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**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**

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**Rusty Hardin & Associates, LLP**  
5 Houston Center  
1401 McKinney, Suite 2250  
Houston, Texas 77010  
Telephone: 713-652-9000  
Facsimile: 713-652-9800

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## I. INTRODUCTION AND EXECUTIVE SUMMARY

In June 2013, Speaker of the House Joe Straus directed the Texas House of Representatives Select Committee on Transparency in State Agency Operations (the “Committee”) to examine the conduct of University of Texas Regent Wallace L. Hall, Jr. (“Hall”) and to consider whether such conduct provided grounds for impeachment. At that time, Hall had been accused of, among other things, misrepresenting facts in his appointment application and abusing his office by making numerous “unreasonably burdensome, wasteful, and intrusive requests for information” to The University of Texas at Austin (“UT Austin”).<sup>1</sup> The Speaker specifically charged the Committee with ensuring that Hall and other such officers were “acting in the best interest” of the institutions they govern and with investigating regent actions for “misconduct, malfeasance, abuse of office, or incompetency.” The Committee asked undersigned counsel to serve as Special Counsel to discover relevant facts, prepare Committee members to take oral testimony, and to report factual and legal findings to the Committee in order to help the Committee decide whether to recommend articles of impeachment to the House. This report contains the findings of fact and conclusions of Special Counsel to the Committee.

The principal conclusion of this investigation is that grounds exist for the Committee to refer Hall’s conduct to the House for impeachment proceedings. As discussed more fully in Parts IV and V of this report, the facts presented in the course of the Committee’s investigation show, among other things, that:

1. Hall’s unreasonable and burdensome requests for records and information from UT Austin violated, and continue to violate, the Texas Education Code, the Texas Penal Code, the Board of Regents *Rules and Regulations*,

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<sup>1</sup> See Tex. H.R. 230, 83rd Leg., 1st C.S. (2013).

and the best interests of The University of Texas System (“UT System”);

2. Hall’s improper use of confidential information violated federal and state privacy statutes, violated the Texas Penal Code, and constituted “official misconduct” under the Texas Public Information Act;
3. Hall’s actions toward Cigarroa, Powers, and Hegarty violated UT System policy and may have violated the Texas Penal Code; and
4. Hall’s advocacy before CASE against the development interests of UT Austin likely violated the Texas Education Code, the letter and spirit of the Board of Regents *Rules and Regulations*, and the best interests of UT System and its flagship institution.

Any one of these conclusions would support a decision by the Committee to propose articles of impeachment against Wallace L. Hall, Jr. pursuant to Texas Government Code Chapter 665.

More generally, the review of Hall’s conduct showed that, while serving as a Regent, Hall acted like a roving inspector general in search of a problem rather than a solution. Hall cast wide nets looking for items that he believed could be used to embarrass, criticize, punish, or silence those who disagreed with his policy aims. At best, Hall’s method of “gotcha!” governance resulted in: (1) the abuse of University of Texas personnel, in particular the staff at UT Austin; (2) the waste of taxpayer money; and (3) an escalation in tension and a drop in morale among those working at UT Austin and the UT System. At worst, Hall’s tactics resulted in: (1) his disclosure of confidential information in violation of federal and state law in an attempt to silence his legislative critics; (2) his targeting for punishment certain witnesses who cooperated with the Committee; and (3) the tarnishing of the reputation of UT Austin, the UT System’s flagship campus, because of the negative atmosphere created by Hall’s incessant search for things and people to criticize.

Committee counsel believe the Committee’s duty to investigate Hall’s conduct is

best undertaken in two steps. The first investigatory step is to identify Hall’s allegedly improper conduct and to document it for possible impeachment action by the House. According to the Texas Supreme Court, such alleged “delinquencies or malfeasances” need not be “statutory offenses or common-law offenses, or even offenses against any positive law.”<sup>2</sup>

The second investigatory step is to identify and apply legal standards by which Hall’s conduct can be measured. Again, the Supreme Court explained, “[The Legislature] must ascertain the law by an examination of the Constitution, legal treatises, the common law and parliamentary precedents, and therefrom . . . apply the principles so worked out to the facts of the case before it.” As discussed more fully within this report, an example of a legal standard is found in the Texas Education Code, which requires Hall to “preserve institutional independence,” “enhance the public image of each institution under [his] governance,” and “nurture each institution under [his] governance to the end that each institution achieves its full potential within its role and mission.”<sup>3</sup> Another example of a standard comes from the UT System’s Regent Rules and practice as described by past and current regents. For example, the Committee should take note when the Board Chairman advises Hall in writing:

You and I have a fundamental disagreement on the basic role of a regent. And I believe that is the source of many of the frustrations that we experience.<sup>4</sup>

Initially, the investigation focused on three areas of inquiry identified in a proposed resolution by Representative Jim Pitts: (1) Did Hall fail to disclose material

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<sup>2</sup> *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924).

<sup>3</sup> TEXAS EDUC. CODE § 51.352(a) (Vernon 2012).

<sup>4</sup> Exhibit 201.

information on his regent application? (2) Did Hall reveal information about students that violated their privacy? and (3) Did Hall exceed his role as a regent by constantly requesting massive information from the University of Texas?<sup>5</sup> During the investigation, however, it became apparent that a proper review of Hall's conduct should focus on additional areas covered under the provisions of the Speaker's proclamation. Most notably, the Committee did not initially realize, and could not have realized, that Hall's conduct *after* the conclusion of the public hearings would be at least as troubling, if not more, than the conduct known to members of the House in June 2013. Instead of investigating three finite questions, the inquiry therefore broadly considered whether Hall's documented conduct constituted misconduct, malfeasance, and misfeasance within the context of the Texas Education Code, Penal Code, and federal and state law related to governance of educational institutions. The investigation also considered whether "abuse of office" had occurred due to violations of the Texas Penal Code and whether acts of incompetence had occurred due to violations of the UT System's own rules and policies.

Counsel and the Committee collected, reviewed, and indexed over 150,000 pages of documents regarding Hall, his actions in office, and institutions and areas in which Hall's actions have been criticized. These documents have come from public sources, witnesses employed or formerly employed by UT Austin, and the UT System. An index of the materials received and dates they were collected is appended to this report at Appendix C. Counsel conducted dozens of interviews of potential witnesses and spoke to

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<sup>5</sup> See Comments of Rep. Dan Flynn before the House of Representatives Select Committee on Transparency in State Agency Operations on October 23, 2013 at 6:8–14. Representative Pitts's resolution was not adopted, but it informed the Committee's investigation. As discussed throughout the report, the Committee's investigation commenced pursuant to the Speaker's June 2013 Proclamation.

former regents and experts on higher education governance. A number of these witnesses and experts presented live testimony to the Committee in public hearings held in October, November, and December 2013.

The facts uncovered by the investigation and public testimony were extremely troubling. Hall has engaged in a vindictive pattern of bullying administrators he ranks above at the UT System and its component institutions. If subordinates failed to comply with his demands, or if subordinates disagreed with his policy aims, Hall attempted to pressure these individuals to comply with his views.

Because malignant management and personal skills alone do not likely warrant Legislative action, counsel also examined whether Hall's problematic conduct was directed at the best interests of the institutions he was appointed to serve. It was not. The facts developed by the investigation and public testimony show that Hall's most questionable actions—disclosing confidential student information, pressuring Committee witnesses to change their testimony, and burdening UT Austin with impossible document production demands—were done for personal, rather than educational or institutional, motives. Even when Hall's conduct could be fairly viewed to have mixed institutional purposes, his ends-justify-the-means approach was still unbecoming for a regent.

This report discusses eight categories of conduct by Hall that qualify as potential “delinquencies or malfeasances” under *Ferguson* and the standards applicable to each type of conduct:

1. Issuance of unduly burdensome records requests from UT Austin administrators and staff;
2. Illegal disclosure and misuse of confidential student information;
3. Attempted manipulation of the investigation and coercion of witnesses before the Committee;

4. Advocacy against UT Austin and System interests before the Council for Advancement and Support of Education (“CASE”);
5. Omission of information during the appointment and confirmation process;
6. Usurpation of delegated authority regarding the UT Austin athletic program;
7. Micromanagement of, and persistent advocacy against, UT Austin and UT System officials for personal, rather than institution-minded, motives; and
8. Obstruction of the legislative process to the detriment of the UT System and its institutions.

Of these categories, Hall’s misuse of confidential information and his disregard for the legislative process and his attempt to coerce witnesses to change their testimony are particularly troubling and potentially criminal in nature. Hall’s promulgation of excessive and unreasonable record requests and his open criticism of UT Austin’s development efforts in a way contrary to the interests of the institution are also areas of concern. In addition, this report generally documents an antagonistic approach by Hall with respect to the UT System and UT Austin in particular that is inconsistent with an approach typical of a caretaker for the institutions he has been appointed to help govern. The findings and legal standards with respect to each of the categories above are set forth below, but several categories of Hall’s conduct deserve discussion here.

**Unabated and Burdensome Requests for Records.** One of the most oppressive and costly examples of Hall’s conduct as a regent came through his massive requests for records directed at UT Austin. The high-water mark of this conduct occurred in October 2012, when Hall dispatched Francie Frederick, General Counsel to the Board of Regents (the “Board”), to request all of the UT Austin Open Record Request files from January 1, 2011 through September 30, 2012—about 1,278 Open Record Request files—and the

documents provided in response to those requests over the same period of time. Hall wanted UT Austin to provide him the documents within two weeks.

The breadth of Hall's request and the short time in which he expected the materials to be delivered caused staff responsible for the job to ask if they could have some indication of what Hall was looking for so that they could appropriately focus their efforts. Hall refused to provide any insight or information about the reason for his requests. In fact, there is no indication that members of the Board or the Chancellor knew the purpose of Hall's sweeping request either at the time or today. Nonetheless, UT Austin staff began working to provide Hall with the information he requested. The effort brought the day-to-day business of Vice President Kevin Hegarty's office to a grinding halt and required that additional staff be added. Eventually, the effort led staff to muster hundreds of thousands of pages for Hall's review at the expense of over \$1 million to UT Austin.

Moreover, the Committee's investigation has not slowed Hall's targeted and unreasonable requests for information from UT Austin. As the Committee's hearings occurred in Fall 2013, Hall continued seeking records from UT Austin and, in particular, President Powers's travel records. Indeed, the UT System transmitted a request for records at Hall's request on the very day the Committee convened a hearing.<sup>6</sup> After the public hearings concluded, Hall's agents continued to press UT Austin for the names of all donors who had paid for Powers's trips and the flight manifests for those trips.<sup>7</sup> It is difficult to understand how implicitly criticizing and questioning donor activity with the

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<sup>6</sup> See Exhibit 139.

<sup>7</sup> See Exhibits 146, 147, 167 & 169. UT Austin was also asked to produce copies of contracts related to UT Austin and Accenture, a consulting firm retained to assist UT Austin. See, e.g., Exhibit 162.

President furthers the best interests of the university, particularly where there is absolutely no evidence of any inappropriate activity. Even in 2014, despite being informed months earlier that no such information existed,<sup>8</sup> Hall requested the Chancellor's office to follow up with past requests to ask UT Austin administrators for any information regarding "gifted" travel by Powers for outside board activity.

No one interviewed during the course of the Committee's investigation could point to a single substantive improvement or initiative that resulted from Hall's demanding and voluminous information requests. Because Hall declined to testify, the Committee has no sworn testimony about any possible improvements that resulted from his requests. Letters from Hall's lawyers fall short of identifying why UT Austin employees were consistently required to rush and prioritize Hall's requests above all other business. Leaving aside the unresolved question of Hall's purpose, the effect upon UT Austin and its staff is clear: he antagonized staff who worked diligently to provide him what he asked for, he dampened morale at a component institution, and he cost the university dearly to satisfy his incessant demands.

Therefore, as discussed more fully below, the undisputed evidence available to the Committee supports a finding that Hall's requests for records and information violated, and continue to violate, the Texas Education Code, violated the spirit of the Regents Rule and policy for interacting directly with institution staff and faculty without Chairman or Board involvement, and disregarded the best interests of UT Austin and the UT System.

**Misuse of Confidential Student Information.** One consequence of Hall's push

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<sup>8</sup> See Exhibits 148 & 158.

to get records quickly was his possession of two documents concerning students who had applied for admission to UT Austin or its school of law. Each of the documents also reflected some interest in, or relationship between, the applicant and a state legislator. The evidence available to the Committee does not precisely show how long Hall possessed these documents before he brought them to the attention of the General Counsel for the Board. There is also no indication of how many different people Hall shared these documents with other than Frederick, the Office of the Attorney General, and his personal attorneys. What is clear from the evidence, though, is that Hall used private information about students protected by law for his own personal interests.

When Hall was asked to return the documents, he declined and said that he had destroyed them. When Hall asked whether he could obtain redacted copies of the same information he had possessed in its original form, his request was appropriately denied. When the Committee initiated this investigation into Hall's conduct, he provided the allegedly destroyed information to his lawyers (despite having received legal advice that the information could not be shared with others) so they could tout Hall's "discoveries" in a letter to the Committee and in interviews they provided to the media. As discussed more fully below, this conduct supports a finding that Hall violated the Family Educational Rights and Privacy Act of 1974, the Texas Public Information Act, and the Texas Penal Code. The Texas Public Information Act also expressly labels conduct such as Hall's to be "official misconduct."<sup>9</sup>

**Public Criticism for UT Austin.** Documents and undisputed statements to the Committee show that Hall actively opposed UT Austin's attempt to persuade CASE to

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<sup>9</sup> TEX. GOV'T CODE § 552.352(c) (Vernon 2013).

reconsider its interpretation of a newly modified guideline regarding how non-monetary gifts should be counted for development purposes.

In 2010, UT Austin received a new, multi-year software license from Landmark Graphics. By all accounts, the software license was a generous and invaluable addition to the Geology Department's resources at UT Austin. As it had done in prior years, UT Austin accounted for the software license as part of its capital campaign.

In 2011, however, CASE published a "clarification" to rules regarding the completion of surveys reporting non-monetary gifts, which created uncertainty about how UT Austin could account for the software license in its capital campaign. After careful consideration, UT Austin requested a meeting with CASE's leadership, and it hired outside counsel to help make a presentation about how it believed the grant for Landmark Graphics should be treated for purposes of a capital campaign. UT Austin's appeal to CASE was done with the knowledge and consent of the UT System Chancellor.

When UT Austin made its presentation to CASE in Washington, D.C., Hall appeared in person and actively opposed UT Austin's position, namely, that UT Austin be allowed to include the granted software license in its capital campaign. Hall sent messages to the Board's general counsel during the meeting disparaging the presentation being made by UT Austin's counsel. Hall also interrupted the presentation made by UT Austin's counsel and challenged assertions counsel made about the value of donors' perceptions concerning how their gifts would be treated by the university. When CASE did not go as far as Hall thought was necessary in terms of preventing UT Austin from reporting the grant in its capital campaign, Hall utilized the Chancellor's office and an internal compliance review of capital campaign accounting to stop counting the

Landmark Graphics software, reducing UT Austin's capital campaign totals by \$215 million not just for the 2010 license, but back to 2007 as well.

In short, Hall vigorously attempted to discredit the efforts of one of the UT System's component institutions to seek clarification of a new rule that the institution believed would affect its important relationship with donors. As discussed more fully below, the undisputed evidence available to the Committee supports a finding that, even if Hall had a good faith basis to believe that his personal view was correct and was that of the UT System, the manner in which Hall advocated that view violated the Texas Education Code, violated the Regents Rule for making controversial statements without Board approval, and disregarded the best interests of UT Austin and the UT System.

**Obstruction of Legislative Process.** Finally, Hall's interactions with the Committee and its investigation have provided an insight into Hall's corrosive method of governance and misplaced priorities right up to the date of providing this report. This conduct postdates the Speaker's Proclamation and, in some instances, the Committee's public hearings. The investigation into the continuing conduct has prolonged the preparation of the Committee's findings and recommendations.

The developing evidence available to the Committee supports a finding that Hall acted improperly in connection with the Committee's proceedings and his regental duties in at least three respects: he deployed UT System resources for his personal gain; he pressured UT System witnesses to alter testimony provided to the Committee; and he sought retaliatory employment action despite the Committee's express requests that no such action be taken during the course of the investigation.

First, Hall collected and used UT System information for his personal defense.

Hall used taxpayer money to prepare himself for anticipated hearings by having UT System personnel gather documents for him. On July 15, 2013, days after the Committee first convened to discuss him, Hall wrote to the General Counsel for the Board, and tasked her with gathering “all of the legislative requests that have been made to the System and to the Board.”<sup>10</sup> Hall said he wanted the documents the same day he requested them “in preparation for [his] anticipated appearance” before the Committee.<sup>11</sup> One month later, as mentioned above, Hall’s personal attorney issued a nine-page letter, which he specifically asked the Committee to make public. In that letter, Hall’s counsel attempted to justify Hall’s heavy-handed scrutiny of UT Austin by referring to confidential correspondence from UT Austin files that Hall had reviewed in his capacity as a Regent.<sup>12</sup> Details about at least one of those communications and a link to Hall’s then most visible critic, Representative Jim Pitts, were published in the *National Review* less than one week later.<sup>13</sup>

Hall also used his status to gain additional, advance information about the investigation while the hearings were underway. For example, Hall inquired of the UT System’s Vice Chancellor for Government Relations about the Committee’s “plans” prior to the October hearings at which witnesses were first expected to testify.<sup>14</sup> Beginning in

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<sup>10</sup> Exhibit 98.

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Stephen Ryan to Co-Chairs Rep. Alvarado and Rep. Flynn (August 15, 2013) at Appendix D (APP 00040–41).

<sup>13</sup> See Kevin Williamson, *Killing the Messenger*, THE NATIONAL REVIEW ONLINE, Aug. 21, 2013, at <http://www.nationalreview.com/node/356209/print> (last visited Feb. 3, 2014), and Kevin Williamson, *The Curious and Curiouser Case of Wallace Hall*, THE NATIONAL REVIEW ONLINE, Aug. 21, 2013, at <http://www.nationalreview.com/node/356432/print> (last visited Feb. 3, 2014).

<sup>14</sup> See Exhibit 124.

early November 2013 and continuing into 2014, Hall also repeatedly asked UT System Chancellor Francisco Cigarroa to provide him the notes prepared by UT System’s outside lawyers during interviews conducted by Committee counsel of UT System employees. After the hearings concluded and Hall had declined to appear and answer the Committee’s questions, Hall continued to oversee and micromanage the UT System’s cooperation with the Committee. For example, he asked Cigarroa whether anyone from the UT System had “provided instruction to UT Austin” that “we wished to be present at any interviews requested by counsel to the transparency committee?”<sup>15</sup>

Despite Hall’s keen interest in the manner and content of information provided by UT System and UT Austin employees to the Committee, Hall spurned repeated invitations from the Committee for his voluntary cooperation. Hall declined to engage in the Committee’s inquiry even when the invitation allowed him to indirectly influence the fact-finding process by merely identifying witnesses he believed the Committee should call to testify. Based upon the evidence now available to the Committee, it is clear that Hall never had any intention of cooperating with the investigation. Notes Hall prepared in September 2013 include comments that reflect a disdain for the legislative and investigation process, such as:

- “The transparency committee will narrowly define what the charges against me will be, it will not be an opportunity for me to tell my story.”
- “Legislature has very crude tools of governance, we don’t”
- “. . . it all started when they hit me back”
- “Are my ideas of accountability, institutional integrity really so threatening to require my censorship?”

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<sup>15</sup> Exhibit 143.

- “Texas Supreme [Court] said impeachment is to protect the public not to punish an individual, so who is really protecting the public, the politicians or me? I have gained nothing from my service, can the politicians honestly say the same?”
- “I believe there are serious questions as to the legitimacy of the impeachment process itself”
- “It is clearly an attempt on the part of a few politicians to intimidate me and other members of this board and our System administrators and staff to cause us to not perform our official duties”<sup>16</sup>

Hall’s recent actions demonstrate that he, rather than the Legislature, was actually the one responsible for “intimidat[ing] . . . System administrators and staff.”

Second, although Hall declined to testify voluntarily before the Committee himself, he put intense pressure on witnesses who had testified. Hall’s primary targets were UT Austin President William Powers Jr., UT Austin CFO/VP Kevin Hegarty, and Chancellor Cigarroa.

Hall’s criticisms of Powers predated his appearance before the Committee. Before Powers testified, Hall thought Powers lacked “veracity,” was insubordinate, had encouraged “mid-level staff” to falsely accuse the UT System, and had fermented “dissent” among those at UT Austin.<sup>17</sup> One month after Powers testified, Hall sent Cigarroa a lengthy and detailed critique of portions of the sworn testimony.<sup>18</sup> Hall noted that his critique was based on a review of documents available to Cigarroa “for many months,” and he characterized portions of Powers’s testimony as “false and

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<sup>16</sup> See Exhibit 120.

<sup>17</sup> See Exhibit 107.

<sup>18</sup> See Exhibits 184 & 185.

misleading.”<sup>19</sup> The purpose of the message, in Hall’s own words, was to “further highlight the continuing dilemma regarding [Cigarroa’s] continued support of Powers.”<sup>20</sup>

When Cigarroa did not immediately respond to Hall’s message, Hall emailed Cigarroa again noting, “I am concerned that you are not prioritizing this issue and do not recognize the risk inherent in this conduct.”<sup>21</sup> Hall then reminded Cigarroa about his “duties and responsibilities” by providing links to the UT System’s Standards of Conduct Guide and (ironically) the UT System’s Policy regarding Protection from Retaliation for Reporting Suspected Wrongdoing.<sup>22</sup> Hall asked, “[H]ow do you justify and defend [Powers’s] behavior?”<sup>23</sup>

Documents show that Cigarroa, with the support and review of some regents,<sup>24</sup> began preparing a letter to the Committee to, in part, address the content and accuracy of some of the testimony provided to the Committee.<sup>25</sup> At the same time, Hall circulated specific criticisms with Powers’s testimony to other regents, which Vice Chairman Wm. Eugene Powell identified as “more than minor mistakes.”<sup>26</sup> On February 1, 2014, Cigarroa sent a letter to the Committee and provided, among many other points of information, a few “clarifications” of Powers’s testimony regarding development accounting and interactions with CASE discussed more fully above and in Part IV(D)

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<sup>19</sup> Exhibit 184.

<sup>20</sup> *Id.*

<sup>21</sup> Exhibit 179.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See* Exhibit 181.

<sup>25</sup> *See* Exhibit 185.

<sup>26</sup> *See* Exhibit 187.

below. Cigarroa's letter did not contain any of Hall's other deconstructions of Powers's statements.

Hall's attention to Hegarty was similarly intense. As the UT Austin custodian of records, Hegarty resisted Hall's requests for information from October 2012 to present when he believed compliance with the exceedingly broad requests threatened the integrity of the collection and review process in addition to his office's ability to deal with other matters occurring in the ordinary course of business. One day after the February 1, 2014, letter to the Committee, Hall told Cigarroa:

As you confirmed in your letter to the Transparency Committee, Mr. Hegarty's testimony was misleading. The volume of pages came nowhere close to 800,000 (maybe  $\leq$  100,000 pages) but that did not deter him from providing false testimony to the committee or to the public. Will there be any ramifications to Mr [sic] Hegarty as an employee of the UT System or will you turn a blind eye to this type of behavior?<sup>27</sup>

Hall sent a message several weeks later following up on "Mr. Hegarty's performance."<sup>28</sup>

Cigarroa's handling of the matters above and his cooperation with the Committee appears to have eroded support from Hall. In the weeks following Cigarroa's testimony on December 18, 2013, documents provided to the Committee and referenced above show that Hall pressured Cigarroa on a number of different issues both directly and indirectly tied to topics raised by the Committee's investigation. Hall accused Cigarroa of not doing his job.<sup>29</sup> Indeed, on February 5, 2014, the Chairman of the Board "Set the Record Straight" by explaining why Hall's "tactics" toward the Chancellor were an unfair

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<sup>27</sup> Exhibit 190.

<sup>28</sup> See Exhibit 191.

<sup>29</sup> See Exhibit 192.

and inappropriate attempt to disparage Cigarroa's reputation.<sup>30</sup> On February 10, 2014, Cigarroa announced his resignation as Chancellor.

Third, despite the Committee's formal requests to the UT System to make no adverse personnel changes to witnesses such as Powers during the course of the investigation, it appears that Hall and a minority of other regents continued pushing for the ousting of Powers. In an October 2013 e-mail to Pedro Reyes, Executive Vice Chancellor for Academic Affairs, Hall said that Powers had failed to promptly comply with Hall's request for business and personal travel records. "Two strikes so far," Hall wrote. "Virtually zero accountability with this gentleman. What is your plan," Hall asked.<sup>31</sup> Hall's last question was ominous because Reyes is the UT System administrator with the statutory power to recommend removal of a sitting UT Austin president.

Likewise, in a letter Hall sent to Board Chairman Paul Foster on January 24, 2014, Hall included a series of documents that Hall called "a critical reminder of what has been promised to us as compared to what we have received" since the December 2013 regent meeting in which Cigarroa advocated for Powers to remain in his position. Those documents, which included Hall's notes, notes from Regent Alex Cranberg, and an e-mail from Regent Steve Hicks, show that in August 2013, just a few weeks after the Committee's first letter regarding employment action, Hall told the Board that they were being "held hostage by terrorists" and that firing Powers would only result in a "two-week" reaction that could easily be overcome.<sup>32</sup> Later, several regents tried to pressure

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<sup>30</sup> *Id.*

<sup>31</sup> *See* Exhibit 129.

<sup>32</sup> *See* Exhibit 108.

Powers to step down. Powers declined and said he did not “mind being fired.”<sup>33</sup> Several regents thought that a termination, as opposed to a resignation, would not be “in the best interests” of UT Austin.<sup>34</sup>

In short, while Hall’s disregard for the Committee and legislative process demonstrates exceptionally poor judgment from a regent for a public and publicly-funded institution, the more problematic conduct involves Hall’s harassment of Powers, Hegarty, and Cigarroa because of their service as witnesses before the Committee. As discussed more fully below, the undisputed evidence available to the Committee supports a finding that, at the least, Hall’s pressure on those witnesses to alter testimony provided to the Committee violated UT System policy and possibly the Texas Penal Code.

The investigation also noted conduct by Hall that, no matter how disturbing, might not rise to the level of an impeachable offense or act. For example, Hall frustrated the Committee’s investigative efforts in different ways. When asked to produce documents prior to the Committee’s first hearing at which witnesses would testify, Hall refused. When asked repeatedly to identify witnesses Hall believed should testify before the Committee, Hall refused. Why Hall would, on the one hand, slow the progress of the investigation and, on the other hand, decline an opportunity to identify people who could explain his conduct is puzzling when considered in a vacuum. Hall’s refusals, however, take on a different character when measured against other evidence. For example, Hall has taken a number of his concerns about Powers and others to the Office of Attorney General (“OAG”) for a formal investigation of what he contends is wrongdoing. When repeatedly asked to provide a sworn statement affirming the areas he has asked the OAG

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<sup>33</sup> See Exhibit 177.

<sup>34</sup> See *id.*

to investigate, however, Hall refused. While Hall shows no reservations about casting aspersions, he has been unwilling to account for his contentions under oath.

Hall's refusal to provide sworn testimony to the Committee deserves special consideration. The Committee was eager to hear from Hall. The Committee's counsel requested an interview, but Hall declined. The Committee invited him to provide sworn testimony, but Hall declined. As the subject of an impeachment investigation, Hall has a right to leave the fact finder to reach its own conclusions without his assistance or cooperation. Sometimes this right is exercised out of self-interest, like when one chooses not to provide potentially incriminating information against himself. Whatever the reason for his decision, counsel for the Committee readily concedes that Hall's decision to withhold personal information about his performance as a public servant is not an impeachable act.

Outside of his response to the investigation, the Committee examined Hall's application to become a regent. The investigation revealed that Hall omitted information from his application for his first gubernatorial appointment about lawsuits that made specific and derogatory accusations about his character, his performance as a fiduciary, and the lawfulness of his actions in the private sector. Hall noted in a cover letter accompanying his first application, however, that he omitted lawsuit information, characterized the missing information as primarily indirect eminent domain litigation, and volunteered to provide additional detail if needed. When Hall subsequently applied to become a regent a short time later, he omitted the same lawsuit information in an updated application.

Hall was not asked to provide additional information about lawsuits until his

omissions came under public scrutiny in April 2013. The information Hall provided to the Governor's office (more than a year into his service as a regent) revealed lawsuits that made contentions about him that were totally inconsistent with his prior description of the withheld information. Hall's omission of this information was misleading, and it impaired the Senate's ability to fully consider Hall's appointment for confirmation. Nonetheless, the evidence available to the Committee does not appear to support a suggestion that Hall knowingly made false entries in his sworn application.

The Committee also attempted to determine the apparent motivations behind Hall's conduct. Much of the evidence presented to the Committee showed that Hall was preoccupied with UT Austin President William Powers to the exclusion of the fourteen other components of the UT System. Hall, for example, rejected findings of a review of the compensation practices of the UT Law School Foundation conducted by UT System General Counsel Barry Burgdorf and whether Powers was aware of a specific compensation decision made by the law school's dean. Hall has also pushed audits of Powers's travel both as President of UT Austin and as a private citizen. Further, as discussed above, Hall actively opposed Powers's effort to seek reconsideration from CASE of its interpretation of how a generous and essential software grant to UT Austin could be classified for fundraising purposes. Whatever the issue Hall decided to scrutinize, he consistently used it as a platform to discredit Powers and insist upon his termination. Counsel finds this behavior to be myopic and mean-spirited. Nonetheless, the evidence shows that the Board knew about Hall's conduct and, while some members passionately opposed his methods, the Board did not act to limit or prevent Hall from his pursuit. Hall's obsession with Powers is therefore not a reasonable basis for the

Committee to propose articles of impeachment.

Hall's lack of regard for Powers took a different form when he involved himself in discussions with the agent of a head football coach for a rival university. The evidence available to the Committee shows that Hall usurped a function explicitly delegated to Powers as President of the university when he spoke to the coach's agent. He also told the agent that Powers (who reportedly supported UT Austin's existing head football coach) would no longer be at UT Austin "at the end of the year." Therefore, while the Committee may consider the evidence that Hall's conduct was outside the scope of his individual authority and clumsily handled as either part of, or systemic in, other investigated behavior, the Committee should likely not recommend articles of impeachment on this topic alone.

## **II. BACKGROUND AND HISTORY OF INVESTIGATION**

### **A. The University of Texas System, Board of Regents, and The University of Texas at Austin**

The UT System originated from the Texas Constitution of 1876. Article VII of that Constitution provided, "The Legislature shall as soon as practicable, establish, organize, and provide for the maintenance, support, and direction of a university of the first class, to be located by a vote of the people of this State, and styled 'The University of Texas.'" Enabling legislation to establish The University of Texas was passed in 1881, and classes began at the Main University in Austin on September 15, 1883. The UT System has grown into one of the nation's largest systems of higher education, with nine academic institutions and six health institutions. The UT System educates more than 216,000 students and employs 87,000 faculty and staff.

The Board of Regents is the governing body for the UT System. The Board is

composed of nine members who are appointed by the Governor and confirmed by the Senate. Terms for regents are scheduled for six years each and are staggered so that the terms of three members usually expire at the same time on February 1 of odd-numbered years. The Governor also appoints a student regent for a one-year term. The current members are Paul L. Foster (Chairman), Steven Hicks (Vice Chairman), Wm. Eugene Powell (Vice Chairman), R. Ernest Aliseda, Alex M. Cranberg, Wallace L. Hall, Jr., Jeffrey D. Hildebrand, Brenda Pejovich, Robert L. Stillwell, and Nash M. Horne (Student Regent). The terms of Regents Hicks, Powell, and Stillwell are set to expire in February 2015; the terms of Regents Cranberg, Hall, and Pejovich are set to expire in February 2017; and the terms of Regents Aliseda, Foster, and Hildebrand are set to expire in February 2019.

UT Austin is the largest of the UT System's academic institutions. The UT System "Main University" was renamed UT Austin in 1967.<sup>35</sup> UT Austin enrolls approximately 51,000 students annually and employs approximately 24,000 faculty and staff.<sup>36</sup> The operating budget for UT Austin alone exceeds \$2.1 billion annually, and UT Austin receives approximately \$650 million in research funding.<sup>37</sup>

UT System and UT Austin both receive substantial appropriations from the State legislature. For FY 2012, over 14 percent of the revenue to fund the operating budget of nearly \$13.4 billion for the UT System and its fifteen institutions came from State general revenue. In addition, for 2014, UT System is allocated over \$440 million from the

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<sup>35</sup> See "UT History Central" at <http://www.texasexes.org/uthistory/timeline.aspx> (last visited March 10, 2014).

<sup>36</sup> See "About UT" at <http://www.utexas.edu/about-ut> (last visited March 10, 2014).

<sup>37</sup> See *id.*

Permanent University Fund, a state endowment fund established through the appropriation of land grants dedicated to the support of twenty institutions and six agencies of the UT System and The Texas A&M University System.<sup>38</sup> Over one-third of any allocation from the Permanent University Fund has historically gone to UT Austin.<sup>39</sup>

Texas Education Code Chapter 65 provides for the administration of the UT System. For example, Sections 65.11 through 65.15 and Sections 65.31 through 65.35 set forth the general parameters, powers, and duties for the Board of Regents; Section 65.16 sets forth the relationship between the Board and UT System executives; and Section 65.45 instructs the Board to promote and expand science and technology in the State by utilizing UT System resources and cooperating with industry to, among other things, own and license technology rights.

The UT System and Board of Regents also have long-standing and public internal rules and policies. The first volume of the Regents' "Rules and Regulations" was adopted in August 1891. The current *Rules and Regulations* of the Board were reissued on December 10, 2004, and cover nine areas, including Board governance (Series 10000), administration (Series 20000), personnel (Series 30000), and intellectual property (Series 90000). The official copy of the Regents' *Rules and Regulations* is maintained by the Office of the Board of Regents, but the Rules are also available to the public on-line.<sup>40</sup>

**B. Wallace L. Hall, Jr.**

Hall is a businessman from Dallas. He graduated from UT Austin in 1984 with a

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<sup>38</sup> See Legislative Appropriations Request, Fiscal Years 2014 and 2015 (Revised Oct. 2012) at 4.

