



**The University of Texas System**  
Nine Universities. Six Health Institutions. Unlimited Possibilities.

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Office of the Chancellor  
601 Colorado Street, Austin, Texas 78701-2982  
Phone: (512) 499-4201, Fax: (512) 499-4215

June 9, 2009

The Honorable Ruben E. Hinojosa  
2463 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Hinojosa:

On behalf of The University of Texas System, I write to express my concern regarding a recent court decision that is having a detrimental effect on our campuses and minority-serving institutions nationwide, and I ask for your assistance in securing Congressional action to correct the decision's harmful impact.

On November 4, 2008, the U.S. Court of Appeals for the Federal Circuit ruled in *Rothe Development Corporation v. Department of Defense* (DoD), No. 2008-1017, 2008 WL 4779586, that a minority contracting program at DoD, as well as the Coast Guard and the National Aeronautics and Space Administration (NASA), is facially unconstitutional. The program, which was first authorized under Section 1207 of the Defense Authorization Act of 1987 (10 U.S.C. § 2323), allowed for a 10 percent price evaluation adjustment on contracts to meet the goal of awarding 5 percent of DoD's contracts to minority-serving universities and small businesses owned by socially and economically disadvantaged individuals. The University of Texas System includes six Hispanic-serving institutions, which have benefitted from this contracting program in the form of increased research and development.

Additionally, DoD has assisted HBCUs, MSIs, and HSIs across the nation with infrastructure assistance by establishing and enhancing academic programs in scientific disciplines; awarding scholarships, fellowships, and cooperative work education programs; establishing partnerships between defense labs and minority institutions and black colleges; attracting and retaining faculty involved in scientific disciplines; making DoD personnel available to advise and assist faculty; equipping and renovating laboratories; expanding Reserve Officer Training Corps; and providing other assistance that is critical to the national security functions of DoD.

On February 26, 2009, the district court in San Antonio issued an order that completely enjoined application of 10 U.S.C. § 2323 at the request of the federal circuit court. As a result, DoD issued a directive on March 10,

The University of Texas at Arlington

The University of Texas at Austin

The University of Texas at Brownsville

The University of Texas at Dallas

The University of Texas at El Paso

The University of Texas – Pan American

The University of Texas  
of the Permian Basin

The University of Texas at San Antonio

The University of Texas at Tyler

The University of Texas  
Southwestern Medical Center at Dallas

The University of Texas  
Medical Branch at Galveston

The University of Texas  
Health Science Center at Houston

The University of Texas  
Health Science Center at San Antonio

The University of Texas  
M. D. Anderson Cancer Center

The University of Texas  
Health Science Center at Tyler

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2009, that discontinued all activity that relied exclusively on 10 U.S.C. § 2323. Hispanic-serving institutions, minority-serving institutions, black colleges and universities, small disadvantaged businesses, and HUBZone small business concerns will no longer be able to reap any benefits of the authority Congress intended DoD and other federal agencies to have.

The impact of this decision is already being felt on our campuses. For example, The University of Texas at El Paso has not been granted a previously approved no-cost extension by the National Security Agency, and the Air Force Office of Scientific Research has delayed second-year funding for an award that was funded through the minority set-aside program. The University of Texas at San Antonio has received notice that a strong collaborative relationship under the framework of the HBCU/MI program through the Radio Frequency Radiation Branch of the Air Force Research Laboratory has been discontinued.

The court struck down the law, citing that Congress had not established a strong basis of evidence that race-conscious contracting was necessary to counter discrimination at DoD when Congress last reauthorized 10 U.S.C. § 2323 in 2006. The court further claimed that much of the proof that Congress provided during the reauthorization contained misinformation and contained methodological flaws.

I am asking, therefore, that you support efforts to remedy the impact of this decision by specifically addressing the burden of proof that the court stated is lacking. Section 1207 must be reauthorized before the end of FY09 when it is set to expire. My colleagues and I stand ready to assist as appropriate in reestablishing these essential tools for the benefit of The University of Texas System and other minority-serving institutions across the nation. We look forward to working with you in connection with this critical issue. Your consideration is very much appreciated.

With great respect,

  
Francisco G. Cigarroa, M.D.  
Chancellor

FGC:mk



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June 9, 2009

The Honorable Kay Bailey Hutchison  
284 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Hutchison:

On behalf of The University of Texas System, I write to express my concern regarding a recent court decision that is having a detrimental effect on our campuses and minority-serving institutions nationwide, and I ask for your assistance in securing Congressional action to correct the decision's harmful impact.

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With great respect,

A handwritten signature in blue ink that reads "Francisco G. Cigarroa". The signature is fluid and cursive, with a long horizontal stroke at the end.

Francisco G. Cigarroa, M.D.  
Chancellor

FGC:mk