

HOUSE OF REPRESENTATIVES



Carol Alvarado
Co-Chair

SELECT COMMITTEE ON TRANSPARENCY IN STATE AGENCY OPERATIONS

Dan Flynn
Co-Chair

May 6, 2014

The Honorable Eric Johnson
Member, House Select Committee on Transparency in State Agency Operations
Texas State Capitol
E1.204, Capitol Extension
Austin, TX 78701

Dear Representative Johnson:

From the beginning of this Committee's investigation of Regent Wallace Hall and his alleged actions and misconduct, that his temperament, conduct, disrespectful actions towards legislative officials, and deliberate bullying tactics used on university faculty and employees to expedite his allegedly burdensome requests of the University of Texas at Austin, could easily be grounds enough for some to call for his resignation or impeachment. This committee cannot deny the fact that Regent Hall proved himself to be an arrogant, self-centered, unobliging individual determined to entertain this investigation on his terms alone.

It is clear Mr. Hall took great pleasure in disrupting the committee's efforts to ensure a thorough investigation by failing to provide supporting documents and evidence to defend his actions, refusing to testify, and failing to present a single witness to testify on behalf of his actions. For those who believe Mr. Hall was not offered a subpoena, I heartily encourage them to review the multiple letters from his lawyers not only requiring, but demanding special treatment in regards to his testimony. The degree to which Mr. Hall refrained from participating, demonstrated that he wanted his role in this investigation to be subject to his conditions, or not at all. This can only be considered as a slap in the face of the Texas Legislature and this committee's authority and jurisdiction.

It is not, my intention, or the intention of this committee to restrict trustees and directors from fulfilling their fiduciary responsibility, in fact I would encourage their efforts wholeheartedly. This committee has never wanted to be in a position to limit whistleblowing or stifle concerns over financial practices or the delivery of education. However, after listening to hours of testimony, and reading thousands of pages of documentation, I can see Mr. Hall's actions are

not unlike those of a small grade school bully throwing out barbs against others then running to hide behind his mother's skirt (legal counsel), all the while continuing to throw rocks.

His actions appear to be those of an individual with an agenda, aimed at discrediting this committee, the Texas House and its leadership, the University of Texas at Austin, and the University of Texas System. This all seems to be an attempt to justify his actions, and the actions of those whose company he keeps. Mr. Hall's actions and initial investigation into possible malpractices within the University could have very well been based on merit, but as of late it appears Mr. Hall has taken to the limelight and the grandstanding offered to him by others with equally questionable agendas.

Many believe that the above mentioned actions by Regent Hall alone are enough to warrant impeachment since this is simply not the way Texans conduct business. However, as much as individuals may want to see Mr. Hall impeached, his overbearing, obnoxious attitude and blatant disregard for procedure alone is simply not a reason to impeach, nor does there appear to be legal ground to do so. The precedent set by doing so would subject everyone on a board or committee throughout the state to be subject to a level of scrutiny that would make their tenure more about personality than performance; that simply is not the purview of the Texas Legislature.

If mismanagement exists at the University of Texas, and this committee chooses to follow through with articles of impeachment, it would send the wrong message to Regent Hall and the rest of the board. It would suggest that taking on the hard discussions and investigations, such as insular University behavior, the battle of research versus educating children, rising tuition costs, and mismanagement, would result in their being vilified in the media, vulnerable to legislative investigation, and possibly forced to spend tens of thousands of personal dollars defending their efforts.

A ruling of this magnitude would send a message to all Regents serving our state universities, dissuading any efforts to thoroughly, and fairly, investigate alleged wrong doings, questionable mismanagement of finances or otherwise, and turn a blind eye to allegations of special favors or favoritism. This precedent would hinder the ability of regents to uphold their fiduciary responsibilities and exercise integrity and decorum during moments of crisis or upheaval. Who would want to be a Regent if that is the case? Interference with the Regent's responsibilities to deal effectively with a crisis via energetic and in-depth board oversight would result in research outweighing education, with tuitions rising and far too many tenured professors teaching far too few classes. In the end, students will continue to pay too much and learn too little.

