

PUBLIC INSTITUTION

PRIVATE AGENDA

**The University of Texas System's
Campaign for Tuition Deregulation**



A Report Prepared by

UT WATCH

April 2004

Public Institution—Private Agenda:

**The University of Texas System's
Campaign for Tuition Deregulation**

April 2004

UT WATCH

...the eyes of Texas are upon UT!

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Table of Contents

About UT Watch	2
Methodology	2
Introduction	2
Summary of Findings and Recommendations	3
Timeline of UT's Deregulation Campaign 2002-03	5
Timeline of Deregulation Prior to 2002	20
Deregulation was not Inevitable	20
Effects of Deregulation	21
Tuition Deregulation Proponent Myths	21
Campaign for Public Support	22
Using Alumni	22
Profile of the UT System	23
Personal Connections and the Power of Money	23
Mark Yudof: The Public Face of Deregulation	25
Scott, Smith and Martinez: UT System Lobbyists	27
Geanie Morrison and the Texas Conservative Coalition	28
Mark Zafereo	28
Harrison Keller: The Matchmaker of Deregulation	29
What Does the Law Say?	29

About UT Watch:

UT Watch is a student-based watchdog group for the University of Texas at Austin. We promote campus democracy, affordable education, and genuine access to higher education for all Texans. We resist corporate control of education, authoritarian decision-making, and misuse of public money.

Methodology:

In researching and compiling this report, UT Watch used a number of information-gathering and compiling techniques. Through open records requests we were able to obtain itineraries of meetings between UT officials and legislators as well as email correspondence among UT officials regarding tuition deregulation. We also relied on archived newspaper articles, which repeatedly noted that UT officials were lobbying during the 78th Legislature. In addition, the UT System provided us with data through its website.

Using these sources the expectation and hope of this report is to familiarize the reader with how the UT System executed a multi-faceted campaign to achieve its goal of tuition deregulation. Our intention is to create a reasonable interpretation based on information known and presented in order to provide students and the Texas public with an understanding of their university's actions.

Introduction:

“Even before lawmakers convened in Austin in January, University of Texas System Chancellor Mark Yudof was pushing the idea [of tuition deregulation].”
-The Austin-American Statesman 5/26/2003

In the spring of 2003 during Texas' 78th Legislature, House Bill 3015 passed in the regular session's closing days. HB 3015 shifted the authority to set tuition from the Legislature to university governing boards and removed all caps on tuition increases. Tuition deregulation means that the UT Board of Regents, who are appointed by the governor, will have the power to set tuition throughout the UT System, the largest university system in the state of Texas with approximately 170,000 students. Likewise, other Texas university system governing boards have the authority to set their university tuition rates as well.

Before the session began, UT officials, including Chancellor Mark G. Yudof, were arguing in the media and in legislators' private offices for this change in state law¹. UT officials used their authority as public officials to argue for a change in public policy relating to their institution. The change in public policy was not initiated by the public, yet was carried out by officials whose duty is to serve in the public interest.

To clarify: We think all public agencies, including universities, should be driven by implicit "good government" values, such as serving public, not private purposes, using effective strategies, and taxing (or charging tuition and fees) and spending at no higher a level than necessary.

The public purpose of the University of Texas is to the Texas public—service to the students and taxpayers. In this process, private purposes may be legitimately served only to the extent that they contribute directly to the public purpose of serving students and taxpayers. Examples of private interests include the institutional interests of the University of Texas itself, the interests of business, political parties, and individuals such as the Regents who are connected to UT, businesses and political parties.

The power to set tuition has been taken out of the hands of the elected Legislature and has been placed with the Board of Regents, expanding their authority. The Board has expressed an interest in increased autonomy for the UT System and its 15 component institutions in a variety of ways, including tuition. This autonomy translates into an increased role for the Regents and a decreased role for the elected government and its regulatory authority. This autonomy does not translate into more power for students, the faculty, the staff or the public.

One example of decreased public oversight and control of public resources is UTIMCO². In 1996 the University of Texas Investment Management Company, a private non-profit entity, was formed to manage UT's investments, i.e. public money used for public higher education. Overseen and governed by the Regents, UTIMCO has been

¹ Elliot, Janet, "UT Chancellor advocates new ways to pay the bills," Houston Chronicle. December 11, 2002.

² <http://www.utimco.org>

criticized for its mismanagement and cronyism³. It has been implicated in having a role in enriching several of the Regents and their friends. As a private, non-profit, UTIMCO has been able to skirt and escape regulations on public investments in Texas. It also seems that UT hired a private lobbying firm in 1997 to change additional laws regulating the investing of public funds⁴, deregulating the management of public money managed by UTIMCO even more.

Tuition deregulation is already leading to increased rates at UT schools due to the elimination of the regulation of rates. Tuition is posed to increase most significantly at UT-Austin where tuition and fees, as of fall 2002, were higher than better-ranked public schools such as UC-Berkeley, a school that UT-Austin considers one of its peers and rivals⁵. In a Houston Chronicle article Chancellor Yudof said,

If the system gets its way, Yudof said, UT-Austin students could end up paying a total of \$1,000 more a year. Students at the flagship campus now pay about \$4,000 a year in tuition and fees.

"A thousand dollars over 54,000 students is a real lot of money," Yudof said.⁶ (emphasis added)

As a result of deregulation, tuition has increased \$360 dollars in Spring 2004 at UT-Austin, and will increase the same amount again in the fall. These two increases, along with a rise in fees, will constitute a 35% increase in tuition and fees within one year.

Deregulation threatens to create an increasingly differentiated two-tiered system of public higher education in Texas. UT is already unaffordable for much of the middle and lower class⁷ and deregulation will only exacerbate this increasing problem. Tuition deregulation takes the power to set tuition out of the Legislature's hands and moves Texas higher education in the wrong direction.

The Board of Regents, the Chancellor, their governmental relations officials, and others employed in service to the UT System campaigned for and won the passage of legislation for tuition deregulation. This report is an effort to understand this campaign and to highlight concerns students and the public should have with this process and its implications. At the end of the report aspects of the Texas Government Code that UT has possibly violated will be pointed out. UT's lobbying may be illegal.

Summary of Findings and Recommendations

Tuition deregulation—passed in the Texas 78th Legislative regular session and implemented in the fall of 2003—was vigorously pursued by the University of Texas (UT) System. Efforts by UT System employees, ostensibly public servants, set the legislative agenda and skewed the debate in ways antithetical to that of the public interest.

Campaign contributions to key politicians from certain regents gave the UT Board of Regents access that the largely non-contributing public, especially students and parents who disliked the concept of tuition deregulation, did not have. There is a strong correlation between recipients of large contributions and strong support for tuition deregulation.

- The monetary contributions have been large and consistent over several years, reflecting a long-term and persistent courting of legislative favor and the bolstering of a specific political agenda by the Regents and the Friends of the University PAC.
- The timing of contributions to politicians before and immediately after legislative sessions, particularly the 78th Regular Session, suggests that the contributions acted as "access" fees to legislators and political rewards respectively.

³ Ratcliffe, R.G. "UTIMCO records show favors, failures, fortune," Houston Chronicle. October 5, 2002.

⁴ <http://www.jdoner.com/grass.htm>

⁵ UT-Austin in-state tuition and fees for 2002-03 for an average full time student is \$5,340. UC-Berkeley's in-state tuition and fees in 2002-03 for an average full time student is \$4,200. While UT is ranked 15th of National Doctoral Universities by US News and World Report's America's Best Colleges 2003, it is the 5th most expensive for in-state undergraduate tuition.

⁶ Elliot, Janet, "UT Chancellor advocates new ways to pay the bills," Houston Chronicle. December 11, 2002.

⁷ UT Watch report- A 33 year Trend in Tuition and Fees: The Cost of Attending the University of Texas at Austin. 2002. <http://utwatch.org/tuition/tuitionstudy.pdf>

In addition UT System and component institutions' administrations, especially UT Austin, advocated tuition deregulation during the 78th legislature.

- UT System Office of Governmental Relations personnel, UT System Chancellor Mark Yudof and Board of Regents Chairman Miller all spent considerable time at the Capitol advocating tuition deregulation.
- UT curried favor with legislators during numerous, private meetings both inside and out of the Capitol building,
- UT officials drafted and shaped tuition deregulation bills in a direct, active way. Before the session even began UT Chancellor Yudof ordered tuition deregulation bill drafts to be written,
- UT officials wrote and attempted to influence newspaper editorials in support of tuition deregulation.

It is not our argument that UT necessarily committed illegal activities; however their approach and the content of their advocacy are questionable because of their official roles as public servants. What UT is doing is lobbying and this report seeks to document much of it. We suggest that the Attorney General or the Texas Ethics Commission examine the facts—weighing UT's "lobbying" against state laws that prohibit this type of activity. Regardless of the illegality of UT's activities we think they are highly questionable and have led to massive increases in the cost of education. Because of large contributions from the regents and a team of full time professionals presenting the UT System case, the debate in the legislature was skewed toward the interests of the UT System rather than that of the public. Students' interests are rarely heard due to the current lack of a robust state-wide student lobby organization. Tuition deregulation was not inevitable; on the contrary, it was largely a result of behind-the-scenes lobbying from the UT System, check-writing by certain regents and UT drafting and influencing tuition bills in a full-fledged campaign to change state laws and policies.

To deal with problems in university financing, options other than tuition deregulation presented themselves during the 2003 legislative session—increased state support, more tuition flexibility but with a cap, a larger flat increase than the stair-step \$2 method used in the 90s, cost-cutting, etc. Instead tuition deregulation was presented as the only viable choice by university administrators that were surely aware of other options. Even more troublesome is that the solution they offered to university funding troubles is one that increasingly shifts the costs of education to the public in a state that is 20th in spending on education yet the 2nd largest in population.

Possibly one of the most egregious aspects of UT's campaign for tuition deregulation was that although it was mainly pushed by one university system⁸, the UT System, but especially UT-Austin, it affects all public universities in Texas. Basically, the UT System and UT-Austin administration, due to their proximity to the Capitol, political clout, extensive resources, and aggressive agenda, got what they wanted at the expense of all other schools and the public.

- UT Watch recommends that the Attorney General investigate the activities of the UT System Office of Governmental Relations to determine whether it crossed the threshold of acceptable behavior by public officials. Specifically, their activities may constitute lobbying on behalf of the UT System while on the payroll of the state. (see "What does the Law Say" section, p. 29)
- UT Watch recommends that a thorough audit of the UT System and component institutions budgets be conducted by the State Comptroller to examine spending in institutions of higher education and publish the findings publicly. This report should also include a quality assessment stating whether UT is delivering more and of what per dollar—tuition, state and other. The audit should be done with an eye towards "Closing the Gaps" goals⁹.
- UT Watch recommends that the upcoming 79th legislature re-establish tuition caps or establish tuition increase caps to slow the rate of the increase of tuition at Texas universities.

⁸ Other university systems ended up supporting deregulation but were not nearly as influential or aggressive as the UT System in pushing for the legislation.

⁹ This does not necessarily mean we endorse "Closing the Gaps" in toto, but since it has been adopted by the state as a set of guidelines for state higher education then state policies should correspond to the "Closing the Gaps" goals such as increasing enrollment and minority participation.

- UT Watch recommends that the state of Texas undertake a study on the effects of tuition increases on the ability or perceived ability of students of all income strata to attend a range of different public universities in Texas, especially the University of Texas-Austin, being the most expensive flagship public university in Texas. This study should also consider the ethnic backgrounds of students to determine if there is a disproportionate and/or differential shift in access to higher education, especially to UT-Austin, away from minority groups due to recent increases in the cost of education. There is a threat that tuition deregulation will cause a two-tiered system (or its exacerbation) of higher education in Texas: high quality universities for the rich and lower quality for everyone else.
- UT Watch recommends that students develop their own independent political network across the state of Texas to insure that their interests are heard.

Timeline of UT's Tuition Deregulation Campaign 2002-03

August 2002

8/5 Regent Hunt contributes \$25,000 to Governor Perry (R) (Texas Ethics Commission).

8/7-8/8 The Board of Regents presents their *Selected Issues for the 78th Legislature*. In the BOR minutes from their meeting,

Vice Chancellor Scott stated that the University will pursue the adoption of “deregulation remedies”, having identified 53 potential issues for deregulation.

Chairman Miller identified a key ingredient of deregulation as the freedom to set pricing such as tuition and fees and requested this be included in discussions on deregulation.

Some of these “deregulation remedies” for the UT System are tuition deregulation and indirect cost recovery.

8/13 Regent Riter (deceased) contributes \$500 to Dewhurst (R) (Texas Ethics Commission).

September 2002

9/30 Miller contributes \$5,000 to the Republican Party of Texas (Texas Ethics Commission).

Hunt contributes \$10,000 to the Republican Party of Texas (Texas Ethics Commission).

October 2002

10/2 Miller contributes \$1,000 to Senator Kyle Janek (R), who sits on the Senate Subcommittee for Higher Education (Texas Ethics Commission). NOTE: Janek votes for HB 3015 in the spring.

10/3 Miller contributes \$500 to Senator Van de Putte (D), who sits on the Senate Subcommittee for Higher Education (Texas Ethics Commission). NOTE: Van de Putte does not vote for HB 3015.

10/13 Riter contributes \$1,000 to Governor Perry (R) (Texas Ethics Commission).

