

# **Academic Senate Ad Hoc Committee on University Holidays & Scheduling of Academic Senate Meetings**

## **Final Report**

(Includes majority and minority reports)

Submitted on February 25, 2021 (Update on Feb. 26)

### **Committee Members**

Voting members:

- \*Sharon Aiken-Wisniewski, College of Education
- \*Gregory Clark, Bio-engineering
- \*Amos Guiora, College of Law
- \*Tiffany Chan, ASUU
- \*April Sanders-Aboulila, Division of Public Health
- \*Xiaoming Sheng, College of Nursing
- \*Helene Shugart, Department of Communications
- \*Ryan Steele, College of Science
- \*Adam Stevenson, School of Medicine
- \*Bryce Williams, President, Staff Council
- \*Julie Wright-Costa, College of Fine Arts

Ex Officio, non-voting members

- \*Michele Ballantyne, Office of General Counsel
- \*Wendy Poppleton, University Human Resources

### **The Charge**

The Committee is charged with examining two primary issues, i.e. the specific issue of the scheduling of Academic Senate meetings, and the broader University holiday and cultural observance issue (collectively “University holidays”).

### **Summary of Issues the Committee Examined**

- Why people miss Academic Senate Meetings
- Utah Statute on Legal Holidays
- USHE Rule on Standard Holiday Schedule
- University policy on Personal Preference Holidays
- Legal limitations on the ability of state institutions to observe religious holidays. (Lemon Test explained in Recommendation 2, Rationale.)
- Online calendars for Diversity
- ASUU practice for scheduling
- Personal preference days and impact for U of Utah staff
- Discussed the Resolution passed on Nov. 2

## **Describe What Efforts were undertaken to Solicit Input from larger University Community**

- Due to time frame that Ad Hoc Committee had for this work and limited resources, an organized solicitation of input was not undertaken.
- Committee members did reach out to individuals and groups for input and ideas.
- Unsure what information to solicit once legal and practical constraints on scheduling and holiday options became clear to the committee.

## **Specific Recommendations with Rationale (Agreed Upon by Majority)**

### **Recommendation #1**

Academic Senate should follow the University of Utah calendar as the Senate leaders develop the annual Academic Senate Meeting Calendar due to laws and policies that govern a public institution of higher education in the State of Utah. Additionally, having a regularly scheduled meeting date and time allows attendees to block the time for attendance far in advance or make appropriate arrangements for a substitute.

Furthermore, Academic Senate Leadership should consult calendars available through other University of Utah organizations for awareness of other significant dates to maximize participation in Academic Senate meetings. Through this type of consultation and review, the dates selected support participation of the greatest number of Academic Senate members.

### **Rationale for Recommendation #1**

The Academic Senate is a part of the University of Utah, a public research university of the State of Utah. As a public state university, the University of Utah is subject to the Constitution of the United States, the laws of the State of Utah, and the policies of the Utah Board of Higher Education. Here's a brief explanation of the laws and policy that govern holidays. Utah Code Section 63G-1-301 establishes 11 *legal* holidays for the State of Utah.<sup>1</sup> But Utah Code Section 53B-2-106 (2)(d) permits the president of each institution of higher education, with the approval of the institution's board of trustees, to "enact rules for administration and operation of the institution" including "the holding of classes on *legal* holidays." At this time, the University of

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<sup>1</sup> The legal holidays in Utah are:

New Year's Day

Dr. Martin Luther King Jr. Day

President's Day

Memorial Day

Independence Day

Pioneer Day

Labor Day

Columbus Day

Veterans Day

Thanksgiving Day

Christmas Day

Utah holds classes on Columbus Day and Veteran's Day. Additionally, the Utah Board of Higher Education through Rule 821-3.2.1, has enacted a Standard Holiday Schedule for the Utah System of Higher Education (USHE) that covers nine of the Utah legal holidays (excluding Columbus and Veterans Day) and provides that each institutional president may declare three additional paid holidays for employees. At this time, the University observes the three additional paid holidays on the day after Thanksgiving (1 day), Christmas Eve, and New Year's Eve (2 days).

