

DRAFT

REQUEST BY THE FACULTY OF THE UNIVERSITY OF TULSA FOR LEGAL INTERVENTION BY THE ATTORNEY GENERAL OF OKLAHOMA

Why We Seek Injunctive Relief. We believe that the Board of Trustees of the University of Tulsa has breached its fiduciary duties of care and loyalty in approving the radical academic restructuring of the University known as True Commitment. The Board failed to do appropriate marketing and feasibility studies or to obtain adequate data before approving True Commitment. Most important, the Board disregarded the explicit policies and procedures of shared governance that are found in the contract between the University and its faculty in the *Statement on Academic Freedom, Responsibility, and Tenure* (Blue Book) and in the Constitution of the Faculty Senate, which require substantial input from representative faculty before major changes in University policy and programs can be approved. As a 501(c)(3) organization, the University of Tulsa is tax exempt because of the public benefits an institution of higher learning is supposed to provide. If it fails to provide those benefits, we believe that the Attorney General of the State of Oklahoma has standing to sue the Board of Trustees to enjoin the implementation of these changes. Because there is compelling evidence that the University will suffer irreparable injury if True Commitment continues to be implemented, we are asking you to initiate suit against the Board for breach of fiduciary duty and waste and, at the outset, to request injunctive relief to stay implementation of True Commitment so that the parties may have an opportunity to devise a strategic plan that will serve the best interests of the University and all of its constituents, including the people of Oklahoma.

How Major Research Universities Work. In the past two centuries, the university system has evolved into an essential social institution charged with the preservation, cultivation, and transmission of knowledge. The burden of that obligation is borne not by community colleges or vocational and technical schools, but by research universities. These are institutions that offer a wide range of undergraduate and graduate programs across the humanities, social sciences, natural sciences, and the arts, and whose faculty are active scholars as well as accomplished teachers. Research universities seek to transmit the precious cultural heritage of accumulated knowledge from generation to generation, to expand the frontiers of knowledge and creative expression, and to educate good citizens who have a grasp of the country's political system, expressed values, and history.

Until recently, the University of Tulsa was ranked among the best major research universities in the United States. In 2012, TU was ranked 75 in the *U.S. News and World Report's* annual list of the best 100 national universities—a list with Princeton and Harvard in the top two slots. TU has fallen 31 places since then, to 106 in 2019 (the fourth most precipitous decline of the top 124 schools in 2012), and, if nothing is done, will fall much further for the reasons outlined throughout this document.

Faculty Governance at TU and Violations of Procedure. Non-profit institutions of higher education are unlike for-profit businesses in that they traditionally give a core group of employees—the faculty—significant control over the “product,” including curriculum, educational content, and scholarship. This makes good sense, because it is the faculty—not the

staff, the administration, or the board of trustees—who are trained in teaching and research, and who have painstakingly built up academic programs in their areas of specialization.

Consultation with the faculty, and deference to it in matters within its sphere except in the most grievous of emergencies, is furthermore part of the institution’s legally binding contract with its faculty as represented by the Blue Book (Appendix A). Section III.A of the Blue Book, “Academic Freedom and Responsibility,” includes the following language: “The exercise of academic freedom and responsibility by faculty members extends beyond individual rights and duties to *participation in the determination of University policy.*” Neither the faculty as a whole nor its elected representatives participated in the development of the True Commitment plan. Principles of faculty governance and control over the curriculum are enshrined in other governing documents as well. Article VI, Section C of the Constitution of the Faculty Senate (included as Appendix B) states: “Except in emergencies, major decisions and plans of the administration that significantly affect the academic affairs of the University *should be discussed* with the Faculty Senate for an expression of views *prior to implementation or submission to the Board of Trustees.*” The True Commitment plan was not submitted to the Faculty Senate for review and discussion. The charge of the University Curriculum Committee states that “proposals for creation or changes of undergraduate programs (degrees, majors, minors, and certificates) *shall be submitted* to the University Curriculum Committee” (Appendix C). Again, the True Commitment plan was not submitted to the University Curriculum Committee. The Arts and Sciences Faculty Handbook (Appendix D, p. 4) states that the Curriculum Committee “*shall have responsibility* for review of the Collegiate baccalaureate requirements and curricula *and for action on proposals to alter them.*” True Commitment was not submitted to the Arts and Sciences Curriculum Committee, or to the curriculum committees in any of the other colleges.

