

June 23, 2025

VIA ELECTRONIC MAIL

Board of Regents
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RE: Written Response to Investigation into Regent James

Hon. Members of the Board of Regents, University Counsel, & and their designees under Regent Policy 2.M,

Regent James, through undersigned counsel and pursuant to Regent Policy 2.M., submits her written response to the pending investigation:

STATEMENT OF FACTS

The undisputed facts show that Regent James never urged a government official to pull funding for the Tea on THC program.

Instead, the evidence shows that before Regent James even learned about the Tea on THC's racist imagery, the Governor decided to recommend cutting the campaign's funding. When she learned and inquired about the racist imagery, Regent James was told that the funding had already been pulled.

At its core, this case is based on misinterpretations of statements that Regent James made in the media. But those misinterpretations cannot trump direct, contrary evidence. Given that Regent James provided testimony in her interview and in this written response clarifying that she never advocated for funding cuts, the only supportable factual conclusion is that she never urged a government official to cut the Tea on THC's funding.

I. Trainings and written materials encourage, rather than forbid, speaking out against University of Colorado programs.

1. The Regent Roles and Responsibilities Overview ("Policy Overview"), which was shared with the regents at their January 9, 2025 retreat, did not forbid regents from *ever* advocating against *any* university program.

2. The Policy Overview introduced the duties of care, loyalty, and obedience in broad terms, but did not state or imply that those duties would be transgressed if a regent advocated against the substance or funding of a University program. **Exhibit 4, p. 5.**¹ The remaining "Roles and Responsibilities" also don't state that a regent is forbidden from ever advocating against the substance or funding of a University program. *Id.*

3. In fact, the Policy Overview says that per Board norms, a regent should "[P]rotect the institution's reputation."

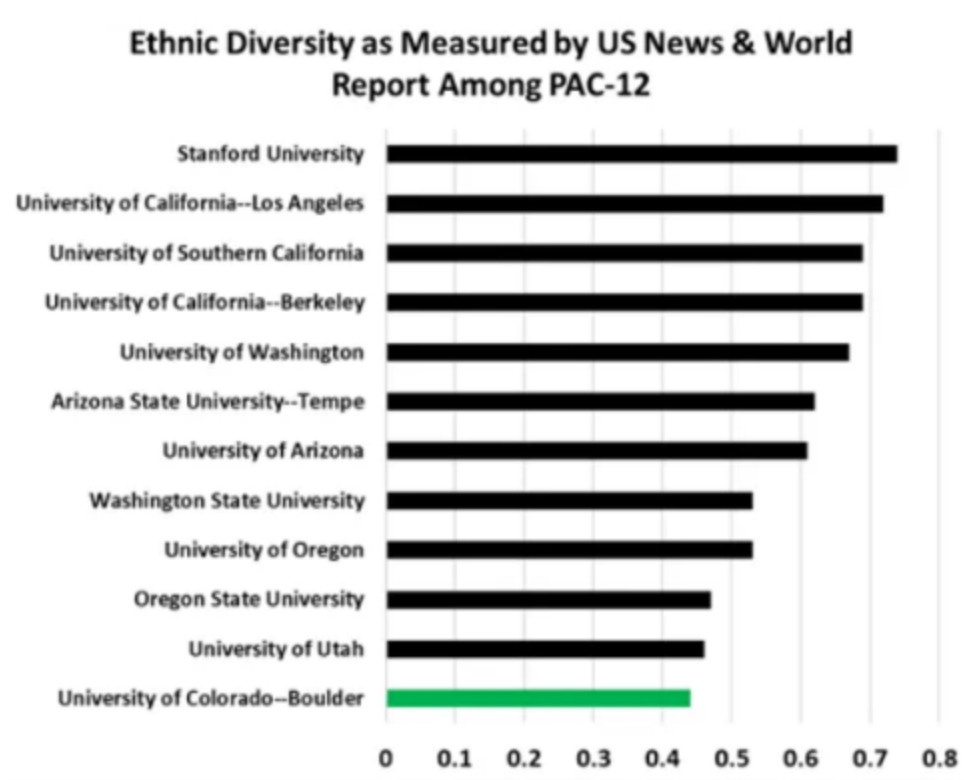
4. The University has historically had trouble recruiting and retaining Black students. Over the period of 1994 to 2021, the CU Boulder enrolled just 20 Black students (<1% of its matriculation).²

5. In 2021, CU Boulder ranked as the least diverse school in the Pac-12.³

¹ Exhibit references refer to the numbered exhibits presented to Regent James during her interview with investigators on June 18, 2025.

² Roger Pielke Jr., *Why is the University of Colorado Boulder so White*, (Oct. 4, 2021), <https://rogerpielkejr.substack.com/p/why-is-the-university-of-colorado>.

³ *Id.*



6. To bridge this racial gap, the University has struck out on a mission to acknowledge its racist, deficient history, change its approach to recruitment and messaging, and transform itself into a welcoming space for Black students, alumni, and faculty.