<sup>39</sup> Jordan Rudner, "UT-Austin receives bulk of UT System money – yet still lacks enough funds," *The Daily Texan* (Sept. 22, 2013).

<sup>40</sup> See <https://www.utsystem.edu/bor/rules/> (last visited March 10, 2014).

Bachelor of Arts in Economics degree. For over fifteen years, Hall was involved in oil and gas investments and acted as a securities analyst, financial futures trader, and broker dealer in the financial services industry. More recently, Hall founded and serves as President of Wetland Partners, LP, a partnership which established and operates a wetlands bank created to mitigate environmental impacts to the aquatic system as provided under the Clean Water Act. Hall has also served on the Texas Business Leadership Council and the Board of Trustees at St. Mark's School of Texas.

Hall was appointed to a six-year term on the Board by Governor Rick Perry in February 2011. He previously served as a member of the Texas Higher Education Coordinating Board on the Committee for Strategic Planning and Policy and as Chair of the Committee on Agency Operations. He resigned his position to accept appointment to the Board. According to interviews conducted during the investigation, Hall had no relationship with, and may not have met, Governor Perry before his appointment to the Texas Higher Education Coordinating Board or Board of Regents. Hall was referred to Governor Perry by a mutual friend, Jeff Sandefer.

On the Board, Hall has served as Chairman of the Task Force on Blended and Online Learning and as a member of the Advisory Task Force on Best Practices Regarding University-Affiliated Foundation Relationships. He is now Chairman of the Technology Transfer and Research Committee and is a member of the Audit, Compliance, and Management Review Committee and the Finance and Planning Committee. He is the Board's Liaison to the Governor's Office on Technology Transfer and Commercialization Issues.

### **C. Initial Public and Legislative Attention on Regent Hall**

In early 2013, tensions and speculation began to grow that Hall and the two other

regents appointed to the Board by Governor Perry in 2011 had been directed to scrutinize and unseat President Powers, even if that mission was inconsistent with the larger promotion of UT Austin or the UT System. On February 13, 2013, Regents Hall, Cranberg, and Pejovich directed pointed questions during a Board meeting at UT Austin President William Powers regarding the hiring of development personnel and undergraduate completion rates. The intensity of the questioning drew public attention. For example, Lieutenant Governor David Dewhurst expressed support for President Powers and remarked, “I’m particularly troubled when I see UT regents go around this man. I see them trying to micromanage the system.”<sup>41</sup> Governor Perry privately took an opposing position in support of the regents. For example, on March 1, 2013, Governor Perry sent an email to Regents Hall, Cranberg, Pejovich, and Foster which read, “I know you all get tired of being hammered by the charlatans and peacocks but the fight is being won.”<sup>42</sup>

Members of both houses of the legislature then took further action. On March 8, 2013, Representative Trey Martinez Fischer and Senator Judith Zaffirini sent separate requests for documents to the UT System pursuant to Texas Government Code 552.008. Among other things, the requests sought information in the possession of the Board of Regents related to the UT System’s investigation of President Powers. On March 20, 2013, Hall seconded a motion to reopen an investigation concluded in October 2012

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<sup>41</sup> Terrence Stutz, “Lt. Gov. David Dewhurst defends UT-Austin president Bill Powers against critics”, THE DALLAS MORNING NEWS (Feb. 18, 2013), at <http://www.dallasnews.com/news/politics/headlines/20130218-lt.-gov.-david-dewhurst-defends-ut-austin-president-bill-powers-against-critics.ece> (last visited March 14, 2014).

<sup>42</sup> Ralph K.M. Haurwitz, “UT Regent grilled on Perry emails,” THE AUSTIN AMERICAN-STATESMAN (May 14, 2013), at <http://www.mystatesman.com/news/news/state-regional-govt-politics/ut-regent-grilled-on-perry-emails/nXrR9/> (last visited March 15, 2014).

regarding the relationship and funding arrangements between The University of Texas Law School Foundation and The University of Texas at Austin School of Law. President Powers had served as a professor and dean of the law school during part of the time period relevant to that investigation.

The escalating controversy reached media outlets in April 2013. On April 3, 2013, the *Texas Tribune* reported that Hall was “coming under fire” for failing to disclose litigation history on his appointment applications.<sup>43</sup> And on April 15, 2013, Hall gave an interview to *Texas Monthly* in which he commented that, if members of the legislature “want[] to initiate impeachment against me, [they have] every right to do so. I respect that.”

On June 24, 2013, Representative Jim Pitts filed a resolution to advance impeachment proceedings against Hall by forming a special committee.<sup>44</sup> The next day, Speaker Straus issued a proclamation expanding the Committee’s existing jurisdiction to allow it to investigate officials like Hall and propose articles of impeachment against executive appointees.

#### **D. Select Committee on Transparency and State Agency Operations**

The Committee is a select committee of the Texas House of Representatives. The Committee is comprised of eight members, four Democrats and four Republicans: Rep. Carol Alvarado (Co-Chair), Rep. Dan Flynn (Co-Chair), Rep. Naomi Gonzalez, Rep. Eric Johnson, Rep. Lyle Larson, Rep. Trey Martinez Fischer, Rep. Charles Perry, and Rep.

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<sup>43</sup> Jay Root, “UT Regent Failed to Disclose Lawsuits,” *THE TEXAS TRIBUNE* (April 3, 2013), at <http://www.texastribune.org/2013/04/03/ut-regent-failed-disclose-lawsuits/> (last visited March 15, 2014).

<sup>44</sup> See Tim Taliaferro, “Pitts Files Resolution to Impeach UT Regent Wallace Hall,” *Alcalde* (June 24, 2013), at <http://alcalde.texasexes.org/2013/06/pitts-files-resolution-to-impeach-ut-regent-wallace-hall/> (last visited March 15, 2014).

Four Price. Speaker Straus formed the Committee on January 31, 2013.<sup>45</sup> The stated purpose of the Committee was to investigate finances, compensation packages, and public-private partnerships across state government, including the judicial branch and boards and commissions.<sup>46</sup>

The Committee held its first meeting on February 20, 2013, and it held its first hearing on March 7, 2013. The Committee's initial hearings dealt with the role of the State Auditor; forgivable loans and salary supplements between several foundations and various universities; and the relationship between the Cancer Prevention and Research Institute of Texas and the private foundation set up to supplement agency salaries and support the institute's operations.

On July 1, 2013, the Committee met to discuss the expanded charge provided in the Speaker's Proclamation and Chapter 665 of the Government Code. On July 25, 2013, the Committee issued a letter to then-Board Chairman Wm. Eugene Powell notifying the Board of the investigation, requesting that a broad range of documents and correspondence be preserved, and asking the UT System to refrain from taking employment action with respect to anticipated witnesses in the investigation, including President Powers. The June 25, 2013 letter specifically stated:

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<sup>45</sup> See *Texas Legislature Online* "Committee Membership History," found at <http://www.capitol.state.tx.us/Committees/MembershipCmteHist.aspx?LegSess=83R&CmteCode=C465> (last visited March 10, 2014).

<sup>46</sup> See Jay Root, "Straus Offers Details on Transparency Panel," THE TEXAS TRIBUNE (Feb. 1, 2013) at <http://www.texastribune.org/2013/02/01/straus-announce-panel-transparency/> (last visited March 15, 2014) ("This arose from some conversations that the governor and I had recently about the proliferation of certain foundations and support organizations throughout state government and higher education and agencies and departments of our state government broadly, and that there's very little transparency associated with them," Straus said. "It's just time to take a look at why this happened, where it's happening, what they're doing.")

In order to ensure the integrity of the witness testimony, the Committee asks that no adverse employment action be taken against any proposed witness for the duration of the investigation absent compelling justification. In the event such employment action is taken, the committee expects a thorough briefing as to the rationale for the action.<sup>47</sup>

**E. Special Counsel to the Select Committee**

On July 10, 2013, the Committee convened for an organizational meeting regarding the investigation of Hall. In connection with a discussion of past impeachment proceedings, Representative Martinez Fischer expressed concern over whether the Committee had the resources necessary for a thorough investigation with sufficient staff, depositions, and access to documents. In August 2013, after additional informational and planning meetings, the Committee retained Rusty Hardin & Associates, LLP to serve as Special Counsel to the Committee. On September 16, 2013, the Committee met with Hardin and his team publicly and in executive session to outline an investigatory plan, discuss the appropriate procedures to be followed during hearing testimony, and set tentative public hearing dates in October, November, and December 2013.

From August 2013 to March 2014, Committee counsel:

- Reviewed publicly-available news accounts and documents regarding Hall's appointment, actions in office, and responses to criticism;
- Assisted the Committee in issuing requests and subpoenas for documents and witnesses;
- Requested and reviewed more than 150,000 pages of electronic data and documents produced in response to requests for production and subpoenas issued by the Committee;
- Conducted interviews of persons with knowledge about Hall or other areas relevant to this investigation;

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<sup>47</sup> See Appendix D (APP 00035). The Committee issued another letter with a substantially similar admonition in October 2013. See Appendix D (APP 00106).

- Researched impeachment procedure, standards of conduct applicable to this investigation, and various other legal issues arising in the course of the investigation such as the applicability of attorney-client privilege to materials requested in the course of impeachment proceedings;
- Prepared materials for and participated in public testimonial hearings and several executive session Committee meetings; and
- Communicated with counsel for Hall and other potential witnesses.

In December 2013, the Committee asked counsel to prepare this report to document the factual findings and legal conclusions drawn from the investigation.

#### **F. Request and Review of Documents**

In late September and early October 2013, the Committee issued letter requests for documents relevant to the investigation to prepare for the upcoming hearings. One request was directed to the Appointments Division of the Governor's Office;<sup>48</sup> another request was directed to the Senate Nominations Committee;<sup>49</sup> and a third request was sent to Regent Hall. The co-chairs issued the request to Regent Hall on October 9, 2013.<sup>50</sup>

The Committee received quick responses from both the Appointments Division of the Governor's Office and the Senate Nominations Committee. The documents were produced well in advance of the first hearing date.

The request to Hall did not receive the same prompt attention. Hall did not respond to the request until the Friday before the first hearings in this matter were scheduled. In an October 18, 2013 letter from his lawyer, Hall voiced numerous

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<sup>48</sup> See Letter from Co-Chairs Rep. Alvarado and Rep. Flynn to Darrell Davila (September 6, 2013), at Appendix D (APP 00103).

<sup>49</sup> See Letter from Co-Chairs Rep. Alvarado and Rep. Flynn to Patsy Spaw (September 6, 2013), at Appendix D (APP 00104).

<sup>50</sup> See Letter from Co-Chairs Rep. Alvarado and Rep. Flynn to W. Hall (October 9, 2013), at Appendix D (APP 00107).

criticisms of the Committee's request.<sup>51</sup> Among other things, Hall complained about the scope of the Committee's request, the purported absence of standards by which his conduct is being evaluated, and the power of the Committee to receive everything it had requested. Hall noted that he had "turned the [Committee's] request over to U.T. System counsel," and that UT System counsel already had approximately 19,000 pages of material he had previously collected in response to legislative requests from Senator Zaffirini and Representative Martinez Fischer.

On October 23, 2013, the Committee issued subpoenas for the production of documents.<sup>52</sup> One of the document subpoenas resulted directly from the October 18 letter from Hall's lawyer. As discussed below, Hall failed to follow the directives of the Committee's original request for documents.

The Committee first received documents from Hall on November 4, 2013. In the letter accompanying the documents, Hall advised that he expected to turn over another 12,000 documents to the UT System for review.<sup>53</sup> On November 11, 2013, the day before the November hearing, Hall produced an additional 9,246 pages of documents to Committee counsel.<sup>54</sup>

On October 28, 2013, the UT System produced 32,559 pages of documents for the Committee's review along with a privilege log, which contains 683 items that the UT System considered confidential under the attorney-client privilege. The documents were

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<sup>51</sup> See Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (October 18, 2013), at Appendix D (APP 00119).

<sup>52</sup> Appendix D (APP 00124–29).

<sup>53</sup> See Letter from G. Allan Van Fleet to Rusty Hardin (November 4, 2013), at Appendix D (APP 00140).

<sup>54</sup> See *id.*

produced in response to the Committee's October 23, 2013 subpoena directed to Dan Sharphorn, Interim Vice Chancellor and General Counsel.

In the days leading up to the Committee's resumed hearing scheduled for November 12, 2013, the UT System reached an agreement with Committee counsel regarding protected production of documents the UT System had withheld from its initial production. Rather than seek a response from the OAG regarding the scope and applicability of the attorney-client privilege in connection with documents sought in impeachment proceedings, the UT System agreed to disclose withheld documents to Committee counsel with the understanding that Committee counsel could not share those documents with others. In the event Committee counsel wanted to share withheld documents with Committee members, the UT System asked Committee counsel to ask permission, which UT System promised not to unreasonably withhold.

The UT System produced 17,580 additional pages of documents between November 15, 2013 and November 22, 2013, 4,520 additional pages of documents on December 6, 2013, and 18,849 additional pages of documents one week before the Committee's December 18, 2013 hearing. In total, the UT System and Hall produced about 54,000 pages of documents in a one-month period.

Committee counsel reviewed the documents and determined that certain expected communications had not been produced. For example, the document productions did not contain data and reports compiled for and distributed to the Board or correspondence about Hall's attempts to instigate a criminal investigation by the OAG. Committee counsel contacted the OAG, which agreed to release 822 pages of correspondence and documents related to Hall's interactions with that office.

After the December hearings, Committee counsel continued to press for release of additional documents from the UT System. The UT System produced approximately 14,827 pages between January 4, 2014 and January 14, 2014, in response to a November 22, 2013 subpoena from the Committee. On February 11, 2014, the Committee Co-Chairs supplemented the November 22, 2013 subpoena to ensure that the UT System produced documents reflecting more recent activity and communications. On February 21, 2014, the UT System produced 3,421 additional pages of documents, 3,163 of which were in response to the original November 22 subpoena, and 249 of which were in response to the Committee's February 11, 2014 letter to UT System. The 249 pages were heavily redacted. On March 3, 2014, after counsel reiterated its request under the impeachment provisions of the Texas Government Code, the UT System produced the 249 pages without redactions. On March 10, 2014, the UT System produced 2,012 additional pages of documents.

The Committee and Committee counsel also sent numerous requests to UT Austin for documents. UT Austin promptly complied with all such requests, producing more than 1,600 pages to the Committee over the course of the investigation.

#### **G. Hearings**

On September 17, 2013, the Committee provisionally scheduled three sets of dates for Committee meetings and potential witness testimony. On October 22 and 23, 2013, the Committee heard testimony from eight witnesses, including: (1) Representative Pitts; (2) Kevin Hegarty, UT Austin Chief Financial Officer, Vice President, and custodian of records; (3) Carol Longoria, Open Records Coordinator for UT Austin; (4) Barry Burgdorf, former UT System General Counsel; (5) Teresa Spears, former Director of the Governor's Office of Appointments; and (6) Robert Haley, Clerk for the Senate

Nomination Committee. The topics covered during these hearings included Hall's application for and confirmation of appointment, Hall's requests for records and information from UT Austin, Hall's history of investigating UT Austin departments, and Hall's access to, and possible disclosure of, confidential student information. The Committee also issued subpoenas for the production of documents from UT System and UT Austin.

On November 12, 2013, the Committee heard testimony from five witnesses, including: (1) Francie Frederick, General Counsel to the Board; (2) Daniel Sharphorn, Acting General Counsel for the UT System; and (3) Barbara Holthaus, a senior attorney for the UT System and system-wide privacy coordinator. The topics covered during these hearings included Hall's access to, and possible disclosure of, confidential student information.

On December 18, 2013, the Committee heard testimony from four witnesses: (1) H. Scott Caven, Jr., a former Chairman of the Board; (2) John Barnhill; a former regent; (3) William Powers, Jr.; President of UT Austin; and (4) Francisco Cigarroa, M.D., Chancellor of the UT System. Hall was originally scheduled to testify on December 19, 2013, but he refused to appear unless he was subpoenaed.<sup>55</sup>

The topics covered during these hearings included the standards and practices of the Board and the impact of Hall's conduct on UT Austin and the UT System. The

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<sup>55</sup> The Committee opted not to subpoena Hall because the Committee did not want to compel or force testimony from an individual who was the object of an investigation. Rather, the Committee thought that Hall should testify by his own free will in response to an invitation. Some witnesses received subpoenas, in part, because they were not the object of the Committee's investigation. Others, including Representative Pitts, testified without subpoenas. *See* Comments of Rusty Hardin before House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 10:1 – 12:7.

Committee also raised the possibility of mandating regular reporting requirements to the UT System and UT Austin to monitor the extent that document and data requests continued despite the Committee's investigation.

Two days after the third hearing, the Committee co-chairs formally directed Cigarroa and the UT System to report back to the Committee by February 1, 2014, about several items, including:

1. A listing of all requests for information made by a regent or an employee of the System to a System university or institution after December 20, 2013;
2. A description of any proposed changes to Regents' Rules and Regulations; and
3. A description and update on the progress of any pending investigations and inquiries conducted by the UT System.

Cigarroa responded on February 1, 2014, and he sent a follow up letter to the Committee co-chairs on March 3, 2014.

#### **H. Hall's Role in Committee Proceedings**

Hall's public commentary regarding the Committee and its investigation has grown more critical over time. In September 2013, Hall participated in a panel discussion as part of the Texas Tribune Festival and "questioned the legitimacy" of the Committee's investigation.<sup>56</sup>

As discussed above, Hall has not volunteered or promptly produced documents in response to Committee requests. In correspondence between Hall and the UT System provided by the UT System regarding the Committee's original request for documents on

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<sup>56</sup> See Jacob Kerr, "Facing impeachment, Regent Wallace Hall defends actions in debate with Sen. Kirk Watson", THE DAILY TEXAN (Sept. 28, 2013), at <http://www.dailytexanonline.com/news/2013/09/28/regent-wallace-hall-sen-kirk-watson-debate-regents-role-impeachment> (last visited March 15, 2014).

October 9, 2013, the UT System noted that “it remains incumbent on Regent Hall” to identify documents responsive to the Committee’s request. When Hall later produced documents to Committee counsel in the days before hearings resumed, however, he deflected responsibility and informed counsel that he was producing 1,188 pages of documents “the System reviewed and provided to us with permission to produce.”<sup>57</sup> The Committee did not receive any documents directly from Hall until November 3, 2013. Hall then produced 9,246 pages of documents to Committee counsel on November 11, 2013, the day before the November hearing.

The Committee repeatedly invited Hall to provide any evidence he wanted the Committee to consider in his defense, and similarly requested the names of any witnesses he wanted the Committee to hear on his behalf. Hall did not respond to any of these requests.

Hall did not voluntarily appear before the Committee to provide testimony. Hall stated that he was available to testify on November 12, 2013, but only if his appearance was compelled with a subpoena. Nor did Hall respond to several requests by the Committee to provide documents or the names of any witnesses to support Hall’s side of the investigation.

### **III. FRAMEWORK FOR THE INVESTIGATION**

#### **A. June 25, 2013 Proclamation by Speaker of the House Joe Straus**

On June 25, 2013, Speaker of the House Joe Straus issued a Proclamation pursuant to House Rule 1, Section 16 initiating this investigation. The full text of the

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<sup>57</sup> Letter from G. Allan Van Fleet to Rusty Hardin (November 4, 2013) at Appendix D (APP 00140).

Proclamation is appended to this Report at Appendix A. The Proclamation expanded the jurisdiction of the Committee to include the following:

The committee shall monitor the conduct of individuals appointed in offices of the executive branch of the state government, including university regents, to ensure that such officers are acting in the best interest of the agencies and institutions they govern.

The Proclamation set forth the scope of the Committee's investigatory authority as follows:

[T]he committee shall have the authority to investigate matters relating to the misconduct, malfeasance, misfeasance, abuse of office, or incompetency of such officers . . . .

The Proclamation's grant of authority does not list exceptions and is therefore to be interpreted and applied broadly.

The Speaker expressly charged the Committee with the rare authority to initiate and conduct impeachment proceedings under Government Code Chapter 665. As discussed below, Chapter 665 provides for impeachment and removal of, among others, regents with control or management of a state institution or enterprise.<sup>58</sup> The Proclamation specifically provided:

[T]he committee . . . may propose appropriate articles of impeachment against such officers if the committee determines the grounds for impeachment exist.

[D]uring the First Called Session of the 83rd Legislature, the committee shall have authority to initiate and conduct impeachment proceedings as described in Chapter 665, Government Code, on behalf of the Texas House of Representatives regarding one or more such officers and may continue its investigations and make recommendations of the Texas House of Representatives thereafter as

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<sup>58</sup> See TEX. GOV'T CODE § 665.002(3) (Vernon 2004).

provided by Section 665.003, Government Code.

If after a full and fair investigation under Chapter 665, Government Code, the committee determines that grounds for impeachment exist, the committee may propose appropriate articles of impeachment against one or more such officers and present those articles to the Texas House of Representatives to consider for presentment to the Texas Senate.

## **B. Basis and Procedure for Impeachment**

Impeachment is a parliamentary device for the removal of public officials. *Merriam-Webster's Dictionary* defines the word "impeach" to mean "to charge (a public official) before a competent tribunal with misconduct in office." In terms of governmental activities, impeachment is basically a process by which a public official is charged by an authorized legislative body with conduct unworthy of his or her office. Such an impeachment is merely an accusation and has frequently been compared with the act of a grand jury returning an indictment.<sup>59</sup> Impeachment by legislative body, like indictment by a grand jury, is not necessarily indicative of guilt, but is the instrumentality by which charges are preferred and upon which a later finding of guilt or innocence can be made by the proper tribunal.

Impeachment by legislative means was originally developed in England as a device by which Parliament could exercise some measure of control over officials who had been appointed by the King. It was used as a direct method of bringing to account in Parliament the ministers and other public officials of the King, who were men with sufficient power to have been beyond the reach of the King's Courts or the people of England. The first record of an impeachment in England appeared in 1386, when the

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<sup>59</sup> See, e.g., *Ferguson*, 263 S.W. at 94.

King's Chancellor was impeached on a variety of charges, including breaking a promise he had made to the full Parliament and failing to expend sums Parliament directed to be spent. The House of Commons voted hundreds of other impeachments during the next 400 years for misapplication of funds, abuse of official power, neglect of duty, encroachment on the prerogatives of Parliament, corruption, and betrayal of trust.<sup>60</sup>

In 1787, the American Constitutional Convention adopted the British practice of impeachment and incorporated impeachment provisions in the new constitution of the United States. Article I, Sections 2 and 3, provide the House of Representatives with the sole power of impeachment and provide the Senate with the sole power to try all impeachments to conviction and removal from office. Federal impeachment has been summarized as follows:

Impeachment is perhaps the most awesome though the least used power of Congress. In essence, it is a political action, couched in legal terminology, directed against a ranking official of the federal government. The House of Representatives is the prosecutor. The Senate chamber is the judge and jury. The final penalty is removal from office and disqualification from further office. There is no appeal.<sup>61</sup>

Over 50 federal impeachment proceedings have been initiated in the House of Representatives since 1789. The conduct emphasized in these proceedings has related to abuse of governmental process and adverse impact on the system of government, rather than allegations of criminal conduct. Indeed, "it was never intended that impeachment

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<sup>60</sup> See generally E. Bazan & A. Henning, *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice* (Congressional Research Service 2010).

<sup>61</sup> Congressional Quarterly, Inc., "Guide to the U.S. Congress" (3d ed. 1982).

grounds be restricted to that conduct which was criminal in nature.”<sup>62</sup>

Texas has provided for impeachment since its earliest days as a governmental unit. The authority and jurisdiction for impeachment in Texas is provided in three sources: the Texas Constitution, statutory provisions outlining impeachment procedure, and court decisions applying and interpreting the constitutional and statutory provisions.

### **1. Constitution**

Impeachment has been authorized in the Texas Constitution since the days of the Republic. Article I of the Constitution of the Republic of Texas provides that the House of Representatives shall have the sole power of impeachment (Section 6), the Senate shall sit as a court of impeachment and shall convict only with the concurrence of two-thirds of the members present (Sections 11 & 12), and judgment in impeachment cases extends only to removal from office and disqualification to hold future office. These constitutional provisions have been carried forward in the Constitutions of 1845 (Article IX), 1861 (Article IX), 1866 (Article IX), 1869 (Article VIII), and 1876 (Article XV).

Article XV of the Constitution of 1876 has provided the basis for all subsequent impeachments and this investigation. Five sections of that Article relate to the potential impeachment of a member of a public university board of regents:

Section 1. POWER OF IMPEACHMENT. The power of impeachment shall be vested in the House of Representatives.

Section 3. OATH OR AFFIRMATION OF SENATORS; CONCURRENCE OF TWO-THIRDS REQUIRED. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall

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<sup>62</sup> “Impeachment: Report of the Select Committee on Impeachment to the Speaker and the House of Representatives” (July 23, 1975) at 8.

be convicted without the concurrence of two-thirds of the Senators present.

Section 4. JUDGMENT; INDICTMENT, TRIAL, AND PUNISHMENT. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law.

Section 5. SUSPENSION PENDING IMPEACHMENT; PROVISIONAL APPOINTMENTS. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Section 7. REMOVAL OF OFFICERS WHEN MODE NOT PROVIDED IN CONSTITUTION. The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

The Constitution does not specify grounds for impeachment. Texas is one of nine states in which the constitution is silent on this matter.<sup>63</sup> One former legislative committee drew the conclusion from this silence that “grounds for impeachment . . . can be any misconduct of an officer, public or private, of such a character as to indicate unfitness for office.”<sup>64</sup> The Texas Supreme Court read into this silence “such official delinquencies, wrongs, or malfeasances as justified impeachment according to the principles established by the common law and the practice of the English Parliament and the parliamentary bodies in America.”<sup>65</sup>

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<sup>63</sup> *Id.* at 11.

<sup>64</sup> *Id.*

<sup>65</sup> *Ferguson*, 263 S.W. at 892.

In addition, Article XV was amended in 1980 to provide for the removal of an officer by the Governor directly:

Section 9. REMOVAL OF PUBLIC OFFICER BY GOVERNOR WITH ADVICE AND CONSENT OF SENATE. (a) In addition to the other procedures provided by law for removal of public officers, the governor who appoints an officer may remove the officer with the advice and consent of two-thirds of the members of the senate present.

(b) If the legislature is not in session when the governor desires to remove an officer, the governor shall call a special session of the senate for consideration of the proposed removal. The session may not exceed two days in duration.

## **2. Government Code Chapter 665**

In 1993, the legislature enacted statutory provisions implementing the constitutional impeachment provisions discussed above. Texas Government Code Chapter 665 sets forth procedures for impeachment and removal of state officers and employees. Section 665.002 provides, among other things, that “a member, regent, trustee, or commissioner having control or management of a state institution or enterprise” is subject to impeachment.

The House of Representatives is charged with conducting impeachment proceedings and, if appropriate, preferring articles of impeachment in the manner set forth in Sections 665.003 through 665.007. Among other things, the House or a House Committee may, when conducting an impeachment proceeding, “(1) send for persons or papers; (2) compel the giving of testimony; and (3) punish for contempt to the same extent as a district court of this state.”<sup>66</sup> The Senate is charged with convening a trial of

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<sup>66</sup> TEX. GOV'T CODE § 665.005 (Vernon 2004).

impeachment after the House prefers articles of impeachment in the manner set forth in Sections 665.021 through 665.028. In addition, Chapter 665 provides for “Removal by Address” by the Governor with the advice and consent of the Senate as set forth in Article XV(9) of the Constitution.<sup>67</sup>

### **3. Previous Impeachment Cases**

Impeachment as a procedure for removal of a public official has rarely been used in Texas. Other than judges and one governor discussed below, the only other reported impeachments have involved members of the House (Messrs. F.A. Dale and H.H. Moore in 1927), land commissioners (W.L. McGaughey in 1893 and J.T. Robinson in 1929), a Comptroller (S.H. Terrell in 1929), and an agriculture commissioner (J.E. McDonald in 1935). We are not aware of any instance in which a regent has been impeached.

The most notable impeachment case in Texas occurred in 1917 with the impeachment and trial of Governor James E. Ferguson. The House voted articles of impeachment against the Governor on August 24, 1917, by a vote of 74 yeas, 45 nays.<sup>68</sup> The instrument of impeachment included twenty-one separate articles, nineteen of which were sustained by a conviction after a lengthy trial in the Senate. Governor Ferguson resigned before final conviction by the Senate, but the Senate continued to enter a final judgment removing the Governor from office and providing that he be ineligible to hold public office in Texas again.

## **IV. INVESTIGATIVE FINDINGS**

The Committee’s investigation was undertaken in two steps. The first step was

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<sup>67</sup> See TEX. GOV’T CODE §§ 665.051–665.053 (Vernon 2004).

<sup>68</sup> “Impeachment: Report of the Select Committee on Impeachment to the Speaker and the House of Representatives” (July 23, 1975) at 16.

designed to identify Hall's allegedly improper conduct and document it for possible impeachment action by the House. The factual findings resulting from that step are below. The second step, which involves the identification and application of legal standards by which Hall's conduct can be measured, is set forth in Part V.

Initially, the investigation focused on three areas of inquiry identified in a proposed resolution by Representative Jim Pitts: (1) Did Hall fail to disclose material information on his regent application? (2) Did Hall reveal information about students that violated their privacy? and (3) Did Hall exceed his role as a regent by constantly requesting massive information from the University of Texas? Although the Speaker's Proclamation provides the authority for the investigation, Representative Pitts's proposed resolution and the areas of inquiry in that proposed resolution were instructive at the outset. Factual findings with respect to those three areas are found in subparts IV(E), IV(A), and IV(B) below.

During the course of the Committee's investigation, however, a number of actions and practices by Hall warranted attention even though they were not originally identified in Representative Pitts's proposed resolution or the Committee's initial investigation plan. These additional topics included: (1) Hall's conduct before CASE in connection with software contributions to UT Austin; (2) Hall's communications with third parties about UT Austin football program coaching changes without administration or Board approval; (3) Hall's pattern of targeted scrutiny and criticism, particularly directed toward UT Austin President Powers and his perceived allies; (4) Hall's alleged preoccupation with the continued investigation into the UT Law School Foundation for allegedly improper motives; (5) Hall's alleged manipulation and reorganization of original records

in the course of his document review; and (6) Hall's allegedly improper procedures for demanding records, *e.g.*, issuing requests orally instead of in writing. The first three of additional topics were substantive enough to warrant analysis in this report. Factual findings with respect to those three additional areas are found in subparts IV(D), IV(F), and IV(G) below.

Finally, during the investigation it became clear that Hall's conduct during and after the conclusion of the public hearings was at least as, if not more, troubling than the conduct known to members of the House in June 2013. Hall's obstruction of the Committee's efforts alienated the UT System, which Hall was charged to protect, from the Legislature. Moreover, Hall acted with recrimination against UT System administrators who chose to comply with the Committee's requests, and he sought to punish witnesses for providing testimony with which he did not agree. As discussed in subparts IV(C) and IV(H) below, these additional topics may also provide grounds for the Committee to find that Hall has engaged in conduct warranting impeachment.

#### **A. Requests for Records and Information from UT Austin**

On June 24, 2013, Representative Pitts filed a resolution in the House alleging that Hall, "while holding office as a member of the Board of Regents of The University of Texas System, may have abused that office by making numerous unreasonably burdensome, wasteful, and intrusive requests for information of certain University of Texas System institutions as a member of the board of regents as well as on his own behalf."<sup>69</sup> Pitts's resolution further alleged that Hall "exhibited behavior that calls into question his fitness for office by giving the incorrect and misleading impression to certain

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<sup>69</sup> Tex. H.R. 230, 83rd Leg., 1st C.S. (2013) at 2.

institutions and personnel of The University of Texas System that certain actions taken and requests for information made by him were approved by the board of regents, when in fact the actions taken or requests made were without approval of the board of regents.”<sup>70</sup>

Pitts’s resolution was based on two kinds of requests for documents by Hall to UT Austin: (1) regental requests beginning in October 2012 for a large volume of documents from UT Austin related to requests by third parties under the Texas Public Information Act (“TPIA”); and (2) personal requests by Hall in early June 2013 for documents from UT Austin pursuant to the TPIA. UT Austin has produced hundreds of thousands of pages of documents to Hall in response to these requests. After Representative Pitts filed his resolution, Hall continued to propound additional requests to UT Austin and President Powers individually, including requests for President Powers’s travel records issued on the same date of the Committee’s public hearings.

By the time the Committee began its public hearings in September 2013, Hall had received an estimated 800,000 pages of documents.<sup>71</sup> Hall had received 1,200 files, 94

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<sup>70</sup> *Id.*

<sup>71</sup> It is unclear exactly how many pages UT Austin produced for Hall. During testimony before the Committee, in response to a legislator’s question, Hegarty estimated that the 1,200 files UT Austin had produced for Hall’s review resulted in the production of over 800,000 pages. *See* Testimony of Kevin Hegarty before the House of Representatives Select Committee on Transparency in State Agency Operations on October 22, 2013 (“Hegarty Testimony”) at 123:7–14. Both Hall and the UT System disputed this number. In a February 1, 2014 letter to the Committee, Cigarroa stated that System believed that “perhaps fewer than 100,000” pages were provided to Hall by UT Austin. Letter from Chancellor Francisco Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (Feb. 1, 2014) at Appendix D (APP 00241).

In his letter to the Committee, Cigarroa offered no explanation of how UT System had reached the estimate of “fewer than 100,000” pages. Indeed, days after the letter, Cigarroa was still seeking information internally to “how we calculated” the amount. *See* Exhibit 193. In an e-mail sent to Powers two weeks after the letter’s public distribution,

percent of the 1,278 open record files created at UT Austin between January 2011 and June 2013.<sup>72</sup> This number does not include additional records the UT System obtained on Hall's behalf as a result of subsequent regental inquiries about items such as Pulsepoint, Accenture, Powers's travel records, or the Law School Foundation.

**1. Hall Asked UT Austin to Produce Over Twenty Months' Worth of Open Record Request Files in an Unreasonable Amount of Time.**

Hall's requests for records from UT Austin have garnered attention because the requests "started large and they kept large."<sup>73</sup> On October 5, 2012, Francie Frederick contacted UT Austin personnel on Hall's behalf.<sup>74</sup> Frederick explained that Hall wanted

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Cigarroa explained, "[t]he method by which we calculated the 100,000 pages in my letter to the oversight committee was that there exists about 2,500 pages per box. If you multiply this by 40 we get to approximately 100,000." Exhibit 198.

