



May 10, 2023

To Honorable Representatives: John Bucy III, DeWayne Burns, Dustin Burrows, Travis Clardy, Sheryl Cole, Mary González, Donna Howard, John Kuempel, Suleman Lalani, Dennis Paul, and John Raney

The Texas Association of College Teachers (TACT) and the Texas Conference of the American Association of University Professors (AAUP) remain opposed to Texas SB18 and hope the House Higher Education Committee will not pass it out of committee. Although we welcome the changes in many portions of the committee substitute for SB18 [1], especially the continuation of the ability to hire tenure-track and tenured faculty members, we believe that the bill should not pass, for the following reasons.

1. Suppression of academic freedom. In the United States, over 800 colleges and universities have adopted principles of academic freedom and tenure jointly formulated by AAUP and organizations representing university administrations.[2] Tenure is a necessary guarantee of academic freedom, which is freedom from censorship by the institution or the government. Tenure allows professors to have full freedom in helping students develop the critical thinking, knowledge, training, and professional networks needed for successful careers. Tenure protects professors in developing and disseminating new knowledge from all viewpoints, including conservative, moderate, liberal, and apolitical. Tenure-track professors are rigorously evaluated in teaching, research, and service over a six-year period by faculty, administrators, and external experts, and those that do not earn tenure are dismissed from the institution. Once tenured, by State Law, all tenured faculty members undergo a robust review each year, including a rigorous multi-year comprehensive review at least once every six years. And tenure-track and tenured faculty are the engines for universities to advise the doctoral students and land the external research funding to reach Tier 1 and Tier 2 status.[3]

2. Authority to grant tenure is in the hands of those without disciplinary expertise. Another concern regarding the substitute bill for SB18 pertains to language that states that only the governing board shall grant tenure; i.e., based on the recommendation of the Chief Executive Officer. We are concerned that this language might be construed by some to indicate that faculty have no involvement in this process. Long established standards of higher education, however, call for faculty involvement in tenure decisions, primarily because it is the faculty in a particular subject area who possess the chief competence for judging the work of their colleagues[4]. Please note that the tenure review process typically is multi-tiered, with a recommendation coming first from faculty at a departmental level, which is then forwarded and reviewed by a school/college committee,



which then makes a recommendation to the school/college dean, who in turn makes a recommendation to a university-wide faculty committee. This committee then makes a recommendation to the Chief Academic Officer, who in turn makes a recommendation to the Chief Executive Officer. As you can see, faculty have a critical role to play in making tenure decisions. Over 1300 colleges and universities in the United States, including each of the Texas public university systems, have adopted these shared governance principles [4].

3. Erosion of the tenure protections. We are also concerned that Section 3(c) in the committee substitute for SB18 limits a faculty member's property interest in tenure to their "regular annual salary." In *Board of Regents of State Colleges v. Roth* (1972), the U.S. Supreme Court held that tenured faculty at public colleges and universities have a property interest in their continued public employment—such that they cannot lose tenure or otherwise be removed from their positions without the due process of law required by the Fourteenth Amendment to the U.S. Constitution. But a faculty member's property interest is defined *by* state law—such that Section 3(c) could be read to **eliminate** a tenured faculty member's property interest in continued employment. If a tenured faculty member has no property interest in their tenure beyond their "regular annual salary," then the state could argue that a severance equal to one year's salary is all that due process requires for the termination of tenured faculty—regardless of the circumstances. Thus, Section 3(c) could be read to give Texas's public colleges and universities the power to impose all kinds of restrictions on tenured faculty members—up to and including revocation of their tenure—without running afoul of the U.S. Constitution. Under that reading of Section 3(c), the protection provided by the committee substitute for SB18 would be tenure in name only; and could have the same consequences as the elimination of tenure itself.

4. Lack of due process. We are also concerned that the substitute bill's detailed language makes no mention of faculty involvement in the dismissal hearing of a faculty member. Here, again, national standards jointly crafted by professional associations representing college and university administrators, governing boards, and faculty clearly state that faculty should be involved as their judgment is central to educational policy and faculty possess subject specific expertise necessary to adequately evaluate the work of their colleagues. [4]

5. Vague language on cause for dismissal. Lastly, we are concerned that, among the bill's language directing governing boards' justifications for dismissal of a tenured faculty member is the phrase "...engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities...." This language is sufficiently vague that it might well invite abuse by individuals with whom the faculty member under consideration has a



personal disagreement unrelated to their professional responsibilities. Moreover, this provision could be used to terminate faculty members for engaging in protected speech outside of their employment that could be construed as harming the institution's reputation.

We wish to reiterate support for a system of tenure as the surest means of protecting academic freedom so that truth might be pursued in the classroom, in the archives, and in the lab. Adoption of the system of tenure in the mid-twentieth century allowed United States' colleges and universities to supplant Germany's institutions as the epitome of world higher education when the latter allowed sharp infringements upon academic freedom to devastate the learning process.

In conclusion, we thank you for your defense of academic freedom, tenure, and shared governance. We greatly appreciate your efforts and will be glad to further discuss these issues.

Respectfully,

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References

- [1] House Higher Education Committee, [Committee Substitute for SB 18](#), May 8, 2023.
- [2] [1940 Statement of Principles on Academic Freedom & Tenure](#), jointly formulated by American Association of Colleges & Universities representing college and university administrations and the American Association of University Professors representing professors. AAC&U has [more than 800 college and university members](#).
- [3] Brian Evans, "[Tenured and Tenure-Track Faculty in the US, Texas A&M & UT Austin](#)", April 3, 2023.
- [4] [1966 Statement on Government of Colleges and Universities](#), jointly formulated by the American Association of University Professors, American Council on Education, and Association of Governing Boards of Universities & Colleges. The AAUP represents faculty members, ACE represents university administrations, and AGB represents university systems, boards of regents and boards of trustees. ACE has more than 1500 [college and university members](#) and AGB has more than 1300 [college, university, and system members](#).