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The University of Louisville Crisis: Frequently Asked Questions

I. Events

1. How did this crisis start?

Last year, Gov. Steve Beshear failed to appoint the legally [required](#) number of members of racial minority individuals to the Board of Trustees. The Justice Resource Center filed suit. The suit had not been resolved by the time Gov. Matt Bevin took office. [On March 18, Bevin and the Justice Resource Center agreed](#) to resolve the dispute in the following way: Bevin would void Beshear's last appointment to the Board and appoint two African American members. Bevin and the Justice Resource Center agreed that the Board would conduct no business until Bevin had made those appointments.

Bevin never made the appointments. Consequently, the Board has been unable to conduct any business since March. The Board has not approved personnel decisions. It has not passed a budget. It has not acted on a vote of no confidence in Ramsey, an action that had been tabled at the March meeting.

The whole crisis started, then, because the Governor failed to appoint two racial minority Trustees, despite his binding agreement to do so.

2. Why didn't Gov. Bevin just appoint the two legally mandated minority Trustees and allow the entire Board to resume its work?

The *official* answer is that he could not *appoint* new members until those members had been *nominated* by a separate committee, the Governor's Postsecondary Education Nominations Committee, and that Committee never nominated anyone. It did not do so because the Governor's Postsecondary Education Nominations Committee also lacked the legally required racial and political diversity. Bevin also [irregularly reconstituted that committee](#), and consequently, it legally cannot send him any nominees.

The *straightforward* answer is that Bevin failed to complete his duties. Instead, he selectively took *sudden, unilateral, precipitous, and irregular* action rather than simply uphold his end of the legally binding agreement with the Justice Resource Center.

3. What did Bevin do?

Bevin issued two executive orders, [2016-338](#) and [2016-339](#). The first one replaces the statutorily created UofL Board of Trustees, which features 20 members, 17 of whom are appointed by the governor to serve staggered six-year terms and three of whom represent campus constituencies, with a smaller 13-member body, ten of whose members are to be appointed by the Governor. The second executive order appoints three individuals to serve as an "interim" Board until such time as the replacement Board is created. Since the replacement Board cannot be created until the Governor's Postsecondary Education Nominations Committee sends Bevin 30 nominees to choose from and since that latter Committee is currently unauthorized to act, the Nominations Committee cannot legally meet the two-week timeline Bevin gave it for sending him the list of nominees. Thus, there is no real timeline for the creation of this replacement Board. Even once it is created, it must either be ratified by the legislature next year or the executive order replacing it would be rescinded, returning the Board to its current, or previous, constitution.

As for the interim Board, it lacks sufficient personnel to carry out required Board functions as stipulated in University Bylaws, including overseeing the secretive University of Louisville Foundation.

4. What did Attorney General Andy Beshear do?

Beshear filed suit against Bevin to prevent these executive orders from taking effect. In doing so he joined the dispute over the UofL Board of Trustees with disputes over the Kentucky Retirement Systems Board.

He did this because he thought the core issues in question were substantially the same; namely, that Bevin was precipitously changing Board personnel just before major and necessary decisions so that the Boards would do Bevin's bidding rather than make independent decisions based on sound reasoning and institutional memory. According to Beshear, the law does not give Governor Bevin the "absolute authority" that he's claimed.

The Attorney General argues in his lawsuit that Bevin's orders do not conform with KRS 12.028 reorganization law because they "do not achieve greater economy, efficiency and improved administration." Beshear also argues that Bevin has violated numerous other laws that govern the makeup and functions of various boards which are meant to ensure their independence, for example, laws governing "how many people are elected to a board versus appointed, create set terms, who can and can't sit on a board, what qualifications they have to have, who selects the directors or presidents, how chairs or vice chairs are selected."

Beshear said, "The governor's executive order shattered every single one of these checks and balances and allowed him to assert control." Giving a governor absolute power to abolish and re-create a board creates a "simply untenable" imbalance of power in the executive's favor, Beshear said.

The Attorney General stated that the reorganization law "is about efficiency for administration, not about control," and it would be a dangerous "absurdity" to say that there are no limits on a governor's powers to abolish and re-create a governmental unit.

5. What did President Ramsey do?

Ramsey made an agreement with Bevin, behind closed doors, to "offer" his "resignation/retirement" to the replacement Board once it is, in his words, "legally restructured." Since there is no timeline for the replacement Board, there is no timeline for Ramsey's resignation offer. Ramsey later indicated that he had "no intention" of continuing at UofL after the 2016-17 academic year, but he would help with the transition in any way he could. Assuming that "the transition" continues until such time as the University has a new president, it seems that Ramsey expects to be president of the University at least until July of 2017 or perhaps longer.