This methodology of counting pages is inaccurate and incorrect. Hall's receipt of forty boxes of documents only accounted for UT Austin's production of original TPIA request files for April 2011 through September 2012. This box count, on which UT System solely relied for his page count, did not include the boxes of files previously produced to Hall, which encompassed TPIA requests for January, February, and March 2011. Nor did it account for: (i) subsequently produced TPIA files for Hall's review, which included requests from October 2012 through June 2013; (ii) Hall's regental requests, which numbered 110 between 2011 and October 2013; and (iii) Hall's citizen requests for open records, two of which alone resulted in the production of eight boxes of documents. *See Exhibits 5 & 53.*

<sup>72</sup> *See Exhibit 5.*

<sup>73</sup> Hegarty Testimony at 126: 11–12.

<sup>74</sup> This was not the first time Hall had interacted with the UT Austin open records department. A few weeks earlier, Hall asked Frederick to investigate whether Carol Longoria, an attorney and open records coordinator for more than seven years, worked for UT Austin or the UT System. *See Exhibit 8.* Hall wanted to know how Longoria had "become entangled" in "search protocols." *See Exhibit 7.* With two attorneys out on maternity leave, the UT System had temporarily hired Longoria, who typically worked as a public information coordinator for UT Austin. *See Exhibit 8.* Frederick followed Hall's order—emailing senior attorneys at UT Austin and the UT general counsel's office for information about Longoria, her work, and her access to UT computers. *See id.*; Exhibit 7.

all of the UT Austin Open Record Request files<sup>75</sup> from January 1, 2011 through September 30, 2012—about 1,278 Open Record Request files.<sup>76</sup> The log for those records was 500 pages alone and the files filled more than two file cabinets. Hall wanted the documents within two weeks.<sup>77</sup>

Hall’s request was unique because of its breadth and divergence from Board protocol.<sup>78</sup> In the past, if the Board sought information—and it was generally the Board, not a single regent—Board staff or an Executive Vice Chancellor would explain the general inquiry to the UT Austin open records department and the staff would gather files that could answer the Board’s question.<sup>79</sup> UT Austin staff saw this as a collaborative effort to help the Board with broad policy inquiries. Hall, on the other hand, had requested thousands of files covering a broad array of topics, and he offered no explanation as to why he wanted the information. Indeed, Hall has never explained why he wanted the information. Nor did Hall provide any background information, which would have allowed UT records staff to more efficiently collect and assemble the information, much of which contained information protected by privacy statutes.<sup>80</sup>

Fulfilling Hall’s request for “everything that was produced” was “not a cut and

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<sup>75</sup> It is important to note that, at this time, Hall was not making his own Open Records Request under the TPIA. Rather, he wanted to see all of the TPIA requests submitted to UT Austin by other individuals during the past two years.

<sup>76</sup> See Exhibit 11.

<sup>77</sup> See *id.*

<sup>78</sup> See Testimony of H. Scott Caven, Jr. and John Barnhill before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 27:13 – 30:11 & 33:13–22.

<sup>79</sup> See Hegarty Testimony at 110:1–16.

<sup>80</sup> See *id.* at 119:20 – 120:9; Testimony of Carol Longoria before the House of Representatives Select Committee on Transparency in State Agency Operations on October 22, 2013 (“Longoria Testimony”) at 238:15–23.

dried endeavor.”<sup>81</sup> Files collected for public record requests often contain personal information such as bank account and social security numbers, medical records, personnel files, or sensitive and confidential contracts.<sup>82</sup> Additionally, the documents included information protected by privacy statutes such as FERPA or the Health Insurance Portability and Accountability Act (HIPAA). Hall did not initially indicate whether he wanted private information to remain redacted, or whether statutorily protected information should be withheld. Eventually, Hall ordered UT Austin staff to release more than 1,200 files with no apparent safeguards to insure confidentiality once Hall had received the documents.<sup>83</sup> This directive eased somewhat the administrative burdens associated with production, but UT Austin’s custodian of records had other concerns with releasing sensitive information in this fashion.

UT Austin staff originally tried to balance Hall’s requests with ongoing record requests from the public by offering Hall one month of requested data at a time.<sup>84</sup> Frederick pushed for a faster response on Hall’s behalf. Frederick suggested that UT Austin staff release at least three months of files each week with the last box being delivered by December 14, 2012.<sup>85</sup> Frederick offered no justification for these deadlines.

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<sup>81</sup> Exhibit 13.

<sup>82</sup> In addition, many of these items are considered confidential and cannot be disclosed under state and federal laws. For example, Government Code Chapter 552 protects I-9 forms, W-2 forms, W-4 forms, driver’s license information, direct deposit forms, and fingerprints, among other items.

<sup>83</sup> See Exhibit 13.

<sup>84</sup> See Exhibit 12.

<sup>85</sup> See Exhibit 20.

**2. UT Austin Personnel Expressed Concerns with Hall's Requests, Authority, and Production Deadlines.**

Hall's request for almost two years' worth of public records concerned UT Austin personnel for several reasons. The public records office at UT Austin, staffed with only two fulltime employees, was already overworked. Record requests had increased more than 50 percent during the previous two years,<sup>86</sup> and, under applicable state law, the office had to respond to all public record requests within ten business days. In addition, the office had to draft briefs to the OAG seeking advice for record requests that were unclear or overly broad before the expiration of that ten-day period.<sup>87</sup> To meet the public's increasing demand for records, the office had recently added a second full time employee. Hall's requests and aggressive deadline meant that, instead of answering citizen requests, the new employee's sole task would be answering Hall's requests as well as the dozens of tag-along record requests by the media and knowledgeable individuals interested to see what Hall had requested and obtained.<sup>88</sup>

Kevin Hegarty, Chief Financial Officer and custodian of records for UT Austin, responded to Frederick, explaining that his staff was already taxed with existing public records requests.<sup>89</sup> As custodian of records, Hegarty and the staff that handled the public records could be held legally responsible if any material made confidential by statute entered the public domain. UT Austin staff saw no alternative but to review the files with an attention to detail—carefully searching for, and removing, information kept

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<sup>86</sup> See Longoria Testimony at 314:11–17.

<sup>87</sup> See Hegarty Testimony at 121:18–25.

<sup>88</sup> See Longoria Testimony at 237:10–24.

<sup>89</sup> See Exhibit 20.

confidential by statutes such as HIPAA and FERPA.<sup>90</sup> Hegarty's staff could not meet Frederick's deadline, however, while adhering to office protocols. Hegarty offered that if Frederick wanted, the files could be delivered to the UT System office and attorneys for UT System could review the documents to remove confidential information before releasing the documents to Hall.<sup>91</sup> Frederick agreed. Between November and December 2012, Hegarty's staff brought forty boxes of documents to the Board office for UT system attorneys to review for confidential material before allowing Hall to access the files.<sup>92</sup> These boxes, and six previously delivered boxes, represented documents responding to more than half of Hall's October 2012 request.<sup>93</sup>

### **3. The Relationship Between UT Austin Personnel and Hall and His Agents Concerning Hall's Requests for Records and Information Became Hostile.**

When 2013 arrived, hundreds of original open record request files remained in the Board's office. UT Austin, still trying to meet statutory deadlines for the public's requests, attempted to retrieve original files from the Board office.<sup>94</sup> An attorney for the

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<sup>90</sup> See Exhibits 13, 14 & 17.

<sup>91</sup> See Exhibits 20 & 21.

<sup>92</sup> See Exhibits 9 & 21.

<sup>93</sup> Hall's conduct also put UT System officers and employees such as Francie Frederick and Dan Sharphorn in a difficult position. Texas Education Code Section 65.16(d) provides, "[T]he central administration of the system shall recommend policies and rules to the governing board of the system to ensure conformity with all laws and rules . . . ." In response to Hall's demands, however, counsel for both the Board and the UT System appear to have given a higher priority to Hall's requests and requirements than to their statutory obligation to the system as a whole.

<sup>94</sup> See Exhibit 42; Hegarty Testimony at 129:3–17 ("It wasn't fast enough for the board and I was told continually it's not fast enough for Regent Hall . . . Ms. Frederick came to me and said 'I've got a deal. We have attorneys that know this. We've got attorneys that can do the same thing your attorneys can do. We will protect your data. Let's do this. You box up all these files,' and there were some 40 boxes, 'you release them to us. We will guard, we will protect, we will do what a custodian does to these

Board of Regents, Karen Rabon, stopped the UT Austin staffer who had come to retrieve the files.<sup>95</sup> Regardless of protocol and legal requirements, Hall wanted the original files. UT Austin had to make copies of documents needed for citizen requests or briefs to the OAG.<sup>96</sup>

When Hall sought the production of additional public record files from UT Austin in 2013, Frederick, on Hall's behalf, pushed for the release of only the original files, which UT Austin was not eager to release.<sup>97</sup> Original files often included confidential information such as social security numbers or bank account numbers. Hall, however, would not accept copies.<sup>98</sup> Hall wanted the original files, presumably because the way those files were arranged and annotated would provide insight into the work product of UT Austin staff tasked with gathering and producing responsive documents.<sup>99</sup>

By March 7, 2013, Hegarty's concerns about his duties as custodian of records had increased, so he explained to Frederick that Hall's insistence on receiving only original files made it more difficult for UT Austin staff to fulfill other record requests.<sup>100</sup> Hegarty also voiced security concerns about the risk of original files leaving the UT Austin campus.<sup>101</sup> As Hegarty explained in an e-mail, "[o]nce they leave campus I have

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records. We will give Regent Hall access to those records, as is appropriate, and then return those to the—to the campus.”)

<sup>95</sup> *See id.*

<sup>96</sup> *See Exhibits 42 & 43.*

<sup>97</sup> *See Exhibits 45 & 52.*

<sup>98</sup> *See Exhibits 52 & 53.*

<sup>99</sup> *See Longoria Testimony at 238:15–21.*

<sup>100</sup> *See Exhibit 52.*

<sup>101</sup> *See id.*

no idea whether any original documents have been removed.”<sup>102</sup> Hegarty asked Frederick why copies would not suffice, and he informed Frederick that he would not release any more original files until the UT Austin Office of General Counsel instructed Hegarty, as his legal counsel, to do so.<sup>103</sup> Frederick never responded to Hegarty’s inquiries.

By early April 2013, several weeks later, with the matter still unresolved, Hall continued to actively seek original records.<sup>104</sup> Hegarty, withholding production of original documents until he obtained assurances from lawyers other than Frederick, also questioned whether a lone Board member was permitted to have access to confidential records that “exceed[ed]” access afforded to the general public and the state legislature.<sup>105</sup> Hegarty advised that he would not release more records until UT System attorneys answered his legal questions.<sup>106</sup>

Two weeks later on April 19, 2013, Hegarty received a response from the UT System General Counsel, Dan Sharphorn.<sup>107</sup> According to the UT System, Hall could see any document he wanted, whenever he wanted, unless a specific law made the document confidential.<sup>108</sup> It made no difference whether Hall sought the documents under a Board directive or for his own purposes, according to the letter.<sup>109</sup> Hall could act “unilaterally

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<sup>102</sup> *Id.*

<sup>103</sup> *See* Exhibit 58.

<sup>104</sup> *See* Exhibit 59; *see also* Exhibits 57, 58 & 60.

<sup>105</sup> *See* Exhibit 59.

<sup>106</sup> *See id.*

<sup>107</sup> Exhibit 61.

<sup>108</sup> *See id.*

<sup>109</sup> *See id.*

and request records” from UT Austin “without action or resolution from the Board as a whole.”<sup>110</sup>

On April 23, 2013, Hall re-urged his request for original files of public record requests from UT Austin in December 2012, January 2013, and February 2013.<sup>111</sup> Additionally, Hall wanted to see the original files for October and November 2012, indicating that he was not satisfied reviewing copies of these productions in the past. Hegarty was advised that Hall was coming to the UT Austin campus on April 29, 2013, and Hall wanted to view the requested files that day. Hegarty agreed to have documents available for Hall’s review at Hegarty’s office, and Hegarty informed Sharphorn of the process UT Austin staff would use while Hall reviewed the original files.<sup>112</sup>

Hall found Hegarty’s response “troubling.”<sup>113</sup> On April 24, 2013, Hall forwarded Hegarty’s letter to Chancellor Cigarroa, asking whether UT Austin President Powers, Hegarty’s boss, was “comfortable with his CFO responding in this fashion to requests from the Board of Regents?”<sup>114</sup> Hall’s e-mail continued:

In our attempt to perform our [d]uties I find this administration’s persistent reluctance to be forthcoming, more and more troubling. [F]rederick has offered our staff and our legal personnel to assist throughout this process and we are met with resistance and grandstanding. As an example, when collecting [Open Record Request] boxes from System, UT Austin refused their customary practice of transporting materials through the garage so they could create a spectacle for the press in an overt effort to create conflict and sow distrust. I find it quite probable that when

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<sup>110</sup> Exhibits 61 & 63.

<sup>111</sup> See Exhibit 62.

<sup>112</sup> See Exhibit 63.

<sup>113</sup> See Exhibit 65.

<sup>114</sup> *Id.*

I visit the UT campus this Monday to review the remaining files, I will be challenged in some inappropriate manner, as well. While I appreciate Mr. Hegerty's [sic] new found sense of responsibility for his role as 'administrator', I intend on requesting an audit by the [Audit, Compliance, and Management Review Committee] to assess their compliance with all facets of the TPIA.<sup>115</sup>

Hall made good on his threat. In May 2013, the audit committee on which Hall sits recommended that UT Austin undergo an audit and compliance review of the public records department.<sup>116</sup> UT Austin underwent the audit in October 2013, the results of which are not yet public.<sup>117</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> Letter from Chancellor Francisco Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (March 3, 2014) at Appendix D (APP 00256).

<sup>117</sup> Had the audit included a review of Hall's own compliance with TPIA requests during this same period of time, it very well might have concluded that there were concerns. For example, Sharporn received a TPIA request on August 27, 2013, asking for "a copy of any documents, notes, reports, or memos pertaining to UT Austin President Bill Powers . . . created by UT System Board of Regent Wallace L. Hall, Jr. at the UT System Board of Regents Meeting held on August 21-22<sup>nd</sup>." Exhibit 111. A copy of the request was forwarded to Hall. He responded the same day, "I have nothing responsive to this request." Exhibit 112. Based upon Hall's representation, a lawyer for the UT System wrote to the requestor "that System maintains no information responsive to your request." Exhibit 115.

During this investigation, however, the Committee received an email from Hall to Frederick attaching a copy of his "notes prepared in advance of the executive session meeting for the August 22 meeting of the Board of Regents." *See* Exhibit 127. Hall explained that he "supplemented [the notes] during the course of the meetings as discussions were held concerning the qualitative evaluation/discussion of presidential leadership." *Id.* Hall concluded, "As you can see by the time stamp at the top right hand corner, my final update occurred on August 22<sup>nd</sup> at 2:56pm which was contemporaneous with the meeting." *Id.*

Prior to the conclusion of this report, Committee counsel confirmed with the original TPIA requestor that he neither received any documents in response to his TPIA request, nor did he receive notice that the UT System was seeking an exception to disclosure of a responsive document. Because Hall declined requests to be interviewed and to testify, we have no additional information at this time accounting for Hall's unambiguous representation that he had "nothing responsive to the request" when, in fact, he clearly did.

**4. Hall Personally Reviewed Documents and Visited UT Austin Campus to Obtain Documents.**

Hall's intolerance of perceived delays created by UT Austin's protocols predated the April 2013 hostilities. When staff at UT Austin initially challenged Hall's demands—asking for more time to adhere to protocol or questioning the unfettered release of confidential information—they were told by Hall's agents, Frederick and Sharphorn, to “just produce the records, just produce the records.”<sup>118</sup> In mid-November 2012, five weeks after Hall's initial request, Frederick informed Hall that approximately half of the files Hall had requested arrived at the Board office, and Hall responded, “progress, thanks.”<sup>119</sup>

UT Austin produced hundreds of thousands of pages of documents for Hall, which he reviewed in the Board office, as evidenced by colored post-it notes on documents designated to be copied and requests to UT System staff for PDF copies of the documents.<sup>120</sup> UT Staff provided documents to Hall electronically and made copies for him.<sup>121</sup> Neither Frederick nor the other Board attorneys questioned how Hall would keep confidential information secure once electronic copies were provided as Hall requested. Nor did any UT System official ask Hall to sign a confidentiality agreement or non-disclosure statement under which Hall pledged not to disclose statutorily-protected information.<sup>122</sup>

On the Friday before Hall's April 29, 2013, scheduled visit to UT Austin,

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<sup>118</sup> Hegarty Testimony 155:23–24.

<sup>119</sup> See Exhibit 25.

<sup>120</sup> See Exhibits 35 & 39.

<sup>121</sup> See Exhibit 74.

<sup>122</sup> See Hegarty Testimony at 138:24 – 139:14.

Hegarty's records staff worked until 2 a.m. sorting through hundreds of files to redact information typically protected by privacy statutes.<sup>123</sup> Hall arrived at Hegarty's office about 9:10 a.m. on Monday, April 29, 2013, with Frederick and Helen Bright, an attorney from the UT System Office of General Counsel.<sup>124</sup> Within ten minutes, Hegarty was summoned to the room. Hall, without ever looking at or directly addressing Hegarty, instructed Frederick to ask Hegarty why Hall was not given original unredacted records, like the ones he had previously reviewed at the UT System Office.<sup>125</sup> Hegarty explained that his staff had adhered to protocol and removed information protected by privacy laws.<sup>126</sup> Hegarty was dismissed. Hall refused to view the redacted records, and he left about twenty minutes after his arrival.<sup>127</sup>

After Hall's departure, Hegarty contacted Sharphorn to clarify which information Hall had wanted to view.<sup>128</sup> Sharphorn responded that Hall wanted to see all documents except those protected by FERPA or HIPAA and that any social security numbers could be withheld. All other information was to be disclosed.<sup>129</sup> Hegarty's staff then worked late into the night to reassemble the open records request with the confidential materials Hall sought to review.<sup>130</sup>

Hall's April 2013 on-site inspection of documents was the first of several

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<sup>123</sup> See Longoria Testimony at 301:13–22.

<sup>124</sup> See Exhibit 66.

<sup>125</sup> See Hegarty Testimony at 179:7 – 180:18.

<sup>126</sup> See *id.* at 179:24 – 180:10.

<sup>127</sup> See Exhibit 66.

<sup>128</sup> See Exhibit 67.

<sup>129</sup> *Id.*

<sup>130</sup> See Exhibit 68.

occasions in which UT System counsel informed Hegarty that Hall intended to visit UT Austin to review hundreds of records with only a few days' notice. For example, on May 28, 2013, Sharphorn notified Hegarty that Hall would be on campus the next day and that Hall wanted to see the March and April 2013 open records request files.<sup>131</sup> No reason was offered for the abrupt deadline. Hegarty responded that one day's notice was not enough for his staff to collect and assemble the files while still performing other duties.<sup>132</sup> Hegarty offered June 5, 2013 as an alternative production date, and, once again, his staff worked late into the night to ready files for Hall's review.<sup>133</sup>

This pattern repeated itself again in late June. Sharphorn e-mailed Hegarty on Friday, June 21, 2013, telling Hegarty that Hall would be on campus the following Monday, June 24, 2013, and that Hall wanted to see any e-mails between state legislators or officials and Powers or his deputy, Nancy Brazzil.<sup>134</sup> As discussed below, Hegarty's office had initially received this large request from Hall in the form of a personal TPIA request on June 7, 2013.<sup>135</sup> Now, about three weeks later, Hall wanted to review these documents with notice of one business day. Again, no reason was offered for the abrupt deadline. The investigation has revealed that Hall had scheduled a meeting with the OAG that day in Austin and that he intended to provide documents during that meeting.<sup>136</sup>

During the weekend before Hall's June 24 visit, e-mails went back and forth

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<sup>131</sup> See Exhibit 76.

<sup>132</sup> See *id.*

<sup>133</sup> See Exhibit 78.

<sup>134</sup> See Exhibit 90.

<sup>135</sup> See Exhibit 80.

<sup>136</sup> See Exhibits 91, 93, 94 & 95.

between Hegarty’s staff and Sharphorn, who was urging the immediate production of documents on Hall’s behalf. Hegarty’s assistant explained in an e-mail that, while Hall could obtain the files for May 2013 open record requests, he could not yet obtain e-mails between state legislators and Powers or Brazzil.<sup>137</sup> This was because UT Austin staff had sifted through thousands of pages and spent “many hours sorting these documents into categories of exceptions and identifying the public documents” for the office’s brief to the Attorney General regarding Hall’s TPIA request.<sup>138</sup> Hegarty’s office wanted to comply with the statute and meet the deadline for submitting a brief to the OAG to obtain an advisory opinion as to the legality of Hall’s broad request. June 21, 2013, the day Sharphorn reminded Hegarty about Hall’s visit, “was the [ten] day statutory deadline and we had to send [third party] notifications to all legislative members in both the House and Senate.”<sup>139</sup> Hegarty’s assistant told Sharphorn that “the documents are in active use and it is impossible to make them available in response to a regent request at the same time. These records are needed on campus and time is of the essence in order to comply with the” law.<sup>140</sup>

The e-mail exchanges between Sharphorn, Hegarty, and Hegarty’s staff continued into the weekend, with Sharphorn insisting that Hall obtain the documents that Monday morning. Hegarty stood firm, explaining, “Compliance with the law trumps all.”<sup>141</sup> “If

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<sup>137</sup> See Exhibit 92.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* The Texas Public Information Act requires government entities to make a good faith effort to notify all third parties when that governmental entity is releasing their proprietary information. TEX. GOV’T CODE § 552.305 (Vernon 2013).

<sup>140</sup> *Id.*

<sup>141</sup> Exhibit 92.

certain docs are necessary to meet TPIA request they will not be provided until” after the “TPIA request is met.”<sup>142</sup> As the squabble over Hall’s access continued, Frederick kept Hall posted by forwarding him the e-mail exchanges between Hegarty and Sharphorn.<sup>143</sup>

Eventually, at about 5 P.M. on Monday, June 24, Sharphorn came to Hegarty’s office and physically took possession of the records for Hall. Hegarty and his staff were never told why Hall had such an urgent need for the documents. As it turned out, Hall had an appointment with Deputy Attorney General John Scott the day Sharphorn had obtained the documents.<sup>144</sup> Hall had wanted to provide the e-mails to the OAG so the office could conduct a criminal investigation into Powers, Brazzil, and other legislators based on Hall’s accusations.<sup>145</sup>

**5. Hall Was Critical and Distrustful of the Way UT Austin Managed the Document Review and Production.**

Hall’s April 29, 2013 visit to the UT Austin campus was a watermark example of Hall’s distrust of UT Austin personnel. Several days after the visit, Hall asked Frederick to find out the names of the two UT Austin employees he had met during the visit.<sup>146</sup> Frederick e-mailed Bright, thanking her for help and saying she was “just curious” about the names of the UT Austin staff she had met.<sup>147</sup> Once she obtained the employees’ names, Frederick immediately passed the information to Hall, who praised Frederick “for

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<sup>142</sup> *Id.*

<sup>143</sup> *See, e.g.,* Exhibit 92.

<sup>144</sup> *See* Exhibit 91.

<sup>145</sup> *See* Exhibits 93 & 94. The criminal investigation has not advanced. On June 27, 2013, Deputy Attorney General Scott asked Hall to prepare a “simple” written statement of the recommended scope of investigation. *See* Exhibit 93. Despite follow up on multiple occasions, *see, e.g.,* Exhibit 95, Hall has not yet complied with this request.

<sup>146</sup> *See* Exhibit 70.

<sup>147</sup> *Id.*

the follow through.”<sup>148</sup>

Hall grew more suspicious about the loyalty of UT Austin open record staff.<sup>149</sup> On May 16, 2013, Hall e-mailed Cigarroa and said he was “concerned that the law is not being followed by UT Austin and the [UT] System may not be doing enough to ensure its compliance.”<sup>150</sup> Hall told Cigarroa his “immediate concern is what appears to be the concealment of at least one document that should have been produced by UT Austin under the TPIA in numerous earlier requests and was not.”<sup>151</sup>

The document at issue was a March 2011 letter sent to Cigarroa by anonymous faculty members of The University of Texas School of Law complaining about gender discrimination and a hidden compensation scheme. The letter was of interest to Hall because of a renewed investigation into law school compensation and Hall’s suspicion that President Powers was implicated.<sup>152</sup> While the letter was known to UT Austin administrators and UT Austin counsel, the Board did not learn of the letter until Barry Burgdorf made a presentation in October 2012 about his investigation of the law school and Law School Foundation. Months later, this fact continued to gnaw at Hall.<sup>153</sup>

UT Austin open records staff spent hours scouring their files, but they could not locate the allegedly missing letter. It turns out that, although lawyers for UT System and UT Austin had reviewed the letter, the letter had not been provided to the open records

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<sup>148</sup> *Id.*

<sup>149</sup> *See* Hegarty Testimony at 135:21 & 199:5.

<sup>150</sup> Exhibit 71.

<sup>151</sup> *Id.*

<sup>152</sup> *See* Brian D. Sweany, *The Wallace Hall Interview*, TEXAS MONTHLY, April 15, 2013; at <http://www.texasmonthly.com/story/wallace-hall-interview?fullpage=1> (last visited March 18, 2014) .

<sup>153</sup> *See* Exhibit 75.

office.<sup>154</sup> While UT Austin counsel knew of the letter, the public records staff did not. By June 2013, the reason for the letter's absence was determined, and Hall was notified.<sup>155</sup> Hall never made an effort to correct his earlier indictment of the UT Austin staff.

Hall held UT Austin to a different standard. On September 28, 2013, Hall participated in a panel discussion where he publicly addressed some of the criticisms voiced with his tenure as a regent.<sup>156</sup> Among other topics, Hall said UT Austin officials had failed to provide a copy of an agreement between UT Austin and the Longhorn Network.<sup>157</sup> When an article reported on the panel, Hall sent an e-mail to Frederick, Vice Chancellor Reyes, and Regents Foster and Cranberg underscoring his points and decrying “[y]et another untruth from UT Austin.”<sup>158</sup> Hall continued, “I would like to request an unambiguous retraction and correction by President Powers on this matter ASAP.”<sup>159</sup>

#### **6. Hall Issued Personal TPIA Requests to UT Austin Connected to His Regental Privileges and Overlapping Regental Requests.**

In addition to Hall's regental requests for all open record requests processed by UT Austin, Hall submitted personal requests for documents under the TPIA.<sup>160</sup> On June

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<sup>154</sup> See Exhibit 81.

<sup>155</sup> See Exhibit 82.

<sup>156</sup> See Andrew Roush, “Hall: ‘I Can Choose My Actions. I Can’t Choose My Consequences,’” *ALCALDE* (Sept. 28, 2013), located at <http://alcalde.texasexes.org/2013/09/hall-i-can-choose-my-actions-i-cant-choose-the-consequences/> (last visited March 25, 2014).

<sup>157</sup> See *id.*

<sup>158</sup> Exhibit 121.

<sup>159</sup> *Id.*

<sup>160</sup> Hall was not the only regent to submit regental requests for information. Between 2011 and October 2013, all regents submitted about 203 regental requests for information. Hall made 110 of these requests, Regent Cranberg had 49, Regent Pejovich

7, 2013, Hegarty's office received three such requests on Hall's personal stationery.<sup>161</sup> In the letters, Hall asked for: (a) "a box of files relating to the Law School Foundation" created during October 2011; (b) "All Texas Public Information Act requests for information related to the School of Law and or/the Law School Foundation;" and (c) "Any and all emails, attachments to emails, documents, notes, post-it notes, memoranda to or from the Office of the President, William Powers" regarding UT Austin, the law school, the law school foundation, the Board, or individual regents.<sup>162</sup>

Hall ended each letter by stating, "Because this request is made on behalf of a member of the UT System Board of Regents and it is of general public interest and concern, I would ask that you waive the assessment and collection fees, if any, associated with responding to this request."<sup>163</sup> This language was confusing for two reasons. First, if Hall submitted the record requests as a citizen, he could not get the documents for free. Second, no other regent had asked Hall to obtain this information for the Board, negating Hall's statement that he wanted the information for general public interest, rather than for his own personal use.

The requests generated substantially more work for Hegarty's staff.<sup>164</sup> This is because the requests required a large production of documents and a briefing to the OAG required by the TPIA. Once others regents learned of the TPIA requests, one of them

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had 26, Regent Powell had 16, and Regent Foster had 2, according to an e-mail by Francie Frederick. *See* Exhibit 123.

<sup>161</sup> *See* Exhibit 80.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *See* Hegarty Testimony at 227:9 – 228:4.

called Hall's actions "divisive" and "an abuse of power."<sup>165</sup>

Undeterred by criticism or frustrated by the additional statutory protocols for responding to a TPIA request, Hall resubmitted his TPIA requests as a regent.<sup>166</sup> Hall's recast of the request meant that UT Austin staff could not withhold otherwise confidential information. Nor could UT Austin delay delivery of the documents while they sought an Attorney General's opinion on various facets of Hall's individual requests under the TPIA.<sup>167</sup> Tellingly, to date, Hall has never taken delivery of any documents UT Austin has made available in response to Hall's personal TPIA requests.<sup>168</sup>

**7. The Possible Purposes Behind Hall's Requests Relate to His Search for Misdeeds by UT Austin Administrators Rather than UT Austin's Educational Mission.**

As noted above, unlike other regents making requests for information through the Board, Hall never told UT Austin or the UT System the purpose behind his requests for records and information regarding UT Austin's public records request.<sup>169</sup> E-mails, news articles, and statements by Hall's counsel, however, provide some possible, albeit conflicting and ultimately unsatisfying, insights into his explanations. For example, seven months after issuing his initial document requests and one month before Representative Pitts's resolution, Hall explained in an e-mail to the *Texas Tribune* that his initial review of public and confidential documents "enable[d] institutional and system

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<sup>165</sup> See Exhibits 83 & 85.

<sup>166</sup> See Exhibit 84.

<sup>167</sup> This is because under a regental request, according to UT System attorneys, Hall could obtain immediate access to a variety of otherwise confidential information. Under the TPIA, however, UT Austin could withhold the documents while they sought an opinion from the Attorney General's Office as to the confidentiality of information.

<sup>168</sup> See Exhibit 125.

<sup>169</sup> See Longoria Testimony at 254:10 – 255:8.

leadership the opportunity to be more fully informed on what is transpiring at our campuses.”<sup>170</sup> Hall deemed it “irresponsible” to ignore the information. After the Committee began this investigation, attorneys for Hall similarly explained that the dozens of record requests by Hall were done “to fulfill” Hall’s “duty to oversee the operations of the UT System” and to learn “how UT Austin respond[ed] to information requests by Regents and how the University respond[ed] to open record requests under” TPIA.<sup>171</sup> In other words, Hall’s requests were part of an inspector general-like effort to test UT Austin’s record request system for weaknesses. Viewed in the most favorable light, Hall was allegedly testing the integrity of UT Austin’s record request protocol the way a plumber might test the integrity of a pipe fitting—by flushing the system with intense pressure.<sup>172</sup>

Hall’s attorney specifically argued to the Committee that Hall “found that in certain instances, UT Austin did not respond to regental requests, or responded slowly and incompletely.”<sup>173</sup> Hall’s lawyer offered no examples or details in his letter, but he asserted that Hall learned he could get “quicker responses to information requests if he made them not as a Regent,” but if he made them as an individual citizen under the

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<sup>170</sup> Reeve Hamilton, *Despite Concerns, UT Regent’s Requests Continue*, THE TEXAS TRIBUNE, May 29, 2013, at <http://www.texastribune.org/2013/05/29/despite-concerns-ut-regents-data-requests-continue/> (last visited Feb. 3, 2014).

<sup>171</sup> Letter from Stephen Ryan to Co-Chairs Rep. Alvarado and Rep. Flynn (August 15, 2013) at Appendix D (APP 00042).

<sup>172</sup> Hall’s document review purportedly resulted in two university initiatives. The first was the creation of a searchable database in which the public can see a listing of public record requests submitted to a University of Texas institution. The second was the audit of UT Austin’s open records department.

<sup>173</sup> *Id.*

TPIA.<sup>174</sup> The letter neglected to mention that Hall had yet to attempt to obtain or review a single document that had been gathered and made available to him in response to his personal TPIA requests. In fact, he had only received portions of his TPIA requests because he had later resubmitted the requests as a regent.<sup>175</sup>

Hall's attorney also argued that, by reviewing the open record files, Hall was able to uncover "systemic noncompliance and inefficiency."<sup>176</sup> The letter offered no examples of Hall's discoveries, but e-mails from Hall, Frederick, Sharphorn, and others at UT System demonstrate that Hall made inquiries about fewer than five files, out of the 1,200 he reviewed, in which Hall suspected that the produced records were incomplete.<sup>177</sup> In each instance, the files were in use by UT Austin staff, which explained their absence from Hall's production, or UT Austin had never obtained the document in question, such as the "missing" anonymous letter related to the UT law school foundation.

The evidence gleaned in this investigation, however, suggests that Hall's actual motive in seeking massive amounts of documents was to conduct a fishing expedition for what he apparently thought would be potentially incriminating evidence against UT Austin administrators, and President Powers in particular. Hall's requests reveal a pattern. Hall's later inquiries were based on his discovery of documents of potential interest in Hall's initial, unspecific requests for others' records.

Three examples illustrate this pattern. First, in December 2012, Hall received at least two anonymous letters (postmarked near Dallas and from downtown Austin) written

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<sup>174</sup> *Id.*

<sup>175</sup> *See* Exhibit 84.

<sup>176</sup> Letter from Stephen Ryan to Co-Chairs Rep. Alvarado and Rep. Flynn (August 15, 2013) at Appendix D (APP 00042).

