ARIZONA SUPREME COURT

STATE OF ARIZONA, *ex rel.*
MARK BRNOVICH, Attorney General

Appellant/Petitioner,

v.

ARIZONA BOARD OF REGENTS,

Appellee/Respondent.

CV-19-0247-PR

Court of Appeals
No. 1 CA-CV 18-0420

Maricopa County Superior Court
No. CV2017-012115

BRIEF OF *AMICUS CURIAE* THE JAMES G. MARTIN CENTER FOR ACADEMIC RENEWAL

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae the James G. Martin Center for Academic Renewal is a nonprofit, nonpartisan organization that works to improve higher education. The purpose of the Martin Center is to discover and communicate ways to renew and fulfill the promise of higher education in North Carolina and across the country.

Since 2003, the Martin Center has been a voice for excellence in higher education. We advocate responsible governance, viewpoint diversity, academic quality, cost-effective education solutions, and innovative market-based reform. We do that by studying and reporting on critical issues in higher education and recommending policies that can create change—especially at the state and local level.

The Martin Center has an interest in public university tuition because we believe that public universities have a responsibility to provide value for students, parents, taxpayers, and society.

INTRODUCTION

Tuition at Arizona's public universities is on the rise. Tuition at the University of Arizona increased nearly 500 percent in the last twenty years; Arizona State University and Northern Arizona University saw increases nearly as high. These tuition increases are much greater than the rate of inflation and faster than the increase in wages during the same period, making tuition more difficult to afford for many Arizona students and families, and helping to drive the student loan crisis. Such sustained increases are incompatible with the provision in Arizona's Constitution that "the instruction furnished [at public colleges and universities] shall be as nearly free as possible." Ariz. Const. art. XI, § 6.

These unsustainable tuition increases aren't justified by instructional needs or compatible with delivering a reliable return on investment for students. Rather, they are tied to rising operational costs, such as unnecessary increases in the number of non-instructional programs and staff. This administrative bloat does not contribute meaningfully to student learning or post-graduation success—graduation rates have only increased modestly despite very large increases in spending.

Public colleges and universities have a responsibility to provide value to students, parents, taxpayers, and society; excessively raising tuition runs counter to that mandate.

ARGUMENT

I. Tuition at Arizona's public universities is excessively high and rising

Tuition for Arizona's three major universities has risen dramatically in the last 20 years. At the University of Arizona, in-state tuition rose from $2,162 in 1998 to $12,487 in 2018 (478 percent); at Arizona State University, it rose from $2,158 to $10,822 (401 percent); and at Northern Arizona University, it rose from

$2,160 to $11,564 (435 percent).[1] During that same time period, the official U.S. inflation rate rose by 54 percent[2] and per capita spending on health care (in constant dollars) rose 79 percent.[3]

These tuition increases have significantly outpaced the national average for four-year public institutions. From 1999 to 2019, in-state tuition at public universities nationwide only rose 102 percent, from $5,170 to $10,440 (in 2019 dollars).[4] And Arizona's excessive tuition increases have also placed all of Arizona's public universities above the national average in terms of in-state tuition rates.[5] Put simply, the instruction at Arizona's universities is not being furnished "as nearly free as possible."

II. The dramatic increase in tuition is unrelated to the cost of furnishing instruction

According to the Delta Cost Project, which performed the most recent large study of expenditure types in higher education in 2014, administrative bloat (*ie.* non-instructional staff expenditures) is a major factor responsible for increased

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[1] *Tuition and Fees, 1998-99 Through 2018-19*, THE CHRONICLE OF HIGHER EDUCATION (Dec. 31, 2018).
[2] *Consumer Price Index, 1913-*, FEDERAL RESERVE BANK OF MINNEAPOLIS (last visited Mar. 25, 2020).
[3] Rabah Kamal, *et al.*, *How has U.S. spending on healthcare changed over time?*, PETERSON KFF (Dec. 20, 2019).
[4] *Trends in College Pricing 2019* at 12, COLLEGE BOARD, (Nov. 2019).
[5] *See id.*

higher education costs.[6] Staff expenditures have increased due to (1) the number of staff employed in higher education and (2) the amount of compensation per staff member.

