Legislators Flex Some Muscle

In some states, legislators are showing greater willingness to criticize higher education—and sometimes to back their critiques with legislative action. Is this a new era of governmental intrusion?

By Stephen G. Pelletier

In South Carolina, legislators use the power of the purse to express their displeasure over campus discussions of LGBT issues. In Michigan, university involvement in a program on labor organizing draws legislative scrutiny and threatened budget cuts. In Kansas, legislators outraged over a professor’s tweet are said to be part of the impetus behind a new policy about...
what university employees can say on social media. In Texas, hostile politicians angle to unseat the president of the state's flagship university.

Anecdotal evidence from across the country suggests that some legislators are getting more vocal in their criticisms of higher education—and more willing to put some bite in their critiques through legislation. Even though the evidence of such actions is episodic rather than routine—at least so far—the existing examples raise essential questions. Are we entering a new era of governmental intrusion? Should public universities steel themselves for greater legislative interference? And perhaps more to the point, how can presidents of AASCU institutions best navigate today's sometimes more roiled political waters?

Legislative Activism

Whether it constitutes a full-fledged trend or not, there is increasing evidence of legislative activism around higher education. In South Carolina, for example, state lawmakers recently mandated that the College of Charleston spend $52,000 to teach the U.S. Constitution—a de facto penalty for college professors having assigned students to read a book called Fun Home, which explores sexual orientation in the context of family relationships, and for the university having sponsored a play based on the book. Legislators, who originally wanted to cut those funds entirely from the college's budget, enacted similar legislation to also punish the University of South Carolina Upstate for assigning a different book with gay themes. In a move that raised further fears about the future of free speech at the campus, USC Upstate recently shuttered its Center for Women's and Gender Studies, which had sponsored the reading program that offered the book.

Tensions between lawmakers and educators in South Carolina were ratcheted up a notch when the legislature bypassed candidates named by a search committee to successfully support the appointment of Republican Lieutenant Governor Glenn McConnell as president of the College of Charleston. McConnell, who served three decades in the state senate, is an avid Civil War re-enactor who once co-owned a gift shop that sold Confederate memorabilia. His appointment drew no-confidence votes from the college's faculty and students.

Over the 4th of July weekend this year, ongoing tensions spilled over between policymakers in Texas and William C. Powers, Jr., president of the University of Texas, when the university's chancellor requested that Powers resign. The exact reasons for the request were not clear, but friction between Powers and Texas Governor Rick Perry has been reported for some time. Powers has also been the focus of intense scrutiny by University of Texas regent Wallace Hall, who currently faces possible impeachment in the Texas House of Representatives for investigations that some believe have been overly zealous. Powers chairs the executive committee of the Association of American Universities, and the calls for him to step down led AAU President Hunter R. Rawlings, III to issue a statement calling what is happening in Texas “the outer limit of political intrusion into academic institutions” and “the complete politicization of higher education.”

Among still other examples of what might be perceived as greater legislative activism, in June Michigan lawmakers reversed an earlier decision and decided not to cut $500,000 from a program at Michigan State University that partners with an external academy that offers training for unions. Two months earlier, USA Today reported that legislators in Illinois, Maryland and New York had introduced laws that would ban public universities from sending money to organizations that support academic boycotts. In other states, legislators have recently toyed with bills that would legislate teaching loads, curtail sabbatical leaves, and end tenure.

Using their authority to exercise power over higher education in a different way, Florida legislators recently proposed that undergraduate classes in public universities use the same textbooks for three years to help students save money. The move drew immediate protests from professors who said the proposed regulations could hamper their teaching effectiveness and might stop students from getting up-to-date information.

Legislators in New Jersey, meanwhile, recently sought to flex their political muscle through governance. The president of the state's senate introduced legislation that would expand the Rutgers University board of governors by adding two additional appointees for the governor and one each for the state senate's president and the speaker of the state's assembly—in effect giving elected officials more control over that body.

Daniel J. Hurley, associate vice president for government relations and state policy at AASCU, says that one context for understanding legislative action today is the "polarization of state legislatures." Hurley observes, "We have historically low levels of two-party government…and a one-party government, essentially, in many places.” That creates circumstances, he says, where “there is less debate, and [the potential for parties

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in power] to ride roughshod over minority voices.” Hurley also suggests that diminished public opinion about higher education makes colleges and universities more vulnerable to legislative criticism.

At the same time, though, Hurley is quick to note that much of current legislation concerning higher education represents apt exercises in legislative authority. “Obviously state governments have a very appropriate role to ensure that public colleges and universities are good stewards of state taxpayer dollars and students’ and families’ tuition dollars,” he says. “There are many rules and regulations and legislation put forth to help ensure that. Institutions themselves are often a partner in working with states on how to best go about the process.”

Legislators in half the states, for example, have recently adopted some form of performance or outcome-based funding for public higher education. While that trend can be seen as further evidence of deeper legislator interest in higher education, it tends to not be shadowed by the sometime overt political agendas that more intrusive legislation often carries. Moreover, performance-based funding attracts support from diverse stakeholders in both political and educational circles—and discussions around it may even provide a space where those with diverse points of view can collaborate effectively for the greater good.