<sup>177</sup> *See* Exhibits 73, 75 & 97.

by “Citizens Concerned for UT” and “Concerned Citizens of UT.”<sup>178</sup> In the anonymous letter sent from Austin, the author urged Hall to remove President Powers. The letter accused Powers of surrounding himself with “yes men” and suggested that Hall investigate Brazzil and a consulting agency named Pulsepoint Group.<sup>179</sup> The second letter was a series of bullet points in which the author accused Powers of mismanaging UT Austin’s recent capital campaign, accused Brazzil and Paul Walker, a marketing consultant and, later, an employee of Pulsepoint, of “dismantling” the university’s development efforts, and urged Hall to “change” the UT Austin administration by removing Powers, Brazzil, and Walker.<sup>180</sup> Apparently inspired by these letters, on June 14, 2013, Hall submitted an individual request under the TPIA for all public information related to Pulsepoint Group and Walker’s former position at UT Austin.<sup>181</sup>

Second, as part of his review of open record request responses, Hall received a series of e-mails between Powers, UT Austin head football coach Mack Brown, several attorneys, and Joe Jamail, a successful attorney who had donated more than \$20 million to UT Austin. The e-mails discussed details for an upcoming trip to a Bahamian island.<sup>182</sup> Jamail funded the trip.<sup>183</sup> The trip was expressly approved by the UT System.<sup>184</sup>

Apparently intrigued by these e-mails (but without any knowledge or interest in

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<sup>178</sup> Exhibit 36.

<sup>179</sup> See Exhibits 36 & 37.

<sup>180</sup> See Exhibit 37.

<sup>181</sup> See Exhibit 88.

<sup>182</sup> See Exhibits 49 & 50.

<sup>183</sup> See *id.*

<sup>184</sup> See Exhibit 48.

the fact that the travel was approved), on June 7, 2013, Hall requested “[d]ocuments or information related to transportation (including private flights) or lodging or food associated with travel for business, personal or outside board-related activities accepted by or on behalf of President Powers.”<sup>185</sup> Hall not only asked for that information, but he also wanted Powers to disclose a host of other information, such as “who provided the transportation, lodging, or food,” and whether the transportation, lodging, or food “was reported as a gift on the President’s personal financial disclosure statement to the Texas Ethics Commission or reported to the UT System as part of each president’s annual report, for the year in which it was accepted.”<sup>186</sup> Hall continued to press UT Austin for a response to this request in 2013 and 2014, including the names of all donors who had paid for Powers’s trips and even the flight manifest for several journeys.<sup>187</sup> The documents show that Hall’s interest in Jamail had to do with Jamail’s history with Powers, not any possible impropriety on Jamail’s part.<sup>188</sup>

Third, and most significantly, Hall’s TPIA and regental requests for e-mails between UT Austin administrators and state legislators appear to be inspired by Hall’s review of confidential materials inadvertently disclosed to him in the course of the rushed production of original open record request files.<sup>189</sup> The confidential documents consist of an e-mail between Brazzil and the dean of the UT law school regarding the law school

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<sup>185</sup> See Exhibit 128; *see also* Exhibit 126.

<sup>186</sup> Exhibit 128.

<sup>187</sup> See Exhibit 147; *see also* Exhibits 132, 137, 141 & 169.

<sup>188</sup> See, e.g., Exhibit 150.

<sup>189</sup> While Hegarty’s staff had released the December 2011 open record file in which this e-mail was contained, they did so with the understanding that Frederick and her staff, or other UT counsel, would review the materials and redact information made confidential under federal statutes. See Exhibits 20 & 10.

application of the son of a state representative. Brazzil was seeking a report on the status of the application at the request of UT System legislative liaison Barry McBee because Cigarroa was scheduled to meet with the state representative on other matters.<sup>190</sup> The e-mail prompted Hall to seek a university review of UT Austin’s admission practices and led Hall to ask the OAG to investigate Powers, legislators, and others in regards to admission practices.

**8. Hall’s Conduct Has Continued During Committee Proceedings.**

Neither the Legislature’s proposed impeachment measures in June 2013 nor the Committee’s proceedings to date appear to have deterred Hall from continuing to pursue information about UT Austin through requests for voluminous records and documents. In July 2013, Executive Vice Chancellor Pedro Reyes requested on Hall’s behalf “[d]ocuments or information related to transportation (including private flights) or lodging or food associated with travel for business, personal or outside board-related activities accepted by or on behalf of President Powers.”<sup>191</sup> By the time the Committee held its first public hearings, the UT System itself had calculated that Hall had issued over half of all regental requests since 2011.<sup>192</sup> As the Committee’s hearings occurred in Fall 2013, Hall continued seeking open record requests from UT Austin and, in particular, those relating to Powers’s travel records. Indeed, the UT System transmitted a request for records at Hall’s request on the very day the Committee convened a

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<sup>190</sup> See *id.*

<sup>191</sup> See Exhibit 126.

<sup>192</sup> See Exhibit 123 (Of 203 regental requests tallied by Frederick, at least 110 were issued by Hall).

hearing.<sup>193</sup>

After the public hearings concluded, Hall's agents continued to press UT Austin for the names of all donors who had paid for Powers's trips and the flight manifests for those trips.<sup>194</sup> In late 2013 through January 2014, UT System personnel acting on Hall's behalf expanded their areas of inquiry even further by asking to see contracts related to UT Austin and Accenture, a consulting firm.<sup>195</sup> As recently as March 2014, Reyes followed up with past requests to ask UT Austin administrators for any information regarding "gifted" travel by Powers for outside board activity, and the UT System has propounded a new series of requests regarding a law school admissions review initiated by Hall's efforts.

Hall's criticism of the way UT Austin has handled his continued requests for documents and information has also persisted after the conclusion of the public hearings. On January 4, 2014, Hegarty wrote a memorandum advising the dean of the UT School of Law that some, but not all, requested student data could be provided in response to an ongoing investigation by UT System General Counsel Sharphorn into the law school

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<sup>193</sup> See Exhibit 139.

<sup>194</sup> See Exhibit 129, 125 & 126.

<sup>195</sup> See Exhibits 136 & 174. Hall did not simply inquire about Accenture. Rather, his Accenture requests, like his requests about Powers's travel records, entailed additional inquiries about UT Austin's contract with Accenture and when he was going to obtain his information. See, e.g., Exhibits 139, 145, 159 & 162. Hall did not explain the purpose behind this request. See Exhibits 159 & 139. In addition, as with requests related to other subjects, when Hall felt that his requests regarding Accenture were not receiving a sufficiently "immediate" review, he then sent a message to Chancellor Cigarroa directly telling him that "[i]t is time to get serious." See Exhibit 155; see also Exhibit 174 ("[I]s this request being processed? . . . 'Looking into it . . .' is not what I requested."). Hall's demand for documents and information regarding Accenture (and complaints that responses by both UT Austin and the UT System to date had been "incomplete and unresponsive") persisted in February and March 2014. See Exhibit 162.

admissions process.<sup>196</sup> Hall sent an e-mail to Cigarroa telling the Chancellor that, if the memorandum “is part of the new relationship between you (and by extension the Board of Regents) and President Powers, I don’t believe it’s going very well.”<sup>197</sup> Hall told Cigarroa to “ask President Powers to respond to these requests *with good answers* by the end of business tomorrow.”<sup>198</sup> When Cigarroa responded later that evening that he had spoken to Powers, Hall responded:

I appreciate your response but it doesn’t even begin to deal with the fundamental issue. Vice President and CFO, Kevin Hegarty, is acting under the supervision of Bill Powers. Hegarty’s serial refusals to provide information to us has been ongoing for quite some time. When Dr. Reyes requested disciplinary action from Powers for Hegarty earlier this year, President Powers wrote back a letter of praise for Hegarty’s actions, which I believe included unilaterally refusing to provide information under the Texas Public Information Act.

I have no confidence that we will get full cooperation from Bill Powers now or in the future as his assurances are unsupported by the facts.<sup>199</sup>

#### **9. Hall’s Conduct Has Harmed UT Austin and the UT System.**

Hall’s insatiable appetite for documents has imposed a heavy cost on the university. Hall’s demands for the continued production of documents have created a divide between UT Austin and UT System personnel and have negatively impacted employee morale.<sup>200</sup> The publicized distrust and scrutiny of UT Austin has also

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<sup>196</sup> See Exhibit 152.

<sup>197</sup> Exhibit 153.

<sup>198</sup> *Id.* (emphasis added).

<sup>199</sup> Exhibit 154.

<sup>200</sup> See Testimony of Francisco Cigarroa before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 (“Cigarroa Testimony”) at 94:1–12 & 151:21–25; Testimony of William Powers before

discouraged recruitment of faculty and students to UT Austin.<sup>201</sup> Moreover, UT Austin officials have not accounted for the cost of pulling and scanning various files requested by Hall, but at least one full-time UT Austin attorney was dedicated to Hall's requests, and up to seven part-time employees assisted with the requests at any time.<sup>202</sup> So, while the precise financial implications of Hall's demands are unclear, Powers estimates that Hall's record review has cost UT Austin "well over a million dollars."<sup>203</sup> It is difficult to see how this search for "gotcha!" information is in the best interests of UT Austin or the UT System.

## **B. Use of Confidential Information**

From its inception, the Committee's investigation has focused on whether Hall mishandled and/or misused confidential student information to which he had access. In his resolution, Representative Pitts alleged that Hall "may have violated the duties and responsibilities of his office and interfered with the proper functioning of The University of Texas System and its component institutions by disregarding the processes and procedures of the board of regents concerning the gathering and handling of information from institutions of the system."<sup>204</sup> In the course of the Committee's investigation, however, the gravity of this issue and Hall's conduct has increased.

On November 12, 2013, the Committee received testimony from witnesses with personal knowledge concerning Hall's possession and use of confidential student

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the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 ("Powers Testimony") at 215:8 & 233:7–22.

<sup>201</sup> See Powers Testimony at 213:12 – 214:21 & 233:7–22.

<sup>202</sup> See Hegarty Testimony at 132:10 – 133:4.

<sup>203</sup> Powers Testimony at 236:18–23.

<sup>204</sup> Tex. H.R. 230, 83rd Leg., 1st C.S. (2013) at 2.

information. In broad strokes, the testimony established that Hall obtained e-mail correspondence to UT System administrators regarding the admission of two student applicants. Both applicants became students at UT Austin's law school or undergraduate campus. The confidentiality of those e-mails is therefore protected by federal and state statutes. Hall was advised by UT System counsel to destroy the documents. Rather than heed this advice, Hall provided copies of the confidential correspondence to the OAG as part of his advocacy for a criminal investigation of the UT Law School or Law School Foundation. Hall also provided the confidential correspondence to his personal attorneys, who subsequently published summaries of the documents to the press and in a letter to the Committee to further Hall's personal, as opposed to official, interests. As discussed below, not only do undisputed facts concerning Hall's possession and use of confidential student information support articles of impeachment, they may also implicate Hall in criminal liability.

**1. Hall Obtained Two E-Mails Containing Statutorily-Protected Student Information.**

In or about November 2012, as part of Hall's first request to see all original documents collected for UT Austin's open records requests, UT Austin delivered to UT System attorneys a file of records collected for a request made by the *Texas Tribune* in December 2011. The responsive documents collected by UT Austin contained an e-mail exchange between Nancy Brazzil and then Dean of the UT law school, Lawrence Sager. This document was not provided to the *Texas Tribune*. In the e-mails, Brazzil asked about the Dean's impressions of a potential student to UT law school. The applicant is the son of Representative Pitts. In the e-mail, Brazzil conveyed her understanding that Chancellor Cigarroa was scheduled to meet with Representative Pitts that week, and she

inquired about the son's visit to the law school in the event the topic came up during the conversation.<sup>205</sup> In response, Dean Sager recounted a meeting with the applicant in which he instructed the applicant on how he could improve his application for admission. Hall received the full *Texas Tribune* file (including materials produced to and withheld from the publication) on or about January 16, 2013, after the student had attended the UT School of Law.<sup>206</sup>

The second e-mail was located in a file generated by UT Austin staff in response to an open records request made by the *Texas Tribune* on April 15, 2013 for e-mail communications to and from President Powers in February and March 2013.<sup>207</sup> UT Austin open records staff negotiated with the *Texas Tribune* reporter to produce only emails without confidential information, but one of the withheld emails contained an exchange between Powers and Senator Judith Zaffirini. In the last line of the e-mail, Senator Zaffirini inquired about the appropriate process another senator should use to recommend a UT Austin undergraduate applicant.

Hall obtained the e-mail exchange on or about June 5, 2013, in response to one of his requests to see all public information requests made to UT Austin and files or documents gathered in response to such requests.<sup>208</sup> At the time Hall obtained the e-mail, the applicant had not yet enrolled at UT Austin. On June 7, 2013, UT System personnel

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<sup>205</sup> According to witnesses interviewed during the investigation, the status of the law school application did not actually come up during the meeting.

<sup>206</sup> See Memo. from Phil Hilder (Jan. 13, 2014) attached at Appendix D (APP 00218). Hilder provided this memo to the Committee as part of an inquiry by the UT System's outside counsel into Hall's disclosure of the e-mail.

<sup>207</sup> Cf. Memo. from Phil Hilder (Jan. 13, 2014) attached at Appendix D (APP 00217–18).

<sup>208</sup> See, e.g., Exhibit 76.

returned to UT Austin the file of both produced and withheld information. In the single day between the time the file was produced by UT Austin and returned by the UT System, Hall issued his own public record request to UT Austin for all correspondence between Powers and Texas legislators.<sup>209</sup>

As discussed below, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”) protects personally identifiable student information and prevents the disclosure of the information without permission of the student or a parent of a student under the age of 18. The e-mail string regarding a legislator’s son would likely qualify as an education record because it contains personally identifiable information such as the student’s name, the student’s father’s name, admissions information, and other information “that would make it possible to identify the student with reasonable certainty.”<sup>210</sup>

These highly personal e-mails are not formal school records maintained in the registrar’s office or the student’s school file. In her interview with Committee counsel, Barbara Holthaus said the location of records containing student information was key to understanding whether it is protected by FERPA. Though she did not specifically address the provenance of the emails identified by Hall and his counsel, she suggested that records located in places within a university where the student’s official education record is not being maintained might not enjoy the benefits of FERPA protection. But based on the Department of Education’s broad interpretation of the term “education record” in other matters, the e-mails identified by Hall and his counsel appear protected

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<sup>209</sup> See Exhibit 80.

<sup>210</sup> 34 C.F.R. § 99.3.

by FERPA.<sup>211</sup>

An example of how the Department of Education (“DOE”) defines the term “education record” is demonstrated in an open records decision by the Texas Attorney General’s Office. In 1989, the Attorney General, in response to an inquiry from Texas A&M University, wrote the DOE for guidance on how to interpret the term “education record” under FERPA’s guidelines.<sup>212</sup> Texas A&M wanted to know if cassette recordings of an interview of a former Texas A&M football player with the university’s general counsel and the vice president of finance and administration was an education record under FERPA.<sup>213</sup> The interview pertained to the football player’s recruitment at Texas A&M and his attendance at Texas A&M. The university turned to the Attorney General for guidance on the issue as it pertained to the TPIA. The Attorney General, in turn, wrote the DOE for assistance.

In response to the inquiry, the DOE concluded that the “tape recordings at issue would fall within the definition of ‘education records’ because they are directly related to a student, they contain information about a former student while the individual was a student at the institution, and they are maintained by an educational agency or institution.”<sup>214</sup> For purposes of defining a student record in that case, the DOE considered the content of the record and whether it was maintained by an educational agency, not, the record’s form or precise location. Under this standard, it appears the e-mails regarding legislator’s son qualify as a FERPA-protected “education record”

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<sup>211</sup> See Tex. Att’y Gen. ORD-539 (1990).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 2.

<sup>214</sup> *Id.* at 2–3.

because they were maintained by UT Austin and they directly relate to the student's admission to the school while he was in attendance there.

The other record—the e-mails between Zaffirini and Powers—would likely *not* have qualified as a FERPA protected student record at the time Hall acquired the e-mail in June and July 2013. This is because FERPA only pertains to students, and a student is an individual in attendance at an educational agency or institution.<sup>215</sup> Assuming the individual named in the e-mail enrolled in Fall 2013, as opposed to Summer 2013, the individual would not be considered a “student” under FERPA until he or she actually attended UT Austin. Classes at UT Austin began on August 28, 2013.<sup>216</sup> Thus, any distribution of the Zaffirini e-mail prior to August 28, 2013, would not constitute distribution of a protected education record based on the UT System's representations about the applicant's admission status at that time.<sup>217</sup>

## **2. Hall Did Not Have a Legitimate Educational Interest in Obtaining the Protected Student Information.**

Under FERPA, an educational agency such as UT Austin generally may only disclose an education record with a student's permission. One exception to this rule

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<sup>215</sup> See 34 C.F.R. § 99.3.

<sup>216</sup> See <http://registrar.utexas.edu/calendars/13-14> (last visited March 14, 2014).

<sup>217</sup> UT System attorneys accurately testified that only one of the e-mails potentially contained information protected by FERPA. The System did not think that FERPA protected the Zaffirini e-mail because the student was not enrolled at UT when Hall viewed the e-mail. See Testimony of Francie Frederick before the House of Representatives Select Committee on Transparency in State Agency Operations on November 12, 2013 (“Frederick Testimony”) at 53–54; Testimony of Barbara Holthaus before the House of Representatives Select Committee on Transparency in State Agency Operations on November 12, 2013 (“Holthaus Testimony”) at 197–200.

includes “school officials,”<sup>218</sup> who, in a documented request, must state a legitimate educational interest that the school official has in the particular record requested.<sup>219</sup> FERPA also permits disclosures to officers, employees, and agents of a school official in limited situations. A school official with a legitimate educational interest in the information may provide it to his employee or agent, but only if the employee uses the information for the same purpose as the school official.<sup>220</sup>

FERPA limits when exceptions to the confidentiality rule apply. For example, FERPA prohibits disclosure of an education record for instances referred to as “targeted requests.”<sup>221</sup> These are requests for information where the institution believes a requestor knows the student’s identity and redaction of student information would be a useless formality. In those instances, the information cannot be released, even in a redacted form.<sup>222</sup>

A school official’s own personal interest in a record will not qualify as an educational interest.<sup>223</sup> The DOE concluded that a University of New Hampshire professor had violated FERPA when he obtained a confidential education record and gave a copy to his defense attorney as part of his criminal defense.<sup>224</sup> The student whose

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<sup>218</sup> While receiving information under his regental requests, Hall would qualify as a school official under the federal law.

<sup>219</sup> See 34 C.F.R. § 99.31(a)(1)(i)(A); see also 73 Fed. Reg. 237 (Dec. 9, 2008) at 74817.

<sup>220</sup> See 34 C.F.R. § 99.33(a)(2).

<sup>221</sup> See 34 C.F.R. § 99.3(g).

<sup>222</sup> See 73 Fed. Reg. 237 (Dec. 9, 2008) at 748290–300.

<sup>223</sup> See Department of Education Guidance Letter to the University of New Hampshire (Jan. 1, 2000) at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/unh.html> (last visited January 22, 2014).

<sup>224</sup> See *id.*

record was disclosed had provided the professor a copy of her GRE scores when she applied to the graduate program in which the professor taught. Several years later, the professor disclosed these grades to his attorney after the student accused the professor of assault.<sup>225</sup>

The timing of the professor's possession and disclosure was critical to the DOE's opinion that the professor had violated FERPA. Initially, the professor had the student's permission to access the record as part of her application. But the DOE concluded when the professor had "accessed the student's GRE scores in order to defend himself in light of the accusations made against him, he did not have a legitimate educational interest as defined by FERPA."<sup>226</sup>

Additionally, the DOE opined that the professor's disclosure of the records to his attorney was not permitted under FERPA because "the matter before the court related to [the professor] personally and not to the University."<sup>227</sup> Counsel for the professor was the educator's "personal attorney and not a University official or party acting for the University."<sup>228</sup> Therefore, the professor should not have disclosed the education record. If the professor believed the record was necessary for his defense, he could ask the court to subpoena the record, according to the DOE letter.<sup>229</sup>

In a January 13, 2014 memorandum to the Committee on the FERPA disclosure issue discussed here, the UT System concluded, without citing legal authority, that Hall's

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<sup>225</sup> *See id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *See id.*; *see also* 34 C.F.R. §§ 99.33(a)(1) & (b)(2).

receipt and retention of the confidential education record did not violate FERPA.<sup>230</sup> UT System attorneys specifically concluded, “FERPA requires neither antecedent justifications nor written expositions of an original educational purpose.” Rather, the UT System’s memorandum opines, “[A] school official’s educational purpose may expand due to information discovered through a request for student information.” This is not true under the law.

In the New Hampshire case discussed above, the DOE found that a school official must have a legitimate educational interest at the time that he or she accesses the education record. Even if the UT System is correct in stating that Hall retained the education record because the e-mails raised concerns about UT Austin’s admission practices,<sup>231</sup> Hall did not have—and certainly did not document—that concern when he initially obtained the record. This purported concern, which the UT System asserts is a legitimate educational interest, only arose after his receipt of the e-mail.

Moreover, even if the UT System’s counsel is correct, and FERPA allows Hall to develop a legitimate educational interest in the record after its acquisition and disclosure, this does not serve as legal justification for Hall’s disclosure of the e-mails to his personal counsel and the OAG.<sup>232</sup> FERPA does not permit a school official to disclose a confidential education record to a third party agent unless the disclosure is for the same purpose the school official originally gave as his or her legitimate educational purpose for

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<sup>230</sup> See Memo. from Phil Hilder (Jan. 13, 2014) attached at Appendix D (APP 00218).

<sup>231</sup> See *id.* at Appendix D (APP 00217).

<sup>232</sup> See Department of Education Guidance Letter to the University of New Hampshire (Jan. 1, 2000) at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/unh.html> (last visited January 22, 2014).

obtaining the confidential materials.<sup>233</sup>

Here, Hall had no legitimate educational purpose when he discovered the confidential student record. And even if Hall purportedly retained the record because he sought to investigate UT Austin's admission standards, Hall did not disclose the materials to his personal counsel for the same purpose. Nor did Hall disclose the materials to the OAG for the same purpose; Hall provided the education records to the OAG in hopes that the State would initiate an investigation.<sup>234</sup> Moreover, the purpose behind Hall's disclosure to the OAG differs from any alleged reason Hall initially had for retaining the documents after their inadvertent disclosure and therefore violates FERPA under DOE standards.

**3. UT System Attorneys Told Hall to Destroy or Return the Protected Student Information.**

In early June 2013, Frederick learned that Hall possessed e-mails with identifying information about student applicants.<sup>235</sup> Frederick counseled Hall that she thought the e-mails contained information protected by FERPA.<sup>236</sup> Hall asked Frederick if he could release the e-mails to law enforcement, but Frederick said no.<sup>237</sup>

**4. Hall Told UT System Attorneys That He Had Destroyed His Copies of the Protected E-Mails Instead of Returning Them.**

Soon after Hall's June 24, 2013 meeting with the OAG, the UT System Office of General Counsel told Frederick that Hall needed to return the e-mails because they

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<sup>233</sup> See 34 C.F.R. § 99.33(a)(2).

<sup>234</sup> See Exhibit 101; Frederick Testimony at 48:7 – 48:20.

<sup>235</sup> See Frederick Testimony at 46:16 – 47:4.

<sup>236</sup> See *id.* at 46:16 – 49:7.

<sup>237</sup> See *id.* at 54:15–18.

contained identifiable information protected by FERPA.<sup>238</sup> Frederick relayed this requirement to Hall, but Hall claimed he had destroyed his copies.<sup>239</sup>

Hall also asked Frederick if he could get redacted copies with the students' names and identification removed. Frederick investigated Hall's request, and UT System attorneys advised Frederick that Hall could not obtain redacted copies of the correspondence because such a targeted request for information would be impermissible under FERPA.<sup>240</sup> Frederick told Hall this information.<sup>241</sup>

#### **5. Hall Distributed Protected Student Information to Third Parties.**

Beginning on June 20, 2013, approximately two weeks after Hall obtained the e-mail communications with Senator Zaffirini, a newspaper article in Dallas reported, "Some emails may include information about members of the Legislature requesting admission to the UT law school on behalf of others."<sup>242</sup> Because the e-mail exchange with Senator Zaffirini only referred to an undergraduate applicant to UT Austin, the *Dallas Morning News* article had to be referring to the e-mail regarding Representative Pitts's son. The same article discussed Representative Pitts's preparation of a resolution to impeach Hall.

On June 30, 2013, "media reports" about the protected e-mail in Hall's possession became more specific. In an article in the *Houston Chronicle*, a spokesman for Governor

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<sup>238</sup> See *id.* at 48:21 – 49:15.

<sup>239</sup> See *id.* at 49:12–13.

<sup>240</sup> See *id.* at 54:15–18.

<sup>241</sup> See *id.*

<sup>242</sup> Claire Cardona, "Influential House member launches impeachment effort against UT regent" DALLAS MORNING NEWS, June 20, 2013, at <http://trailblazersblog.dallasnews.com/2013/06/influential-house-member-launches-impeachment-effort-against-ut-regent.html/> (last visited March 24, 2014).

Perry, Rich Parsons, is quoted saying, “[I]f media reports are true that Chairman Pitts’s efforts could be motivated by attempts to conceal emails that include information about members of the Legislature requesting admission to the UT law school on behalf of others, this is a very alarming development.”<sup>243</sup> A reasonable inference from this quote is that Hall shared information from the first e-mail, if not the e-mail itself, with Parsons, the *Houston Chronicle* reporter, or both.

Around the same time, Hall ignored Frederick’s instructions and released the confidential e-mails to the OAG in connection with a June 24, 2013 appointment he had made with the office.<sup>244</sup> Initially, Hall was supposed to communicate with the OAG about an investigation into the UT law school foundation.<sup>245</sup> But in mid-June, after viewing the e-mails described above, Hall e-mailed the OAG, and asked for an appointment in which he could discuss numerous items he wanted investigated.<sup>246</sup>

On June 24, 2013, Hall met with the OAG for four hours and released more than 740 pages of documents to that office.<sup>247</sup> Hall disclosed the e-mails regarding the meeting between Dean Sager and Representative Pitts’s son. Hall also disclosed the e-mails with Senator Zaffirini. Hall did not provide the e-mails to the OAG for the purpose of asking whether the e-mails were public records or confidential. Rather, Hall wanted to

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<sup>243</sup> Patricia Kilday Hart, “UT says Regent given copies of confidential information” HOUSTON CHRONICLE, June 29, 2013, at <http://www.houstonchronicle.com/news/kilday-hart/article/UT-official-says-regent-given-copies-of-4638380.php> (last visited March 19, 2013).

<sup>244</sup> See Frederick Testimony at 49:8–14.

<sup>245</sup> See Exhibit 93.

<sup>246</sup> See *id.*

<sup>247</sup> See Exhibit 88; see also Exhibits 91, 93 & 94.

know whether “there might have been a violation of Texas law”<sup>248</sup> based on the content of the e-mails.

Hall later “told [Frederick] that he had given copies to the Attorney General’s Office.”<sup>249</sup> Frederick called the OAG and purported to retrieve the copies distributed by Hall. When Committee counsel sought discovery from the OAG during the course of this investigation, however, the email regarding Representative Pitts’s son was still present in the Attorney General’s file.

By August 2013, the Committee’s investigation of Hall was well publicized. Hall retained counsel, who defended Hall before the Committee and in the media as described below. After reading correspondence from Hall’s lawyer, Frederick believed Hall had provided the confidential e-mails to his counsel.<sup>250</sup> Frederick confirmed that Hall had disclosed the e-mails to his lawyer, and she eventually reclaimed the e-mails.<sup>251</sup> Frederick was not certain as to the date on which she obtained the e-mails from Hall’s counsel.

**6. Hall and/or His Agents Used Protected Student Information to Further Hall’s Personal Interests.**

The June 20, 2013 *Dallas Morning News* article first reported that “[s]ome emails may include information about members of the Legislature requesting admission to the UT law school on behalf of others.”<sup>252</sup> That article did not discuss the emails in the

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<sup>248</sup> Frederick Testimony at 48:7–14.

<sup>249</sup> *Id.* at 49:8–10.

<sup>250</sup> *See id.* at 49:25 – 50:5.

<sup>251</sup> *See id.* at 50:1–5.

<sup>252</sup> Claire Cardona, “Influential House member launches impeachment effort against UT regent” DALLAS MORNING NEWS, June 20, 2013 at

context of UT System admissions reform or other potentially educational interest; rather, the *Dallas Morning News* article was about Representative Pitts's preparation of a resolution to impeach Hall. Although there is no way for the Committee to gain access to the conversations between the *Dallas Morning News* reporter and her source, it is reasonable to speculate that the e-mail discussing Representative Pitts's son was offered in retaliation for Representative Pitts's public impeachment efforts.

Hall's mercenary interest in the protected student information became much more explicit less than two months later. On August 15, 2013, Hall's personal attorneys kicked off his representation in this investigation with a nine-page letter, which counsel specifically asked the Committee to make public.<sup>253</sup> The letter lauded Hall, provided "input" on how the Committee should investigate Hall, and praised what they viewed as Hall's careful scrutiny of public records. In the letter, Hall's counsel specifically wrote that Hall had reviewed:

[C]orrespondence on behalf of a Representative inquiring about the admission of the Member's adult son or daughter to a UT Austin graduate school. Although the dean had previously stated the applicant did not meet the school's standards and would need to either retake the graduate admission exam or attend another graduate school first, upon information and belief the son or daughter was in fact admitted without retaking the test or attending another school.

Regent Hall found other correspondence in which a Senator sought special consideration for an applicant who had been rejected, but was strongly supported by another Senator. In the communication, the Senator seeking special treatment reminded the UT Austin official of recent legislative action

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<http://trailblazersblog.dallasnews.com/2013/06/influential-house-member-launches-impeachment-effort-against-ut-regent.html/> (last visited March 19, 2013).

<sup>253</sup> Letter from Stephen Ryan to Co-Chairs Rep. Alvarado and Rep. Flynn (August 15, 2013) at Appendix D (APP 00037).

taken to benefit [t]he University. Upon information and belief, the rejected applicant was subsequently admitted to UT Austin.

Neither of these characterizations is accurate,<sup>254</sup> but, even if the accounts of the e-mails had been true, Hall should not have shared them through his agents.

This was not the only instance in which Hall's counsel discussed the contents of the protected e-mails at issue here. At least one of Hall's attorneys discussed the sensitive materials with a reporter for the *National Review*, Kevin Williamson.<sup>255</sup> In the article, the reporter describes the contents of the e-mails in a manner that mirrors the description given by Hall's counsel. The article also includes portions of Williamson's interview with Hall's attorney about the e-mails.

That same day, Williamson posted a second on-line article about the e-mails in which he states "it was suggested to me that one of the legislators [Rep. Jim Pitts] leading the impeachment push was one of the same legislators who had sought preferential treatment for their children in admissions to the University of Texas law school."<sup>256</sup> Williamson said he had not spoken with Hall about the matter. Williamson also states that Hall's attorney, with whom Williamson did speak, "did not suggest that

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<sup>254</sup> See, e.g., Testimony of Representative Jim Pitts before the House of Representatives Select Committee on Transparency in State Agency Operations on October 22, 2013 ("Pitts Testimony") at 68:9–21.

<sup>255</sup> Kevin Williamson, *Killing the Messenger*, THE NATIONAL REVIEW ONLINE, Aug. 21, 2013, at <http://www.nationalreview.com/node/356209/print> (last visited Feb. 3, 2014); Kevin Williamson, *The Curious and Curiouser Case of Wallace Hall*, THE NATIONAL REVIEW ONLINE, Aug. 21, 2013, at <http://www.nationalreview.com/node/356432/print> (last visited Feb. 3, 2014).

<sup>256</sup> Kevin Williamson, *The Curious and Curiouser Case of Wallace Hall*, THE NATIONAL REVIEW ONLINE, Aug. 21, 2013, <http://www.nationalreview.com/node/356432/print>.

Representative Pitts was the preference-seeking legislator in question.”<sup>257</sup> Hall’s attorney is the only named source that Williamson identifies in his article.

**C. Hall Targeted Witnesses Whose Testimony He Did Not Agree With.**

**1. Hall Attacked Cigarroa.**

In the documents provided to the Committee, Chancellor Cigarroa regularly appears to be on the receiving end of Hall’s micromanaging and second-guessing. Unlike Hall, Cigarroa voluntarily made himself available for an informal interview with the Committee’s investigators. Cigarroa did not impose any conditions upon the scope or substance of the interview. Unlike Hall, Cigarroa appeared before the Committee and provided sworn testimony. While Cigarroa’s appearance was pursuant to subpoena, he did not request it. The request for a subpoena to Cigarroa was made on the motion of Committee Member Larson.<sup>258</sup>

Cigarroa’s cooperation with the Committee appears to have eroded the support of Hall. In the weeks following Cigarroa’s appearance, documents provided to the Committee show that Hall pressured Cigarroa on a number of different issues both directly and indirectly tied to topics raised by the Committee’s investigation. Other UT System administrators noted the “dilemma” Cigarroa faced as a result of criticisms voiced by Hall and a minority of other regents regarding the Committee, and they counseled Cigarroa that Hall, rather than Cigarroa, should rebut testimony provided in the hearings if necessary.<sup>259</sup> Nonetheless, Hall’s pressure on Cigarroa led him to accuse

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<sup>257</sup> *Id.*

<sup>258</sup> Comments by Rep. Lyle Larson before the House of Representatives Select Committee on Transparency in State Agency Operations on November 12, 2103 at 123:23 – 124:4.

<sup>259</sup> *See* Exhibit 188.

Cigarroa of not doing his job.<sup>260</sup> Indeed, Hall's conduct toward the Chancellor was interpreted by the Chairman of the Board as an unfair attempt to disparage Cigarroa's reputation.<sup>261</sup>

Despite reassurances provided by Chairman Foster that Hall's conduct was inappropriate, Cigarroa announced his resignation as Chancellor on February 9, 2014. In his announcement, Cigarroa cited a desire to return to his surgical practice. Cigarroa's continued commitment to his medical practice during the six years he served the UT System is undisputed. It is nonetheless tempting, however, to look for correlations between his departure and the escalation of Hall's micromanagement and criticisms. Though Cigarroa never cited his working relationship with Hall as a basis for leaving, one would be hard pressed to fault a person in Cigarroa's position for growing weary of Hall's bullying attitude.

## **2. Hall Pressured Cigarroa to Withdraw His Support of Powers.**

One month after refusing to testify before the Committee, Hall sent Cigarroa a lengthy and detailed critique of portions of President Powers's sworn testimony.<sup>262</sup> Hall noted that his critique was based on a review of documents available to Cigarroa "for many months." Hall repeatedly characterized portions of Powers's testimony as "false and misleading."<sup>263</sup> The purpose of the message, in Hall's own words, was to "further

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<sup>260</sup> See Exhibit 192.

