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To: Interim President Scott Coltrane

Cc: Robert Kyr, President of the University Senate
University Senate

Re: Request to Postpone Board Resolution to Create a "Policy on University
Policies"

We want to follow up our discussion yesterday at the Senate Executive Committee. We urge you to request the new Board of Trustees of the University of Oregon to abstain until its next Board meeting in March from passing any resolution that would create a new "Policy on University Policies."¹ In the meantime, we ask that you consult with University leaders including the Senate President on any revised policy.

If temporary changes are needed in policy procedures, the University President already has full authority to make such interim changes.

We are not certain whether you have been made aware of that authority, which is contained in the explicit provisions of UO Policy 01.00.01 and 01.00.02.

Substance: The Board resolution, if passed, would supersede the careful and balanced shared governance of the University of Oregon's Constitution and relegate university stakeholders to supplicants. Perhaps some Board members are seeking efficiency and have failed to understand the significance of their proposal. The resolution would, if passed, deal a mortal blow to 138 years of faculty shared governance at the state's oldest and most prestigious university.

Procedure: This proposed resolution is the result of a process kept secret until now. It was devised over a two-month period without its existence being leaked to the faculty. Board members and Administration did not tip off faculty leaders regarding this planned action. Faculty learned of this dramatic change in

¹ Memorandum from Angela Wilhelms, Secretary of the University, to Board of Trustees, December 4, 2014, with included *Resolution: Adoption of a Policy on University Policies*, available at <http://trustees.uoregon.edu/sites/trustees1.wc-sites.uoregon.edu/files/field/image/Full%20BOT%20Notice%20and%20Materials%20120414%20-%20r.pdf>.

governance only because a professor noticed it on a website, six days before the Board meeting. This is not a proper procedure for any self-respecting university in the 21st century.

Effect: If it passes this resolution, the Board would ignore long-standing principles of higher education in America recently reaffirmed by the Association of American Universities (AAU). It would ignore the advice of the national Association of Governing Boards of Colleges and Universities (AGB). It would risk sanctions from the American Association of University Professors (AAUP). It would likely imperil the accreditation of the University. It would violate collective bargaining agreements. It would contravene state law and relegate the University Constitution to a dead letter.

Because the President already possesses to make needed temporary changes to policy and procedures, none of this is necessary.

I. Summary of Proposed Policy	2
A. A blunt instrument	3
B. The possibility of careful surgery on an interim basis.....	4
II. Lack of Notice, Consultation, and Proper Process.....	5
III. Governance in Higher Education.....	6
A. Association of American Universities (AAU)	6
B. Association of Governing Boards (AGB)	8
C. American Association of University Professors (AAUP)	9
D. Accreditation.....	10
E. Collective Bargaining Agreement.....	11
F. State Law	11
G. University of Oregon Constitution	12
IV. Request for Postponement.....	12

I. Summary of Proposed Policy

The policy that the Board of Trustees is asked to adopt on December 11 would give, without any boundary of time, unlimited power to the University President to repeal the policy on academic freedom, to change the conditions for tenure, to repeal procedural protections for tenured faculty, to impose restrictions on freedom of speech and criticism equal to the restrictions imposed by corporations. In the future, all university policies would be in the hands of the University President to rewrite at will, without the collaborative process that characterizes a university.

This is simply unnecessary, considering authority that the President already possesses and the collaborative checks-and-balances available under that authority.

A. A blunt instrument

The proposed Board resolution and “Policy on University Policies”² would use a blunt instrument to solve apparent temporary problems that can be addressed in a more surgically precise manner. It would make these changes in governance at the University of Oregon:

- The resolution supersedes the University of Oregon Constitution.
 - It states that it “shall supersede all related and existing University authorities, policies, and procedures.”
 - This language, obviously written by a lawyer, targets all current policies of the University that promote shared governance, as well as the University of Oregon Constitution itself.
- The resolution repeals the normal policy processes that include the University Senate, even where the Senate has clear jurisdiction.
 - It “Repeals UO Policies 01.00.01 (Policy Statements: Authority and Origins) and 01.00.02 (Policy Statements: Authority and Origins)” without any demonstration that these existing policy processes are a roadblock to effective governance.
 - If efficiency needs improvement, the best approach is the collaborative use of a scalpel, not the lopping off of a scalp.
 - The University President already has “emergency authority” in both policies to make changes to improve the internal work of his own Administration, without Board action. This is the proper procedure, rather than micromanagement by the Board. And it maintains flexibility.
- The resolution establishes a new process in which individual faculty members merely provide “advice” and have neither legitimacy nor accountability to the faculty as a whole or others.
 - It sets up, through its “Exhibit A,” a process that the University President has already established for management of his own Administration.
 - The problem with Exhibit A is that it goes beyond his Administration and cuts out the Senate. This is unacceptable.
- The resolution’s “whereas” clauses are misleading regarding the state of affairs at the University.