From 1990 to 2012, the average number of full time equivalent ("FTE") employees per 1,000 FTE students rose by 3.4 percent at public research universities.[7] Although this increase may appear modest, wage and salary expenditures for FTE staff members increased .8 percent annually from 2002 to 2010.[8]

Those increases in wage and salary expenditures are, by and large, unrelated to increases in wages and salaries for staff *responsible for furnishing instruction*. Most of the increase in expenditures for wages and salaries at public research universities (such as Arizona State University, Northern Arizona University, and the University of Arizona) occurs in two categories that directly affect student costs: academic support, and student services.[9]

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[6] Donna M. Desrochers & Rita Kirshstein, *Labor Intensive or Labor Expensive? Changing Staffing and Compensation Patterns in Higher Education* at 15, AMERICAN INSTITUTES FOR RESEARCH (Feb. 2014).
[7] *Id.* at 23.
[8] *Id.* at 28.
[9] *Id.*

Neither academic support,[10] nor student services,[11] involve furnishing instruction to students. Yet, wages and salaries in those categories are rising at a higher rate than other expenditure area (other than research). For example, wages and salaries for academic support staff members rose an average of 1.3 percent annually from 2002 to 2010.[12] And wages and salaries for student services staff members rose an average of 1.1 percent annually during the same period.[13]

The increase in expenditures for academic support and student services largely result from increasing the number of non-instructional staff positions per student. At the same time, universities began designating those staff positions as "professional,"[14] as opposed to "nonprofessional."[15] From 1990 to 2012, there has

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[10] "Academic support" includes the salaries of academic administrators (deans and their support staff, but not department heads), library and museum staff, the staff for "demonstration schools" (such as an elementary school connected to the education department), and some technical staff. *See* "Academic support," *IPEDS 2019-20 Data Collection System* at 1, NATIONAL CENTER FOR EDUCATION STATISTICS (July 31, 2019).

[11] "Student services" include the salaries for admissions, student records, and registration personnel, health and mental health practitioners, some technical staff, and staff involved with extracurricular activities. *See* "Student Services," *IPEDS 2019-20 Data Collection System* at 31, NATIONAL CENTER FOR EDUCATION STATISTICS (July 31, 2019).

[12] Desrochers, *supra* note 6 at 28.

[13] *Id.*

[14] A "professional" position is one "whose assignments would require either a baccalaureate degree or higher or experience of such kind and amount as to provide a comparable background." *See* "Other professional," *IPEDS 2019-20 Data Collection System* at 24, NATIONAL CENTER FOR EDUCATION STATISTICS (July 31, 2019).

been a massive 71.4 percent increase in the number of non-instructional staff defined as professional.[16] In 1990, there were roughly twice as many staff members deemed nonprofessional—such as clerical, maintenance, and some technical workers—as there were staff members deemed professional. Now, there are slightly more professional staff members, including "business analysts, human resources staff, admissions staff, computer administrators, counselors, athletic staff, and health workers."[17] This replacement is not cost-neutral; professional staff, on average, receive more compensation than their nonprofessional counterparts.

As wages and salaries rise, so do expenditures per student. From 2006 to 2018, institutional support expenditures per student grew 39 percent. Academic support expenses grew by 91 percent. And expenditures for student support services grew by more than 100 percent. At the same time, instruction costs per student only grew 28 percent.[18] Yet, tuition costs have skyrocketed much higher than 28 percent, demonstrating that the price of tuition at public universities

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[15] The "nonprofessional" category "includes persons who perform some of the duties of a professional in a supportive role, which usually requires less formal training and/or experience than normally required for professional status." *See* "Technical and paraprofessional," *IPEDS 2019-20 Data Collection System* at 32, NATIONAL CENTER FOR EDUCATION STATISTICS (July 31, 2019).

[16] Desrochers, *supra* note 6 at 24.

[17] *Id.* at 7.

[18] *Id.* at 24.

(including Arizona's public universities) is being inflated beyond the modest increases in the costs to furnish instruction.