7. According to the University of Colorado, and numerous departments thereunder, a core value of the University is calling out racist messaging. The Law School launched an antiracist initiative to take steps to “confront racism.”⁴ The English department issued a “Departmental Antiracist Statement,” which recognized the “racist actions without our own university’s history,” and emphasized the need “to counteract racist attitudes, especially via attention to language conventions and the texts that shape our communities.”⁵

8. Per the Regent Policies, it is a regent’s duty to carry out this mission by calling out racism in the University, *especially when* the University’s budget is being used to advance racist tropes. Regent Policy 10.A (Nondiscrimination) specifically states:

A true commitment to diversity, equity, and inclusion requires that each regent, member, department, and office of the university community engage in self-examination to identify the policies

⁴ *Anti-Racism and Representation Initiative*, UNIVERSITY OF COLORADO LAW SCHOOL, <https://www.colorado.edu/law/anti-racism-and-representation-initiative>, (last visited June 6, 2025).

⁵ *Departmental Antiracist Statement*, UNIVERSITY OF COLORADO DENVER, <https://clas.ucdenver.edu/english/departmental-antiracist-statement> (last visited June 19, 2025).

and practices that perpetuate inequities, and create and commit to action steps that foster a more diverse, inclusive, and equitable community.

The University of Colorado will continually assess its progress on these goals as we maintain our commitment to eradicating inequities. **Strategic and budgetary planning must include measurable goals that prioritize the advancement of diversity, equity, and inclusion.** Progress and assessment will be presented to the regents annually.

9. Prior to the events at issue in this investigation, Regent James was never advised, through written materials or oral statements, that she was forbidden from ever advocating against funding for any University program.

II. Regent James’s accomplishments that were ignored by the investigators.

10. During her interview, the investigators took a myopic view of Regent James’ accomplishments, asking only about the awards she received in the cannabis space.

11. The investigators were even unprofessional enough to begin the interview by asking Regent James whether she smokes a “joint every day,” even though consumption of cannabis was in no way related to the investigation into Regent James. This left-field question plays on the same tropes that are at issue in the Tea on THC campaign. Regent James’s white colleagues were never asked questions about their consumption of cannabis, alcohol, or other intoxicants, even though white people use marijuana at higher rates than Black people. The only regent who was accused of drug use, even though it had no relation to the investigation, was Regent James—a Black woman.

12. To set the record straight, this is a select number of positions, awards, and honors bestowed on Regent James that the investigators ignored, including but not limited to:

- a. Serving on Senator Kamala Harris’ National Finance Committee 2020
- b. Serving on Governor Jared Polis’ Transition Team 2019
- c. Serving on Colorado Governor’s Amendment 64 Task Force Work Group 2013 & 2015
- d. Serving on Obama for America National Finance Committee 2008
- e. Serving on Obama for America Colorado Finance Committee 2007
- f. Serving on Los Angeles Small Business Commission 2004
- g. Serving by Gubernatorial Appointment, Colorado Tourism Board 2019
- h. Serving on Alumni Board of Directors, University of Colorado 2005 - 2008

- i. Serving on Board of Directors, Starlight Children’s Foundation 2002 - 2004
- j. Serving as President, National Women’s Political Caucus-Los Angeles 2001 - 2003
- k. Serving as Junior League of Los Angeles Board Fellow, 2002
- l. Serving as Economic Chair, Greater Los Angeles African American Chamber of Commerce 2000 - 2004
- m. Received Colorado Women’s Chamber of Commerce Top 25 Most Powerful Women in Business 2023
- n. Received Blood Sweat and Tears Award 2022
- o. Received Person of the Year, CEA & Artemis Foundation 2021; and
- p. Received Advocate of the Year, Industry Power Women 2018.

III. The University of Colorado rolls out a duplicative and racist campaign.

13. In 2021, the Colorado State Legislature passed HB 21-1317, which directed the Colorado School of Public Health (“CSPH”) to produce an educational campaign on the possible effects of THC.

14. Regent James was not involved in lobbying or advocating for or against HB 21-1317. Regent James did not communicate directly, or solicit others to communicate, with a covered official for the purpose of aiding in or influencing a variety of legislative, executive branch, or state agency activities. C.R.S. 24-6-301(3.5)(a).

15. Through HB 21-1317, \$2MM from the Marijuana Tax Cash Fund (“MTCF”) was directed to the Colorado School of Public Health to develop an awareness campaign called the “Tea on THC.” **Exhibit 17, p.6.**

16. The Tea on THC campaign had two latent flaws, which would ultimately contribute to its downfall. *First*, the Tea on THC campaign drew its funds from the MTCF, so if marijuana sales plummeted, its funding source would dry up. *Second*, similar research—including research into the effects of THC use on pregnant people—was already being conducted by CSU-Pueblo, causing some to question whether the program was duplicative.⁶

⁶ See Emily Bates, *Defining the Effects of CBD Consumption During Pregnancy on Fetal Neurodevelopment and Postnatal Anxiety*, Institute of Cannabis Research (2022), <https://www.instituteofcannabisresearchcolorado.org/research/defining-the-effects-of-cbd-consumption-during-pregnancy-on-fetal-neurodevelopment-and-postnatal-anxiety/>.

