

Via email

May 31, 2023

The Honorable Greg Abbott
Governor, State of Texas
Office of the Governor
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RE: Commendation on Signing the C.R.O.W.N. Act and Veto Request for Senate Bill 17 and Senate Bill 18

Dear Governor Abbott:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to commend you for signing House Bill 567, the Texas C.R.O.W.N. (Creating a Respectful and Open World for Natural Hair) Act into law last week. The C.R.O.W.N. Act will serve as an important tool to prohibit race-based hair discrimination in Texas workplaces, schools, and housing policies against Black Texans. The C.R.O.W.N. Act will allow Black Texans, especially, regardless of their hair style or hair formation, to express their authentic selves and feel welcome and safe in schools and workplaces across Texas. Thank you for your leadership in making Texas the twentieth state in the nation to pass such a law.

It is in this spirit that we write in strong opposition to Senate Bill 17 and Senate Bill 18. These two bills will work to undermine the belonging and freedom of expression fostered by the C.R.O.W.N. Act and other values of equality and non-discrimination espoused in the U.S. Constitution, Texas Constitution, and other laws. Senate Bill 17 will prohibit public colleges and universities from enacting policies to foster belonging for underrepresented and historically marginalized students of color. Senate Bill 18 will weaken academic freedom and remove protections for professors, especially Black and Latinx faculty, seeking to have intellectual authenticity on topics related to race, racism, and our shared history in their classrooms and research. We strongly and respectfully urge you to veto Senate Bill 17 and Senate Bill 18.

Throughout the last several months, state legislators heard from hundreds of Texans across the state detailing how these bills threaten the existence of critical educational programs that support higher education faculty, staff, and students, especially Black and Latinx people, veterans, and people with disabilities. The pursuit of equity is not only paramount to providing equal educational opportunities to historically marginalized communities but is also a key component of the current strategic plan to build a talent-strong Texas, maintain the state’s national standing in higher education, and prepare individuals to compete in a global economy. Signing these bills into law could cause irreparable and

direct harm to students and to the campus climate across institutions of higher education throughout Texas.

Founded in 1940 under the leadership of Thurgood Marshall, LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. Since the historic U.S. Supreme Court decisions in *Sweatt v. Painter*¹ and *Brown v. Board of Education*,² which LDF litigated and won, we have continued to represent students of color to ensure they receive quality and equitable educational opportunities. All students deserve access to high-quality education inclusive of accurate curricula and school climates that acknowledge and address the needs and perspectives of all communities. Senate Bills 17 and 18 contain harmful provisions that will undermine progress made in public institutions of higher education, potentially hamstringing their ability to recruit and serve diverse educators and students, as well as deter school and business efforts to improve diversity, equity, and inclusion.

I. Senate Bill 17

As an initial matter, DEI is a non-partisan system of practices that are designed to foster integration and uplift communities that have experienced marginalization in the past and continue to face barriers today. DEI, in general, and as contemplated by SB 17, is separate from race-conscious admissions and should not be quantitatively measured solely by the number of students of color on campus. As scholars have explained, “institutions of higher education have to go beyond simply increasing enrollment of students of different racial and ethnic backgrounds. These institutions must also attend to both the quality of the campus racial climate and the actual interactions among diverse students.”³ DEI initiatives and offices are essential because “just increasing the racial/ethnic diversity on campus while neglecting to attend to the racial climate can result in difficulties for students of color as well as for white students.”⁴

Senate Bill 17, if it becomes law, will codify guidance from your office, dated February 4, 2023, mischaracterizing DEI initiatives as “policies that expressly favor some demographic groups to the detriment of others” and “proactively encourage discrimination in the workplace.”⁵ Following your guidance, multiple universities across Texas, including Texas’ flagship university, the University of Texas at Austin, announced their suspension of DEI initiatives.⁶ However, in actuality—and in stark contrast to the letter’s mischaracterization—DEI initiatives function to make the workplace a more inclusive environment for all. Senate Bill 17 would enshrine these

¹ *Sweatt v. Painter*, 339 U.S. 629 (1950).