Further, Ramsey has not resigned as president of the UofL Foundation, the independent, secretive body that invests the University's endowment. This is the same entity that paid him \$2.8 million last year. Ramsey has recently agreed to remain president of the Foundation until September.

6. What is the current situation?

Beshear's suit is in Franklin County Circuit Court. It was assigned to Judge Shepherd, and is filed under [16-CI-00656](#). Beshear joined the UofL case with the case of the Governor's similarly precipitous and irregular reorganization of the Kentucky Retirement System.

Formally speaking, a governor's actions are presumed legal unless successfully challenged or restrained by a court. Hence, unless and until the Circuit Judge issues a restraining order, the three-person interim Board is legally authorized to act as the Board of Trustees, despite being out of compliance with university Bylaws and having been appointed in violation of KRS 164.821 on Board constitution. It has not yet, however, held or announced a meeting. The University has no budget, but Ramsey has asserted an intention to move forward with a "spending plan" of his own design that was rejected by the Board of Trustees' Finance Committee (on June 2) before Bevin issued his executive orders.

Coincidentally, on June 16, President Ramsey publicized three “budget options,” all of which included tuition increases — of 5%, 4%, and 2.5% — with the latter two requiring faculty or staff layoffs. In that email, he presented an argument for why he believed that the 5% tuition increase was the best option, but he did not offer any explanation or rationale for why he ignored the Finance Committee’s explicit request for alternative/exploratory budget scenarios that did not increase tuition or student fees. Since Governor Bevin dissolved the entire Board of Trustees *the very next day*, June 17, we do not know how the Finance Committee would have reacted to the President’s June 16 budget proposals. In addition, the Board of Trustees’ meeting scheduled for June 21 was cancelled, so the opportunity to seek clarification on the process/status of the budget approval was lost.

II. Consequences

7. What happens if Bevin wins the lawsuit? What happens if Beshear wins?

If Bevin wins this case, then his Nominations Committee is required to send him 30 nominees. However, that Committee cannot legally do so until Bevin brings it into compliance with the law. Once these things happen, he will appoint 10 of the 13 members of the replacement Board of Trustees. The other three Trustees will represent faculty, staff, and students. Once the replacement Board is in place, Ramsey will offer his resignation. It is unclear whether this Board will accept Ramsey’s resignation or on what timeline. If the legislature ratifies these changes after it convenes in January 2017, then the changes will become permanent; if the legislature does not ratify them, then either Bevin will issue a new executive order in 2017 after the end of the legislative session, or the Board will revert to its prior, statutory, constitution.

If Beshear wins, then the Board reverts to its statutory constitution. It will still be unable to conduct business until Bevin appoints two minority Trustees.

Ramsey’s intent to “offer” his “resignation/retirement” letter seems to assume that that resignation will be offered only to the *new* replacement Board and perhaps only when the Board is ratified by the legislature. Yet, if Beshear wins and Bevin brings the current Board into compliance by appointing two minority Trustees, then the Board would be legally constituted and Ramsey would apparently be committed to offering his resignation to that Board.

8. When will this crisis be resolved?

It depends upon what is meant by “resolved.” We may assume it means: UofL has a new president, and the Board of Trustees is named, in place, and operating.

If Bevin wins, the replacement Board might be functioning by fall, and the University might have a new president as soon as the summer of 2017. So, this would take a year. However, it is hard to imagine any independent-minded academic leader seeking the role of president of a university that has undergone this kind of political meddling. More likely would be the appointment of someone from outside of academia who meets Governor Bevin’s stipulations as to ideology and, specifically, regarding the role of higher education. We can expect a heavy emphasis on engineering and inhibitions to the Humanities. This turn of events would make the crisis, in effect, permanent.

If Beshear wins, we could be on the same timeline – summer of 2017 – unless Bevin continues to hold up action by refusing to appoint minority members to the original Board of Trustees. Conceivably, Beshear might have to go back to court to try to convince a judge to compel Bevin to meet his obligations pursuant to his agreement with the Justice Resource Center.

