

July 5, 2022

Ken and Steve,

I received your letter dated June 27, 2022 (“June 27th Letter”) regarding the letter to the Legislative Audit Commission (“LAC Letter”) I joined seeking a review of the constitutionality of Joan’s contract approved at our December 2021 meeting and other considerations. I have carefully reviewed the assertions you make in your June 27th Letter and considered the apparent prescriptions you offer for how you believe a member with such concerns should proceed. In the sincere hope of aiding our mutual understanding of the relevant issues and to orient our interactions moving forward, I address your contentions you make and clarify factual inaccuracies and address my view of the application of the policies and procedures cited in your letter.

Regents have a fundamental right to express their views as they deem necessary and appropriate

I was previously inspired by Ken’s strong words relating to an earlier Board controversy when he stated, “We respect the First Amendment rights of Regents — to speak publicly about University matters” I concur with Ken’s sentiments as this freedom is both critical to maintaining a free society and the best way to honor the brave men and women throughout our history who have risked and even given their lives to defend this right.

Putting Ken’s expressed commitment to the test, your June 27th Letter contains what could be seen as compulsory communication requirements as well as limits on what you believe a regent should be permitted to communicate. While freedom of expression includes the ability of Board leadership to express your own preferences for how members would communicate their concerns, I wish to make clear that every regent must be unimpeded in the ability to decide how and to whom the regent communicates to advance the interests of the University. This latitude must apply to all regents, regardless of their leadership status or seniority on the Board.

While no notice of the LAC request is required, notice was intended and given

Based on your three years as chair and vice chair, it isn’t immediately clear on what basis you believe other regents have an obligation to inform you, other regents, or anyone else of their individual activities or communications. This includes a regent’s decision to seek a review of a contested Board action by the Legislative Audit Committee (“LAC”), Attorney General, or the Minnesota Courts to defend the constitutional authority of the regents. Even so, as one of four signatories to the LAC Letter – a fact your June 27th Letter does not recognize – I was not the only one distributing the LAC Letter. I sent the letter to the co-chairs of the LAC. Governor Arne Carlson agreed to send the letter to additional parties including the Office of the Board of Regents (“OBR”). As he stated in a June 23rd e-mail to Brian, he realized he had not sent the LAC Letter to OBR. Mr. Steeves received Governor Carlson’s e-mail four days before you sent your June 27th Letter.

The June 27th Letter's protest about a lack of notice is inconsistent with how Board leadership has operated

A complaint by Board leadership about a lack of notice of individual regent actions is ironic. The past three years have produced a parade of decisions, whether authorized by policy or not, that have not been disclosed to the rest of the Board – at least those of us outside your inner circle. These supposed authorizations have typically been revealed to the rest of us at the same time as the general public when the administration announces a decision made “after consulting with Board leadership.” This imbalance in the role of individual regents is problematic. It gains significance when the courtesy of notice is not given to all regents and such approvals via consultation are made without authority granted to Board leadership to act without the rest of the Board weighing in. In my experience, effective leaders include the colleagues who placed them in that position when making decisions reserved for the body as a whole.

The regents' policy cited in your June 27th is not applicable in this matter

Your June 27th Letter asserts that I should be compelled to use Board of Regents Policy: *Code of Conduct for Members of the Board of Regents* to address my concerns. This claim reflects a remarkable misinterpretation of the cited policy and an obvious misunderstanding of the remedy I seek. The Regents Code of Conduct policy is not directed at the sort of question raised by the December 2021 Board action that in my view clearly offends the Minnesota Constitution. Rather, the policy is constructed to address acts by an individual regent, as shown by the use of the singular in the policy. The proposition that the only means to challenge an action taken by the votes of nine regents is to convince seven regents, including at least four of those taking the unfortunate action, to sign the complaint is absurd. That is not the type of challenge intended under that policy, and despite its inclusion in your June 27th Letter, I suspect you also know that.

No regent or even a majority of the Board has the authority to remove the constitutionally granted governance authority of any other regent or group of regents

The December 2021 contract approval placed exclusive authority over the President's compensation and goals and objectives with the Chair. This is no mere delegation of a minor administrative task. This concentration of authority occurred after several regents raised a constitutional concern about the contract. Despite the constitutional concerns raised, eight regents voted against a proposed amendment that would have restored the full Board's authority to set the President's priorities and approve her compensation.