10/14 Miller contributes \$25,000 to Governor Perry (R) (Texas Ethics Commission), who supports tuition deregulation in his State of the State address in February 2003.

10/18 Miller contributes \$500 to Perry (R) (Texas Ethics Commission).

10/21 Hunt contributes \$5,000 to Dewhurst (R) (Texas Ethics Commission).

10/25 Riter contributes \$250 to Senator Shapiro (R) (Texas Ethics Commission), Chair of the Senate Education Committee and author of one of the tuition deregulation bills. She votes for HB 3015.

10/30 Chancellor Yudof and Tom Scott have a meeting with Representative Hill (R) and then with Senator Shapiro (R) (Yudof itinerary 10/30/02).

Wednesday, October 30	
Private Appointment	
T - UT Component Visit (Dallas)	
7:00am	Michael Warden to pick up Chancellor at Nakonah
7:30am	8:30am System plane departs Austin for Dallas - UTD campus visit
9:00am	2:00pm UT Dallas meetings
2:00pm	Tom Scott to drive Chancellor to 2:15 appointment in Richardson
2:15pm	3:15pm Tom Scott and Rep. Fred Hill
3:45pm	4:45pm Tom Scott and Florence Shapiro
6:30pm	7:00pm Hotel conderge to call taxi to drive to Osbornes (per Judy)
7:00pm	9:00pm dinner with Osbornes, Charles Miller, Ruth & Ken Altshuler (at the Osbornes)
yudof, c	
6	

November 2002

11/11 Yudof directs Vice Chancellor and General Counsel of the UT System Cullen Mike Godfrey to draft "a bill giving the Board of Regents full discretion to set tuition by campus" (Holly Wright email 11/13/02).

Wright, Holly

From: Frederick, Francie
Sent: Wednesday, November 13, 2002 4:38 PM
To: Martinez, Art; Wright, Holly
Subject: FW: Drafting of Bills for Upcoming Session
Importance: High

fyi
 -----Original Message-----
From: Mark Yudof [mailto:myudof@utsystem.edu]
Sent: Monday, November 11, 2002 5:51 PM
To: Cullen (Mike) Godfrey
Cc: tsullivan@utsystem.edu; tscott@utsystem.edu; FFrederick@utsystem.edu
Subject: Drafting of Bills for Upcoming Session
Importance: High

While there are still many unsettled matters, I think we should begin drafting bills on retention of indirect costs and deregulation (from the GC draft on this subject), including tuition. Tom Scott and I are working on integrating an indirect cost proposal with the excellence funding, but we also should have a stand-alone bill--just in case. On tuition, I may have some more nuanced proposals down the line, but for now I would like a bill giving the Board of Regents full discretion to set tuition by campus. MGY

 Mark G. Yudof
 Chancellor
 The University of Texas System
 601 Colorado Street
 Austin, Texas 78701
 Phone: 512/499-4201 Fax: 512/499-4215
 E-mail: myudof@utsystem.edu

11/19 Chancellor Yudof has dinner with Senator Zaffirini (D) at Headliners. (Yudof itinerary 11/19/02) Note: Zaffirini votes yes on HB 3015 in May 2003, unlike most Democratic Senators- Senate votes on HB 3015 Democrat - YES: 2 (15%), NO: 10 (77%)¹⁰

December 2002

12/5 Miller contributes \$5,000 to Speaker of the House Craddick (R) (Texas Ethics Commission). Note: Tom Craddick adamantly supported tuition deregulation.

12/10 Executive Director of the UT System Office of Public Affairs Michael Warden and Yudof meet with the Houston Chronicle Editorial Board (Yudof itinerary December 09-15 2002). According to the Houston Chronicle website, "this board formulates the editorial policy of the *Houston Chronicle*."¹¹

12/10-12/11 Board Chairman Charles Miller and Chancellor Mark Yudof publicly declare their support for tuition deregulation in newspapers, including the *Houston Chronicle*. Simultaneously Yudof's Texas Compact plan is introduced.

12/11 Hunt contributes \$5,000 to Dewhurst (R) (Texas Ethics Commission).

12/12 Yudof and Warden have an interview with Dallas TV WFAA news; Yudof unveils tuition deregulation plan (Yudof itinerary 12/12/02).

Senator Ogden (R) states his opposition to tuition deregulation (*Houston Chronicle* 12/12/03).

12/13 At a Board of Regents meeting, Yudof "explains that he is not in favor of the deregulation of tuition but is in favor of local control of tuition by the Board of Regents" (Board of Regents minutes 12/13/02). These are essentially the same things since they both denote a shift in tuition-setting authority from the legislature to the Regents.

Also at this meeting the Regents and Yudof plan their legislative strategy for the spring. Miller states that the primary concern of the meeting would be tuition deregulation (The Daily Texan 12/12/03).

12/14 Hunt contributes \$2,000 to Craddick (R) (Texas Ethics Commission).

January 2003

1/13 Yudof, Tom Scott and Ashley Smith travel to Texas State University System offices (Yudof itinerary 1/13/03).

Smith also meets with officials from the University of Houston System (Smith itinerary 1/13/03).

Smith goes to Legislative Ladies Club Black Tie and Bluebonnets Dinner Dance (Smith itinerary 1/13/03). The Legislative Ladies Club is composed of wives of Texas Legislature members and includes Nadine Craddick, wife of Tom Craddick (R).¹²

1/14 Yudof attends "Stars Over Texas Celebration honoring Nadine and Tom Craddick" at the Driskill Hotel (Yudof itinerary 1/14/03).

Smith also attends (Smith itinerary 1/14/03).

¹⁰ <http://utsapso.org/index.php?showtopic=123&st=0&#entry341>

¹¹ http://webadv.chron.com/ads/ads_i/insidestory/editorial_board.html

¹² <http://www.uthscsa.edu/opa/releases/nrel25Mar03.htm>

Marcus Wilson, President of the Texas Association of Student Financial Aid Administrators, states that Yudof is using the Texas Compact as a political carrot to get legislators to approve tuition deregulation (The Austin-American Statesman 1/15/03).

1/15 Yudof and Warden attend San Antonio Editorial Board meeting (Yudof itinerary 1/15/03).

Smith meets with Representative Stick (R) in Yudof's office (Smith itinerary 1/15/03). Stick votes for HB 3015.

1/17 Yudof has an interview with the *Austin-American Statesman* (Yudof itinerary 1/17/03).

1/20 Smith attends Lt. Governor Dewhurst's (R) Pre-inaugural Reception, which is held at the UT Club in the Darrell K. Royal-Texas Memorial Stadium (Smith itinerary 1/20/03).

1/21 Smith spends his entire day attending the inauguration activities of the Texas Legislature (Smith itinerary 1/21/03). These include

- Governor's Prayer Service at First United Methodist Church
- The Inauguration at the South Steps of the Capitol
- Inaugural Barbecue, West Grounds of the Capitol
- Inaugural Luncheon at the Driskill Hotel
- Inaugural Parade
- Inaugural Ball at the Austin Convention Center
- Post-inaugural Ball Champagne and Dessert Party at the Four Seasons Hotel

Smith also goes to a Chancellor's meeting at the Texas State University System offices.

1/22 Smith meets with Senator Florence Shapiro (R), an author of one of the three tuition deregulation bills (Smith itinerary 1/22/03).

Smith also attends a "Bill and Amendment Drafting Meeting" at the UT System offices.

1/28 Craddick (R) calls for tuition deregulation (The Austin-American Statesman 1/29/03).

1/29 Smith attends a meeting of the Senate Finance Committee (Smith itinerary 1/29/03).

1/30 Yudof and Smith meet with Representative Wilson (D) (Smith itinerary 1/30/03). Note: Ron Wilson does not vote for HB 3015.¹³

Yudof and Smith meet with Senator Shapiro (R).

February 2003

2/3 Yudof and Smith meet with Representative Hill (R) (Smith itinerary 2/3/03). Hill is absent for the ultimate vote on HB 3015.

Smith has dinner with Dewhurst (R) at Fleming's.

2/4 Smith meets with Representative Wooley (R) (Smith itinerary 2/4/03). Wooley votes yes on HB 3015.

2/5 Miller and Smith eat dinner with Dewhurst (R) in the Capitol (Smith itinerary 2/5/03).

Smith meets with Senator West (D). West votes 'no' on HB 3015.

¹³ <http://utsapso.org/index.php?showtopic=123&st=0&#entry341>

2/6 Tom Scott, Yudof and Smith meet with Representative Morrison (R) (Smith itinerary 2/6/03). Morrison is the author of HB 3015.

2/10 Smith meets with Senator Ogden (R) (Smith itinerary 2/10/03). In December 2002, Ogden publicly opposed tuition deregulation (Houston Chronicle 12/12/2002). He also sits on the Senate Committee on Education. Although he opposed deregulation he votes for HB 3015 in June.

2/11 Yudof joins “Speaker Craddick in calling for tuition deregulation” (Holly Wright email 2/11/03).

Smith participates in the Orange Maroon Day (Smith itinerary 2/11/03).

Perry calls for tuition deregulation in his State of the State address¹⁴.

2/12 Smith meets with Senator Todd Staples (R), member of the Senate Subcommittee on Higher Education (Smith itinerary 2/12/03).

2/13 Scott and Smith meet with Representative Morrison (R) (Smith itinerary 2/13/03).

2/17 Smith meets with Senator West (D), chair of the Senate Subcommittee on Higher Education (Smith itinerary 2/17/03).

2/18 Smith meets with Senator West (D) (Smith itinerary 2/18/03).

Yudof has a closed-door meeting with UT-Austin student government leaders. UT Watch asks for the meeting to be opened to ‘all interested students’ (The Austin-American Statesman 1/19/03).

2/19 Yudof testifies before House Appropriations Subcommittee on Education.¹⁵

2/20 Smith meets with US Senator Hutchison (R) (Smith itinerary 2/20/03). The next day Hutchison publicly supports tuition deregulation, tethering it to her goal of higher research funding at Texas universities-

"I want our best and brightest students to want to go to a Texas university instead of to an out-of-state university because they know they will get the best education, but to do that we have to be able to charge more for the education that people are getting." (*Daily Texan* 2/21/03)

2/21 Scott and Smith meet with Senator Bivins (R) (Smith itinerary 2/21/03).

Smith meets with Representative Morrison (R).

2/24 Smith meets with Representative Heflin (R) (Smith itinerary 2/24/03). Heflin votes for HB 3015.

2/25 Smith meets with Senator Ratliff (R) (Smith itinerary 2/25/03). Ratliff votes for HB 3015.

Smith has lunch with Harvey Kronberg who runs the Quorum Report.

March 2003

3/5 Yudof meets with Senator Harris (R) (Yudof ininerary March 03-09 2003). Harris votes yes on tuition deregulation in May.¹⁶

Carlos Martinez emails Tom Scott and Ashley Smith on Senator Bivin’s (R) interest in “carrying a tuition deregulation bill” and wants them to meet with Bivins (Carlos Martinez email 3/5/03). Bivins does not carry a deregulation bill. He does vote yes on HB 3015.

¹⁴ <http://www.uh.edu/admin/media/topstories/2003/aas/200302/20030213tuition.html>

¹⁵ <http://www.utsystem.edu/news/2003/YudofTestimony-EdSubcommittee02-19-03.html>

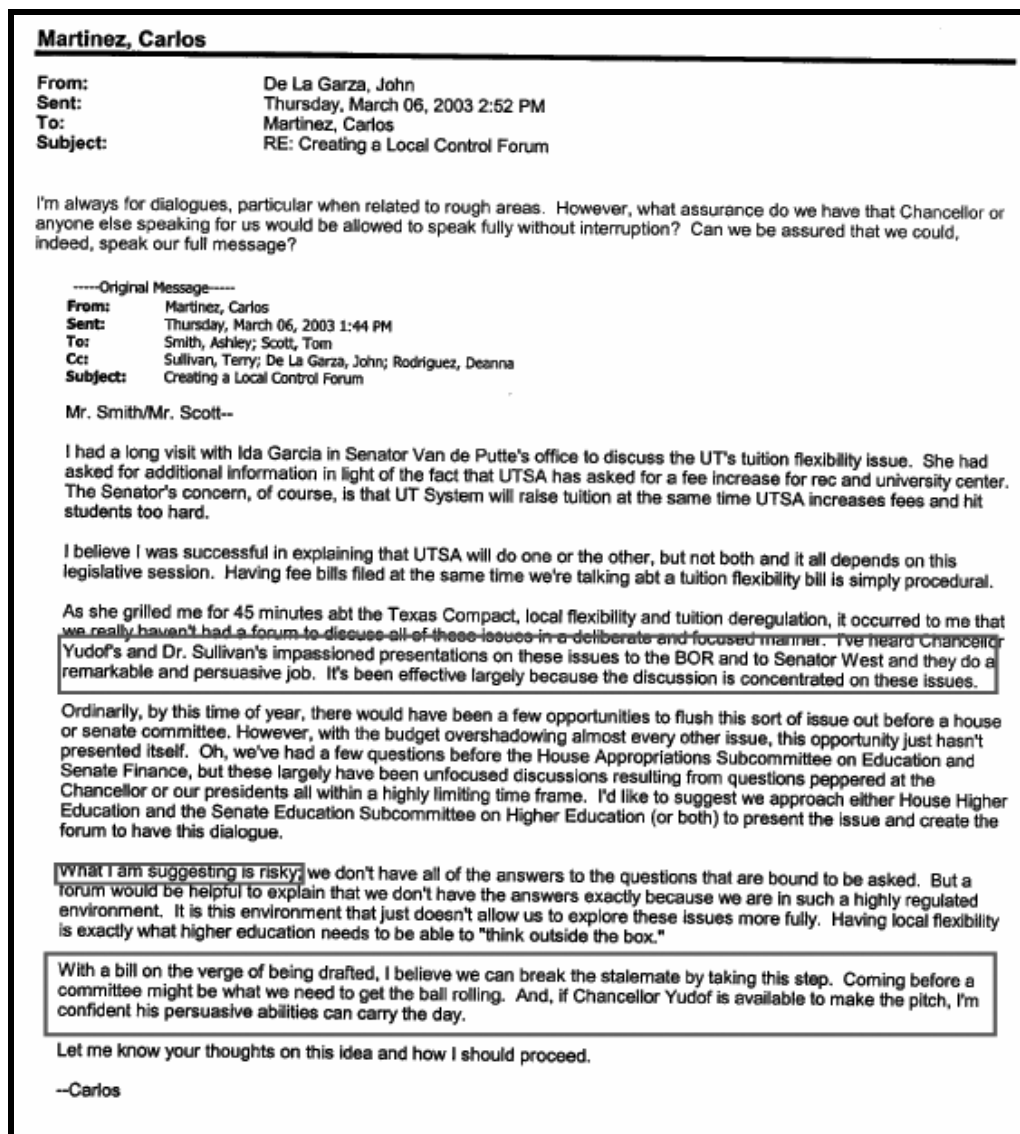
¹⁶ <http://utsapso.org/index.php?showtopic=123&st=0&#entry341>

Yudof and Miller have dinner with Bivins (R) that night at Jeffrey's (Yudof itinerary 3/5/03).

