

**Subcommittee of Committee of Eleven (SC11) Investigation Report
to the Chair of the Faculty in Response to the Concern
submitted by Drs. Abraham, Lin, and Maggert on 07/28/2022**

December 20, 2022

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**Appendix D: Original Letter of Concern by Dr. Matthew Abraham, Dr. Wei Hua Lin, and
Dr. Keith Maggert**

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Preamble

Shared governance is predicated on faculty electing their faculty representatives (ARS 15-1601B). To this end, the University Faculty Constitution and Faculty Bylaws specify who is eligible to run for elected office. [Appendix A]

The Concern

On August 17, 2022, Chair of the Faculty Dr. Leila Hudson charged the Committee of Eleven (C11) to investigate a concern by Dr. Matthew Abraham, Dr. Wei Hua Lin, and Dr. Keith Maggert regarding alleged violations of academic freedom and retaliation in not being placed on a ballot of candidates for a University of Arizona standing committee. Drs. Abraham, Lin, and Maggert assert that in 2022 they were each prevented from running for the faculty-elected Committee on Academic Freedom and Tenure (CAFT), thereby preventing their participation in shared governance. This concern alleges a violation of a fundamental aspect of shared governance—the right of faculty to seek election to shared governance bodies. [Appendix D contains the original letter of concern]

Relevant Statutes and Policies

Arizona Revised Statute §15-1601(B):

*"The Universities shall have colleges, schools and departments and give courses of study and academic degrees as the Board (of regents) approves. Subject to the responsibilities and powers of the Board and the University Presidents, **the faculty members of the Universities, through their elected faculty representatives, shall share responsibility for academic and educational activities and matters related to faculty personnel. The faculty members of each University, through their elected faculty representatives, shall participate in the governance of their respective Universities and shall actively participate in the development of University policy.**"*
[boldface added]

Note the **Nominating Committee charge from Faculty Bylaws with regard to the CAFT ballot:**

"The Nominating Committee will prepare a list of names containing not fewer than two times the number to be elected. After consultation with the Chair of the Faculty and the President, the committee will reduce the list to a slate of twice the number to be elected, giving due consideration to diversity. For each person listed, a brief description of relevant academic experience, qualifications and background will be provided. This information will also appear on the ballot submitted to the General Faculty along with the names and colleges of continuing members. If the outcome of an election cannot be determined because of a tie vote, a runoff election shall take place." [Appendix A: Faculty Bylaws, Art.V §9]

The Investigation Process

A subcommittee of eight Committee of Eleven members (SC11) conducted an investigation comprised of document review, Zoom interviews, email correspondence, and email inquiries. All members of SC11 were without conflicts of interest, not being involved with the concern either as plaintiff or as defendant.

The Sequence of Events

- August 30, 2021: Chair of the Faculty Jessica Summers and Nominating Committee Chair Ping Situ sent all General Faculty the customary *Annual Faculty Survey: Opportunities for University-level Service and Participation in Shared Governance* to gauge interest in shared governance bodies at the University. Faculty Senate staff prepared a spreadsheet listing faculty who expressed willingness to stand for election or serve on specific committees, including the Committee on Academic Freedom and Tenure (CAFT).
- The Senior Program Coordinator (the SPC) for the Faculty Center, Jane Cherry, received the Faculty Survey results. The SPC consulted with Elizabeth Miller, Associate General Counsel in the Office of General Counsel (OGC) to solicit advice regarding restriction of faculty who had a “conflict of interest” (COI) relative to shared governance bodies, following the procedure that the SPC says was established during the training for her position.
- Though not based on existing policies, Faculty Constitution or Bylaws, or Arizona State laws, the following questions were reportedly raised by the SPC during discussion(s) with OGC:
 - Should a Nominating Committee member be allowed to serve on a grievance committee (e.g., CAFT or the Committee on Conciliation)?
 - Should serving on more than one grievance committee be disallowed?
 - Does running for multiple committees constitute a COI?¹
- As a result of these discussions with OGC, the SPC then highlighted in red the following faculty prior to forwarding the list to the Nominating Committee, alleging that they were ineligible:
 - Dr. Dalila Ayoun, who had already been reelected to CAFT 2021-24
 - Dr. Matthew Abraham, who had pending grievances in Fall 2021 at the time of the Faculty Survey
 - Dr. Michael Grandner, who served already on the Committee on Conciliation and was deemed ineligible to serve on another grievance committee
 - Dr. Kenneth Knox, who is an Associate Dean and therefore ineligible (Bylaws Article 5 §9)
 - Dr. Keith Maggert, who had an active CAFT case that was not closed until May/June 2022
 - Dr. Wei Lin, for reasons of unsubstantiated, alleged past unprofessional interactions with the Faculty Center and Chairs of other shared governance bodies²
 - Drs. Abraham, Lin, and Maggert remained on the list forwarded by the SPC to the Nominating Committee, though with red highlighting in place.
 - Dr. Abraham was considered eligible to be on the ballot; though prior to the Faculty Survey his grievance case had been pending, his case was closed by the

¹ The only current policy- or Bylaws-based COI preclusion of faculty membership in CAFT relates to the disallowance of Deans.

