

May 6, 2014

The Honorable Carol Alvarado
Co-Chair, House Select Committee
on Transparency in State Agency Operations
Room E2.810, Capitol Extension
P.O. Box 2910
Austin, Texas 78768

The Honorable Dan Flynn
Co-Chair, House Select Committee
on Transparency in State Agency Operations
Room GN.7, Capitol
P.O. Box 2910
Austin, Texas 78768

Dear Chairwoman Alvarado and Chairman Flynn:

On April 25, I requested on behalf of University of Texas System Regent Wallace Hall, Jr. that you provide the audio recording of the August 22, 2013 UT Board of Regents meeting that was obtained by your committee to the Travis County District Attorney. Your failure to provide this evidence increases our concern that the committee is engaged in a process to manipulate official proceedings for the purpose of interfering in the Board's investigations, personnel matters and other activities.

Specifically, we believe the committee is withholding information from the District Attorney and the public that will exonerate Regent Hall from all of the committee's charges. This includes the following facts:

1. **Regent Hall fully disclosed information on his nomination application:** The committee's external legal counsel Rusty Hardin alleged in his draft report that Regent Hall misled the legislature because he left information off of his 2011 nomination application. In testimony before the committee on Oct. 23, 2013, former Appointments Director for the Governor, Teresa Spears, told the committee that Regent Hall willingly provided all of the information he was asked to provide, and offered to provide additional information wherever needed. In addition, the committee was aware that Regent Hall's nomination file from a previous appointed position included the additional information they claim he failed to disclose. Ms. Spears made clear to the committee that all nominee information, including from past nominations, is maintained in a single file for each nominee. She also testified

that Regent Hall acted in good faith at all times to ensure that his application information was accurate and complete. The committee dismisses Ms. Spears' testimony, despite the fact that she is the state's primary custodian of records on such issues.

2. **Regent Hall did not violate FERPA protections:** The committee alleges that Regent Hall improperly sought information about students that is protected by federal privacy laws. In a Jan. 13, 2014 legal opinion commissioned by the UT System *at the committee's request*, independent legal counsel Philip Hilder told the committee that ***“we find no credible evidence of a violation of (the law) or of any other state or federal law.”*** ***He also stated that Regent Hall “had a legitimate educational purpose” for possessing certain information investigated by the committee.*** In addition, UT System Chancellor Francisco Cigarroa told the committee in a letter on Feb. 1, 2014 that “Regent Hall specifically requested that no personally identifiable student information or information covered by health information privacy laws be provided to him.” The committee is alleging there was no “educational purpose” for possessing FERPA-related information as a means to intimidate Regents from reviewing admissions data that is at the core of apparent improper activities. This is despite the fact that Regents have absolute authority to make determinations for themselves about what constitutes educational purpose. The committee is also ignoring Chancellor Cigarroa's testimony and the legal opinion it sought on this issue, despite the fact that the opinion stated that prosecution of Regent Hall on this matter would “have an absurd result.”
3. **Regent Hall did not “leak” or otherwise disclose student information:** Rusty Hardin suggests in the report that Regent Hall may have secretly provided information about students or legislators to the media. In fact, while the committee allowed Mr. Hardin to routinely discuss issues that were the focus of his investigation with the media *before his investigation was even completed*, Regent Hall refused media inquiries to avoid any impression that he would attempt to influence the process. In addition, when the *National Review* on Aug. 21, 2013 named a legislator who allegedly used his position to ensure that one of his children was admitted into a UT program—the first media report to name a legislator—he specifically stated that he did not obtain the information from Regent Hall or his lawyers. The reporter even took the unusual step of publishing a second article on Dec. 13, 2013 to make clear that the legislator named in the first article was, in fact, the source of the “leak.” Rusty Hardin attempts to manipulate the committee's views on this issue by stating in his report, “Setting aside whether Hall leaked details...to reporters...” instead of correcting the record by presenting the facts. This caused the same reporter to write again on April 30, 2014 that “Mr. Hardin's report is false and should be immediately corrected.” He also stated, “Mr. Hardin et. al. still seem to believe that my source was Mr. Hall or one of his attorneys when it was Google and Mr. Pitts
4. **Regent Hall properly represented the UT System in discussions about charitable donations:** The committee continues to promote the false allegation that