17. Between the height of the pandemic (when HB-1317 was passed) and last year, marijuana tax collections declined by 41%, which represented a decrease of \$172MM.⁷ This caused severe restrictions on the MTCF itself, which lawmakers blamed on the legislature treating the MTCF like a “piggy bank that folks look to when they want something funded,” which caused misuse of the funds.⁸ “Nothing paid for by the Marijuana Tax Cash Fund makes sense,” claimed the JBC chair.⁹ To alleviate misuse, the JBC chair called for a “line-by-line review of the fund.”¹⁰

18. In 2024, the State of Colorado was poised for a budget shortfall, and Governor Polis began recommending budget cuts to alleviate the deficit.

19. On November 1, 2024, given the budget shortfall, decreased funds to the MTCF, and duplicative programming, Governor Polis recommended that the Joint Budget Committee reduce the Tea on THC funding from \$2MM to \$1MM. **Exhibit 17, p. 6.**

20. Around December 19, 2024, the Colorado School of Public Health rolled out its Tea on THC campaign. **Exhibit 3, p.1.**

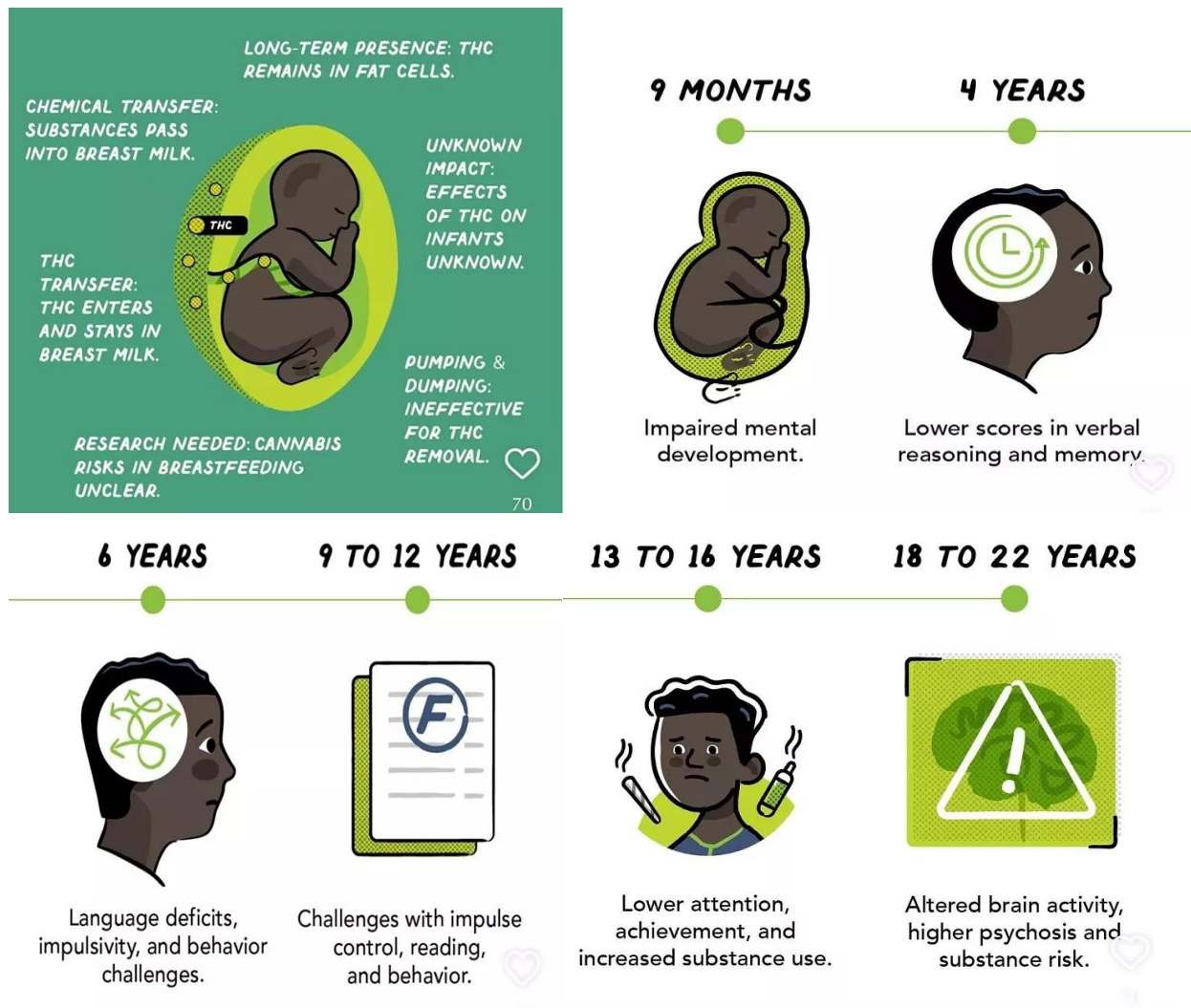
21. The Tea on THC campaign included racist imagery, depicting Black parents as drug users, and their babies, children, teenagers as “[i]mpaired mental[ly]” achieving “[l]ower scores in verbal reasoning and memory,” enduring “[l]anguage deficits, impulsivity, and behavior challenges,” and having “[c]hallenges with impulse control, reading, and behavior.”