² *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

³ Gurin, P., Nagda, B. (R.) A., & Lopez, G. E. (2004). The Benefits of Diversity in Education for Democratic Citizenship. *Journal of Social Issues*, 60(1), 17–34. <https://doi.org/10.1111/j.0022-4537.2004.00097.x>

⁴ Hurtado, S., Griffin, K. A., Arellano, L., & Cuellar, M. (2008). Assessing the value of climate assessments: Progress and future directions. *Journal of Diversity in Higher Education*, 1(4), 204–221.

⁵ Brian Lopez, *Texas higher education leaders say equitable access is key for graduation goals*, TEXAS TRIBUNE (Feb. 9, 2023) <https://www.texastribune.org/2023/02/09/texas-higher-education-budget/>.

⁶ *Id.*

deeply flawed prohibitions into Texas law and will hinder ongoing efforts by Texas public institutions of higher education to undo the longstanding vestiges of state-sanctioned discrimination against Black and Latinx students and faculty. These efforts are key to cultivating positive school climates that foster inclusive institutions, and Texans will undoubtedly suffer the impacts of Senate Bill 17 in their classrooms.⁷

Moreover, Senate Bill 17 seeks to prohibit “discriminatory initiatives” that federal guidance has already explained are not discriminatory. Recent guidance on DEI issued by the United States Department of Education Office for Civil Rights (OCR) reinforces that “Title VI [of the Civil Rights Act of 1964] prohibits discrimination based on race, color, or national origin in the programs or activities of all recipients of Federal financial assistance.”⁸ “A [] college violates Title VI if it intentionally treats a person differently or causes them harm *because of* their race, or if a [] college creates or is responsible for a racially hostile environment.”⁹ “Activities intended to further objectives such as diversity, equity, accessibility, and inclusion are not generally or categorically prohibited under Title VI.”¹⁰ For example, Title VI does not prohibit diversity, equity, and inclusion training, instruction in or training on the impact of racism or systemic racism, cultural competency training or other nondiscriminatory trainings, or efforts to assess or improve school climate, including the use of community focus groups or climate surveys.¹¹ Indeed, DEI training may be necessary in some instances to combat the discrimination that Title VI prohibits. Moreover, to date, no Texas state court or federal court has found any Texas public college or university’s DEI office or policies to violate Title VI, the Texas State Constitution, or the U.S. Constitution as racially discriminatory.

Indeed, as OCR notes, DEI initiatives are often agreed upon to be implemented where there is a finding that a college has violated Title VI.¹² DEI initiatives can remedy differential “treatment of students, provide remedial measures to address harassing conduct, assist in remedying other forms of discrimination on the basis of race, and foster a more positive and inclusive school climate.”¹³ Therefore, contrary to unfounded claims that DEI promotes discrimination, the opposite is true: DEI efforts help to combat discrimination and to address unintended gaps in services and opportunities for underserved communities, including Black and Latinx people, veterans, and differently-abled people. Senate Bill 17 is not in the best interest of faculty and students of color in Texas and will restrict public colleges and universities from using an important

⁷ Tomás Monarrez and Kelia Washington, *Racial and Ethnic Segregation within Colleges*, URBAN INSTITUTE (Dec. 1, 2020), <https://www.urban.org/research/publication/racial-and-ethnic-segregation-within-colleges>.

⁸ U.S. Dep’t of Education, Office for Civil Rights, Fact Sheet: Diversity & Inclusion Activities Under Title VI

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

tool to create more belonging for all of their students and faculty.¹⁴

II. Senate Bill 18

Senate Bill 18 originated from Lt. Gov. Dan Patrick's quest to punish professors who teach so called "critical race theory."¹⁵ In his inauguration speech on January 17, 2023, he explained that after Texas banned "critical race theory" in K-12 schools, he wanted to punish public university professors for teaching "critical race theory" by removing tenure.¹⁶ Subsequently, on February 13, 2023 Lt. Gov. Patrick announced 30 priorities, including Senate Bill 18.¹⁷

Given this history, LDF expresses concern that Senate Bill 18 will likely impact professors who are disproportionately Black, Latinx, Asian, Indigenous, and LGBTQ+ as they are more likely to teach courses on critical race theory, gender studies, ethnic studies and intersectionality. Due to Senate Bill 18, the next generation of scholars, and especially scholars of color, will likely suffer punishment and retaliation for teaching in accurate and inclusive ways if Senate Bill 18 becomes law.

