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FACULTY SENATE MINUTES FOR 12 April 2010 (Vol. XXXVIII, No. 15)

The 2009 – 2010 Faculty Senate minutes and other information are available on the Web at <http://www.eiu.edu/~FacSen> The Faculty Senate agenda is posted weekly on the Web, at McAfee Gymnasium 1102, and on the third-level bulletin board in Booth Library. Note: These minutes are not a complete verbatim transcript of the Senate meeting.

I. Call to order by Chair John Pommier at 2:00pm. (Booth Library Conference Room)

Present: J. Best, A. Brownson, J. Coit, M. Fero, F. Mullins, M. Mulvaney, R. Murray, J. Pommier, A. Rosenstein, J. Russell, D. Van Gunten, , A. White, M. Worthington. Excused: A. Methven, D. Viertel.
Absent: A. Boyd, S. Lambert
Guests: Gary Aylesworth (Philosophy), Grant Sterling (CAA/Philosophy), Emily Steele (DEN), Jeanne Snyder (Associate Dean of LCBAS), Blair Lord (Provost/VPAA), Amir Prellberg (DEN)

II. Approval of the Minutes of 6 April 2010

Vice Chair Van Gunten (White) moved to approve the minutes. Motion passes unanimously

III. Announcements

Monday, April 19, 3:30-5pm, Charleston-Mattoon Room of the MLK Union, Faculty Senate/UIP Forum on the Illinois State Budget and the Future of Public Education.

The schedule of on campus interviews for the new Director of Planning and, Budget and Institutional Research are available at this link: <http://www.eiu.edu/pbirsearch/index.php>

IV. Communications

V. Old Business

A. Committee Reports

1. Executive Committee:

2. Nominations Committee: Senator Worthington stated that the committee will meet Thursday, April 15, to finalize nominations for fall 2010.

3. Elections Committee: Vice Chair Van Gunten stated that she inadvertently missed entering an at-large CAA position for the spring elections. She stated that Senate could run a special election to fill the seat, which could be certified in the summer or fall. Brownstein stated that the election should occur in the fall to take account of faculty leaving EIU. Rosenstein stated that the election should take place in the Spring so faculty have time to plan for service and the committee could be informed. Mulvaney stated he supported a spring election if the timeline would work. Van Gunten stated that if the call for election went out Thursday, petitions could be due Friday April 23, and the elections could take place April 27-28, pending confirmation with CATS. VanGunten (Murray) moved to conduct a special election for the CAA seat with those dates. Motion passes

4. Faculty—Student Relations Committee: no report

5. Faculty—Staff Relations Committee: no report

6. Awards Committee: no report

7. Faculty Forum Committee:

8. Other Reports

a. Provost's Report: No report

b. Budget Transparency Committee: no report

c. Other: Pommier asked if the nominations committee supported changes in the nominating process. Worthington stated she has talked to other committee members, and among the members there doesn't seem to be much movement to changing anything. She stated Senate could discuss the recent communications from Roger Beck and Gail Richards and decide if they presented compelling reasons to change Senate policy. Worthington stated that Beck has been speaking to Gail Richards and the members of the Intercollegiate Athletic Board want him on the committee. She stated that Richard also raised the issue that there are no female faculty currently on the IAB, and faculty members are from the same two faculty areas. Worthington stated that she suggested to Richards that diversity across colleges could be accomplished with a change in the committee's bylaws. She stated that she was not sure that it is in Senate's purview to make selections based on race or gender. Senator White stated that he is on this