² After subsequent examination of email correspondence between Dr. Lin, the then-Chair of the Committee on Conciliation, and the SPC, SC11 did not recognize any unprofessional interactions based on those correspondences. Dr. Lin’s persistence in requesting correction of the factual record in a Conciliation letter was not found to be unwarranted.

time the list of potential faculty candidates was sent to the Nominating Committee. However, his name remained highlighted in red.

- Dr. Maggert was removed from the list because of his pending CAFT hearing, though his CAFT case would likely have been closed prior to the new academic year.
- Collateral considerations/events
 - During the deliberation process of the Nominating Committee, the SPC volunteered input on the various candidates.
 - Dr. Katie Zeiders, member of the Nominating Committee, objected in several meetings that the Committee's processes were not in compliance with Faculty Bylaws.
 - At some point during the process, the SPC reviewed minutes of the Nominating Committee and found that Faculty Bylaws had changed in 2007, revising the process for preparation of the CAFT ballot.³
- Allegedly based on precedent by former Chair Dr. Jeremy Frey, the Nominating Committee adhered to what one member called "historic guidelines" that added additional restrictions on candidate eligibility for the CAFT and other committee ballots. Faculty Bylaws do recommend that the Nominating Committee give "due consideration to diversity" when preparing the CAFT ballot, but without specificity. The prior Nominating Committee had used these "historic guidelines" of unknown origin for committee makeup in general:
 - *To make sure all colleges are represented.*
 - *Number of names to be forwarded... generally one and a half to two times required (for example if 8 candidates are required we forward about 12 to 16 names).*
 - *Keep male/female ratio even, and other diversity aspects, if possible.*
 - *If someone knows that some candidate will not be a good fit based on prior knowledge about the candidate then he may vote against forwarding the name or provide information why he/she will not be a good fit.*⁴

³ Additional Nominating Committee history, according to the SPC:

- Before 2007: Chair of the Nominating Committee would meet with Chair of the Faculty and the President; Chair of the Faculty and President would choose the candidates.
- After a 2007 Bylaws change, the Chair of the Nominating Committee would meet with the Chair of the Faculty and President to solicit their feedback, but the Nominating Committee would make the ultimate decision.
- Pam Brigmon, former head of Faculty Center, followed change of Bylaws in 2007 and 2008, but then reverted to the former practice.
- Brigmon was replaced in 2010 by Briana Thaut. Faculty Center staff—the current SPC, in particular—was charged by Thaut with all faculty committee work.
- Harboring increasing concerns over processes in the Faculty Center, the SPC alleged that Thaut threatened to fire those who questioned or revealed how the Faculty Center was run.

⁴ The SPC's inappropriate use of the term "hidden agendas" in reference to faculty candidates in her communication with the Nominating Committee seems to have originated in the prior practice in the Faculty Center.

- *Some committees have an eligibility requirement such as the person should be tenured, continuing, tenure track, or member of general faculty. Again, we can make a complete document about these requirements.*
- *Make sure one candidate is not serving on too many committees, so other faculty have a chance.*
- The Nominating Committee for the 2022 election submitted on 01/07/2022 via email from the SPC (without cc to Nominating Committee Chair Ping Situ) a reduced list of 14 faculty members to the Chair of the Faculty Jessica Summers and President Robbins for further reduction to 8 final candidates for the CAFT ballot.
- This list—a word document with the candidate statements—still included Dr. Abraham and Dr. Lin as candidates and did not contain any red highlights. Here are the 14 candidates:
 - Abraham, Matthew
 - Bennett, Paul
 - Diaz, Duarte
 - Earl, Jennifer
 - Fatás-cabeza, Jaime
 - Guzman, Roberto
 - Lanza, Fabio
 - Lee, Jamie A
 - Lin, Wei
 - Lyons, Patrick
 - Ruggill, Judd
 - Salado, Alejandro
 - Watson, James
 - Zwinger, Lynda
- A phone conversation between the Chair of the Faculty Summers and the SPC took place to discuss the balance of candidates with respect to their college affiliations.
- Chair of the Nominating Committee Ping Situ did not perform the Bylaws-mandated duty to attend the meeting between the Chair of the Faculty and the President. Ms. Situ was urged by Nominating Committee members to attend but declined. As a result, no one knows what exactly was discussed between the Chair of the Faculty and the President (Chair Summers' recollection of this meeting is summarized two bullets down).
- The result of that meeting was the following list of 8 candidates for the CAFT ballot, here given with college affiliations:
 - Jennifer Earl, College of Social and Behavioral Sciences
 - Jamie Lee, College of Social and Behavioral Sciences
 - Roberto Guzman, College of Engineering
 - Alejandro Salado, College of Engineering
 - Judd Ruggill, College of Humanities
 - Paul Bennett, Co-Director of Clinics, College of Law
 - Patrick Lyons, Director, Curator, Arizona State Museum
 - James Watson, Associate Director, Curator of Bioarcheology, Arizona State Museum
- Both Dr. Abraham and Dr. Lin had been removed from the ballot. The reasons given for the removal of Drs. Abraham and Lin by Chair Summers were that other candidates from

the same colleges as Drs. Abraham and Lin had stronger statements. The final ballot does show that two candidates each from the College of Engineering and the College of Social and Behavioral Sciences—the Colleges of Drs. Lin and Abraham—were included. (Note that President Robbins did not respond to SC11’s request for comment regarding his involvement in the process of finalizing the CAFT ballot).

