

24 Feb. 2018

Dear FacEx Members,

FRPR met on Friday, 23 February, and approved the enclosed materials.

Per our specific charges, we recommend that FacEx put forth a number of proposals, most of which, if acted upon now, could be in place by the end of this fiscal year.

- **Specific Charge 4: Faculty Control of Curriculum and the KU Core** pages 2-3
 - I place this one first because it is the most time-sensitive
- **Specific Charges 1 & 2: Due-Process Rights for Non-Tenure-Track Faculty** pages 4-5
- **Specific Charge 3: Conflict of Interest: Gift-Acceptance Policy** pages 6-8
- **Appendix: resources regarding gift-acceptance and conflict of interest** pages 9-11
- **Endnotes** page 12

Please let me know if you have questions. I would be happy to attend a FacEx meeting to discuss these proposals.

Thank you very much for your consideration.

Respectfully,

Joseph Harrington
Chair, Committee on Faculty Rights, Privileges, and Responsibilities

Specific Charge 4: Faculty Control of Curriculum and the KU Core:

“Make recommendations to the Faculty Senate regarding administration and implementation of the Core Curriculum, including draft language delineating faculty control of the curriculum and amendments to the FSRRs that articulate how faculty can change the Core curriculum (e.g., with regard to goals).”

In response to this charge, FRPR recommends FacEx do the following:

1.) Propose addition to FSRR Article V:

Section 1. Definitions.

5.1.1 The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, and those aspects of student life which relate to the educational process. The faculty sets the requirements for the degrees offered, determines when the requirements have been met, and authorizes the Chancellor and Board to grant the degrees thus achieved.

~~5.1.1~~ 5.1.2 Credits are expressed in terms of semester hours. One semester hour means course work normally represented by an hour of class instruction and two hours of study a week for one semester, or an equivalent amount of work. The concept may vary according to the level at which instruction is offered.

2.) Create an Ad Hoc Committee on Core Goals Revision:

FRPR recommends that FacEx establish a committee, composed of equal numbers of their appointees and members of UCCC as voting members, to examine the language of each of the six KU Core Goals and recommend revisions to it.

3.) Incorporate these Revised Goals into the FSRRs.

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Rationales & Timelines:

Proposal 1:

This amendment would fulfill the part of charge # 4 to “draft language delineating faculty control of the curriculum.” One of the fundamental principles of the modern American university is that the faculty should control the content and implementation of the curriculum (rather than administrators, politicians, donors, etc.). The **American Association of Universities (AAU)** statement on Academic Principles (2013) states, “**The faculty holds the primary responsibility for matters related to education and research, such as setting the curriculum.**”¹ The University Code (2.5.1) states that “[t]he Faculty Senate shall act in behalf of the Faculty in the performance of its powers”; since one of the Faculty’s responsibilities is developing and changing the curriculum, it is important to state as much in the Faculty Senate Rules and Regulations.

Timeline:

¹ <https://www.aau.edu/sites/default/files/AAU%20Files/AAU%20Documents/Academic-Principles.pdf>

FRPR recommends that FacEx move this amendment to the Faculty Senate floor as soon as may be, with the goal of gaining approval in time to put in place by the end of the fiscal year.

Proposal 2:

The Chair and members of the University Core Curriculum Committee (UCCC), because of their experience on the Committee, as well as input from faculty, know that the wording of some of the Core Goals is inadequate or imprecise. They have indicated that they plan to work on revising that wording from the late spring semester 2018 through the beginning of the fall 2018 semester. For the reasons set forth in Proposal 1, we believe it is imperative that the Faculty Senate or its designees participate in the process of revising the Core Curriculum goals.

Timeline:

Because UCCC plans to begin this process soon, FRPR recommends that FacEx establish such a committee in concert with UCCC as soon as practicable.