² The Board at present plans to vote December 11 on a resolution (Exhibit D, “Adoption of a Policy on the Development and Revision of University Policies”) to adopt a “Policy on University Policies” (Exhibit A). There is also a “Charge” to the president’s “Policy Advisory Council” (Exhibit B). The resolution and presumably the Policy and Charge is not slated to be discussed at the December 10 meeting of the Executive and Audit Committee of the Board. See Exhibit C, “EAC Notice and Materials.”

- They posit the need for “having a uniform, well- articulated, inclusive and thoughtful process” for policy revision. Yet the new process is neither inclusive nor thoughtful.
- They say that the University needs an “easily-accessible, widely-disseminated, organized, consistent, and comprehensive set of University policies.” This is important, but is not provided by this new process. It is not necessary to exclude stakeholders from real participation when appropriate.
- They say that policies must enhance effective management, follow best practices, and ensure legal compliance. These platitudes are true but a radical new process is not needed to achieve them.
- The resolution, despite two months of development, is full of sloppy errors that are simply embarrassing for a major academic institution.
 - One clause refers to “offers” when presumably it means “officers.”
 - Another clause provides the wrong title for UO Policy 01.00.02.
 - Various sentences are inconsistent in use of commas.

In effect, passage of this policy would eviscerate Section 7 of the Constitution of the University of Oregon, updated in 2011 and accepted by every President of the University since then. In addition to this effect, it would explicitly repeal two standing policies that were carefully negotiated between the Administration and the University Senate – UO Policies 01.00.01 and 01.00.02.

This is unnecessary. The policies already contain provisions that allow for modification, whether temporary or permanent. To repeal these by Board action would irrevocably damage the already strained bonds of trust between the faculty, the Administration, and the Board. It would diminish the academic and professional experts on the faculty to the status of mere committee members, not the holders of responsibility for academic matters as historically and commonly understood in American higher education.

B. The possibility of careful surgery on an interim basis

Policy processes can be improved. Efficiency can be enhanced. This can be done by careful and precise modification – or even by reformed notification processes and the imposition of deadlines.

Among the topics that a revised policy process could include are:

- Involvement of the Senate President at a much earlier stage. At present, the Senate is sometimes notified of a policy development after the Administration has labored internally.
- Use of joint working groups. Many sound university policies at the University of Oregon have been developed in joint, *ad hoc* Senate-

Administration working groups or task forces. Such collaborative work invariably produces better policies and affirms shared governance.

Putting the current Board resolution on “hold” for a short period can allow faculty, staff, and executive leadership to work out any kinks that exist in the current process. Indeed, the President has the authority to make interim changes for a six-month period on an emergency basis. We would support use of that process.

In short, there is no need to trash shared governance in pursuit of goals of accountability and efficiency. These values are not inherently at odds.

II. Lack of Notice, Consultation, and Proper Process

The procedure by which the Board currently plans to take action would violate universally recognized norms of transparency and consultation. Until late this week, this has all been happening in secret, behind the scenes. The staff has worked with the Board’s staff for two months to develop this new governance structure for the University. At no time were faculty informed. This radical restructuring of the University was kept under wraps until the day after the President met with the University Senate (December 3). It is not even clear whether the President was fully informed. After that meeting was over, this radical new policy was sent to Board of Trustees members, dated December 4. Faculty members noticed it on the website of the Board of Trustees for the first time on December 5. Even the faculty representative on the Board of Trustees was unaware that a Board resolution was in process.

The Chair of the Board visited the University just two weeks ago and spoke to the University Senate. After answering questions, he left immediately. The Senate returned to its agenda and efficiently passed proposed changes to the Student Conduct Code regarding sexual assault, established a permanent Committee on Sexual and Gender-Based Violence, approved a new Masters Program in Sports Product Management, approved the Fall Curriculum Report, established a Task Force on Academic Integrity, and adopted a new schedule for almost weekly meetings starting in January. The debate was both intellectual and passionate, as that of any academic legislative body can be, but neither disrespectful nor particularly “contentious” toward the Administration, as President Coltrane can attest. He stayed during the entire Senate meeting.