committee, and this issue did come up, and he indicated that Senate has to go with whoever applies. He stated that he asked if the committee wanted diversity or interest in the athletic program, and suggested that these interests may not line up. White stated that if the committee wanted more female members, what does Senate do if no females apply? Worthington stated she told Richards that Richards could invite females to apply for the committee. Van Gunten stated that Senate could not select members based on race and gender, and stated it should be up to the committee to come forth with a proposal and rationale why the nominations process should be changed. Worthington stated that Richards used to chair the Senate's nominations committee, and then the committee used a form in which candidates listed qualifications for the committees on which they wished to serve. Worthington stated she was concerned about not only the increased work of this system, but also potential accusations of Senate favoritism. Van Gunten stated that Senate should encourage chair of committees unhappy with the current selection process to come up with a proposal, and that Senate's role would be to consider the changes. Worthington stated that if a committee member served three terms it might qualify them for continued appointment, which might make it harder for younger faculty to get service. Senator Best asked if there is any evidence that of all of the boards and committees that we nominate for, if there is a committee that's entrenched. Best stated that Senate did not have many contested elections this Spring, and stated that if there are entrenched committees it's because these members are the few faculty willing to come forward and serve. Worthington stated that she does not see evidence of entrenched committees, but stated that there are contested committees, and that faculty put their names in for those spots for three years in a row and aren't appointed get on it, and stated that if Senate began assessing the quality of nominees it would make that problem worse. Best stated that if faculty are agitated because they don't get on committees that they want, they aren't interested in serving. He stated that serving means you go where you're needed not where you want to go. Best noted that the Institutional Review Board requires members with specialized knowledge to be effective. Worthington stated that in a three-year term one might gain some institutional knowledge. Best asked if all the boards like that, and what percentage of boards have needs which most faculty could meet. Van Gunten stated that all of these committees in their bylaws can determine their own qualifications, and if they want diversity they can address that in their bylaws. Worthington stated she would shudder to try and determine what committees want. She stated that Senate has received one email, and she solicited feedback from chair of the IAB, but is not seeing a huge groundswell of support for new procedures. Pommier stated that when he chaired Nominations Committee, a committee chair asked if Senate could select minority representation, and Pommier suggested the chair encourage the individuals they preferred to put their names in to increase the chance of their selection. Worthington stated that even if Nominations Committee knew the race of nominees they wouldn't be able to choose on that basis. Murray stated that it is not legal. Best stated that there's no system that is going to work all the time, and Senate's current system minimizes the amount of discomfort, and that in a way there's nothing more fair than random. Pommier stated that in his two terms chairing Nominations, people typically put their names in for one or two committees, and seemed to pinpoint committees in which they think they have expertise. Worthington stated that those committees can self-select, and it is not up to Senate to determine nominees qualifications. Pommier stated that the most important thing is to listen, and suggested maybe Richards could visit the Senate. Worthington stated Richards is willing to consult with faculty member. Van Gunten urged that if Richards comes to Senate that she brings a proposal for change. Pommier suggested Worthington could consult with Cynthia Nickels, and noted some issues with lack of diversity on exit interviews for student-athletes. Worthington asked if she would ask her about the legality of diversifying committees. Rosenstein stated that the place to start is with a proposal in writing. Van Gunten suggested Richards contact Cynthia Nickels, it's not our job to create a proposal. Worthington noted that she had originally contacted Richards, and stated that Richards may not feel strongly enough to pursue a proposal. White stated that in the exit interviews in which he participated, the committee was 3 females and 2 males, and that the committees are mixed. Worthington stated that that's due to some effort on Richards' part.

B. Other Old Business

Article XIII bylaws. Senator Rosenstein (Brownson) move to take up proposed Article 13 bylaws from table. Motion passed unanimously. Senator Rosenstein (White) moved to amend the proposed bylaws according to the language submitted by Senator Best.

Best stated that his proposed language is based on the law at www.ilga.gov/legislation/ilcs. Best stated University General Counsel Rob Miller's response to the proposed language, asserted something which in my reading of the law we are not bound to do. The letter states that "should the public body wish