⁷ *Brian Eason*, Colorado’s marijuana tax revenue keeps falling from its pandemic high, spurring new calls to rein in spending (April 3, 2025), <https://coloradosun.com/2025/04/03/colorados-marijuana-tax-revenue-keeps-falling-from-its-pandemic-high-spurring-new-calls-to-rein-in-spending/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*



The Tea on THC's racist imagery.

22. These images and their stereotypes deploy the same tropes as racist texts across centuries: Black babies and children, and adolescents are stupider than their white counterparts; Black teenagers are more poorly behaved than their white counterparts; and Black men are prone to psychosis, and therefore more dangerous.

23. These tropes have real world consequences. As an example, look deeper at the statement that Black adults are prone to psychosis.

24. Statistics show that the Aurora Police Department uses force against Black people 1.26 times more often than their white counterparts, and kills Black people at a rate 3.5 times greater than white people.¹¹

¹¹ *Police Accountability Tool*, <https://mappingpoliceviolence.org/cities> (last visited June 16, 2025).

25. A prevailing explanation for this trend is that police perceive Black people to be violent and/or experiencing psychosis at a higher rate than white people, and police are more likely to use deadly force when dealing with someone they believe to be experiencing psychosis.¹²

26. Given that the Tea on THC campaign contributes to the stigma that Black people are more likely to experience psychosis, the campaign is perpetuating a perception that helps drive this country's, and this very state's, racial disparity in police killings among other injustices.

IV. Regent James attempts to work with University leadership to get the racist imagery removed, but she is rebuffed.

27. On Saturday, January 25, 2025, Regent James first became aware of the Tea on THC's racist imagery.

28. On or around Sunday, January 26, 2025, Regent James contacted University of Colorado President Todd Saliman, asking him if he had seen the racist imagery. President Saliman agreed that the images were reprehensible. He directed Regent James to contact Chancellor Don Elliman to discuss her concerns.

29. On or around Sunday, January 26, 2025, Regent James contacted Chancellor Elliman to inquire if he had seen the racist imagery. In response, Chancellor Elliman remarked that Regent James should consider that a Black man headed the campaign.

30. Regent James then had a follow-up conversation with President Saliman on or around Sunday, January 26, 2025, recapping her conversation with Chancellor Elliman.

31. In her conversations with President Saliman and Chancellor Elliman, Regent James requested that (1) the Tea on THC Instagram page and website be taken down in light of the racist imagery; (2) they provide transparency on how this campaign was developed and who initiated it; and (3) CU Public Health and Initium Health be held accountable for the racist imagery. **Exhibit 10.**

32. That day, neither President Saliman or Chancellor Elliman indicated that they would work with Regent James to pursue these goals or otherwise work to remove the racist imagery.

33. Regent James also contacted Regent Hood, who acknowledged that the images were racist, but did not provide further help in getting the images removed.

34. Regent James similarly contacted three other regents about these images, but received no reply, let alone confirmation that the regents would work with Regent James to get the racist imagery removed.

¹² See generally Fuller et al., *Overlooked and Undercounted*, Treatment Advocacy Center (December 2015), <https://www.tac.org/wp-content/uploads/2023/11/Overlooked-in-the-Undercounted.pdf>.

35. Regent James did not contact anyone in the Colorado School of Public Health, much less any faculty, to criticize their work or attempt to influence the substance of their research.

V. After University officials decline to intercede against the racist imagery, Regent James asks a government member about the status of the Tea on THC campaign, who confirms that the decision to pull the campaign's funding had already been made.

36. Having not received support from the University President, Chancellor of Anschutz medical campus, and other regents, Regent James asked others whether there were ongoing efforts to mitigate the harm caused by the racist imagery.

37. Before she reached out to any government official outside of the University, Regent James had heard from other contacts that the Governor's office had already planned on recommending a complete elimination of the funding for the Tea on THC campaign in light of prior funding, budget shortfalls, and duplicative programming.

38. On or around Sunday, January 26, 2025, Regent James contacted a representative of the governor's office to ask whether the governor's office was aware of the racist imagery, and *whether* the governor's office had plans to mitigate the harms of the imagery.

39. That official confirmed what Regent James had already heard from other sources: even before the racist imagery was deployed, the governor had planned to recommend to the JBC that all of the funding for the Tea on THC program be eliminated in light of prior funding, budget shortfalls, and duplicative programming. *See supra*, ¶¶ 18-19.

40. The only contact Regent James had with the governor himself on this matter was sending him a text containing the racist imagery, asking if he had seen the images.

41. The communications described in Paragraphs ¶¶ 38-40 were the only communications Regent James had with the governor or governor's office regarding the Tea on THC campaign.

42. The governor's decision to pull the funding was made before Regent James even learned about the Tea on THC's racist imagery.

43. Regent James could not have influenced, much less caused, the decision to pull the campaign's funding given that the decision was made before she even learned about the campaign.