With nine regents voting to surrender their most fundamental oversight authority to the Chair individually, the only means to defend the constitutional authority of the regent seat to which I have been elected must come from outside the Board. By first approaching the Legislature for review, I call on the body with the strongest interest in ensuring the regents – elected by them – are empowered to carry out their duties. Legislators are without a doubt interested parties to respond to authority given or removed from a regent.

The University's constitutional autonomy does not place the University above the law or beyond review by the Legislature or the Courts

Your June 27th Letter's claim that a request for an LAC review in this instance is “an improper intrusion into the Board's constitutional autonomy” speaks volumes. Not only does your assertion miss the purpose of the University's autonomy as relating to academic freedom and the general operation of the University, it reflects a view among the Board's current leadership that the University of Minnesota is an independent fiefdom, above any review or oversight by our electors in the Legislature or any other entity. If the claim

about an LAC review being improper despite its past use is correct, perhaps you would agree that the Minnesota Attorney General (“AG”) or the Minnesota Courts have jurisdiction to determine whether an action, such as the chair seeking and securing removal of eleven regents’ role in presidential oversight, offends the plain language of the University Charter and thus the Minnesota Constitution.

The claim that a majority vote inherently renders a Board action constitutionally sound is invalid

The only basis your July 27th Letter provides to validate removing the authority of eleven regents from setting Joan’s performance metrics, goals, and objectives and evaluating her performance is that a roll call vote occurred after a public discussion, with 9 regents, including Ken, voted to give Ken complete control over evaluation of the University administration’s performance. That two or at most three other regents have an opportunity to give their opinions to the Chair is nonsensical. It is akin to defending a law removing 66 State Senators’ right to vote on the state budget in favor of exclusive authority in the Majority Leader by pointing out a few other Senators get to offer the Majority Leader their thoughts on the matter.

To further illustrate the point, please consider the impact of the language you use. The June 27th Letter provides:

[T]he Board of Regents – through a public and transparent discussion and a roll call vote at our December 2021 Board meeting – **delegated to the Chair authority to award performance pay to the President after consultation with the Presidential Performance Review (PPR) Committee, which is composed of three regents who in turn receive performance input from approximately 30 members of the wider University community.** Nine members of the Board voted to approve this language in **the President’s employment agreement** and two – yourself and Regent Farnsworth – dissented. Your assertion that exercising a delegated authority from the Board in conformance with a legally binding **employment agreement** is somehow poor governance – or perhaps even illegal – has no basis. (Emphasis added.)

Now consider the following modifications:

[T]he Board of Regents – through a public and transparent discussion and a roll call vote at our December 2021 Board meeting – **delegated to the regents from the 1st, 2nd, 5th, 6th, 7th, and 8th Congressional Districts and the Chair of the Board all authority for strategic planning and budgetary decision making.** Nine members of the Board voted to approve this language in **BOARD OF REGENTS POLICY: *Board Operations and Agenda Guidelines*** and two – yourself and Regent Farnsworth – dissented. Your assertion that exercising a delegated authority from the Board in conformance with a legally binding **new Regent’s Policy** is somehow poor governance – or perhaps even illegal – has no basis.

As shown in the language above, the mere fact that a majority of the Board voted to delegate an authority does not render the delegation constitutionally valid (or in any way good governance) when it strips eleven regents of the fundamental oversight role to which the Minnesota Legislature elected them. The University President’s compensation and goals and objectives are among the most fundamental determinations made by a regent and must be defended.

Your June 27th Letter misstates the actual language of Joan’s contract

Your June 27th Letter makes the surprising claim that Joan’s performance pay is “awarded based upon goals set by the full Board each year” Yet here is the language of her contract approved in December 2021:

The bonus shall be based upon **metrics, goals, and objectives to be agreed upon annually between President and the Chair of the Board** tied to advancement of the MPact 2025 systemwide strategic plan and/or other agreed upon metrics, goals, and objectives. (Emphasis added.)