Ebb and Flow

Nonetheless, increasing evidence of more pointed and politically charged legislative activity raises the question of whether we are in an era of more legislative intrusion into university affairs. Political scientist David Tandberg, an assistant professor of higher education at Florida State University who studies the intersection between state higher education policy and politics, suggests that some historical perspective can help here.

Over time, Tandberg says, “there has been an ebb and flow in the relationship between the state and its public institutions. Prior to World War II, it was fairly hands-off. As we like to say, the state would put the money on the stump and then walk away, and the institutions could pick it up and do what they wanted with it.” Following World War II, though, when the federal government began to rely more on universities for research and began to invest more directly into student aid, it also began to use the states as a primary means of assuring coordination and focused effort on the part of public institutions. At that juncture, Tandberg says, the federal government “mandated things like some sort of state office that would coordinate public higher education. And that initiated an effort toward greater centralization and more state intrusion into public higher education.”

Still later, however, Tandberg says, “There were trends away from a more centralized approach on the part of states.” So, very much an ebb and flow.

Reflecting on recent events in South Carolina, Tandberg notes that individual state lawmakers regularly get ticked off about sexually themed events at colleges. “That has been a fairly consistent theme over the years,” he says. “Some of those more ideologically driven intrusions around social issues—personally I don’t think there’s been an uptick in that. Conservative lawmakers and conservative advocates have for many years seen higher education as a liberal bastion that needs to be balanced. That’s kind of a constant theme.”

Presidential Perspectives

Whether they are ebbing and flowing with historical trends or dealing with the legislative whims of exercised lawmakers with a particular axe to grind, presidents of public universities always need a robust toolkit of strategies for working with legislators.

A seasoned perspective comes from John C. Hitt, who has served as president of the University of Central Florida since 1992. Asked whether he sees a trend toward more legislative intrusion, Hitt first notes that legislative activism often “waxes and wanes with personalities.” In Florida, he says, “it used to be that you dealt with some people in the legislature who had been in positions of power, or who had strong influence having to do with higher education, maybe for decades.” Term limits enacted in 1992 helped ameliorate that pattern.

Apart from whether strong-willed legislators can exert undue pressure on universities, Hitt takes a bigger-picture view. “There’s always going to be a bit of ‘to-ing and fro-ing’ that goes on between the legislature and higher education,” he says. Considering Florida’s adoption of performance-based funding, for example, Hitt believes that discussions in the statehouse around metrics like graduation rates “offer legislators a chance to express themselves and what they believe are the important responsibilities of the universities. I don’t see that as an undue

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intrusion at all.” Moreover, Hitt suggests, the negotiations around higher education that engage legislators, the state university system and universities themselves, is an expected and appropriate part of the process.

The challenge for universities and their leaders, Hitt says, is to use every opportunity to talk about the university and what it is trying to accomplish. “If you have a particular mission that you believe is important, or some noteworthy achievements, let those be known in ways that are understandable and acceptable,” he says.

There’s always the chance that not everyone will agree with or understand what a university is trying to accomplish, Hitt observes. Moreover, he says, “not everyone is your friend. Somebody may be looking for a way that they can sow some suspicion or doubt about your institution and what it’s doing.” Hitt says that for universities that want to keep an even keel no matter how legislative winds are blowing, pre-established lines of communication are key.

“"It’s almost always the case that we like our story better when we tell it than when someone else does. So without being obnoxious and intrusive, be sure that you tell your story,” he says. “If people know you, and understand what your values are, it’s a lot easier for them to accept that you may end up doing something that they don’t really approve of.”

If legislators know from past experience that presidents “play it down the middle without favoring one particular viewpoint,” Hitt says, they may better understand that universities have an obligation to “preserve an open environment where all points of view can be expressed.”

P. George Benson, who recently retired as president of the College of Charleston, knows a thing or two about public expression of viewpoints. Benson spent much of his last couple of years in office working with some legislators who were extremely exercised over the teaching of books with gay themes. At the same time, the college was searching for a new president. Given that 17 of the college’s 20 trustees are elected by the legislature—and the other three are appointed by the governor—it was probably inevitable that lawmakers would seek to influence college policy and decision-making through its board—adding pressure to an environment where tensions between the college and various stakeholders in politics were already running high.

The bottom line, Benson suggests, is that university presidents need to stand firm on their principles. Reflecting on the controversy over gay-themed books, he says, “I think you have to come back to how important academic freedom is, and understand that the free exchange of ideas is a basic right of the faculty and students of a university. Literally, academic freedom is a core principle on which our modern universities are founded. If you understand that, and most presidents do, then that’s the thing that you latch onto. That’s the thing you hold up.”

Presidents need to be intentional about balancing their roles on campus and off-campus—without losing sight of core values, Benson says. “You have to come back to the basics,” he says, suggesting that a critical question is whether there can be compromise on what should be considered bedrock principles. “Are you willing to give this up? Are you willing to bend this in any way, shape or form?” Benson says. “If you think about that hard enough, you come back with an answer of ‘no.’ And then you stand pat. You have the high ground if you are standing for academic freedom.”

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