Proposal 3:

The Core was devised in a manner that created substantial ill-will, resentment, and suspicion amongst the rank-and-file faculty towards the Administration at the time: there was and is a widespread perception that then-Provost Jeffrey Vitter implemented the Core in a hasty top-down fashion (solicitations of “input” from faculty and students notwithstanding). Although the Faculty Senate Executive Committee was briefed on the progress of the Core and permitted to suggest some of its wording, *the Core never came before the Faculty Senate for a vote*. Indeed, the KU Common Core is listed in the Policy Library as a “Provost’s Policy.” This state of affairs has created an ongoing crisis of academic legitimacy for the Core.

Incorporating the Core goals into the FSRRs would:

- ▀ *Allow the Faculty Senate to amend the Goals of the Core.* This ability would place the Faculty, not the Administration or its designees, in control of designing and amending the curriculum. Thus the University would be brought into line with this fundamental principle of modern higher education.
- ▀ *Acknowledge the KU Core as constituting the general education requirements for all undergraduates at the University.* Although some faculty remain hostile towards the very concept of the Core, there does not appear to be a comprehensive alternative in the offing. In the meantime, the Faculty at large has no say in the general education requirements of the University. Incorporating them into the FSRRs would remedy that situation.

Timeline:

FRPR recommends that the revised Core Goals developed by the ad hoc committee (Proposal 2), be proposed as an amendment (i.e., addition) to the FSRRs as early in the fall 2018 semester as may be. This will be a large and potentially controversial initiative, so the more time it has to make its way through the process, the better.

Specific Charges 1 & 2: Due-Process Rights for Non-Tenure-Track Faculty:

- “1.) Analyze, and, if warranted, recommend language to strengthen, FSRRs relating to the Faculty Rights Board, as well as FRB procedures.
- 2.) Analyze, and, if warranted, strengthen, language in policies designed to protect non-Tenure-track faculty.”

In response to these charges, FRPR recommends FacEx do the following:

Propose the following amendments to FSRR Article VII:

FRPR recommends the following changes to FSRR 7.3.2:

c. Require that the appealing party state in writing the grounds for the appeal and the basis for the jurisdiction of the Faculty Rights Board. The opposing party shall have a reasonable opportunity to respond. The grounds for an appeal are limited to allegations that action by an administrative authority violated established University procedures ~~and or~~ adversely affected faculty rights. Administrative authorities include tribunals formed within the University to hear and rule on faculty grievances.

d. Provide to an appellant and opposing parties a fair opportunity to present their cases and arguments in a hearing before the Faculty Rights Board if the Board has determined that the allegations in the appeal are sufficient to warrant a hearing. The Board may dismiss an appeal in accordance with the grounds and requirements listed in USRR 6.5.3 for dismissal of grievances by the Judicial Board, and also may dismiss an appeal if the appellant fails to provide information requested by the Board within seven days of the Board’s request. At a hearing, the evidence and testimony considered by the Board shall be limited to how the administrative authority’s action violated established University procedure ~~and or how the alleged violation~~ adversely affected the faculty member’s established rights. The Board shall not conduct a hearing to review factual issues that are not disputed or are not material to the dispute.

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f. Provide that the burden of proof is on the appellant to prove by clear and convincing evidence that there has been a violation of established university procedure ~~and or an adverse effect upon that the violation~~ ~~adversely affected~~ an established faculty right.

* * *

7.3.3.1 After a hearing, the Faculty Rights Board shall deliberate and determine, by majority vote, whether the appellant has proved by clear and convincing evidence that the administrative action violated established University procedure ~~and or whether the violation~~ adversely affected an established faculty right. A written decision stating the conclusions of the Faculty Rights Board and the reasons for them, as well as any recommended actions to be taken, shall be provided to the parties, the Provost, the Chancellor, and any other administrative officials involved in the case no later than fourteen days after the hearing is completed.



Rationale & Timeline:

FRPR believes that these amendments would serve as a partial response to the charges above. FSRR VII sets forth the grounds and procedure for faculty to appeal administrative actions other than appeal of tenure decisions or dismissal of tenured faculty (e.g., non-renewal of teaching contracts, unfavorable third-year reviews, alleged bias in allocation of resources, etc.). FSRR VII states, at several points, that in such cases, “grounds for an appeal [to the Faculty Rights Board] are limited to allegations that action by an administrative authority violated established University procedure **and** adversely affected faculty rights.”

