California Competes
Higher Education for a Strong Economy

10 + 1 Myths

MYTH 1: Shared governance means faculty members have the final say on curriculum matters.

The policy statement of the American Association of University Professors (AAUP) makes it clear that shared governance is a system of communication, collaboration and delegation. While governing boards should generally defer to faculty expertise on academic issues, the governing board remains "the final institutional authority." The expertise need not always emanate from inside the institution. Because disciplines and conditions change, the AAUP statement says, a college president "must at times, with or without support, infuse new life into a department" by relying on outside experts.

MYTH 2: Deferring to faculty expertise on an academic matter means accepting the majority votes of the academic senate and dismissing other perspectives.

Again, directly from the AAUP's policy statement: "It is the duty of the president . . . to ensure that faculty views, *including dissenting views*, are presented to the board . . . on those issues where responsibilities are shared."

MYTH 3: Accrediting standards require college presidents to delegate academic and curriculum issues to their academic senates.

Visiting teams assess whether students, administrators, and faculty (including but not limited to academic senates) *all* have a voice. The standards of the Accrediting Commission for Community and Junior Colleges (ACCJC) say:

> Faculty and administrators have a substantive and clearly defined role in institutional governance and exercise a substantial voice in institutional policies, planning, and budget that relate to their areas of responsibility and expertise. Students and staff also have established mechanisms or organizations for providing input into institutional decisions.

> The institution relies on faculty, its academic senate or other appropriate faculty structures, the curriculum committee, and academic administrators for recommendations about student learning programs and services.

Ultimately, the governing board "is responsible for establishing policies to assure the quality, integrity, and effectiveness of the student learning programs and services and the financial stability of the institution."

MYTH 4: AB 1725 gave academic senates *primacy* on a list of campus issues.

Enacted in 1988, the Community College Reform Act required joint development of faculty hiring procedures. Otherwise, the legislation required *consultation* with faculty, students and staff. It did not mandate delegation or mutual agreement on anything else.

MYTH 5: AB 1725 established the "right of academic senates to assume primary responsibility for making recommendations on academic and professional matters."

Recommendations yes, but not on "academic and professional matters." The words in AB 1725 covered a much smaller and less ambiguous range of issues: *curriculum and academic standards*. Lobbyists later persuaded the Board of Governors to adopt regulations that changed *recommend* to a *requirement*, and that expanded the territory from the classroom (course content and grading) to a much broader umbrella, "academic and professional matters," under which the expansive 10+1 list was built.

MYTH 6: The Title 5 governance regulations gave community college academic senates the same authority as the academic senates at four-year colleges.

Academic senate authority at four-year colleges is not mandated, it is delegated by the governing boards and subject to their approval. Furthermore, the scope of the delegations is far narrower, generally limited to curriculum and academic standards (as intended in AB 1725), not the broad list of 10+1 topics included in the CCCCO regulations.

MYTH 7: No one questioned the legality of the governance regulations until the California Competes legal challenge in December 2012.

In a non-binding opinion in 1991, the year after the regulations were adopted by the statewide Board of Governors, the attorney for the state legislature declared the regulations *invalid*. The opinion, which was not made public but was shared with the Chancellor's office, reasoned:

> "[T]he Education Code speaks in terms of the academic senate merely 'making recommendations' and not in terms of changing the role of the academic senate to the degree of **equalizing its role with that of the governing board.**"

In 1992, the Community College League of California declared that the regulations "went beyond the mandate of AB 1725 and lessened the legal decision-making authority of the locally elected governing boards."

Observing that the regulations tended to be "dysfunctional and counterproductive," Thomas Nussbaum, then the CCCCO general counsel, in 1995 pointed out that the rules are "flawed in terms of legal accountability—in that we cannot expect to hold a district accountable for an action or inaction it only partially controls." He feared that the regulations he had crafted "eventually could overwhelm and defeat the purpose of the structure itself." Dr. Nussbaum listed the weaknesses, explaining in detail the internal dynamics involved in each one:

1. The structure tends to promote balkanization of the college or district.
2. The structure tends to promote "turf wars."
3. The structure tends to provide less meaningful participation for students, mid-managers, and classified staff.
4. The structure tends to produce a budget which is cobbled together instead of a budget which reflects an overall institutional vision in the best interests of students, the system, and the state.
5. The structure tends not to facilitate trust.
6. Compared to the past, the structure is more expensive to maintain; and more often tends to produce inaction, or action dominated by one organization.
7. The structure tends to create and perpetuate expectations which cannot be met.
8. The structure tends to be unsound in terms of enabling districts to be accountable to the Legislature and Board of Governors.
9. The structure tends to make the colleges less responsive to change.

Dr. Nussbaum's solution: "The legalistic provisions of current regulations that require mutual agreement and address when a board can act without mutual agreement, or when a board can decide

not to 'rely primarily' on the advice and judgment of the academic senate, **should be deleted**." That is what California Competes has proposed.

MYTH 8: The regulations "provide mechanisms under which local boards of trustees can take action contrary to the recommendations of the academic senate." (Letter from Chancellor Brice Harris to California Competes, dated January 23, 2013).

Guidance from Chancellor Harris's own office contradicts this assertion. For example, this Q&A from Legal Opinion M 97-20 makes it clear that the board of trustees is at a dead end with no recourse:

> Question. *The "mutual agreement" procedure appears to contain de facto ability to block changes in policy when an existing policy is in place by failing to agree to needed action. What would happen if this occurs?*
>
> Answer. *It would be bad faith for either the governing board or its designee(s) or the academic senate to attempt to block changes in policy when an existing policy is in place, by failing to agree to needed action*.[1]

The answer offers no "mechanism" whatsoever: there is no remedy offered for bad faith. Furthermore, *it is not bad faith* for an academic senate to insist on the decision rights it has been granted; there may be a genuine disagreement about what action is "needed." The problem is no one is empowered to break the stalemate.

MYTH 9: "Senates do not have veto power over anything" (Michele Pilati, president of the Academic Senate for California Community Colleges, January 27, 2013)

ASCCC's own technical assistance materials describe no less than *21 typical situations* in which presidents and local governing boards are prevented from taking action without the formal approval of their academic senates. In some cases presidents may not act even in fiscal emergencies, and in all cases "the academic senate has legal recourse both in the form of complaints to the Chancellor's Office for violations of Title 5 and to the courts."[2]

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[1] Legal Advisory Regarding Shared Governance, California Community Colleges Chancellor's Office, October 23, 1997, accessed at http://extranet.cccco.edu/Portals/1/Legal/Ops/OpsArchive/97-20.pdf on February 17, 2013.

[2] "Scenarios to Illustrate Effective Participation in District and College Governance," A Joint Publication of the Community College League of California and the Academic Senate for California Community Colleges, accessed at http://asccc.org/sites/default/files/FinalScenario.pdf on February 17, 2013.

MYTH 10: California Competes is proposing "the elimination of shared governance" (Faculty Association for California Community Colleges, multiple communications with members).

California Competes is proposing that California community colleges enjoy the same approach to shared governance that works at other colleges in California and across the nation. The amendments proposed in L.C. 1 would establish the system that FACCC and others *say* they want: a prominent voice, but not the final say.