It is clear that Regent Hall was frustrated because he was unable to retrieve from the University of Texas leadership, the public records he believed he needed to do his job. Regent Hall felt he had no choice but to make an open records request of public institutions under the Texas Public Information Act. That a regent was forced to resort to this method to get information

that otherwise should have been promptly made available to him by the institution is quite troubling.

We must ask why the University didn't simply provide him the information he wanted. Why if there was conflict did the President of the University 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? It makes one believe that either this is poor management or something else was being hidden from taxpayers and the Legislature. Strong governance is indispensable in ensuring that taxpayers are getting what they pay for. To focus solely on Regent Hall, and not the actions of the entire Board, the Chairman of that Board, the Chancellor of UT System, as well as the University of Texas, would tell only part of the story and fail to provide a transparent window by which to address the root causes of this situation.

In giving Regent Hall a fair review, this committee must remember that if not for Regent Hall the 'payola' scheme that provided more than 6 million dollars in forgivable loans from the University of Texas' Law School Foundation, prompting the investigation into legislative favors, would not have been uncovered. While the University seemed to be holding that investigation's findings from the committee, we do know that Rep. Jim Pitts, Chairman of the Appropriations Committee - who was the first Legislator to call for Hall's impeachment - and others wrote to President Powers and the Dean of the Law School creating at least the appearance of favoritism. Why are the investigations results being withheld from the committee?

Independent of this investigation, this committee has yet to conduct a legislative review of President Powers' questionable decision to direct more than \$1 million in contracts to Accenture, a move that seemed to have failed to receive approval from the Board of Regents, in addition to an embarrassing accounting scandal surrounding the University's fundraising efforts. We continue to hear about issues that appear to suggest a lack of leadership at the University, and University System, compromising the University's ability to be recognized as one of the best in the country.

It is difficult to hold only Regent Hall accountable without holding all the System Regents, the Chancellor, and University of Texas President accountable for what can easily be seen as unacceptable conduct on both sides of the issue. To that end, I am asserting that we hold the System, the Board of Regents, Chairman of the Board, and the President of the University of Texas at Austin accountable by requiring the following as a start towards a better future for the University of Texas system:

1. An immediate investigation into the Accenture contracts.
2. A mandatory monthly summary (posted on their website) of any and all new Requests For Information (RFI) made by any Regent or any staffer at the University of Texas System.
3. Mandatory changes to the Regents' Rules and Regulations, as proposed by Chairman Foster, as a matter of public record.
4. Mandatory action/completion of a new policy to address the potential mishandling of confidential student information and FERPA documents.
5. Mandatory action plan to be established by the University of Texas System, and approved by this committee, to make the process more transparent and accountable to the Committee and to the citizens of Texas.
6. Mandatory establishment and use, by all Regents, of the State email system.
7. Mandatory development of a balanced governing structure plan designed to promote institutional integrity, autonomy, and flexibility of operations while maintaining maximum operating efficiency and academic excellence.
8. Mandatory development of a plan to ensure the governing board remains free from any contractual, employment, personal financial, or familial financial interest in the institution or institutions under its governance.
9. Mandatory policy development and requirement to make each report, recommendation, or vote of the governing board or of a committee, subcommittee, task force, or similar entity reporting to the governing board, available to the public on the board's website not later than the end of the next business day after the date of the report, recommendation, or vote.
10. Mandatory coordination and development of an agreed to method with the office of the Speaker of the House to provide reimbursement for any/all expenses occurred by the House of Representatives or members in the undertaking of or in relation to these hearings without reducing the budget for any University in the system.

In regards to Regent Hall, he should understand that his goal may have been admirable, but his tactics, methods and approach to the problems at the University were wrong, misdirected and without merit. A primary responsibility of a public servant is to point out weak or bad procedures and turn them over to proper authority, which was never done. There does not appear to be a desire to improve the University, only to tear down and discredit the institution and individuals, which is shameful. While his actions do not merit levels of impeachment, there

is no question that his actions warrant immediate resignation. Consideration should be made by Regent Hall to resign and save the taxpayers the expense of a costly trial.