- This final list was forwarded to the ballot for CAFT, bypassing the Nominating Committee, and with no further deliberation.

Points of Procedural Failure

No single party bears full responsibility for this grievance. SC11 identified the following failures and/or lack of proper coordination among parties, listed in alphabetical order:

Chair of the Faculty

- The then-Chair of the Faculty did not reinforce the Bylaws-stipulated process for the preparation of the CAFT ballot, particularly with regard to the absence of the Nominating Committee Chair from the consultation between the Chair of the Faculty and the President.

Faculty Center Senior Program Coordinator (SPC)

- Inappropriate involvement by the SPC included red highlighting of survey results and interfering with Nominating Committee procedures.
- Inappropriate Faculty Center staff consultation with OGC.
- It is our finding that the SPC did the above not at the behest of third parties, but largely informed by the instructions/training received by former supervisors when they entered their positions or when supervisors changed (see footnote 3). Among the instructions/training received, unwarranted by ABOR, UHAP, or Constitution and Bylaws:
 - There is a strict vetting process for candidates for CAFT.
 - Not everyone who volunteers is necessarily qualified.
 - Faculty need to be collegial, unencumbered by grievances, and good citizens.

Nominating Committee

- The Nominating Committee did not operate according to Faculty Bylaws (Appendix A):
 - The process by which the CAFT ballot should be determined was not followed.
 - The Nominating Committee was not fully formed.
- The then-Chair of the Nominating Committee Ping Situ ignored concerns by Committee members regarding the interference of the Faculty Center.
- The Chair of the Nominating Committee did not attend the meeting between the Chair of the Faculty and the President and was thus unable to report deliberations back to the Nominating Committee for preparation of the final ballot.
- The Nominating Committee did not participate in the reduction to 8 final candidates for the CAFT ballot.

Office of General Counsel

- Elizabeth Miller's second response to SC11 (see Appendix C) implies that OGC rendered guidance to Faculty Center Staff regarding faculty eligibility for shared governance participation. There is no allowance for this in the Faculty Constitution or Faculty Bylaws.⁵

President Robbins

- The President was either unaware of or did not follow Faculty Bylaws in recognizing that his role in CAFT ballot preparation is advisory only.

⁵ See Appendix B for all references to OGC/University Counsel in Faculty Constitution and Bylaws.

SC11 Recommendations

For shared governance to function optimally and individual rights of faculty to be protected, various components of University structure must recognize their roles and responsibilities, and act in a fair, objective, and efficient manner. Specifically, regarding faculty grievances, these include Faculty Officers, Faculty Committees, and Faculty Senate; Faculty Center Staff; and Administration including the President, Provost, and Administrators who report to them, and the Office of General Counsel. In this spirit, we make the following recommendations:

Regarding Senate Committee Procedures

- All Senate committees shall create—if currently nonexistent—and abide by bylaws/operating guidelines that include the charge from the Faculty Constitution and Faculty Bylaws, membership requirements, lengths of terms, and clear processes for activities related to their charge.
- Their operating guidelines shall be consistent with ABOR, UHAP, and Faculty Senate policies, and should be publicly available on committee websites.
- Committee Chairs and all committee members shall review the bylaws/operating guidelines in the first meeting of each academic year before commencing their charge.
- Committee Chairs shall be expected to demonstrate clear and consistent leadership.
- Procedures for removal of committee members or Chairs and their replacement should be established in each committee and included in its bylaws to ensure accountability and effectiveness.

Regarding Committee Membership

Faculty Officers should choose one or more shared governance bodies (e.g., Constitution & Bylaws Committee, Academic Personnel Policy Committee) to consider and recommend amendments to the Faculty Bylaws related to the following:

- COI concerns regarding faculty eligibility in each Senate committee. (See our recommendations for CAFT COI follow in the section below).
- Concerns regarding faculty membership on multiple Senate committees, including but not limited to membership on multiple grievance committees.

Regarding CAFT Membership specifically

- The Constitution and Bylaws Committee and Academic Personnel Policy Committee should consider and recommend to the Faculty Senate revisions of the procedure for CAFT ballot preparation, in order to:
 - Define the intent and scope of “giving due consideration to diversity,” currently too vague to be useful and allowing inappropriate candidate elimination.
 - Eliminate the limit on the number of candidates, i.e., the vetting process altogether, for the CAFT ballot. SC11 finds the ballot-reducing process unnecessary and problematic.
 - Consider the elimination of the involvement of the Chair of the Faculty and the President in reducing the ballot.
 - Consider whether current CAFT hearings or Conciliation cases should preclude a faculty member from eligibility for CAFT.
- Until the Faculty Bylaws reflect any recommended changes, the Nominating Committee Chair shall attend the CAFT ballot consultation between the Chair of the Faculty and the

President and inform the Nominating Committee members of the deliberations that transpire. Moreover, the Nominating Committee must receive the input from the Chair of the Faculty and the President only as recommendations, not as a mandate.