<sup>261</sup> See *id.*

<sup>262</sup> See Exhibits 184 & 185.

<sup>263</sup> See Exhibit 185.

highlight the continuing dilemma regarding [Cigarroa's] continued support of Powers."<sup>264</sup>  
As other UT System personnel noted, this posed a "dilemma" for Cigarroa.<sup>265</sup>

Two weeks passed. Cigarroa did not respond to Hall's message. Hall emailed Cigarroa again noting, "I am concerned that you are not prioritizing this issue and do not recognize the risk inherent in this conduct."<sup>266</sup> Hall then proceeded to remind Cigarroa about his "duties and responsibilities" as Chancellor by providing links to the UT System's Standards of Conduct Guide and the UT System's Policy regarding Protection from Retaliation for Reporting Suspected Wrongdoing.<sup>267</sup> Hall asked Cigarroa, "[H]ow do you justify and defend [Powers's] behavior?"<sup>268</sup>

In the meantime, documents indicate that Cigarroa, with the support and review of several regents,<sup>269</sup> began preparing a letter to the Committee which planned, in part, to address the content and accuracy of some of the testimony provided to the Committee.<sup>270</sup> At the same time, Hall circulated piecemeal critiques of Powers's testimony to Regent Powell and others. One of Hall's messages prompted Powell to weigh in on Hall's critique and Cigarroa's draft letter to the Committee on behalf of the System. Powell commented to Cigarroa, "[I]n our letter we make reference to a couple of 'minor' corrections to President Power's [sic] testimony and the incidents and quotes that [Hall]

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<sup>264</sup> *Id.*

<sup>265</sup> *See* Exhibit 188.

<sup>266</sup> Exhibit 179.

<sup>267</sup> *See id.*

<sup>268</sup> *Id.*

<sup>269</sup> *See* Exhibit 181.

<sup>270</sup> *See* Exhibits 183 & 186.

calls out are more than minor mistakes.”<sup>271</sup> During this time period, Hall kept pressuring Cigarroa to have Powers and Hegarty change or ‘correct’ their testimony to match Hall’s version of events.

On February 1, 2014, Cigarroa sent a letter to the Committee and provided, among many other points of information, a few “clarifications” of Powers’s testimony regarding CASE. Cigarroa’s clarifications of Powers testimony did not remotely approach Hall’s blustery deconstruction of Powers’s statements in his January email to the Chancellor. It did not accuse Powers of misleading the Committee. It did not accuse Powers of providing false testimony.

Cigarroa also took time to address testimony provided to the Committee about the number of documents that had to be collected in response to Hall’s requests to UT Austin. Cigarroa asserted that the UT System believes the number of documents gathered was substantially smaller than had been represented during the hearing. Cigarroa did not name the person (Kevin Hegarty) who publicly testified about the volume of documents. Nor did he suggest the witness had lied.

**3. Hall Pressed for Employment “Ramifications” Against Hegarty Because of Hegarty’s Testimony to the Committee.**

Showing no appreciation for the plain and diplomatic language of Cigarroa’s letter, Hall wrote to him on February 2, 2014:

As you confirmed in your letter to the Transparency Committee, Mr. Hegarty’s testimony was misleading. The volume of pages came nowhere close to 800,000 (maybe≤100,000 pages) but that did not deter him from providing false testimony to the committee or to the public. Will there be any ramifications to Mr [sic] Hegarty as an employee of the UT System or will you turn a blind eye to

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<sup>271</sup> Exhibit 187.

this type of behavior?<sup>272</sup>

Cigarroa responded that he had not personally read Hegarty's testimony.<sup>273</sup> He told Hall that he understood Frederick and Sharphorn were doing so.<sup>274</sup> He advised Hall that he would visit with Powers about any inconsistencies in Hegarty's testimony once that review was complete.<sup>275</sup>

Several weeks later, Cigarroa met with Powers to discuss an issue concerning the University's use of Accenture.<sup>276</sup> In that meeting, at the urging of Hall, Cigarroa mentioned to Powers that if he and Hegarty wanted to amend their testimony they should feel free to do so. After that meeting, Hall sent Cigarroa a message asking about the meeting with Powers as it concerned Accenture and "Mr. Hegarty's performance."<sup>277</sup> Cigarroa did not respond in the email to Hall's inquiry about Hegarty.<sup>278</sup>

The next week, Cigarroa sent Powers an email thanking him for the meeting. Cigarroa wrote:

I again want to thank you for the very constructive visit we had this past Friday related to Accenture, testimonies and request for Budget Changes. On the matter of yours and Kevin's testimony, if either of you need to expand or clarify any portion of such testimony it would be appreciated if it can be done within the next week. I have asked the same to all my staff.<sup>279</sup>

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<sup>272</sup> Exhibit 190.

<sup>273</sup> *See id.*

<sup>274</sup> *See id.*

<sup>275</sup> *See id.*

<sup>276</sup> *See Exhibits 191 & 198.*

<sup>277</sup> *See Exhibit 191.*

<sup>278</sup> *See id.*

<sup>279</sup> Exhibit 198.

Powers replied, “Thank you. I have looped back with Kevin, and neither he nor I think we need to change or expand our testimony.”<sup>280</sup> Cigarroa responded with a follow up question about the methodology for Hegarty’s calculation regarding the volume of documents to which Hegarty replied.<sup>281</sup>

The inescapable inference from this conduct is that Hall was pressuring Cigarroa to get Powers and Hegarty to change their testimony. When Cigarroa simply and diplomatically gave them the opportunity to change their testimony if they wanted to do so, Hall was not satisfied. Shortly thereafter, Cigarroa announced his resignation.

**D. Advocacy Before Council for the Advancement and Support of Education**

**1. UT Austin Received a Valuable Software License from Landmark Graphics.**

In December 2010, Landmark Graphics, a subsidiary of Halliburton, donated a three-year, nonexclusive, nontransferable license for individuals and departments affiliated with UT Austin to make educational use of geological modeling software.<sup>282</sup> The three-year term was not an indication that Landmark Graphics intended its support of UT Austin to end after December 2013; rather, the term reflected the fact in the industry that new, updated software would be available within three years. In other words, Landmark Graphics’ donative intent was to give UT Austin the software for the full functional life span of the software. The appraised value of the grant by Landmark Graphics was \$44,281,420 annually (\$88M value of software less a 50% educational discount).

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<sup>280</sup> *Id.*

<sup>281</sup> *See Exhibits 198 & 200; see also Exhibit 199.*

<sup>282</sup> *See Exhibit 3.*

**2. CASE Modified Rules for Reporting Non-Monetary Gifts on Annual Surveys, Creating Uncertainty Regarding Whether and How to Count the Landmark Graphics Grant.**

CASE is a professional association serving educational institutions and the advancement of professionals who work on their behalf in alumni relations, communications, development, marketing, and allied areas.<sup>283</sup> Among other things, CASE helps its members raise funds for campus projects and collects annual fundraising information so members can assess and benchmark their own efforts. There are explicit standards for reporting annual development information in the surveys submitted to CASE and the Council for Aid to Education (“CAE”)<sup>284</sup> because the reports generated from those surveys would not be useful without an “apples to apples” comparison of member data. The most recent printed edition of the CASE reporting standards was published in 2009. CASE also provides guidelines for educational institutions to “consider” in the management and marketing of capital campaigns, but CASE expressly acknowledges and permits member institutions to report campaign data to constituents in ways that “differ from the CASE standards.”<sup>285</sup>

The CASE reporting standards and management guidelines did not prohibit or discourage counting intellectual property grants like Landmark Graphics’ grant in a member school’s capital campaign at the time the grant was made in 2010. UT Austin therefore initially counted the grant in its capital campaign. On October 17, 2011,

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<sup>283</sup> See CASE, *CASE Reporting Standards & Management Guidelines for Educational Fundraising* (4<sup>th</sup> ed. 2009) at xi.

<sup>284</sup> The survey submitted to CASE is called the Case Campaign Survey, and the survey submitted to CAE is called the Voluntary Support of Education survey, or VSE.

<sup>285</sup> *CASE Reporting Standards & Management Guidelines for Educational Fundraising* at 61.

however, the CASE Commission on Philanthropy published a “Clarification to CASE Reporting Standards on Counting Issues,” which instructed institutions filing two survey forms (the CASE Survey of Educational Fundraising Campaigns and the VSE) not to use the donor’s appraised value of “permanent donations of intellectual property and patents” for counting purposes.<sup>286</sup> Although the clarification did not expressly apply to capital campaign counting and might not apply to the Landmark Graphics grant, UT Austin sought legal advice to be sure it was proceeding appropriately.

UT Austin General Counsel Patti Ohlendorf contacted the law firm of Vinson & Elkins (“V&E”) to perform a legal analysis of whether it was appropriate for UT Austin to count the software grant from Landmark Graphics in UT Austin’s capital campaign and, if necessary, to advance V&E’s findings to CASE. The initial request was time sensitive. UT Austin President Powers wanted to make an announcement at commencement ceremonies in 2011 that the capital campaign had reached \$2 billion, but UT Austin wanted to ensure that the statement would be accurate before it was announced in light of recent guidance that had been published on the subject. Ohlendorf first contacted Don Wood, a partner in the Austin office of V&E who practices primarily in tax advice and litigation. Wood asked Juliana Hunter to assist in the tax and counting analysis and asked Harry Reasoner to join the team in order to advocate V&E’s findings to CASE.

**3. It Was Appropriate for UT Austin to Seek Clarification from CASE Regarding the Rules for Reporting Software Grants.**

V&E determined that it was appropriate for UT Austin to count the grant made by

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<sup>286</sup> See [http://www.case.org/Samples\\_Research\\_and\\_Tools/CASE\\_Reporting\\_Standards\\_and\\_Management\\_Guidelines/Clarification\\_to\\_Standards\\_Oct\\_2011.html](http://www.case.org/Samples_Research_and_Tools/CASE_Reporting_Standards_and_Management_Guidelines/Clarification_to_Standards_Oct_2011.html) (last visited March 19, 2014).

Landmark Graphics in UT Austin’s capital campaign. The law firm found that CASE’s reporting standards and management guidelines clearly distinguished between counting in annual year-end reporting and counting in capital campaigns, and that counting for capital campaigns was deliberately more inclusive. V&E also formed an opinion that the CASE guidelines had been written by development officers without apparent legal guidance regarding the Internal Revenue Code or other regulatory context. Accordingly, V&E determined that the Clarification should be reconsidered and that grants like those made by Landmark Graphics should be counted in CASE reports such as the CASE Survey of Educational Fundraising Campaigns and VSE.

In the course of their work, V&E interviewed three to five representatives of UT Austin’s geology department to determine how the Landmark Graphics software was being used. The educators advised that the software was “absolutely essential” to their educational mission. The Landmark Graphics software is the “gold standard” of geologic imaging applications, and losing access to the software would result in a loss of prestige to UT Austin. V&E also interviewed an employee at Halliburton who is responsible for the relationship between Landmark Graphics and UT Austin to determine the donative intent behind the grant and to find out the donor’s perspective on a rule prohibiting the counting of Landmark Graphics’ grant in the capital campaign.

According to a written submission provided by the UT System with Hall’s input,<sup>287</sup> the UT System took a contrary position on whether software licensing grants

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<sup>287</sup> Letter from Chancellor Francisco Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (Feb. 1, 2014) at Appendix D (APP 00229); *see also, e.g.*, Exhibit 188.

should be counted as charitable gifts before UT Austin sought legal advice.<sup>288</sup> In September 2012, the UT System believed that it conveyed to UT Austin that, “because Landmark did not completely irrevocably transfer ownership of the software to U.T. Austin, the CASE ruling was correct and the grants were not eligible to be counted as a charitable gift.” Committee counsel has been unable to document the communication of this view in September 2012. Nonetheless, even the UT System has taken the position recently that “[a]ny U.T. System institution may present an argument to CASE if it has a justification for doing so, and U.T. Austin leadership felt that it had such justification.”<sup>289</sup>

V&E scheduled a meeting at CASE to discuss the law firm’s findings and to offer to provide guidance to CASE regarding intellectual property grants. The primary purposes of the meeting were to persuade CASE that intellectual property grants should be treated differently than suggested in the “clarification” and to confirm CASE’s agreement that UT Austin could count the Landmark Graphics grant in its capital campaign.

#### **4. Hall Internally Opposed UT Austin’s Position and Efforts.**

According to the UT System, the initial uncertainty regarding whether CASE’s clarification impacted capital campaign accounting originated with Hall himself in July 2012.<sup>290</sup> When Hall became aware that UT Austin had retained V&E regarding “the non-monetary gift controversy at UT Austin,” he asked Frederick and Randa Safady, the Vice Chancellor for External Relations and former director of development at UT Austin, to

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<sup>288</sup> See Letter from Chancellor Francisco Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (Feb. 1, 2014) at Appendix D (APP 00242).

<sup>289</sup> *Id.* at Appendix D (APP 00243).

<sup>290</sup> See *id.* at Appendix D (APP 00242).

help obtain V&E’s opinion work product.<sup>291</sup> In an e-mail titled “Vinson & Elkins,” Hall confided in Safady that “any position that UT Austin successfully takes that is contrary to the System affects all of us.”<sup>292</sup> Without UT Austin or V&E’s knowledge, Safady began contacting CASE personnel on Hall’s behalf to gather information about the potential reporting dispute.<sup>293</sup>

The leading reasons *not* to count a software grant like Landmark Graphics’ in a capital campaign are (i) the grant is limited in duration and (ii) the donor cannot take a tax deduction for the grant. Upon request, Tara Brazee at CASE articulated some of these reasons to Safady before the meeting,<sup>294</sup> but Brazee’s e-mail was never shared with V&E.

On October 25, 2012, Safady also convened a meeting with all fifteen Vice Presidents for development at the UT System institutions regarding CASE counting and reporting. Hall asked Safady to communicate to the development staff that “we must abide by the rules . . . .”<sup>295</sup> When Hall learned that V&E intended to meet in person with CASE, Hall repeatedly asked Safady to obtain V&E’s “talking points” in advance. When Safady obtained them and provided them to Hall, Hall made extensive notes and generated questions on the document critical of the positions taken in V&E’s work product.<sup>296</sup>

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<sup>291</sup> See Exhibit 15.

<sup>292</sup> *Id.*

<sup>293</sup> See Exhibit 18.

<sup>294</sup> See *id.*

<sup>295</sup> See Exhibit 19.

<sup>296</sup> See Exhibits 16, 23, 24 & 26.

**5. Hall Appeared in Person at a Meeting with CASE Leaders and Advocated Against UT Austin's Position.**

The meeting between V&E and CASE was originally scheduled for October 29, 2012, in Washington, DC, but it was cancelled due to Hurricane Sandy.<sup>297</sup> The meeting was rescheduled for November 19, 2012, at CASE headquarters in Washington, DC.<sup>298</sup> Safady immediately informed Hall of the change.<sup>299</sup>

V&E had been advised shortly before the meeting that Hall planned to attend. Reasoner and Hunter were aware that Hall disagreed with the law firm's findings, but they had not been advised whether the UT System had taken a position on V&E's findings and they did not expect anyone on behalf of the UT System to take a different position at the meeting.

Four people attended the meeting in person for CASE: John Lippincott (CASE President), Rae Goldsmith (VP for Advancement Resources), Megan Galaida (Director of Information Center), and Tara Brazee (Senior Information Resources Specialist). Three people attended in person for UT Austin: Ohlendorf, Reasoner, and Wood. Hunter (V&E), Frederick, and Safady attended the meeting by telephone. Hall attended the meeting in person. Lippincott sat at the head of a large conference room table, the CASE representatives sat along one side of the table, and V&E sat on the other side of the table. Hall sat on the far end of the side of the table with CASE personnel.

Reasoner started the meeting by distributing some brochures highlighting the importance of the grant to UT Austin's educational mission and making an opening

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<sup>297</sup> See Exhibit 22.

<sup>298</sup> See *id.*

<sup>299</sup> See *id.*

statement. Hall became visibly disturbed during the statement, and he spoke up to take issue with several of Reasoner's points. For example, Hall said that it would not be right for UT Austin to maintain "two sets of books" to separately keep track of capital campaign accounting and annual reporting accounting. Reasoner responded to Lippincott that there is nothing unusual in organizations maintaining two different accounting books for the SEC and tax purposes. Hall also interrupted the presentation and sounded upset when Reasoner suggested that a donor may be less inclined to make a grant of intellectual property if it knows it will not be counted. There was a period in which Hall and Reasoner were speaking over each other, and Hall raised his voice and told Reasoner to "let me finish." The meeting started at 9:30 a.m. and lasted more than one hour.

Ten minutes after the meeting began, Hall began exchanging e-mails with Frederick with criticisms of the presentation.<sup>300</sup> While the meeting was still going on, Hall then asked Frederick to locate the "90 day clause" termination provision in V&E's retention agreement.<sup>301</sup> When Frederick complied, Hall copied Safady on a response asking for confirmation that V&E could be terminated "[f]or any reason, right?"<sup>302</sup>

After Reasoner's presentation, Lippincott stated that it was appropriate for UT Austin to count the Landmark Graphics grant in its capital campaign. Lippincott's statement about the appropriateness of including the grant in the university's capital campaign was separate from any discussion about how the grant should be treated for purposes of the university's annual survey reports. Reasoner volunteered the services of V&E on a *pro bono* basis to follow up with Lippincott and his colleagues on this subject,

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<sup>300</sup> See Exhibit 27 (At 9:40 a.m. Eastern time, Hall wrote, "I'm embarrassed so far").

<sup>301</sup> See *id.*

<sup>302</sup> See Exhibit 29.

which CASE welcomed. Hall then followed Lippincott out of the meeting room and back toward Lippincott's office. Reasoner was not invited to participate in whatever discussion took place.

Later that day, Hall sent an email to then Board Chairman Powell reporting on the meeting.<sup>303</sup> The email indicated that Powell had prior knowledge of Hall's plan to attend the meeting, although Committee counsel has been unable to find any Board minutes or agendas referring to the meeting or CASE standards or guidelines in any respect. Hall memorialized two areas of "specific concern" from V&E's presentation, including that V&E apparently "suggested that the pro-CASE position that the System was taking in opposition to theirs was causing 'harm' to the University of Texas at Austin."<sup>304</sup>

**6. Hall Was Involved in Subsequent UT System Policy to Not Count Software Grants, Restate Past Contribution Accounts, and Terminate UT Austin's Attorneys.**

In November 2012, Hall worked with Safady to draft a letter from Cigarroa to UT System institution Presidents and Vice Presidents for Development advising campus fundraising personnel that a donor's value of a software grant cannot be included in the public campaign totals reported to CASE.<sup>305</sup> The e-mail exchange shows that Hall devoted "numerous conversations, emails, legal reviews and meetings" to the issue of "proper gift counting versus donor recognition." This letter was transmitted on December 1, 2012.<sup>306</sup>

Although Lippincott's determination distinguished survey reporting from public

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<sup>303</sup> See Exhibit 31.

<sup>304</sup> *Id.*

<sup>305</sup> See Exhibit 32.

<sup>306</sup> See Exhibit 33.

capital campaign reporting and Cigarroa’s letter only technically prohibited reporting software grants on CASE and CAE surveys, Hall took the view that any materials tracking UT Austin’s capital campaign, including confidential internal goal tracking documents, should reflect a “restatement downward of approximately (\$215,000,000) of non-monetary gifts and the passage of an additional (5 to 6 months).”<sup>307</sup> That figure represented a disallowance of software grants back to 2007. In other words, Hall’s position is that CASE’s clarification regarding survey reporting should be applied not only to bar UT Austin from counting software grants in non-survey documents, but also to apply retroactively to capital campaign accounting performed before the CASE clarification ever took place.

Hall also initiated an internal compliance review of capital campaign accounting.<sup>308</sup> The audit recommended that UT Austin restate both current and past CASE and CAE surveys to remove software grants like Landmark Graphics.<sup>309</sup> Hall actively edited the “audit report” summary regarding the review.<sup>310</sup>

V&E was not involved in the restatement of UT Austin’s capital campaign results or the development audit of UT Austin conducted in early 2013. V&E had been retained in 2009 and 2012 by the UT System to provide tax advice. After the CASE meeting, however, V&E was terminated from all legal matters for the UT System and its institutions, and Reasoner understands that the firm has been banned going forward from providing representation on either a billable or *pro bono* basis. This ban will likely result

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<sup>307</sup> See, e.g., Exhibit 40.

<sup>308</sup> See Letter from Chancellor Francisco. Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (Feb. 1, 2014) at Appendix D (APP 00243).

<sup>309</sup> See Exhibit 55.

<sup>310</sup> See Exhibit 64.

in the loss of hundreds of thousands of dollars of legal advice historically donated to the UT System by V&E. Documents produced in the Committee’s investigation show that Hall played an active role in V&E’s termination.<sup>311</sup>

Even more recently, Hall appears to continue to focus on, distrust, and sow seeds of controversy over UT Austin’s reporting of non-monetary grants. As discussed more fully in Part IV(E) below, after Powers testified before the Committee in December 2013, Hall internally challenged Powers’s testimony regarding CASE, referring to it as “misleading,” “false,” and “incomplete.”<sup>312</sup> In mid-January 2014, Hall e-mailed Cigarroa excerpts of Powers’s answers to questions posed by Committee members or counsel regarding the CASE issue and then provided rebuttal as to why Powers’s answers were incorrect.<sup>313</sup> When Hall did not receive a satisfactory response from Cigarroa, Hall wrote the Chancellor: “I am concerned that you are not prioritizing this issue and do not recognize the risk inherent with this conduct . . . . As you know, I share your distrust of Austin’s leadership. With that said, how do you justify and defend his behavior?”<sup>314</sup> Indeed, as recent as February 2014, Hall continued to question UT Austin’s accounting treatment of the software gift from Landmark.<sup>315</sup>

#### **E. Application for and Confirmation of Appointment**

On June 24, 2013, Representative Pitts filed a resolution in the House alleging that Hall “may have obtained [the appointment as regent] through misrepresentation of

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<sup>311</sup> See, e.g., Exhibits 41, 47 & 51.

<sup>312</sup> See Exhibit 179.

<sup>313</sup> See *id.*

<sup>314</sup> *Id.*

<sup>315</sup> See Exhibit 189.

material facts regarding his experience and qualifications” and that Hall had engaged in “ongoing concealment of that misrepresentation.”<sup>316</sup> Pitts’s resolution followed a series of Spring 2013 news stories, reporting that Hall had omitted information from his application for appointment to the University of Texas System Board of Regents.<sup>317</sup> Specifically, the media reported that, in response to a question on the application about litigation in which he was involved, Hall had disclosed only two lawsuits when, in fact, he had been involved in many more.<sup>318</sup> Although the Pitts resolution was not adopted and the Speaker’s Proclamation governs the Committee’s investigation, questions regarding Hall’s appointment and confirmation were still a fundamental part of the inquiry.

**1. Appointment Applications Require Information about Litigation.**

Individuals who seek appointed office have traditionally completed written applications provided by the Office of the Governor. The form used by the Office of the Governor has changed over time, and at least one revision to the form came during James R. Huffines’s tenure as Secretary of Appointments to Governor William P. Clements, Jr. from 1986 to 1990. Huffines was interviewed because of his prior service as a member and Chairman of the Board. As Appointments Secretary, Huffines reviewed the application form to be completed by candidates for appointment. The application form was sparse and requested less information than Huffines thought was necessary. Huffines added a question to the application about litigation in which the candidate had been

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<sup>316</sup> Tex. H.R. 230, 83rd Leg., 1st C.S. (2013).

<sup>317</sup> See, e.g., Jay Root, *UT Regent Hall Failed to Disclose Lawsuits*, THE TEXAS TRIBUNE, April 3, 2013, at <http://www.texastribune.org/2013/04/03/ut-regent-failed-disclose-lawsuits/>. (last visited March 16, 2013).

<sup>318</sup> See *id.*

involved to ensure, among other things, that the governor would be aware of any information that could compromise the candidate or later embarrass the governor.

**2. Hall Completed Applications Asking for Litigation Information.**

Over twenty years later, Hall encountered the legacy of that question when he submitted applications to the appointments staff for Governor Rick Perry in 2008 and 2010. The applications forms were identical.<sup>319</sup> Each application posed the same question about litigation:

Have you, your spouse, or any company in which you or your spouse have a material interest been party to litigation? If yes, give details.<sup>320</sup>

Hall provided the same answer to this question in each of the applications he submitted to Governor Perry's Office, disclosing two lawsuits:

WLH, Jr. – West Fork Partners LP (p) vs Metroplex Sand & Gravel (d) for unpaid royalties

Premium Resources (p) vs West Fork Partners, LP & Squaretop Partners, LP (d) – WLH, Jr.<sup>321</sup>

Hall signed each application. His signature appears immediately below a section of the application titled "CERTIFICATION OF APPLICANT." The certification provides:

I hereby certify that the foregoing and any attached statements are true, accurate and complete. I agree that any misstatement, misrepresentation or omission of a fact may result in my disqualification for appointment. I assign and hereby give the Office of the Governor full authority to conduct background investigations pertinent to this application. I specifically authorize the Texas Department of Public Safety to conduct a background investigation and

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<sup>319</sup> See Exhibits 2 & 4.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

to disclose the results of that investigation to the Governor or his authorized representative.<sup>322</sup>

The application does not require an oath.

Hall submitted a one-page resume along with his completed applications. In 2008, he provided the application and resume under a cover letter addressed to an appointments manager, Mary Fraser.<sup>323</sup> Dated January 29, 2008, Hall's letter flags the question about litigation.<sup>324</sup> He noted that the application did not provide enough room for a "comprehensive response."<sup>325</sup> Hall explained:

Per the question of litigation, I have during the course of business in my capacity as a fiduciary both as an investor and operator been in litigation from time to time in addition to the two cases listed. Much of this has involved eminent domain lawsuits. I am happy to provide as much detail as required, if you and your office so desire to review it in its entirety.<sup>326</sup>

Hall did not provide a similar letter in connection with his application in 2010.

Hall's 2008 Appointment Application led to his interim appointment to the Texas Higher Education Coordinating Board ("THECB") on August 24, 2009. As an interim appointee, Hall began serving without Senate confirmation. Hall submitted an updated appointment application before his interim appointment to THECB was docketed for a confirmation hearing in the 2011 legislative session. As required by the Governor's Office, Hall's updated application ultimately led to his appointment to the Board.

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<sup>322</sup> *Id.*

<sup>323</sup> *See* Exhibit 1.

<sup>324</sup> *See id.*

<sup>325</sup> *See id.*

<sup>326</sup> *Id.*

### 3. The Senate Relied Upon Hall's Appointment Application.

The Senate confirmed Hall for his position as Regent on February 9, 2011. The Committee sought, but was unable to obtain, copies of materials prepared for and relied upon by members of the Senate Nominations Committee in 2011. According to Robert Haley, who has served as the Committee Director of the Senate Nominations Committee for the past ten years, materials compiled for the committee members to use for confirmation hearings are routinely destroyed after the confirmation hearing or vote.<sup>327</sup> The only documents that must be archived are minutes, witness lists, and any other public documents or handouts used during hearings.

By way of background, Haley explained that he receives “pretty basic” information from the Appointments Division of the Office of the Governor. In most cases, Haley receives a copy of the governor’s letter appointing the individual to office and an application completed by the individual for the governor’s office *without* the page including the signature and “CERTIFICATION OF APPLICANT.” Haley does not know why the Office of the Governor routinely excluded the certification and signature page, but he estimates that it was excluded on 99 percent of the applications he received for ten years. In some cases, Haley also receives a resume prepared by the appointee and a photo. Haley uses this information to create an electronic file in his office for the appointee and to begin building a background notebook about the appointee for committee members.

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<sup>327</sup> See Testimony of Robert Haley before the House of Representatives Select Committee on Transparency in State Agency Operations on October 23, 2013 (“Haley Testimony”) at 174:1 – 175:15.

Haley did not have a specific recollection of what he collected and included in the notebook regarding Hall. In fact, his only specific recollection about the February 2011 regent confirmations involved controversy about whether then appointee Alex Cranberg was a resident of Texas or Colorado. Nonetheless, Haley was confident about what he would have included in committee members' notebooks concerning Hall because it is the same information he has provided for hundreds of appointees over the past decade.

Haley identified the following documents as items that were included in the Senate Nominations Committee notebook for Hall: Governor Perry's February 1, 2011 appointment letter to the Senate; Hall's December 23, 2010 appointment application; and possibly Hall's resume.<sup>328</sup> Haley also included a mission statement about the Board and a personal financial disclosure for Hall obtained from the Texas Ethics Commission. Haley was certain that he did not receive, and therefore did not provide to the committee members, Hall's January 2008 letter to Mary Fraser that referenced additional litigation.

#### **4. Hall Acknowledged Omitting Information from the Appointment Application.**

As noted above, Hall declined to provide the Committee sworn testimony about his application for appointment. He did, however, make public statements to the media about his appointment applications when the applications came under scrutiny in early 2013. According to one publication, Hall acknowledged that the applications omitted information about lawsuits in which he had been involved.<sup>329</sup> In a published interview with another publication, Hall explained:

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<sup>328</sup> See Haley Testimony at 174:24 –175:4.

<sup>329</sup> Jay Root, "UT Regent Failed to Disclose Lawsuits," THE TEXAS TRIBUNE (April 3, 2013), at <http://www.texastribune.org/2013/04/03/ut-regent-failed-disclose-lawsuits/> (last visited March 15, 2014).

The application I filled out had two questions that have led people to accuse me of doing something inappropriate. I listed two lawsuits that were material *to me*, and then there were a number of lawsuits that were not included at the time . . . . One of my businesses is a mitigation bank, and one of the obligations I have to the Army Corps of Engineers is to protect the wetlands. The lawsuits that were omitted all had to do with protecting the wetlands from eminent domain. These were not material lawsuits, *in terms of personal value or investment value*. These were things where we were attempting to get the pipelines to not come through the wetlands and to protect the aquatics. So based on my understanding of the question, these clearly didn't fit. I had discussions with the governor's staff at the time of the application process, and I asked about these issues. I was not asked to supplement my answer then, but it was discussed. The other lawsuit was material, but at the time I listed it under the bankruptcy section, where my partnership had been in a bankruptcy and all of the litigation that this spawned came from that. I listed that, and then I had a conversation with the governor's staff to explain this lawsuit. So it was absolutely disclosed in my mind. There was no intent to do anything other than to be fully forthcoming.<sup>330</sup>

In a recorded interview after the Committee began its investigation, Hall made similar comments about the information he did and did not disclose in his applications.<sup>331</sup>

Hall repeated that he had conversations with Appointments Division staff in Governor Perry's Office following his letter about other lawsuits and that his offers to provide additional information to staff were declined.<sup>332</sup>

Staff members from Governor Perry's appointments office were unable to

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<sup>330</sup> Brian D. Sweany, *The Wallace Hall Interview*, TEXAS MONTHLY, April 15, 2013; at <http://www.texasmonthly.com/story/wallace-hall-interview?fullpage=1> (last visited March 18, 2014) (emphasis added).

<sup>331</sup> See *Capital Tonight: One-on-one with UT Regent Wallace Hall*, September 17, 2013, <http://austin.twcnews.com/content/295322/capital-tonight--one-on-one-with-ut-regent-wallace-hall>.

<sup>332</sup> See *id.*

confirm Hall's assertions. Mary Fraser, an appointments manager for Governor Perry at the time of Hall's applications, did not recall having any conversations with Hall on this subject. She did not keep any notes regarding her work, if any, on Hall's application. Teresa Spears, Director for the Office of Governmental Appointments during the time of Hall's applications, vaguely recalled visiting with Hall during the appointment process. However, she did not recall having any conversations with Hall about his litigation history. Like Fraser, Spears did not keep any notes regarding her work on Hall's appointment.<sup>333</sup> Neither Fraser nor Spears denied that it is possible they discussed Hall's litigation history with him. They simply had no recollection that such conversations occurred.<sup>334</sup>

More than two years after his application, appointment, and confirmation as Regent, Hall created a supplemental list of lawsuits not included in his 2008 and 2010 applications. That list, received by the Appointments Division of the Office of the Governor on April 12, 2013, disclosed eleven lawsuits and a bankruptcy action into which other litigation matters had been subsumed. Hall told a reporter for YNN in September 2013 that he would not approach the application process any differently today than he did in the past, asserting that the omitted information was not material to the appointment application. Spears similarly testified that she did not consider Hall's omissions to be an attempt to mislead the Governor in light of his correspondence and other disclosures.<sup>335</sup>

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<sup>333</sup> See Testimony of Teresa Spears before the House of Representatives Select Committee on Transparency in State Agency Operations on October 23, 2013 ("Spears Testimony") at 148:4–13.

<sup>334</sup> See *id.* at 149:2–13.

<sup>335</sup> See *id.* at 159:6–20.

The Senate Nominations Committee does not share Hall’s opinion about the relevance and materiality of this information. The committee’s director, Haley, explained that he and several committee members were surprised and upset to learn about the omission of information from Hall’s appointment application. In testimony before the Committee, Haley hesitated to say the disclosure of that information would have made a difference in whether Hall was confirmed.<sup>336</sup> Representative Pitts testified similarly, noting that, according to conversations he had with Senators about Hall’s omissions, the disclosure of that information might or might not have made a difference in their decisions about confirmation.<sup>337</sup>

**5. Hall’s Public Characterizations of the Omitted Information Are Misleading.**

Hall’s assertion to the media that the omitted lawsuits “all had to do with protecting the wetlands from eminent domain” is undermined by a closer inspection of the information available to the Senate Nominations Committee. Three of the lawsuits that were not disclosed in 2010 did not, in fact, concern protecting wetlands from eminent domain. One lawsuit accused Hall and others of engaging in fraud, deceit, state securities violations, and breaches of fiduciary duty to a partnership formed to operate a gas collection and processing plant.<sup>338</sup> Another lawsuit accused Hall of theft of survey

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<sup>336</sup> See Haley Testimony at 176:8 – 177:18.

<sup>337</sup> See Pitts Testimony at 45:2–8.