III. Keeping tuition low is critical to students' return on investment

Attending a four-year college is an investment. When a student enrolls, he invests his time and money in obtaining an education intended to improve his financial prospects. At the same time, the student foregoes the opportunity to make a living. When tuition is excessive, and gainful employment isn't guaranteed, attending university can be a risky (and sometimes terrible) financial investment.

Excessive tuition is driving the student loan crisis. Student loans have a staggering presence on the American campus; roughly 70 percent of all students accumulate some debt during college.[19] Students who borrow often struggle in their early adult years, even those who graduate. The average debt for those who borrow is $31,172, and their average monthly payment is $393.[20] And the normal time it takes to satisfy the debts ranges from 10 to 30 years.[21]

Student loans—which can't be discharged through bankruptcy—are especially problematic for students who cannot obtain gainful employment. For example, many majors have starting salaries averaging below $40,000 per year,

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[19] Natalie Issa, *U.S. Average Student Loan Debt Statistics in 2019*, CREDIT.COM (June 19, 2019).
[20] *Id.*

and that's assuming the graduate can find employment in his field.[22] Indeed, many graduates are simply unable to find work in their chosen field. Among all recent graduates, 43 percent of college graduates are underemployed in their first year after graduation, meaning they have a first job that doesn't require a college degree.[23] Over half of psychology majors (54%) and biology majors (51%) are underemployed post-graduation.[24] Underemployment doesn't necessarily get better after the first year; over two-thirds of underemployed graduates remain underemployed after five years, and roughly half remain underemployed after 10 years.[25]

The prospects are even worse for those who don't graduate in a reasonable amount of time. According to federal statistics, roughly 40 percent of first-time, full-time undergraduate students who began seeking a bachelor's degree at 4-year degree-granting institutions in the Fall of 2011 failed to graduate from the institution by 2017.[26] For such students, going to a four-year college or university can have a heavy opportunity cost. Instead of taking some more profitable course

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[21] *Id.*

[22] *College Earnings and Debt by Major: Which college degrees are worth it?*, TEXAS PUBLIC POLICY FOUNDATION (last visited Mar. 25, 2020).

[23] Preston Cooper, *Underemployment Persists Throughout College Graduates' Careers*, FORBES (Jun. 8, 2018).

[24] *Id.*

[25] *Id.*

[26] *Fast Facts: Graduation Rates*, NATIONAL CENTER FOR EDUCATION STATISTICS, (last visited Mar. 25, 2020).

of action, such as entering the military, completing an apprenticeship, or merely getting work experience and accumulating assets, they may wind up leaving school with no appreciable gain in skills or credentials—and with a hefty pile of debt.

Arizona's higher education outcomes are similar to those nationwide. Many public university students in Arizona never graduate. The University of Arizona - South (in Sierra Vista) has the highest graduation rates of all public universities in the state.[27] But it still fails to graduate nearly a quarter of all its students after eight years. At other public Arizona universities, about a third of all students never graduate.[28]

Those that do graduate don't always find remunerative employment. According to the US Census Bureau, 2016 American Community Survey, the median earnings in Arizona of an individual with a bachelor's degree were $50,479 one year after graduation.[29] But this average obscures the reality that some graduates earn salaries that are not commensurate with their levels of education. There are more than 20 programs at Arizona public universities whose graduates earn less than $25,000 one year after graduation. A few examples are

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[27] *College Scorecard*, U.S. DEPARTMENT OF EDUCATION (last visited Mar. 25, 2020).
[28] *Id.*
[29] *2017 Annual Report on Wages Earned by Arizona University System Graduates* at 2, ARIZONA BOARD OF REGENTS (Sept. 27, 2017).

