

Texas Conference of the American Association of University Professors - News Release

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Professor Association Responds to the Passage of Anti-DEI and Anti-Tenure Bills by the Texas House Higher Education Committee

The Texas Conference of the American Association of University Professors (AAUP) expresses concern over the passage yesterday by the Texas House Higher Education Committee of their substitutes for SB17 and SB18. Although the House substitutes for SB17 and SB18 are preferable to the Senate versions of these bills, the Texas AAUP contends that they still endanger the quality of and access to higher education across the State of Texas.

Founded in 1915, AAUP has helped shape American higher education by developing standards and procedures that maintain education quality and academic freedom in this country's colleges and universities. Academic freedom is freedom from censorship by the institution or government, and robust tenure protections are necessary safeguards. Texas AAUP opposes SB17, which restricts Diversity, Equity, and Inclusion (DEI) programs at public colleges and universities, and SB18, which weakens constitutional and other protections for tenured professors. Many AAUP members testified against the bills at the House Higher Education Committee hearing on May 8, 2023.

Brian Evans, Vice President of the Texas AAUP Conference, said of anti-DEI SB17, "Diversity, Equity, and Inclusion programs are vital to creating and maintaining a safe and welcoming place to learn and work for all students, staff and faculty. Additionally, Texas public colleges and universities could lose \$1-2B/year in federal and other grants that require institutionalized DEI programs for student training and workforce development."

Regarding SB18, the anti-tenure bill, Evans noted, "A robust tenure system gives professors the academic freedom protections to help students develop their critical thinking skills for successful careers and create new knowledge from all viewpoints, including conservative, moderate, liberal, and apolitical." Evans further insisted, "Because of our tenured and tenure-track faculty, coupled with State support, Texas has the most public Tier 1 and Tier 2 research universities of any state. If robust tenure protections were prohibited, Texas would not be able to compete for top faculty with the 800 colleges and universities that have adopted AAUP principles of academic freedom and tenure; the stature of our public institutions of higher learning would immediately decrease."

Since different versions of both bills passed the Senate, Texas AAUP is very concerned that the more draconian Senate versions of the bills – which eliminate new offers of tenure and nearly all DEI programs – could emerge from the reconciliation process, should the House pass the House version.

Texas AAUP has raised specific concerns about the bills as outlined in Appendix I and Appendix II below. Versions of the Appendices were provided to members of the House Higher Education Committee prior to yesterday's vote, and will be provided to the Speaker and other House Members.

Appendix I

On S.B. 18, relating to tenure and employment status at public institutions of higher education in this state

The UT Austin chapter of AAUP, the Texas Conference of the American Association of University Professors (AAUP), and the Texas Association of College Teachers (TACT) are opposed to Texas SB 18. Although the changes in many portions of the committee substitute for SB 18 are welcome, especially the continuation of the ability to hire tenure-track and tenured faculty members, 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 university administrations. 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 doctoral students and acquire the external research funding to reach Tier 1 and Tier 2 status.

2. Authority to grant tenure is in the hands of those without disciplinary expertise. One concern in the committee substitute for SB 18 pertains to language that states that only the governing board shall grant tenure. Mention is made of recommendation by the Chief Executive Officer in this process. Long established national standards of higher education call for faculty involvement in the decision to grant an individual tenure because faculty peers in a particular subject area possess the chief competence for judging the work of their colleagues; and more generally, the faculty's judgment is central to educational policy. Over 1300 colleges and universities in the United States, including Texas public university systems, have adopted these shared governance principles.

3. Erosion of tenure protections. Another serious concern is that Section 3(c) in the committee substitute for SB 18 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 SB 18 would be tenure in name only; and could have the same consequences as the elimination of tenure itself. We strongly recommend removal of Section 3(c).

4. Lack of due process. The committee substitute'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.

5. Vague language on cause for dismissal. A final concern is that the bill's language directing governing boards' justifications for dismissal of a tenured faculty member includes 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 jobs that could be construed as harming a university's reputation.

Summary: A robust system of tenure is 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. The tenure system remains the foundation of academic freedom in the United States, and is as important to students and society at large as it is to the faculty who work under its protection.