9. Will UofL lose its accreditation?

There is reason to believe that Bevin's plan has serious consequences for accreditation. Quite apart from what a judge rules, it is possible that the Southern Association of Colleges and Schools, SACS, will regard Bevin's actions as a wholesale dismissal of the Board without cause and an attempt to exert undue political influence over the functioning of the University. Such actions would violate SACS accreditation criteria sections 3.2.5 and 3.2.4, respectively. If SACS believes this to be the case, it may place UofL on probation, issue a "warning," or remove its accreditation altogether.

Accreditation matters, because it certifies the quality and transferability of courses and makes UofL degrees marketable. A degree from an unaccredited institution is not nearly as valuable as a degree from an accredited one. The foreseeable damage from this action could take years to reverse. Faculty have spent years with little or no raises working toward accreditation that improves UofL and results in providing economic stability for Kentucky and surrounding communities. They have invested time in their jobs and careers to improve UofL's standing and reputation. These problems jeopardize their careers, and the crisis diminishes years of hard work.

10. What are the consequences for academic freedom?

Academic freedom is the cornerstone of both teaching and research. It is essential to the University's academic mission. Simply put, scholars must have freedom to teach, investigate, and communicate ideas without fear of censorship or retaliation. But academic freedom also matters for the President and Board of Trustees. The trustees of a university must be committed to academic freedom and to resisting undue control by donors, contractors, and governors. *Presidents must defend academic freedom publicly and internally.* Both President and Board of Trustees must represent the University and publicly defend faculty and students even when their investigations and actions seem offensive or worthless to political leaders, to the broader public, or to potential donors or corporate contractors. Bevin's executive orders threaten this essential independence of the Board and the President. If the new Board or President loses favor with Bevin, he could simply replace them again next year in another executive order. This is why the Attorney General described Bevin as having made himself "de facto President and Board of Trustees" of the University of Louisville.

Tenure protects some faculty members from dismissal without cause, but if Bevin succeeds, he will erase the line between *dismissal without cause* and *reorganization*. By reorganizing departments, the Governor or his monopoly Board of Trustees could effectively fire select faculty members for political reasons or any reason at all, and could fundamentally reshape the University in Bevin's image. They could do this by "reorganizing" departments and programs in ways that would make some or all of their faculty no longer employable at the University. Departments that Bevin thinks are not contributing to the economy could be shuttered or "reorganized" into smaller programs. Even faculty members in favored departments such as Engineering could suffer from a chilling effect and may avoid conducting research that would run counter to Bevin's views about politics, religion, science, or society.

The American Association of University Professors (AAUP) monitors academic freedom and shared governance. The AAUP's Committee on College and University Governance may investigate violations of policy and standards of academic governance that have stemmed from Governor Bevin's actions. If the investigating committee finds that the Governor exerted undue political interference and influence, and the threat of such illegitimate interference in the operations of the University continues, the Committee on Governance may recommend that UofL be placed on the AAUP's list of institutions sanctioned for substantial non-compliance with standards of academic government. Such sanctions would forewarn job candidates that the University will not support their independence, and it will inhibit them from applying

or accepting positions here. It would then become even more difficult for the University to hire and retain top scholars.

III. Responsibilities

11. Are those who wanted Ramsey dismissed happy about the crisis?

One curious fact is that the Trustees who most vociferously *defended* Ramsey are suddenly the most vocal *proponents* of the resignation plan. Trustees have said things about “fresh starts” and “ending the crisis.” But the fact is that Ramsey’s promise merely to *offer* his resignation once there is a legally reconstituted Board, which could be months away and keep Ramsey in place for a year or more while sheltering the Foundation from any scrutiny, unnecessarily prolongs the crisis. Ramsey could have simply resigned, effective immediately. But he did not. Ramsey’s resignation is a sideshow to the main action, which is Bevin’s seizure of control of the Board.

12. Why wasn’t the Board doing its job?

First, Bevin made an agreement with the Justice Resource Center that the Board would conduct no business until he had appointed two racial minority Trustees; and *second*, Bevin failed to appoint those Trustees.

That is all there is to it. Any further “dysfunction” was simply disagreement among Board members. But such disagreement is expected. That is why boards have more than one member. Indeed, such disagreement is *written into the constitution of the Board*, inasmuch as the law requires the Board to have proportional representation of Democrats and Republicans. In that context, disagreement among Board members is not “dysfunction” at all but a healthy and functional democracy at work. The rhetoric of “dysfunction” originates with President Ramsey and other “loyal” Trustees, who were in conflict with some members of the Board seeking changes in the direction of the university’s leadership, financial oversight, and budget.

