LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature Second Regular Session - 2024

IN THE HOUSE OF REPRESENTATIVES
HOUSE CONCURRENT RESOLUTION NO. 26

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE, REQUESTING THAT THE STATE BOARD OF ED-
UCATION RECONSIDER CERTAIN ACTIONS, REQUESTING COOPERATION FROM THE
STATE BOARD OF EDUCATION, THE UNIVERSITY OF IDAHO, AND THE UNIVERSITY
OF PHOENIX, AND AUTHORIZING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
AND THE PRESIDENT PRO TEMPORE OF THE SENATE TO ACT AS AGENTS OF THE LEG-
ISLATURE FOR CERTAIN PURPOSES.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, on May 18, 2023, the State Board of Education, acting in its ca-
pacity as the Board of Regents of the University of Idaho, voted to authorize
the creation of a corporation; and
WHEREAS, the purpose of the corporation so authorized is to acquire the
assets and assume certain liabilities of the University of Phoenix, a pri-
vate institution; and
WHEREAS, the Board offered no meaningful opportunity for public comment
or public participation before taking its vote; and
WHEREAS, because the Board held its vote after the Legislature ad-
journed sine die, the Legislature had no opportunity to act in the immediate
aftermath of the vote; and
WHEREAS, the University of Idaho was established by special act of the
Territorial Legislature in 1889; and
WHEREAS, the special act vested the government of the university in the
Board of Regents; and
WHEREAS, the special act established the Board of Regents as a corpora-
tion with specific powers; and
WHEREAS, a corporation is an artificial being created by law that,
within the scope of its charter, is capable of acting as a natural person; and
WHEREAS, a fundamental principle of corporate law is that a corporation
may not act beyond the scope of its charter; and
WHEREAS, when a corporation is created by special act of a legislature,
the special act serves as the corporation's charter; and
WHEREAS, the special act establishing the University of Idaho is there-
fore the charter of the Board of Regents; and
WHEREAS, no provision of the charter permits the Board of Regents to au-
thorize the creation of a corporation; and
WHEREAS, no provision of the charter permits the Board of Regents to,
directly or indirectly, acquire a private institution and assume its liabil-
ities; and
WHEREAS, in clarifying the differences between natural persons and cor-
porations, the United States Supreme Court has stated that while a natural
person may do anything not forbidden by law, a corporation may do only what
its charter permits it to do; and
WHEREAS, the United States Supreme Court further stated in the case
Northwestern Fertilizing Company v. Village of Hyde Park, 97 U.S. 659, that
a corporation acting outside the law of its creation is "subject, like indi-
viduals, to the will of the law-making power"; and

WHEREAS, the lawmaking power in the State of Idaho belongs to the Legis-
lature; and

WHEREAS, the Idaho Supreme Court has stated that substantial matters of
public policy should be decided by the Legislature; and

WHEREAS, the question of whether to allow a state institution of higher
education to affiliate itself, financially or otherwise, with a private in-
stitution is a substantial matter of public policy that should be decided by
the Legislature; and

WHEREAS, the Legislature has enacted no law enabling the Board of Re-
gents to acquire the assets and assume the liabilities of the University of
Phoenix or to otherwise affiliate itself with the University of Phoenix; and

WHEREAS, it is a well-settled principle of American law that the cre-
ation and authorization of corporations is a legislative function; and

WHEREAS, because the creation and authorization of corporations is a
legislative function, and because the Idaho Constitution limits the Leg-
islature's ability to create corporations in Article III, Section 19, and
Article XI, Section 2, the Legislature does not believe that the state or any
of its officers, employees, or entities may create a corporation; and

WHEREAS, the Idaho Admission Bill, the act of Congress that admitted
Idaho as a state of the Union, provides that any land grant university must
"forever remain under the exclusive control" of the State of Idaho; and

WHEREAS, the University of Idaho is a land grant university; and

WHEREAS, an affiliation by the University of Idaho with a private insti-
tution could, depending on the nature of such affiliation, remove the uni-
versity from the state's exclusive control, and therefore conflict with the
Idaho Admission Bill; and

WHEREAS, the Legislature has additional legal, policy, and financial
concerns about the proposed affiliation between the University of Idaho and
a private institution; and

WHEREAS, one such concern is whether the State Board of Education and
the University of Idaho would be protected by sovereign immunity in legal ac-
tions by private parties relating to the affiliation; and

WHEREAS, courts have ruled that state entities may not assert sovereign
immunity as a defense when such entities have acted beyond the scope of their
legal authority, as the Board has done here; and

WHEREAS, courts have also ruled that state entities surrender their
sovereign immunity when they engage in nongovernmental functions; and

WHEREAS, the Board's creation of a private corporation for the purpose
of acquiring a private institution is a nongovernmental function; and

WHEREAS, the waiver of the state's sovereign immunity is a substantial
matter of public policy that should be decided by the Legislature and clearly
provided in statute; and

WHEREAS, the Legislature does not believe that the state's or the peo-
ple's interests have been fully considered or protected by the parties to the
proposed affiliation.
NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-seventh Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature respectfully requests that the State Board of Education, in its capacity as the Board of Regents of the University of Idaho, reconsider its May 18, 2023, vote authorizing the creation of a corporation.

BE IT FURTHER RESOLVED that the Legislature respectfully requests that the State Board of Education, in its capacity as the Board of Regents of the University of Idaho, reconsider any actions that would affiliate the University of Idaho in any way with the University of Phoenix unless and until the Legislature enacts a law authorizing such actions.

BE IT FURTHER RESOLVED that the Legislature respectfully requests that the State Board of Education, the University of Idaho, and the University of Phoenix cooperate fully with the Legislature as it considers matters relating to the proposed affiliation.

BE IT FURTHER RESOLVED that the Legislature authorizes the Speaker of the House of Representatives and the President Pro Tempore of the Senate to act as agents of the Legislature in taking actions necessary to protect the legislative power and the people of Idaho in this matter, including the initiation of appropriate legal action in any court of competent jurisdiction.