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May 8, 2014

The Honorable Dan Flynn
Co-chair, House Select Committee on Transparency in State Agency Operations
P.O. Box 2910
Austin, TX 78768

Dear Chairman Flynn:

I am in receipt of your letter dated May 6, 2014 (the "Letter") addressed to the members of the Select Committee on Transparency in State Agency Operations (the "Committee") wherein you wrote that "comments and suggestions as to why the enclosed solutions would or would not be sufficient are encouraged and appreciated." What follows are my comments and suggestions in response to your Letter.

In your Letter, you raised a number of points and posed several rhetorical questions that I found somewhat confusing. For example, on page 3 of your Letter you asked "Why if there was conflict did the President of the University [sic] of Texas at Austin, and the Chancellor of the System not meet with the Regents and come to a professional and transparent conclusion? If the University or System felt Regent Hall was out of control, why did the Board of Regents allow this to go on? Why didn't the Chancellor or Chairman of the Board show the strength of character and leadership and simply just say no? Why did it take a legislative committee spending hundreds of thousands of taxpayers' dollars to do something that would, in the business world, not be tolerated?"

I found the questions you posed in the above quotation odd in light of the task that the Committee has been charged with and also in light of the facts. The Committee has been charged with investigating the actions of Regent Wallace Hall, *not* the actions of the President of the University of Texas at Austin or the Chancellor of the University of Texas System. According to the Speaker of the House's Proclamation dated June 25, 2013, the Committee was charged with "monitor[ing] the conduct of individuals appointed to the offices of the executive branch of state government, including university regents, to ensure such officers are acting in the best interest of the agencies and institutions they



COMMITTEES:

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govern...the committee shall have the authority to investigate matters relating to misconduct, malfeasance, misfeasance, abuse of office, or incompetency of such officers, and may propose appropriate articles of impeachment against such officers." The actions (or inactions) of the President of the University of Texas at Austin and the Chancellor of the University of Texas System are therefore *wholly outside the scope of the Committee's investigation*. Moreover, you seem to ignore a basic fact of our public university system of governance: that the Chancellor of the University of Texas System and the President of the University of Texas at Austin are *employees* of the University of Texas System and *report* to the University of Texas Board of Regents, on which Regent Wallace Hall sits. To me, it hardly shows a lack of "character and leadership" for the Chancellor of the University of Texas System not to "just say no" to one of his bosses, as you asserted in your Letter.

In the above quotation, you also asked why it took the Committee "spending hundreds of thousands of taxpayers' dollars" to do something that would not be tolerated in the business world. I found this question to be a strange one coming from the person who, along with the Committee's co-chair, actually made the decision to hire the Committee's counsel and presumably approved the contract for the Committee counsel's services. As for the behavior that "would, in the business world, not be tolerated", it is unclear to me exactly whose behavior you are decrying, but raising the issue, even obliquely, of the cost of the Committee discharging its duties strikes me as peculiar coming from the person who actually authorized the expenditures. In any event, none of the above issues that you raised in your Letter are at all relevant, in my opinion, to the task that the Committee was given by the Speaker of the House and only serves to further confuse an already complicated issue.

Similarly, you raised in your Letter "President Powers' questionable decision to direct more than \$1 million in contracts to Accenture" and went on to call for "[a]n immediate investigation into the Accenture contracts." Not only is anything having to do with President Powers and any Accenture contracts wholly outside the scope of our current, ongoing, and incomplete investigation into Regent Wallace Hall, but it would appear that, less than one full page after you decried the amount of taxpayer money that has gone into the Committee's *current* investigation into Regent Wallace Hall, you call for the Committee to open *another* investigation into the President of the University of Texas at Austin? Suffice it for now to say that I found this to be a totally inconsistent and, frankly, bewildering recommendation for a next step (the first next step, in fact) for the Committee to take in dealing with the complex matter at hand.

The above represent the bulk of my comments to your Letter. What follows are my suggestions for how the Committee should proceed.

First, the Committee should adopt an official report of its findings with respect to its investigation of Regent Wallace Hall; to me, this is obvious, but apparently there is some question about the need for the Committee to take such an official action. The Speaker of the House appointed a select committee and authorized it to conduct an investigation which was, in fact, conducted. As your Letter pointed out, this investigation was

conducted at some cost to the taxpayers of Texas. Posterity requires that the Committee officially summarize its investigatory findings in a written report. This report could be the report generated by the Committee's counsel without further modification; or it could be an edited version of the Committee's counsel's report; or it could be a *sui generis* report generated by the Committee that is based in part, or not at all, on the report generated by the Committee's counsel. What is important is that the Committee take some official action (e.g. vote) on a final report that will represent the work of the Committee and that the Committee as a whole will take ownership of (even if no individual member does), much like when a legislative committee approves a bill: an affirmative vote of a legislative committee represents the approval of the committee as a whole, regardless of whether the vote was unanimous or not, but does *not* necessarily reflect perfectly the views of each (or any) individual member of said committee.

Second, no vote on the impeachment of Regent Wallace Hall should be taken by the Committee, if at all, until *both* of the following two (2) things have first occurred:

1. The Committee's official report (discussed above) has been finalized and adopted by at least a simple majority of the Committee; and
2. The law enforcement agencies to which you and your co-chair referred Regent Wallace Hall's conduct with respect to protected student information have made a final determination as to whether they believe Regent Wallace Hall violated state and/or federal law by his conduct, as evidenced by their refusal to bring charges against Regent Wallace Hall (thereby ending the criminal investigation into Regent Wallace Hall), or by a grand jury either "no-billing" Regent Wallace Hall or returning an indictment against Regent Wallace Hall.

It is important that the Committee not squander its hard work up to this point by acting with too much haste. The Committee should work hard to generate a report that it can officially adopt, hopefully by a unanimous vote, but certainly by at least a simple majority vote. Then, the Committee should allow the law enforcement agencies that are investigating one of the major possible grounds for the Committee to propose the impeachment of Regent Wallace Hall identified in the Committee's counsel's report -- Regent Wallace Hall's alleged improper use of confidential information -- to complete their investigations and determine whether or not they believe Regent Wallace Hall's actions were in violation of state and/or federal law so that the Committee can make the most informed decision possible regarding whether or not to propose the impeachment of Regent Wallace Hall.

Respectfully submitted,

Eric Johnson



Cc: The Honorable Carol Alvarado, Co-chair
The Honorable Naomi Gonzalez
The Honorable Lyle Larson
The Honorable Trey Martinez Fischer
The Honorable Charles Perry
The Honorable Four Price