Smith meets with Senator Harris (R). Harris votes yes on HB 3015.

3/6 Yudof meets with Representative Morrison (R-Victoria), author of the tuition deregulation bill, at Victoria Country Club for a meeting with the Victoria Texas Exes (Yudof itinerary March 03-09 2003).

In an email to UT Office of Governmental Relations officials, Carlos Martinez proposes a "local control forum" with the House Higher Education Committee and the Senate Subcommittee on Higher Education to "get the ball rolling" and "break the stalemate" on tuition deregulation. Although the UT System "don't have all of the answers to questions that are bound to be asked", Carlos Martinez believed that "if Chancellor Yudof is available to make the pitch, I'm [Martinez] confident his persuasive abilities can carry the day" (Carlos Martinez email 3/6/03).



3/7 Yudof attends and testifies at a Senate Finance Committee hearing¹⁷. He is shot down by senators on that committee.

"You [Yudof] spoke much more passionately about your feelings on tuition deregulation than the real clear picture of taking one-sixth of your proposed budget and cutting it," [Senator] Whitmire said.

¹⁷ <http://www.capitol.state.tx.us/tlo/78R/witmtg/C5402003030708001.HTM>

"You're either awful fat and got a lot to cut, which some in this building believe, or you didn't do a very good job to clearly help me during the (budget) markup to fight for your university. I'm going to give you another chance because I'm totally unimpressed." (The Austin-American Statesman 3/8/03)

Yudof and Smith meet with Representative Naishtat (D) (Yudof itinerary 3/7/03). Naishtat votes No on HB 3015 in May.¹⁸

3/10 Yudof and Smith meet with Senator Shapiro (R), Comptroller Strayhorn (R) and Senator Bivins (R) (Yudof itinerary 3/10/03).

Yudof meets with the Chancellor of the Texas State University System (Yudof itinerary 3/10/03).

3/11 Yudof and Smith meet with Senator Bivins (R) (Smith itinerary 3/11/03).

Smith has dinner with Dewhurst (R) at Eddie V's.

3/12 Miller and Smith meet with Senator West (D) (Smith itinerary 3/12/03).

Miller and Smith meet with Senator Barrientos (D). Barrientos votes no on HB 3015.

Miller and Smith meet with Representative Woolley (R). Woolley votes yes on HB 3015.

Martinez emails Smith about Representative Van Arsdale's (R) tuition incentive bill (Carlos Martinez email 3/12/03). Content of the emails is deleted because of section 552.106 of the Public Information Act, which deals with "A draft or working paper involved in the preparation of proposed legislation"¹⁹.

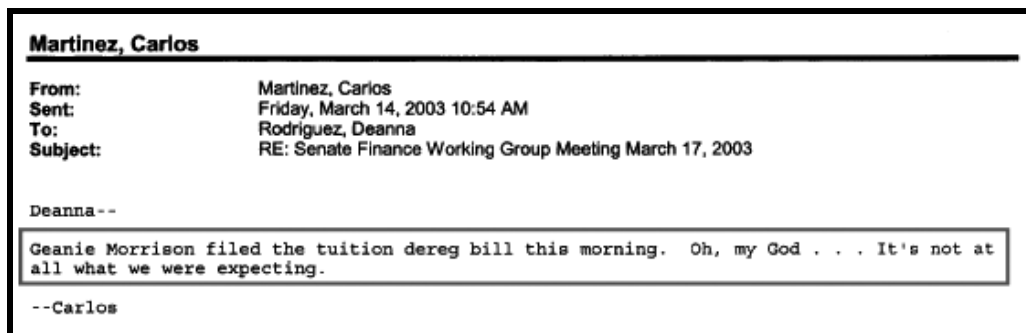
Morrison (R) states that her deregulation bill was shaped by universities-

"Geanie Morrison, R-Victoria, chairwoman of the House Higher Education Committee, refused to give details of the bill she will file this week. She said she has met with university officials and her bill would reflect their needs." (The Austin-American Statesman 3/12/03)

3/13 Smith meets with Senator West (D) (Smith itinerary 3/13/03).

3/14 Rep. Morrison (R) filed HB 3015, the tuition deregulation bill²⁰.

UT System Assistant Vice Chancellor for Governmental Relations and Academic Affairs Carlos Martinez emails Associate Vice Chancellor for Community Relations and Executive Associate to the Chancellor for Strategic Communications Deanna Rodriguez and states, "Oh, my God...It's not at all what we were expecting", referring to Morrison's original bill (Carlos Martinez email 3/14/03).



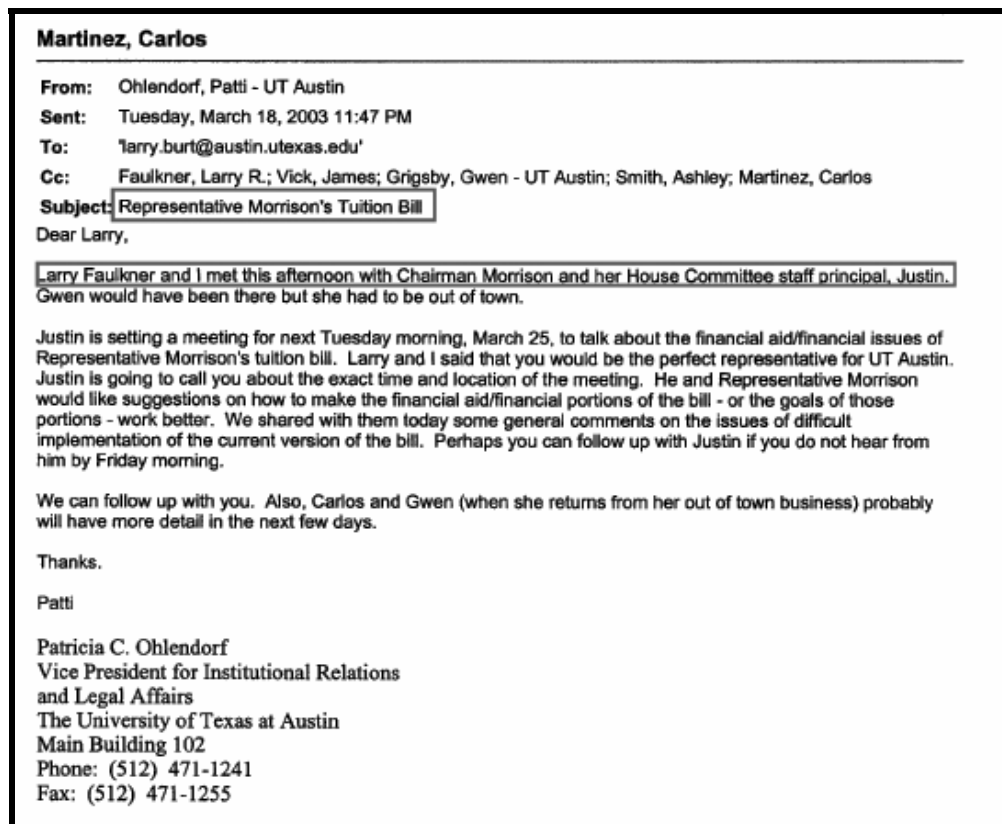
¹⁸ <http://utsapso.org/index.php?showtopic=123&st=0&#entry341>

¹⁹ <http://www.capitol.state.tx.us/statutes/go/go0055200.html#go029.552.106>

²⁰ <http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/actions.d2w/report?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=03015>

3/17 Smith meets with Senator Harris (R) (Smith itinerary 3/17/03).

3/18 UT-Austin President Larry Faulkner and UT-Austin Vice President of Institutional Relations and Legal Affairs Patricia C. Ohlendorf meet with Rep. Morrison (R) and her House Committee staff principal (Carlos Martinez email 3/18/03).



Miller and Smith meet with Representative Morrison (R) (Smith itinerary 3/18/03).

Smith has dinner with Harvey Kronberg.

3/19 Smith has dinner with Senator Ratliff (R) at Eddie V's (Smith itinerary 3/19/03).

3/21 Gwen Grigsby, Associate Vice President for Government Relations for UT-Austin, forwards information on the Student Lobby Day Against Tuition Deregulation, organized by UT Watch, to UT System Office of Governmental Relations personnel- Tom Scott, Carlos Martinez, Roger Starkey, Brian Jammer, Ashley Smith (Carlos Martinez email 3/21/03).

Martinez states in an email to Smith and Scott that Morrison's bill was crafted by the advice of many people, specifically Governor Perry and Craddick's offices (Carlos Martinez email 3/21/03).

Martinez, Carlos

From: Martinez, Carlos
Sent: Friday, March 21, 2003 8:21 AM
To: Smith, Ashley; Scott, Tom
Cc: Starkey, Roger; Jammer, Brian; Breckner, Toni; Cone, Blythe
Subject: HB 3015 - Tuition Flexibility Bill

Mr. Smith/Mr. Scott--

I spoke with Justin Unruh in Chairwoman Morrison's office abt the background on HB 3015. He said the bill was crafted with the guidance of many people. He specifically mentioned advice received from the Governor's and Speaker's offices.

He also said that this bill was crafted with four principles in mind:

- * The bill had to guarantee a certain measure of flexibility for institutions to set tuition rates.
- * The bill also had to address accountability measures that would provide information on accessibility.
- * The bill had to include a measure that would provide predictability of cost for families.
- * The bill also must insure affordability.

He suggested that these principles would continue to guide Chairwoman Morrison's decisions.

--Carlos

3/24 Yudof and Smith have dinner with Senator Shapiro (R) at Eddie V's (Smith itinerary 3/24/03).

Yudof and Chancellors from five other major Texas university systems meet with Dewhurst and Shapiro (*The Battalion* 3/24/03).

3/25 Scott and Smith meet with Representative Morrison (R) (Smith itinerary 3/25/03).

3/26 Smith has dinner with Senator Ratliff (R) at Eddie V's (Smith itinerary 3/26/03).

HB 3015 is read for the first time and referred to the House Committee on Higher Education.

April 2003

4/7 Kate Moore, a policy analyst for the Senate Committee of Education (chaired by Shapiro), emails out an outline of "Senator Shapiro's intention in preparing a committee substitute for her tuition flexibility bill" to Jack Morton who then sends it out to officials at several university systems (Carlos Martinez email 4/7/03). Outline attached to email was not included in Open Records obtained by UT Watch.

Martinez, Carlos

From: Martinez, Carlos
Sent: Monday, April 07, 2003 1:46 PM
To: Scott, Tom; Smith, Ashley; Sullivan, Terry; Kerker, Mike; Wallace, Randy; Grigsby, Gwen - UT Austin; Burt, Larry - UT Austin
Subject: FW: Tuition Flexibility Bill Draft

-----Original Message-----
From: Jack Morton [mailto:jmorton@unt.edu]
Sent: Monday, April 07, 2003 1:21 PM
To: gcampbell@palosalto.uh.edu; Grigsby, Gwen - UT Austin; irishmike@tamu.edu; I-deviney@tamu.edu; s-calvert@tamu.edu; Diane.Corley@tsus.edu; martha.brown@ttu.edu; lcalfee@uh.edu; Martinez, Carlos
Subject: Re: Tuition Flexibility Bill Draft

I have attached a memo I just received from Kate Moore (in word perfect) which she says outlines Senator Shapiro's intentions in preparing a committee substitute for her tuition flexibility bill. She asked that I forward it to everyone for review and comment. She said she would be around her office all afternoon. She did not indicate whether the substitute would be offered tomorrow.

