

CASE STUDY

STATEGRAFT IN PUBLIC UNIVERSITIES: A CALL FOR COHORT TUITION

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INTRODUCTION

The tuition increase has almost doubled my out-of-pocket tuition because my financial aid was not increased at all. I did not budget to pay double, and I am very nervous about it going up again next year. It is so anxiety inducing to have no control and no insight into how much you'll be expected to pay from one year to the next. I am looking into new loan and job options.

—Anonymous University of Wisconsin Law Student¹

Over the last decade, tuition at public universities has risen exponentially.² To add insult to injury, misleading price information, vague and confusing language regarding costs, and an overall lack of transparency surrounding tuition has made it nearly impossible to compare pricing among institutions.³ As a case in point, law students at the University of Wisconsin have been adversely impacted by misleading tuition information. When final law school deposits were due in April 2021, many prospective students relied on the prices and scholarships

* J.D. Candidate, 2024, University of Wisconsin Law School. This article would not have been possible without the relentless advocacy of Alex Kaplan and Taylor Gilbertson. Thank you both for your commitment to making tuition more equitable. My thanks also go out to the brilliant Sarah Ross for your thoughts and insight.

1. Law Student Survey, Tuition Increases (Sept. 9, 2022) (on file with author).
2. Paul Weinsten & Veronica Goodman, *Hidden Prices and Higher Tuition: The Case for Transparency in Higher Education Pricing and Advanced Credit*, PROGRESSIVE POL'Y INST. 2 (2021), <https://www.progressivepolicy.org/publication/hidden-prices-and-higher-tuition-the-case-for-transparency-in-higher-education-pricing-and-advanced-credit/> [<https://perma.cc/7TEJ-4RSM>] (From 1988–2018, public four-year institutions have raised tuition by 213% in real terms).
3. *Id.* at 6.

offered to them in determining where to attend.⁴ However, after the deposit deadline had passed and the vast majority of students were committed to Wisconsin Law School (but before classes started), tuition costs rose—an increase of over 9% for in-state students.⁵ For some, the net price listed in their scholarship award doubled or more.⁶

Students facing *ex-post* tuition increases have little—if any—recourse. Those who wish to attend another school at this point would be forced surrender their deposits, which could total up to \$1,000.⁷ Unless that student placed deposits at multiple schools (which is discouraged),⁸ they would also have to incur the costs of another year of applications. Moreover, students at this point in the matriculation cycle may have already quit their jobs and/or relocated in reliance on a scholarship offer. This Case Study argues that post-acceptance increases in tuition at public universities are statecraft. Moreover, this Case Study posits that there is a simple fix to this problem: charging students a fixed tuition rate that averages the tuition increases they would have experienced across the length of their degree, termed “cohort tuition” or the “cohort tuition model.” Several institutions of higher education have already implemented cohort tuition to increase price transparency for students.⁹ The University of Wisconsin, other institutions of higher education, and legislators should follow suit.

4. Law Student Survey, *supra* note 1.

5. See *Cost of Attendance and Debt at University of Wisconsin*, L. SCH. TRANSPARENCY. <https://www.lawschooltransparency.com/schools/wisconsin/costs> [<https://perma.cc/K4FP-MXXB>] (last visited Apr. 15, 2024). Out-of-state tuition costs rose over 5%. *Id.*

6. For the academic year 2021–2022, fifty-six percent of students were paying half of the price of tuition or less. 2022 *Standard 509 Information Report - University of Wisconsin*, AM. BAR ASS’N 3 (2022), <https://law.wisc.edu/prospective/media/std509infoport-2022.pdf> [<https://perma.cc/N3MA-AMP4>]. According to the 2021 to 2022 rates, an in-state student with a scholarship of \$30,000 would have a net tuition price of \$1,635. *Id.* After a 9% increase (raising in-state tuition \$31,635 to \$34,482), this student’s updated net tuition price would be \$4,482.15—nearly a 150% increase.

7. Gabriel Kuris, *How to Approach Law School Seat Deposits*, U.S. NEWS & WORLD REP. (Jan. 29, 2024), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/how-to-approach-law-school-seat-deposits> [<https://perma.cc/A7V8-PTC5>].

8. In fact, the University of Virginia School of Law bans double depositing at their final deposit deadline. See *Pay Your Admissions Deposit by Credit Card*, UNIV. OF VA., <https://pci.foc.virginia.edu/law/admissions/pay-admissions-deposit> [<https://perma.cc/7JQJ-VLWP>] (last visited Apr. 15, 2024).

9. Alex Kaplan & Taylor Gilbertson, *UW Law School Must Explore Cohort Tuition System to Increase Transparency about Education Costs*, THE BADGER HERALD (Feb. 7, 2023), <https://badgerherald.com/opinion/2023/02/07/uw-law-school-must-explore-cohort-tuition-system-to-increase-transparency-about-education-costs/> [<https://perma.cc/CK9Q-EFRU>].