The Board’s discussions of critical issues concerning university oversight was not “dysfunction”; there was only *Bevin’s failure to appoint two minority Trustees* that paralyzed its operation. On the other hand, if a new Bevin Monopoly Board does come into existence and features choruses of agreement and univocal support for Ramsey, that is when we should worry about dysfunction.

13. Is Bevin trying to resolve the crisis and move on?

No. If he were trying to find a resolution, he would have appointed the required two racial minority Trustees and allowed the Board to return to work. He did not do that.

Bringing the current (prior) Board into compliance would have allowed the Board to conduct immediate business. This business would involve such action as passing a budget, and then allowing Board members to work out any other differences or animosity on their own time. They are adults. They could have done this. Other boards function this way.

IV. Law

14. Doesn’t Bevin have the authority to reorganize Boards like this when the legislature is not in session?

According to [KRS 12.028](#), the Governor has the authority to reorganize boards to achieve “greater economy, efficiency, and improved administration as the needs of government dictate.” However, first, for the reasons explained above, it is not clear that any such “economy, efficiency, [or] improved administration” is achieved here, certainly not by any plausible criterion of the “needs of government.”

The only supposed “efficiencies” achieved by the executive order lie in the reduction in the number of Board members. The Board’s duties are not reduced or streamlined. Dividing the same amount of work among fewer people is not more efficient, it is just more burdensome. And since Board members are not paid for their service, there is not even a savings to the Commonwealth. Further, all that was required to achieve “improved administration” was to fully staff the Board with two racial minority members.

Since Bevin’s actions cannot plausibly be explained by admissible reasons for those actions, Bevin arguably lacks the authority to do what he did.

In addition, Bevin failed to meet the law’s *procedural requirements*. Specifically, his reorganization plan must be “first reviewed by the interim joint legislative committee with appropriate jurisdiction.” In this case, the interim joint committee on education, or its subcommittee on higher education, should have received the reorganization plan, and is to have had up to 60 days to review it. Thus Bevin should have provided his reorganization plan to the education committee on or about April 17. **Bevin did not do this.**

There is a specific, legally mandated procedure for filing his plan, laid out specifically in KRS 12.028 sections (2) through (4). **Bevin did not file any such plan.**

There is, to be sure, precedent for governors’ failure to file such plans when reorganizing Boards. Since the legislature does not have power to act while it is not in session, some regard the notification requirement as pointless. Of course, the mere fact that some other governors have gotten away with something is no reason to believe that it is legal. For a governor who claims to be so determined to fix the messes he inherited, it would be ironic if his justification for illegal action was “Beshear did it!” or “Conway approved it!”

Moreover, even if the legislature cannot formally act when out of session, its members can publicize proposals and elicit valuable conversations among stakeholders. This is why the notification requirement remains important even when, or rather precisely because, the legislator is out of session. Otherwise precipitous plans can be secretly crafted in the Governor’s office and imposed instantly on unsuspecting state Boards and the agencies they govern. Indeed, that is just what has happened here.

Indeed, whatever may be the case for minor board reorganizations that occur in a timely fashion, Bevin’s actions on the UofL Board of Trustees were *sudden*, *precipitous*, and *disproportionate*.

Sudden: The changes were unannounced and unsuspected until they dropped out of thin air mere days before the end of the fiscal year, when the University had no budget and its personnel actions had not been approved. The entire University community learned of these changes by news media or social media rather than from any internal communication.

Precipitous: the changes left the University with *no* leadership – no permanent President, Provost, or Trustees – at a time of great challenge due to investigations, scandals, and budgetary uncertainty. Further, the changes were tied to the President’s resignation *while* a vote of no confidence in the University President was pending at the Board.

Disproportionate: Bevin had, within his power, far less precipitous actions that would have sufficed to solve the problem. Specifically, he could simply have appointed the required two racial minority Board members pursuant to his signed agreement with the Justice Resource Center, and let the statutory Board get back to work.

Due to the precipitous and unilateral nature of Bevin’s executive orders, his actions *prolong the uncertainty* and, hence, the crisis at the University. First, there is a higher than normal likelihood that the

legislature will fail to ratify Executive Order 2016-338, and thus the Board will revert in 2017 to its statutory constitution (or be constituted on a continuing basis by recurring annual executive orders as long as Bevin remains in Frankfort). Thus the campus community will remain confused and unstable, without statutory leadership, potentially for years to come.