In evaluating options for recommending a different Academic Senate calendar, the committee reviewed a variety of calendars that identified numerous days during which certain groups of University employees may wish (or feel the need) to take time away from University business for a variety of reasons. Based on this review, it is clear that the Academic Senate would struggle to identify any meeting dates if holidays beyond those currently recognized by the University of Utah were considered. However, the act of consulting calendars from other University of Utah organizations for awareness is an action that encourages the greatest participation and could avoid a conflict for a group of individuals who would not have their voice represented. For example, Academic Senate includes 18 members from ASUU. By reviewing the ASUU calendar, Academic Senate can avoid a conflict that would hinder all assigned ASUU representatives for participating in an Academic Senate meeting and requiring identification of 18 substitutes that would need to be briefed on relevant issues to effectively participate in the Academic Senate meeting.

### **Recommendation #2**

We recommend that University of Utah continue to follow State of Utah Code, USHE Rule, and University of Utah policy that establishes holidays and closure days for the University of Utah calendar.

### **Rationale for Recommendation #2**

As noted above, the current calendar for the University of Utah has emerged due to law and policy. If the Ad Hoc Committee were to recommend different holidays, it would be limited to recommending that one of the three discretionary holidays referenced in USHE Rule 821 be changed to accommodate a different holiday. It is in the best interest of the University to retain the current holiday schedule.

In exploring whether to recommend that the University change one or more of its three discretionary holidays (which is the only latitude available under Utah law and Higher Ed. policy), the Committee considered legal and practical limitations on recommending a different holiday schedule. Federal constitutional law limits the University's ability to observe a religious holiday unless such observance meets the *Lemon* test. State institutions must have a bone fide secular purpose for observing a religious holiday, and the effect of the recognition must not advance or inhibit religion (including a symbolic endorsement), nor may it require excessive entanglement with religion or religious institutions. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Further, through conversations with others and during committee meetings, we discovered:

- Institutional policy provides personal preference days (PPDs) that are used at the discretion of the staff and/or faculty member.
- The scheduling of University holidays is a highly relevant issue to staff as holidays, closure days, and personal preference days are benefits that are valued, justify time off from work, and often are built into how one organizes their life.
- Changes to the University of Utah calendar have to be balanced with impact on the institutional mission, cost to institution, and impact on community and stakeholders.
- Changes to the University of Utah calendar have to consider academic department issues such as accreditation rules on classroom engagement time.
- Changes to the calendar have a potential impact on the student experience through a variety of transactions and experiences.
- Changes to the calendar have a potential impact on the U of Utah Hospital and Clinics.

As the committee began to discuss the issue of the changing the University of Utah calendar, it became clear that expertise and resources beyond the committee and Academic Senate (e.g. legal counsel, human resources, marketing and communications, VP for Government Relations) would be necessary for exploring this campus-wide issue through a thoughtful and inclusive process.

Of potential relevance and use for offices or agents that might consider this matter subsequent to this report, the committee considered, as noted above, personal preference days (PPDs): currently, U employees may use up to two PPDs each year. Although it exceeded the scope of this charge to the committee, we discussed the option of increasing the number of PPDs available to employees in light of increasingly multicultural university membership. The costs to the university and its members would need to be assessed and carefully evaluated, however.

### **Closing Statement**

As this Ad Hoc Committee concludes its work, we encourage Academic Senate leadership to openly acknowledge that Senate members represent diverse communities with a variety of experiences and values that include observing holidays beyond the legal state holidays in Utah and the USHE Standard Holiday schedule that govern the University of Utah holiday calendar. The Academic Senate appreciates these differences. This message needs to be clearly articulated through a variety of mediums under the Academic Senate purview (e.g. the website that houses the Academic Senate meeting calendar). This message should also clearly appear with the Senate policy for a substitute to a Senate meeting to make it clear that days of cultural celebration are valued and accommodated by the Academic Senate.

Due to the diversity of the Academic Senate and the greater University of Utah community coupled with being a public organization in the State of Utah, the Academic Senate calendar can't guarantee that a meeting will not fall on a holiday celebrated by one or more of our members. The Academic Senate acknowledges and appreciates diversity in the broadest sense as it engages with the business of the organization, whose mission it is to serve numerous and diverse communities that range across the university, the city, and the state.

## **Summary of Responses to Requested Items for Committee Consideration**

The seven factors below were mentioned in the charge to the Ad Hoc Committee. The charge indicated that the Committee is free to consider and give appropriate weight to any factors or considerations it deems appropriate and relevant to the two primary issues, but should consider at a minimum the following seven factors. Even though the seven factors were discussed and appear in the report, the Ad Hoc Committee is listing them below with a brief italicized comment in parentheses after the factor.

