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The Geopolitics of Place and Residence in Texas

The University of Houston, like all public institutions of higher education in Texas, exists in a framework determined by statute, law, and regulation, carefully erected to provide the residents of the State with an interdependent system of postsecondary education, one that apportions state resources and access. In large part, the concept of place matters greatly in Texas, not only differentiating enhanced opportunity to its own state residents and those domiciled in the State, but in a geographic sense of trying to locate affordable college access across service areas. This important dimension of geographic reach and placement is governed by the Texas Higher Education Coordinating Board, with duties to provide “a statewide perspective to ensure the efficient and effective use of higher education resources and to eliminate unnecessary duplication” and to “assess the higher education needs of each region of the state.”

One of the most important means by which the CB undertakes its statutory duties is by enacting planning measures that guarantee a geographic balance, so that all areas—however remote and rural—are served and so that no single metropolitan area has unbridled and wasteful duplication of efforts. Such measures specifically include attention to service areas and regions of the large state:



- The board shall develop and periodically revise a long-range statewide plan to provide information and guidance to policy makers to ensure that institutions of higher education meet the current and future needs of each region of this state for higher education services and that adequate higher education services at all levels are reasonably and equally available to the residents of each region of this state.
- The board in developing the plan shall examine existing undergraduate, graduate, professional, and research programs provided by institutions of higher education and identify the geographic areas of this state that, as a result of current population or projected population growth, distance from other educational resources, economic trends, or other factors, have or are reasonably likely to have in the future significantly greater need for higher education services than the services currently provided in the area by existing institutions of higher education.
- The board shall identify as specifically as practicable the programs or fields of study for which an area has or is projected to have a significant unmet need for services.
- In determining the need for higher education services in an area, the board shall consider the educational attainment of the current population and the extent to which residents from the area attend institutions of higher education outside of the area or do not attend institutions of higher education.
- The board shall include in the plan specific recommendations, including alternative recommendations, for administrative or legislative action to address an area's unmet need for higher education services as efficiently as possible.

These specific references to geographic distribution are undergirded by a longstanding practice and requirement that new campuses be approved by the CB and that regional services are to be apportioned and distributed so as not to overlap programs or pose duplicative and wasteful competition. In addition, a common law of geography has been carefully developed over time to ensure that any new programs and course offerings meet a high standard of need, taking into account pre-existing colleges and service areas. The University of Houston has been subject to such regional restrictions: when the UHS requested in 2006 to locate an instructional site in Northwest Houston, it was determined by the CB that to do so would encroach upon the attendance zones and recruiting areas of Prairie View A&M. This was at a time at the end of the Priority Plan, an agreement with the Office of Civil Rights with then- Governor George W. Bush to take steps to ensure the viability of educational programing and student success for TSU and Prairie View A&M. UH accepted and has abided by the decision, even though the site would not have been a full campus. When UH was invited to offer instruction in hotel and restaurant management in San Antonio, it sought the concurrence of all the public institutions in the San Antonio service areas, and received their blessings.

When TAMU attempted to affiliate with South Texas College of Law in Houston (a private and freestanding law school), it did so without receiving permission of the CB to undertake such an affiliation and was denied permission, a decision ratified by the Texas Supreme Court in *In Re STCL*. After TAMU and STCL entered into their 1999 “affiliation agreement,” it was determined that several million dollars were spent by both parties, yet the court declared the Agreement to be “void because it exceeds the authority granted Texas A & M University in the Texas Education Code, and because its essential purpose violates public policy as expressed in the Texas Education Code.”

The Texas Supreme Court has upheld the authority of the CB to void even “affiliation agreements,” and in a challenge brought by

Mexican American plaintiffs on the issue of whether or not the provision by the CB of higher education degrees, dollars, and driving distances to boarder-area colleges were unconstitutional, the same Court also held that finding “an equal rights violation simply because defendants ‘expend less state resources on higher education in the border area of Texas ... than its population would warrant,’ it cannot be sustained. In this case, if the state has made a geographical classification, defendants need only show that the system of allocating educational resources is rationally related to a legitimate purpose, which they have done under this record. Attempting to ensure that the State's limited higher education budget is wisely and efficiently spent on necessary and non-redundant programs is clearly a legitimate goal, and the State's system for coordinating these requests is a rational means of furthering that purpose.” *LULAC v. Richards*