Regarding the Nominating Committee and the Committee on Elections

- The Nominating Committee should receive the results from the Annual Survey of Faculty directly. Faculty Center Staff should assist with the Qualtrics survey setup, but the Chair of the Nominating Committee should be the administrator in charge of survey management and reports.
- The Annual Survey sent by the Nominating Committee should stipulate that running for election to shared governance bodies implies the commitment to consistent and intentional engagement.
- As per Faculty Bylaws, the Chair of the Faculty and the President should be purely consultative regarding the CAFT ballot.
- The relationship between the Nominating Committee and the Committee on Elections should be clarified. Bylaws state that the Committee on Elections—not the Nominating Committee—determines eligibility of candidates, but that the Nominating Committee is responsible for reducing the CAFT ballot to twice the number of available seats. The Faculty Constitution Art.V §5 states that the Nominating Committee assists with recommending faculty for shared governance bodies; there is no mention of determining eligibility. [Appendix A]
- Following the examination of the relationship between the Nominating Committee and the Committee on Elections, the Faculty Senate should consider whether both are necessary.

Regarding Faculty Center involvement in committee membership and operations

- The role of Faculty Center Staff in determining eligibility should be clearly limited to policy-specified criteria (e.g., tenure status and administrative status such as “Deans of any rank” precluded from CAFT, as per Bylaws).
- Faculty Center Staff should not contact OGC for advice regarding shared governance bodies. When in doubt, they should contact the Chair of the Faculty.

Regarding OGC involvement in faculty committees

- OGC should not engage in discussing or rendering opinions related to shared governance matters that are not within current policy frameworks, including involvement with the Nominating Committee.

General recommendations

- Election to shared governance bodies implies commitment to consistent, intentional, and informed engagement. As faculty participation in shared governance is required by Arizona law (ARS 15-1601B), those who serve should be protected and rewarded, including in the Promotion & Tenure process at the University.
- The General Faculty should have the right to vote for the full slate of faculty candidates who have come forward.
- An employee who discloses and subsequently suffers an adverse personnel action as a result is subject to the protection of ABOR 6-914. Deeming a faculty member ineligible for standing for election based on previous grievances risks a reprisal claim of an adverse

personnel action. The university should develop appropriate mechanisms to advise all employees of the existence of ABOR 6-914.

Appendix A: Current policies, descriptions, and charges of relevant University Committees

Nominating Committee

Faculty Constitution, Art.V §5

The Nominating Committee shall recommend members of the General Faculty to the Chair of the Faculty for appointment or nomination to all committees of the General Faculty. Upon request of any administrative officer of the University, the committee shall also recommend persons for appointment to new or existing committees whose appointments lie within the discretion of such requesting officer.

Faculty Bylaws, Art.V §3

The Nominating Committee shall be composed of six members of the General Faculty elected by the General Faculty for three-year staggered terms. No more than two members shall be elected from any one College faculty and no member shall serve consecutive terms. The committee shall elect its chair from those of its members who have served one year or more on the committee.

Committee on Elections

Faculty Constitution, Art.V §2

The Committee on Elections shall conduct elections for offices and committee memberships of the General Faculty, and elections for Faculty Senators representing the several College Faculties in accord with procedures specified in the Bylaws.

Faculty Bylaws, Art.IV

Committee on Elections and Election Procedures

The General Faculty Standing Committee on Elections shall consist of three members of the General Faculty appointed by the Chair of the Faculty, after consultation with the Faculty Senate Executive Committee, from among candidates recommended by the Nominating Committee, or by other members of the General Faculty, for three-year staggered terms. The committee shall elect its chair from those of its members who have served at least one year on the committee, and shall follow these procedures: Candidates for any positions elected by the General Faculty or the Faculty Senate shall provide a candidate statement.

Section 1: Declaration of Candidacy

Candidates for elective office shall declare their candidacy to the committee as directed on the faculty governance website:

- a. Declarations shall identify the elective office being sought, and provide a means for candidates to affirm their eligibility for and willingness to hold the office. Electronic or hard-copy distribution of declarations shall be acceptable.
- b. Candidates shall affirm in writing their willingness to hold office by signing their declaration. Electronic or hard-copy signatures shall be acceptable.
- c. The Committee on Elections shall verify the eligibility of each nominee.

Section 2: Conduct of Elections

- a. The Committee on Elections shall notify the General Faculty, no later than January 15 each year, of elective offices to be filled that year.
- b. The committee shall accept completed declarations of candidacy no later than the close of business ten (10) class days prior to the election.

- c. The committee shall conduct general elections for elective offices no later than March 1, allowing ten (10) class days from the opening of the online election to the close of the election.
- d. The committee shall notify members of the General Faculty of the results of general elections no later than March 22.
- e. The committee shall conduct runoff elections for faculty offices no later than April 1, allowing ten (10) class days from the opening of the online election to the close of the election.
- f. The committee shall notify the General Faculty of the results of the runoff election no later than April 25. Results will include a list of any individuals elected and policies adopted, as well as an overall participation rate for the election. Requests for vote counts in individual races may be made to the Committee on Elections.
- g. In the event of a tie vote, the decision shall be made by lot. Lots are cast by the Committee on Elections. The candidates or their designated witnesses are invited to observe the casting of lots.