1. The legal implications of recognizing particular holidays based on religious and cultural observances. *(University of Utah is a public institution affiliated with the state of Utah. Thus law and policy establish holidays that are observed by faculty, staff, and students at the University of Utah.)*
2. The labor, budgetary and other pragmatic consequences of recognizing University holidays on different types of employees. *(University of Utah has a variety of employee classifications. Based on classification type, the employee might experience a holiday differently in relationship to expectations for delivering the University of Utah mission. Actual data collection was beyond the resources and timeline of the committee, but contributions from committee members who represented various classifications suggested moreover that costs of holiday observances vary across facets of the university and, in some case, can be substantial.)*
3. The implications of recognizing holidays on instructional calendars of academic programs with strict accreditation requirements, as well as the impact on the University hospital and health systems. *(The committee confirmed that some academic programs and hospital and health systems could be adversely impacted by increasing non-instructional days and/or holidays due to accreditation guidelines. Furthermore, employees of the University of Utah also belong to sub-units that have specific expectations due to accountability standards)*
4. What role, if any, does or should the scheduling of University holidays play in terms of the University's commitment to diversity, equity and inclusion (DEI). *(DEI should be acknowledged within the institution as well as sub-organizations. Is it possible to create awareness and still follow laws and policy that drive a state institution? The committee believes this is possible and encourages active awareness through available mechanisms.)*
5. What weight, if any, does or should environmental, political, mental health, public relations or other considerations play in the scheduling of University holidays. *(The 21<sup>st</sup> century higher education institution needs to carefully consider all of these points made above as well as resource allocations, stakeholders, and societal shifts as it negotiates the tension between law & policy that governs a state institution and respecting the needs and expectations of the diverse people who comprise the internal and external community engaged in the process of education.)*
6. Should there be announced and well-defined criteria, standards or objectives that guide the University's decision-making in the recognition and scheduling of holidays? *(This is a question that needs to be addressed by the broader community at the University of Utah and should take into consideration laws and policies that govern this issue.)*
7. Should the current policy of allowing elected Senators to miss Senate meetings for any reason (provided a substitute representative from the same College is designated and who attends) be continued or modified? *(As stated in the report, the recommendation is to continue current practice.)*

Academic Senate Ad Hoc Committee on University Holidays & Scheduling of  
Academic Senate Meetings

Minority Report  
Gregory A. Clark

Submitted Feb 25, 2021

Based on Draft of Majority Report updated on Feb. 16, 2021

## Specific Recommendations with Brief Rationales

### **Recommendation #1: Academic Senate Calendar Should Follow University Calendar**

- 1.1. Academic Senate should follow the University of Utah calendar as the Senate leaders develop the annual Academic Senate Meeting Calendar due to laws and policies that govern a public institution of higher education in the State of Utah. Additionally, having a regularly scheduled meeting date and time allows attendees to block the time for attendance far in advance or make appropriate arrangements for a substitute.**

*Concurs with Majority Report recommendation. In contrast, concomitantly this rejects recommendations of Senate Resolution of Nov 2020 and multiple other recommendations, as elaborated later herein.*

Additionally, Academic Senate meetings are open to the University and non-University communities, so the Senate meeting schedule affects a broader public at large. This is both as a conceptual point that is relevant to rationales for following law and policy, and as a practical point in considering the consequences and difficulties of rescheduling so as to avoid conflicts for subsets of the population. The bigger the population, the more the potential conflicts, and the larger the impacts of irregular schedules or rescheduling.

- 1.2. Academic Senate Leadership should communicate interactively with members of other University of Utah organizations for awareness of other significant dates in order to maximize participation in Academic Senate meetings and other organizations' meetings.**

*Differs in emphasis from Majority Report recommendation. The present Minority Report recommendation indicates there is a bidirectional, shared responsibility among University organizations to minimize scheduling conflicts among the Academic Senate and other organizations, rather than a unilateral responsibility of the Academic Senate alone.*

Although potential conflicts with ASUU meetings are selected as an example (perhaps the sole example) in the Majority Report, ASUU Senate and Assembly meetings occur on Thursday and Tuesday evenings, respectively, and do not presently pose conflicts in practice.