I. EX-POST TUITION INCREASES ARE STATEGRAFT

Bernadette Atuahene’s theoretical framework coined “stategraft” was created to address the phenomenon in which public actors commit illegal acts for the benefit of public coffers, rather than private parties.¹⁰ In essence, stategraft has four elements: (1) a state actor, (2) transferring property, (3) for the benefit of the state, and (4) in violation of the state’s own laws or basic human rights.¹¹ Post-acceptance tuition increases at public universities meet all four of these elements.

First, if there is any doubt as to whether public universities are state actors, the Supreme Court has held as recently as 2023 that public universities are, in fact, instrumentalities of the state.¹² In its words, universities serve a “a public purpose, acting as the State’s ‘agen[t] in the educational field.’”¹³ Secondly, there is a clear transfer of property here: students’ tuition dollars. Public universities predominantly spend tuition dollars on costs such as instruction, research, and other day-to-day operation expenses.¹⁴ Because public universities are state actors, and because tuition dollars are for the purpose of running public universities, these increases in tuition can be categorized as “for the benefit of the state,” meeting the third element of stategraft.

As for the illegality element, courts have explicitly recognized that by enrolling and paying tuition, students are consumers.¹⁵ Likewise, case law also supports the idea that an implied contract exists between universities and tuition-paying students.¹⁶ Misleading marketing and employment reporting-based claims have come up short under this implied contractual theory because these reports do not relate to the “essential functions of education.”¹⁷ However, as demonstrated above, tuition is essential to the core function of universities: institutions cannot instruct, research, or otherwise operate without tuition funds.¹⁸

Black’s Law Dictionary defines a material representation under the common contract law as “[a] false statement that is likely to induce a

10. Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U.L. REV. 1, 2–3 (2023).

11. *Id.* at 8–24.

12. *Biden v. Nebraska*, 143 S. Ct. 2355, 2366–67 (2023) (stating that the University of Arkansas is “an official state instrumentality”).

13. *Id.* at 2367 (quoting *Arkansas v. Texas*, 346 U.S. 368, 371 (1953)).

14. *Fast Facts: Expenditures*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/fastfacts/display.asp?id=75> [<https://perma.cc/EYT4-MWYZ>] (last visited Apr. 15, 2024).

15. *Finstad v. Washburn University of Topeka*, 252 Kan. 465, 472 (1993).

16. Ogechi Achuko, *The Blame Game: Law Schools Sue Their Schools for Deceptive Employment Reporting Practices*, 20 VA. J. SOC. POL’Y & L. 517, 534 (2013).

17. *Id.*

18. See NAT’L CTR. FOR EDUC. STATS, *supra* note 14.

reasonable person to assent or that the maker knows is likely to induce the recipient to assent.”¹⁹ Opaque, inaccurate tuition pricing fits neatly into this definition: universities know that students rely on pricing information when determining which institution to attend. Students are enticed to attend a university based on seemingly low net-costs, and when tuition is suddenly increased, the rug is pulled out from under them. One anonymous survey respondent at the University of Wisconsin Law School reported, “I came to this school on the guise of an almost full tuition scholarship. I turned down higher ranked schools because of this. But between this years increase and last, my scholarship barely covers 60% of just tuition...”²⁰ Opaque, *ex-post* tuition increases at public universities breach the implied contract between students and universities, violate the common contract law, and are, therefore, stategraft.

II. AN ARGUMENT FOR THE COHORT TUITION MODEL

Implementing cohort tuition would increase transparency and allow students to accurately compare costs across different institutions. Under this model, each class’s tuition is cemented when they accept an offer to attend a university.²¹ This fixed rate would account for all of the foreseen tuition increases over the length of that student’s degree.²² So, instead of charging X rate in year 1, Y rate in year 2, and Z rate in year 3, universities would charge A rate, which is an average of X, Y, and Z.²³ The university brings in the same amount of money under cohort tuition as they do with annual increases.

Under the cohort tuition model, students know up front how much their degree will cost them. While this does shift the risk of increased costs onto the university, under the annual-increase model, students bear 100% of that risk.²⁴ As sophisticated institutions, universities are better positioned to foresee future costs and have negotiating power with suppliers to sign multi-year contracts to help keep their cost increases stable and predictable.²⁵ Law schools such as the University of Illinois and the University of Indiana have already implemented the cohort tuition model at their institutions.²⁶ In order to allow students and prospective students to adequately assess costs, other universities should follow suit,

19. *Misrepresentation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

20. Law Student Survey, *supra* note 1.

21. Kaplan & Gilbertson, *supra* note 9.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

and state lawmakers should enact legislation²⁷ to uniformly mandate this model across public institutions of higher education.

CONCLUSION

Misleading tuition pricing plagues the country, forcing millions of students to bear the risk of increased university costs. These increases can cost a student thousands of dollars more than what they were expecting to pay: a cost that can be financially devastating. Hidden, *ex-post* tuition increases at public universities are instances of Bernadette Atuahene's theory of stategraft. Institutions of higher education—law schools, in particular—should immediately focus their attention on remedying this issue. Cohort tuition is a viable way to do so.

27. For a model of how states could enact cohort tuition laws, see Ohio Rev. Code Ann. § 3345.48 (2023–24).