There are a couple of serious problems with this wording.

Firstly, meeting both of those tests (proving **both** that a violation of procedures occurred **and** proving an adverse effect on the individual’s faculty rights) is a very high, if not impossible, standard, given that the burden of proof is on the appellant. Moreover, in the case of many if not most non-tenure-track faculty (NTTF), the decision of the unit head or P.I. *is* the “procedure.” In other words, *NTTF have practically no due process protections of academic freedom as teachers or researchers, at the University of Kansas*. These changes would not remedy that situation entirely but at least would provide a last resort, if a NTTF member’s academic freedom were to be violated by their supervisors.

Secondly, perhaps more problematically, the current language of FSRR VII implies that, as long as “established University procedure” is followed, it is acceptable to violate “established faculty rights.” In other words, the current wording of the FSRRs would appear *to sanction the violation of faculty members’ academic freedom*, which is guaranteed in the Faculty Code. This state of affairs reflects rather poorly upon the University. Meanwhile, other peer regional AAU institutions, such as the University of Texas at Austin, make protections of non-tenure-track faculty explicit.²

We expect the proposed changes may be opposed by the Office of General Counsel, but we believe it will be possible to find common ground.

This institution has a deep commitment to academic freedom, peer review, and shared governance, but the current FSRR VII language implies that it does *not*. By contrast, the proposed amendments are consistent with the shared values of both Administration and governance, and therefore should be approved by both.

Timeline:

FRPR recommends that FacEx move these amendments to the floor of the Faculty Senate at the earliest opportunity, with the goal of gaining approval in time to put in place by the end of the fiscal year.

² For instance, “Issues Subject to Grievance Procedures” include “any issue bearing upon the academic freedom of an individual faculty member”; “dismissal of a . . . non-tenured faculty member during the stated period of employment”; and “non-renewal of a non-tenured faculty member.” The policy also states that “the term ‘faculty member’ includes all tenured, tenure-track, and non-tenure track faculty (including visiting faculty),” and that an appellant’s burden is “to prove by a preponderance of the evidence, that there was a substantial violation of the grievant’s academic freedom, constitutional, statutory, or contractual rights.” Note the “or.” The entire policy may be found here: <https://policies.utexas.edu/policies/faculty-grievance-procedure>

Specific Charge 3: Conflict of Interest: Gift-Acceptance Policy

“Explore the advisability of a University-wide Conflict of Interest Committee that would investigate &/or adjudicate all types of conflict of interest, and, if such a committee is deemed advisable, draft an addition to the University Code to create it.”

In response to this charge, FRPR recommends that FacEx move the following in SenEx:

1. Proposed Amendment to USRRs: Addition of the following as Article X:

10. University Gift Acceptance Policy

The University must preserve the primacy of shared academic governance in establishing campuswide policies for planning, developing, implementing, monitoring, and assessing all donor agreements and donor collaborations, whether with private industry, government, or nonprofit groups.

The University must preserve its academic autonomy – including the academic freedom rights of faculty, students, postdoctoral fellows, and academic professionals – in all its relationships with industry and other funding sources by maintaining exclusive academic control over core academic functions, such as faculty evaluation, hiring, and promotion decisions, research conduct and assessment, classroom teaching, curriculum development, and course content.

Therefore, the University will accept no gift which infringes on academic control over these functions; that would require the University to contravene its established policy of nondiscrimination and equal opportunity; or if the potential donor requires that its purposes cannot be disclosed publicly.