VI. University officials pull the imagery and admit it was racist, but only after public pressure.

44. On January 28, 2025, the Colorado School of Public Health acknowledged that the Tea on THC campaign used racist imagery, and announced a plan to take the images down. **Exhibit 11, p. 1.**

45. Nevertheless, for approximately the next week, the images were still accessible on the campaign's Linktree account.

46. On January 28, 2025, while the images were still accessible on the campaign's Instagram page, Regent James sent an email to "Black CU Leadership," explaining her concerns with the campaign's racist imagery, and making the same three proposals that Regent James made to President Saliman and Chancellor Elliman: (1) the Tea on THC Instagram page and website be taken down in light of the racist imagery; (2) CU provide transparency on how this campaign was developed and who initiated it; and (3) CU Public Health and Initium Health be held accountable for the racist imagery. **Exhibit 12, p. 1.**

VII. Governor Polis finalizes his own decision to recommend funding cuts to the Tea on THC program in light of prior significant investments, budget shortfalls, and duplicative programming.

47. On January 31, 2025, Governor Polis upgraded his recommendation to the JBC, now asking that the funding for the Tea on THC campaign be entirely eliminated, citing "significant previous funding being allocated to this program, as well as the challenging balancing outlook for the [Marijuana Tax Credit Fund]," and "duplicative" research and educational opportunities at CSU-Pueblo. **Exhibit 17, p.6.**

48. The timeline of the governor's proposal supports the conclusion that Regent James did not have any insight or influence into the governor's decision to cut the Tea on THC's funding. Given the coordination and work that goes into the governor's JBC's proposals, it was next to impossible that Regent James's contact with the governor's office on Sunday could have had any influence on the decision to cut funding for the campaign five days later.

VIII. After the Governor recommended that the funding be pulled, the Board of Regents misconstrues Regent James's statements on the campaign, her involvement in advocating against the racist imagery, and the nature of her speech.

49. This investigation accused Regent James of: allegedly lobbying the governor to get the campaign's funding pulled and redirected to social equity programs; and allegedly succeeding in getting the funding pulled.

50. The above facts, supported by documentary evidence, make clear that the governor had already made the decision to pull the campaign's funding, and therefore Regent James did not, and could not have, influenced the governor's pre-existing decision to propose funding cuts to the Tea on THC program.

51. The governor had already recommended cutting the campaign's funding in half in November 2024.

52. The governor decided to increase his proposed cuts to entirely eliminate the funding for the Tea on THC campaign before January 25, 2025.

53. When Regent James reached out to someone in the governor's office to inquire about the status of the Tea on THC campaign, she had already been informed by cannabis owners and professionals that the governor made the decision to cut the campaign's funding entirely.

54. Given that the decision to cut the campaign’s funding had already been made by the governor, Regent James did not lobby or urge the governor or any other government official to cut the Tea on THC’s funding.

55. In public statements, Regent James has said she had *goals* that the funding for this racist program would be eliminated.¹³ But descriptions of policy goals does not mean that Regent James lobbied the governor’s office to achieve them.

56. In public statements, Regent James has said that she was *working* to get the funding for the racist program pulled.¹⁴ In this case, “working” simply meant speaking in favor of getting funding pulled, asking what the status of the funding was, and speaking with Black students, alumni, and faculty who were eager to know more about whether the campaign was going to retain its funding in light of the racist imagery.

57. Even before this written statement, Regent James clarified to the press that people are misunderstanding her words, and she did not lobby or influence the governor’s pre-existing plan to cut the Tea on THC’s funding. In an interview with the Denver Post, Regent James said that prior articles had “misquoted” her, and that the only contact she had with the governor was texting him the images, and “he agreed they were horrible.” As for the governor’s office, she clarified that all she said was that the money “should be used in places . . . that knew how to do this the correct way.” **Exhibit 31, p. 3.**

58. In light of the undisputed facts presented in this written statement, there is no reasonable basis to conclude that Regent James lobbied or urged the governor to pull or redirect funding—that decision was made before she called anyone in the governor’s office. At most, Regent James merely voiced her support for that decision.

* * *

59. This undisputed evidence shows that Regent James:

a. **Did not** request that responsible officials in the Executive and Legislative branches pull funding from the Colorado School of Public Health. The decision to pull that funding was made before Regent James reached out to anyone in the governor’s office, and

¹³ **Exhibit Tab 5** (post stating that she “*would* be speaking with the CU President, Ans[c]hutz Chancellor, and the Governor about” the campaign); **Exhibit Tab 6** (stating that it was her “goal that the funding for this group be pulled by the state”); **Exhibit Tab 9** (stating she *would* be speaking to the governor’s office about the pictures); **Exhibit Tab 12** (stating that she is “looking at” having that money moved); **Exhibit Tab 14** (stating that the state “should” pull the program’s funding); **Exhibit Tab 15** (stating that she’s “looking at” pulling the funding).

