


UNC BOARD OF GOVERNORS

Memorandum

To: UNC Board of Governors Committee on Educational Planning, Policies, and Programs

From: Steven B. Long 

Date: February 14, 2017

Re: Policy Change to Ensure the Academic Focus of Centers and Institutes

The agenda for your March 2, 2017 committee meeting will include the attached proposed Board of Governors (“BOG”) Policy, which provides that UNC centers and institutes shall not engage in litigation. I have proposed this new policy because I believe that it is needed to maintain and protect the academic focus of centers and institutes and I ask that you support its adoption. The Policy adds to BOG Regulation 400.5[R] (“BOG Centers and Institutes Regulation”).

There are approximately 240 academic centers and institutes on the 16 campuses of the University of North Carolina (“UNC” or “the University”). Each university must adopt a procedure whereby one or more faculty members may establish an academic center or institute (collectively, a “center”) pursuant to the BOG Centers and Institutes Regulation and campus procedures. Each center is required to identify itself as either a research, public service, or instructional unit. The university chancellor and board of trustees must approve the creation of each center and must notify the Office of Research and Graduate Education at UNC General Administration prior to establishment of any center.

Universities began to establish academic centers after World War II and primarily to conduct federally-funded research. The centers serve as a way to bridge departments so as to conduct inter-disciplinary research and educational activities. For example, the UNC Center for Media, Law and Policy addresses issues involving both the school of law and the school of journalism.

The BOG Centers and Institutes Regulation currently limits the ability of centers to engage in lobbying but does not prevent a center from engaging in litigation against private parties or State and local governments. A BOG policy (Policy 200.5) prevents UNC constituent institutions from filing lawsuits in their own names or in the name of the University, absent BOG approval for most types of claims. This effectively means that centers cannot initiate lawsuits with the center or its sponsoring university as the plaintiff without BOG approval. The BOG’s policies do not currently prevent centers or institutes from participating in litigation in other ways, such as by providing legal representation to other parties.

Filing legal actions against the State or city and county governments is far outside the primarily academic purpose of UNC centers. So too is the representation of private parties by full-time university center employees (as opposed to law students as part of a law clinic program where student education is a primary focus). The more than 13,000 academic centers at United States universities¹ are overwhelmingly dedicated to academic endeavors. We should act to preserve that focus in the University.

The reasons for the proposed policy change are compelling. To summarize, those reasons include the following:

1. UNC has a three-fold mission: teaching, research and service to the State. Initiating lawsuits against State or local governments violates UNC's mission. If the State or a local government fails to comply with a legal requirement, it is not UNC's place to initiate a lawsuit against that government but to advise the government of the legal requirements so that they can be met. Advice provided by the School of Government at UNC-CH is an example of the proper role of UNC in relation to State and local governments.
2. Academic centers are not structured to operate as litigation centers. There is no oversight body in existence to determine objectively that litigation initiated by a UNC academic center is for a worthwhile purpose, based upon verifiable facts, and has an academic or educational purpose. The lack of oversight structure opens the door to use of UNC centers to pursue litigation that advances the personal causes and interests of center personnel rather than UNC's educational mission.
3. Lawyers who are employed by the University and assigned to work on behalf of UNC academic centers are government employees with little incentive to resolve claims and significant incentive to litigate. Allowing academic centers with government-funded lawyers to engage in litigation will incentivize less discussion of ways to resolve conflicts and encourage litigiousness and prolonged litigation.
4. Permitting academic centers to engage in litigation, with no oversight, creates substantial risk that center personnel will lose sight of UNC's educational mission and become too focused on litigation.
5. Academic centers are not law school clinics, which provide law students with hands-on legal training through representation of clients in criminal, domestic violence, landlord-tenant, and other pro bono matters. Law school clinics, according to American Bar Association ("ABA") standards, must provide in-class training in addition to real-world litigation experience. The ABA standards

¹ William R. Tasch and Stephen Miles Sacks, *The Payoff: Evaluating Research Centers, Institutes, Laboratories, Consortia For Success*, *The Journal of Science and Health Policy*, at 18 (2004).

ensure that students, not full-time lawyers, are the ones primarily representing clients. Law school clinics therefore focus on educating law school students; academic centers do not have that same focus.

6. Participation in litigation by academic centers does not provide the best means or a necessary means for educating law students. Real-world litigation experience is available to law students through internships with private law firms, nonprofit organizations, government agencies, and law school legal clinics. There is no need for UNC centers to initiate litigation to provide training to law students.
7. The BOG Centers and Institutes Regulation contains several restrictions to ensure that centers maintain an academic focus and the proposed restriction is consistent with those requirements. The regulation requires that each center: (1) must be assigned to a specific campus for administration oversight; (2) is subject to the authority of the Board of Trustees to create or discontinue the center; (3) must be subjected to comprehensive reviews every five (5) years; and (4) like charities, may not engage in excessive lobbying to support or oppose legislation.

For the reasons above, I request your approval of the proposed new policy.

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cc: Board of Governors officers
Thomas Shanahan, Esq.

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PROPOSED BOARD OF GOVERNORS POLICY
For Discussion by the Committee on Educational Planning, Policies, and Programs
March 2, 2017

Involvement of Centers and Institutes in Legal Actions

I. Applicability and Purpose. The Board of Governors believes that the establishment of Centers and Institutes, as defined in Section 400.5[R] of the UNC Policy Manual, can strengthen and enrich University programs and activities associated with the University's core missions of research, instruction, and service. This policy seeks to protect the academic focus of such entities by restricting Centers and Institutes from participating in litigation.

II. Legal Actions. No Center or Institute may do any of the following:

A. File a complaint, motion, lawsuit or other legal claim in its own name or on behalf of any individual or entity against any individual, entity, or government or otherwise act as legal counsel to any third party; or

B. Employ or engage, directly or indirectly, any individual to serve as legal counsel or representative to any party in any complaint, motion, lawsuit, or other legal claim against any individual, entity, or government or to act as legal counsel to any third party.

III. Other Matters.

A. Effective Date. The requirements of this policy shall be effective on the date of adoption by the Board of Governors. The requirements of this policy shall not apply to any pending legal action in which a Center or Institute was participating immediately prior to the effective date of this policy, provided that the Center or Institute notifies the Secretary of the Board of Governors, in writing, of its participation in such action within thirty (30) days of the adoption of this policy.

B. Relation to State Laws and University Policy. The foregoing policy as adopted by the Board of Governors is meant to supplement, and does not purport to supplant or modify, those statutory enactments and existing University policies which may govern or relate to the matters addressed herein.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

DRAFT 2/13/2017