Yet during all this time, the fact that a drastic restructuring of policy processes at the University through Board action was underway behind the scenes – and had been for two months – was never mentioned. Of course, we have been interacting with the Administration regarding the flow chart and process that they were beginning to implement for the Policy Advisory Committee and its charge to manage the transition of Oregon Administrative Rules, Internal Management Directions, and university policies. But the fact that a permanent new policy regime

would be imposed through Board resolution, while superseding at the same time the current policy system, was kept hidden.

What is it that transparency and participation would imperil? Why is it that faculty not only are denied their roles as stakeholders who deserve to be involved, but are treated as some kind of enemies from whom battle plans are to be kept secret? This is a prescription for disaster at an institution of higher learning that aspires to great things.

III. Governance in Higher Education

These changes are contrary to the following standards of national and regional bodies concerned with higher education:

- Association of American Universities (AAU): “Academic Principles: A Brief Introduction” (2013)
- Association of Governing Boards of Colleges and Universities (AGB): “Board Responsibility for Institutional Governance” (2010)
- AAU, American Council on Education (ACE), and American Association of University Professors (AAUP): “Joint Statement of Government of Colleges and Universities” (1966)

The changes also violate state law, the collective bargaining agreement with United Academics, and applicable accreditation standards.

A. Association of American Universities (AAU)

If the Board adopts the proposed policy as written, it will run athwart the Association of American Universities’ 2013 statement of academic principles, which is quite explicit:

The traditional concept of *shared governance* encompasses the joint efforts of the governing board, administration, and *tenured faculty to govern a university internally*.³

The AAU recognizes three roles in the modern university:

- The President of the University has responsibility for “day-to-day decisions” and “*implementing* institutional policies.”⁴

³ Association of American Universities, *Academic Principles: A Brief Introduction*, April 2013, available at <http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=14364>. Italics added.

⁴ Ibid. Italics added.

- What about the *creation* of institutional policies? “The *faculty* holds the primary responsibility for *matters related to education and research . . .*”⁵
- As for the Board of Trustees, the AAU is also clear: “fiduciary responsibility and legal authority rest with the board.”⁶

The proposed resolution would centralize policy-making in one of the described constituencies – the office of the President. Under the proposed Policy on University Policies the faculty as a body would no longer hold “primary responsibility.” Indeed, it would hold no responsibility at all. Individual faculty members chosen by the Administration would be on a new Council – but even there, only as advisors. Merely having some faculty members in an advisory role is not shared governance. On academic matters, the Senate must retain its role.

The AAU points out that shared governance is not only for the benefit of those who participate. It is crucial to the autonomy of the university, needed to accomplish its missions: “Shared governance . . . provides the mechanisms to support the university’s autonomy, enabling the institution to fulfill its education, research, and service missions.”⁷

The AAU, membership in which the University of Oregon is hanging on by the skin of its teeth, is an elite association of the top 60 research universities in America. Only 29 states have an AAU member within their borders; 21 states do not. UO is the *only* university in Oregon and *one of only two* in the Pacific Northwest to be a member of the AAU. It may take very little for the AAU to cut the cord that ties Oregon to it. Having the President and the Board taking away from faculty the authority for the creation of policies relating to education and research is contrary to the explicit position of the AAU, stated above.⁸

The AAU does not work alone. Rather, it relies upon the principles stated in the governing bodies of important national university associations. At the end of the AAU statement, the AAU explicitly directs us to the 2010 statement of the

⁵ Ibid. Italics added.

⁶ Ibid.

⁷ Ibid.

⁸ Furthermore, the AAU is explicit about the need for including the faculty and other constituencies:

While the ultimate legal authority of the university rests with the governing board, the success of shared governance lies in communication and *cooperation among the different groups* involved. The components of the institution are interdependent. By including multiple *constituencies in decision-making processes*, the university can ensure that different voices are heard and integrated into a cohesive vision.

Ibid. Italics added.

Association of Governing Boards (AGB) and the 1966 joint statement of the Association of Governing Boards, the American Council on Education (ACE) and the American Association of University Professors (AAUP).⁹ We will examine those next.