### **Recommendation #2: University Calendar for Holidays and Closures Should Not Yet Change**

**The University should not change its calendar for holidays and closure days at present, without further considerations. However, the Academic Senate and University of Utah administrative leaders should substantively re-examine the topic of holidays, closure days, and related issues in order to explore potential changes.**

*Differs from Majority Report recommendation. The Majority Report does not provide an explicit recommendation—one way or the other—as to whether University calendar should be changed or stay the same, nor does it encourage further exploration of the issue. Instead, the issue is left open explicitly as a question (in the rationale). The consideration of personal preference days is raised repeatedly in the Majority Report (including in Recommendation 2), along with other staff time off. These issues are related to but separate from the Committee’s main charges. Hence, they are considered more fully as a separate Recommendation (#3) and elsewhere herein.*

### **Recommendation #3: Eliminate Pro-Religion Biases for Staff Time Off**

**3.1. Except where potentially otherwise obligated by law, the University should eliminate all special preferences for providing staff time off for religious reasons over secular reasons. Discrimination in favor of religious motivations is legally problematic and antithetical to the principles of true equity and inclusion.**

The present University policy for main campus provides inappropriate special consideration for staff time off for religious holidays (Rule 5-300A, III. D.4., [https://regulations.utah.edu/human-resources/rules/rule\\_5-300A.php](https://regulations.utah.edu/human-resources/rules/rule_5-300A.php)). U policy explicitly instructs supervisors to “to make every effort to grant... requests consistent with business necessity” for observing “additional religious holidays” not covered by paid time off or personal preference holidays (PTO/PPH). Inequitably, policy does not comparably and generically encourage granting requests for secular cultural observances or other secular reasons or obligations. More appropriately and in contrast, time off for PPH does not discriminate between religious and other personal reasons, indicating that equity without discrimination favoring religion is achievable in practice as well as in principle.

In contrast to the main campus policy, the University of Utah Hospitals and Clinics (UUHC) policy does not provide special consideration for time off for religious obligations over secular obligations (Rule 5-200B, [https://regulations.utah.edu/human-resources/rules/rule\\_5-200B.php](https://regulations.utah.edu/human-resources/rules/rule_5-200B.php)). UUHC policy thus indirectly further reinforces the idea that preferential treatment granted for staff time off for religious holidays is not an external legal mandate.

*Apparently differs from the Majority Report recommendations. Evaluation and recommendations regarding ongoing University practice exhibiting pro-religion bias and discrimination for staff time off are largely or entirely omitted from the Majority Report.*

**3.2. Without further considerations, the University should not increase its allotment of paid time off or personal preference holidays.**

*Apparently differs from the Majority Report recommendations. Although Recommendation #2 and its associate rationale in the Majority Report reference personal preference days, the Majority Report apparently does not provide an explicit recommendation—one way or the other—as to whether the number of personal preference days should be changed or stay the same. Potentially increasing the number of PPH (raised in the Majority Report rationale) is worthy of consideration as part of a larger reconsideration of University holiday and time-off policy. My initial preliminary evaluation is that increasing PPH is not particularly warranted and would have a substantive financial cost, unless for example accompanied by reduction of other days off.*

**Recommendation #4: Eliminate Pro-Religious Discrimination in Student Scheduling Accommodations**

**Except where potentially otherwise obligated by law, the University should eliminate all special preferences for mandating student “scheduling accommodations” for religious obligations over secular obligations. Discrimination that favors religious motivations is legally problematic and antithetical to the principles of true equity and inclusion.**

An explicit inequity is present in U Policy 6-100. III. O: Instructors **\*must\*** excuse students from class for “religious obligations,” but are **\*not\*** generically required to do so for secular reasons (except for specified officially sanctioned University activities and government obligations) (<https://regulations.utah.edu/academics/6-100.php>).

Secular obligations are also valid. As just one example of many, our international students have numerous cultural observances that are not necessarily religious, including 11 different official holidays in 2020-2021 for our Asia campus alone; Lunar New Year; etc.