Jack

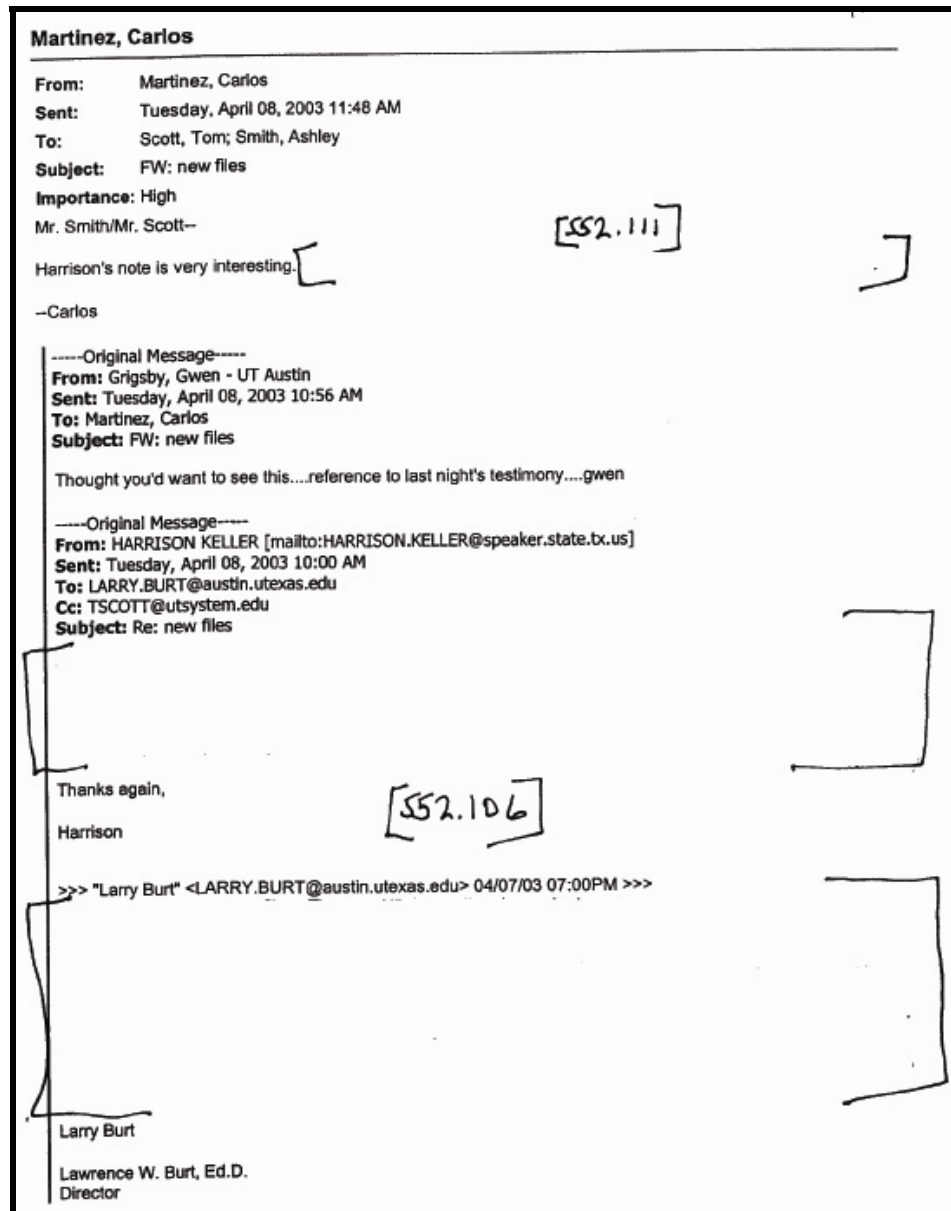
Students and other interested persons testify in committee on HB 3015. There is unanimous opposition to the bill except for Mark Zafereo's testimony for it (see "*Mark Zafereo*" section).

4/8 Larry Burt, director of the Office of Student Financial Services²¹; Harrison Keller, Senior Policy Advisor for Education for Speaker Tom Craddick²² and Project Director for Education Policy at UT Austin's Charles A. Dana

²¹ http://www.utexas.edu/opa/news/00newsreleases/nr_200004/nr_faulkner000410.html

²² http://www.capitol.state.tx.us/psf/9_11_03/meeting/Harrison%20Keller/Proposed%20Research%20Agenda.pdf

Center²³, comment on testimony (mostly students testified) on HB 3015 on 4/7/03²⁴ (Carlos Martinez email 4/8/03). The comments are deleted due to section 552.106 of the Public Information Act, which exempts “A draft or working paper involved in the preparation of proposed legislation”²⁵. Carlos Martinez emails Scott and Smith that “Harrison’s note is very interesting”. The fact that these comments are deleted is because UT was involved in actually drafting legislation, possibly a violation of laws that are meant to prohibit lobbying by state agencies.



4/10 Gwen Grigsby, UT-Austin Associate Vice President for Governmental Relations, meets with Representative Morrison and Harrison Keller, Senior Policy Advisor for Education for Speaker Tom Craddick (R)²⁶ and Project Director for Education Policy at UT Austin's Charles A. Dana Center²⁷. They discuss the “tuition bill draft” and “tweak” it (Carlos Martinez email 4/10/03). Notes on the “tweaks” are deleted in the email due to section 552.106 of the Public Information Act²⁸. Also Martinez doesn't want to go “out to the components” to get information related to the “tweaks”.

²³ <http://www.utexas.edu/lbj/faculty/keller.html>

²⁴ <http://www.capitol.state.tx.us/tlo/78R/witbill/HB03015H.HTM>

²⁵ <http://www.capitol.state.tx.us/statutes/go/go0055200.html#go029.552.106>

²⁶ http://www.capitol.state.tx.us/psf/9_11_03/meeting/Harrison%20Keller/Proposed%20Research%20Agenda.pdf

²⁷ <http://www.utexas.edu/lbj/faculty/keller.html>

²⁸ <http://www.capitol.state.tx.us/statutes/go/go0055200.html#go029.552.106>

Martinez, Carlos

[552.106]

.106

From: Martinez, Carlos
Sent: Thursday, April 10, 2003 11:20 PM
To: Kerker, Mike
Subject: FW: Update from meeting with Rep. Morrison this
 Dr Kerker--

There are tweaks that need to be made to the template. Gwen's detailed them after her conversations with Chairwoman Morrison. Justin Unruh and Harrison Keller. I don't envy the proposition of going out again to the components to get this information.

--Carlos

-----Original Message-----

From: Grigsby, Gwen - UT Austin
Sent: Thursday, April 10, 2003 8:31 PM
To: Jack Morton (jmorton@unt.edu); Calvert, Stanton; 'Brown, Martha'; 'Calfee, Laura'; Martinez, Carlos; Scott, Tom; Diane Corley (diane.corley@tsus.edu)
Cc: 'HARRISON KELLER'; Justin Unruh (justin.unruh@house.state.tx.us); LARRY.BURT@austin.utexas.edu; Grigsby, Gwen - UT Austin
Subject: Update from meeting with Rep. Morrison this afternoon

Based on a meeting this afternoon with Rep. Morrison and Harrison Keller, here are the latest ideas/requests on the tuition bill draft. Rep. Morrison had asked Justin to call each system to let folks know that there would be several "tweaks" to the bill substitute that would be coming later this evening. These notes reflect those "tweaks".

I think this captures our discussions. I hope this is clear to everyone. I tried to call every one tonight as well. I think I only missed Houston and TSUS as it was late and I missed them at the office. I'm not sure when Harrison and Justin want this information, but am assuming that it is the same timeframe as their request sent earlier today...due tomorrow.

Gwen

Gwen Grigsby
 Associate Vice President for Governmental Relations
 Main Building, Room 102
 Mail Code: G4800
 P. O. Box R
 Austin, Texas 78713-8918
 (512) 232-1781
 (512) 232-2005 fax
 (512) 875-4010 pager

4/15 SB 1542, Shapiro's (R) deregulation bill, is watered down to the point where deregulation is eliminated (*The Austin-American Statesman* 4/16/03).

4/29-30 HB 3015 is amended and passes in the House²⁹.

May 2003

5/9 David Gabler, UT San Antonio Assistant Vice President for University Communications, who is, according to UTSA's website, "responsible for internal communications, marketing and advertising for the institution"³⁰, lets UTSA and UT System officials know that the San Antonio Express News will endorse tuition deregulation in an editorial (Yudof email 5/9/03).

Subject: FW: Tuition deregulation
 Date: Fri, 9 May 2003 16:20:42 -0500
 X-MS-Has-Attach:
 X-MS-TNEF-Correlator:
 Thread-Topic: Tuition deregulation
 Thread-Index: AcMWcH82NUJSBfRTnmMFWUFURIIhgAADVjw
 From: "Warden, Michael" <MWarden@utsystem.edu>
 To: "Yudof, Mark" <MYudof@utsystem.edu>
 Cc: "Smith, Ashley" <ASmith@utsystem.edu>, "De La Garza, John" <JDeLaGarza@utsystem.edu>, "Miller, Charles" <cm494@aol.com>, <cynditaylor.krier@usaa.com>

FYI ...
 -----Original Message-----
 From: Gabler, David - UT San Antonio
 Sent: Friday, May 09, 2003 4:18 PM
 To: Steger, Jan - UT San Antonio; Martinez, Sonia; Warden, Michael; Jones, Monty; Carrisalez, Albert - UT San Antonio; Storm, Jennifer - UTSA; Jean Troncale
 Cc: Lynn Gosnell
 Subject: Tuition deregulation

fyi...

The San Antonio Express-News will endorse tuition deregulation in an editorial this Monday (current publishing schedule).

David

5/19 Martinez emails Smith on the "Senate Education Committee and HB 3015" (Carlos Martinez email 5/19/03). The full first half of the email is deleted due to section 552.106 of the Public Information Act³¹.

5/20 Email communication between Martinez and Kate Moore, a policy analyst for the Senate Committee of Education chaired by Shapiro (R). The content of this email has been deleted, however the subject is "Professional and Graduate Tuition Deregulation" (Carlos Martinez email 5/20/03).

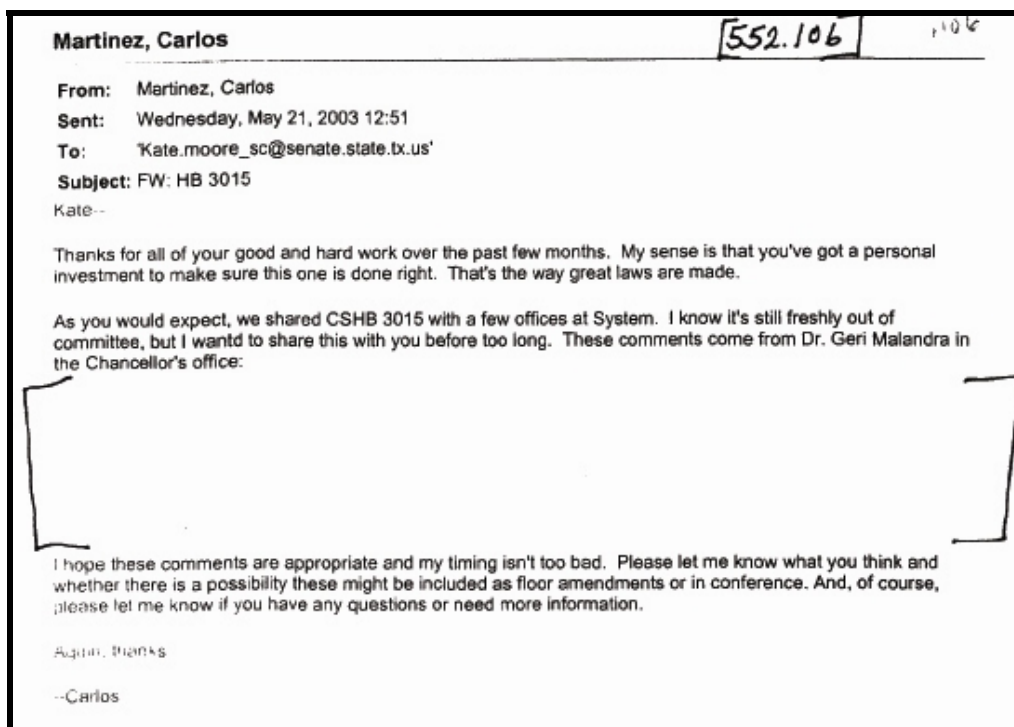
Deregulation for undergraduates within HB 3015 appears dead, gutted by the Senate Education Committee after being diluted in the House (*The Austin-American Statesman* 5/21/03). Morrison (R) states that she "would like to see [deregulation] revived". Craddick (R) will revive deregulation by the end of the week.

5/21 Martinez emails Kate Moore and thanks her for her "good and hard work", speaking on HB 3015, which is the subject of the email. Martinez states that he or the OGR has "shared" HB 3015 "with a few other offices at System", including the Chancellor's office. Deleted are comments by Geri Malandra, Assistant Vice Chancellor of Accountability and Institutional Improvement in the Chancellor's office. Martinez wants Malandra's comments "included in floor amendments or in conference".