2. Proposed Addition to University Code Article XI:

Section 6. The Gift-Acceptance Committee

(a.) membership

The Gift Acceptance Committee shall be composed of 13 members. The membership in any given academic/fiscal year shall consist of the following:

- Seven (7) members of the faculty, nominated by the Faculty Senate Executive Committee, serving staggered three-year terms;*
- A student representative, nominated by the Student Senate Executive Committee;*
- A staff representative, nominated by the Staff Senate Executive Committee;*
- The Provost or representative;*
- The University General Counsel’s Office or representative; and*
- The Vice Provost for Administration and Finance*
- President of KU Endowment Association, Inc. or representative*

(b.) responsibilities

The Gift Acceptance Committee is charged with developing criteria for ensuring that any substantial gifts to the University are consistent with its academic autonomy; its policy of nondiscrimination and equal opportunity; and its commitment to transparency. The Committee will review and approve gifts, prior to their acceptance, that:

- ▀ Are \$5,000 or more and are designated for faculty compensation; or*
- ▀ Are designated for the formation of new centers, institutes, academic research projects, scholarly programs, and the like.*

Rationale & Timeline:

Since these changes would benefit the entire University, not just the faculty, FRPR recommends that FacEx move these amendments be approved by SenEx for introduction in the University Senate.

In studying and thinking about the issues involved, it quickly became apparent that “conflict of interest” is such a broad category, applying to so many different circumstances, that the likelihood of devising a committee to encompass all of them would be impossible for FRPR to accomplish this year.

However, it seemed that the primary concern of FacEx vis-à-vis conflict-of-interest was in regards to restricted gifts, so this is where the Committee directed its efforts. This issue is very topical, in that KU and many other institutions of higher education have received gifts in recent years (whether from the Koch Brothers, BB&T, George Soros, or the People’s Republic of China) that stipulated direct involvement of the donors in the operations of those Universities, including the selection of faculty and curricula. Many considered such a high level of control by external donors as threatening the academic autonomy and credibility of their respective institutions.³ Given KU’s experience with the formation of the Center for Applied Economics; other universities’ recent experience with unacceptable donor stipulations; the uncertainty, speculation, and lack of information in the University community regarding the funding of the new Earth, Energy, and Environment Center; and the constant pressure on the University to come up with new ways to generate income and cut or externalize costs, the time has come to address the issue pro-actively.

Moreover, KU’s accrediting body, the **Higher Learning Commission**, requires that an institution “preserves its **independence from undue influence on the part of donors**, elected officials, ownership interests, or other external parties **when such influence would not be in the best interest of the institution.**” Its Criteria for Accreditation go on to state that “[t]he governing board delegates day-to-day management of the institution to the administration and **expects the faculty to oversee academic matters.**”

Those respective duties can come into conflict when outside donors approach the institution with large sums of money that have strings attached. The KU Administration addresses this dilemma to some extent with its “Institutional Advancement Practices and Guidelines,” which state:

“Typically, the donor’s preferences are well within the capability of the institution to carry out. On

³ See Appendix.

occasion, however, the use conditions of a gift may not be appropriate or may be unnecessarily restrictive. Before a gift is accepted, KU Endowment will discuss the gift's implications with University administrators to determine acceptance feasibility. KU Endowment is responsible for negotiating appropriate gift conditions and its staff should be involved early in discussions on potential gifts."

The policy makes no provision for persons outside of the Administration or Endowment to participate in such a determination. The problem this situation creates is that, if faculty are expected "to oversee academic matters" – including academic integrity – then they would have to be involved in "discuss[ing] the gift's implications" and appropriateness in order to determine whether it conflicted with the academic mission. The proposals above will provide for that involvement.

The addition of the proposed USRR Article 10, above, would establish broad standards for gift acceptance. The first two paragraphs are taken from the AAUP's "56 Principles to Guide Academic-Industry Engagement,"⁴ and the last paragraph is adapted from the University of Michigan's policy on gift acceptance.⁵ The language here makes clear that the University does not exist simply to exist. Rather, its continued operation is only justified by certain principles; if those principles are weakened or destroyed by a particular "gift," then that money harms rather than helps the institutional mission, credibility, and stature, and should be declined.

