

AAUP-UofL Report on Gov. Bevin's Executive Orders 2016-338 and 2016-339

[This report was researched and written by the executive committee of the University of Louisville Chapter of the American Association of University Professors (AAUP-UofL), and approved by the chapter's members in an online ballot concluding on 7/14/16. It is therefore a formal policy statement of the AAUP-UofL. The subject of the report is the Bevin executive orders and their effect on academic freedom and shared governance at the University of Louisville and beyond. It is not about the 13 persons serving (at the time of this publication) as trustees pursuant to the executive orders.]

On June 17, 2016, by Executive Order, Governor Matt Bevin called for the dissolution of the statutorily-created, seventeen-appointed-member University of Louisville Board of Trustees in order to replace it with a new and smaller ten-appointed-member Board. The Governor cited "dysfunction" as the primary reason for dissolving the Board, and, invoking KRS 12.028, cited "economy, efficiency, and improved administration" as the objectives for dramatically reducing the number of appointed Trustees. An interim Board comprised of three persons was to serve briefly until the new nominees could be appointed. On June 28, the Governor's Postsecondary Education Nominating Committee – the legality of whose composition is itself in question – met to review over one hundred candidates, presenting to Governor Bevin a sealed list of thirty nominees that same day; the next morning, the Governor announced his ten appointees.

Alongside the Governor's unprecedented actions, UofL President James Ramsey announced that he had consented to offer his resignation/retirement when a legally restructured Board of Trustees is in place. President Ramsey publicly endorsed the Governor's dissolution, reconstitution, and reduction of the UofL Board of Trustees.

Attorney General Andy Beshear sued to overturn Governor Bevin's Executive Orders and filed for a restraining order and injunction against their implementation. The lawsuit argues that Governor Bevin's orders do not conform with KRS 12.028 reorganization law because they "do not achieve greater economy, efficiency, and improved administration," but rather assert a level of control over governmental units that "eviscerate[s] all checks and balances and effectively give[s] the governor undue influence over all decisions, including tuition and staffing at UofL...." Furthermore, the Attorney General argues, Governor Bevin's orders violate other statutes, most notably KRS 164.821, which exist in order to ensure the independence of governing boards, their makeup, function, and appointment terms, and the process of lawful removal.

Governor Bevin's critique of, response to, and proposed remedy for the problems that he identified with UofL's Board of Trustees all warrant close scrutiny, as they precipitate significant consequences for the future not only of UofL, but of all institutions governed by the public trust in the Commonwealth.

Governor Bevin cited the "dysfunction" of the existing UofL Board of Trustees as the principal factor motivating his dissolution of the Board. However, since March 18, the UofL Board was barred from conducting its affairs pursuant to an agreement between Governor Bevin and the Justice Resource Center. That agreement forbade the Board from conducting business until the Governor appointed at least two minority trustees to UofL's Board, as required under Kentucky law. Governor Bevin never made those appointments. The alleged dysfunction of the Board was thus a direct result

of Governor Bevin's failure to execute his legal obligation, and his inaction was directly responsible for the Board's inability to conduct any substantive business.

On June 17, Governor Bevin opted instead to dissolve UofL's Board of Trustees. Through this course of action, the Governor has defined "economy, efficiency, and improved administration" in such a way as to allow for the summary dismissal of public governing boards, thereby concentrating authority in his office. The implications of this unilateral action cannot be overstated. Henceforth, a governor will be legally entitled to abolish any Board with which he or she disagrees under the protection of the "economy and efficiency" clause. This effectively subjects all the remaining stakeholders in a university's governance structure – the president, provost, deans, faculty, and students – to the Governor's will regarding the institution's functioning and future.

Finally, Governor Bevin's decision to reduce the number of appointed trustees from seventeen to ten compromises the Board's ability to fulfill one of its primary functions, which is to represent the diversity of the Commonwealth through its membership. Fewer Board members means, quite simply, fewer women, fewer minorities, and fewer perspectives that will be shaping the stewardship of UofL. In this regard, supposed economy and efficiency come at the price of representation and, need we add, investment. In addition, the reduced size of Governor Bevin's new Board accords with the smaller regional universities in the state, pulling it out of step with major research institutions nationwide and belying UofL's statutory mandate to serve as the "premier metropolitan research university in the Commonwealth." By comparison, the University of Kentucky's Board of Trustees numbers sixteen appointed members, the only governing board of its size remaining in the Commonwealth's system of nine state-supported institutions of higher education.

The AAUP's central policy document relating to academic governance is the *Statement on Government of Colleges and Universities*, jointly adopted in 1966 by the American Council on Education and the Association of Governing Boards of Universities and Colleges, supplemented with additional policy statements since then, and most recently affirmed at the 2016 Annual Meeting of the AAUP to commemorate its fiftieth anniversary. The *Statement* is "directed to governing board members, administrations, faculty members, students, and other persons [we would add state governors to this list] in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. [It] is intended to foster constructive joint thought and action, both within the institutional structure and in *protection of its integrity against improper intrusions*" [emphasis added]. Since 1991, the AAUP has used the practice of sanctioning institutions for infringement of governance standards.

Governor Bevin's unilateral and precipitous actions constitute major departures from AAUP-supported standards of academic governance. As the *Statement* notes, "The variety and complexity of the tasks performed by institutions of higher education produce an inescapable *interdependence* among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort." Important areas of action – for example, the wholesale dismissal and restructuring of a Board of Trustees and the forced resignation of a President – should involve "the initiating capacity and decision-making participation of all the institutional components."

For these reasons, the AAUP chapter at UofL finds that Governor Bevin's actions constitute an unprecedented executive overreach that exerts improper interference in the governance of the University of Louisville; his actions have put at risk the core principles of shared governance and academic freedom on which higher education rests.