¹⁴ **Exhibit Tab 6** (stating that she is “working to make” the funding pull happen); **Exhibit Tab 7** (saying she was going to “strategize” on how to get the images pulled, and more transparency and accountability); **Exhibit Tab 12** (stating she is “working with the governor’s office” to have the program defunded).

it would have been impossible for Regent James to “request” the governor’s office to make a decision that they had already made.

b. **Did not** request that responsible officials in the Executive and Legislative branches divert funding from the campaign to grants for marijuana business owners. Regent James never made this request or suggestion to anyone in the governor’s office—she merely suggested it would be good policy when speaking to members of the media.

c. **Did** express opinions critical of the “Tea on THC” campaign publicly and privately. But she never did so to faculty members of the CSPH, or otherwise attempt to influence the substance of their scholarship.

ANALYSIS OF ALLEGED VIOLATIONS

Based solely on her criticism of the Tea on THC’s racist imagery, Regent James was accused of violating:

1. Regent Policy 2.A (Conflicts of Interest) and C.R.S. § 24-18-108.5 (Rules of Conduct for Members of Boards);¹⁵
2. Regent Policy 2.J (Fiduciary Obligations);
3. Regent Policy 2.I (Political and Social Expression by Regents); and
4. Regent Policy 5.B.1 (B) (Academic Freedom).

The initial investigative report concluded that Regent James violated the second and third provisions. But that report’s analysis was threadbare, failing to cite any binding or persuasive authority to support its interpretation of these provisions. A closer look at the facts and law confirms that Regent James did not violate any of these provisions.

I. Regent James did not advance any personal pecuniary interest (2.A-Conflict of Interest; C.R.S. 24-18-108.5).

The initial investigative report concluded that “James likely did not violate Regent Policy 2.A,” which prohibits regents from placing their “own financial interest or personal interest” above the “interests of the university.” That holds true.

Regent Policy 2.A. incorporates its conflict-of-interest standard from a series of statutes, which make clear that a conflict of interest exists only when:

- There is a transaction between the university and an organization in which a regent owns an interest. *See* C.R.S. §18-8-308(2) (defining a potential conflict of interest as when the regent “owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction”). Here, there is no

¹⁵ Regent Policy 2.A. expressly incorporates C.R.S. § 24-18-108.5, so this analysis discusses the two issues in the same section.

allegation that the University conducted a transaction with a company in which Regent James owned an interest.

- A regent acquires an interest, wagers, or aids someone else based on confidential information she learned in her capacity as regent. *See* C.R.S. § 18-8-402(1). Here, there is no allegation that Regent James misused any confidential information in this case.
- There is proof beyond a reasonable doubt that a regent performed an official act¹⁶ which may have a direct economic benefit on a business in which the regent has a direct or substantial financial interest. *See* C.R.S. § 24-18-108.5(2). But Regent Policy 2.A. clarifies that “direct” economic benefit means the benefit would have to flow to the regent, and the regent alone. “A regent is not deemed to have a conflict of interest if the matter affects the entire membership of a class to which the regent belongs.” Regent Policy 2.A.1. Here, the theory raised in commissioning this investigation was that: Regent James made public statements criticizing a campaign that advocated against pregnant people consuming cannabis→if the program were pulled, some pregnant people *might* buy more cannabis→if more pregnant people buy cannabis, it *might* increase the revenue of *all dispensaries*→if the revenue of all dispensaries is increased, it *might* increase Regent James’s financial interests because she owns a dispensary. As pointed out in the initial report, that sort chain of inferences is the exact sort of “attenuated” reasoning that Policy 2.A.1. forbids. Because any increase in cannabis spending would “affect[] the entire membership base” of cannabis dispensary owners, that speculative, additional spending does not constitute a conflict of interest.

As the initial investigative report points out, Regent James properly disclosed that she owned a dispensary. *See* Regent Policy 2.A.1 (“To avoid the appearance of impropriety, a regent should disclose to the board any financial, personal, or other interest of the regent or regent’s family or associates in a matter that might reasonably be perceived either as adversely affecting the regent’s exercise of independent judgment on behalf of the university, the board, and the public or as a breach of the regent’s public trust.”). That, coupled with the fact that Regent James (1) did not contract with the university, (2) did not misuse confidential information, and (3) did not promote a direct benefit to herself or her businesses, confirms that Regent James did not violate the conflict-of-interest provisions.

II. Regent James’s advocacy served, rather than hurt, the University (2.J-Fiduciary Obligations).

Regent James’s public advocacy served, rather than violated, her Duties of Care, Loyalty, and Obedience.

¹⁶ Regent James public statements are not an official act, and for that reason could never amount to a conflict of interest.

Policy 2.J.I (Duty of Care): Regents “shall act at all times in good faith and with the appropriate diligence, care, and skill required under the circumstances” and “shall act in a manner reasonably believed to be in the best interests of the university.”

The initial report concluded that “less than 24 hours passed between James learning of the images and her contacting the Governor to request that the campaign’s funding be cut.” That is factually false. After she learned of the images, Regent James’s first contacts were inside the University system. She contacted President Saliman, Chancellor Elliman, and fellow regents to raise concern over the racist imagery. *See supra*, ¶¶28-34. To be sure, she also contacted a member of the governor’s team to ask about the status of the program, but she made no requests or demands in that communication because the governor’s team informed her that they had already decided to propose cutting the Tea on THC’s funding for unrelated reasons.