Appendix II

On S.B. 17, relating to public higher education reform; authorizing administrative penalties

The UT Austin chapter of AAUP, the Texas Conference of the American Association of University Professors (AAUP), and the Texas Association of College Teachers (TACT) is encouraged that language has been included in the committee substitute for SB 17 that would exempt federal grants and contracts, private grants, and accreditation standards from its prohibitions on DEI offices, officers, programs and practices. Even so, the bill will have a chilling effect by discouraging accomplished faculty and promising students from attending or continuing in Texas public higher education institutions to the detriment of the people and economy of the great State of Texas. Additionally, public higher education institutions will lack the ability to provide inclusive and hospitable working and learning environments for those who continue to work and study in Texas.

There are ten major concerns with SB 17:

1. Expanded DEI efforts will be necessary for higher education institutions to compete for the students needed to achieve the Texas 60x30 goals. These plans call for 60% of those 25-34 years of age to earn a post-secondary degree or certificate by 2030. The U.S. Census showed that of the 4 million people added to the Texas population from 2010 to 2020, 95% are people of color, with Hispanic Texans being responsible for half of that increase. Additionally, the South Asian population of Texas has grown significantly in recent decades. To reach the Texas 60x30 goals, public colleges and universities must be more successful in recruiting and retaining students across these and other demographics. Both recruiting and retention require Texas public colleges and universities to become more welcoming, accessible, and accommodating institutions. This requires expanding DEI programs, not contracting them—thus supporting strategic plans for growth and excellence at public colleges and universities in Texas.
2. DEI does not divide campus communities; rather, DEI programs and policies help to facilitate inclusive and supportive learning environments for all. This is important for the maintenance of academic freedom, critical inquiry, and intellectual exploration by faculty and students, which are vital to any free and open society. Research shows that students with a high sense of inclusion and belonging have increased academic motivation, which is correlated to student achievement. There is no evidence that DEI programs in any way inhibit the academic success of those from historically advantaged groups.
3. “Diversity statements” are not loyalty oaths or political litmus tests. SB 17 prohibits the use of diversity statements in hiring. These may be used by academic departments, and ask applicants to discuss the ways that they create inclusive labs, classrooms, research teams, and learning spaces for diverse students and colleagues. Diversity statements do not require a candidate to express agreement with a specific political position or opinion. Far from being a means of limiting academic freedom, diversity statements can help departments determine how a candidate works to ensure critical inquiry and intellectual exploration for those with diverse viewpoints, experiences, and learning styles.

4. Diverse workplaces are innovative workplaces. The committee substitute for SB 17 repeatedly prohibits “preferential treatment” with regard to race, sex, color, or ethnicity. However, DEI programs work within the law and thus do not give any candidates preferential treatment. Given this, the bill’s language can be interpreted to mean that any efforts to recruit a diverse pool of job applicants will be banned under SB 17. This will put Texas institutions at a distinct disadvantage. As has been anecdotally documented by numerous department chairs, identifying a diverse pool of job applicants for higher education positions in Texas has already proven challenging during this hiring season due to the chilling effect that proposed legislation has had on recruiting prospective candidates. This is bad for Texas because research shows that diversity and innovation are directly correlated.
5. Without DEI best practices explicitly mentioned or employed in hiring, preferential treatment will be given to those from historically advantaged backgrounds, which may expose universities to expensive and lengthy lawsuits under the provisions of SB 17 or its committee substitute. This is because active recruiting for garnering a diverse applicant pool requires awareness and understanding of DEI. This is especially important because bias is a normal human trait, thereby inherently present in faculty and administrators involved in faculty hiring decision making. Understanding how one's decisions are impacted by one’s biases and learning how to mitigate its effect in decision-making is an important practice that needs to be retained. Although one stated aim of SB 17 is to ban preferential treatment, the language will have the unintended effect of codifying it.
6. There would be substantial loss in external funding for research breakthroughs and workforce development.
 - a. Texas would lose competitiveness for federal grants and contracts. Increasingly, grant opportunities from the major federal granting agencies in the US require DEI programs and infrastructure. The goal is to keep America’s technological and engineering advantage by including every talented person in the STEM workforce. These efforts include all of the major agencies supporting research in STEM fields (including the National Science Foundation, National Institutes of Health, Department of Energy, and Department of Defense) and other fields, requiring evidence that grant monies will be used in both innovative research and workforce development and diversification, including DEI. Furthermore, the expectation from federal funding agencies is that initiatives enabled by the funded grants are institutionalized and continued beyond the lifetime of the project, which would not be allowed under SB17 or its committee substitute.
 - b. Unintended bottlenecks. The committee substitute for SB 17 appears to exempt federal grants and contracts as well as private grants from the bill’s prohibitions. However, this bill will create an unnecessary burden and bureaucracy at each institution and system in which new DEI grant offices need to be created and programs approved for exemptions, and new personnel hired and trained for this exclusive purpose to avoid the inevitable bottlenecks from the large volume of grant