<sup>338</sup> See *ES Energy Solutions, LP et al. v. Bluff Power Partners, LP., Wallace Hall, Jr., et al.*, Cause No. 09-0518, 44th Judicial District Court of Dallas County, Texas.

equipment.<sup>339</sup> A third lawsuit accused Hall of illegal interception of electronic communications.<sup>340</sup>

Hall filed general denials in all of these matters. He may very well have had substantial and legitimate defenses to the serious allegations made about him. However, he was never required to discuss the suits because of *his* unchallenged interpretation that the appointment application sought information *material to him* (as opposed to disclosure of all lawsuits involving entities in which he had a material ownership interest as the plain language of the application requests). Whatever the merit or lack of merit of the allegations in these lawsuits, they were unknown to the Senate Nominations Committee at the time of Hall's confirmation (and therefore went unexplored) because he had not disclosed them in his 2010 application to become a Regent. Quoted in a news article about this issue, one state senator crystallized the significance of full disclosure, "We use that application to make a lot of our decisions."<sup>341</sup>

## **6. Hall's Conduct Prompted the Senate to Amend its Vetting Process for Gubernatorial Appointees.**

Noting that the Nominations Committee had previously operated on the "honor system" with appointees, Haley described at least one change that has been made in light of Hall's conduct. The Senate Nominations Committee now requires all appointees to complete a certification independent of the one included in the appointment

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<sup>339</sup> *West Fork Partners, LP and Squaretop Partners v. Universal Enesco*, Cause No. 933295, County Court of Law No. 3, Harris County, Texas.

<sup>340</sup> *McCommas LFG Processing Partners LP v. MMR Group Inc., et al.*, Cause No. 06-03542-C, 68th Judicial District Court of Harris County, Texas.

<sup>341</sup> Jay Root, "UT Regent Failed to Disclose Lawsuits," THE TEXAS TRIBUNE (April 3, 2013), at <http://www.texastribune.org/2013/04/03/ut-regent-failed-disclose-lawsuits/> (last visited March 15, 2014).

application.<sup>342</sup> Titled “Certification of Application,” the new form requires appointees to “certify and affirm that the application I submitted to the Office of the Governor . . . is true, accurate and complete to the best of my knowledge as of the date of my signature below.” According to Haley, the Nominations Committee now also requires all appointees to submit a new appointment application in the event that they have previously completed an appointment application for another appointed office.

Representative Pitts testified that neither Hall’s January 2008 cover letter nor his more recent supplemental list of litigation impacted his view, and the view of Senators with whom he spoke, that Hall’s omission of information deprived those involved in the appointment process of facts necessary for an informed decision.<sup>343</sup> Representative Pitts noted that Hall’s decision to pick and choose what he did and did not disclose is inconsistent with the plain terms of the appointment application.<sup>344</sup> Representative Pitts also testified that Hall’s omissions raised the possibility that Hall may have violated state penal law.<sup>345</sup>

## **F. Communications Regarding the UT Austin Football Program**

### **1. Hall Initiated a Call with Nick Saban’s Agent Regarding Possible Employment with the UT Austin Football Program.**

The Texas Longhorns football program is the intercollegiate football team representing UT Austin. The program is one of the most highly regarded and historic football programs of all time. The program began in 1893, and it has the second most successful record in NCAA history behind the University of Michigan Wolverines.

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<sup>342</sup> See Haley Testimony at 180:14 – 181:13.

<sup>343</sup> See Pitts Testimony at 33:8–9 & 45:2–16.

<sup>344</sup> See *id.* at 49:24–25 & 50:1–5.

<sup>345</sup> See *id.* at 32:18–19.

Texas has won four Division I-A national championships and 32 conference championships. In 2008, ESPN ranked the Texas Longhorns the seventh most prestigious college football program since 1936. In 2012, the UT football program was valued at \$805 million, more than the calculated value of several NFL teams.

Until December 2013, the team was coached by Mack Brown. Brown achieved a great deal of success since he was hired in 1998, but the program underperformed in the 2011 and 2012 seasons. Texas lost their last two games of the regular season in December 2012 after a promising start, resulting in fan dissatisfaction with the program and Brown.

Nick Saban, Jr. is the current head football coach of the University of Alabama, a position he has held since the 2007 season. Saban previously served as head coach of the National Football League's Miami Dolphins and three other universities. His eight-year contract totaling \$32 million made him one of the highest paid football coaches, professional or college, in the United States at the time. Saban is regarded as one of the most successful football coaches in the current era.

In late December 2013, Hall and Regent Steve Hicks had a conversation about whether Saban might be interested in replacing Brown as head coach of the Texas Longhorns.<sup>346</sup> Hicks did not pursue the idea and left the country, but Hall continued to communicate with a "very confidential" friend about Saban's possible interest.<sup>347</sup> On January 5, 2013, Hall contacted Tom Hicks, Regent Hicks's brother and owner/executive of professional baseball and hockey teams, to arrange for a call between Hall, Hicks, and Saban's agent, Jimmy Sexton, to engage in informal discussions about Saban's interest in

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<sup>346</sup> See Exhibit 38.

<sup>347</sup> See Exhibit 118.

a new position at UT Austin.<sup>348</sup> Hall and Hicks scheduled the call for 7:30 p.m., and Hall asked to be part of the call.

Hall, Hicks, and Sexton spoke on the telephone for approximately 45 minutes.<sup>349</sup> According to Hicks, Sexton confirmed that Saban would be willing to entertain leaving Alabama for Texas, and Hicks volunteered to explore Brown's willingness to retire. Hicks met with Brown on January 7, 2013, at which time Brown made it clear that he had no interest in retiring at that time. On January 8, 2013, Hicks notified Sexton, and he had a conversation with Hall, who thanked Hicks for "everything [he] was doing for the University."<sup>350</sup>

No one else was aware of the call until mid-September 2013, when Hall told the Associated Press about the conversations.<sup>351</sup>

**2. Hall Was Not Authorized by the Board or UT Austin's President to Engage in UT Austin Staffing Discussions.**

Hall was not authorized by the Board to communicate with Sexton about the possibility of joining the staff and faculty of UT Austin.<sup>352</sup> There is no record in the Board minutes or materials of the communication with Saban or his agents. Indeed, three days before the January 5, 2013 call took place, Regent Hicks told Hall the opposite: "I talked to the Chairman about it and he felt we should not do anything about it at this

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<sup>348</sup> See *id.*

<sup>349</sup> See *id.*

<sup>350</sup> *Id.*

<sup>351</sup> See Jim Vertuno, "Texas Regent Talked to Saban's Agent," APNEWSBREAK (Sept. 19, 2013), at <http://collegefootball.ap.org/article/apnewsbreak-texas-regent-talked-sabans-agent> (last visited March 14, 2014).

<sup>352</sup> See *id.* ("Nothing was authorized by the board and the chairman and myself thought the board should not be involved," Steve Hicks said.)

time.”<sup>353</sup> Nor was Hall one of the Board’s Athletic Liaisons, who might arguably have standing authority or portfolio to engage in athletic hiring matters on behalf of the UT System.

Hall was not authorized by President Powers to communicate with Sexton about the possibility of joining the staff and faculty of UT Austin. Indeed, according to Hicks, Powers was not one of the few individuals who was ever aware the call took place.<sup>354</sup> President Powers should have been notified about the discussion.<sup>355</sup> As Powers explained during an appearance on YNN in Austin in September 2013, “The athletic department is a department in the university. The athletic director reports to me. I would be not just heavily involved — that is a presidential choice.”<sup>356</sup>

### **3. Hall Denigrated President Powers to a Third Party.**

The slight to Powers did not end with his exclusion from the call between Hall, Sexton, and Hicks. After Hicks mentioned that Brown “had leadership’s support to stay” during the call, Hall told Sexton that UT leadership “was most likely going to change during the year.”<sup>357</sup> According to Hicks, Hall specifically stated that “Bill Powers

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<sup>353</sup> Exhibit 38.

<sup>354</sup> See Reeve Hamilton, “*Hall said Powers would be gone by year end*,” THE TEXAS TRIBUNE, at <http://www.texastribune.org/2013/11/06/hall-said-powers-would-be-gone-end-year/> (last visited March 23, 2014).

<sup>355</sup> See Reeve Hamilton, “UT System: Should Have Told Powers About Saban,” THE TEXAS TRIBUNE (Sept. 25, 2013) at <http://www.texastribune.org/2013/09/25/ut-system-powers-should-have-been-notified-saban-c/> (last visited on March 24, 2014).

<sup>356</sup> *Id.*

<sup>357</sup> Reeve Hamilton, “*Hall said Powers would be gone by year end*,” THE TEXAS TRIBUNE, at <http://www.texastribune.org/2013/11/06/hall-said-powers-would-be-gone-end-year/> (last visited March 23, 2014).

wouldn't be here at the end of the year.”<sup>358</sup>

## **G. Zealous Preoccupation with UT Austin and Powers**

### **1. Hall Appears to Have Been Appointed to the Board with an Agenda to Diminish and Unseat Powers.**

A number of witnesses interviewed in the course of this investigation opined that a well-known goal of Governor Perry—and, by extension, his appointee Hall—is to terminate Powers as UT Austin President.<sup>359</sup> This goal seems out of step with Powers's accomplishments, including his recent selection as president of the Association of American Universities, the nation's consortium of leading research universities. Bad blood may have originated, however, in a May 2008 summit led by Perry contributor and Austin businessman Jeff Sandefer, a former UT adjunct business professor who developed a new model for higher education.<sup>360</sup> Sandefer drew controversy with his “7 Solutions” for higher education, including ideas like professor ratings based on the number of students they taught or what they “earn” their institutions, which critics said undervalued research and high-level seminar-led studies. Sandefer's ideas influenced Governor Perry's higher education policy, including Perry's call for a 4-year tuition freeze for incoming college students in January 2009 and a \$10,000 college degree in 2011.<sup>361</sup> Powers did not support these plans, and he later expressed disappointment that

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<sup>358</sup> *Id.*

<sup>359</sup> *See, e.g.*, Testimony of Barry Burgdorf before the House of Representatives Select Committee on Transparency in State Agency Operations on October 23, 2013 (“Burgdorf Testimony”) at 70:13–16 (“I think there is a clear intent to get rid of Bill Powers.”).

<sup>360</sup> Reeve Hamilton, *Who's Behind Proposed Reforms to Texas Higher Ed?*, THE TEXAS TRIBUNE, March 16, 2011; at <http://www.texastribune.org/2011/03/16/whos-behind-proposed-reforms-to-texas-higher-ed/> (last visited March 19, 2014).

<sup>361</sup> *See id.*

the Board did not raise tuition to increase revenues for UT Austin.<sup>362</sup>

In 2011, Perry selected three new appointees to the Board with ties to Sandefer. Perry staff members called the new appointees “kick-ass regents.”<sup>363</sup> Hall, a Perry appointee who had listed Jeff Sandefer as a reference on his Regent application,<sup>364</sup> took Perry’s message to heart. In 2011, Hall, along with Regents Powell, Cranberg, and Pejovich, began requesting and reviewing large volumes of documents from UT Austin.<sup>365</sup> The requests focused on data at the heart of Sandefer’s reforms, such as faculty hours, assignments, and productivity.<sup>366</sup> These were all items related to implementing the “seven break through” solutions<sup>367</sup> that Perry had highlighted in the May 2008 summit.

Hall’s focus, however, shifted away from conceptual higher education reforms to the search for conspiracy and undue influence at UT Austin. While Cranberg and Pejovich tried to implement Sandefer’s ideas, the Board commenced an inquiry into the UT Law School Foundation’s forgivable loan program after officials learned that then law school dean, Larry Sager, was the recipient of a \$500,000 forgivable loan. From that

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<sup>362</sup> See Liz Farmer, “The UT System Board of Regents makes tuition increase decisions,” THE DAILY TEXAN (May 4, 2012), located at <http://www.dailytexanonline.com/news/2012/05/04/the-ut-system-board-of-regents-makes-tuition-increase-decisions> (last visited March 25, 2014). Powers had recommended a 2.6 percent in-state tuition increase for UT Austin, but the Board instead froze undergraduate tuition at UT Austin for two years while increasing tuition at every other UT System institution.

<sup>363</sup> See Reeve Hamilton, “UT President Ends Tough Year With Another Battle,” THE TEXAS TRIBUNE (Dec. 16, 2011), located at <https://www.texastribune.org/2011/12/16/ut-president-ends-tough-year-yet-another-battle/> (last visited March 25, 2014).

<sup>364</sup> See Exhibits 2 & 4.

<sup>365</sup> See Burgdorf Testimony at 11:20 – 12:12.

<sup>366</sup> See *id.* at 13:20–25.

<sup>367</sup> See *id.* at 14:8–15.

point forward, Hall's focus tightened on former law school dean Powers and what Hall perceived as Powers's failings. On April 15, 2013, Hall gave an interview to the *Texas Monthly* in which he stated that the source of his attention to President Powers stemmed from an initial "unsuccessful" attempt to initiate a dialogue with UT Austin: "I guess you could say I never felt that he hugged me back." Hall further explained, "I do believe that everything that occurs at the university is ultimately the president's responsibility."<sup>368</sup>

For example, after thorough investigation screened by both an outside law firm and the OAG, then UT System General Counsel Burgdorf circulated a draft of his report regarding the Law School Foundation's forgivable loan program in February 2012. Hall expressed his displeasure with the report and reiterated his displeasure in October 2012, when Burgdorf published his final draft report on the investigation.<sup>369</sup> Hall referred to the final draft as a "sham."<sup>370</sup> Hall wanted the comprehensive examination of the Law School Foundation and its forgivable loan program to focus more on President Powers and his involvement in, or awareness of, the forgivable loan program.<sup>371</sup>

Hall also fixated on the fact that Powers had received a copy of an anonymous letter to Chancellor Cigarroa in which the letter's author discussed claims of gender and ethnic discrimination at the law school, pay inequality, and a "hidden" compensation scheme. Hall stated that Powers had seen the letter in Spring 2011.<sup>372</sup> The Regents,

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<sup>368</sup> Brian D. Sweany, *The Wallace Hall Interview*, TEXAS MONTHLY, April 15, 2013; at <http://www.texasmonthly.com/story/wallace-hall-interview?fullpage=1> (last visited March 18, 2014).

<sup>369</sup> *See id.* at 28:4–13.

<sup>370</sup> Exhibit 44.

<sup>371</sup> *See id.* at 18:9–12.

<sup>372</sup> *See* Exhibit 71.

however, did not see the letter until February 2013, six months after the publication of Burgdorf's report. This fact bothered Hall.<sup>373</sup> In August 2013, Hall's executive session notes contain a laundry list of items that Hall perceived as the "current state of affairs" under Powers.<sup>374</sup> Included in the list was "law school, veracity as to knowledge, responsibility, management."<sup>375</sup>

Documents produced during the investigation further show that Hall and a minority of other regents continued pushing for the ousting of Powers despite the Committee's formal requests to the UT System to make no adverse personnel changes to witnesses such as Powers during the course of the investigation. In an October 2013 e-mail to Executive Vice Chancellor Reyes, Hall said that Powers had failed to promptly comply with Hall's request for business and personal travel records. "Two strikes so far," Hall wrote. "Virtually zero accountability with this gentleman. What is your plan," Hall asked.<sup>376</sup>

Likewise, in a letter Hall sent to Board Chairman Foster on January 24, 2014, Hall included a series of documents that Hall called "a critical reminder of what has been promised to us as compared to what we have received" since the December 2013 Regent meeting in which Cigarroa advocated for Powers to remain in his position. Those documents, which included Hall's notes, notes from Regent Cranberg, and an e-mail from Regent Hicks, show that in August 2013, just a few weeks after the Committee's first letter regarding employment action, Hall told the Board that they were being "held

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<sup>373</sup> *See id.*

<sup>374</sup> *See* Exhibit 107.

<sup>375</sup> *Id.*

<sup>376</sup> Exhibit 129.

hostage by terrorists” and that firing Powers would only result in a “two-week” reaction that could easily be overcome.<sup>377</sup> Later, several Regents tried to pressure Powers to step down. Powers declined and said he did not “mind being fired.”<sup>378</sup> Several regents thought that a termination, as opposed to a resignation, would not be “in the best interests” of UT Austin.<sup>379</sup>

**2. Hall Has Focused Exclusively on UT Austin When More Serious and Pressing Matters Were Before the Board.**

Powers’s relationship with the Law School Foundation was just one of several complaints Hall had about Powers. Hall also complained or had suspicions about: (i) Powers’s handling of the school’s Longhorn Network contract with ESPN; (ii) “gaming of the numbers” for development campaigns; (iii) “Insubordination;” (iv) “Authorizing & encouragement of mid-level staff to falsely accuse System;” and (v) “Admissions favoritism” between Powers and the Legislature.<sup>380</sup> Hall also believed there was a “cover-up underway” in relation to the “state of affairs” at UT Austin and that Powers had started dissent.”<sup>381</sup>

As discussed above, in October 2012, Hall sought every document over a nearly two-year period that had been requested of UT Austin through the TPIA. When Hall discovered a document or information of interest to him or in line with his suspicions, Hall added document requests of his own. For example, when Hall obtained a copy of an anonymous letter complaining about employment and compensation practices at the UT

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<sup>377</sup> Exhibit 108.

<sup>378</sup> See Exhibit 177.

<sup>379</sup> See *id.*

<sup>380</sup> See *id.*

<sup>381</sup> See *id.*

School of Law, Hall wrote a 36-point e-mail demanding a full investigation to “determine if there were any legal or ethical wrongdoing[s]” on the part of President Powers.<sup>382</sup>

By July 2013, Hall honed in on Powers’s travel and his communications with legislators. Hall’s attention to his requests for documents and information was relentless. For example, Hall repeatedly asked UT System personnel to “follow up” on his July 2013 request to see “any travel expenses” for President Powers paid for “on his behalf for ‘corporate’ purposes, which is neither personal or UT business.”<sup>383</sup> When Powers responded in an e-mail that his corporate board travel was “provided as a normal business expense” of serving on various boards, and not gifted to him, Hall called his response “a non-answer at best.”<sup>384</sup> Hall’s hunt extended to personal travel records dating back to the time Powers took office until, in January 2014, Cigarroa reminded Hall that there was “no need for” regents “to know a president’s personal travel on his or her personal time.”<sup>385</sup> Even after Cigarroa and Board Chairman Foster agreed that insisting on further disclosure would not be “appropriate,”<sup>386</sup> Hall continued to press for more travel information.<sup>387</sup>

In the three years Hall has been focused on matters like Powers’s travel schedule, however, the UT System and Board have faced various crises and challenges. Hall made no requests for documents or other inquiries into such matters.<sup>388</sup> Indeed, no witness who

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<sup>382</sup> Exhibit 79.

<sup>383</sup> *See, e.g.*, Exhibit 128.

<sup>384</sup> *See* Exhibit 163; *see also* Exhibit 165.

<sup>385</sup> *See* Exhibit 142.

<sup>386</sup> *See id.*

<sup>387</sup> *See, e.g.*, Exhibit 170.

<sup>388</sup> *See* Burgdorf Testimony at 100:3–6.

testified before the Committee was aware of any document requests issued by Hall to any other institution other than UT Austin.<sup>389</sup>

### 3. Hall's Governance Style is Intense and Vindictive.

Documents produced in the course of the investigation show that Hall's focus on not just challenging Powers, but ruining him, is part of Hall's leadership style. For example:

- Burgdorf testified that Hall was not satisfied with the level of scrutiny Burgdorf had applied toward Powers in his report involving the Law School Foundation forgivable loan program, so Burgdorf was invited to resign for being “misaligned” with Hall.<sup>390</sup> Documents produced in the course of the investigation confirm that Hall was “deeply troubled” by Burgdorf's “sham investigation.”<sup>391</sup>
- As discussed above, Hall's displeasure with V&E arising out of a presentation to CASE in Washington, DC lead to Hall's directive that V&E “not be paid and disgorge fees to date” and that the firm otherwise “be held accountable.”<sup>392</sup>
- When Hall and others were notified of a security breach resulting in the disclosure of FERPA information, Hall's reaction was to ask who was responsible for the access and “what is being done with regard to their employment?”<sup>393</sup>
- In response to an article regarding the CASE matter in August 2013 quoting UT Austin Director of Media Relations Gary Susswein, Hall attacked Mr. Susswein directly to Cigarroa and indicated that the article constituted “ongoing and deliberate insubordination.”<sup>394</sup>
- Throughout the Committee's investigation—from July 2013 to the present—Hall continued to push for Powers's receipts for all travel expenses—both personal and business. In October 2013, dissatisfied with

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<sup>389</sup> See, e.g., *id.* at 102.

<sup>390</sup> See *id.* at 36:12 – 37:7.

<sup>391</sup> See Exhibit 44.

<sup>392</sup> See, e.g., Exhibit 30; see also Exhibits 27, 28, 29 & 34.

<sup>393</sup> See Exhibit 6.

<sup>394</sup> See Exhibit 103.

Powers's responses Hall noted in an e-mail to the Chancellor's office, "I would expect the President of our institution to respond both fully, honestly and timely to our requests. Two strikes so far. Virtually zero accountability with this gentleman. What is your plan?"<sup>395</sup>

- Finally, as discussed above, Hall eventually turned on Cigarroa for "not doing his job" with respect to corraling witnesses who testified against Hall's interests before the Committee.<sup>396</sup>

In another telling example, in August 2013, Hall challenged Cigarroa directly after reading an article in *The Daily Texan* regarding reported "regent tensions."<sup>397</sup> Hall sent an e-mail to Cigarroa criticizing the "faculty" author as "making ill informed and misleading statements to the public" and daring Cigarroa or UT Austin administrators to respond or take action against the author—"Are public statements such as these ever challenged by *their* employers?"<sup>398</sup> Hall's criticism relented when Executive Vice Chancellor Reyes informed Hall that the article was quoting a student, not a faculty member.<sup>399</sup>

## **H. Frustration of Investigative and Legislative Process**

In an interview published in April 2013, a reporter asked Hall a series of questions about his recent interaction with members of the Legislature.<sup>400</sup> Among other comments, Hall noted, "I would say I have a growing and expanding mea culpa in not appreciating their need for communication from the board. I get it now. I did not

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<sup>395</sup> Exhibit 129.

<sup>396</sup> See Exhibit 192.

<sup>397</sup> See Exhibit 114.

<sup>398</sup> *Id.* (emphasis in original).

<sup>399</sup> See *id.*

<sup>400</sup> Brian D. Sweany, *The Wallace Hall Interview*, TEXAS MONTHLY, April 15, 2013; at <http://www.texasmonthly.com/story/wallace-hall-interview?fullpage=1> (last visited March 18, 2014) (emphasis added).

recognize our need to be over there.”<sup>401</sup> Hall continued, “I’m comfortable answering any questions and would be available to talk about why we’re doing what we’re doing. My only regret is that we weren’t asked sooner, and that I didn’t know to reach out sooner to talk to them.”<sup>402</sup>

Hall’s response to this Committee is impossible to reconcile with the assurances of cooperation and transparency he made to the press in the months immediately preceding this investigation. Before the Committee had even commenced hearings, Hall voiced his disapproval, writing in his preparation notes for a media interview: “The transparency committee will narrowly define what the charges against me will be, it will not be an opportunity for me to tell my story.”<sup>403</sup> Instead of answering questions and making himself available to discuss the “why” and “what” about his conduct, Hall thwarted the Committee’s requests for his timely cooperation and input. He attempted to manage and control every single request the Committee made of him, while simultaneously probing system witnesses and counsel for information about their dealings with the Committee. In addition, as discussed above, Hall focused intense criticism and pressure from within the UT System on witnesses who have cooperated with the Committee and provided sworn testimony.<sup>404</sup>

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<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> Exhibit 120.

<sup>404</sup> In fact, Hall had doubts from the beginning about the impeachment process, noting “Texas Supreme [Court] said impeachment is to protect the public not to punish an individual, so who is really protecting the public, the politicians or me? I have gained nothing from my service, can the politicians honestly say the same?” *See* Exhibit 120. Later, in the same set of notes, Hall wrote “I believe there are serious questions as to the legitimacy of the impeachment process itself[.] It is clearly an attempt on the part of a few politicians to intimidate me and other members of this board.” *Id.*

**1. Hall Carefully Tracked the Committee’s Investigation.**

Hall used employees of the UT System, the UT System’s outside counsel, and his personal counsel to keep tabs on the Committee’s investigation. His preparation for the investigation began less than a month after the Speaker’s Proclamation. On July 15, 2013, Hall wrote to Frederick and tasked her with gathering “all of the legislative requests that have been made to the System and to the Board.”<sup>405</sup> Hall said he wanted the documents the same day he requested them “in preparation for [his] anticipated appearance” before the Committee.<sup>406</sup> Hall inquired of the UT System’s Vice Chancellor for Government Relations about the Committee’s “plans” prior to the October hearings at which witnesses were first expected to testify.<sup>407</sup>

When witnesses were interviewed by the Committee’s investigative staff, Hall insisted on receiving and received copies of notes from the UT System’s attorneys who attended interviews of Cigarroa, Frederick, Sharphorn, and Holthaus.<sup>408</sup> Hall inquired whether Cigarroa had informed UT Austin staff that UT System representatives “wished” to be present at any interviews with the Committee.<sup>409</sup> If Cigarroa had not conveyed this message, Hall wanted Cigarroa to explain “the rationale for this decision.”<sup>410</sup>

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<sup>405</sup> See Exhibit 98.

<sup>406</sup> *Id.*

<sup>407</sup> See Exhibit 124.

<sup>408</sup> See Exhibits 130, 143 & 172.

<sup>409</sup> See Exhibit 143.

<sup>410</sup> *Id.*

**2. Hall Refused to Timely Comply with the Committee's Request for Documents.**

Notwithstanding the nearly contemporaneous updates Hall received about the Committee's interaction with the System and its employees, he showed little regard for the Committee's requests for information from him. Prior to its first hearing at which fact witnesses would testify, the Committee sent Hall a request for documents.<sup>411</sup> Dated October 9, 2013, the letter detailed categories of information Hall was directed to produce to the Committee within ten days.<sup>412</sup> Many of the requests were tailored to obtain information relevant to witnesses the Committee planned to call at its hearing scheduled for October 22 and 23, 2013.

Neither Hall nor his counsel ever called the Committee or its staff to discuss the scope of the requests, the time it would take him or others to collect the information, or the applicable rules governing such requests. Instead, Hall's counsel sent a letter to the Committee on October 18, 2013 (the Friday before hearings were to be held), lambasting the Committee's investigation and, for the first time since the request issued, informing the Committee that some responsive documents were under review by the System.<sup>413</sup>

Hall's counsel also stated that neither he nor his client would honor the Committee's ten-day deadline.<sup>414</sup> He cited an erroneous contention that the Committee is bound by the Texas Rules of Civil Procedure and Texas Rules of Evidence, which allow

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<sup>411</sup> Letter from Co-Chairs Rep. Alvarado and Rep. Flynn to Wallace Hall (October 9, 2013) at Appendix D (APP 00107).

<sup>412</sup> *See id.*

<sup>413</sup> Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (October 18, 2013) at Appendix D (APP 00119).

<sup>414</sup> *See id.*

parties 30 days to respond to document requests.<sup>415</sup> Hall's interpretation was contrary to House Rule 4, the previous practice of the Legislature, the opinion of the House Parliamentarian, and the plain language of the civil procedure rules and rules of evidence, which make no mention of the Legislature. Nonetheless, Hall persisted and did not produce any documents any sooner than he believed was necessary.

### **3. Hall Refused the Committee's Invitation to Propose Witnesses.**

The Committee's Co-chairs and members repeatedly made clear that Hall was welcome to suggest witnesses that should be called to testify.<sup>416</sup> Moreover, the Committee made three written requests to Hall's counsel during the investigation and hearings to this effect.<sup>417</sup> Rather than embracing this suggestion, Hall's counsel gave the Committee an ultimatum: Hall would not identify any witnesses unless the Committee first provided him advance notice of the witnesses it intended to call.<sup>418</sup>

### **4. Hall Refused to Testify.**

Hall's penchant for control of the investigation proceedings also extended to the subject of his anticipated appearance before the Committee. There was never any question the Committee wanted to hear from him. Committee Co-Chairs Flynn and Alvarado made clear before the Committee began receiving testimony that not only did

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<sup>415</sup> See *id.*

<sup>416</sup> See, e.g., October 22, 2013 Transcript at 50:23 – 51:4 (Rep. Perry); *id.* at 198:1–8 (same); *id.* at 322:4–6 (same); December 18, 2013 Transcript at 5:6–12 (Rep. Flynn). Indeed, Co-Chair Flynn and Representative Larson made it clear as early as July 29, 2013, that the Committee wanted Hall to testify publicly.

<sup>417</sup> Letter from Rusty Hardin to G. Allan Van Fleet (October 15, 2013) at Appendix D (APP 00116); Letter from Rusty Hardin to G. Allan Van Fleet (October 30, 2013) at Appendix D (APP 00136); Letter from Co-Chairs Rep. Alvarado and Rep. Flynn to G. Allan Van Fleet (December 10, 2013) at Appendix D (APP 00202).

<sup>418</sup> Letter from G. Allan Van Fleet to Rusty Hardin (November 4, 2013) at Appendix D (APP 00140).

they want to hear from him, but it was also important to the Committee that Hall have an opportunity to respond to information brought to the Committee's attention. Other members also repeatedly expressed their desire to hear directly from Hall throughout the hearings.

Once the hearings were underway, however, Hall's counsel began qualifying the circumstances under which Hall would be willing and available to appear. Hall would not appear, for example, without receiving a subpoena.<sup>419</sup> Additionally, Hall's appearance would be subject to Hall having adequate notice (as defined by Hall and his counsel).<sup>420</sup> Eventually, Hall provided the Committee with an ultimatum about not only the conditions of his appearance but also the time in which the Committee had to respond.<sup>421</sup>

Ultimately, Hall declined the Committee's invitation for his sworn testimony in a letter from his lawyer.<sup>422</sup> Hall also declined the invitation to speak informally with the Committee's investigators.<sup>423</sup> The letter from Hall's counsel cited the possibility of a criminal investigation, confusion about the Committee's intentions, and the lack of

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<sup>419</sup> See Letter from G. Allan Van Fleet to Rusty Hardin (October 27, 2013) at Appendix D (APP 00133).

<sup>420</sup> See *id.*; Letter from G. Allan Van Fleet to Rusty Hardin (November 4, 2013) at Appendix D (APP 00140); Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (November 7, 2013) at Appendix D (APP 00142).

<sup>421</sup> See Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (December 5, 2013) at Appendix D (APP 00199).

<sup>422</sup> See Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (December 16, 2013) at Appendix D (APP 00209).

<sup>423</sup> See Letter from Rusty Hardin to G. Allan Van Fleet (December 12, 2013) at Appendix D (APP 00207); Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (December 16, 2013) at Appendix D (APP 00209).

reasonable notice as bases for his decision.<sup>424</sup> Hall's counsel did not indicate that Hall would invoke a privilege (*e.g.*, his right under the Fifth Amendment to the United States Constitution) against testifying. Instead—and much like his comments to the press before the Committee's investigation began—Hall's lawyer stated that Hall would be willing to talk at some unspecified time in the future when his client determines the time and circumstances are to his liking.<sup>425</sup> Eventually, as the public hearings phase of the Committee's work ended on December 17, 2013, the Committee Co-Chairs again renewed their invitation to Hall.<sup>426</sup> Hall remained silent.

Given that Hall voluntarily opted not to participate in the proceedings, formally refusing a chance to directly influence the Committee's investigative findings, one would have expected him to merely wait for the conclusion of the investigation. Instead, as discussed in Part IV(c) above, Hall began meddling with the testimony of other witnesses who had appeared and answered questions.

## **V. ANALYSIS OF HALL'S CONDUCT UNDER THE PROCLAMATION AND THE LEGAL STANDARDS FOR IMPEACHMENT**

In order to determine whether investigated conduct would support a proposal of articles of impeachment by the Committee, it is important to set forth the framework, or set of standards, by which the conduct is to be judged. As the Texas Supreme Court explained 90 years ago while repudiating the notion that impeachment powers can be

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<sup>424</sup> See Letter from G. Allan Van Fleet to Co-Chairs Rep. Alvarado and Rep. Flynn (December 16, 2013) at Appendix D (APP 00209).

<sup>425</sup> See *id.*

<sup>426</sup> See Comments by Rep. Carol Alvarado before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 6:16–25.

wielded arbitrarily:

[The Legislature] must ascertain the law by an examination of the Constitution, legal treatises, the common law and parliamentary precedents, and therefrom determine the nature, elements, and characteristics of impeachable offenses, and, in the light of reason, apply the principles so worked out to the facts of the case before it.<sup>427</sup>

The Texas Constitution, statutes, and courts, however, have not specified which conduct warrants the preference of impeachment charges, other than to say that (a) the House “may determine whether one of the people’s servants has done an official wrong worthy of impeachment under the principles and practices obtaining in such cases”<sup>428</sup> and (b) impeachable conduct need not be “statutory offenses or common-law offenses, or even offenses against any positive law.”<sup>429</sup>

The Committee and the House have broad discretion to determine which “principles and practices” govern an impeachment inquiry and whether a subject violated those principles and practices. During the impeachment trial of Judge O. P. Carrillo in 1975, Speaker of the House Bill Clayton explained, “[E]ach member of this body is going to have to make its mind up in its own way, whether or not to vote on the articles of impeachment.”<sup>430</sup> In response to a question of whether the basis of impeachment should be probable cause or truth of or falsity of the allegations made, Speaker Clayton further stated, “I think that after the study of the committee report and after hearing the article debated and after looking at the documents and transcripts of the hearings, that each

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<sup>427</sup> *Ferguson*, 263 S.W. at 890.

<sup>428</sup> *Id.*

<sup>429</sup> *Id.* at 892.

<sup>430</sup> Tr. of Proceedings, *In the Matter of the Report of the Select Committee on Impeachment H.R. 161 – Judge O. P. Carrillo* (1975) at 204–05 (Vol. I).

individual member is going to have to make that determination himself.”<sup>431</sup> Therefore, according to the limited history and authority in Texas, impeachment is a forum where elected legislators can determine, based on their judgment, whether one of their peers in government should be tried to determine continued fitness for office. In other words, aside from the statutory provisions, rules, and other legal authorities set forth and analyzed below, the Committee and, if the Committee recommends articles of impeachment, the full House are authorized to rely on their own reason and judgment to measure Hall’s conduct.

