

To: Senator Kel Seliger, Chair, Senate Higher Education Committee

From: Thomas K. Lindsay, Ph.D., Director of the Center for Higher Education at the Texas Public Policy Foundation

Date: 18 March 2015

Re: My concerns regarding SB 177

I appreciate the time and effort that the committee has given to the crafting of SB 177. I have no doubt that preserving and enhancing Texas public higher education is its overriding intention.

My concern is with the unintended consequences of the bill. Rather than strengthening our public universities, it could and, I fear, would, weaken them. How?

Higher education, in Texas and nationally, is in a crisis. Studies testify to poor student learning (36 percent of students surveyed nationally show no significant increase in learning during four years of college); to skyrocketing tuitions; and to crushing student-loan debt (\$1.2 trillion nationally). Consequently, 57 percent of prospective students told a Pew survey that college no longer delivers a value worth its cost; 75 percent deem college simply unaffordable.

Addressing this crisis requires strong leadership. Who can provide it? Senior administrators? Regents? Ideally, both. But former Harvard President Derek Bok, in his book, *Our Underachieving Colleges*, finds presidents "often reluctant" to lead for fear of "faculty opposition," which could "threaten their jobs." College CEOs lack the power of their corporate counterparts. Facing a faculty no-confidence vote, few presidents possess the wherewithal to lay down their jobs.

Who, then, is empowered to implement the reforms commensurate with our crisis? Benno Schmidt, former Yale president and current chairman of the CUNY board, answers, "Change in institutional strategy can only come from trustees."

Such change is overdue: Higher education reached its crisis state with the acquiescence of trustees, who in the past let boosterism trump their fiduciary duties. "Fiduciary" derives from the Latin *fiducia*, for "trust." A trustee possesses the legal power and duty to act on behalf of others, both the school *and* the Texas citizenry, under conditions requiring both complete trust and complete openness.

The nonpartisan American Council of Trustees and Alumni describes the role of trustees as "responsible for both the fiscal well-being of the institution" and "the quality of the education it provides." Central to "fiduciary responsibility is transparency—and in the case of public colleges and universities, this is all the more appropriate and necessary, since taxpayers fund these institutions and have a right to know whether those funds are used effectively and responsibly." Now is the time that we need trustees to reclaim their fiduciary duties, which must include their asking probing questions of senior administrators.

For this reason, limiting boards' powers at this critical time would not enhance but fetter institutions. Although such limitations might be thought to increase school administrators'

powers, they would in fact dilute them. Presidents would find themselves with only bad choices. If they implement needed changes, they risk losing their jobs through no-confidence votes by faculty armed with virtual life-tenure. If, as Bok expects, presidents therefore decline this risk, their only remaining choice would be to sit idly by—lacking a board empowered to support them—letting their colleges capsize for lack of captains. In time, presidents would come to pine for a return of strong boards, at which they can redirect the ire of faculty and alumni—and thereby save both their institutions and their jobs.

Bottom line: No presidents, however visionary and courageous, can succeed in the transformational roles that our crisis requires without duly empowered boards that have their backs. But while the necessity for transformational change requires boards to “step up,” SB 177 sends the message, “Step back.” It could, I fear, prove tragic to limit trustees precisely when our need for their strong leadership has never been greater.

Thank you for allowing me to share my concerns with you on SB 177.