In order to ensure that these principles are observed in the process of gift acceptance, FRPR recommends the establishment of a new University standing committee, the "Gift Acceptance Committee." Some colleges and universities have such committees, but KU does not. Given the faculty's preeminent role in maintaining the academic integrity of the institution, a majority of members of such a committee should be faculty members (in keeping with AAUP guidelines). However, other stakeholders (students, staff, Administration, and Endowment) should have representation as well. The Committee would be charged with preserving the principles outlined by the new USRR 10 in the case of particularly sensitive gift restrictions and amounts.

Timeline

FRPR recommends that members of FacEx approve these proposals at its next meeting, then at the first SenEx meeting after that, move that they be approved and sent to the University Senate for discussion and vote.

⁴ <https://www.aaup.org/sites/default/files/files/Principles-summary.pdf>

⁵ See in particular subsections II.L,M, and N: http://spg.umich.edu/sites/default/files/policies/602X02_0.PDF

APPENDIX:

Documentation resources regarding gift-acceptance and conflict of interest.

Here is a recent story involving UT-Austin and concerns about donor influence. Senator Ted Cruz raised concern about funds proposed to be accepted from a Chinese foundation. Ultimately, the university decided against accepting the funding.

<https://www.texastribune.org/2018/01/15/ut-wont-accept-funding-chinese-foundation-after-criticism-cruz-profess/>

This article discusses KU, among other schools:

Paul Baskin, *Think You Know What Type of College Would Accept Charles Koch Foundation Money? Think Again* (Dec. 20, 2017). <https://www-chronicle-com.www2.lib.ku.edu/article/Think-You-Know-What-Type-of/242103>

Koch Brothers Influence at KU:

UnKoch My Campus - <http://www.unkochmycampus.org>

There is a lot of information here, detailed about KU's experience (see excerpts below), but addresses other schools as well, delving deep into the methods of influence the Koch Foundation has employed in its higher education funding.

Here you will find a useful summary of issues tied specifically to academic principles, including the information re: KU pasted below:

<http://www.unkochmycampus.org/introduction/>

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At the University of Kansas, a records request revealed that the Fred and Mary Koch Foundation (one of several Koch family foundations controlled by Charles Koch) provided funding in 2009 to support the creation of a "Capitalism course"

The 2009 grant of \$100,000, dedicated to payroll, allowed the Center to continue the work made possible by the 2008 grant—as well as **inaugurate a Capitalism course in the KU School of Business** for honor students university-wide. ([KU records request](#), pg 3)

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At the University of Kansas, various foundations controlled by Charles Koch, the Fred and Mary Koch Foundation, the Charles Koch Foundation, and the Claude R. Lambe Foundation, have provided at least \$1.2 million to the University of Kansas (KU) School of Business, including the creation of the Center for Applied Economics (CAE) in 2004. The director, Art Hall, describes the Center as "a self-funding economic research organization staffed by an executive director." CAE is inside the School of Business, but entirely independent of the KU Department of Economics. (KU records request, pg 9)

From 1997 to 2004, Hall was chief economist of Koch Industries' lobbying subsidiary, Koch Companies Public Sector. In his capacity with CAE, Hall has worked in collaboration with other Koch affiliates to advance state policy change that reflect Kochs' agenda, while assuming the academic credentials of KU. In fact, several reports Hall has published under the CAE are co-authored by Koch-funded economists.

[Public records](#) released by the University of Kansas show include only a few emails between Hall and Koch officials between 2007 and 2013. In one document, Art Hall describes the CAE’s overtly political goal of influencing public policy in favor of “free-enterprise”:

In a 2007 letter to the Charles Koch Foundation, Art Hall states that “[t]he research team’s goal is to create intellectual products that will enlighten public policy debates in a way that helps promote smaller government and a more robust free-enterprise policy platform.” ([KU records](#), pg 4). Hall describes the Center’s model of delivering policy-products for money:

The Center has focused on targeted, high-quality research projects that hold the promise of major structural reform across different policy areas, and has adopted a policy of paying scholars only upon delivery of work product ready for final publication. ([KU records](#), pg 2)

[Additional records](#) show at least one example of how Art Hall failed to disclose his funding from the Koch Foundation with the sole purpose of lobbying against clean energy incentives. Koch Industries holds significant interests in fossil fuels, it was actively lobbying against these incentives. In a November 2013 email to Koch officials, Hall describes the Center’s use of funding from the Fred and Mary Koch Foundation (FMK) in 2013:

A substantial portion of that sum financed [1] background research on Renewable Portfolio Standard and (2) work on a survey project related to the local "business environment" in Lawrence.
[...]