For the purposes of this report, however, Committee counsel relied on the June 25, 2013 Proclamation by the Speaker of the House that initiated Committee action and this investigation as the most informative measure of what constitutes an “official wrong.” As discussed below, the Speaker tasked the Committee with determining whether executive appointees, and university regents in particular, (i) committed acts of misconduct, malfeasance, or misfeasance, (ii) abused their office, (iii) acted with incompetency, or (iv) otherwise failed to act in the best interest of the agencies and institutions they govern. In the context of this investigation, each one of these four areas actually provides a unique standard of conduct.

**A. “Misconduct, Malfeasance, Misfeasance”  
Violations of the Education Code, Penal Code, and  
Federal and State Law Governing Information in Educational Institutions**

Misconduct, malfeasance, and misfeasance are words with slightly different, but related, meanings. *Black’s Law Dictionary* defines “misconduct” to mean “a dereliction of duty, injurious to another,” it defines “malfeasance” as the “wrongful or unjust doing

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<sup>431</sup> *Id.* at 205 (Vol. I).

of some act which the doer has no right to perform,” and it defines “misfeasance” as “doing what a party ought to do improperly.” The common thread to these words is conduct that fails to meet a duty imposed by law or practice. In other words, if the investigation revealed that Hall acted contrary to a law governing or related to his role as a Regent, then the Committee would have grounds to find that he engaged in misconduct, malfeasance, and/or misfeasance.

The Government Code does not define misconduct, malfeasance, or misfeasance, but other State statutes use or define those terms in a way that supports the common dictionary meanings. For example, the Local Government Code defines “misconduct” to mean “intentional, *unlawful* behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law,” expressly including “an intentional or corrupt failure, refusal, or neglect of an officer *to perform a duty imposed on the officer by law.*”<sup>432</sup> Likewise, the Code of Criminal Procedure defines “official misconduct” to mean “an offense that is an intentional or knowing *violation of a law* committed by a public servant while acting in an official capacity as a public servant.”<sup>433</sup>

To warrant a removal from office under State statutes such as Local Government Code Article 87.011, the misconduct must have a relation to the official’s duties. In other words, removal is not justified if the conduct, “[h]owever reprehensible” it may be, is not connected to the discharge of the duties of office.<sup>434</sup> Likewise, Chapter 39 of the Penal

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<sup>432</sup> TEX. LOCAL GOV’T CODE § 87.011(3) (Vernon 2008) (emphasis added); *see also* TEX. LOCAL GOV’T CODE § 21.022(4) (Vernon 2008) (same); TEX. LOCAL GOV’T CODE § 178.001(3)(A) (Vernon 2009) (“‘Misconduct’ means intentionally or knowingly . . . *violating a law* relating to the office . . .”).

<sup>433</sup> TEX. CRIM. PRO. Art. 3.04(1) (emphasis added).

<sup>434</sup> *See Johnson v. City Council of Galveston*, 33 S.W. 150, 152 (1895).

Code, which criminalizes abuse of office and official misconduct, defines “law” in this context to mean “a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant.”<sup>435</sup>

At least three areas of Texas law are connected to the discharge of regental duties. Failure to comply with these laws would therefore constitute “misconduct, malfeasance, or misfeasance.” First, Chapter 51, Subchapter G of the Texas Education Code sets forth statutory duties and responsibilities for higher education governing boards such as the UT System Board of Regents. Education Code Section 51.352 provides, in pertinent part:

It is the policy of this state that the governing boards of institutions of higher education, being composed of lay members, shall exercise the traditional and time-honored role for such boards as their role has evolved in the United States and shall constitute the keystone of the governance structure. In this regard each governing board:

- (1) is expected to preserve the institutional independence and to defend its right to manage its own affairs through its chosen administrators and employees;
- (2) shall enhance the public image of each institution under its governance;
- (3) shall interpret the community to the campus and interpret the campus to the community;
- (4) shall nurture each institution under its governance to the end that each institution achieves its full potential within its role and mission; and
- (5) shall insist on clarity of focus and mission of each institution under its governance.<sup>436</sup>

Second, a number of criminal offenses relate to the performance of public office

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<sup>435</sup> TEX. PENAL CODE § 39.01(1) (Vernon 2003).

<sup>436</sup> TEX. EDUC. CODE § 51.352(a) (Vernon 2012).

such as a UT System regent. The crimes associated with “abuse of office” in Chapter 39 of the Penal Code are discussed more fully below, but any criminal activity rising to the level of “abuse of office” would also be fairly described as “misconduct, malfeasance, or misfeasance.”

Third, a regent would be bound to comply with state and federal laws restricting the use of the type of private and educational information a regent may have access to in the course of his or her duties. The most notable and relevant of these laws is the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. FERPA protects personally identifiable student information and prevents the disclosure of the information without permission of the student or a parent of a student under 18 years old. Personally identifiable student information is defined, in part, as: (1) the name of the student, the student’s parent, or other family member(s); (2) the student’s address; (3) the student’s social security number or other identifier; (4) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty; or (5) other “information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”<sup>437</sup>

It is reasonable to find that FERPA is connected to the performance of regental duties because, according to Francie Frederick, counsel to the Board, all incoming regents, including Hall, receive training and instruction on FERPA.<sup>438</sup> Regents are

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<sup>437</sup> 34 C.F.R. § 99.3.

<sup>438</sup> Frederick Testimony at 65:3–18; *see also* Testimony of H. Scott Caven, Jr. and John Barnhill before the House of Representatives Select Committee on Transparency in

specifically trained on how to handle FERPA material and why disclosure is impermissible.<sup>439</sup>

FERPA’s privacy protections pertain to “education records,” which the law defines as: “records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”<sup>440</sup> FERPA also states that “record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche.<sup>441</sup> FERPA defines “student” as any individual who “is or has been in attendance at an educational agency or institution.”<sup>442</sup> Thus, an “education record” under FERPA includes records that are directly related to current students and former students, while they were applying to or attending the school.

Although FERPA provides no criminal penalties or private right of action for individuals whose education records are publically disclosed,<sup>443</sup> enforcement of the law is handled through funding. The federal government can cut federal money if a school’s disclosures of confidential education records are egregious and the school offers no

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State Agency Operations on December 18, 2013 at 49:5–14 (“(REP. PERRY) But y’all are educated on [FERPA], I guess, about kind of responsibilities in that, or is that something that’s part of the trustee process? FERPA education, do -- is that part of your initiation? (WITNESS BARNHILL) Yes. (WITNESS CAVEN) Yes.”).

<sup>439</sup> See Testimony of H. Scott Caven, Jr. before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 (“Caven Testimony”) at 80:19 – 81:5.

<sup>440</sup> 20 U.S.C. § 1232g(a)(4)(A).

<sup>441</sup> 34 C.F.R. § 99.3.

<sup>442</sup> *Id.*

<sup>443</sup> See *Gonzaga v. John Doe*, 536 U.S. 273 (2002).

remedy for the continued disclosure of records.<sup>444</sup>

There appears to be no case law in which a Texas court, state or federal, interprets or applies the term “education record” under FERPA. The Texas Attorney General, however, has interpreted the FERPA term “education record” as being “broadly defined” to include “records, files, documents and other materials maintained by an educational agency or institution that contain information directly related to a student.”<sup>445</sup> The Attorney General has also concluded that, in Texas, FERPA protects “information” related to “contacts between the university and” and an individual “before he [or she] is enrolled.”<sup>446</sup> The Department of Education, in connection with a request for advice by the Texas Attorney General, has concluded that “education records” can take various forms, such as tape recordings, and can involve discussions about a student’s admission prior to his enrollment.<sup>447</sup>

Another example of a law connected to Hall’s role as a regent is the Texas Public Information Act. The TPIA provides that information maintained by governmental entities, including state funded schools, is public unless the information is deemed “confidential by law, either constitutional, statutory, or by judicial decision.”<sup>448</sup> As Hall

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<sup>444</sup> See *id.* at 288.

<sup>445</sup> Op. Tex. Att’y Gen. No. JC-0333 (2001) at 2. Although they are not binding legal authority, Attorney General opinions are persuasive legal authority and entitled to due consideration, particularly when an issue has not yet been addressed by the courts. See *Comm’rs Court of Titus County v. Agan*, 940 S.W.2d 77, 82 (Tex. 1997); see also *City of Houston v. Houston Chronicle Publ’g Co.*, 673 S.W.2d 316, 322 (Tex. App.—Houston [1st Dist.] 1984, no writ) (holding attorney general opinions should be given great weight).

<sup>446</sup> Tex. Att’y Gen. ORD-539 (1990) at 2.

<sup>447</sup> *Id.*

<sup>448</sup> TEX. GOV’T CODE § 552.101 (Vernon 2013). If a governmental entity is unclear whether information is confidential, it may ask the Attorney General’s office for a

himself acknowledged in private notes, “The TPIA is critical to the people’s right to see and understand what our government is doing.”<sup>449</sup>

Student records are confidential under two separate provisions of the Act:<sup>450</sup> (i) student records at an educational institute, funded wholly or partly by state revenue, are excepted from the Act’s disclosure requirements;<sup>451</sup> and (ii) the Act does not require the release of information contained in “education records of an educational agency or institution, except in conformity with the Family Education Rights and Privacy Act of 1974.”<sup>452</sup> The Act does not define the term “student records,” but the Texas Attorney General has defined that term as “generally includ[ing] information concerning the student himself and his individual relationship to the educational institute.”<sup>453</sup> This includes, but is not limited to: “applications for admission, standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, and psychological

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decision by submitting a letter, and a copy of the information in question, to the Attorney General’s office. *See id.* at § 552.301. The Attorney General’s office will then issue an open records decision, which is public record, in which the Attorney General determines whether the information is confidential or public.

<sup>449</sup> Exhibit 120.

<sup>450</sup> While neither section of the code refers to student records as “confidential,” the title of section 552.114 states: “Exception: Confidentiality of Student Records.” In a February 1, 2014 memorandum, UT System took the position that student records are not confidential. Rather, the UT System asserted that the reference to student records as “excepted” from disclosure is different from a designation of confidentiality. There are no cases, however, that support this assertion. The UT System’s memorandum on student records and Hall’s disclosure relies upon the analysis by Justice Wainwright in his dissenting opinion in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010); however, analysis by the Attorney General’s office indicates that the State views student records as confidential items the release of which may result in criminal prosecution. *See Op. Tex. Att’y Gen. No. JC-0561 (2002) at 6, 8.*

<sup>451</sup> TEX. GOV’T CODE § 552.114 (Vernon 2013).

<sup>452</sup> *Id.* at § 552.026.

<sup>453</sup> Op. Tex. Att’y Gen. No. H-447 (1974) at 2.

tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and reports of behavioral patterns or disciplinary actions.”<sup>454</sup>

In light of the substantial overlap, the Attorney General also considers student records as the equivalent of student information protected by FERPA.<sup>455</sup> The Attorney General’s Office has also opined that certain student records such as LSAT scores are confidential under the doctrine of constitutional privacy and common-law privacy, “which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public.”<sup>456</sup>

In an advisory opinion, the Attorney General has concluded that the distribution of student records by a state agency, if done for a reason other than compliance with a federal law, would constitute disclosure of confidential information under the Act.<sup>457</sup> An individual who distributes the information also could be criminally prosecuted under the Act.<sup>458</sup> A person specifically commits a misdemeanor—punishable by a fine up to \$1,000 and six months confinement in jail—if he knowingly discloses confidential information to a person not authorized to receive it.<sup>459</sup> As with FERPA, it is reasonable to find that compliance with TPIA is connected to the performance of regental duties because, according to Frederick, all incoming regents, including Hall, receive training

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<sup>454</sup> Tex. Att’y Gen. ORD-634 (1995) at 5.

<sup>455</sup> See Tex. Att’y Gen. ORD-34 (1974).

<sup>456</sup> Tex. Att’y Gen. OR2013-14911 (2013) at 10.

<sup>457</sup> Op. Tex. Att’y Gen. No. JC-0561 (2002) at 6, 8–10.

<sup>458</sup> See *id.* at 9–10.

<sup>459</sup> TEX. GOV’T CODE § 552.352(a)–(b) (Vernon 2013).

and instruction on the TPIA.<sup>460</sup>

**B. “Abuse of Office”  
Violations of the Penal Code**

“Abuse of office” is a term of art under Texas statute. Chapter 39 of the Penal Code sets forth a number of criminal offenses constituting abuse of office. Four offenses are relevant to this investigation. Section 39.02(a), “Abuse of Official Capacity,” provides for a Class A misdemeanor against a public servant who intentionally or knowingly “violates a law relating to the public servant’s office or employment . . . with the intent to obtain a benefit or with intent to harm or defraud another.”<sup>461</sup> Section 39.06, “Misuse of Official Information,” provides for a third degree felony against a public servant who engages in any of three different information crimes:

- (a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he . . .
  - (2) speculates or aids another to speculate on the basis of information . . . .
- (b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) has not been made public.
- (c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that: (1) the public servant has access to by means of his office or employment; and (2) has not been made public.

Accordingly, if the investigation revealed that Hall committed any of the offenses above, then the Committee would have grounds to find that he engaged in abuse of office.

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<sup>460</sup> See Frederick Testimony at 65:3 – 65:21.

<sup>461</sup> TEX. PENAL CODE § 39.01(a)(1) & (b) (Vernon 2003).

**C. “Incompetency”  
Violations of Institution Rules and Policy**

*Black’s Law Dictionary* defines “incompetency” to mean “[l]ack of ability, legal qualification, or fitness to discharge the required duty.” The Government Code does not define incompetency in the context of impeachment,<sup>462</sup> but courts and other State statutes use or define that terms in a way that supports and clarifies the common dictionary meaning.

For example, for purposes of statutory provisions relating to removal of county officers, the Local Government Code defines “incompetency” to mean, among other things, gross ignorance of official duties or gross carelessness in the discharge of those duties.<sup>463</sup> Likewise, courts have applied the following definition of incompetency in an action to remove a county judge and four county commissioners from office: “gross ignorance of official duties, or gross carelessness in the discharge of them.”<sup>464</sup>

Under these authorities, a finding of incompetency warranting removal of a public official from office requires more than a mere error in judgment; however, an act may clearly be done honestly and in good faith but still be grossly careless.<sup>465</sup> The difference between misconduct and abuse of power, discussed above, and incompetency is that

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<sup>462</sup> The Constitution of 1869 included a provision where a judge could be impeached or removed by address for “incompetency” upon a vote of “two-thirds of the members elected to each House,” but that language is not in the current Constitution.

<sup>463</sup> See LOCAL GOV’T CODE 87.011(2)(A) & (B) (Vernon 2008); see also *De Anda v. State*, 131 S.W.3d 198, 201 (Tex. Ct. App.—San Antonio 2004) (affirming removal of sheriff from office for incompetency, based on definition tracking Local Government Code provision).

<sup>464</sup> See *State ex rel. Hale v. O’Meara*, 74 S.W.2d 146, 147 (Tex. Ct. App.—San Antonio 1934).

<sup>465</sup> See *De Anda*, 131 S.W.3d at 202.

incompetency does not require a showing of intent.<sup>466</sup> Accordingly, if the investigation revealed that Hall was grossly ignorant or grossly careless in the performance or nonperformance of his duties as a Regent, then the Committee would have grounds to find that he acted incompetently.

The most readily available sources of local regental duties with which to measure Hall's competency are the Texas Education Code and UT System's internal rules and policies regarding Regent conduct. Education Code Sections 65.11 through 65.15 and Sections 65.31 through 65.35 set forth the general parameters, powers, and duties for the Board of Regents; Section 65.16 sets forth the relationship between the Board and UT System executives; and Section 65.45 instructs the Board to promote and expand science and technology in the State by utilizing UT System resources and cooperating with industry to, among other things, own and license technology rights. Several Education Code provisions deserve special mention:

- Education Code Section 65.11 provides, "The board may provide for the administration, organization, and names of the institutions and entities in The University of Texas System in such a way as will achieve the maximum operating efficiency of such institutions and entities . . . ;"
- Education Code Section 65.16(a) provides, "The board shall establish a central administration of the university system to provide oversight and coordination of the activities of the system and each component institution within the system;"
- Education Code Section 65.16(c) provides, "Subject to the power and authority of the board, the chief executive officer is responsible for the general management of the university system within the policies of the board and for making recommendations to the board concerning the organization of the university system and the appointment of the chief administrative officer for each component institution within the system;"
- Education Code Section 65.31(g) provides, "The board by rule may

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<sup>466</sup> See *id.* at 201–202 (citing *Quintanilla v. State*, 56 S.W. 614, 615 (1900)).

delegate a power or duty of the board to a committee, officer, employee, or other agent of the board;”

- Education Code Section 65.45(a) encourages the Board to “promote[] and expand[]” the development and growth of the science and technology industry by, among other things, utilizing UT System research facilities, funding, and personnel; and
- Education Code Section 65.45(b) further directs the Board to (i) make cooperative arrangements with technology partners to “own and license rights to products, technology, and scientific information” and (ii) “carry on and support such other activities as the board may deem appropriate for achieving” development and growth of science and technology in the State.

The Board of Regents also publishes *Rules and Regulations* covering nine areas, including Board governance (Series 10000), administration (Series 20000), personnel (Series 30000), and intellectual property (Series 90000). Regents are required to attend formal training on the *Rules and Regulations* with counsel.<sup>467</sup> At least four Regent Rules are relevant to this investigation.

First, Regents Rule 10403, Section 5, entitled “Communications with Staff and Faculty,” bestows regents with a “responsibility . . . to be knowledgeable in some detail regarding the operations, management, finances, and effectiveness” of the UT System and entrusts regents with the authority to “inform themselves” of this information “as they may deem proper.” But the Rule also provides that the “regular channel of communication” from Board members to the faculty, staff, and administration “is through the Chancellor, the appropriate Executive Vice Chancellor, and the president of the institution involved . . . .” Rule 10403(5) states that regents “are not precluded from direct participation and communication with the presidents, faculty, staff and students of the U. T. System,” and past Board Chairman H. Scott Caven, Jr. testified to the

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<sup>467</sup> See Caven Testimony at 30:22 – 31:9.

Committee that, “as far as gathering information [under this Rule], there are no limitations.”<sup>468</sup> As a matter of Board practice, however, any contacts a regent would have with faculty, staff, or students for information-gathering purposes should be with the knowledge of the Board and Chairman and the spokesperson for such inquiries should be the Chairman.<sup>469</sup> An individual regent should “not act independently of the board.”<sup>470</sup> Good judgment and practice further dictate that the Board refrain from letting information gathering turn into micromanagement.<sup>471</sup>

Second, Regents Rule 10403 §10, entitled “Political or Controversial Matters,” prohibits individual regents from making public statements on controversial topics “which might reasonably be construed as a statement of the official position of the U. T. System or any institution or department thereof” without advance Board approval. Chairman Caven explained that the rule and practice prohibiting commentary and press availability by individual regents is “pretty strict.”<sup>472</sup>

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<sup>468</sup> Caven Testimony at 59:7–8.

<sup>469</sup> *Id.* at 29:14 – 30:1; *see also id.* at 27:24 – 28:3 (“It is certainly appropriate for the regent to have conversations with employees of the system, but it generally is only the board that acts on any particular decision that is made and not any individual regent.”).

<sup>470</sup> *Id.* at 30:1–3; *see also* Testimony of John Barnhill before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 (“Barnhill Testimony”) at 30:5–11 (“I think it was made clear when I became a regent that as far as acting independently, it was not appropriate and also that most things would be better going through the chairman, especially as far as any kind of information that went to the public. It was — it was always the chairman who had that role.”).

<sup>471</sup> *See* Barnhill Testimony at 28:6–13 (“I think the fact that we did have access to the various presidents and, for that matter, the — the various staff members was helpful. But we were never in a position to actually demand something of these people. In other words, it was an information-type thing and they — I think the way I look at it, they — they had enough bosses. They didn’t need us to be telling them what to do.”).

<sup>472</sup> *See* Caven Testimony at 41:20 – 42:11.

Third, Regents Rule 20201, entitled “Presidential Selection,” provides that a president of a component institution is expected to appoint members of the institution’s faculty and staff.<sup>473</sup> Although the Board is responsible for selecting an institution’s president, once he or she is hired, the president (under the “supervision and direction” of the appropriate Executive Vice Chancellor) “has general authority and responsibility for the administration of that institution.”<sup>474</sup> It would therefore be “inappropriate” for a regent to “go around the president” and administrators reporting to the president regarding personnel decisions at a particular UT System campus.<sup>475</sup>

Fourth, Regents Rule 31101, entitled “Presidential Evaluation,” tasks the appropriate Executive Vice Chancellor with the responsibility for evaluating the job performance of presidents of component institutions.<sup>476</sup> The Rules do not provide for public criticism or performance evaluation by a Regent outside of this procedure and without consultation with the Executive Vice Chancellor, approval of the Chancellor, or approval of the Board. As Regent Barnhill explained, “[The Board is] an oversight committee hiring the chancellor to basically have the day-to-day contact with the various presidents. And our primary role is to set policy that the chancellor follows and the president follows.”<sup>477</sup>

If the investigation revealed that Hall acted in gross ignorance of or disregard for any of the rules, regulations, and practices above, then the Committee would have

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<sup>473</sup> Rule 20201 §§ 4.5 & 4.8.

<sup>474</sup> *Id.* at § 4.

<sup>475</sup> See Caven Testimony at 37:24 – 38:8.

<sup>476</sup> See Rule 31101 § 1.

<sup>477</sup> Barnhill Testimony at 26:18–22.

grounds to find that he acted incompetently.

**D. “Best Interest of the Institutions they Govern”**

The June 25, 2013 Proclamation broadly charged the Committee with monitoring the conduct of public officials to ensure that such officers are acting in the best interest of the institutions they govern. This clause provides a catch-all standard with which Hall’s conduct can be measured.

The Proclamation’s “best interest” language is based on the fact that Regents appointed to the Board have a fiduciary relationship with the UT System and its component institutions.<sup>478</sup> Past regents testified that the overriding standard governing the conduct of the Board was whether an action benefits the students and reflects positively on “the University, the System, [and] the State of Texas.”<sup>479</sup> As Chairman Caven explained, “[O]ur board, as well as all boards, are always looking to advance and improve the quality of the institution over which we have responsibility.”<sup>480</sup> Other experts on higher education governance agree.<sup>481</sup> UT System regents are specifically advised that their ultimate responsibility is “to do the best thing possible for the agency

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<sup>478</sup> See Caven Testimony at 71:3–22.

<sup>479</sup> See Barnhill Testimony at 40:2–12 (“I recall so many times that when you talk about who benefitted from a conversation like that, it was always said, ‘What is best for the students and what is best for the tax holders?’ In other words, we — we were concerned about a lot of issues other than just the simple vote, you know, on — on what was on the board. But, ‘How does this benefit the — how does this benefit the student? Will it help us attract more topnotch faculty? What reflection will it have on the University, the System, the State of Texas?’”).

<sup>480</sup> Caven Testimony at 45:4–7.

<sup>481</sup> See, e.g., “Q&A: Former UT System Chancellor William Cunningham talks money, power and politics,” THE DALLAS MORNING NEWS, August 30, 2013 (agreeing that “the most important quality separating outstanding regents from acceptable ones is their ‘willingness to put the UT System ahead of everything but their families.’”).

for which you have charge . . . the institution.”<sup>482</sup>

Intense scrutiny on an issue without a sense of scale or prioritization can be detrimental to higher educational institutions governed by regents, even if the scrutiny is leveled in good faith and the issue would otherwise be of concern. As Regent Barnhill explained, “The staff, the leadership of the system that we’re familiar with is unparalleled, has been unparalleled. And I think there is . . . a need to prioritize. And sometimes things that are not quite as serious as others bubble to the top and perhaps take the attention away -- take the leadership’s attention away from some things that are more serious.”<sup>483</sup>

Chairman Caven framed the same issue as a “responsibility” as a member of the Board:

[I]t our responsibility as a member of the Board of Regents to put forward the best face possible. But I think everything that we’re talking about here is part and parcel of that, full transparency, full discussion, evaluation and weighting of all the issues. But with 70,000 employees and 200,000 students — at least that was the case when we were on the board — we have to depend on the individual institutions, the leadership of those institutions, and the leadership of the system to help us filter what are the critical issues that need to be addressed, because we could not — we are not capable of prioritizing those on our own.<sup>484</sup>

While the Board can and should identify and address concerns and issues, individual regents should not take it upon themselves to “tackle” those issues.<sup>485</sup>

This potential problem is exacerbated when an individual regent “is dictating to employees of the system or of any of the individual components” without the collective

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<sup>482</sup> See Caven Testimony at 71:10–22.

<sup>483</sup> Barnhill Testimony at 56:1–9.

<sup>484</sup> Caven Testimony at 69:21–25.

<sup>485</sup> See Barnhill Testimony at 56:17 – 57:4.

consent or approval of the Board.<sup>486</sup> According to Chairman Caven, such conduct “crosses the line.”<sup>487</sup>

Conduct that casts the UT System or its institutions in a negative light with the State legislature is also not in the best interests of the institution. As past regents confirmed in public hearings, “[T]he responsibility for the administration of any higher education system is granted not by the governor, but by the Legislature.”<sup>488</sup> Accordingly, when a regent inserts himself or herself between the Legislature and a legislative request for information or documents, such conduct “crosses the line.”<sup>489</sup>

In a July 15, 2013 letter to Representative Pitts, Regent Powell defended Hall’s conduct as furthering the best interests of the UT System:

Hall’s efforts extend to bringing the U.T. System into a competitive position nationally; especially related to offering blended and online learning opportunities to U.T. students. I would point out Hall’s excellent service to the Board in terms of time and energy. I appreciate his Board service and his dedication and hard work designed to fulfill his fiduciary obligations.”<sup>490</sup>

The question before the Committee, however, is not whether Hall’s dedication and hard work meet the standards for a Board member. If the investigation revealed that Hall acted to further a personal agenda or an agenda provided by elected and unelected individuals without a direct affiliation with the UT System or its component institutions

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<sup>486</sup> See Caven Testimony at 61:15–23.

<sup>487</sup> *Id.*

<sup>488</sup> Caven Testimony at 57:21 – 58:8. Chairman Caven went on to testify, “And so the Legislature is certainly the ultimate authority with regard to the actions of the Board of Regents.”

<sup>489</sup> See *id.* at 62:24 – 63:2 (“Had I been chairman at the time, I would have had a very serious conversation with such a regent and brought up the matter before the board.”).

<sup>490</sup> Exhibit 99.

rather than to further the best interests of those institutions, then the Committee would have grounds to make findings and recommendations against Hall, including the proposal of articles of impeachment.

**E. Application of Legal Standards to Hall’s Conduct**

**1. Hall’s Requests for Records and Information from UT Austin Were and Continue to Be Grounds for the Committee to Propose Impeachment.**

**a. Misconduct and Abuse of Office**

Representative Pitts’s resolution alleged, among other things, that Hall abused his position as a Regent by (i) “making numerous unreasonably burdensome, wasteful, and intrusive requests for information of certain University of Texas System institutions as a member of the board of regents as well as on his own behalf” and (ii) “giving the incorrect and misleading impression . . . that certain actions taken and requests for information made by him were approved by the board of regents, when in fact the actions taken or requests made were without approval of the board of regents.”<sup>491</sup> The second of these allegations may be true and is undoubtedly bad practice, but communicating a false imprimatur does not violate any law of which undersigned counsel is aware. If proven, however, the first of these allegations could amount to a violation of Education Code Chapters 51 and 65 in connection with the exercise of Hall’s duties as a regent. The first of these allegations also could possibly support a charge of abuse of official capacity under Section 39.02(a) of the Penal Code. Such evidence would support a finding of misconduct and malfeasance, if not abuse of office.

There are a number of undisputed facts known to the Committee about Hall’s

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<sup>491</sup> Tex. H.R. 230, 83rd Leg., 1st C.S. (2013) at 2.

requests for records and information from UT Austin to support Representative Pitts’s first allegation. Hall or his delegates at the UT System have made numerous indisputedly burdensome and intrusive requests for information of UT Austin and UT Austin administrators, beginning in October 2012 and continuing to present. Although estimates of the actual number of pages produced differ, UT Austin has had to hire additional staff and fund the review, appeal, and production of over 1,200 files sought by Hall to the estimated tune of over one million dollars. Hall has not articulated a preexisting legitimate motivation for those requests; rather, the pattern of requests indicates that Hall is using the “ends” of materials discovered in the course of his data mining to justify the “means” of his discovery.

Hall’s conduct is not “expected to preserve [the] institutional independence” of UT Austin, has not “enhance[d] the public image” of UT Austin, and has not “nurture[d]” UT Austin, despite the requirement to do so in Education Code Section 51.352(a)(1), (2) & (4). Nor has Hall’s conduct provided for UT Austin to “achieve the maximum operating efficiency” as required in Education Code Section 65.11. Indeed, Hall’s conduct has achieved—apparently by design—the precise opposite of efficiency.

Moreover, by violating the laws above with the demonstrated intent to malign UT Austin through its administrators, Hall’s conduct could constitute a misdemeanor offense under Penal Code Section 39.02(a)(1), “Abuse of Official Capacity.” Such conduct, therefore, could amount to “misconduct, malfeasance, or misfeasance” as set forth in the Proclamation. This finding would be consistent with the observations of other regents, who, when they learned of Hall’s TPIA requests, called Hall’s actions “an abuse of

power.”<sup>492</sup>

**b. Incompetency**

Even if Hall’s document requests to UT Austin do not amount to “clear[] harassment and an abuse of power” as believed by fellow regents in real time,<sup>493</sup> such actions reflected a gross departure from internal rules and practice. The undisputed facts known to the Committee demonstrate that Hall sought and reviewed documents in person, traveled to the UT Austin campus directly and confronted campus staff regarding his individual document requests, and publicized his ongoing dispute with UT Austin about his frustrations in getting requested documents and suspicions sparked from a review of the documents. Such conduct does not conform with Regents Rule 10403 § 5, 10403 § 10, or the long-standing practice of acting with consensus of the Board.

According to past regents, an individual regent making voluminous document requests on behalf of himself on matters he wants to investigate is “inappropriate” and “not in keeping with the traditions of the Board of Regents.”<sup>494</sup> None of the regents who testified to the Committee or submitted to interviews with Committee counsel had ever encountered a situation where an individual regent made voluminous requests for information from UT System campuses in his or her personal capacity.<sup>495</sup> Indeed, even supporters of Hall have acknowledged that Hall’s “methods were more aggressive and

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<sup>492</sup> See Exhibit 85.

<sup>493</sup> See Exhibit 88.

<sup>494</sup> See Caven Testimony at 31:23 – 32:11.

<sup>495</sup> See, e.g., *id.* at 36:3–11; see also Testimony of H. Scott Caven, Jr. and John Barnhill before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 81:13–24.

intrusive than I would personally prefer.”<sup>496</sup>

Further, Hall not only ignored the Regent Rules and practice regarding document requests and individual action, he actually advocated that those rules be repealed or ignored. While the regents discussed possible changes to Regents Rules, specifically controls that would curtail a regent’s ability to request public records, Hall pushed for the *status quo*—no control over the regents.<sup>497</sup> Hall pushed for specific time frames in which staff had to fulfill a response while, at the same time, he questioned “whether it is appropriate for a [regent] to be required to process information requests through the Chancellor and the Chairman in all instances.”<sup>498</sup> Other regents disagreed with Hall’s approach.<sup>499</sup>

**c. Failure to Act in the Best Interests of the UT System and UT Austin**

None of the past regents who testified before the Committee could think of any circumstance where it would be helpful to, among other things, initiate personal TPIA requests without going through the Board for authorization.<sup>500</sup> Regent Barnhill views such a practice as “disruptive,” particularly if a particular regent is not acting with the consensus of the Board: “[W]hat would happen if you had nine people who decided they wanted to do the same thing, start their own effort to research something independently?”

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<sup>496</sup> See Exhibit 89.

<sup>497</sup> See Exhibit 180.

<sup>498</sup> *Id.*

<sup>499</sup> See Exhibit 140.

<sup>500</sup> See Testimony of H. Scott Caven, Jr. and John Barnhill before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 28:14 – 29:7.

It wouldn't be anything but disruptive."<sup>501</sup> Once others regents learned of the TPIA requests, several of them called Hall's actions "divisive."<sup>502</sup> These findings are inconsistent with conduct promoting the best interest of the institutions Hall governs.

Hall's break from typical regental rules and practice also resulted in public rebuke from the Board's stakeholders. UT Austin student leaders weighed in on the controversy surrounding their campus and its relationship with the Board in November 2013 by passing a vote of "no confidence" in Hall. In a joint resolution, the Senate of College Councils and Student Government passed a resolution condemning Hall and expressing no confidence in his ability to carry out his regental duties.<sup>503</sup> The resolution outlined the student groups' reasoning, drawing from recent testimony to the legislative committee. Hall's "burdensome" data requests, and the possibility that Hall's access to certain data may have violated privacy laws, were motivating factors. The resolution is also noted that the vote was "a reflection of the lack of faith that UT-Austin's students have in him to adequately perform his duties as a Regent." This public repudiation of Hall's competency as a regent presents strong grounds for the Committee to find that Hall did not act in the best interests of UT Austin as contemplated in the Proclamation.

In light of all of these circumstances, the Committee has grounds to propose articles of impeachment arising out of Hall's requests for records and information.

**2. Hall's Improper Use of Confidential Information Was Grounds for the Committee to Propose Impeachment.**

Representative Pitts's resolution alleged, among other things, that Hall violated

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<sup>501</sup> Barnhill Testimony at 33:9–12.

<sup>502</sup> See Exhibit 85.

<sup>503</sup> Exhibit 133.

his official duties and harmed the UT System and its component institutions by “disregarding the processes and procedures of the board of regents concerning the gathering and handling of information from institutions of the system.”<sup>504</sup> In light of the undisputed evidence available to the Committee, this allegation may have been too lenient on Hall. Under federal and state privacy laws, student records—which include FERPA protected information and information concerning a student and his individual relationship to an educational institute—are confidential and are not subject to public disclosure. In fact, the law specifically prohibits the distribution of such records and provides for criminal prosecution of an individual who distributes student records. Hall obtained an e-mail discussing Representative Pitts’s son, which contained confidential student information protected by law. Hall’s admitted and inferred disclosures of that e-mail to, among others, his private attorneys for his own defense violated the law and likely qualify as official misconduct under the law. The disclosures would consequently support a finding by the Committee of both misconduct and abuse of office.