“Course-content accommodations” (Policy 6-100. III. Q) provide a useful contrast to the “scheduling accommodations” above. Unlike scheduling accommodations. Instructors are not generically required to grant requested course-content accommodations. Course-content accommodations do not distinguish between accommodations for religious and non-religious beliefs. The equity in this policy indicates that it is possible in practice as well as principle to have equitable accommodation policies that don’t discriminate in favor of religion (or against it).

*Differs from Majority Report recommendation. Aside from a brief, indirect allusion in the rationale of the Majority Report, recommendations regarding this pro-religion bias and*



*discrimination are largely omitted from the Majority Report. This issue is separate from but related to the immediate charges to this Committee.*

### **Recommendation #5: Records Should Be Maintained**

**Senate leadership, including the Senate President, should better retain correspondence (and other potential records) that address past and ongoing Senate matters, rather than deleting them.**

Although this recommendation lies outside the explicit charges to the committee, the deletion of correspondence relevant to the Committee's charge has had unfortunate consequences for evaluating the present issues. Destruction of other official University correspondence could have similar unfortunate consequences for other official University matters.

As indicated in Senate President's Randy Dryer's Nov. 10, 2020 e-mail charge to the Ad Hoc Committee, "the initial impetus for the creation of the Ad Hoc Committee was concern over the Senate holding its regularly scheduled meeting on September 28, 2020, which meeting this year coincided with Yom Kippur." His email to the Academic Senate of Sep. 26 indicated: "on Friday *I received several emails* expressing concern over our Monday Senate meeting being held on Yom Kippur, an important Jewish holiday... One email suggested we cancel the meeting." (Emphases added.)

As part of a larger process of collecting and understanding community input, I contacted President Dryer on Jan. 7, 2021 to request that he provide this correspondence "unless it would be inappropriate or illegal." The Committee's charge includes undertaking efforts "to solicit input from the larger University Community" (Nov. 10 charge) regarding the Senate and University calendars. Unfortunately, Prof. Dryer replied (Jan. 12): "I did not save and could not recover the few communications I had regarding the initial impetus for this issue."

### **Recommendation #6: Articulation and Implementation of EDI Principles Addressing Pro-Religion Preferences and Biases Should Be Included**

**In openly acknowledging the principles articulated in the Majority Report closing statement, Senate leadership should also communicate that special preferences for religion are legally problematic and antithetical to the principles of true equity and inclusion. Leadership should articulate that failure to discriminate *in favor* of religion is not discrimination *against* religion, as some seem to think. Additionally, these principles should be incorporated into the University's Equity, Diversity, and Inclusion (EDI) efforts.**

As the history of considering the present issue has documented, implicit and explicit biases that favor religious over secular motivations are repeatedly evident in University policy and practice and in the views expressed formally and informally by the University community, including members of the Academic Senate. Providing counterbalances to address and eliminate these biases is appropriate and warranted.

## **Caveat**

Possibly the present Minority Report would have been different if it had been based on the final version of the Majority Report instead of a draft.

My recommendations and comments are based on a draft of Majority Report dated on Feb. 16, 2021. The Committee vote was also based on this draft. The draft was mostly but not entirely complete, and unspecified (presumably relatively modest) changes have been made for the final report. The Committee will not see the actual final version of the Majority Report till after its submission, and it appears it will not vote on the final version.

## **General Considerations**

In establishing its calendars, the Academic Senate and the University at large must follow laws and policy that govern a public institution of higher education in the State of Utah. More specifically, special considerations for religious holidays over non-religious holidays presumably would be illegal and discriminatory and would undermine equity and inclusion. The choice of meeting days must have a primarily secular purpose that is not a sham cover for endorsement of religion. Secular purposes include low attendance on that day and spreading out legal holidays, as examples. In contrast, providing a day off for worship is unconstitutional.

Our Ad-hoc committee is making only recommendations, not decisions. Other individuals will be making the decision later. Hence, decision-makers will need to be appropriately informed, or at least alerted to the key issues. Notably, our committee's recommendation conflicts with the Nov 2020 resolution of the Academic Senate and with multiple other recommendations.

There is widespread consensus that inclusivity is a worthwhile goal. Likewise, it's a given that U. policy must stay within the law.

Despite essentially universal general agreement on those two key concepts, there is high divergence of opinion as to how these concepts translate into practice. Different parties have come to mutually exclusive, extremely different conclusions. There is also extreme disagreement as to whether appropriate calendar changes could be implemented as a practical matter, and how many conflicts would actually arise.