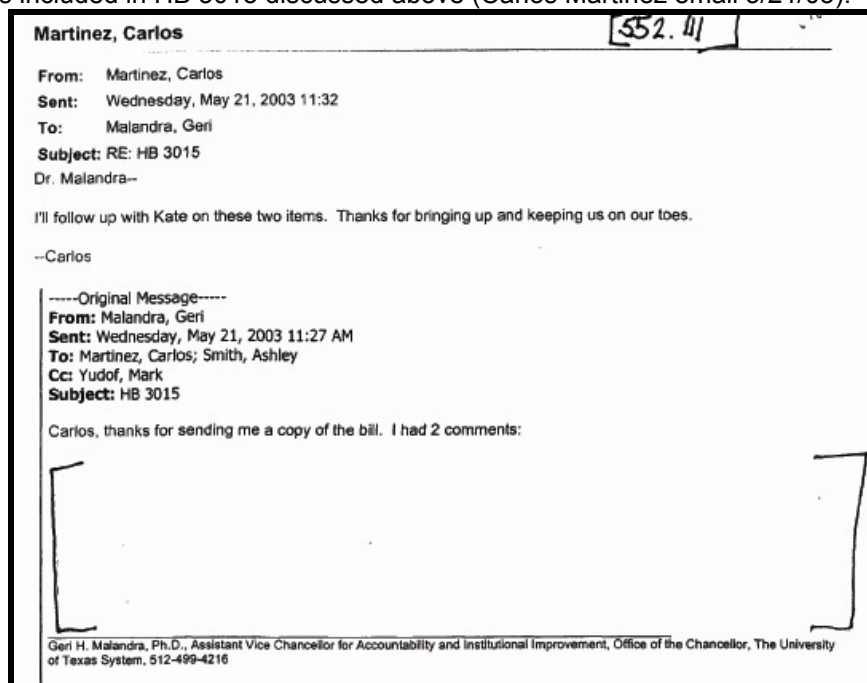
²⁹ <http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/actions.d2w/report?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=03015>

³⁰ <http://www.utsa.edu/ucomm/about/dgabler.cfm>

³¹ <http://www.capitol.state.tx.us/statutes/go/go0055200.html#go029.552.106>



Martinez writes Malandra and states that he will “follow up with Kate on these two items”, referring to comments that Malandra wants included in HB 3015 discussed above (Carlos Martinez email 5/21/03).



5/24 Dewhurst (R), Craddick (R) and Perry (R) revive deregulation (in HB 3015) in a “marathon” 8 hour meeting (The Austin-American Statesman 5/24/03).

“I was talking to a Senator this morning about this; he said it took the three most powerful people in the state, in a closed door meeting, and eight hours of negotiations to overturn the progress that we made against this issue” (Brian Haley email 5/25/03).

“University of Texas officials have been lobbying for that freedom [deregulation] since before the legislative session started. But it has been bitterly opposed by smaller college systems, many UT students

and by several senators who had appeared to kill the idea earlier this month” (*The Austin-American Statesman* 5/25/03).

5/26 *The Austin-American Statesman* reports that tuition deregulation has become a “political trade-off between the House and Senate leadership”, not a tradeoff for budget cuts. In exchange for deregulation universities would be given \$500 million more in state money (*The Austin-American Statesman* 5/26/03).

”This has nothing to do with balancing the budget,” Dewhurst said Monday. “We have agreed to pass whatever the House passes on deregulation.”

5/28 Martinez emails out a description of HB 3015 with brief summaries of its key aspects. Terry Sullivan then emails Yudof with “Is this Deregulation?” However, in Martinez’s original email he states that “details will be ironed out over the next few days” (Yudof email 5/28/03).

Priority: Urgent
Importance: high
From: "Sullivan, Terry" <TSullivan@utsystem.edu>
To: "Yudof, Mark" <MYudof@utsystem.edu>

This is Deregulation?

-----Original Message-----
From: Martinez, Carlos
Sent: Wednesday, May 28, 2003 2:50 PM
To: Sullivan, Terry; Smith, Ashley
Cc: Grigsby, Gwen - UT Austin; Jammer, Brian; Starkey, Roger; GRP-GRAC Academic; Wallace, Randy; Malandra, Geri; Kerker, Mike; Scott, Tom

Subject: HB 3015 as voted out of the Senate on 5/28/03
Importance: High

Dr. Sullivan/Mr. Smith--

The Senate passed out HB 3015 last night. As you know, HB 3015 has become the tuition bill for this session and it will likely head to a conference committee to iron out the details. Here are the major components of the bill as it made it out of the senate and as we understand it:

- * Provides for the sunset of all tuition and student fee (mandatory fees) authority on and after January 1, 2006.
- * Provides authority for an additional \$23 per sch in designated tuition in the 2003-2004 academic year.
- * Provides authority for another \$23 per sch increase in designated tuition in the 2004-2005 academic year.
- * Provides authority to charge designated tuition in any amount for the 2005-2006 academic year and thereafter.
- * Provides that the authority to charge designated tuition in excess of \$46/sch expires after Sept. 1, 2007 along with the other compliance requirements established to exercise this authority.
- * Provides that the increased revenue from designated tuition is subject to the general appropriations process.
- * Provides that the coordinating board shall develop and adopt criteria that it must certify institutions to have met if the institutions are to exercise authority to charge designated tuition in excess of \$46 per sch.
- * Provides deregulation for designated tuition charged to non-resident, professional and graduate students.
- * Provides for differential tuition for programs, courses, time periods.
- * Establishes the Legislative Oversight Committee on Tuition Deregulation to

Printed for Mark Yudof <myudof@utsystem.edu> 7/17/200

Sullivan, Terry, 02:58 PM 5/28/2003 -0500, FW: HB 3015 as voted out of the Senate on ... Page 2 of 2

monitor the implementation of tuition deregulation and make recommendations to the legislature. This committee expires on September 1, 2007.

- * Provides for a hold-harmless provision for the Texas Tomorrow Fund.
- * Provides for a minimum 40% set aside from the increases in designated tuition for resident undergraduate students for workstudy, interest-free loan and TEXAS grant program.
- * Provides for a minimum 3% set aside from the increases in designated tuition for non-resident undergraduate students for workstudy and a loan program.
- * Provides for a minimum 15% set aside from the increases in designated tuition for resident graduate and professional students for grants, scholarships, and work study programs.
- * Provides for performance standards to be established by the coordinating board and for performance and accountability reports be prepared and submitted by governing boards.
- * Provides for an joint interim study on higher education finance by the senate education committee and house higher education committee.
- * Provides that changes in the law regarding tuition apply in Fall 2003.

A copy of the enrolled version of the bill should be available later today on-line at <http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/Hmatrix.d2w/report?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=03015&SORT=Asc>.

Some of the provisions of this bill might not meet our components' optimal needs and may create additional concerns. However, it is very likely not the final version. Again, those details will be ironed out over the next few days. We will continue to keep you updated on this issue.

If you have any questions or require more information, please feel free to call on me.

--Carlos

5/29 HR 1694 and SR 1034 are filed³². These resolutions allowed the house and senate conferees on HB 3015 to "go out of bounds" and tack on language to HB 3015 to allow the governing board to charge any tuition they deem appropriate.

5/31 HR 1694 and SR 1034 pass.

June 2003

6/1 HR 1694 scraps all limits placed on deregulation in HB 3015. This 11th hour maneuver surprises and angers many legislators, students, and educators.

"Tensions flared between party lines during the debate on the House floor. Coleman and Rep. Joe Crabb, R-Kingwood, continued to argue after the debate and had to be separated by a House sergeant

Sen. Steve Ogden, R-College Station, said he plans to vote in support of the measure but sees only one state college system -- the University of Texas -- as using it to their advantage. Ogden said Texas A&M regents have assured him they will not increase tuition dramatically as a result of the legislation" (Houston Chronicle 6/1/03).

"Basically Craddick forced both chambers of the Legislature to scrap both versions of HB 3015, which had at least some limits on deregulation, to give the regents complete deregulation. He held the entire state budget in limbo to do this" (Nick Schwellenbach email 6/1/03).

6/2 HB 3015 pass.

³² <http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/actions.d2w/report?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=R&BILLSUFFIX=01694>

6/22 Perry (R) signs HB 3015.

6/30 Tom Craddick (R) receives \$10,000 contribution from Miller (Texas Ethics Commission).

Craddick (R) receives \$5,000 from Hunt (Texas Ethics Commission).

Selected Timeline of tuition deregulation prior to 2002-2003

1984

The earliest mention of tuition deregulation in Texas. No bills were created.

1985

Rep. Gary Thompson, R-Abilene sponsors House Bill 958, a tuition deregulation bill. 2,000 students assemble at the State Capitol to rally against proposed tuition hikes. HB 958 dies in committee.

1987

Tuition deregulation is brought up again in the 70th Legislature. Law school tuition becomes deregulated. As a consequence, tuition doubles for in-state tuition within two years.

1988

The Texas Student Lobby works with Senator Barrientos (D) to create a student legislative agenda before the 71st Legislature. Students from 29 colleges and universities from around the state come and focus on defeating tuition deregulation.

1989

UT officials begin using the term “flexible tuition” to describe tuition deregulation. Rep. Jack Vowell, R-El Paso sponsors House Bill 2436. Hundreds of students from 21 universities lobby the Legislature on April 3, 1989. Students defeat HB 2436.

1991

Sen. John Leedom, R-Dallas sponsors Senate Bill 602. Students hold a lobby day in April. A caravan of students travel to Leedom’s district and go door to door explaining to families how Leedom’s bill would hurt their children. SB 602 fails.

1992

Graduate students band together to take back control of tuition setting authority that had been granted to the Regents in 1987.

1995

The legislature introduces the “Stair Step” plan for tuition.

1998

John Sharp (D) and Rick Perry (R), both lieutenant governor candidates, debate tuition deregulation.

2000

UT Regents and UT component presidents support deregulating tuition. Faulkner calls it a “Flex Plan”.

Deregulation was not inevitable

Tuition deregulation, as passed by the 78th legislature, should not be understood as merely a response to or compensatory measure for decreased state support of public universities resulting from economic recession and a tightened state budget. Instead, UT System officials revealed their true intentions for tuition deregulation by completely avoiding any attempt to pursue increased state appropriations. In fact, many state universities, in particular the University of Texas at Austin, still received minor increases, or, as in the case of the UT System as a whole, negligible changes in state appropriations for FY 2004 and FY 2005. UT has been seeking tuition

deregulation for 20 years (see *Timeline of Deregulation Prior to 2002*) and in 2002-03 achieved it in a political campaign. *Tuition deregulation was not simply the result of a state budget crisis but was pushed onto Texas by UT System lobbying.*

Effects of Tuition Deregulation

The transfer of decision-making authority from the state legislature to the nine appointed regents of the UT System represents both a shift as well as centralization of power. While dividing authority amongst individual public university systems diffused the power to set educational policy (thus allowing a more rapid response to changing institutional needs), it also de-coupled policy-making from the electorate. As a result, state representatives are now able to “pass the buck” and avoid answering the public on controversial decisions such as tuition increases, effectively rolling back democratic accountability.

Combined with legislation such as omnibus deregulation³³ and indirect cost recovery, the UT System demonstrated that tuition deregulation is only one aspect of a larger strategy designed to centralize decision-making within the hands of the Board of Regents. Consequently, the regents now possess the power to determine the cost of individual student course loads, employment benefits and sick leave, expenditure of revenue derived from indirect costs associated with research, etc. based upon the internal economic goals and market needs of each institution –without the level of public responsibility previously held by the state legislature.

Even after the 78th legislature approved tuition deregulation, the level of accountability held by the Board of Regents to the people of Texas remained minimal at best. House Resolution 1694, passed only a few days before the end of the session, effectively allowed the alteration of House Bill 3015 which assured the regents that there would be no impediments to their ability to determine tuition rates. Previously, HB 3015 (along with several other proposed bills) had amendments that provided stipulations on how much tuition could be raised and criteria that would help shape tuition rates. These amendments were largely eliminated.

Since colleges and universities now have the unlimited power to set tuition rates, the incentives to hold down unnecessary costs will be diminished. Waste at universities could increase, and there is no guarantee that universities will reverse the trend of charging students more while giving them less. For example UT-Austin has increased tuition and fees 35% from Fall 2003 to Fall 2004 while library and custodial staff hours have been cut. Meanwhile UT has already allocated \$500,000 from the Available University Fund (which can be used to fund libraries and academic programs) for a potentially multi-million dollar gamble to win management of Los Alamos National Laboratory from the University of California System.³⁴

Tuition deregulation threatens to exacerbate a highly stratified two-tiered system of higher education in Texas. Smaller university systems and less prestigious universities within systems may not be able to charge higher tuition to make up for a decrease in state appropriations. At these schools education may become little more than job training, with high student-faculty ratios, and few if any tenured professors. Since the better universities in Texas may become out of range of ordinary Texans, most Texans will be herded into these poor-quality diploma mills.

Tuition Deregulation Proponent Myths

Myth #1: Deregulation allows for flexibility in pricing

Reality: Before deregulation, different universities charged different tuition rates up to a certain capped rate. Fees were largely deregulated, but were ostensibly tied to very particular needs like a lab fee or a fee to fund certain buildings. In the 77th Legislature, UT-Austin was allowed to charge flat-rate tuition without shifting tuition-setting authority to the Regents. Now universities can charge “whatever the market will bear”; in other words, they can charge parents and students irrespective of the needs of the institutions. Universities have been given a “blank check” to charge students and parents and incentives to “cut costs” or to prioritize needs and wants are diminished as a result.