**a. Misconduct and Abuse of Office (FERPA)**

The accidental disclosure of FERPA protected e-mails by either UT System or UT Austin staff to Hall may have violated FERPA, which has strict limitations on when materials may be disclosed to school officials. Hall’s subsequent retention and knowing distribution of the e-mails, however, clearly violated FERPA.

In June 2013, Hall learned from Frederick that he possessed material the UT System thought was FERPA protected.<sup>505</sup> Frederick specifically told Hall that he could

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<sup>504</sup> Tex. H.R. 230, 83rd Leg., 1st C.S. (2013) at 2.

<sup>505</sup> In fact, UT Austin and the UT System continued to treat at least one of the documents as confidential information protected by FERPA through the conclusion of the

not distribute the e-mails to the OAG. Setting aside whether Hall leaked details about the e-mails to newspaper reporters in Dallas and Houston in order to retaliate against Representative Pitts, Hall ignored Frederick and distributed the e-mails to the OAG. Later, when Frederick instructed Hall to return the documents to the UT System, Hall lied to Frederick and told her he had chosen to destroy the e-mails.

In addition, Hall distributed the e-mails to his personal counsel and did not inform Frederick about the distribution. Hall did not offer testimony about why he provided his attorney with the e-mails, but his attorney used them in an attempt to justify Hall's methods after-the-fact. This does not qualify as a legitimate reason to hold and disclose protected student information under FERPA. Frederick and others at UT System learned of the distribution after Hall's counsel publicized the details of the e-mails in a letter that he wrote to the chairs of the Committee and, later, publicized with *The National Review*.

Setting aside whether obtaining and using protected student information for one's personal defense violates other laws such as Education Code Chapter 51, Hall's uncontested violation of FERPA constitutes misconduct and malfeasance as those terms are used in the Proclamation, and the Committee therefore has grounds to recommend articles of impeachment on that topic.

**b. Misconduct and Abuse of Office (TPIA)**

As discussed in Part III(C) above, a record protected by FERPA is automatically considered confidential under the TPIA. Alternatively, because the TPIA is broader in scope than FERPA, information may not be protected by FERPA, but may still be

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Committee's investigation by, among other measures, notifying the affected student about document requests from the Committee to which the information was responsive.

considered a student record under TPIA's broad definition of "student record."<sup>506</sup> For example, the Attorney General's Office has opined that certain student records such as LSAT scores are confidential under the doctrine of constitutional privacy and common-law privacy, "which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public."<sup>507</sup> The first email concerning Representative Pitts's son likely contains enough private information to qualify for additional protection in Texas.

Accordingly, Hall's uncontested conduct constitutes misconduct and malfeasance as those terms are used in the Proclamation, and the Committee therefore has grounds to recommend articles of impeachment on that topic.

**c. Abuse of Office**

Hall's conduct with respect to protected student information is serious enough to implicate two different possible criminal offenses and, therefore, to provide grounds for the Committee to propose articles of impeachment based on abuse of office. First, Hall's disclosure of confidential information violates the Texas Penal Code. Section 39.02(a), "Abuse of Official Capacity," provides for a Class A misdemeanor against a public servant who intentionally or knowingly "violates a law relating to the public servant's office or employment . . . with the intent to obtain a benefit or with intent to harm or defraud another,"<sup>508</sup> and Section 39.06(b), "Misuse of Official Information," provides for a third degree felony against a public servant who, "with intent to obtain a benefit or with

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<sup>506</sup> See Tex. Att'y Gen. OR2013-14911 (2013) at 10.

<sup>507</sup> *Id.*

<sup>508</sup> TEX. PENAL CODE § 39.02(a)(1) & (b) (Vernon 2003).

intent to harm or defraud another, . . . discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) has not been made public.”<sup>509</sup> The undisputed facts known to the Committee support the elements of both offenses.

Based on documents released by the UT System, the testimony of Francie Frederick and Barbara Holthaus, and interviews with UT Austin staff, it appears that Hall received correspondence containing FERPA protected information and personal information about an applicant who also became a UT Austin student in late August 2013.

Hall, counseled by Frederick that at least one e-mail contained information protected by FERPA, distributed copies of the e-mails to at least the OAG and his personal attorneys after Frederick told him not to do so. After Hall distributed the e-mails to his personal counsel, his attorney used that information as a sword by including a detailed description of the e-mails in a letter to legislators that became a public record at his lawyer’s request and was later publicized in the press. The same attorney also provided an interview with *The National Review* in which he discussed the e-mails.

Second, Regent Hall’s distribution of an e-mail containing identifying information about an applicant who became a student at UT may constitute a criminal offense under the TPIA if the e-mail is deemed to be a student record or contains information protected by FERPA. Government Code 552.352(a) prohibits the distribution of public information deemed confidential by constitutional law, state or federal statute, or judicial decision, and permits for the criminal prosecution of individuals who distribute

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<sup>509</sup> TEX. PENAL CODE § 39.06(a) (Vernon 2003).

confidential information.<sup>510</sup> Section 552.352(b) specifically provides for a misdemeanor punishable by a fine of up to \$1,000, a six-month jail term, or both in connection with a TPIA violation.<sup>511</sup> A TPIA violation also constitutes “official misconduct.”<sup>512</sup>

Based upon the evidence and information presently available to the Committee and its counsel, Regent Hall’s conduct violates Section 552.352 of the Texas Government Code. Student records “generally include information concerning the student himself and his individual relationship to the institution.”<sup>513</sup> Such records are excepted from public disclosure and are confidential under the TPIA.<sup>514</sup>

Accordingly, if Hall committed any of the offenses above, including an offense that specifically designates Hall’s actions as “official misconduct,” then the Committee would have grounds to find that he engaged in abuse of office.

**d. The Government Code Does Not Likely Provide a Defense for Hall’s Conduct.**

The UT System has argued that Hall’s misuse of protected information, at least with respect to provision of the documents to counsel, is privileged from criminal sanction under Government Code Section 552.005. That provision states that the TPIA “does not affect the scope of civil discovery under the Texas Rules of Civil Procedure.” The code goes on to say that “exceptions from disclosure under this chapter do not create

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<sup>510</sup> TEX. GOV’T CODE § 552.352 (Vernon 2013); *see also* Op. Tex. Att’y Gen. No. H-447 (1974) at 2.

<sup>511</sup> TEX. GOV’T CODE § 552.352(b) (Vernon 2013).

<sup>512</sup> TEX. GOV’T CODE § 552.352(c) (Vernon 2013).

<sup>513</sup> Op. Tex. Att’y Gen. No. H-447 (1974) at 2.

<sup>514</sup> TEX. GOV’T CODE §§ 552.026 & 552.114 (Vernon 2013).

new privileges from discovery.”<sup>515</sup>

In order to try to fit Hall within the exception provided in the Government Code, UT System counsel likens the Committee’s impeachment investigation to a proceeding that is “judicial in character”<sup>516</sup> and, thus, constitutes litigation. Therefore, the UT System argues, the Texas Rules of Civil Procedure govern the Committee’s proceedings, and Section 552.005 permits the disclosure of the records to Hall’s attorney so he can prepare Hall’s defense and respond to discovery requests. UT System counsel argues that it would lead “to an absurd result were it criminal for an official to provide student records to his or her attorney in the face of litigation, or anticipated litigation, involving those very records.” System counsel further asserts that it is illogical for Section 552.352 to prohibit disclosure of documents to one’s own attorney for compliance with civil discovery requests, or in preparation for litigation, if Section 552.005 permits such acts.

UT System’s analysis, however, presupposes three facts: (i) that Hall is involved in civil litigation governed by Texas’s discovery rules; (ii) that Hall provided the documents to his attorney in preparation for his appearance before the Committee, as opposed to a means of attempting to publically embarrass a visible critic; and (iii) that exceptions do not exist under the Act or civil discovery rules requiring a subpoena for the release of certain records. These presuppositions are not supported by the evidence adduced in this investigation.

Hall’s attorneys and UT System counsel have repeatedly asserted that this

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<sup>515</sup> *Id.* § 552.005(b).

<sup>516</sup> *See* Report to the Committee Regarding Criminal Referral of Alleged Violations by Regent Wallace L. Hall, Jr. Under the Texas Government Code, Section 552.352 (Jan. 13, 2014) at Appendix D (APP 00220).

legislative proceeding is equivalent to litigation. This argument rests on dicta from a 1924 judicial opinion, which states that impeachment proceedings are “judicial in nature.”<sup>517</sup> Additionally, counsel asserts that the Texas Rules of Civil Procedure apply to the present proceeding because of the language in Rule 4, Section 13 of the Texas House of Representatives Rules of Procedure. This rule states that, “[t]he Rules of Procedure of the House of Representatives, *and to the extent applicable*, the rules of evidence and procedure in the civil courts of Texas, shall govern the hearings and operations of each committee, including a calendars committee.”<sup>518</sup> Other than their own conclusions, however, neither Hall’s nor the UT System’s counsel offers legal support allowing for the conclusion that this Committee’s investigation is a judicial proceeding or that the Texas Rules of Civil Procedure apply to the Committee hearings.

There is also no evidence before this Committee indicating that Hall disclosed the education record to his counsel in preparation for discovery requests or for assistance with his defense. Neither Hall nor his attorney testified before the Committee. Hall’s counsel publicly discussed the content of the education records in a highly publicized letter that counsel sent to the Committee and the media. The letter was sent two months before the Committee began hearing testimony or requesting documents from Hall.

Furthermore, as FERPA provisions and advisory letters indicate, a school official’s subsequent disclosures of education records, even if originally obtained with a legitimate education purpose, must be done for the same purpose as when the official obtained the record.<sup>519</sup> There is no exception for a school official’s disclosure of

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<sup>517</sup> *Ferguson*, 263 S.W. at 890.

<sup>518</sup> HOUSE OF REP. R. PROC. 4 § 13 (*emphasis added*).

<sup>519</sup> 34 C.F.R. § 99.33(a)(2).

education records to his attorney for his personal defense. In fact, as the Department of Education noted in its letter to University of New Hampshire officials, if a school official believes that he needs education records for a litigation proceeding or for his legal defense, the official's counsel should subpoena such records from the school.<sup>520</sup>

There is no legal support for the UT System's assertion that the Committee's proceedings are judicial proceedings or governed by the Texas's Civil Rules of Procedure. Similarly, there are no cases on point that hold that a Committee's impeachment investigation constitutes a judicial proceeding. But, even if these proceedings are judicial in nature, under FERPA's regulations, Hall would still need to have his counsel subpoena the record to use in his defense because Hall had no legitimate educational purpose when he originally obtained the record. His purported reason for retaining and releasing the record was not a documented legitimate educational interest provided to university officials before the release of the record. Accordingly, no matter how much credit the Committee seeks to give Hall's side of this particular issue, there remains ample law and undisputed facts supporting the recommendation of articles of impeachment on this subject.

**3. Hall's Actions Toward Cigarroa, Powers, and Hegarty Were Grounds for the Committee to Propose Impeachment.**

Hall's conduct toward witnesses who cooperated with this investigation is deeply disturbing. First, Hall's preoccupation after the hearings with the accuracy of the testimony provided (as he sees it) is an effort to do indirectly what he declined to do directly. Hall could have addressed the accuracy of witnesses' testimony through his

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<sup>520</sup> Department of Education Guidance Letter to the University of New Hampshire, January 1, 2000. See <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/unh.html> (last visited January 22, 2014).

own testimony or the suggested testimony of witnesses he was invited to identify. He did neither.

Second, it is axiomatic that the subject of an official investigation should not seek to influence the sworn testimony of others involved in the investigation. Hall demonstrated absolutely no self-consciousness in his relentless critique and pursuit of people who offered testimony that arguably painted him in an unflattering light. His desire that they be held to account for their supposed inconsistencies, inaccuracies, or inattentiveness to things Hall believed were important crossed a line.

Hall's conduct highlights the very danger this Committee sought to avoid when it repeatedly asked the UT System to refrain from taking employment action against employee witnesses who cooperated with the Committee's investigation.<sup>521</sup> Indeed, Hall paid lip service to this idea in the letter from his attorney declining the Committee's invitation to testify, implying that the Committee should "provide reasonable protections for all participants against retribution for their views."<sup>522</sup>

The UT System has codified this expectation in Policy UTS131.<sup>523</sup> That policy prohibits unlawful retaliation against employees as a consequence of good faith actions in the reporting of, or *the participation in an investigation pertaining to, allegations of wrongdoing.*<sup>524</sup> The policy provides a number of protections, including, "No U.T. System employee shall take any disciplinary or retaliatory action against any

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<sup>521</sup> See Appendix D (APP 00035 & APP 00106).

<sup>522</sup> See Appendix D (APP 00140, APP 00142 & APP 00209).

<sup>523</sup> See <http://www.utsystem.edu/bor/procedures/policy/policies/uts131.html> (last visited March 14, 2014).

<sup>524</sup> *Id.*

individual . . . for assisting in an authorized investigation of alleged wrongdoing.”<sup>525</sup> Hall was aware of this policy. He cited it to Cigarroa when reminding him how to “do his job.”

Hall disregarded the policy when he escalated his criticisms of Cigarroa following his testimony before the Committee. He disregarded the policy when he challenged Cigarroa’s support of Powers’s continued service as President to UT Austin following Powers’s testimony to the Committee. Hall flagrantly disregarded the policy when he sought employment ramifications against Hegarty because of Hegarty’s testimony to the Committee. Accordingly, at the least,<sup>526</sup> Hall’s total disregard of a System policy constitutes incompetence as that term is used in the Proclamation, and the Committee therefore has grounds to recommend articles of impeachment on that topic.

**4. Hall’s Advocacy Before CASE Against the Development Interests of UT Austin May Be Grounds for the Committee to Propose Impeachment.**

The undisputed evidence available to the Committee supports a finding that, even if Hall had a good faith basis to believe that his personal view was correct and was that of

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<sup>525</sup> *Id.*

<sup>526</sup> Hall’s efforts to tamper with the sworn testimony provided by Cigarroa, Powers, and Hegarty could also subject him to criminal liability under Penal Code Section 36.06(a)(1)(A). It is unclear at this time, however, whether the undisputed facts known to the Committee support a finding that Hall unlawfully threatened to “harm” those witnesses as required under that offense. *Cf. Phillips v. Goodyear Tire & Rubber Co.*, 651 F.2d 1051, 1057 (5<sup>th</sup> Cir. 1981) (arguing that employment action in retaliation for pressure to change truthful testimony or to refuse to commit perjury violates Section 36.06(a)) (J. Brown, dissenting). If additional information became available on this point, then Hall’s conduct with respect to witnesses and testimony would be a violation of criminal law, which could also constitute misconduct as that term is used in the Proclamation, and the Committee would also have grounds to prefer articles of impeachment on that topic.

the UT System,<sup>527</sup> the manner in which Hall advocated that view constituted misconduct, incompetency, and a disregard for the best interests of UT Austin and the UT System.

Hall's management of the CASE matter amounts to misconduct because his conduct violated Education Code Sections 51.352 and 65.45. Hall's conduct before CASE personnel was not "expected to preserve [the] institutional independence" of UT Austin, did not "enhance the public image" of UT Austin, and did not "nurture[d]" UT Austin, despite the requirement to do so in Education Code Section 51.352(a)(1), (2) & (4). To the contrary, Hall openly undermined UT Austin before CASE leadership, even though Cigarroa now has explained that the UT System "does not preclude any institution from challenging CASE counting guidelines"<sup>528</sup> and Safady has stated that UT Austin's account of that meeting is accurate.<sup>529</sup>

Likewise, Education Code Section 65.45(a) encourages the Board to "promote[] and expand[]" the development and growth of the science and technology industry by, among other things, utilizing UT System research facilities, funding, and personnel. Section 65.45(b) further directs the Board to (i) make cooperative arrangements with technology partners to "own and license rights to products, technology, and scientific information" and (ii) "carry on and support such other activities as the board may deem appropriate for achieving" development and growth of science and technology in the

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<sup>527</sup> For the purposes of this report, Committee counsel will credit the facts as set forth in Cigarroa's letter and "clarifications" of February 1, 2014, even if the assertions in that letter were not presented in public hearings and are contrary to facts adduced in interviews with other fact witnesses.

<sup>528</sup> Letter from F. Cigarroa to Co-Chairs Rep. Alvarado and Rep. Flynn (Feb. 1, 2014) at Appendix D (APP 00243).

<sup>529</sup> See Exhibit 197.

State.<sup>530</sup> Hall’s internal campaign to “restate[] downward” hundreds of millions of dollars in technology partnership funds with UT Austin appears to be inconsistent with this law.

Hall’s management of the CASE matter also may amount to incompetency because his personal appearance at the CASE meeting under the apparent, but not actual, authority of the Board and the UT System is not in keeping with, among other things, Regents Rule 10403 § 10. That rule prohibits individual regents from making public statements on “controversial matters” without advance Board approval. Chairman Caven explained that the rule and practice prohibiting commentary and press availability by individual regents is “pretty strict.”<sup>531</sup> Nonetheless, Committee counsel has been unable to find any discussion of Hall’s appearance at the CASE meeting in Board materials, much less a vote or note of consensus on the subject.

Finally, even if the Committee credits the stated policy reasons behind Hall’s position on reporting of non-monetary grants (*e.g.*, uniformity and transparency), Hall’s management of the CASE matter did not promote the best interest of the institutions Hall was appointed to govern. To the contrary, Hall’s conduct with respect to CASE reporting requirements has impacted the UT System and UT Austin adversely from both a financial and perception standpoint. For example, the functional moratorium against retaining V&E, even in matters where V&E has offered to contribute legal services *pro bono*, could easily result in the loss of hundreds of thousands of dollars of legal advice historically provided to the UT System.

Likewise, although difficult to quantify, Hall’s public obsession with UT Austin’s

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<sup>530</sup> TEX. EDUC. CODE § 65.45(b)(1) & (b)(4) (Vernon 2012).

<sup>531</sup> See Caven Testimony at 41:20 – 42:11.

approach to capital campaign reporting casts UT Austin in a bad light and damages the UT System's reputation, particularly with potential donors. For example, on April 15, 2013, Hall gave an interview to the *Texas Monthly* in which he was asked if it was fair to characterize the Board as "micromanaging" UT Austin. Hall responded that it was not fair, and he provided the following example regarding CASE:

It was clear to me, once I looked at the numbers, that there was cause for concern [related to non-monetary gifts]. \* \* \* Sometimes there's confusion, and donors' intentions are not always aligned with institutional intentions. We had excelled in the non-monetary category, and we were way ahead of our aspirational peer in raising this. So I asked about it, and it turns out it was a nine-figure gift from Landmark Graphics. It was software, which is critical to our educational component in the Jackson School of Geosciences, for instance. It is a real benefit for us. But the problem is that it doesn't count under the fundraising guidelines. We reviewed the license agreement, and you can see very quickly it doesn't count—it's not a charitable gift. If the University of Texas had had a senior person who had the authority to direct the campaign, I don't believe we would have made that mistake. And I don't believe some of our schools would be lagging so far behind in their goals. \* \* \* [W]hen you back out what was counted that should not have been counted, we fall from third in the country to twelfth in terms of our campaign. So it gives a false sense that we're doing better than we are. From 2007 – 2012, we have had to remove \$216 million in non-monetary gifts based on CASE's guidelines.

Unfortunately, it now appears to be typical for Hall to observe a successful part of the institutions he is obligated to protect, "ask[] about it," and then turn a positive story into a "mistake." Although critical thinking and a desire to improve are positive traits, Hall's approach to governance—especially when it plays out in the media for all to see—is not in the best interest of the UT System and its component institutions. Accordingly, the Committee has grounds to recommend articles of impeachment against Hall with respect to his position as a regent under Government Code Chapter 665.

**5. Hall's Responses to the Appointment Application for Regent Were Incomplete but Not Unlawful, and are Therefore Not Likely to be Independent Grounds for the Committee to Propose Impeachment.**

As an applicant to an appointed position rather than a sworn public official at the time of the investigated conduct, Hall lacked the prerequisite duty to be held accountable under the “abuse of office,” “incompetency,” or “best interest of the institution” standards.<sup>532</sup> The remaining question is whether Hall’s conduct in the application and nomination process constituted “misconduct, malfeasance, or misfeasance” worthy of impeachment.

Representative Pitts has specifically identified Texas Penal Code section 37.10 as one law that he believes Hall may have violated. Section 37.10 addresses the criminal offense of Tampering with a Governmental Record, which is knowingly making a false entry in a governmental record. A “governmental record” includes anything belonging to, received by, or kept by the government for information. It is a defense to prosecution for this misdemeanor offense that the false entry or false information could have no effect on the government’s purpose for requiring the governmental record. A demonstrated violation of this provision of the Penal Code would amount to “misconduct, malfeasance, or misfeasance.”

There are a number of undisputed facts known to the Committee about Hall’s conduct with respect to his appointment application and other submitted materials. Hall

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<sup>532</sup> Hall’s counsel has further argued that Hall’s pre-appointment conduct was outside the scope of this Committee’s jurisdiction in an impeachment investigation. TEX. GOV’T CODE § 665.081 provides that “[a]n officer in this state may not be removed from office for an act the officer may have committed before the officer’s election to office.” It is unclear whether Section 665.081 applies to a situation where, as here, Hall was never “elected to office;” however, because we do not find that Hall’s conduct seeking appointment as Regent presents likely independent grounds for articles of impeachment, we decline to address this argument or any exceptions to it further.

first submitted an application for appointment to Governor Perry's office on January 29, 2008. At that time, Hall was seeking appointment to the THECB. Hall disclosed only two lawsuits in response to an application question seeking information about lawsuits, when in fact there was additional responsive information about lawsuits he did not disclose on the application itself. In a letter accompanying his application, however, Hall specifically noted that application question and his answer, explaining further that he was prepared to provide information about additional lawsuits to the Governor's staff upon request. There is no indication anyone from the Governor's office followed up on this request. Hall asserts that he had conversations with staff from the Governor's office about this issue.

The information about Hall's appointment application for the THECB is relevant to the Committee's investigation of Hall's Regent application for four reasons. First, it provides evidence about Hall's intent. One could conclude from the available evidence that Hall's disclosure should be taken at face value. He did not have enough room on the application itself to disclose all of the lawsuits in which he was involved, he brought this to the attention of Governor Perry's staff, and he offered to provide more information if needed.

On the other hand, one could conclude that Hall's approach to the question about lawsuits is representative of a broader character trait defiantly on display in other aspects of this investigation: Hall decides whether, how, and when he shares information to suit his own purposes even in the face of requirements or practicalities that show he should do so. Regardless of one's interpretation of Hall's motives based upon the available evidence, the record is clear that he voluntarily highlighted this issue for the very people

who were responsible for vetting him. The suggestion that his answer was *knowingly false* is unsustainable for purposes of a criminal prosecution in light of his contemporaneous and accurate statement about the fact that other lawsuits existed.

Second, Hall's apparent interpretation of "material" for purposes of the appointment application differs significantly from the interpretation provided by at least three former appointments secretaries. Huffines, Spears, and Ken Anderson, the Director of the Appointments Office for Governor Perry from October 2001 to March 2008, informed Committee counsel that litigation involving a "material interest" as those terms are used in the appointment application would encompass lawsuits against an applicant alleging fraud or deceit. The Governor's Appointments Office is generally interested in litigation involving allegations that might embarrass the potential office holder or the Governor and/or litigation exposing a potential conflict of interest between the potential appointee and the area or constituents he or she would govern. Hall, however, reportedly viewed "material" litigation based on the amount of financial exposure involved, contrary to the plain language of the application.<sup>533</sup>

Third, there is a continuity of staff who handled Hall's applications for Governor Perry. The same Appointments Manager and Director who oversaw his interim appointment to the THECB in 2008 also oversaw his transition to the Board of Regents in 2011. They retained the application information from 2008 (including the cover letter about other lawsuits) and kept it with his December 2010 application materials. Even though Hall did not submit another cover letter with his updated Appointment

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<sup>533</sup> Brian D. Sweany, *The Wallace Hall Interview*, TEXAS MONTHLY, April 15, 2013; at <http://www.texasmonthly.com/story/wallace-hall-interview?fullpage=1> (last visited March 18, 2014 ("These were not material lawsuits, *in terms of personal value or investment value.*") (emphasis added)).

Application in December 2010, it is reasonable to conclude that the appointments staff was either already aware of or on notice about the fact that other, undisclosed lawsuits existed. Further, testimony from the governor's staff is clear that they did not then and do not now consider his answer on the application to be misleading.<sup>534</sup>

Finally, the information available to Governor Perry's staff about the incompleteness of Hall's response to the litigation question in 2008 was not passed on to the Senate Nominations Committee in 2011, even though Hall's cover letter was still part of the staff's files. The Nominations Committee relied upon the diligence of the Office of the Governor to not only submit qualified candidates for office, but to forward any application information that might be relevant to committee's consideration of the appointee. Hall did not have anything to do with how the information he provided to the governor's staff was parsed or shared with the Senate Nominations Committee. In light of all of these circumstances, Hall's answers to the relevant appointment application question are incomplete, but they are neither unlawful nor a likely independent basis for the Committee to propose articles of impeachment.

**6. Hall's Communication Regarding the UT Austin Football Program Was Improper and Incompetent, But Not Likely to be an Independent Ground for the Committee to Propose Impeachment.**

The undisputed evidence available to the Committee supports a finding that Hall's unauthorized employment-related communications with the agent of a potential new head football coach for one of the UT System's campuses was inappropriate and in conflict with Board rules and practice. Regents Rule 20201 § 4.5 vests the power to "[a]ppoint all members of the faculty and staff" at UT Austin to the President, under the supervision

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<sup>534</sup> See Spears Testimony at 159:6–20.

and direction of the appropriate Executive Vice Chancellor. None of the regents who testified to the Committee or submitted to interviews with Committee counsel had ever encountered a situation where an individual regent had communications regarding athletic recruitment without consulting with the president and athletic director of the affected institution and gaining approval.<sup>535</sup> Chairman Caven explained why:

[I]t's inappropriate for a member of the board of regents to go off — the — the — a football coach or a basketball coach or anyone is responsible to the athletic director or a member of the faculty to the president. Ultimately, the president is the person that makes the decision on those things. And to have a regent go around the president and the athletic director to contact anyone about a football coach would be, in my opinion, totally inappropriate. \* \* \*

[A]cting independently of the board is just an unacceptable practice.<sup>536</sup>

In a statement in September 2013, Sharphorn also acknowledged that Powers should have been notified on behalf of the UT System.<sup>537</sup>

In a prepared statement, Hall defended his actions by explaining that he “notified then-chairman Gene Powell, who then informed vice chairman and athletic liaison Steve Hicks, which resulted in a conference call with Mr. Sexton.”<sup>538</sup> Hall also minimized his role in the conversation, stating, “Introductions were made and then I withdrew from the process.”<sup>539</sup> Even if these statements are true—and at least the second one conflicts with

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<sup>535</sup> See, e.g., Caven Testimony at 37:16–20 & 38:24–25.

<sup>536</sup> *Id.* at 37:24 – 38:8.

<sup>537</sup> Reeve Hamilton, “Hall Said Powers Would Be Gone by Year’s End,” TEXAS TRIBUNE (Nov. 6, 2013) at <http://www.texastribune.org/2013/11/06/hall-said-powers-would-be-gone-end-year/> (last visited March 18, 2013).

<sup>538</sup> Jim Vertuno, “Texas Regent Talked to Saban’s Agent,” APNewsBreak (Sept. 19, 2013).

<sup>539</sup> *Id.*

the written account of Tom Hicks—they miss the point. Hall’s notification of Chairman Powell was not sufficient to discharge his duty to defer staffing matters to President Powers, especially when documents produced to the Committee show that Chairman Powell discouraged the call days before it took place. Indeed, subsequent communications from Hall indicate that Hall still does not understand the respective roles of a regent and campus executive when it comes to “coaching negotiations.”<sup>540</sup>

In addition, Regents Rule 10403 §10 prohibits individual regents from making public statements on controversial topics without advance Board approval. By holding himself out as someone who may have the authority to discuss staffing at UT Austin, maligning President Powers to a third party without advance Board approval, and then speaking to the media about the conversation months later, Hall violated more than one internal rule. Accordingly, Hall’s conduct constitutes incompetence as that term is used in the Proclamation.

That said, witnesses interviewed by Committee counsel seemed to agree that Hall’s rule violation in this instance was not severe. As Sharphorn explained in a statement, “the conversation was very preliminary and short-lived.”<sup>541</sup> It is a stretch to describe Hall’s actions as grossly incompetent under the circumstances; therefore, while the Committee may consider Hall’s conduct as either part of or systemic in other offensive actions, the Committee should likely not recommend articles of impeachment on this topic alone, even if grounds technically exist.

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<sup>540</sup> See Exhibit 149 (“We are being successfully manipulated and utilized as a proverbial rubber stamp. Bill Powers negotiates a contract and/or commitment with a coach or donor, in advance, creating an untenable set of options for this board.”).

<sup>541</sup> Reeve Hamilton, “Hall Said Powers Would Be Gone by Year’s End,” TEXAS TRIBUNE (Nov. 6, 2013) at <http://www.texastribune.org/2013/11/06/hall-said-powers-would-be-gone-end-year/> (last visited March 18, 2013).

**7. Hall’s Zealous Preoccupation with UT Austin and Powers Was Not Likely to Be an Independent Ground for the Committee to Propose Impeachment.**

According to past regents who testified to the Committee and provided interviews to Committee counsel, it is unprecedented for a regent to indicate that the Board was going to get rid of a president at one of the UT System campuses without the concurrence of the entire Board.<sup>542</sup> Publicly airing such a viewpoint would be “inappropriate.”<sup>543</sup> Focusing so much oversight and attention on one of fifteen institutions—much less a handful of administrators at that institution—also does not promote the best interests of the UT System and the other institutions within Hall’s purview.

The agenda to unseat President Powers also runs directly counter to the Committee’s formal requests to the UT System to make no adverse personnel changes to witnesses such as Powers during the course of the investigation. For example, in August 2013, just a few weeks after the Committee’s July 25, 2013 letter asking the Board to take no adverse employment action “absent compelling justification,” Hall told the Board that they were being “held hostage by terrorists” and that firing Powers would only result in a “two-week” reaction that could easily be overcome.<sup>544</sup> Later, several Regents tried to pressure Powers to step down.

Hall’s agenda, even if overly narrow and destructive, however, does not expressly run afoul of the law or internal rules. In fact, Education Code Section 65.32 provides, “The board may remove any officer, member of the faculty, or employee connected with

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<sup>542</sup> See Testimony of H. Scott Caven, Jr. and John Barnhill before the House of Representatives Select Committee on Transparency in State Agency Operations on December 18, 2013 at 74:4–10.

<sup>543</sup> See Barnhill Testimony at 75:18–25.

<sup>544</sup> Exhibit 108.

the system when in its judgment the interest of the system requires the removal.” Therefore, the undisputed evidence available to the Committee would not support a finding that Hall’s preoccupation with Powers constitutes misconduct, abuse of power, or incompetency worthy of an independent recommendation of articles of impeachment.

**8. Hall’s Frustration of the Committee’s Investigative Efforts Was Not Likely to Be an Independent Ground for the Committee to Propose Impeachment.**

Hall has a right to abstain from being a part of the fact-finding process, and, as the subject of the Committee’s investigation, he exercised that right. Some of the reasons he posited for declining the Committee’s invitation to testify are highly dubious. For example, the suggestion that he lacked ample notice to prepare for an appearance before the Committee is undermined by his liberal and questionable use of the public resources at his disposal to track the investigation and receive information about interviews.

Other aspects of his limited interactions with the Committee fall short of an examination of rights and instead provoke questions about his lack of respect for the Committee and the Legislature’s oversight powers. Hall is a public servant who was asked to timely comply with requests for information. Despite his status, he put his own interests and agendas above this investigation and the minimum requirements it imposed on him. Co-Chair Flynn publicly described Hall’s conduct toward the Committee as a “slap in the face.”<sup>545</sup> The Committee chose restraint over its ability to exercise its contempt powers.

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<sup>545</sup> Comments by Rep. Dan Flynn, Hearings before the House of Representatives Select Committee on Transparency in State Operations on December 18, 2013 at 5:13–16.

Hall's disregard for the Committee and legislative process also is exceptionally poor judgment from a regent for an institution that receives millions in appropriations from the Legislature. Counsel is not prepared to conclude that Hall's bad manners rise to the level of impeachable incompetency, however, without evidence that Hall's actions actually resulted in legislation detrimental to the UT System. Accordingly, although Hall undoubtedly put his own interests above the UT System's best interests in navigating the Committee's investigation, the Committee would be hard pressed to punish him for doing so by referring articles of impeachment to the House with respect to this particular conduct alone.

## **VI. SUMMARY CONCLUSION AND RECOMMENDATION**

For the reasons set forth above, the facts presented in the course of the Committee's investigation support the following conclusions:

1. Hall's unreasonable and burdensome requests for records and information from UT Austin provided, and continues to provide, a sufficient basis for the Committee to propose articles of impeachment;
2. Hall's improper use of confidential information provided a sufficient basis for the Committee to propose articles of impeachment;
3. Hall's actions toward Cigarroa, Powers, and Hegarty provided a sufficient basis for the Committee to propose articles of impeachment; and,
4. Hall's advocacy before CASE against the development interests of UT Austin may have provided a sufficient basis for the Committee to propose articles of impeachment.

The facts presented in the course of the Committee's investigation, however, also support the following conclusions:

5. Hall's responses to his appointment applications were incomplete, but they were neither unlawful nor likely to be an independent basis for the Committee to propose articles of impeachment;
6. Hall's communication regarding the UT Austin football program was

improper and incompetent, but not likely to be an independent basis for the Committee to propose articles of impeachment;

7. Hall's zealous preoccupation with UT Austin and Powers is disturbing, but not likely to be an independent basis for the Committee to propose articles of impeachment; and
8. Hall's frustration of the Committee's investigative efforts is not, by itself, likely to be an independent basis for the Committee to propose articles of impeachment.

Counsel concludes that the Committee is therefore authorized and empowered to propose appropriate articles of impeachment against Wallace L. Hall, Jr. for some, but not all, of his investigated conduct pursuant to Texas Government Code Chapter 665. If the Committee chooses to recommend impeachment to the full House of Representatives, then the facts and law would support at least four bases for such a recommendation.