Committee on Academic Freedom and Tenure

Faculty Bylaws, Art. V §9

The Committee on Academic Freedom and Tenure shall be composed of twelve tenured or continuing members of the General Faculty other than deans of any rank, four of whom shall be elected each year by the General Faculty for a term of three years. The slate of candidates presented to the General Faculty shall be selected in the following manner: The Nominating Committee will prepare a list of names containing not fewer than two times the number to be elected. After consultation with the Chair of the Faculty and the President, the committee

will reduce the list to a slate of twice the number to be elected, giving due consideration to diversity. For each person listed, a brief description of relevant academic experience, qualifications and background will be provided. This information will also appear on the ballot submitted to the General Faculty along with the names and colleges of continuing members. If the outcome of an election cannot be determined because of a tie vote, a runoff election shall take place.

The Committee on Academic Freedom and Tenure shall elect its chair and vice chair from among those of its regular members who have served at least one year. In the event that the committee is of the opinion that the case load is so great that undue delay will be experienced in the hearing and disposition of all cases before it, the committee may direct that temporary members be installed to hear specific cases.

Faculty Constitution, Art.V §9

The Committee on Academic Freedom and Tenure (CAFT) shall have jurisdiction to make inquiry and to conduct hearings in two general areas contained in ABOR 6-201, 6-301 and 6-302 namely: in regard to those matters contained in the Conditions of Service dealing with the contractual employment relationship between the General Faculty member and the University/Board of Regents; and in regard to any internal matters relating to grievances against or by any member of the General Faculty. The committee shall consider the protection of academic freedom and tenure as a principal obligation. (Certain preliminary steps for dismissal situations are described in Chapters 3

and 4 of the *University Handbook for Appointed Personnel* and Sections 6-201, 6-301 and 6-302 of the *Arizona Board of Regents Policy Manual*).

Appendix B: References to OGC/University Counsel in Faculty Constitution and Bylaws

Faculty Constitution

The only reference to the involvement of University Counsel in the Faculty Constitution pertains to review of proposed amendments to the Faculty Constitution or Faculty Bylaws.

Faculty Bylaws

The only reference to the involvement of University Counsel in Faculty Bylaws pertains to Grievances, Art. VII. There is no recommendation that Faculty Center Staff or the Chair of the Faculty should engage with OGC to assist with shared governance elections.

Appendix C: Transcripts of relevant correspondence between SC11 and OGC

Elizabeth Miller, Associate General Counsel, OGC

SC11 posed the following questions to Elizabeth Miller of OGC in an e-mail from 10/31/2022:

- *Has OGC traditionally interacted with the Faculty Center to assist in the vetting process of candidates?*
- *More specifically, have you interacted with Jane Cherry to help vet any candidates that have expressed an interest to serve on CAFT?*
- *If so, what was the nature of interaction?*

Good Morning Professors Fink and Milbauer,

I appreciate your patience with my response – I was out of the office when you sent your below email regarding the Committee of 11’s review of the Nominating Committee’s processes.

My answers in response to your inquiry are below in red:

*Has OGC traditionally interacted with the Faculty Center to assist in the vetting process of candidates? **To my knowledge, no.***

*More specifically, have you interacted with Jane Cherry to help vet any candidates that have expressed an interest to serve on CAFT? **No.***

*If so, what was the nature of interaction? **N/A***

As Elizabeth Miller’s response appeared to be in contradiction to what Jane Cherry had stated, SC11 posed the following follow-up questions on 11/30/2022:

- *Has Jane Cherry approached you in the past for advice? If so, what was the advice about?*
- *More precisely, did you advise Jane Cherry regarding conflicts of interest related to candidates who serve on multiple grievance committees? If so, what specific advice did you give?*
- *Did you advise Jane Cherry regarding conflicts of interest related to candidates who serve on the Nominating Committee but sought membership on a grievance committee? If so, what specific advice did you give?*
- *Did you advise Jane Cherry regarding eligibility of candidates for CAFT election? If so, what specific advice did you give?*
- *Has the Faculty Center approached you in the past for advice? If so, what was the advice about?*
- *Has the Chair of the Faculty Jessica Summers approached you in the past for advice? If so, what was the advice about?*
- *Has the Nominating Committee approached you in the past for advice? If so, what was the advice about?*

SC11 received the following response from Elizabeth Miller in an e-mail from 12/08/2022:

Dear Professors Fink and Milbauer,

I appreciate the work of the Committee of 11 and its decision to review the operations of the Nominating Committee; however, I am unable to answer these additional questions. My professional obligations to the University, including the attorney-client privilege afforded to my legal advice, prevent me from disclosing the details you are requesting.

I understand that Laura Todd Johnson spoke to C11 earlier this year to discuss the role of the Office of the General Counsel. She is happy to continue that conversation if C11 has additional questions.

Sincerely,

Elizabeth W. Miller

Given Elizabeth Miller's response above, SC11 recognizes (a) that she refuses to answer the specific set of follow-up questions, and (b) she asserts attorney-client privilege in her refusal to answer our follow-up questions. We interpret her response to imply that (1) an attorney-client relationship actually existed between the SPC and OGC, and (2) that legal advice was given. Moreover, her response raises ethical questions regarding the role of OGC offering legal advice on candidate eligibility for statutorily mandated faculty elections (ARS 15-1601B).