Even if Regent James had asked that the funding be pulled within 24 hours of speaking to President Saliman, Chancellor Elliman, and other regents, that would not violate her duty of care. Federal and state laws protect—and in fact encourage—members of boards to report issues outside of the board to government officials. *See, e.g.*, 18 U.S.C. § 1514A(a). Board members are not required to first attempt to deal with the issue internally before reporting it to other government officials. *See id.* These whistleblower protections show that the Duty of Care does not require that concerns with misconduct be raised internally, or wait an arbitrary number of days, before reporting the concerns to other government officials.

Policy 2.J.2 (Duty of Loyalty): Regents “shall faithfully pursue the interests and mission of the university, rather than the regent’s own interests or the interests of another person or organization.”

The initial report opined that “pulling research funding is likely never in the best interest of the University, and because the University had decided it was in the best interest of the University to lobby against proposed funding cuts to the CSPH for the 2025-26 FY, James’s subsequent attempts to defund the campaign likely undermined the best interests of the University.” That is factually false. The Governor had already decided to pull the funding of the Tea on THC campaign before Regent James reached out to his team, so Regent James did not “attempt[] to defund the campaign.” *See supra*, ¶¶ 38-39, 47-48.

And even if Regent James had, the duty of loyalty does not forbid regents from *ever* advocating against *any* University funding. Just a few years back, the Board of Regents itself voted against a tuition increase, choosing instead a freeze tuition.¹⁷ And at least eight of nine members of the current Board of Regents have publicly advocated against tuition hikes, which is the same as advocating against increased funding.¹⁸ In an interview in 2022, Regent Rennison

¹⁷ *Regents approve no tuition, fees, compensation increases, more*, CU Boulder Today (May 19, 2020), <https://www.colorado.edu/today/2020/05/19/regents-approve-no-tuition-fees-compensation-increases-more>.

¹⁸ (Chair Rennison) <https://www.dailycamera.com/2020/10/08/university-of-colorado-board-of-regents-2nd-congressional-district-candidate-callie-rennison/>; (Vice Chair Montero) <http://craigdailypress.com/news/candidate-for-university-of-colorado-regent-wants-lower-tuition/>; (Regent Hood) <https://www.westword.com/news/university-of-colorado-regent->

stated that “she would support eliminating *public* and student funds from the [CU Benson] center’s budget.”¹⁹

Just consider the practical implications if regents were always forbidden from advocating against any University program. Would Regent James be forbidden from advocating against funding a campaign that stated that Black students are intellectually inferior because of their skull shape? Would Regent James be forbidden from advocating against funding a campaign that stated that gay students are amoral and therefore shouldn’t hold positions of trust in student groups? Would Regent James be forbidden from advocating against funding a campaign that stated that Muslims are biologically more violent than their Christian counterparts?

Advocating against programs that spew racist tropes *is* in the best interests of the University. Don’t take our word for it. When discussing the importance of anti-racist views, the School of Medicine has said that “it is not enough to hold these beliefs, we must speak out, and more importantly, we must enact change.”²⁰ By calling out the racist imagery in the “Tea on THC” campaign, Regent James was addressing the real harm the campaign inflicted on both Black students at CU and the broader Black community in Colorado. Addressing racism and institutional harm is in the best interests of the University. Racism on a college campus can negatively impact students’ mental health, academic performance, and career outcomes, while simultaneously leading to decreased student enrollment, donor withdrawal, and loss of critical partnerships for the University. Taking a clear stand against racism not only protects all members of CU’s community, but also safeguards the University’s reputation as an elite educational institution.

Policy 2.J.3 (Duty of Obedience): Regents “shall ensure that, in the exercise of official duties, the regent’s conduct is in accordance with applicable law and the university’s mission.” Regent James has not violated any law or Regent Policy. And her advocacy against the racist imagery is consistent with the University’s mission to “[p]romote and uphold the principles of ethics, integrity, transparency, and accountability,” and expand[ing] student success, diversity, and the economic foundation of the State of Colorado.”²¹

[candidates-have-different-visions-22364369](https://www.chavezforcu.com/issues); (Regent Chavez)

[https://www.chavezforcu.com/issues](https://www.mcnultyforregent.com/priorities); (Regent McNulty)

<https://www.mcnultyforregent.com/priorities>; (Regent Spiegel)

<http://ilana4regent.com/priorities/>; (Regent VanDriel) <https://regents.markvandriel.com/issues/>.

¹⁹ *Regents chair defends CU’s Benson Center but advises better selection process for scholars*, Colorado Newsline (June 20, 2022), <https://coloradonewsline.com/briefs/regents-chair-defends-cus-benson-center-but-advises-better-selection-process-for-scholars/>.

²⁰ *Anti-Racist Statement*, Colorado Posterior Cortical Atrophy (PCA) Support, University of Colorado Anschutz Medical Campus, <https://medschool.cuanschutz.edu/pca/home-page/anti-racism-statement#:~:text=We%20vigorously%20condemn%20racism%20in,importantly%2C%20we%20must%20enact%20change> (last visited June 9, 2025).