This could not more clearly state that *only* the Chair establishes the “metrics, goals, and objectives” that guide the University’s CEO on an annual basis. Disenfranchising the remaining eleven regents from these decisions renders them largely irrelevant in the ongoing oversight of the University in contradiction to the Minnesota Constitution.

Your assertion that concentrating the power to determine Joan’s performance bonus in Ken alone is not significant because it is only within a range is false

Your June 27th Letter alludes to Joan’s performance pay being “capped,” apparently in support of the validity of the contract’s denial of any other regent having a vote on her total compensation. To wit, the contract provides:

The amount of any bonus under this section is not guaranteed. **The bonus amount for each fiscal year will be determined by the Chair, in the Chair’s discretion**, within ninety (90) calendar days of the end of the fiscal year, after consultation with the Board’s Presidential Performance Review (PPR) Committee. (Emphasis added.)

The cap on the amount that can be given is no comfort and continues to deny the full Board the authority to set Joan’s compensation as provided in Board policy and consistent with constitutional authority placed in twelve regents. For instance, if under the current contract Ken awards the full amount under the cap but other regents believe it wasn’t fully earned, they are without a vote on the matter. Likewise, if Ken awards a lower amount or no performance pay at all, but other regents believe Joan earned the full amount, they are without a vote on the matter. This arrangement not only eliminates the oversight authority of the most significant University administrator of the remaining eleven regents, it leaves the Chair impermissibly greater among equals, with a presidential incentive to focus primarily, if not exclusively, on meeting the Chair’s expectations with little regard to the other regents.

I welcome your reading and would support a change to Joan’s contract to address these issues

If it turns out that you both understood that the objectives are to be established by the full Board despite the contract’s language, and you would seek to make that change as well as replacing the December 2021 contract with one that returns presidential compensation decisions to the full Board, I will support you. Those changes would render moot the request for an LAC review of the contract. If no such changes are forthcoming, the request for an LAC review and a potential AG or court review remain on the horizon.

The concern about the UMD Chancellor matter raised in the LAC Letter are appropriate and based on objective facts

Your June 27th Letter’s references that you are “troubled” by “baseless and reckless assertions over the ongoing search for a Chancellor at the University of Minnesota Duluth” despite not reciting what assertions and accusations have been made by myself or the other signatories on the LAC Letter. The statements made about David McMillan’s discussions of the UMD Chancellor job as a regent, his resignation, and his subsequent effort to secure a chancellor appointment have been factual:

- No regent in our 171-year history has been known to have resigned to be placed in a highly paid administrative position at the University.

- No regent has been known to have been hired by a president, with or without a late recusal in the process, over whom the regent has served and for whom the regent has made hiring and compensation decisions.
- The recent search process declared a failed search produced three academically qualified and experienced higher education administrators.
- By their admission, a discussion about the UMD Chancellor position occurred between Joan and David, including a discussion of his candidacy while he was a regent. This is during a time when then-Regent McMillan was under a fiduciary duty to serve the University exclusive of his personal interests.

There are additional, significant facts relating to this concern. As stated by Regent Venora Hung when the *ad hoc* committee David McMillan served on recommended Steve resign from the Board in 2012: “We must mitigate the chance of a perception of a conflict of interest in the eyes of our constituents.”

It’s unfortunate that Board leadership seek to characterize the concern as personal accusations made by one person. This is simply not accurate. The other signatories on the LAC Letter include a former two-term Governor of Minnesota, the S. Walter Richey Professor of Corporate Law and former chief ethics counsel for the President of the United States, and a highly respected former state legislator and corporate government affairs chief. Significantly, the American Council of Trustees and Alumni has “denounced” the act of resigning from the Board to pursue the UMD chancellorship, stating:

Members of university governing boards—particularly those that oversee state flagship systems like the University of Minnesota—have a primary responsibility to the public. This duty stands above any other constituency and requires that a regent avoid even the appearance of a conflict of interest in carrying out his or her fiduciary obligations. To do otherwise undermines public trust in our nation’s institutions of higher education, which are vital to the long-term civic and economic health of this country. Public confidence in higher education requires that board members treat their role not as an honorific but as a solemn duty.