Art Lee, Vice President and Deputy General Counsel

SC11 posed the following questions to Art Lee of OGC in an e-mail from 10/31/2022:

- *Has OGC traditionally interacted with the Faculty Center to assist in the vetting process of candidates?*
- *More specifically, have you interacted with Jane Cherry to help vet any candidates that have expressed an interest to serve on CAFT?*
- *If so, what was the nature of interaction?*

Good morning, Professors Fink and Milbauer. Thank you for your email below. I was unaware that your committee had created a sub-committee that is looking into how the Faculty Senate's Nominating Committee has "historically gone about preparing a list of candidates for the CAFT ballot". I appreciate you reaching out with your questions. As you may know, the Office of the General Counsel at the University of Arizona (OGC) represents and advises the University/the Arizona Board of Regents as an institution and not any specific components that may comprise the University, such as various committees that may exist. Notwithstanding that, I'm happy to respond to your inquiry. Please see my response in regular font below your questions which are restated in italics below.

Has OGC traditionally interacted with the Faculty Center to assist in the vetting process of candidates?

To the best of my knowledge, no, OGC has not traditionally interacted with the Faculty Center to assist in the vetting process of candidates.

More specifically, have you interacted with Jane Cherry to help vet any candidates that have expressed an interest to serve on CAFT?

No, I have not interacted with Jane Cherry to help vet any candidates that have expressed an interest to serve on CAFT.

If so, what was the nature of the interaction?

Please see my response to Question 2.

Appendix D: Original Letter of Concern by Dr. Matthew Abraham, Dr. Wei Hua Lin, and Dr. Keith Maggert

July 28, 2022

Leila Hudson, Ph.D.
Associate Professor and Chair of the Faculty
University of Arizona
Tucson, Arizona
via E-mail

Dear Professor Hudson:

On January 24th, 2022, Dr. Matthew Abraham submitted a public records request for emails and documents generated by the Nominating Committee for its process of selection for nominees for the Committee on Academic Freedom and Tenure in 2018 and 2022. On July 22nd, 2022, the Public Records Office released emails and documents related to that request. Included in the released material were emails from Faculty Center Senior Program Coordinator Jane Cherry (attached to this letter). These emails reveal that the Nominating Committee uses a highly inappropriate and prejudicial process to exclude faculty from full and fair consideration for committee service. It does so outside of established policy, without clear standards or criteria, and in secret. It does so arbitrarily and capriciously, in accordance with only Ms. Cherry's personal opinion of the candidates based on information that only she is privy to.

In an email dated October 5, 2021, responding to Dr. Katherine Zeiders, Ms. Cherry indicated that she had decided that multiple faculty (Drs. Matthew Abraham, Wei Hua Lin, and Keith Maggert) had been declared "ineligible" for service on the Committee on Academic Freedom and Tenure (CAFT). We three were declared to be "ineligible" for service on CAFT because we are "problematic." Within the subsequent emails, Ms. Cherry takes two positions, both extremely troubling. First, that we are personally problematic to her, and that is sufficient to void our nominations. Second, that we are problematic to the administration. It need not be elaborated upon, but neither Ms. Cherry nor the administration represent the constituencies that faculty serve, nor should either have hidden control over faculty representation on a committee as important as CAFT. When pressed for details by Dr. Zeiders, Ms. Cherry indicated that she based her decisions on her personal interactions, rumors, and "confidential" information that she did not disclose to the Committee. Ms. Cherry is a staff member, unelected and unaccountable, acting outside of policy or process, exercising her will on the Nominating Committee on the supposed basis of special knowledge and experience. Ms. Cherry's emails reveal an extremely dangerous influence and a direct threat to shared governance at the University of Arizona. This harrowing situation further suggests a troubling pattern of administrative interference with faculty-driven contributions to University governance.



Ms. Cherry's interference with the Nominating Committee seemingly goes unquestioned by members of the Nominating Committee (outside of Dr. Zeiders), shrouded from scrutiny or accountability. When pressed by Dr. Zeiders, Ms. Cherry did not explain herself or provide any information supportive of her actions. Ms. Cherry indicated to Zeiders that her feelings are 'irrelevant' and that the information Cherry has from the Office of the General Counsel, Faculty Senate, and committees are 'facts.' That Cherry would make these statements to Zeiders reveals the arrogance and recalcitrance of someone who has operated unchecked over many years.

When communicating with Dr. Abraham last February about why his name was not selected to be on the ballot for CAFT, Ms. Cherry stated, "*Your name went forward on the list of fourteen names but wasn't chosen to be on the ballot. That meeting is a confidential meeting and I am not privy the discussion or why/how those decisions were made. I only get the names that were chosen and no explanation for the choices.*" This is an intentional lie when compared to the documents released by the Public Records Office. It serves to obscure Ms. Cherry's influence, to prevent Dr. Abraham from knowing or contesting his blacklisting, and to deprive the general faculty from understanding how the Nominating Committee crafts committee membership. Dr. Abraham's question to Ms. Cherry about whether a candidate's knowledge of, and experience dealing with, issues around academic freedom is considered in the selection process were completely ignored, and to this day, remain unanswered.