It is therefore essential to evaluate the specifics: Which ongoing or recommended practices are legal? Which are plausible to implement, in practice?

### **Which ongoing or recommended practices are legal or illegal?**

Multiple recommendations and potentially ongoing practices are, or seem to be, legally problematic, including potentially the Nov. 2020 Resolution of the Academic Senate. A more extreme example is a more recent suggestion that the Law School (and by extension presumably the University) as well as the Senate should close on Yom Kippur and Ramadan as red-letter

religious days. However, as noted above, the choice of operating or meeting days must have a primarily secular purpose that is not a sham cover for endorsement of religion.

Examples of religiously motivated recommendations or practices include but are not limited to the following. Several of these are legally problematic, though some are less extreme than others.

- **Proposals that the Academic Senate avoid meeting on Yom Kippur, as evidenced in the University’s official Summary of the September Senate meeting and in other multiple correspondences.**

*From the Senate Summary:* “Consideration of a **Third Resolution**, seeking to schedule no Academic Senate meetings on Yom Kippur, was postponed until the next meeting of the Senate on Nov. 2, 2020, and the discussion will be expanded to include the larger issue of whether the university should recognize Yom Kippur or other religious holidays as official university holidays.” (Underlining added.)

<https://attheu.utah.edu/facultystaff/senate-summary-september-2020/>

The Senate Summary and Minutes in the public record unambiguously indicate:

- Yom Kippur is explicitly identified as a religious holiday
- The proposed expanded discussion to modify the resolution again focused explicitly on religious holidays
- This promotion of religious favoritism received official University approval for public dissemination
- Substantive numbers of the University, Senators, and University community members appear relatively unaware of these types pro-religion biases, if not actively agreeing with them and/or promoting them

The original religious intents and circumstances remain active and relevant. They also raise potential conceptual and legal questions regarding whether any subsequent wording or policy changes to Academic or University schedules reflect true changes in motive, or instead serve as a sham pretext to cover religious motivations.

As illustrated by the Axson-Flynn case that the University ultimately settled with payments of undisclosed amounts, and which led to the University’s present-day content accommodation policy, challenging sham pretexts can be a successful legal strategy.

- **“New business” introduced by Senator Julie E. Wright-Costa at the 9/28/2020 Academic Senate meeting:** “Concerns have been expressed regarding Senate meetings being scheduled on major religious holidays. I request that this issue be added to the new business agenda.”

Again, the explicit focus is on religious holidays. The exact relationship of this “new business” to the more specific consideration of Yom Kippur as a religious holiday on which the Senate should not meet is not immediately evident in the public record.

See also related Minutes <https://academic-senate.utah.edu/meeting-minutes/>

- **The apparent suggestion that Law School (and by extension presumably the University) as well as the Senate should close on Yom Kippur and Ramadan as red-letter religious days.**

Implementing these or related suggestions would be highly problematic legally. The choice of operating or meeting days must have a primarily secular purpose that is not a sham cover for endorsement of religion.

- **ASUU policies, practices and suggestions**
  - An open letter from ASUU member Devon Cantwell focuses exclusively on religious holidays, apparently championing religious preferences.
  - Additionally, according to Cantwell and others, ASUU has already begun “eliminating scheduling of mandatory or decision making meetings occurring on religious holidays.”

This situation raises an apparent contradiction: If ASUU practices or recommended practices are legal, then why would comparable practices of the Academic Senate or the University at large not also be legal?

Alternatively, if comparable practices or policies at the Academic Senate or University levels would be illegal, then why are comparable practices of ASUU allowable?

Possibly, some ASUU policies, practices or suggestions are or would be legally problematic.

- **Nov. 2, 2020 Academic Senate Resolution**

“Resolution: The University of Utah values diversity. We strive to create and maintain an inclusive campus community. Be it resolved that the Academic Senate will endeavor to refrain from scheduling deliberative and decision-making meetings on the dates of religious or cultural observances so that no members of the campus community are systematically excluded.”

This resolution was passed overwhelming by the Senate— “The motion passed with ten opposed and six abstentions.”