B. Association of Governing Boards (AGB)

The 2013 statement of the Association of Governing Boards of Colleges and Universities recognizes the importance of “working collaboratively” with “faculty leaders.”¹⁰ It describes how in 2006 the AGB’s Task Force on the State of the Presidency in American Higher Education . . . recognized a series of new demands on and expectations of academic presidents:

[S]ignaling the need for a new collaborative spirit in governance, the task force called on presidents and governing boards to partner in leadership, with the *support and involvement of the faculty*: Leadership of this sort links the president, the faculty, and the board together in a well-functioning *partnership* purposefully devoted to a well-defined, broadly affirmed institutional vision.¹¹

The 2013 statement states:

Boards should recognize that academic tradition, especially the status accorded faculty because of their central role in teaching and generating new knowledge, creates the *need for deliberation and participation of faculty* and other key constituents *in decision making*.¹²

The 2013 statement talks of “the delegation of authority to the administration *and faculty*” – not only to the administration. It says further:

Faculty, staff, and students have a vital stake in the institution and should be given opportunities to be heard on various issues and *participate in the governance process*. Historically, higher education governance has included

⁹ AGB, ACE, and AAUP, *1966 Statement on Government of Colleges and Universities*, available at <http://www.aaup.org/report/1966-statement-government-colleges-and-universities>.

¹⁰ Association of Governing Boards of Universities and Colleges, *Statement on Board Responsibility for Institutional Governance* (2010), Foreword, page i, available at <http://agb.org/news/2010-03/statement-board-responsibility-institutional-governance>.

¹¹ Ibid. Italics added.

¹² Ibid., Principle 2, page 2.

three principal internal participants: governing boards, senior administrators, and the *full-time tenured and tenure-track faculty*.¹³

And also: “[B]oards should strive to ensure opportunities for participation in governance.” It talks of the “responsible faculty *participation* in governance,”¹⁴ not merely consultation by the President with some selected faculty members. The AGB asks this question:

Has the board, in concert with the president and in consultation with appropriate constituent groups, assessed the *participation of constituents in institutional decision making* and their collaboration in policy implementation?¹⁵

Furthermore, the AGB expects there to be proper notice to and consultation with faculty and other campus constituents prior to Board action, asking this:

Does the board allow reasonable time for meaningful deliberation and establish clear deadlines for the conclusion of consultative and decision-making processes? What does the board do to ensure timely information and decisions from campus constituents?¹⁶

C. American Association of University Professors (AAUP)

The AAUP, along with the ACE and the AGB, has provided clear guidelines for policy-making in a university. The provisions of the 1966 joint statement of the bodies recognize that the faculty’s “judgment is central to general educational policy.” The provisions include these:

The *faculty has primary responsibility* for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.¹⁷

¹³ Ibid. Italics added.

¹⁴ Ibid. Italics added.

¹⁵ Ibid. Italics added.

¹⁶ Ibid.

¹⁷ American Association of University Professors, the American Council on Education (ACE), and the Association of Governing Boards of Universities and Colleges (AGB), *1966 Statement on Government of Colleges and Universities*, available at <http://www.aaup.org/report/1966-statement-government-colleges-and-universities>.

The joint statement even urges a university president to ensure that faculty views reach the Board:

It is . . . incumbent on the president to ensure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared.¹⁸

This has not happened with this proposal for radical change at the University of Oregon. The president did not invite faculty leaders to present their views either to him or the Board during the development of this Board resolution; however, by means of this memorandum we are doing so. Our action stems from a commitment and duty to affirm the shared governance that we value so greatly.

Although some small colleges and a few non-AAU universities have at times deviated from the 100-year tradition and standards of formal faculty participation in the shared governance of higher education in the United States, we are not aware of any of the 60 AAU universities that have done so. Some non-AAU higher education institutions have squelched faculty governance and as a consequence have been criticized strongly for doing so.

Just 3 years ago, the AAUP sanctioned Idaho State University and Rensselaer Polytechnic Institute for abolition of their faculty Senates and other matters, based on the 1966 Joint Statement, above.¹⁹

D. Accreditation

To be accredited, universities in the Northwest must “make provision for the consideration of the views of faculty, staff, administrators, and students on matters in which they have a direct and reasonable interest.”²⁰ Creation of an advisory council does not constitute compliance with this accreditation standard if it ignores established lines of faculty authority.