The Provost’s Program Review Committee and Violations of Procedure. True Commitment was the work of the Provost’s Program Review Committee (PPRC), formed in June, 2018. That committee included no one from the humanities, performing and creative arts, or natural sciences—the areas hardest hit by the restructuring. All committee members had to sign blanket non-disclosure agreements, in violation of the standards and guidelines of the American Association of University Professors (Appendix E). The administration and Board of Trustees approved the PPRC’s recommendations, in spite of the fact that the Faculty Senate and college curriculum committees were not informed or consulted about any of them—in violation of the Blue Book, the Faculty Senate Constitution, and the charges of the University Curriculum Committee and the Arts and Sciences Curriculum Committee (Appendices A, B, C, and D).

Provost Levit established the PPRC shortly after the Higher Learning Commission (HLC), TU’s accrediting agency, conducted a site visit in the spring of 2018 and issued a negative report that threatened to remove our accreditation. President Clancy has repeatedly referred to HLC report as one of the justifications for the PPRC and resulting True Commitment plan. But those who have seen the HLC report note that nothing in it requires TU to take any of these steps. The HLC report requires only that TU develop a process of program review. In an email of April 12, 2019, Clancy-stated that the changes implemented in True Commitment “allow us to remain in good standing with the Higher Learning Commission” (Appendix F). However, faculty who had not previously reviewed the HLC report when it was briefly available in 2018 can no longer verify that claim because Clancy has refused to make the report public (Appendix G). Ironically,

the president of the Faculty Senate has confirmed that it was the HLC's concerns about the "fragility" of faculty governance at TU that led to the amendment of the Faculty Senate Constitution in May, 2018 so as to include Article VI, providing for oversight of the curriculum.

Even now, the administration continues to use HLC as an excuse for implementing True Commitment. It has demanded teach-out plans from departments that are slated to be closed under True Commitment, claiming that the HLC requires them. But a close examination of the language from *HLC Policy (Number FDCR.B.10.010): Commission Approval of Institutional Teach-Out Arrangements* indicates that this claim is without basis (Appendix H)

Facts About True Commitment. True Commitment was publicly rolled out on April 11, 2019. The restructuring eliminates 40% of TU's academic programs, including core undergraduate programs in philosophy, religion, theater, dance, musical performance, and basic languages of the tradition (Greek, Latin, Chinese, German, French, and Russian). Graduate programs in art, fine arts, education, history, anthropology, mathematics, physics, chemistry, biochemistry, geophysics, and geosciences are also slated for termination. Multiple programs in law are to be cut. (For a complete list of program closures, see Appendix I.) Funding for our flourishing "Great Books" Honors Program was slashed. Graduate programs in English lost six teaching assistantships, the primary means of offering financial support to incoming students. Students almost never undertake graduate study without financial support; this is a common feature of graduate education everywhere. The elimination of assistantship funding may kill the English M.A. and Ph.D. programs.

True Commitment also radically changes the academic organization of the university. The plan calls for the consolidation of the Colleges of Law, Business, and The Oxley College of Health Sciences (the last of which suffered no cuts) in a "Professional Supercollege," although we know of no successful, ranked university that runs its professional colleges in this manner. Nor was there any discussion about the impact this might have on the separate accreditation these colleges must maintain in order to be in compliance with the HLC. (In fact, as is increasingly clear, no such "consolidation" is possible.) In addition, all academic departments across the University—and with them centuries-old disciplinary structures—are slated to be phased out. Atomized faculty will be poured into new "divisions," including one called "Humanities and Social Justice."