Myth #2: Deregulation is a “free” market proposal

³³ UT’s legislative agenda included 58 items to be deregulated.

³⁴ see www.UTnukefree.org for more information

Reality: It is more like a rollback of democracy and public accountability. Since the state still provides higher education, the transfer of authority to the regents is the distancing of policy and tuition setting authority from the public. During the 78th Legislature the Young Conservatives of Texas and William Lutz of the Lone Star Report argued that “true” deregulation “empowers private persons to make decisions about their own operations”³⁵, whereas tuition deregulation “empowers unelected regents at the expense of elected legislators” and that “the fiscal policies of a government agency are not ‘free market’”³⁶. And because higher education is necessary to gain access to most well-paying jobs it is not simply a private “good”, but is instead key to social mobility and is necessary for economic prosperity. Since state universities are supposed to serve the entire state of Texas, then they should be accessible and affordable for all.

Myth #3: Deregulation was and is the only solution

Reality: There are and were many options available. Tuition can be raised beyond a previously legislated cap through the legislature. State appropriations can be increased, and in UT-Austin’s case appropriations were raised to a slight extent (although inflation erodes the slight gain). Senator Whitmire expressed outrage at Yudof for being more enthusiastic about deregulation than for getting state appropriations:

"You [Yudof] spoke much more passionately about your feelings on tuition deregulation than the real clear picture of taking one-sixth of your proposed budget and cutting it," [Senator] Whitmire said.

"You're either awful fat and got a lot to cut, which some in this building believe, or you didn't do a very good job to clearly help me during the (budget) markup to fight for your university. I'm going to give you another chance because I'm totally unimpressed." (*The Austin-American Statesman* 3/8/03)

Campaign for Public Support

“Town hall” forums and advisory committees appointed at each campus were UT’s answers to the question of accountability. The reality is that the tuition advisory committees lacked official mechanisms of oversight and, as a result, produced unenforceable recommendations without any bearing on the regents’ final decisions. Thus, they were simply a means for appearing accountable to the public.

The same conclusion can be drawn from the “town hall” forums. In the case of UT-Austin, these forums were designed to be presentations by the advisory committee to the student body, with a Q&A session afterward. The first forum of fall 2003 took place before the committee had publicly introduced any possible recommendations for students to consider. Nor did this first meeting seriously seek input or recommendations from students—essentially it wasted students’ time. And the second forum was held after the committee’s official recommendations had already been sent to President Faulkner. In sum, these “town hall” forums were little more than a stage act, not a place where students, the committee, and the regents addressed each other’s concerns and worked towards a resolution. The decision-making process has become centralized because only the regents have any official power over tuition. (*The Daily Texan*, Oct. 10, 2003)

Seeking wider public support UT, engaged several editorial boards in Texas including the Houston Chronicle and San Antonio Express-New editorial boards. The UT System’s and component institutions’ Offices of Public Affairs, as well as Chancellor Yudof, sought to influence public perception of tuition deregulation through news and editorial coverage of the issue. Yudof has even defended tuition increases in the *Washington Post* (1/1/2004). This op-ed, “The Truth about Tuition”, by Yudof was later republished in the UT-Austin alumni magazine, *Alcalde*, in April.

Using Alumni

The Orange and Maroon Legislative Day on February 11th was the most visible moment of the UT System’s use of alumni. The UT System and the Texas A&M System³⁷ sponsored a joint lobby effort at the state capitol, where

³⁵ The YCT definition of “true” deregulation is useful in debunking UT’s use of the term. However the picture painted by their use of the term is perhaps “too rosy”. Deregulation, in the YCT sense, has been problematic in practice, though this is not the place for that discussion.

³⁶ http://studentorgs.utexas.edu/yct/images/unlimitedtuition/Unlimited_Tuition-Lutz.rtf

³⁷ Although other university systems ended up supporting tuition deregulation, however reluctantly, it was mainly the UT System that aggressively lobbied for the legislation.

roughly 400 alumni showed up and were given packets defending tuition deregulation (*The Daily Texan*, Feb. 12, 2003; *The Alcade*, Jan./Feb. 2003). Ashley Smith, a lobbyist for UT, was present at this event, although his exact role is unknown. It is possible he helped coordinate the lobbying. UT sought to use alumni to lobby overtly since state agencies are technically prohibited from lobbying—helping to pass or defeat legislation.

The UT Advocates for Higher Education was formed out of the Texas Exes organization to use alumni to lobby for the UT administration's legislative goals. This "grassroots" effort is in actuality a top-down organization that communicates the UT administration's line to alumni to call, write or lobby legislators. Headed by Leticia Acosta,

UT Advocacy is a listserv e-mail group that alerts members about bills affecting higher education during the legislative session. Then members are encouraged to contact their local representative about the bills.

And

Acosta credits the 1,400-member group with getting H.B. 1887 and H.B. 3015 passed in the last session. (*The Daily Texan* 7/18/2003.)

In an interview with Board of Regents Chairman Miller, Miller states that he wants alumni to hire lobbyists for UT.

The move to improve the system's communication with lawmakers, the public, business groups and alumni will begin with Miller, who plans to meet with Texas Exes' leaders at the end of the month and traverse the state talking with newspaper editorial boards. He said he would encourage university supporters to volunteer to meet with legislators or hire their own lobbyists. State law prohibits the UT System from hiring lobbyists. (*The Austin-American Statesman* 4/18/2002.)

A Brief Portrait of the UT System

The UT System proved successful in shaping the direction of public higher education policy in part because it is the largest system in Texas, one of the five largest in the nation, and operates with a yearly budget of around \$7 billion. The System could be described as an extensive, diverse economy comprised of: 15 campuses all across Texas, six of which contain hospitals as well as medical and biotech research facilities; vast oil lands in west Texas; the second largest university endowment in the nation; an investment company (UTIMCO) created solely to manage UT's endowments; governmental relations offices in Austin and Washington, DC; military R&D facilities; business parks in Arlington, San Antonio and elsewhere; spin-off corporations; international facilities in Mexico, Europe, etc.; alumni and former professors in positions of national power (e.g. Dale Klein, Karl Rove); partnerships with hundreds of multi-national corporations, investors, and NGOs; ownership of the Montopolis research campus that houses International SEMATECH; trademarked and marketed university logos and apparel; operation of a nuclear reactor as well as multiple supercomputers; and the list continues on and on.

UT is clearly a powerful force in the social, political and economic life of Texas. It is an institution that has developed an independent capacity to actively and aggressively change policies that affect all Texans, whether or not they are beneficial to the public at large.

Personal Connections and the Power of Money

The power and influence of the UT System extends beyond its material and financial holdings. Several members of the Board of Regents, notably Woody Hunt, Charles Miller, Rita Clements (or her husband, former Governor William Clements) and Dub Riter, are heavy contributors to the campaigns of influential members of Texas government. The Board of Regents, the ultimate locus of authority in the UT System, is composed of wealthy individuals appointed to their positions by the Governor of Texas, usually in return for large contributions.

Chairman Miller's Selected Contributions 2000-03		
Contributions	Recipient	Date
\$10,000.00	David Dewhurst	9/26/2003
\$2,500.00	Kyle Janek	9/3/2003
\$5,000.00	Carole Keeton Strayhorn	7/23/2003
\$3,079.00	Carole Keeton Strayhorn	7/17/2003
\$10,000.00	Tom Craddick	6/30/2003
\$5,000.00	Tom Craddick	12/5/2002
\$500.00	Rick Perry	10/18/2002
\$25,000.00	Rick Perry	10/14/2002
\$500.00	Leticia Van de Putte	10/3/2002
\$1,000.00	Kyle Janek	10/2/2002
\$5,000.00	Republican Party of Texas	9/30/2002
\$100.00	Rick Perry	5/16/2002
\$25,000.00	Rick Perry	4/1/2002
\$10,000.00	Texans for a Republican Majority	11/27/2001
\$25,000.00	Rick Perry	6/13/2001
\$5,000.00	David Dewhurst	12/4/2000
\$5,000.00	Todd Staples	10/10/2000
\$5,000.00	Todd Staples	9/8/2000
\$1,000.00	Florence Shapiro	8/18/2000
\$25,000.00	Rick Perry	6/20/2000

In addition to rapport built up through money gifts over several years the Regents also made contributions shortly before the introduction of a tuition deregulation bill (contributions are allowed before and after the legislative session, but not during). These contributions functioned as access fees that provided them greater access and a disproportionate voice with political leaders than the average citizen. When coupled with the activities of the UT System Office of Governmental Relations, these contributions constituted part of a full-fledged campaign for tuition deregulation.

Regent Rita Clements ^{3*} Selected Contributions 2000-03		
Contribution	Recipient	Date
\$1000.00	Rick Perry	11/24/2003
\$25,000.00	Rick Perry	11/4/2003
\$2,392.00	David Dewhurst	10/8/2003
\$10,000.00	David Dewhurst	9/15/2003
\$25,000.00	Rick Perry	10/21/2002
\$1,000.00	Republican Party of Texas	9/23/2002
\$100,000.00	Rick Perry	6/6/2001
\$1,000.00	Todd Staples	10/02/2000
\$1,000.00	Florence Shapiro	7/19/2000
\$1,000.00	Rick Perry	6/2/2000
\$1,000.00	Rick Perry	4/24/2000
\$1,000.00	Rick Perry	2/4/2000
*Made by former Governor William Clements, husband of Rita Clements		

Both Miller and Hunt donated a total of \$7,000 to Tom Craddick on December 14, 2003, a month before the 78th Legislative session began. Tom Craddick was a staunch supporter of deregulation as early as the beginning of the session. After deregulation passed it seems that the Regents rewarded certain powerful politicians with large contributions. For example, Speaker of the House, Tom Craddick, received a total of

\$15,000 from Miller and Hunt during the same month HB 3015 was passed. Craddick proved he had earned such a generous contribution after reviving tuition deregulation on May 24 during an eight-hour, closed-door meeting with Governor Perry and Lt. Governor Dewhurst, not to mention his aggressive arm-twisting in the legislature demanding deregulation. According to the *Austin-American Statesman* (6/1/03) "Craddick refused to sign off on the [state] budget without complete deregulation." (Miller has also been a large contributor to the Craddick-associated Texans for a Republican Majority.)

Governor Perry has been a major recipient of money from several of the Regents. Chairman Miller's contributions to Perry alone total \$100,600 from January 2000 to Fall 2003. In his State of the State address (2/11/03) Perry expressed his support for tuition deregulation. Perry received large contributions from Regents after the 78th

Regular session, receiving \$25,000.00 from Hunt on 9/17/2003 and \$25,000 from Clements on 11/4/2003. From 2000 to 2003 four Regents contributed a total of \$386,121.89 to Perry.

Regent A.W. Riter's (Deceased) Selected Contributions 2000- 02		
Contribution	Recipient	Date
\$250.00	Florence Shapiro	10/25/2002
\$1,000.00	Rick Perry	10/3/2002
\$500.00	David Dewhurst	8/13/2002
\$2,500.00	Rick Perry	6/13/2002
\$2,500.00	Todd Staples	6/11/2002
\$250.00	David Dewhurst	3/15/2002
\$1,086.89	Rick Perry	12/31/2001
\$2,500.00	Rick Perry	10/9/2001
\$500.00	Rick Perry	10/9/2001
\$1,000.00	Republican Party of Texas	1/26/2001
\$250.00	Todd Staples	9/8/2000
\$2,000.00	Todd Staples	8/21/2000
\$500.00	Florence Shapiro	6/28/2000
\$500.00	Florence Shapiro	3/9/2000

Dewhurst and several members of the Senate Committee on Education received contributions from several Regents. In particular, Todd Staples (R) has received \$29,500, Florence Shapiro (R) \$4,500, Kyle Janek (R) \$3,500, and Leticia Van de Putte (D) \$500 from contributing Regents. Staples and Van de Putte voted against HB 3015 while Shapiro, who authored one of the original deregulation bills, and Janek voted yes. Dewhurst, who negotiated the revival of deregulation with Craddick and Perry, received \$25,750 from regents before the 78th Regular session and \$47,392 after HB 3015 passed.

Regent Woody Hunt's Selected Contributions 2001-03		
Contribution	Recipient	Date
\$897.30	Rick Perry	10/30/2003
\$25,000.00	David Dewhurst	9/19/2003
\$25,000.00	Rick Perry	9/17/2003
\$5,000.00	Tom Craddick	6/30/2003
\$2,000.00	Tom Craddick	12/14/2002
\$5,000.00	David Dewhurst	12/11/2002
\$5,000.00	David Dewhurst	10/21/2002
\$10,000.00	Republican Party of Texas	9/30/2002
\$10,000.00	David Dewhurst	9/12/2002
\$25,000.00	Rick Perry	8/5/2002
\$20,000.00	Rick Perry	5/28/2002
\$25,000.00	Rick Perry	4/3/2002
\$3,038.00	Rick Perry	12/31/2001
\$25,000.00	Rick Perry	6/12/2001

**Friends of the
University PAC
Payments to John
Doner and Associates
10/2002-12/2003**

Payment	Purpose	Date
\$3,000.00	Professional Services	12/10/2003
\$3,000.00	Professional Services	11/5/2003
\$3,000.00	Professional Services	10/8/2003
\$3,000.00	Professional Services	9/12/2003
\$16,237.50	Direct Mail Solicitation	8/13/2003
\$6,000.00	Professional Services	8/13/2003
\$3,000.00	PAC Management Fee	6/30/2003
\$1,000.00	PAC Management Fee	6/30/2003
\$500.00	Speaker's council	4/15/2003
\$10102.50	Printing and postage for fundraiser letter	4/15/2003
\$3,000.00	Monthly services fee	4/15/2003
\$3,000.00	Monthly services fee	4/15/2003
\$4,000.00	Monthly services fee	2/26/2003
\$4,000.00	Monthly services fee	1/13/2003
\$8861.68	Expenses for San Antonio fundraising event	10/22/2002

The FU-PAC is connected to UT-Austin and the UT System through several influential individuals. For example, Mike Millsap was a UT System Vice Chancellor for Governmental Relations from 1992-2000, and now he is the treasurer for the Friends of the University PAC and runs a private political consulting firm, Millsap Consulting.