There have been dozens of such geographic determinations made over the lifetime of the CB, and the State’s colleges and universities would never undertake major extra-territorial site extensions without seeking CB approval in advance of undertaking land purchases. UT should not be allowed to use funds to purchase land hundreds of miles away from its Austin campus for the purpose of offering unauthorized coursework, whether in the form of engineering classes or student internship course credit. All UT Austin courses have full permission to be offered in Austin and its immediate area, but require advance permission from the CB to cross counties and relocate degrees hundreds of miles away. If the desire is to work collaboratively with other institutions on research, UH faculty have shown their willingness to engage and 332 acres of real estate is not what is needed for this to happen. Were the situation reversed and UH bought land near the Austin Airport to provide state-level experiences for its students in the state capitol, UT would properly object and the CB would likely deny a UH application request. UH has observed the rules all these years, and UT should be made to do so here.

Allowing this campus to be established in Houston would unravel years of cooperative and strategic planning by the Coordinating Board and the Legislature, and would harm the careful balance of regional systems of higher education. It also is unclear whether the UT campus is planning to relocate educational programs from the several other UT campuses, such as in El Paso, San Antonio, and elsewhere. All the wrong reasons for the Austin campus moving into Houston extend to these other institutions as well.

CB Commissioner Raymund Paredes acknowledged the importance of such regional planning when he recently wrote, "In Texas, we are in danger of expanding higher education programs and facilities beyond the state's ability -- or willingness -- to fund them adequately. Ultimately, that is a recipe for statewide mediocrity in public higher education."

In sum, the University of Houston has played by the rules, including common law practices, and the CB should enforce these equally against all comers. The University of Texas has conceded the authority for such regional permission-granting by the CB when it went to the CB in 2004 and sought permission to offer executive MBA courses at a hotel complex in Houston on weekends. The CB gave such permission in part because it did not involve a permanent campus but a local hotel complex and in part because the UH did not raise formal objections at the time, although both TAMU and Rice did unsuccessfully lodge objections. (This program now is taught in classrooms at the University of Texas Health Science Center in Houston.) UT, UH, and the other public colleges and universities must render unto Caesar in the form of the CB, and purchasing land almost as large as the UH main campus violates every practice and policy so carefully carved out over the years when apportioning new programs.

UT has engaged in expansionism even as it fought against legislative efforts to locate another UT-affiliated law school in the Dallas area, resulting in UNT being the home of the state's newest law

school. And TAMU sought and received permission to acquire the Texas Wesleyan School of Law and reconstitute it as the TAMU Law School in Ft. Worth, not repeating its disastrous experience a decade earlier in Houston.

When Chancellor McRaven lays out his plans for avoiding the wasteful duplication and painting it as a virtue, he cites LA and Boston: “There is room and opportunity for expanded academic and research ventures in this vibrant city. Boston is home to Harvard, MIT, Boston University and Boston College. In Los Angeles, UCLA and USC — two research powerhouses — sit just a few miles from each other. Houston, too, should be home to a thriving and varied academic landscape.” But he fails to even identify a public campus in Boston, and disingenuously cites the sole public research university in Los Angeles—ignoring the completely different public college situation UT poses to UH, TSU, and the HCC.

It is the responsibility of the CB to ensure thoughtful, reasonable, and strategic placement of institutions of higher education and programs so as to continue providing access to underserved populations which was a key component of *Closing the Gaps* as well as the CB’s new strategic plan, 60X30TX.

Simply buying land in Houston in the hopes that the CB, the area’s several colleges and universities, and the Legislature will not notice, and breaking ground for expansionist plans in the future are wrong, and violate state law and practice. If the UT wants to offer courses and degrees in Houston, it must gain prior permission from the CB to do so, and not kick that can down the road by promising that it will not offer instruction immediately. This transgression violates the law and regulation of Texas higher education campus location and administrative

decision-making, and we urge it be stopped in its tracks before any further plans can be implemented. This act is a Trojan horse, and Houston should not let it inside the gates.

A handwritten signature in blue ink, appearing to read "Michael A. Olivas", with a long horizontal stroke extending to the right.

Michael A. Olivas

(These remarks are my own, and are shared solely in my capacity as a UHLC professor.)