Regent Hall wantonly undermined the UT System's capital campaign by arguing against President Powers' accounting for donated software licenses. In fact, while the committee, donors, and others were told that the licenses constituted a "gift" that should reduce the System's capital campaign goals by \$215 million, Regent Hall's actions at every step to disallow this improper accounting were consistent with long-standing UT System policy. In Chancellor Cigarroa's Feb. 1, 2014 letter to the committee, he stated that the UT System follows guidance on this issue from the Council for the Support of Education (CASE) and the Council for Aid to Education (CAE), and that they strictly oppose counting such donations as "gifts" for tax and accounting purposes. Chancellor Cigarroa stated that "UT System's consistently expressed position was and has been that System institutions must comply with whatever the national standards-setting organizations use as their guidelines." The UT System is a member of the CASE association and relies on its accreditation to support the UT accounting protocols in other areas—a fact that Mr. Hardin failed to report—which makes the issue of critical importance to the UT System even beyond the capital campaign. The committee fails to respect that, as a member of the Board of Regent's Finance and Planning Committee and the Audit, Compliance, and Management Review Committee, no one has more direct responsibility for the UT System on this issue than Regent Hall. The committee also fails to make public that Gene Powell, who was the Chairman of the UT System Board of Regents at the time, knew of and supported Regent Hall's efforts—including to attend a meeting in Washington, DC between the UT System and CASE—to ensure the System's position with CASE would not be jeopardized by UT staff. The committee has dismissed Chancellor Cigarroa's concerns, and fails to acknowledge Regent Hall's critical interest on behalf of the UT System to preserve its standing with CASE on all accounting-related issues, not just those associated with the capital campaign. The committee also fails to inform the public that the same accounting policies advocated by Chancellor Cigarroa and Regent Hall are adopted by virtually all other academic institutions in the nation.

5. **Regent Hall's information requests were reasonable and necessary:** The committee is allowing to stand false allegations that Regent Hall made "1,200 TPIA requests," demanded "800,000 pages," and intentionally overloaded the UT System for no justifiable purpose. Chancellor Cigarroa reported in his Feb. 1, 2014 letter to the committee that Regent Hall actually made five (5) TPIA requests, four of which produced fewer than 100 pages in total (while the fifth pending request has so far produced roughly 2,860 pages). The Chancellor also stated that Regent Hall's total requests produced "fewer than 100,000 pages" and that this resulted *because he asked to see what others had already requested*. The committee is dismissing Chancellor Cigarroa's testimony despite the fact that President Powers and VP Kevin Hegarty—who offered the inflated figures—made clear in their testimony that they did not know the *actual* facts.
6. **Regent Hall did not tamper with or coerce testimony:** The committee claims that Regent Hall attempted to pressure UT System staff to change their testimony before the

committee. In fact, Regent Hall had no contact with the witnesses in question on these matters. Rather, he sent an email to Chancellor Cigarroa to ask what actions he would take to correct demonstrably inaccurate statements made before the committee by UT President Bill Powers and VP Kevin Hegarty. It was the Chancellor's decision to offer the individuals an opportunity to correct their statements relating to the "800,000 pages" and software donations issues. When they declined, Chancellor Cigarroa corrected the misstatements in the Feb. 1, 2014 letter to the committee. The committee is withholding the evidence that only Chancellor Cigarroa communicated with the witnesses, despite the fact that this information is documented and in the committee's sole possession.