¹⁸ Ibid.

¹⁹ AAUP Media Release, *AAUP Censures One, Sanctions Two, and Removes Censure from Two*, June 13, 2011, available at <http://www.aaup.org/media-release/aaup-censures-one-sanctions-two-and-removes-censure-two>.

²⁰ Northwest Commission on Colleges and Universities (NWCCU), *Standards for Accreditation* (revised 2010), part 2.A.1., available at <http://www.nwccu.org/Pubs%20Forms%20and%20Updates/Publications/Standards%20for%20Accreditation.pdf>.

E. Collective Bargaining Agreement

The Collective Bargaining Agreement between the University of Oregon and United Academics affirms a robust system of shared governance. Article 3, “Shared Governance,” recognizes “the vital role of shared governance among the university’s governing board, president, and faculty... upon which excellence in higher education depends.”²¹

Other articles within the CBA protect duly adopted policies, such as the Policy on Policies. Article 6, Section 1, provides that “the University shall comply with all duly adopted administrative rules, policies, and procedures . . .”²² The Policy on Policies (01.00.01 and 01.00.02) was duly adopted and specifically calls for a consultative process. The Board would abrogate Article 6, Section 1, if it repeals those policies without adhering to the consultative process called for in those policies.

F. State Law

The exclusion of faculty governance bodies from the policy process would in essence cancel, or render null, the Charter of the University of Oregon, a state law that has guided the University since its founding in 1876.²³ That Charter, as most recently revised by the Oregon Legislature in section 18 of Senate Bill 270 in 2013, states:

The president and professors constitute the faculty and as such have the immediate government and discipline of a university with a governing board and the students therein, except as otherwise provided by law or action of the governing board.²⁴

The proposed resolution of the new Board would blatantly disrespect the 138-year old Charter of the University. It would vest *all* power of immediate government in the University’s president. The president would govern with nothing more than the advice from a few faculty members whom he appoints to an unelected “Policy Advisory Council.”

²¹ *Collective Bargaining Agreement between The University Of Oregon and United Academics, AAUP/AFT, AFL-CIO*, available at <http://academicaffairs.uoregon.edu/collective-bargaining-agreement-0>.

²² *Ibid.*

²³ It will do this by exercising power under another state law, passed by the Oregon Legislature in 2013, that the Board views as giving it plenary power to end faculty shared governance. Oregon Revised Statutes § ORS 352.107(m).

²⁴ Oregon Revised Statutes § 352.146, Oregon Laws 2013, Chapter 768, section 18.

While the last phrase in the quoted law provides the governing board with the legal power to delete the faculty from its role in the governance of the university, what a body *can* do is not necessarily what it *should* do.

G. University of Oregon Constitution

On December 7, 2011, the full “statutory faculty” ratified the Constitution of the University of Oregon. A line of university presidents, both permanent and interim, have accepted the Constitution.

This Constitution clarified roles within shared governance and articulated the University Senate’s role in academic matters. The Constitution provides clearly defined procedures for negotiating the differences of opinion that are bound to arise between a Faculty and its President. It does so in a fully respectful manner that recognizes the central importance of the faculty in determining policies that involve academic matters. At the same time, it preserves the right of the President to veto any faculty action that he or she deems is not in the best interests of the University.

The Constitution is the solid foundation that permits the Professors and President to carry out the faculty’s obligation to govern the University, as provided in state law. To deprive the Senate (the Professors’ representative body) of the policy-making authority granted by the Constitution would make a mockery of shared governance and in so doing, cause grave harm to the University of Oregon.

IV. Request for Postponement

President Coltrane, we urge you to withdraw ask the Board to withdraw the draft resolution, so that the President of the University and leaders of the University Senate can consult. Together, we can devise an appropriate procedure that solves any needs for modified processes in devising university policies. If changes are needed at the Board level, they could be accomplished in the March meeting of the Board. However, it appears to us that the President already has all the authority needed to make any necessary changes in the policy process at the University of Oregon.

It is unwise for a Board of Trustees to make changes regarding shared governance that can be handled administratively, unless an Administration is recalcitrant.

It is our impression that, on the contrary, there is a mutual willingness, indeed a shared conviction, between the University of Oregon’s President and the University Senate to tackle any policy needs with efficiency and in a timely fashion – and to do so in a manner consistent with shared governance principles.