Another source of money influencing the Legislature is the Friends of the University PAC (FU-PAC). The contributors to the FU-PAC range from bankers (ex. Mr. T.C. Frost, Chairman of the Board of Frost National Bank), corporate executives (ex. James Moffett of Freeport-McMoran), retired persons, professors (ex. Professor Hans Mark and Bobby Inman), car dealers (ex. Mr. McCombs), to law firms (ex. Vinson and Elkins), regents (ex. Rita Clements) and others. On Nov. 21, 2002 (2 weeks after the election), 104 legislators received checks from the Friends of the University PAC. These checks came too late to help them get elected, so they were used as "access fees".

**Friends of the University
PAC Selected Political
Expenditures
10/2002-12/2003**

Contribution	Recipient	Date
\$10,000.00	Tom Craddick	12/10/2003
\$1,000.00	Geannie Morrison	11/5/2003
\$2,500.00	Steve Ogden	11/5/2003
\$10,000.00	David Dewhurst	6/30/2003
\$5,000.00	David Dewhurst	12/2/2002
\$5,000.00	Tom Craddick	12/2/2002
\$2,000.00	Leticia Van de Putte	11/21/2002
\$2,000.00	Todd Staples	11/21/2002
\$1,000.00	Steve Ogden	11/21/2002
\$3,000.00	Florence Shapiro	10/25/2002
\$2,000.00	Royce West	10/25/2002

Another venue of communication between the FU-PAC and legislators is through the political services of John Doner and Associates. John Doner and Associates have been clients of the Friends of the University PAC for several years. Between October of 2002 and the end of 2003, John Doner and Associates have received over \$71,000 from the FU-PAC for services. The filings of the FU-PAC vaguely describe the purposes of the payments

According to the John Doner website (<http://www.jdoner.com/grass.htm>), they provided UT and A&M the services to build "grassroots" support for 1999's Proposition 17, an initiative to change laws regarding the investment of the Permanent University Fund. John Doner was funded by Texans for Proposition 17, which itself was funded by many of the same contributors as the Friends of the University PAC. Texans for Proposition 17, Friends of the University and Proposition 17 for a Better Texas (A&M's PAC) all funded John Doner. \$302,742 was spent between the two Proposition 17-specific PAC's; another \$74,500 came from the Friends of the University.

In fall 1999—before the vote on Prop 17—University officials contacted John Doner and Associates about creating a comprehensive database of voters likely to vote 'yes'. Using this database, they claim to have called 75,000 voters in "just a few days" prior to election day in a grassroots campaign. John Doner plays a role in the political campaign activities of the UT System by being hired by the Friends of the University PAC.

Mark Yudof: The Public Face of Deregulation

Despite only recently arriving at UT from the University of Minnesota, Mark Yudof, the current chancellor of UT, quickly became the flag-bearer for tuition deregulation. In fact, Mark Yudof is no outsider to Texas politics. The *Austin-American Statesman* noted in April of 2003, "as he pushes legislators for the power to set the university's tuition rates, he is counting on longstanding connections". These connections include several legislators who attended the UT Law School while Yudof was a professor, and later, a dean. Yudof's frequency of visits with legislators, along with Ashley Smith, the Vice Chancellor for Governmental Relations and Policy, testify to the active and consistent involvement of UT officials in the legislative process (see Timeline). He also directed Vice Chancellor and General Counsel of the UT System Cullen Mike Godfrey to draft "a bill giving the Board of Regents full discretion to set tuition by campus" (Holly Wright email 11/13/02). Drafting a bill is hardly a neutral activity; it represents an attempt before the legislative session began to indicate to legislators what UT wanted.

Yudof, as flag-bearer, stressed the importance of tuition deregulation for UT (which ended up affecting all universities, not just UT-Austin or the UT System, even though most universities were reluctant of or against tuition deregulation) in December of 2002, four months after becoming chancellor and one month before Texas Comptroller Strayhorn released her report -*Limited Government, Unlimited Opportunity* - calling for the deregulation of tuition. At that point in time, the 78th legislature had not yet begun their session and state budget forecasts were shaky at best.

In fact, Yudof's interest in tuition deregulation extends as far back as the January 2002 issue of the Chronicle of Higher Education in an article entitled "Is the Public Research University Dead?" where he calls for increased tuition. A later version of the article, "Higher Tuition: Harbinger of a Hybrid University", appeared in the March/April issue of *Change* magazine. The article supports "gaining the ability to set tuition on their own and to move funds to new priorities more easily". It is evident that Yudof came to Texas in August 2002 with plans for deregulating public universities.

On December 13th 2002, Chancellor Yudof proposed the Texas Compact³⁸, which would have been a commitment by the UT Board of Regents to secure a package of grants and scholarships equal to the cost of tuition for any Texan who was admitted to an undergraduate program at a UT System university and whose family income was less than the median household income of Texas. It's important to note that Compact was to be implemented if and only if tuition was deregulated. The proposal was later withdrawn even as the legislature deregulated tuition. It was clearly both used and intended to be a political tool in the push for deregulation. In a draft of the "Texas Compact – Proposed Tuition Assistance Program", from January 2003, free tuition for low income students is proposed "...in return for legislative delegation of authority to set tuition to the Board of Regents..."³⁹

The Texas Compact was proposed before any concrete details had been worked out, and was, from its creation, surrounded by questions. Yudof was quoted by *The Austin-American Statesman* as saying, "We have so many holes in the plan... Don't hold me to the numbers."⁴⁰ The UT-Austin Student Government (SG) passed a resolution that called on Chancellor Yudof to "present a cogent explanation of his plan" or have the UT-Austin SG "disregard the proposal as nothing more than a politically strategic repackaging of existing scholarships and grant programs intended to sway the Texas Legislature into deregulating tuition."⁴¹

Marcus Wilson, president of the Texas Association of Student Financial Aid Administrators, heard Yudof say that the Texas Compact was intended to sway the Texas Legislature, which has rejected deregulation in the past.⁴² The Texas Compact was intended as a political tool, and claims by Chancellor Yudof that the Texas Compact was too expensive to implement without deregulation could be, at best, only part of the truth. Wilson, and many others, also argued that the Compact would, at most, help out a handful of students who do not qualify for Pell Grants or the Texas Grant Program, which is usually left with untouched funds. The Compact would not change the situation of those receiving the Texas Grant because all UT schools are already required to fill the gap between the Texas Grant money received by a student and the cost of tuition. The proposal's benefit was largely the fact that, for low-income Texas families, it was a straightforward guarantee that University of Texas schools would be affordable. Yudof, along with many others, described the "sticker shock" of schools like the University of Texas at Austin, and held that the Compact would help make lower income families aware of their opportunity.

In any case, it is clear that Yudof, and the UT System, were using the idea of the Texas Compact, to help sooth fears that the deregulation of tuition would make universities unaffordable for Texans. By March 2003 the UT System abandoned Yudof's political carrot. As a result many students were kicked off the Texas Grant program after tuition deregulation was passed⁴³.

³⁸ The Texas Compact was originally called the "Texas Guarantee".

³⁹ <http://www.utsystem.edu/news/2003/TexasCompactDraft02-05-03.pdf>

⁴⁰ http://www.utwatch.org/oldnews/aas_freed_12_14_02.html

⁴¹ Student Government resolution AR-22, University of Texas-Austin, passed 1/21/2003.

⁴² Jayson, Sharon. "Yudof's tuition idea not unique//Chancellor's plan is similar to underused state aid program." *The Austin-American Statesman*, January 15, 2003.

⁴³ <http://www.lonestarreport.org/newsletterIssues.asp?currentyear=2003¤tqtr=4>

Smith, Scott and Martinez: UT System Lobbyists

"I'm going to try to build a much bigger and better team outside and inside than we've had historically as we go into the next session," said regents Chairman Charles Miller of Houston.
-The Austin-American Statesman 4/18/2002

The UT System's Office of Governmental Relations (OGR) is responsible for communicating with the state government and the Legislature. An editorial in *The Austin-American Statesman* (12/15/2002) on UT's lobbying is worth quoting at length and represents a stance that UT Watch endorses:

They are employed by Texas public university systems. They are paid in the high six-figure range. They aggressively push agendas at the Legislature that promote their employers' interests.

State law prohibits state agencies from lobbying -- helping to pass or defeat legislation. It does permit state employees (including those at public colleges and universities) to provide lawmakers information. Part-time lawmakers largely would be in the dark regarding higher education without that kind of expert information. We certainly believe university officials -- be they chancellors of governmental relations or other staff -- provide a valuable service and are well within the law when they give balanced, detailed information. Lawmakers rely on it.

But clearly, some university systems have strayed dangerously close to -- if not crossed -- the legal line by aggressively lobbying legislators. In some cases, those actions have drawn sharp rebukes (The Austin-American Statesman 12/15/2002.)

Obviously the Texas Legislature and UT need to communicate. Yet that need can be distinguished from UT's aggressive campaigning for policies that very arguably are against the best interests of Texas. There is a pattern of aggressive behavior from UT that can only be described as a full-fledged lobbying campaign for a political goal—the very thing meant to be prevented by state law.

UT's lobbyists are called Vice Chancellors of Governmental Relations. During the 78th session, the Vice Chancellors working on tuition deregulation were Carlos Martinez, Tom Scott, and E. Ashley Smith.

E. Ashley Smith

E. Ashley Smith has led the OGR since he began working for UT just before the 78th Legislative session began in late January 2003. Smith is a former Houston Representative, and was in the early 1990s the Chairman of the House Committee on Higher Education. He was also once a part-time adviser to Governor Perry in the early 1990s (*The Austin-American Statesman* 12/6/2002). His compensation from UT amounts to \$284,000 plus an \$8,400 car allowance. Based on his itinerary Smith – along with Yudof and Martinez - were down at the Capitol talking with legislators almost every day. According to the UT System Legislative Update website⁴⁴, Smith and Martinez were UT's point people on tuition.

Tom Scott

Tom Scott has worked at the OGR since 1988. Before that he worked for Lt. Gov. Bill Hobby and as a chief examiner in the Governor's Budget Office during the administrations of Gov. Preston Smith and Gov. Dolph Briscoe⁴⁵. His main OGR assignments in the 78th Regular session were: maintaining current services, indirect cost, excellence, and special/exceptional items⁴⁶. Scott and Smith often traveled to legislator's office together according to itineraries. Although Scott's main task was securing indirect cost recovery, Scott was kept in the loop regarding tuition deregulation, according to emails obtained via the Texas Open Records Act.

Carlos Martinez

Carlos Martinez is the Vice Chancellor that we have the most email communication from. Through his emails we can examine the nature of UT's engagement with the legislature. For example, Martinez proposes a "local

⁴⁴ <http://www.utsystem.edu/news/weeklyupdates/homepage.html>

⁴⁵ <http://www.utsystem.edu/news/1999/TScott-AstVC9-7-99.htm>

⁴⁶ <http://www.utsystem.edu/news/weeklyupdates/homepage.html>

control⁴⁷ forum” with the House Higher Education Committee and Senate Subcommittee on Higher Education to “get the ball rolling” and “break the stalemate” with tuition deregulation. Although the UT System does not “have all of the answers to questions that are bound to be asked”, Carlos Martinez believed that “if Chancellor Yudof is available to make the pitch, I’m [Martinez] confident his persuasive abilities can carry the day” (Carlos Martinez email 3/6/03). Or in an email from Gwen Grigsby, Associate Vice President for Government Relations for UT-Austin, forwards information on the Student Lobby Day Against Tuition Deregulation, organized by UT Watch, to UT System Office of Governmental Relations personnel- Tom Scott, Carlos Martinez, Roger Starkey, Brian Jammer, Ashley Smith (Carlos Martinez email 3/21/03). Through Martinez’s emails we can see UT’s Office of Governmental pushing for policies and laws and in the case of monitoring the Student Lobby Day, watching their opposition.

Geannie Morrison and the Texas Conservative Coalition

Geannie Morrison (R-Victoria) and author of HB 3015 was a major booster of deregulation and a key player in its passage. Courted by UT’s Office of Governmental Relations and by Harrison Keller, from Craddick’s office, her bill was shaped to fit their agendas. Numerous meetings between UT personnel and her transformed a bill that Carlos Martinez exclaimed “Oh, my God...It’s not at all what we were expecting” (Carlos Martinez email 3/14/03) because of its limitations that took income into account to one that gave full authority to set tuition to the Regents with almost no limitations.