For decades, TU professors have taught five courses per year—a course load consistent with its status as a major research university, and which is necessary for us to be competitive in recruiting the best faculty. True Commitment purports to raise the default course loads to eight per year—a level suitable for a community college, where faculty are not expected to engage in research and scholarship. In addition, enrollment thresholds have been raised far beyond the previous 11:1 student-to-faculty ratio, which allowed for the kind of individualized instructional attention available only at the best private colleges. The College of Arts and Sciences, previously a jewel in the university's crown, will become a "College of Retention" (in the words of Provost Levit)—a service college whose main functions will be to provide general education instruction to all incoming freshmen across the university in a new curriculum called University Studies, and to offer backstop majors for students who are unable to complete degrees in the colleges of Engineering or Health Sciences.

While True Commitment guts the humanities and the natural sciences, programs slated for expansion are almost exclusively technical and professional. These include nursing, speech pathology, digital media and graphic design, cybersecurity, accounting, finance, petroleum engineering, electrical engineering, mechanical engineering, computer information systems, computer engineering and computer science, data management, neurosciences, biochemistry, bioinformatics, and biomedical engineering. However, the expansion plan for these programs does not follow any kind of successful growth strategy used by universities in the past. The significant increase in teaching loads mandated by True Commitment will preclude high-quality research faculty from joining or staying at TU. The elimination of Ph.D. and graduate programs in the engineering and science disciplines will also significantly tarnish the University's academic reputation.

Finally, True Commitment obliges the University to hire large teams of new administrators who will (purportedly) provide success, academic, and career coaching for undergraduates. These functions were previously performed by professors who had concrete knowledge of students through teaching them in small, intensive courses. Interposed between faculty and students, this new administrative layer will further degrade the academic experience of TU students (Appendix J).

There is No Need for True Commitment. In claiming that True Commitment is necessary to save the University of Tulsa from decline, President Clancy has referred to a widely-cited book: *Demographics and the Demand for Higher Education* (Johns Hopkins University Press, 2018) by Nathan Grawe, an economics professor at Carleton College. In fact, Grawe's book *directly contradicts* the case for True Commitment (Appendix K). Grawe's findings suggest that TU's strategy, given its location and institution type, should be to maintain its top-100 ranking and increase its competitiveness as an excellent research and teaching institution. They also suggest that much of the alarmism regarding the demise of American higher education is simply not relevant to TU's situation as a major private research university.

Errors in the PPRC Report. The final PPRC Report (Appendix L, p. 4) contains the following language: "A natural temptation for faculty and staff (and one that has already been articulated several times) is to discredit the recommendations by disputing the underlying data. Within an acceptable margin of error, the data in this report, and the data that undergird this report, are accurate" In fact, faculty never had access to the raw data underlying the report or the methods used to calculate crucial results, including costs per credit hour taught. What is more, the draft and final PPRC program review summaries were seriously flawed, overstating costs and ignoring essential information in the case of departments most affected by True Commitment (Appendices M and N offer examples).

Board Composition and the Influence of Outside Consultants. College and university trustees are counted on to make substantial donations, and tend to be C-level executives, entrepreneurs, and lawyers. TU is no exception. No one on TU's Board of Trustees has a background in higher education; what is more, neither President Gerry Clancy nor Provost Janet Levit, TU's top two administrators, has a Ph.D. It is thus unsurprising that TU's trustees and administrators have turned for advice to people who speak their language—the data-analytics,

managerial, and marketing “experts” in higher education consulting firms—and that they have been all too quick to accept that advice.

TU has for many years paid for services offered by an outside education consultant, EAB. (TU has been a member of EAB’s Academic Affairs Forum since its formation over a decade ago.) EAB markets its services primarily to low-level, at-risk institutions, including community colleges, that are currently struggling to stay in business. With a \$1.1 billion endowment and healthy net assets, TU faces no such risk. Yet it is the first top-100 research university in the nation—and the first institution with an endowment of over \$1 billion—to have undergone such a radical transformation in the direction of vocational and technical training. And it is EAB that recommended to our administrators the basic elements of the True Commitment restructuring, including the elimination of academic departments, the transition to divisions, and the implementation of larger class sizes (Appendices O, P, Q, R, S, T, and U).

