



Testimony

The Governing Powers of Regents in Texas Public Higher Education

Testimony before the Senate Higher Education Committee

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I write to testify on the Committee Substitute under consideration for SB 15. I attach three documents: two Texas Public Policy Foundation research papers on board governance and my *Texas Tribune* piece that appeared for non-subscribers on the day of this hearing.¹

In addition to the information provided in these three documents, let me add the following summary of my position for your consideration as you work out the details of the substitute bill.

Findings

Texas should look to regents to exercise their full powers to address the higher-education crisis, not limit those powers.

The French political philosopher, Montesquieu—so important to this country for his contributions to our constitutional form of government—titled his magisterial political treatise, *The Spirit of the Laws*. He chose this title in part because the spirit of a law often proves more powerful in the long term than its letter.

My deepest fear regarding SB 15—both in its filed and proposed substitute form—is with the spirit of the proposed law. As you will read in my *Texas Tribune* piece, the history of the last half-century of decline in American higher education has included the decline-facilitating abdication of fiduciary duties by “cheerleading” boards. SB 15’s substitute version—however limited the constraints it provides may ultimately prove to be—sends a message that the problem is boards doing too much, not too little. This changes the direction of the debate, but the direction it offers is contradicted by the historical evidence.

If the Legislature has objections to the behavior of certain boards or board members, there are other means available for addressing this. But to attempt to remedy perceived personnel problems through constraining the powers of all boards in the future will prove to be counterproductive. Higher education is facing a profound crisis, one which cannot be legislated away. To meet this crisis, which I detail in my *Tribune* piece, we need energetic boards fully exercising their fiduciary duties. It could prove tragic to limit them precisely when our need for their leadership has never been greater.

Any law animated by a spirit of hostility to existing board powers may produce negative unintended consequences: Rather than realizing its stated purpose of preventing a micromanaging crisis, it might instead prevent boards from being able to manage the crisis in higher education. ★

¹ Heather Williams, “Governing Boards of Universities,” Texas Public Policy Foundation (Sept. 2011); Candace de Russy, “Raise High the Towers: A Call to Good Governance,” Texas Public Policy Foundation (July 2007); Thomas K. Lindsay, “Only Regents Can Reform Higher Education,” *Texas Tribune* (21 Mar. 2013).