An effort that seeks to convert the regent relationship into a paid leadership position at the University of Minnesota diminishes the standing of the Board of Regents and will lead to justified public speculation about the true intent of people serving as regents. Your June 27th Letter states that I “cry foul in the face of contrary facts.” It isn’t clear which contrary facts you reference, but I invite you to share the specific facts you reference as contrary to those provided in the LAC Letter.

Based on the known and objective facts surrounding this matter, the foundation for public concern is clear. It need not come with an admission by the parties involved, nor as a practical matter would such an admission ever be forthcoming. The call to adhere to basic ethics and governance principles by selecting a UMD Chancellor without the identified conflict, without the appearance of a conflict, and with experience and qualifications to serve as the chancellor of our second-largest campus is critical. If recitation of the relevant facts risks damage to the reputations of individuals or the institution, the risk is caused by those taking the actions described, not those who have raised the concern about the actions.

No privacy obligations or private personnel data have been violated or revealed

Your June 27th Letter twice refers to “private personnel data” and “privacy obligations” yet provides no clarification of what those data and obligations might be in responding to the concerns raised. At no point have I discussed information that is not publicly known, revealed by Dave or by the University. I have asked for clarifying information about the original search and current nominees and candidates –

information to which I am entitled as a regent and for which I will honor our obligations for privacy – yet I have received no responses.

If this information addresses the concerns I and others have raised as you imply, it should be timely provided to me. In no case should this information be withheld from me or any other regent at the direction of Board leadership over personnel data or privacy concerns. I have always met that obligation, and to my knowledge, so have my colleagues.

Assistance from the Office of the Board of Regents is no longer available to all regents

Recently, a disturbing pattern has developed of Board leadership directing University administrators and the Office of the Board of Regents (“OBR”) to refuse to respond to individual regents’ reasonable requests. I personally have experienced this on two occasions, with Ken directing our General Counsel to not respond to a follow up question I asked on an employment contract matter in one instance and a request for information that should have been easily accessible to the administration on another.

More recently, Regent Farnsworth requested assistance in setting up a listening session to hear from our constituents about public safety. Despite this having been done on multiple occasions for matters of immediate interest as described in Mr. Steeves’ e-mail, Ken directed OBR to refuse James’ request.

As stated in my recent e-mail to you, weaponizing our limited resources as trustees of the University of Minnesota and denying OBR support based on one’s accord with Board leadership’s view is inappropriate and does not bode well for our ability as a board to provide open and well-informed governance. In all my years of serving as a regent, I have never encountered such extreme control, especially without the courtesy of a phone call or other effort by Board leadership to the regent making the request to seek to reach a collegial resolution.

Collegiality among regents begins at the top

Your June 27th Letter commences with the statement that my “failure to employ the Board’s process as you broadcast your concerns is telling.” While I have already addressed how the process you cite is inapplicable in this circumstance, I agree that my election to join my co-signatories in seeking the opinion of the LAC is telling, but not for the reasons you likely expect.

The way in which Board leadership has treated the few members of the University of Minnesota Board of Regents who exercise independent judgment or seek to be fully informed about significant matters in our governance role leaves much to be desired. As reflected in your June 27th Letter and at times in our board meeting discussions, aspersions and *ad hominem* comments in support of leadership’s position do not reflect interest in reaching mutual respect and understanding.

It appears you worked overtime in crafting the personal attacks in your June 27th Letter. I’ve already addressed some of your personal critiques herein and include and respond to a few others here:

- “[H]ighlights the disrespect you show your colleagues. . . .” – I already explained that notice was intended and then given by a co-signatory. One might view the claim that I intended disrespect to my regent colleagues as a political move to reduce the likelihood that other regents will consider my position on these and future matters, but I won’t speculate on your intentions here.
- “That exemplifies a disrespect for good governance and a disregard for the interests and integrity of this institution.” – To the contrary, not engaging in an inapplicable process and seeking to defend the fundamental, constitutional authority of the regent position is unquestionably in the interests and integrity of this institution.