Committee Counsel, Rusty Hardin, provided working papers for the committee where he laid out four possible specifics for impeachment, including allegations that the Regent abused his office in his pursuit of information regarding the University of Texas at Austin and his mishandling of private student information. The committee is working towards considering options and I am including my thoughts on each of the four allegations below. They are listed below.

1. *Regent Hall's unreasonable and burdensome requests for records and information from UT Austin provided, and continue to provide, a sufficient basis for the Committee to propose articles of impeachment;*
 - a. The main accusation seems to be that Regent Hall's "unreasonably burdensome, wasteful, and intrusive requests for information" caused the University of Texas to produce thousands of pages of records. Mr. Hardin also needed to produce thousands of pages of records to be able to come to this conclusion.
 - b. When Mr. Hegarty testified that Regent Hall had required some 800,000 pages of record production, it was obvious now that he may not have been as accurate as he needed to be. The Chancellor's office estimated the page count was far fewer, suggesting a discrepancy. I believe Mr. Hegarty's testimony did appear to be his best estimate, but because of this the page count cannot be used to gauge burden.
 - c. As an example, one of the accusations against Regent Hall is that his large records requests have been too much of a burden for the university. If Regents Hall's requests are overly burdensome we must look at legislative requests from members who were not at all reluctant to impose work on the public records staff at the university system. A member serving in a separate Chamber recently filed a massive request for "any and all data that relate in any way to the following categories," naming Powers, Hall and some two dozen people, dating back two years.
 - i. The University of Texas System apparently had to contract an outside company to fulfill the request. Emails to Chancellor Cigarroa complained it was taking staff too long to fulfill the request.
 - ii. An email from the legislator stated, "Frankly, I don't understand such delays and what always seems to be an over-abundance of concern about what might be confidential – when, of course, usually it is not." Is Regent Hall's conduct any different from Legislators?

- d. We heard testimony from a University employee with a significant professional salary complaining the requests required her to work late hours, once until 2am. We have to ask if working beyond 40 hours a week for that salary range does not mandate this type of commitment and if the University has tens of thousands of employees why didn't they simply provide her support?
- e. Most of those "impossible" demands could have been met by opening records. However, UT authorities suggested to the committee that a Regent did not have the proper level of clearance to access the records, however the University had employed, undergraduate work-study employees with access to the files in question. There is no doubt this is a conflict within the University System over egos. If a Regent couldn't have access then why did these temporary employees?
- f. How do we recommend impeachment on those grounds without better and more forthcoming evidence as to the size of the actual amount of the requests and a full understanding as to why Regent Hall had to make these requests formally and was not just given the information? Too many unanswered and unsubstantiated questions remain and as such there is little justification for this charge.

2. *Hall's improper use of confidential information provided a sufficient basis for the Committee to propose articles of impeachment;*

- a. Regent Hall was furnished with unredacted versions of many of those records, which is where the second charge of "disclosing confidential information" comes in. The position is that the emails are actually covered by federal student privacy statutes, so Regent Hall could have broken the law by showing them to his defense attorney. Is the same said for members receiving the same information?
- b. Whether Regent Hall did or did not break the law is in fact a matter of criminal determination, not legislative determination. As of this week, the referral made to the Travis County District Attorney's office has been received and the decision has been made to move forward with an investigation.
- c. If Mr. Hall is tried and convicted, he is ineligible for his position and would be immediately relieved of his duties. Therefore, it would be premature of this committee to attempt to determine or influence the outcome of a separate investigation or trial.