<https://academic-senate.utah.edu/meeting-minutes/>

However, in making its own recommendations, the Ad Hoc Committee did not agree with the recommendations of the Resolution—partly on legal grounds. (See also practical considerations, later.) To its credit, the Senate resolution is more inclusive than are some previous and other recommendations and proposals, and explicitly includes cultural observances. Still, as noted, the choice of meeting days must have a secular purpose that is not a sham cover for endorsement of religion. Secular purposes include low attendance on that day and spreading out legal holidays, as examples. In contrast, providing a day off

for worship is unconstitutional.

Additionally, the rationale for any potential calendar change of the Senate or University calendars must be applied equitably. In Nov 2020, I examined attendance records from Senate meetings from all available minutes for AY 18-19, AY 19-20, and AY 20-21. Senate absences for Yom Kippur 2021 (24 absences) are fewer than average for this sample of Senate meetings. Hence Yom Kippur does not qualify for special consideration under the possible grounds of low attendance overall. Other possible provisions (e.g., so that no members of the community are systematically excluded, could potentially apply), but these other criteria and standards would have to be applied equitably.

### **Legal issues aside, which ongoing or recommended practices are plausible to implement, in practice?**

Here there are mutually exclusive, contradictory claims. Which is correct?

One the one hand, the Majority Report claims that equitable accommodation of the many existing observances is untenable for practical reasons (aside from legal reasons): “the Academic Senate would struggle to identify any meeting dates if [all] holidays beyond those currently recognized by the University of Utah were considered.” Similarly, as stated in Senate President Randy Dryer’s Sep. 2020 email that articulates present policy and practice: “the Senate should not favor one set of religious practices over others and given that there are more than 60 religious holidays [and many additional secular cultural observances] in any given academic year, it is not feasible to accommodate all religious holidays [and secular cultural observances].”

Evaluations of multiple sources, elaborated below, indicate that above conclusions are correct.

However, in contrast, other proposals explicitly or implicitly rebut this claim. The Nov Senate resolution implies additional days of avoidances are plausible. The open letter from ASUU member Cantwell attempts to rebut the claim more directly, and proposes ASUU’s own practices provide “excellent example of how we can create an inclusive environment for all religious backgrounds.”

Resolving this contradiction empirically depends in part on considerations of how demanding are the degree of the obligations.

If scheduling conflicts should be avoided with essentially any observance, then regular meetings become in effect almost impossible. The Outlook calendar lists a day of observance for the majority of workdays of the year (even without including the Friday sabbath). Similarly, “Roman Catholics have sainted more than 10,000 people, and every day of the year is the feast day of a handful.” <https://slate.com/human-interest/2012/04/which-major-religion-has-the-most-holidays.html>.

A more practical assessment might be limited to dates that either require active observance or at least entail a day of rest (Slate). A diversity calendar from the University of Missouri (provided

by a committee member) not only designates days of observance, but also helpfully indicates which days have “significant work restrictions” (<https://diversity.missouri.edu/guide-to-religions/dates-practices-accomodations/>) Although the list is incomplete and does not include all religions or the Friday (or Thursday) Sabbath, the number of days with work restrictions is still too high for the University as a whole to close. As noted, it is advisable that Senate largely follow the University calendar in setting its schedule.

I have also considered the two ASUU calendars currently in use to foster inclusivity and avoid systematic exclusion of any of its members in scheduling ASUU meetings. One calendar, an Excel file, lists 32 sets of mostly religious holidays (some are multi-day observances), including 13 Jewish holidays and 19 holidays for all other religions and cultural observances. Multiple religions are omitted. The only holidays that indicate when work is prohibited are Jewish holidays. Given this limited list, this file may be a work in progress but in any case it is not comprehensive or truly inclusive.

ASUU also maintains another calendar in Microsoft Teams that lists a broader range of holidays and observances on which to try to avoid holding meetings. However, even ASUU’s own scheduled meetings frequently conflict with designated days on the Teams calendar, highlighting the genuine challenges of avoiding scheduling conflicts.

Considered together, the information above reinforces prior conclusions that are rearticulated in the General Report of the Ad Hoc Committee and in Dryer’s Sep. 2020 email. For practical reasons alone (aside from legal considerations), it is not feasible to accommodate all religious holidays and secular cultural observances in avoiding scheduling conflicts at the University of Utah or meetings of the Academic Senate. Although imperfect solutions are better than none, favoring one religion over another, or favoring religious over non-religious groups, may undermine equity and inclusivity more than support them.