No faculty with whom we've spoken are aware that the process of nomination includes veto power by staff. No faculty knows that "secret" information is curated by the Faculty Center or is used to cull the list of potential nominees. This alone shatters trust in the Faculty Center and its reputation for objectivity and professionalism.

All evidence suggests that the Nominating Committee and Faculty Center are aware of how distasteful it would be if it became widely known by faculty, because the culling itself is a closely guarded secret. The process itself is neither known widely nor written down. Even members of the Nominating Committee seem unaware of how the process works, and some were unsettled by it. And they were rightfully unsettled considering the committees being crafted hold the power to write or advise on policies and procedures, investigate and adjudicate grievances against administration, influence decisions that impact the entire faculty, staff, and student constituencies of the University of Arizona. Gatekeeping the Nominating Committee puts a thumb on a staggering number of scales.

Although in general the current situation is a flagrant violation of the University's public support for shared governance, our particular cases illustrates a few truly disturbing features:

First, **that mere accusations can deny us due process.** By its secretive nature, we cannot understand the claims against us, cannot demand evidence upon which the claims are asserted, cannot challenge our accusers, cannot clear our names or restore our reputations. We cannot remove ourselves from the blacklist on which we find ourselves. In the case of Dr. Lin, whose last interaction with Ms. Cherry was *eight years ago*, the list is an enduring specter with a long memory.

Part and parcel of this situation is the **formalization of innuendo or personal opinion into University policy.** Those that now know that we three have been declared ineligible because of our "problematic" natures will likely treat us differently, affecting our personal and working relationships, and our abilities to serve on other University committees (which affect our service expectations, affecting in turn our employment status and our salaries). As Dr. Zeiders reported, Ms. Cherry also stated that those "impartial faculty" [sic] who might have "*hidden agendas*"



should be excluded from serving on CAFT. For the Faculty Center coordinator to use such a nebulous descriptor as “*hidden agendas*” to disqualify faculty from receiving fair consideration to serve on CAFT demonstrates an almost Orwellian use of language. For example, is a strong and unceasing commitment to the defense of faculty rights as outlined in UHAP an indication of faculty member’s “hidden agenda”? Ms. Cherry’s deployment of “hidden agendas” in this way reveals a very tendentious understanding of how faculty are supposed to conduct themselves with regard to shared governance.

Second, **that others may influence Ms. Cherry’s decisions.** Ms. Cherry indicates that our culling was due to our annoyance to the administration. This is implicit admission that others’ opinions – specifically administrators’ opinions – are being enacted through Ms. Cherry. This circumvents protections made by policy, providing a conduit for people who have no right to make these decisions to now do so.

Third, **that using the University’s grievance process itself is sufficient to blackball an individual.** No person should be declared ineligible to participate in a process because they choose to use that process. In our case, our knowledge and understanding of the grievance process, of state law, of Open Records requests, of University policies, and our willingness to fervently support policy and individual rights, should be heralded. For example, Ms. Cherry’s assertion that Dr. Abraham was ineligible because he *may* have a Committee on Academic Freedom and Tenure grievance is patently ridiculous: as far as we are aware, anyone may request a hearing at any time. Certainly, Ms. Cherry’s notion as to who may seek relief from the Committee on Academic Freedom and Tenure should play no role. It should be noted that Dr. Abraham is a past chair of CAFT and has published a great deal about academic freedom and shared governance issues.

Fourth, **that exclusion is a punishment for even being accused; exoneration is impossible.** For example, Dr. Maggert was involved in a grievance against his department head at the time of the exclusion. And the timing is informative. Ms. Cherry’s decision occurred between his hearing and when the Committee on Academic Freedom and Tenure rendered its decision. Ms. Cherry might have known the outcome of the Committee (it was issued a few days after the interchange between Ms. Cherry and the members of the Nominating Committee), but if she did, she would have known that the Committee on Academic Freedom and Tenure decision was fully supportive and exonerating of Dr. Maggert. Although Dr. Maggert was exonerated by the hearing, he was still blackballed by Ms. Cherry. He was to lose his standing, branded as a troublemaker, despite his proven innocence.

All of this is even more powerfully unsettling when one considers who is most likely to engage the grievance processes. Marginalized groups remain marginalized because of the onslaught of small injustices, every bit as invective as larger and more overt ones. Not only does blackballing preferentially affect marginalized groups by forfending their rights to bring grievances, it specifically targets those who do seek relief. Situations warranting a grievance in which faculty may find themselves are compounded by their then-exclusion from the selection process from an important committee because of a damaged reputation. The Nominating Committee’s current way of conducting its business is secretive and seemingly efficient. If the Committee’s conduct were to be made public, it would be extremely damaging to internal morale and blacken the University’s image within the public eye.

We do not know what motivated Ms. Cherry’s actions against us. Was it the filing of an open records lawsuit– a fully-legal action? Or the use of the very grievance process we sought to help support – a fully-legal action? Was it a personal email that Ms. Cherry – or some other unnamed



person – found to be personally upsetting? Although we cannot know, we can work to assure that this abhorrent situation is now corrected.

