

## Taking Hostages in Kentucky

BY SUSAN JAROSI

KENTUCKY GOVERNOR Matt Bevin has been testing the limits of shared governance. On June 17, by executive order, the governor unilaterally abolished the University of Louisville's full seventeen-member board of trustees and replaced it with a new thirteen-member board entirely of his own choosing. In an e-mail to the campus community the same day, the university's embattled president, James Ramsey, announced that "after conversations with Governor Bevin" he had agreed to offer his resignation to the "newly appointed board" upon its "legal restructure."

The extant board of trustees was neither consulted nor informed of these decisions, which deprived members of their right to due-process hearings and circumvented their responsibility for the selection and removal of presidents. If left unchallenged, such executive overreach sets a dangerous precedent. The governor would henceforth be legally entitled to dismiss public university governing boards by fiat, at any time.

In response, state attorney general Andy Beshear filed suit on June 22, claiming that Bevin was attempting to assert a level of control that "eviscerate[s] all checks and balances and effectively give[s] the governor undue influence over all decisions, including tuition and staffing at UofL." On July 29, the circuit court judge hearing the case issued a temporary injunction enjoining Bevin's board (which had already met several times) and reinstating the extant board. The judge's final ruling on September 28 offered a wholesale rejection of Bevin's attempted maneuvers, concluding that "the governance of public universities has been carefully structured to insulate

institutions of higher education from the direct influence of partisan politics. The Governor's assertion of the right to unilaterally abolish and recreate the Board of Trustees . . . is wholly inconsistent with the statutory framework of higher education in Kentucky."

At the time of this writing, the governor has yet to communicate whether he will appeal the circuit court's ruling. Regardless of his decision, the board's ability to govern continues to be hampered by restrictions dating back to March 18, when Bevin resolved another legal dispute, over the racial composition of the board of trustees, by signing a legal agreement to appoint two racial minority representatives "as soon as possible." The agreement stipulated that, until the governor did so, the board was prohibited from conducting "any structural or other significant actions, including major personnel actions." As a result, the university budget was not approved until August, and faculty tenure and promotion decisions were delayed until September.

Many months after signing the legal agreement, Bevin still has not made the minority appointments to the board. Doing so would effectively disarm the weapon that's allowed him to constrain the university's self-governance. There are no longer two but five vacancies on the board of trustees. Until Bevin fulfills the terms of the agreement, six new decanal appointments cannot be confirmed, and the search for the university's next president cannot commence. Meanwhile, we wait.

We can readily point to similarities between the Louisville situation and other cases of government

overreach in public institutions—Wisconsin in particular comes to mind—but what's perhaps most troubling about the increase in these episodes is the variety and creativity of the external assaults being employed: executive orders, legal agreements, the restructuring of state agencies that make trustee and other educational board appointments, interference in presidential searches, the slashing of state appropriations, and the use of performance-based funding metrics to exert influence, to name but a few. In light of such incursions, the current climate of public higher education would seem to render the principles of shared governance almost quaint. "It's out of our hands now" has been a common refrain throughout the Louisville crisis, an expression that underscores the marginalization of the university's role in its own governance. And yet the circuit court judge's decision against Bevin in the board of trustees case stands as a powerful reaffirmation of autonomous governance in higher education as a fundamental public interest.

It's no coincidence that we've often spoken of our case being "tied up in court." The metaphor works through the image of bondage. For however long the case remains in litigation, and however long Bevin refuses to make appointments to the board, a major public university and its tens of thousands of students, employees, and stakeholders are held hostage. ■

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