I suppose this might be an appropriate time to ask if the fund can be used in 2014 to support another \$40,000 of payroll—primary the summer portion of the Center's payroll?

On Dec 11 2013, a FMK official, Laura Hands, responds “Yes, FMK would like to authorize an additional \$40k for 2014 payroll” (KU records request, pg 15).

During the 2014 Kansas legislative session, Art Hall provided testimony in opposition to SB 433, Kansas Renewable Portfolio Standards. Hall not only failed to disclose his funding from the Koch foundation, but Hall provided written bullet points as part of his testimony which read:

The viewpoints expressed by Art Hall are his alone, based on his research and independent judgement; they should in no way be interpreted as representing the viewpoints of the University of Kansas (or any sub-unit thereof) or the Kansas Board of Regents. (Hall’s [Written Testimony](#))

In 2015, journalists reporting on the revelations revealed that this testimony was the sole product of the funding:

Hall testified in favor of repeal at a Senate hearing in March 2014, after his center had produced Koch-funded research on the standards.

Hall said in an email to a reporter that the testimony was the only published work that came from his investigation into the standards.

At the University of Kansas, several emails between Koch Foundation officials and the director of Koch's Center for Applied Economics have surfaced as a result of a public records request. In addition to revealing details about how the Koch foundation funds academics to act as corporate lobbyists, the documents released show how Charles Koch's Freedom Partners Chamber of Commerce is jointly funding these research initiatives. A 2007 email describes a partner donorship:

To help underwrite the proposed project, the Center respectfully requests a grant of \$108,400 from the Charles G. Koch Charitable Foundation. This sum represents one-third of the total projected cost of the project. The Center hopes to acquire an equal underwriting commitment from two other foundations. [...]

The Center has submitted an identical proposal to the John William Pope Foundation and The Cortopassi Institute. The Center's goal is to secure equal funding from each grant request. ([KU records](#), pg 4)

These two foundations are run by Art Pope and Dean Cortopassi respectively. Both men have been identified as actively involved in Koch's Freedom Partners Chamber of Commerce through documents leaked from inside Koch's secretive donor summits.

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A series of articles in 2017 addressing similar (larger-scale) issues at Wake Forest:

Peter Schmidt, *Koch Money Brings Distress Over University's Well-Being Institute* (Apr. 4, 2017)

The article discusses faculty concerns about a funded institute and operational agreement from funders:

<https://www-chronicle-com.www2.lib.ku.edu/article/Koch-Money-Brings-Distress/239686>

Article includes a link to a senate committee report on the matter:

<http://www.chronicle.com.www2.lib.ku.edu/items/biz/pdf/Senate%20Ad%20Hoc%20Report.FINAL.March%2015,%202017.pdf>

Nell Gluckman, *Wake Forest Eudaimonia Institute Tries to Turn from Controversy to Scholarship* (Apr. 26, 2017). The article discusses faculty senate attempt to block funding for the Institute:

<https://www-chronicle-com.www2.lib.ku.edu/article/Wake-Forest-s-Eudaimonia/239894>

Following prior article, see letter, from chair of Senate Ad Hoc Committee at Wake Forest after faculty rejected a funded center based on secret stipulations in funding:

<https://www-chronicle-com.www2.lib.ku.edu/blogs/letters/faculty-senate-at-wake-forest-explains-opposition-to-koch-funded-institute/>

Peter Schmidt, *How One College Quelled Controversy Over a Koch-Financed Center* (Oct. 4, 2016). Includes link to Faculty Statement that led to revision of agreement to preserve greater faculty involvement:

<https://www-chronicle-com.www2.lib.ku.edu/article/How-One-College-Quelled/237984>