Corruption withers in the sunlight, and similarly, improper influence will struggle to persist under scrutiny. Therefore, we respectfully REQUEST the following:

1 - **That the Faculty Senate impanel a subcommittee to investigate the situation** that exists within the Nominating Committee, and more-broadly in any Committee with which Ms. Cherry has input or influence. We do not know whether Ms. Cherry acted alone, or whether she acted with, or as an agent of, others. All possibilities must be considered and appropriate actions taken. Minimally, the extent of Ms. Cherry’s influence must be understood to account its damage and end it. Further, exposure of others involved is necessary to end and prevent further influence.

2 - That the University policy be made clear and explicit: **that any faculty member that meets published eligibility requirements** (e.g., tenured, tenure-track, non-administrative title) **be free to appear on a ballot**. This may necessitate a revisitation to the purpose and functioning of the Nominating Committee: is the role of the Committee to bring an adequate slate of nominees, or to cull “problematic” people from service? We maintain that good can only come from the former and in exclusion of the latter. A decision on the purpose of the Nominating Committee – and on a larger scale, whether there is *ever any valid role for administration* in determining the membership of faculty-nominated and faculty-voted members of faculty seats on committees – should be put to a general faculty vote. It is our assertion that most faculty would vigorously reject the current situation.

3 - Emails obtained by the Open Records request indicate that some Committee members were complicit with Ms. Cherry, while others were merely ignorant. For example, the emails from Ping Situ and Dr. Ravi Goyal suggest that they are both in agreement that Ms. Cherry should exercise this level of control over the Nominating Committee because of her experience. Do they really believe this, or have they simply come to believe that this is a stance they must adopt as a member of the Nominating Committee. As trust in the operation of the Nominating Committee – in fact of *any* Committee that works with Ms. Cherry – has been eroded, it is imperative **that all policies, processes, and meeting minutes of the Nominating Committee be made publicly available**. Many committees post their documents on publicly available web pages, and the Nominating Committee should adhere to this standard.

4 - **That the reason for decisions made by committees be communicated to affected parties**. For example, Ms. Cherry declared Dr. Abraham ineligible to the Nominating Committee, but Ms. Cherry’s communication to Dr. Abraham merely indicated that he was “not selected” and went on to misrepresent the situation by denying her role. If Ms. Cherry was required to truthfully inform any person if he or she was excluded *and why*, it is likely that such behind-the-scenes manipulation would be eradicated.

5 - **That the information held by Ms. Cherry be opened to scrutiny**. While it is possible that Ms. Cherry’s influence is enacted “in the moment,” her statements indicate that the Faculty Center possesses documentation or files on individual faculty. If Ms. Cherry does have special access to information about faculty, that should be revealed. We therefore request that all individual faculty be immediately provided the content of his or her own file, and that henceforth files be made accessible to any faculty that so-requests (as is the situation for files curated by Human Resources) and to the leadership of the Faculty Senate.



These actions will restore some faith in the nominating process, and in the Nominating Committee specifically. They will also end improper and possibly illegal influence on faculty self-representation and shared governance. Finally, they will create barriers to the re-establishment of backroom dealings and blacklists. These actions will serve every employed member of the University – administration, staff, and faculty – by safeguarding them from secretive influences and bringing our joint efforts to serve the University to a more open and honest state. To do nothing in light of the evidence we have uncovered will send a chilling message about how the University will continue to operate with the Faculty Senate’s tacit endorsement.

With kindest regards,



Matthew Abraham, Ph.D.
Professor, Department of English
College of Social & Behavioral Sciences



Wei Hua Lin, Ph.D.
Professor, Department of Systems and Industrial Engineering
College of Engineering



Keith A. Maggert, Ph.D.
Associate Professor, Department of Cellular & Molecular Medicine
College of Medicine – Tucson

CC:

Ms. Mona Hymel, Vice Chair and Presiding Officer of the Faculty Senate
Ms. Tessa Dysart, Secretary of the Faculty Senate

Dr. Amelia McCauley Kraeche, Nominating Committee, chair
Drs. Ravi Goyal, Katharine Zeiders, and Hayriye Kayi-Aydar, Ms. Ashlee Linares-Gaffer, and Leslie Sult, Nominating Committee, members



Dr. Wolfgang Fink, chair of the Committee of Eleven
Dr. Rebecca Tsosie, Co-Chair of University Diversity, Equity, and Inclusion Committee
Dr. Praise Zenega, Co-Chair of University, Diversity, Equity, and Inclusion Committee

Drs. Anna Ochoa O’Leary, Robert Senseney, Ms. Kristin Little, Faculty Senate representatives to the College of Social & Behavioral Sciences (for Dr. Abraham)

Drs. Wolfgang Fink, Roberto Guzman, Faculty Senate representatives to the College of Engineering (for Dr. Lin)

Drs. Samantha Harris, Paul Gordon, Benjamin Lee, Marvin Slepian, Faculty Senate representatives to the College of Medicine – Tucson (for Dr. Maggert)

Dr. Andrea Romero, Vice Provost for Faculty Affairs

Ms. Marilyn Taylor, Associate Vice President for Finance and Administration

ATTACHMENTS:

Select emails from Open Records request

All emails from Open Records request