- 7. The committee has manipulated the process to prevent public exposure to the truth about every issue under investigation:** Rusty Hardin alleged in his report that Regent Hall attempted to manipulate the committee's proceedings by not appearing to testify. In fact, Regent Hall wrote the committee on Dec. 4, 2013—one day after the committee issued a subpoena for his testimony—that he would "make every effort to respond to the committee's requirements (to testify)." He requested in the same letter that the committee give him two weeks to prepare (the exact amount the committee previously promised to provide) since it had not yet identified a testimony date and the next scheduled hearing was not to occur for several weeks. Instead, the committee withdrew the subpoena (despite the fact that subpoenas were provided to all other witnesses who were not legislators), announced that it would refer issues relating to Regent Hall to the District Attorney for possible prosecution, and then *invited* Regent Hall to testify five days before the hearing date. As a result, he declined the invitation on the advice of his legal counsel. However, he also at all times declined to make any public statements that might influence the committee's proceedings. By comparison, the committee has allowed its external legal counsel with privileged access to committee documents and sensitive UT information to repeatedly interact with the media throughout the process as a means to impugn Regent Hall's reputation. In addition, Rusty Hardin or the committee secretly provided his report to a reporter before the committee, Regent Hall, his legal counsel, or anyone else could review it. The committee has since alleged that Regent Hall pressured Chancellor Cigarroa to resign, and has throughout the proceedings alleged that Regent Hall alone opposed President Powers and acted outside of Board consensus on the matter. In fact, the committee knows the actual pressures surrounding the Chancellor's decisions and now knows the exact position of the entire Board on the issue of President Powers' continued employment. ***By withholding the recording of the Aug. 23, 2013 Board meeting, the committee is covering up facts that will prove its allegations are false.***

Regent Hall has remained silent during the entire investigation process. This has required him to absorb the abusive conduct of the committee that is intended to impugn his reputation, caused him to expend personal resources in defense of his volunteer position, and undermined his authority as a Regent. It has also led to a false public impression that Regent Hall has had anything to do with the dysfunction and other problems he is working within the System to

The Honorable Carol Alvarado
The Honorable Dan Flynn
May 6, 2014
Page 5

address. This has allowed the committee to escape its own role in the problems, including its role in undermining Chancellor Cigarroa in advance of his resignation and the Board of Regents by dismissing the Chancellor's assertions before the committee, all without the input of any sitting Board member.

We repeat our request that you release the August 23, 2013 recording to the District Attorney and the public.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Allan Van Fleet".

Allan Van Fleet

cc: Stephen M. Ryan, Esq.
Anne Marie Turner, Esq

April 25, 2014

The Honorable Carol Alvarado
Co-Chair, House Select Committee on Transparency in State Agency Operations
Room E2.810, Capitol Extension
P.O. Box 2910
Austin, Texas 78768

The Honorable Dan Flynn
Co-Chair, House Select Committee on Transparency in State Agency Operations
Room GN.7, Capitol
P.O. Box 2910
Austin, Texas 78768

Re: Regent Wallace L. Hall, Jr.

Regent Wallace L. Hall, Jr. has been informed that the University of Texas System (“UTS”) recently produced to the House Select Committee on Transparency in State Agency Operations (“Committee”) an audio recording of the August 22, 2013 Executive Session of the UTS Board of Regents, at which the future employment of UT Austin President Bill Powers was discussed.

Regent Hall participated in the recorded discussion and knows that it directly contradicts key findings and conclusions in the Investigative Report to the House Select Committee on Transparency in State Agency Operations regarding Conduct by University of Texas Regent Wallace Hall and Impeachment Under the June 25, 2013 Proclamation (“Report”).

The Report concluded 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. (Report at 115.) 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. (Report at 87-88, 91.)

The recording will reveal that these claims are false. It should also cause the Committee to call into question the credibility of the Report, given its failure to provide facts fully and accurately on this and other issues.

The Honorable Carol Alvarado
The Honorable Dan Flynn
April 25, 2014
Page 2

The Committee Co-chairs decided on their own and in a non-public meeting to publish the Report and its exhibits on the Committee's website. They also decided to refer the Report and exhibits to the Travis County District Attorney without a vote. To ensure consistency in the Committee's handling of information relating to this process, I request on behalf of Regent Hall that you immediately publish the audio recording and a certified transcript on the Committee's website, and that you send a copy to the Travis County District Attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Van Fleet", with a stylized flourish at the end.

Allan Van Fleet

cc: Stephen M. Ryan, Esq.
Anne Marie Turner, Esq