²¹ *Mission Statement*, UNIVERSITY OF COLORADO, (Sept. 11, 2012), <https://www.cu.edu/mission-university-colorado-guiding-principles-and-vision-statement>.

III. **The political and social expression policy permits, rather than forbids, Regent James’s speech (2.I-Political and Social Expression by Regents).**

The initial investigation found that Regent James violated the policy governing Political and Social Expression by Regents, but that policy empowers (rather than restricts) speech. Policy 2.I states:

The Board of Regents **recognizes the individual right of its members to express opinions on matters of social and political concern.** In accordance with Article 2.A of the Laws of the Regents, **unless the Board of Regents specifically determines otherwise, an individual regent’s expression of opinion on matters of social or political concern does not constitute an expression by the Board of Regents.** In discharging their duties or otherwise exercising official authority granted to the Board of Regents, regents remain obligated to uphold their fiduciary duties to the university.

In short, this policy provides that

- Individual regents have a *right* to speak on matters of social and political concern; and
- That speech is the speech of the individual regent, not the Board, unless the Board of regents votes otherwise.

This policy does not mandate or forbid anything. It does not require regents to disclose that their speech is their own before every statement they make. It does not forbid regents from making statements to the public using their personal title as regent.

Indeed, members of this very board make statements to the public, invoking their personal title as regent, all the time. While running for office, Vice Chair Montera said “As Regent, I have worked to bring back the rich tradition of higher education where students are taught ‘how to think, not what to think,’ regardless of their area of study.”²² He was not punished for not prefacing that claim with a disclaimer, and because the Board did not adopt his speech, it was clear to all that his statement was his and his alone.

Because Regent Policy 2.I does not impose any obligations, there were no obligations that Regent James could have violated.

Instead, Regent James’s speech is explicitly protected under Policy 2.I. Courts have consistently held that “protest[ing] racial discrimination” is “a matter of public concern.” *Adams v. Cnty. of Sacramento*, 116 F.4th 1004, 1011 (9th Cir. 2024); *see also Connick v. Myers*, 461 U.S. 138, 146 (1983) (noting that comments “concerning the school district’s allegedly racially discriminatory policies involved a matter of public concern”). By condemning the racist imagery

²² *Paolo Zialcita*, University of Colorado Board of Regents: Congressional District 5, CPR News (Oct. 14, 2024), <https://www.cpr.org/2024/10/14/vg-2024-university-of-colorado-board-of-regents-congressional-district-5/> (emphasis added).

in a state-funded public health campaign, Regent James was expressing an opinion on matters of social and political concern, which is protected under Policy 2.I.

IV. Regent James never interfered with the academic freedom of faculty (5.B.1-Academic Freedom).

The initial investigation found that Regent James had not violated the policy on academic freedom. All facts support that exoneration. Regent Policy 5.B.1(B) provides:

Faculty members shall not be subjected to direct or indirect pressures in an attempt to influence their work in a manner that would conflict with professional standards of the field. The Board of Regents and administration shall not impose such pressures or influence and shall resist such pressures or interference when exerted from inside or outside the university.

Regent James did not place any direct or indirect pressure on faculty members. She did not even contact, directly or indirectly, anyone in the CSPH. *See supra*, ¶ 35. She certainly did not direct anyone to change their analysis or conclusions. *See id.* And Regent James has not suggested that she would interfere with anyone's reappointment, promotion, or tenure. *See id.*

Further, Regent James did not attempt to influence any work in a manner that conflicts with professional standards. The only thing she urged was that the racist imagery be removed. Some misunderstood her criticism of the campaign as based on "debunked" science. But in her interview with the investigators, she clarified that she was referring to the racist tropes employed by the campaign's images (e.g., claiming Black people are stupider, lack impulse control, and are more prone to violence). She was not insinuating that a faculty member be penalized for their academic work in the area of cannabis and pregnancies.

* * *

Regent James was critical of a campaign that distributed admittedly racist imagery. She urged University leaders to pull those images. And after Regent James learned that the governor had made the decision to pull the campaign's funding—a decision he made independently, before Regent James even learned of the racist imagery—she expressed gratitude for his decision.

There is no basis in law to censure Regent James for this antiracist advocacy. Doing so would conflict with the text and spirit of the regent policies. The threadbare analysis presented in the initial report does not survive even cursory scrutiny. That analysis won't shield the Board of Regents if a court must be called upon to review the basis for this censure.

But if you put aside the specter of future legal review, there's a much simpler reason that the Board should vote against censuring Regent James: censuring the only Black person on the Board of Regents for her antiracist advocacy would be morally reprehensible.

At the Board of Regents' meeting discussing these accusations, the regents will be asked to decide whether standing up against racism is a punishable offense. The Black applicants,

students, alumni, faculty, staff, and their allies will be listening for your response. Make a decision that you can defend while looking them in their eyes.

Sincerely,

/s/ Neil S. Sandhu

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