

March 13, 2019

The Honorable Joseph McNamara
Chairman, House Committee on Health, Education and Welfare
Rhode Island House of Representatives
Rhode Island State House
82 Smith Street, Room 135
Providence, RI 02903
Sent via email to Lisa Cataldi, Committee Clerk: lcataldi@rilegislature.gov

RE: House Bill 5435 – Relating to the Board of Education

Chairman McNamara and Members of the Committee:

I welcome the opportunity to comment on House Bill 5435 on behalf of the Association of Governing Boards of Universities and Colleges (AGB). For almost 100 years, AGB has been recognized as the nation's trusted advisor on matters related to higher education board governance. AGB's membership includes the governing and coordinating bodies of some 2,000 colleges, universities, and institutionally-related foundations. We work with state and institution leaders and their board members to provide education and counsel to over 50,000 leaders across higher education. AGB has shaped best practices in board governance and is committed to advancing policies that strengthen and improve higher education leadership. I hope that our comments can add value as you consider HB 5435.

Let me start by saying that AGB is fundamentally opposed to HB 5435. While we respect the views of those who are advancing this legislation, passage of this bill would diminish the underlying values and principles that define our country's unique model of higher education board governance—autonomy and independence. Both are values that contribute to the respective missions of some 4,000 colleges and universities across the nation. Both values and standards are protected and ensured by the 50,000 men and women who serve as volunteers on the governing bodies that are accountable for the institutions and systems they serve. This model of citizen trusteeship enables our colleges and universities to set policy, strategy, to address some of the increasingly complex issues facing higher education, and to act independently from those with vested interests or political priorities in the decisions coming before boards.

Public higher education governing boards should be comprised of citizens who are independent in their individual and collective judgment. They serve the people of the state, not segments of the state or special interests. HB 5435 calls for a change in Rhode Island's current appointment process to the Council on Postsecondary Education and would require that all eight board members who serve on the

1133 20th Street, N.W., Suite 300
Washington, D.C. 20036
P 202.296.8400 F 202.223.7053

CHAIR
David W. Miles
Drake University

VICE CHAIR
Shauna R. Diggs
University of Michigan

VICE CHAIR
Beverly J. Seay
University of Central Florida

SECRETARY
Angel L. Mendez
Lafayette College

AT-LARGE MEMBER
Eric P. Blackhurst
Alma College

PRESIDENT
Richard D. Legon

Nelson A. Carbonell
George Washington University

Kathleen A. Dore
University of Iowa Foundation

Juliet V. Garcia
Public Member

Linda R. Gooden
University System of Maryland Foundation,
Inc., and Maryland Board of Regents

Cathy Havener Greer
Randolph College

Eleanor V. Horne
The College of New Jersey

Mary K. Hughes
University of Alaska System and
Willamette University, life trustee emerita

Jeffrey L. Humber Jr.
Gallaudet University

Leo M. Lambert
Public Member

Monroe Miller
Johnson C. Smith University

Ross A. Mugler
Old Dominion University

Ronald C. Parker
Texas Christian University

Horacio A. Valeiras
Virginia Polytechnic Institute

Diane Yu
Oberlin College

governing body be individuals who are linked directly to the academy—current and former faculty members, administrators, or employees of a higher education institution. There is no public higher education institution or statewide governing board in the nation with this type of composition. This structure could call into question the independent judgement of the Council and create conflicts of interest.

A board's ability to serve the public's interest is weakened when board members are presumed to have direct relationships with the issues and outcomes of board deliberations. These relationships have the net effect of moving the board from a fiduciary body to a union body. Faculty members are valued members of a shared governance community; however, they are compromised in their ability to remain independent should they be also asked to assume a fiduciary role as a board member. Faculty, like students and staff, have vested interests in board decisions. As such, their ability to focus on broader needs can become difficult during board discussions.

Governing boards do benefit when a member of the board has experience and awareness of academic issues. But to specifically designate board seats to individuals with the same background intrudes on a broader effort to balance board appointments based on a diverse set of skills and experiences, race, gender, ethnic diversity, state geographic representation, and other characteristics.

To assert that only individuals with backgrounds in higher education can effectively serve the public's interest for higher education in Rhode Island misses the point regarding our system of governance, a risk that might also catch the attention of the regional accrediting bodies that increasingly consider the validity of a board's composition, autonomy, and independence. It is also probably why 79.5% of the governing boards of public colleges and universities *do not* have faculty board membership. (*Source: AGB's 2016 Policies, Practices, and Composition of Governing and Foundation Boards.*)

An alternative to formal faculty board membership would be a designated non-voting faculty representative to the board. The representative could provide regular updates to the board on faculty issues and concerns. It is also common practice for faculty to serve on board committees, both standing and ad hoc, if board bylaws permit such representation.

AGB recognizes that the legislature may wish to strengthen input from faculty, employees, and administrators by including their representation on the Council. However, completely overhauling the current board's membership would create conflicts of interest.

It is AGB's view that faculty, staff, and students ordinarily should not serve as voting members of their own institution's governing board because such involvement runs counter to the principle of independence of judgment required of board members. Particularly in the case of faculty or staff members, board membership can place them in conflict with their employment status. Even when constituent groups are represented on the board, the board should be mindful that the presence of one or more students, faculty, or staff as members of the board or its committees or institutional task forces neither constitutes nor substitutes for communication and consultation with these constituent groups.

Source: AGB's 2010 Statement on Board Responsibility for Institutional Governance

Chairman McNamara
March 13, 2019
Page 3

There are those who would point out that the current appointment process results in board members who might be too close to the governor or who might be susceptible to external influence of policy leaders. Appointed board members should remain independent. Members who violate the trust and expectations that go along with a high-profile appointment and the public's interest should be identified and removed.

I commend the legislature for its attention to effective public higher governance. However, HB 5435 will not get you where you want to be. Rhode Island, like many states, faces an array of disruptors in its higher education system. Enacting this legislation would only add to those disruptors.

In my opinion, based on over 30 years of studying higher education boards and consistent with this association's principles of governance independence, I see no sound reason to enact HB 5435. I urge the Committee to vote against this bill.

I am available to answer any questions related to this letter. Please do not hesitate to contact me at rlegon@agb.org or 202-776-0812.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Legon", followed by a horizontal line extending to the right.

Richard D. Legon
President, AGB