The University of Tulsa is celebrating its 125th anniversary this year. It did not begin as a major research university. It achieved that status after a century of investment, careful planning, and incremental, organic growth. We note that many of the actions taken or proposed under True Commitment bear an uncanny similarity to those used by for-profit schools. Far from resulting in stronger, more successful institutions, those steps, because they are in conflict with educational standards and norms across the nation, further degraded the already low status of these for-profit schools, causing several to close their doors. TU should not be emulating the failed strategies of the lowest rung of higher education.

An Analogy. Imagine that the Gilcrease Museum, one of the top 100 museums in the US, was taken over by new administrators who embraced the business fad of “disruptive innovation.” Imagine that they formed a committee whose members were bound to secrecy by blanket non-disclosure agreements. Imagine that this committee decided to throw out 40% of the Gilcrease’s holdings, but didn’t explain why this was necessary, and didn’t consult the museum’s curators, archivists, docents, donors, or members in selecting which artworks had to go. Everyone would deplore such mindless destruction of a precious cultural treasure. But this is essentially what has happened at the University of Tulsa.

Impact of True Commitment on the University. True Commitment will cause the University of Tulsa to decline precipitously both in substance and reputation. Once a major national research university, it will become an overpriced technical and vocational school. The negative effects of the restructuring are broad and ramifying. These effects are already significant, but will take years to unfold fully. They include:

Serious Loss of Human Capital. Almost 7% of the faculty—22 out of approximately 330 full-time professors—took early retirement immediately after True Commitment was announced. This is a significant brain-drain of experienced, accomplished professors. A handful of other, younger faculty took jobs elsewhere. Additional talented faculty—those with the greatest prospects for employment elsewhere—will certainly leave this year, as postings for academic jobs typically occur in the fall.

Collapse of Surviving Programs in the Natural Sciences and Humanities. New target enrollments of 18-25 for upper-level courses (see p. 100, Appendix L) will effectively eliminate remaining majors in many areas. Even at Ivy League schools, upper-level courses in quantum mechanics, Tudor-Stuart drama, or 19th-century European history are unlikely to attract 18 or more students. But B.A. programs in physics, English, or history cannot survive without such courses.

Departure of the Best Students. Serious communities of teaching and learning rely on attracting bright, intellectually curious applicants—the sort TU has enjoyed for decades. A brain-drain similar to that of the faculty is currently occurring among the students. Some have left for other institutions; more will transfer next year. Some entering freshmen who paid deposits in the spring of 2019 are taking the loss and going elsewhere. If True Commitment is fully implemented, the best students will steer clear of TU, whose tuition this fall will be \$41,698. Why not attend OU for a fraction of the cost—a university that offers all the STEM and technical subjects TU does, plus a full range of programs in the fine and performing arts, the humanities, and the natural sciences?

Collapse of Academic Reputation and Status. The departure of the best and most experienced scholars, researchers, and teachers, the inability of the University to attract and retain the most promising students, and the death of academic programs will inevitably diminish the University's reputation and status. As documented below, this will do considerable harm to the City of Tulsa and the State of Oklahoma.

The aforementioned impacts are documented in Appendix V, which includes a very broad range of critical responses to True Commitment. (Please note that almost two dozen scholarly associations and societies have condemned the plan.)

Impact on Tulsa and Oklahoma. The academic collapse of the University of Tulsa will be very bad news for the City of Tulsa and the State of Oklahoma. Impacts include:

Loss of Cultural Vitality. The elimination of programs in theater, music, dance, and fine arts will deprive Tulsa of trained actors, singers, musicians, dancers, and artists who want nothing more than to be part of the artistic and creative revitalization of the city in which they have chosen to live and study. It's especially perplexing that these programs have been eliminated just as the Tulsa Arts District is beginning to flourish.