- “[W]e are troubled by your baseless and reckless assertions.” – The assertions consist of a recitation of the objective facts and governance principles, forming a substantial basis for concern that all regents should share. Proceeding with an unprecedented resignation and appointment of a regent, if it occurs, would be very reckless in relation to the University’s reputation and the reputation of the Board of Regents.
- “Conducting yourself as a Regent in this way is especially troubling” – This is a gratuitous, unfortunate personal attack that adds nothing to the policy debate and lessens the likelihood of reaching a common understanding. It seeks to convert a difference of opinion into a measure of virtue, which admittedly favors those who control the voting majority.
- “[Y]our manufactured inferences.” – This one is entertaining, as inferences require a level of manufacture. The rest of your July 27th Letter is rife with “manufactured inferences” about my motives and goals in my efforts to defend the authority of the regents and the integrity of the University.
- “[A]n irresponsible misuse of your position. . . .” – While I presume most if not all misuses of a position are irresponsible, it isn’t clear how the referenced data – which I have apparently not received – could impact the governance principles at issue. The implication that I have a basis to know the University is placed in a bind to address the concerns is, at best, a “manufactured inference” that is neither accurate nor founded.
- “[I]n order to inflate your latest complaint is similarly misguided” – My initial concern that eleven regents have been divested of much of their immediate oversight authority needs no inflating. Whether the additional concerns raised in the LAC Letter are misguided is what the requested review is intended to resolve.
- “[P]resumably frustrated by your inability to convince your colleagues to vote otherwise” The interest in an external review is based on my sincerely-held view of the regents role under the Minnesota Constitution. You have the right to belittle my concern as simple personal frustration, but that is neither accurate nor advances our discussion.
- “[W]e have concerns over the motivation behind your cobbled together complaints” – I am keenly interested in what you believe to be my motivation.
- “You ignore the process you yourself advocated for and reach to social media to magnify your concern without prior communication to your colleagues.” – As previously indicated, the process you cite is not relevant to the concerns raised in the LAC Letter. Moreover, I have not “reach[ed] to social media” as of yet. I have not sent a tweet, Facebook or Instagram post, or any other publication of my concerns on a social media platform. I ask that we at least agree to factual accuracy in our dialogue.

The personal criticism leveled in the July 27th Letter and other correspondence from Board leadership to regents holding different perspectives is surprising, disappointing, and unnecessary. Throughout the challenges of the past couple years, I have always remained open to a personal dialogue with either or both of you. I have reached out to each of you in the past, and I invite you to contact me on any of these matters going forward. Inflammatory accusations will inhibit meaningful discussions, and I ask that we all work to avoid them in future correspondence.

The future of the University and the reputation of the Board of Regents is at stake

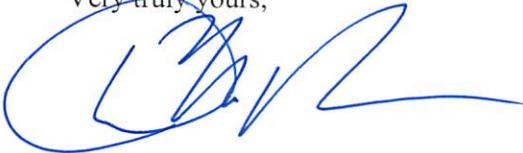
The matters raised in the LAC Letter are critical for the Board and the University. Members of the Legislature and the public are rightfully concerned. The credentials of the additional signatories on the LAC Letter in ethics and implementation of government authority eclipse those of any current regent and

should elevate the importance of their concerns and serve as a compelling guide for governing boards like ours.

Ken and Steve, as you know, I requested information about the UMD Chancellor search and the recent nominations and applications for the interim post in addition to other relevant historical and legal information over a week ago, and I have yet to receive a response. I respectfully ask that you release any hold that may be hindering my receipt of this easily produced information to permit a continuing and informed evaluation of the matter.

Going forward, I urge all of us to focus on the long-term interests of the University of Minnesota. I ask that you increase your communication with all regents rather than a select few. I ask that you set aside personal relationships and any potential informal agreements in favor of the reputations of the University and the Board of Regents. Most significantly, I urge you to work to restore the University in its role as our public Land Grant University and in its fundamental mission of serving Minnesota and the current and future generations of students.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'D. Rosha', with a large, stylized initial 'D' that loops around the rest of the name.

Darrin M. Rosha

Regent

Minnesota's 3rd Congressional District

C: Members of the University of Minnesota Board of Regents