Even if, in some other Board reorganizations, governors have been able to act without the legally mandated notice to the joint legislative committee that has jurisdiction, in this case forewarning, legislative review of, and a stakeholder conversation about, the changes would have made a material difference to the circumstances brought on by the executive orders. Hence Bevin should have followed the procedures laid out in KRS 12.028. While irregular procedure of unilateral action has sometimes been accepted in the past, or is tolerable for timely, minor, or consensual board changes, it is unacceptable for sudden, precipitous, and disproportionate changes, especially when these have major and ongoing consequences for high-profile institutions.

Bevin therefore *does not have the authority to reorganize the Board of Trustees in the way he has attempted*. His actions are not in fact a “reorganization,” but instead a summary wholesale dismissal of the Board members. According to [KRS 164.821\(1\)\(b\)](#), Board members may be dismissed only for cause and subject to a hearing before the Council on Postsecondary Education. No such cause has been given. No such hearings have been conducted.

Therefore Bevin’s executive orders are illegal.

V. Politics

15. Is this another round of Beshear vs. Bevin?

Bevin certainly wants you to believe it is. But even if there is a family feud going on, the question is what the law requires and what is good for the University of Louisville. The University of Louisville community surely has no great love for former Governor Steve Beshear, who for eight years presided over an experiment in budget-cutting, pushing costs onto students and faculty and eroding the tenure system, and spurring the UofL Foundation to adopt, under President Ramsey’s leadership, a high-risk investment and growth strategy that has left numerous endowments underwater and exacerbated uncertainty and fiscal constraint at the University. Further, Governor Beshear’s prior mismanagement of Board appointments gave Bevin the opening to halt the functioning of the Board by failing to appoint the required racial minority Trustees.

The issue here is therefore not “Beshear vs. Bevin”; the University has suffered under both. Rather, the issue is the independence of the University from any governor’s, or any party’s, overweening control.

VI. Confusions

16. Why are the Trustees who most supported Ramsey suddenly the ones most supportive of a deal that ousts him?

This is an excellent question, reflecting the overall lack of transparency of this whole process. Ramsey’s opponents on the Board, on the other hand, seem to have accepted the Governor’s actions rather than challenge them directly; some members of the Board, namely Emily Bingham and Craig Greenberg, publicly called for a similar overhaul of the secretive UofL Foundation, but there is no evidence that any reform will come to the Foundation at all.

17. Did someone state that the Council on Postsecondary Education, CPE, nominates the new Board members?

Yes, Bevin stated this in his press conference on Friday, June 17. But he was wrong. It is the Governor's Postsecondary Nominations Committee that, as referred to above, is secretive, is under Bevin's control, and is currently illegally constituted in the identical way that the Board is constituted.

18. Did someone state that the interim Board would include three campus constituent members, representing faculty, staff, and students?

Yes, the *Chronicle on Higher Education* published this erroneous statement that was then repeated. But Bevin's Executive Order 2016-339 assigned only three Trustees to the interim Board. Those individuals are Chair Junior Bridgeman, Dr. Ronald Wright, and Bonita Black.

19. Can Ramsey remain President of the UofL Foundation indefinitely, notwithstanding his resignation/retirement from the University?

Yes. Currently, Ramsey sits *ex officio* on the Foundation Board, in his role as President of the University. Once he is no longer President he would no longer have a seat on the Foundation Board. He could, however, be renominated and reappointed as an at-large Board member. Even if he is not appointed to serve at-large, he could remain President of the Foundation indefinitely, since the president of the Foundation need not be a member of the Foundation Board.

VII. Resolution

20. How should the crisis be solved?

All three members of the interim Board are African American, which means they are members of a racial minority under the terms of Bevin's agreement with the Justice Resource Center. It follows that the quickest and easiest solution would be for Bevin to appoint two of the current interim Board members to the prior Board. This would bring the Board into legal compliance in respect to the agreement between Bevin and the Justice Resource Center. This would also allow the Board to return to work. Ramsey could submit his resignation immediately and enable the University to begin the search for a new president. This resolution would require Bevin to bring his Nominations Committee into compliance. Then that Committee would need to submit six names to Bevin so that he could appoint two. This is a straightforward process that is entirely in Bevin's hands.

In other words, Bevin could have prevented this problem on March 19. The fact that he has still not resolved this crisis three months later, but instead has gratuitously thrown the University into chaos and confusion, threatening its accreditation and clouding its future, is an outrage.

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