3. *Regent Hall's actions toward Cigarroa, Powers, and Hegarty provided a sufficient basis for the Committee to propose articles of impeachment;*
- a. The final serious accusation, Mr. Hardin states, is Hall pressured UT's record-keeper to change the testimony he gave to a legislative committee considering impeachment. No official record has been produced of Regent Hall contacting the record-keeper in question. Previous testimony suggests the record keeper made the determinations of restricting access and may have exaggerated the amount of pages produced (See Specific Charge #1). That holds little credibility.
 - b. In addition, an audio recording of the August 22, 2013 Executive Session of the UTS Board of Regents, has recently been provided to the committee. The recording includes conversation regarding the future employment of UT Austin President Bill Powers. This audio file directly and clearly contradicts some of the assumptions of Counsel Hardin's working papers about recent events.
 - c. The Committee Counsel's working papers seem to suggest that Regent Hall appears to have been appointed to the Board with an agenda to diminish and unseat Powers, and claims that Regent Hall's concerns about President Powers' performance, and his effect on the ability of the Regents and Chancellor Cigarroa to perform their duties was personal, vindictive, and not shared by other Regents. Well, many people have agendas at all levels of government and that doesn't seem to be a crime.
 - d. In particular, the Report claims that Hall pressured Chancellor Cigarroa to withdraw his support of Powers and suggests that Regent Hall's pressure caused the Chancellor to announce his resignation in February 2014. The audio file suggests that these discussions happened much earlier and were in fact a joint consideration of the board and the Chancellor in the normal course of their operations.
 - e. Even if true, as a Regent advocating for his position, Mr. Hall certainly is entitled to try and persuade others to support him and that includes the Chancellor. Again, without evidence to the contrary little justification is seen for this charge.
4. *Hall's advocacy before the Council for Advancement and Support of Education ("CASE"), against the development interests of UT Austin, may have provided a sufficient basis for the Committee to propose articles of impeachment.*
- a. Clearly Regent Hall felt he had a good faith basis for his personal view in advocacy before CASE. Committee Counsel suggests that his opinion was that Regent Hall's conduct violated the Education Code but that is purely his opinion.

- b. Obviously Regent Hall had been advocating for his position, and if his opinion was not the boards opinion, it was up to the Chairman of the Board, his fellow Regents, and the Chancellor, to strongly advocate for a different position which they clearly did not.
- c. It is not possible to say Regent Hall violated the Educational Code by advocating for something he had every right to endorse as a Regent. Instead, we have to lay a large portion of blame directly on the Board itself for not taking a stand if they disagreed with his conduct.
- d. The Counsel's report seems to suggest that if a Regent does not go along with the institutions philosophy and offers a contrary position, the Regent is not operating in the best interests of the University. Nothing could be farther from the truth, a lack of significant, substantiated evidence to support that claim leaves little ground to justify impeachment.

Instead of immediate impeachment, the facts of the case suggest that we strongly consider the following:

1. Holding a vote on other actions in abeyance until a later date in order to see what significant changes can be made by Regent Hall, the University System and the University of Texas at Austin.
2. A strong letter of censure to Regent Hall, admonishing him for his actions and shameful conduct and well as calling for his immediate resignation.
3. A letter to Governor Perry asking for his assistance in asking Regent Hall to resign such as he has done in educational situations in the past.
4. A letter to the University of Texas Systems reviewing directed requirements for transparency and accountability as outlined above, including additional requirements as may be developed by the committee.
5. A referral to the Senate Committee on Higher Education requesting a review of the standards by which a Regent should provide governance, along with a review of legislative initiatives passed by the House of Representatives during the 84th Session.
6. A joint statement by the committee, with a time certain deadline, citing further action, including an immediate vote on impeachment, if Regent Hall does not resign and the University of Texas system does not make the required changes.
7. Ensuring that the University of Texas System will be assessed the full cost of the trial and any additional costs incurred to date by members of this committee and the House of Representatives if Regent Hall does not resign.

We are at a historic juncture in Texas. Our decisions will have an impact far beyond just the fate of Regent Hall. We have already seen changes in the Governor's appointment process, the Texas Senate's process for confirmation and the way the University of Texas handles its non-transparent pay issues.

Our decisions will also impact the way Texas Regents govern their respective Universities and whether issues of high tuition, mismanagement, misappropriation of funds, insular behavior, education versus research, and the value of a Texas University education are dealt with by Regents across the state in an open and forthright manner, or if it will be up to the Legislature to manage by scandal.

I look forward to discussing this letter with each of you and working to ensure we do the right thing for Texas, the University of Texas System and all Texas Universities. I may be reached at any time.

Sincerely,



Dan Flynn

Co-Chairman
State Representative, HD2

CC:

Co-Chair Carol Alvarado
Representative Naomi Gonzalez
Representative Trey Martinez-Fischer
Representative Four Price
Representative Lyle Larson
Representative Charles Perry