On Monday, May 8, 2023, the Texas House Committee on Higher Education allowed public testimony on Senate Bill 17 and Senate Bill 18. The hearing lasted over 10 hours and did not adjourn until 3:30 a.m. on Tuesday morning.¹⁸ Yet, zero members of the public testified in favor of Senate Bill 18 at this marathon hearing. Texans do not want to weaken the current system of tenure in Texas in accordance with Senate Bill 18. This legislation does not enact public policy in the best interest of Texans, especially Texans from historically marginalized backgrounds.

A strong system of tenure is a critical feature for universities committed to academic freedom at public institutions of higher learning as it empowers and protects professors, especially Black, Latinx, and other professors of color, from ideological discrimination. By attacking the institution of tenure, Texas renders professors vulnerable to any critic who may happen to disagree with their scholarship on important topics such as our history of racial oppression and present-day forms of systemic inequality and discrimination. Ironically, Senate Bill 18 would result in a Texas education system where a Black faculty member's hair formation has more protection under Texas

¹⁴ Gregory L. Fenves, *Why diversity in higher education is worth fighting for*, The Hill, (Oct. 20, 2022), <https://thehill.com/opinion/education/3696926-why-diversity-in-higher-education-is-worth-fighting-for/>

¹⁵ Critical Race Theory has been broadly used to refer to subject matter and content that is outside of the traditional definition of Critical Race Theory which refers to the well-established scholarly examination of how societal systems, practices and policies have been informed by race and racism.

¹⁶ Lt. Gov. Dan Patrick Delivers Inauguration Speech (12:30-13:55), <https://www.nbcdfw.com/news/local/lt-gov-dan-patrick-delivers-inauguration-speech/3172160/>.

¹⁷ Lt. Gov. Dan Patrick Announces Top 30 Priorities for the 2023 Legislative Session, <https://www.ltgov.texas.gov/2023/02/13/lt-gov-dan-patrick-announces-top-30-priorities-for-the-2023-legislative-session/>

¹⁸ Eva Surovell, *Tenure and DEI Changes Loom Large in Texas. Here Are 3 Takeaways From a Marathon Hearing*, *The Chronicle of Higher Education*, (May 9, 2023), <https://www.chronicle.com/article/tenure-and-dei-changes-loom-large-in-texas-here-are-3-takeaways-from-a-marathon-hearing>

law than their ability to truthfully teach the history of Black anti-Black hair discrimination and other history of the racial discrimination.

Black professors are already underrepresented – just over 4% of all tenured professors in Texas are Black¹⁹ – and Senate Bill 18 will make even this small number of professors dwindle to even lower numbers as they face potential dismissal for vague and broadly construed offenses such as “unprofessional conduct” in the absence of robust tenure protections. Most Black professors in Texas are tenured at Historically Black Colleges and Universities (HBCU), where they make up at least 40% of tenured faculty at each of Texas’ HBCUs.²⁰ Senate Bill 18 would cast a shadow of censorship over tenured Black professors at public institutions in Texas like Texas Southern University and Prairie View A&M by subjecting many of them to ideological oversight by political leadership in Austin who may disagree with the viewpoints expressed in their classrooms. Given the political climate²¹ in Texas around teaching accurate and inclusive education, it could lead to professors steering clear of potentially controversial issues pertaining to race and racism as part of their scholarship or in the classroom. SB 18 would weaken critical protections for professors who seek to discuss viewpoints disfavored by state officials related to race, racism, gender identity, sex, sexism, and sexuality that are based in historical fact and that impact their lives and the lives of their students today. The bill risks undermining our most fundamental constitutional values and would harm students and professors at Texas universities, particularly Black and LGBTQ+ professors and students and those who exist at the intersection of those identities.²² Senate Bill 18 may violate numerous laws including Title VII of the Civil Rights Act of 1964.