applications submitted, especially around federal grant program deadlines throughout the year that see very high numbers of grants filed simultaneously.

- c. There would be a substantial loss of income and support for training the next generation of student researchers. Research expenditures at public universities and health-related institutions reached \$5.44 billion in FY 2020. The version of SB 17 that passed the Senate would disallow this \$1-2B/year federal funding to Texas public colleges and universities. Because research funding includes support for graduate students, this loss of funding would mean that 10,000–20,000 students with advanced degrees in and outside of STEM fields would be removed from the nation’s workforce. Without strong campus-wide DEI offices and programs and guarantees that the institution is committed to continuing and institutionalizing activities initiated in the grant, the likelihood of funding would drop significantly, thereby endangering the viability of any research program. Proposals from public institutions in Texas under SB 17 or its committee substitute would not be competitive against proposals from top research universities such as MIT, Stanford, University of California Berkeley, University of Illinois, and the University of Michigan—all of which have the full institutional support for DEI that funders expect to see.
7. Texas public institutions would likely lose access to Title V and Title VI grants. 76 public colleges and universities in Texas have been designated as Hispanic Serving Institutions, which enables them to apply for Title V federal grants. To receive such grants, the institution has to show that it has implemented an appropriate strategy for “servingness” in relation to Hispanic students. Under SB 17 or its committee substitute, “servingness” programming for Hispanic students would be illegal, and Texas institutions would lose this designation and access to millions of dollars in federal grants. Moreover, Title VI federal grants are awarded to international area studies and world languages programs. The US Department of Education considers an institution’s commitment to DEI as an important factor in assessing Title VI grant applications. Nationally, \$60M in Title VI grants are awarded each year.
8. The threat of termination for engaging in DEI activities is draconian. Untold numbers of faculty at Texas institutions incorporate DEI into their recruitment, teaching, research, and service as a matter of best practice. Under SB 17 or its committee substitute, it is unclear whether an employee could be terminated for recruiting a prospective candidate who happened to come from an underrepresented group. The threat of termination would create a chilling effect and inhibit effective recruitment of top talent to Texas institutions.
9. The bill creates an unnecessary and unrealistic bureaucracy for governing boards. Section 2.f of the committee substitute requires governing boards to report to the Legislature on their compliance with SB 17 every other year. Faculty hiring and student programming largely happen at the level of programs, centers, and departments in compliance with existing laws and policies. Governing boards’ effective reporting on each institution’s programs, centers, and departments’ compliance with SB 17 would require an expansive bureaucracy at every level of the institution.

10. DEI works to create student success. The bottom line is that, though there is certainly room for improvement in higher education DEI programs, and they would be better able to create hospitable learning environments with more resources, by and large they achieve their stated goals. The US Department of Education reports that students report less bias and discrimination at institutions that have strong commitments to DEI and that students experience less discrimination at more diverse institutions than at less diverse ones. Institutions with diverse faculty also can increase students' sense of academic validation. Moreover, this research shows that campus spaces oriented toward students' unique cultural backgrounds can reduce feelings of isolation and alienation for students of color. The US Department of Education puts it simply, "Diversity in higher education is critically important to ensuring student success."

Summary: Diversity, Equity, and Inclusion programs are integral to healthy and successful institutions of higher education in Texas and around the country. These programs and offices are woven into the fabric of our institutions, and they function to protect the academic freedom of those with diverse identities and diverse viewpoints. These programs ensure that faculty have access to significant federal, foundation, and private grant dollars. Most importantly, they are proven to lead to student success.