Cell/Cellular Biology and Anatomical Sciences at the University of Arizona, Health and Physical Education/Fitness at Northern Arizona University, and Music at Arizona State University.[30] There are also 73 programs at Arizona public universities whose graduates earn less than $30,000 one year after graduation.[31]

Many Arizona students take out loans in order to pay for college. The average debt of Arizona public university students who graduated in 2017 was $23,967.[32] Fifty-four percent of all graduates left school with student debt.[33] While student borrowing in Arizona is lower than in other states, too many students are unable to repay their debt. In 2016, the cohort default rates at Arizona's public universities were: 6 percent at the University of Arizona and 6.2 percent at Arizona State University and 6.6 percent at Northern Arizona University.[34] In total, more than 6,300 former Arizona public university students defaulted between 2014 and 2016. Excessive tuition is responsible for at least some of the blame.

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[30] *College Earnings and Debt by Major: Which college degrees are worth it?*, TEXAS PUBLIC POLICY FOUNDATION (last visited Mar. 25, 2020).
[31] *Id.*
[32] *Student Debt and the Class of 2017* at 9, THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS (Sept. 2018).
[33] *Id.*
[34] *Official Cohort Default Rate Search for Postsecondary Schools Fiscal Years 2016, 2015, 2014*, FEDERAL STUDENT AID (last visited Mar. 25, 2020) (for statistics on UA, type "001083" into OPE-ID field; for ASU, type "001081"; for NAU, type "001082.").

IV. Public universities must curtail tuition increases in order to prevent nationwide tuition inflation

In 1987, then-secretary of education William J. Bennett penned an article in the New York Times entitled "Our Greedy Colleges." In it, he wrote,

> "If anything, increases in financial aid in recent years have enabled colleges and universities blithely to raise their tuitions, confident that Federal loan subsidies would help cushion the increase. In 1978, subsidies became available to a greatly expanded number of students. In 1980, college tuitions began rising year after year at a rate that exceeded inflation. Federal student aid policies do not cause college price inflation, but there is little doubt that they help make it possible"[35]

His theory, now called "The Bennett Hypothesis" suggests that universities raise tuition in response to increases in student aid in order to capture the entire amount a student has available to pay for education. The hypothesis has been largely vindicated in academic research. A recent meta-analysis on the Bennett Hypothesis revealed that a majority of studies on the subject found some effect of federal subsidies on the price of higher education in at least one segment of the higher education market. In short, federal money enables continual tuition increases.[36]

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[35] William J. Bennett, *Our Greedy Colleges*, THE NEW YORK TIMES (Feb. 18, 1987).
[36] Jenna A. Robinson, *The Bennett Hypothesis Turns 30*, THE JAMES G. MARTIN CENTER FOR ACADEMIC RENEWAL (Dec. 26, 2017).

One important caveat is that public universities, by keeping tuition low, can dampen the effect[37], weakening the link between increases in aid and increases in tuition. By keeping their own tuition low, public universities exert some downward pressure on tuition prices in the larger higher education marketplace.

In 2019, 71 percent of all college and university students were enrolled in public institutions.[38] Therefore, public universities have an important role to play in the higher education market. Part of that role—articulated in Arizona's Constitution—is making college affordable. Large tuition increases run counter to the university system's mission.

CONCLUSION

Excessive tuition doesn't benefit students. It drives them to take out enormous student loans and delivers an unreliable return on investment or inhibits them from attending university altogether. Moreover, it frustrates the purpose of Article 11, section 6 of Arizona's Constitution, which is to ensure that a college education isn't cost-prohibitive for Arizona residents. *See* Ariz. Op. Atty. Gen. No. I99-011 ("From the language of article XI, one can infer that the framers supported an educated citizenry and wished to insure that public education at the

[37] Andrew Gillen, *Introducing Bennett Hypothesis 2.0*, CENTER FOR COLLEGE AFFORDABILITY AND PRODUCTIVITY (Feb. 2012).
[38] *Total fall enrollment in degree-granting postsecondary institutions, by level and control of institution, attendance status, and sex of student: Selected years, 1970*

university level be available and financially accessible to Arizona residents.”).

For these reasons, the Court should hold that the Constitution’s mandate that “the instruction furnished shall be as nearly free as possible” is justiciable question.

RESPECTFULLY SUBMITTED this 31st day of March, 2020.

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through 2026, NATIONAL CENTER FOR EDUCATION STATISTICS (last visited May 25, 2020).