Senate Bill 18 could send professors to universities in other states that offer more robust tenure protections and deter out-of-state professors from teaching in Texas. This, in turn, could lead to lower student application rates from potential in-state students in Texas, out-of-state students, and international students. Furthermore, towns and cities across Texas rely on the university community for economic growth.²³ According to the latest data available, in 2019, Texas’ universities alone “produced a total economic impact of \$11.5 billion across the state.”²⁴ Indeed, Texas’ HBCUs alone generate \$1.3 billion in total economic impact and have created 11,490 jobs

¹⁹ Kalley Huang and Valeria Olivares, *Why are so few Black professors tenured? Texas has made little progress despite promises of change*, DALLAS MORNING NEWS (Jul. 15, 2021),

<https://www.dallasnews.com/news/education/2021/07/15/why-are-so-few-black-professors-tenured-texas-has-made-little-progress-despite-promises-of-change/>

²⁰ Kalley Huang and Valeria Olivares, *Why are so few Black professors tenured? Texas has made little progress despite promises of change*, DALLAS MORNING NEWS (Jul. 15, 2021),

<https://www.dallasnews.com/news/education/2021/07/15/why-are-so-few-black-professors-tenured-texas-has-made-little-progress-despite-promises-of-change/>.

²¹ Kate McGee, *Lt. Gov. Dan Patrick proposes ending university tenure to combat critical race theory teachings*, TEXAS TRIBUNE (Feb. 18, 2022), <https://www.texastribune.org/2022/02/18/dan-patrick-texas-tenure-critical-race-theory/>.

²² Kerol Harrod, *Book bans in Texas hurt youth and our democracy*, DALLAS MORNING NEWS (March 7, 2023), <https://www.dallasnews.com/opinion/commentary/2023/03/07/book-bans-in-texas-hurt-youth-and-our-democracy/>.

²³ ICUT, *The Economic Impact of our ICUT Member Institutions*, <https://icut.org/page/EconomicImpact>.

²⁴ *Id.*

in Texas.²⁵ Indeed, “every dollar in initial spending by Texas’ HBCUs generates \$1.49 in initial and successive spending.”²⁶ Professors across Texas’ colleges and universities have already sounded the alarm bells about the negative impact of weakening tenure.²⁷ Without students, professors, administrators, and staff of these universities, communities across Texas will suffer economically. Likewise, attacks on academic freedom and tenure threaten the accreditation status of Texas colleges and universities and the federal funding that they cannot do without.²⁸

For the foregoing reasons, LDF respectfully urges you to veto Senate Bill 17 and Senate Bill 18. Please contact Hamida Labi or Allen Liu by email at hlabi@naacpldf.org or aliu@naacpldf.org with any questions or to discuss these concerns in more detail.

Respectfully submitted,

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²⁵ *HBCUs Make America Strong: The Positive Economic Impact of Texas’ Historically Black Colleges and Universities*, United Negro College Fund, https://cdn.uncf.org/wp-content/uploads/PDFs/fy_2018_budget_fact_sheets/HBCU_FactSht_Texas_5-17D.pdf?_ga=2.23686970.1445437329.1683298286-1132387942.1683298286.

²⁶ *Id.*

²⁷ Kate McGee, *For thousands of Texas professors seeking tenure, a bill banning the benefit could be a turning point in their careers*, TEXAS TRIBUNE (May 3, 2023), <https://www.texastribune.org/2023/05/03/texas-legislature-tenure-track-ban/>.

²⁸ Southern Association of Colleges and Schools Commission on Colleges, *The Principles of Accreditation: Foundations of Quality Enhancement* 18 (Dec. 2017), <https://sacscoc.org/app/uploads/2019/08/2018PrinciplesOfAcreditation.pdf>; Rick Seltzer, *Restrictions threaten ‘integrity of our system of higher education,’ groups say*, HIGHER ED DIVE (June 8, 2022) (“Colleges and universities forced to comply with political edicts governing curricula and classroom discussions may forfeit their eligibility for accreditation, a drastic result that could compromise students’ eligibility for federal financial aid and place the institutions themselves in jeopardy”), <https://www.highereddive.com/news/restrictions-threaten-integrity-of-our-system-of-higher-education-groups/625159/>.