Loss of Status, Reputation, and Brand Equity. True Commitment will destroy an institution that has brought great distinction to the City of Tulsa and the State of Oklahoma. TU has for many years been the top private university not just in Oklahoma, but in the region. Kansas, Arkansas, and New Mexico have nothing to match it.

Academic reputation is an essential component of the brand equity of any university, and brand equity impacts the well-being of the state wherein the university is housed. A renowned university will attract new industry, as well as attract an influx of young and talented workers to stay on after their education. This will lead to general business growth, increase in real estate values, and overall economic development. For example, the recent growth of Pittsburgh was

affected in large part by the renown of Carnegie Mellon University and the University of Pittsburgh, both of which have significant brand equity in the academic space, and both of which attracted new investment from companies like Google’s self-driving car team in the high tech sector and led to a creation of many small startups in the area. None of this would have been possible if the universities in question had been of low academic repute. Unfortunately, True Commitment has led to a rapid reduction in the brand equity of the University of Tulsa.

Loss of High-Quality Graduates Prepared for Employment in Oklahoma. True Commitment will starve Tulsa, and Oklahoma as a whole, of a major supply of highly literate and numerate employees—precisely the sort of employees businesses value most. Johann N. Neem, author of *What’s the Point of College?* (Johns Hopkins University Press, 2019), succinctly summarizes the practical usefulness of a broad education:

Whether one evaluates the benefits of education in terms of personal growth, civic value, or economic gain, study after study suggests that students who study the humanities, social sciences, and natural sciences are well equipped to do well. Employers agree. They want people who think, and who have the background knowledge to ask the right kinds of questions. Learning the arts and sciences in order to gain insight into the world is extremely practical.”

Neem’s remarks are confirmed by TU alumni and others (Appendix V, pp. 4-11).

Loss of Significant Revenue Sources. Individual programs at the University of Tulsa also contribute significant amounts of money to the local economy. For example, the local economic impact of the programs in theater and musical theater is estimated to be \$320,000 per year (Appendix W)—revenue that will be withdrawn from the economy once True Commitment is fully implemented.

No less important, True Commitment will withdraw revenue from the local and state economy insofar as it undermines the long-term financial viability of the University of Tulsa as a whole. Prospective students and their families are unlikely to pay major private university tuition for an education significantly less valuable than is available at OU, OSU, and many other institutions in the region. We fully expect that enrollment at TU will decline, and with it the number of faculty and staff employed by the University. The revenue in taxes and spending that would otherwise have accrued to the City of Tulsa and the State of Oklahoma will eventually add up to millions of dollars per year.

Disruption of Oklahoma Higher Education. Only one of Oklahoma’s top three universities—OSU—is currently healthy. OU is in turmoil, and its future is currently uncertain. Can Oklahoma afford to lose its flagship private university at this time?

Stakeholders United in Opposition. As Appendix V makes clear, faculty, students, alumni, and community members have vociferously protested True Commitment. 7,500 people have signed a petition asking the administration to reconsider its actions; a Facebook page organized by students has 1,900 members; hundreds of TU alumni have pledged not to donate to the University until True Commitment is paused; and over 100 professors have joined the group

Concerned Faculty of TU (CFTU). But the administration has not responded to any of our questions and concerns, and has declined to meet with CFTU. Hence the need for an injunction.

All we ask is that the administration pause the rollout of True Commitment and allow faculty to participate in conversation about the university's future. After all, as the Blue Book itself makes clear (Appendix A, p. 11), free and transparent discussion and deliberation is what a university is all about.

Benefit for the Stitt Administration. A pause in the implementation of True Commitment will do no harm to the University of Tulsa. Indeed, it increasingly appears to be the only way to save the University from irreparable harm to itself, the City of Tulsa, and the State of Oklahoma. We furthermore believe that the Stitt administration has much to gain from legal intervention by the Attorney General. Such intervention will prove to the citizens of Oklahoma that Governor Stitt is a champion of education, and that he is prepared to act decisively in the best interests of all Oklahomans.