Morrison stated that her deregulation bill was shaped by universities:

“Geanie Morrison, R-Victoria, chairwoman of the House Higher Education Committee, refused to give details of the bill she will file this week. She said she has met with university officials and her bill would reflect their needs.” (*The Austin-American Statesman* 3/12/03)

Morrison also is prominent within the Texas Conservative Coalition, which strongly supported tuition deregulation. Its website claims that they are “one of the largest and most influential caucuses in the Texas Legislature” with 82 members in both chambers of the Legislature and “an overall 89% success rate for its recommendations”⁴⁸. The passage of HB 3015 is one of four bills that TCC is showcasing as one of its successes. Morrison is on the TCC Board of Directors and the Treasurer and Secretary.

All but nine of the 82 active members of TCC voted for HB 3015. As a bloc, TCC is a significant force in Texas politics. Additionally its research arm, the Texas Conservative Coalition Research Institute, released a report recommending tuition deregulation in January 2003⁴⁹.

Mark Zafereo

Mark Zafereo was the only person to testify in support of Morrison’s bill on April 7th and 23rd 2003⁵⁰, while dozens of students testified against. He referred to students’ testimony as “student talk” that should be dismissed.

In a Daily Texan (10/14/2003) article on Sputnik, a motorcycle lobbyist, writer Lomi Kriel spoke with Zafereo

“Zafereo admits he is a ‘die-hard conservative Republican’ and is never seen without a neatly tailored business suit.”

“Having recently quit his job, Zafereo was drawn to the Capitol from Victoria to understand the legislative process better and fulfill some political curiosity. He lived with a friend in Austin and left his wife back home, treating his observation as a “full-time job.”

”Zafereo is glad Texas can finally elect more Republicans to Congress.”⁵¹

⁴⁷ “Local control” was one of the many phrases and terms interchangeably with “tuition deregulation.”

⁴⁸ http://txcc.org/tcc_home.html

⁴⁹ <http://www.txccri.org/publications/taskforce.pdf>

⁵⁰ <http://www.capitol.state.tx.us/tlo/78R/witbill/HB03015H.HTM>

⁵¹ <http://www.dailytexanonline.com/news/2003/10/14/StateLocal/Biker.Political.Activist.Influences.Capitol-527615.shtml>

With this insight the connections between Morrison and Zafereo comes to light. It is probable that they had a political relationship during the time he was testifying in support of HB 3015 since she is a Republican and the Chairwoman of the House Committee on Higher Education and he is a Victoria College Trustee (since 1992⁵²) and a self-described “die-hard conservative Republican.”

Recently he has been hired by Morrison to do work on the tuition issue, further cementing the case that Zafereo and Morrison knew each other during the 78th Regular Session:

“Co-Chair Rep. Geanie Morrison (R-Victoria) has hired Mark Zafereo to sift through the numbers [comparing the cost of higher education]. Zafereo is a Certified Public Accountant and trustee on The Victoria College board.” (Quorum Report 1/22/2004.)

It seems that Zafereo may have testified in favor of Morrison’s bill in order to give it some minimal level of legitimacy. Testimonies would have been unanimously against it except for his presence.

Harrison Keller: The Matchmaker of Deregulation

According to several sources that prefer anonymity Harrison Keller, Craddick’s senior policy analyst on education policy, was a “mastermind” behind tuition deregulation in the Capitol. An editorial in *The Battalion* (6/16/2003)⁵³ describes Keller as “a major force behind the bill [HB 3015]” and that Keller has said, “Students should pay whatever the market will bare. (sic)”

Keller also has many connections with UT. He is Project Director for Education Policy at UT Austin’s Charles A. Dana Center. And according to emails obtained via the Texas Open Records Act he was obviously in communication with UT’s Office of Governmental Relations and involved in helping UT shape its tuition deregulation bill drafts. Gwen Grigsby, UT-Austin Associate Vice President for Governmental Relations, emailed bill “tweaks” to Carlos Martinez, after meeting with Harrison Keller and Geannie Morrison on 4/10/2003. These “tweaks” to the bill are redacted due to section 552.106 of the Public Information Act, which exempts “A draft or working paper involved in the preparation of proposed legislation”. This means, conclusively, that Harrison Keller and Gwen Grigsby were both involved in changing the text of Morrison’s bill.

On April 8th, 2003, the day after testimony was taken on HB 3015, Keller emailed a note to Gwen Grigsby (much of the text is redacted due to section 552.106). Gwen Grigsby states that Keller’s note is in “reference to last night’s testimony”, which as stated before was by students entirely against HB 3015 except for Zafereo’s. Carlos Martinez then emails Scott and Smith saying, “Harrison’s note is very interesting”.

So if Keller, Craddick’s top policy analyst on education, is advocating tuition deregulation inside Craddick’s office and giving UT advice while working at UT, Keller then seems to become one of the major behind the scenes players in the battle over deregulation. He matches Craddick, one of the most powerful politicians in Texas and Speaker of the House, with UT, the most powerful university system in Texas. And although the nitty-gritty details of his relationships are unknown, he is surely connected to prominent and powerful players in an active way. UT’s direct channel to Tom Craddick was Harrison Keller. Craddick pushed tuition deregulation adamantly and along with Governor Perry and Lt. Governor Dewhurst, revived tuition deregulation in an 11th hour deal that left students and many political observers stunned.

What Does the Law Say?

UT Watch recommends that the Texas Attorney General or the Texas Ethics Commission investigate the legality of the University of Texas system’s political activities. We maintain that these activities are contrary to the spirit, if not the letter of law – particularly of Texas Government Code⁵⁴ § 556.004 (C) (see below). Accordingly, we would like to suggest avenues for this investigation, and to illustrate why UT’s extensive political activity is incompatible with at least the intent of § 556.004 and other laws devised to preserve the dignity of democratic government in Texas.

⁵² <http://www.victoriacollege.edu/about/board.html>

⁵³ <http://www.thebatt.com/news/2003/06/16/Opinion/Attention.Gov.Rick.Perry-513897.shtml>

⁵⁴ All laws cited in this section are part of the Texas Government Code.

Texas Government Code**§ 556.004. Prohibited Acts of Agencies and Individuals**

(a) A state agency may not use any money under its control, including appropriated money, to finance or otherwise support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States. This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection.

(b) A state officer or employee may not use a state-owned or state-leased motor vehicle for a purpose described by Subsection (a).

(c) **A state officer or employee may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.**

(d) A state employee may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of any thing of value to a person or political organization for a political purpose.

(e) For purposes of Subsection (c), a state officer or employee does not interfere with or affect the results of an election or nomination if the individual's conduct is permitted by a law relating to the individual's office or employment and is not otherwise unlawful.

§ 556.006. Legislative Lobbying

(a) **A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure.**

(b) This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.

For the purposes of chapter 556, a “state agency” includes “a university system or an institution of higher education (§556.001 (2)(B))”, a “state officer” is “individual appointed to office by the Governor or another officer (§556.001 (4))”, and a “state employee” is an “individual who is employed by a state agency (§556.001 (3)).” The most problematic area relevant to this discussion is that line which separates achieving a political purpose from providing information necessary to frame public policy and debate. UT Watch believes that, generally speaking, providing information crosses the line into political activity when it represents the advocacy of a political position, or if information is distorted with this intent. This position reflects what we believe is the intent of Chapter 556, as measured by other sections of the Texas Government Code that seek to protect the dignity of democratic government and the ability of meaningful public control over government institutions.

For example, in the strongly worded §552.001 (A), which urges the liberal interpretation of the Open Records Act, the “fundamental philosophy of the American constitutional form of representative government” adheres to the “principle that government is the servant and not the master of the people...” This principle necessitates that citizens are entitled to information about government affairs in order that “they may retain control over the instruments they have created.” Chapter 556 and other sections of the Texas Government Code that prohibit or regulate certain political activities by state agencies and other organizations controlled or funded by government point to a recognition that these agencies are the “instruments” that have been created by the citizens of Texas, and should therefore not be involved in actively shaping public policy. These organizations, as “instruments”, are

to be the object of public policy and opinion, which necessitates the distribution of information, but not actively promoting public policy pertaining to themselves.

There is also a more practical reason why attempting to achieve a political purpose should be understood in this way. Chapter 305 deals with the registration of lobbyists. §305.001 argues that “certain persons” engaged in direct communication with government officials need to be monitored in order to “preserve and maintain the integrity of the legislative and administrative process.” These “certain persons” are generally professional lobbyists, those paid by some organization or individual to change or maintain the course of government access. Thus, the Texas Government Code recognizes that the integrity of the legislative process can be damaged by the unrestrained activities of professional lobbyists; without some form of public oversight of their activities, bribery, backdoor deals, and cronyism can erode the role of public debate in shaping public policy. This would effectively mean that, through the power of money and political ties, some would gain a great deal more access and power within the democratic process. By limiting the ability of state agencies to advocate political positions, Chapter 556 protects the dignity of the democratic process in a similar way.

Although none of UT’s actions violate Chapter 305, the largely unmonitored political activities of a state agency effectively distort the political process in a parallel way. The use of a powerful state agency’s resources and employees in a multi-faceted political campaign to decrease the role of public oversight over that state agency squanders public resources and decreases the average citizen’s ability to meaningfully participate in shaping public institutions. § 556.004 (C) can be read as specifically limiting the use of the good faith placed in officials within state agencies in order to achieve political purposes.

State agencies limit the meaningful participation of the average citizen in shaping public policy, and compromise the dignity of the democratic process because: the resources involved, which are not intended to be utilized in political campaigns, exceed the average citizen’s resources as measure in time, money, and political connections many times over; the authority conferred on public officials, which can give their suggestions the appearance of neutrality or objectivity; and the fact that the information relevant to these decisions will be produced and distributed by the same organization that is both the object of public policy and a key political player in shaping and passing these policies. In short, the advocacy of a political position by a state agency, or officer of such an agency in his or her official capacity, damages the legitimacy of the democratic process by decreasing the effective voice of the average citizen and misusing public resources and authority in order to maintain or further an official organization’s own power. For their part, each of the officials and employees involved in these political activities have signed both §556.004 and §556.006 (§556.009).

Another interpretive issue is whether or not state resources or the activities of employees and officers that are paid for by appropriated funds (in the form of salaries or transportation in UT owned vehicles, for example), and used by a state agency to influence the outcome of legislation constitute a violation of §556.006. Because of the importance of the situation, as described above, we would like to suggest that “appropriated money” in §556.006 should be liberally construed to include the use of resources or employees paid for with appropriated money.

UT Watch also suggests that the focus of any investigation into UT’s political activities should be at the level of the “campaign”. Many individual actions of the University of Texas and its employees and officials can only be properly understood in terms of their context in a campaign to deregulate tuition. For example, while it is legal (and, to some degree, necessary) for public officials to meet with legislators, it is questionable whether frequent visits to key lawmakers, in the context of a campaign for a legislative measure, is legal.

As mentioned above, the most relevant law regarding UT’s recent political activities is § 556.004 (C). We believe that the use of the Office of Governmental relations in promoting legislation dealing with tuition deregulation and indirect cost recovery is an example of the use of “official authority or influence” by state officials, as well as the “use of a program administered by a state agency”, to achieve a political purpose. As documented in the “Timeline of UT’s Deregulation Campaign 2002-2003”, several Office of Governmental Relations employees are they employees or officers (appointed or hired), along with Chancellor Yudof, frequently met with legislators regarding legislation. In the section of this report entitled “Smith, Scott and Martinez: UT System Lobbyists”, various e-mails gathered through open record requests are clear indications that these officials were intending to get deregulation passed not to simply provide impartial information so that lawmakers would be informed while shaping public policy. There are also indications that the Office of Governmental Relations had a role to play in organizing the lobby efforts of alumni.

Also, as evidenced in the section of this report entitled “Campaign for Public Support”, Offices of Public Affairs at both the system and component levels contacted the editorial boards of several newspapers. Because offices of a state agency are possibly seeking to promote certain legislation by building public support, it may also be a violation of § 556.004 (C). Seeking favorable editorial coverage of proposed legislation is significantly different from providing information; the former is an attempt to convince readers of a bill’s legitimacy, the latter is an attempt to provide impartial information that can be used by citizens to reach their own conclusions.

UT Watch also suggests that the relationship between the John Doner Company and the University of Texas be examined closely. Specifically, UT’s possible role in coordinating, approving, or funding of the company’s “grassroots” effort to deregulate the management of public money managed by UTIMCO should be uncovered or discredited. If strong collaboration exists, or if any funding exists, it is very possible that a violation of § 556.004 (C) or §556.006 (A) has occurred.

The role of the Board of Regents⁵⁵ and Chancellor Yudof in the campaign for tuition deregulation should also be examined, and questions regarding its legality raised. Because the Office of Governmental Relations and Offices of Public Affairs participated in what amounts to a political campaign, and given the authority of the Chancellor and the Board of Regents, they may have violated § 556.004 (C). Their authority over the UT system places them in a position to permit or prevent the use of a UT program from being used for political ends. The former seems to be the case. There is also evidence that points toward more active violations of § 556.004 (C) by the chancellor and some members of the Board of Regents, specifically, Chairman Miller.⁵⁶

⁵⁵ This refers specifically to the Board of Regents during the campaign for tuition deregulation.

⁵⁶ Evidence to this end is scattered through out this report. The most relevant sections are “Mark Yudof: The Public Face of Deregulation” (pg. 11), “Using Alumni” (pg. 8), and “The Timeline of UT’s Tuition Deregulation Campaign 2002-03” (pg. 18).