to assert the personal privacy exemption, it must, prior to denying the request, inform the newly codified Public Access Counselor in the Attorney General's office of the intention to assert the personal privacy exemption." Best stated that in 5 ICLS 140/9.5 it states "A public body that receives a request for records, and asserts that the records are exempt under subsection (1)(c) or (1)(f) of Section 7 of this Act, shall, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part." Best stated that he does not think that's accurate that we have to inform the PAC before we deny inspection. The PAC can say, you can't deny inspection, but I do not believe that there's any approval process prior to asserting the privacy, and what we are doing in a and b in the proposed bylaws is that we are signaling, for purposes of communication, what we intend to do, either we are going to allow copying and inspection or we are going to deny the request. Best stated that he verified we are not doing anything illegal. I think what we are trying to do is signal out in advance whether we will allow inspection or copying. Pommier referenced a communication from James Tidwell asserting Senate could not legally deny inspection or copying. Best stated that while keeping signatures private might provide a benefit to petition gatherers, Senate needs to decide if it intends to protect privacy of its constituents or not. Coit stated that since the Senate was not the public body in the meaning of the law, its decision would not be final. Best stated that Senate is a public body according to 5 ILCS 140/2 which defines "public bodies" as "any legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts." Best stated that it may be in the Senate's best interest and in the best interest in the State of Illinois to act in cases where people might have their privacy trampled or infringed upon as a consequence of petition signatures becoming public. Best stated that the statute specifies this, that the public does not have an untrammled right to know, and that sometimes it is in the people's best interest to relinquish this right for other rights. Best stated that there's no way Senate can guarantee confidentiality but Senate can assert how we're going to treat this. Pommier stated that if we have a bylaw that states that we assert confidentiality people might get the wrong idea about Senate's intent. Best stated that in his proposed language the Executive Committee has the right and responsibility to make that determination, and that the Committee is going to have to cite the statute language, and is going to have to be accountable to the Faculty Senate, and will have to provide written justification. Rosenstein suggested that the bylaws cite the language of the statute itself rather than provide a citation to the statute. Van Gunten stated that if the bylaws quote the statute you might change the context of the law, our appear to change the intent of the law. Coit stated that the bylaws do quote the relevant statute language. Best stated that the reason he did both was that he is trying to signal we didn't wing this, we know what we're talking about to the extent that we can know. Russell stated she was unsure whether or not under the FOIA act Senate has the flexibility to even consider whether or not a signature is something that would be protected. She stated that she went online and read Article 7 of FOIA and didn't see in Article 7 where it references signatures. She stated she did not believe Senate could give the illusion that signatures could be protected. Best stated that he agreed there is a grey area into which a lot of categories of information might fall, and that area would be determined would be by the Public Access Counsel and court findings. Best stated that the PAC might say Senate could not protect names, and then Senate would have to comply with a FOIA request. Best stated that he does not think we are distorting the law, or engaging in anything illegal or unethical. Russell stated that Senate is just focusing on the area of signatures. Rosenstein asked if someone could request the information with elements blacked out, which might provide identifying information. Russell stated that what the law is talking about the kind of material that is private, the law is specific does not include signatures in that category. Russell stated that for rationale for the Executive Committee's decision, people have been talking more inclusively about the kinds of information that can be kept private than the law describes, and the law is being very specific in including "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." Coit noted that the law distinguished between the specific list of private information and personal information which might be protected by the right to privacy. Best stated that the bylaws were not an attempt by Senate to determine the meanings of FOIA in a particular sense, but to deal with petitions in a specific sense, and the issues which arise when the petition bumps up into FOIA. Best states that the bylaws state how Senate would attempt to resolve the this collision, and provides language to conduct a petition process. White stated that he was concerned

about the bylaws following the law, but as long as Senate can follow the law we're ok. Rosenstein stated that the bylaws clearly identify that the Executive Committee to determine the issue, but doesn't really say that Senate would pass that information on to the PAC, and asked if language could be added to make it clear Senate is not the last word in the process. Best stated that the bylaws simply show how Senate will conduct a petition, and spells out where the process bumps up with FOIA. He stated that he bylaws, don't tell a requestor what to do, and that it's up to requestors' as a citizens to find out what must be done. Rosenstein suggested that "in the spirit of FOIA" be added to II.C.13.A after the statute citation to show that Senate are attending to that. Best stated that the principles are stated in the first sentence of the statute language, which is out there on the web, and Senate didn't need to repeat it. Best stated that Senate does need language that tells us what to do for petitions. Van Gunten stated that FOIA covers the right to inspect and to copy. Rosenstein moved to change add "personal descriptors including" after "confidentiality of" in the first sentence of II.C.13.A, and to add "to inspect" after "to know" in the second sentence. Motion died for lack of a second. Coit proposed to replace "to know" in the second sentence of II.C.13.A with "to inspect," and this was accepted by Rosenstein and White as a friendly amendment. The motion to amend the proposed bylaws passed, 10-2. Yes: Best, Brownson, Coit, Fero, Mulvaney, Murray, Pommier, Rosenstein, White, Worthington. No: Russell, Van Gunten. The motion to add bylaws governing article 13 elections passed, 10-2. Yes: Best, Brownson, Coit, Fero, Mulvaney, Murray, Pommier, Rosenstein, White, Worthington. No: Russell, Van Gunten. New bylaws are appended to the minutes below.

VI. New Business

VII. Adjournment at 3:21

Future Agenda items:

Officers' election, Retiring Faculty reception.

Respectfully submitted,

Jonathan Coit
April 18, 2010

II. C. 13. Article XIII referenda

a. Upon the receipt of a completed referendum petition, the Executive Committee of the Faculty Senate (meaning the Chair of the Faculty Senate as the head of the public body (5 ILCS 140/2(e)), the Vice-Chair of the Faculty Senate, and the Recorder of the Faculty Senate or their duly authorized designees) will have the right and the responsibility to make a determination of the need for confidentiality of the signatures on the petition. This determination shall be made in conformity with the stipulations of (5 ILCS 140/7(1)(c)) which provide for an exemption of the people's right to inspect and to copy information in cases in which the disclosure of the personal information contained within a public record (i.e., a person's signature on a petition) would constitute an unwarranted invasion of personal privacy to the extent to which the disclosure is objectionable to a reasonable person, and to which the subject's right to privacy outweighs the legitimate and untrammled right of the people to know and to obtain the information.

1. The Executive Committee of the Faculty Senate will provide to the Faculty Senate a written justification in those cases in which it has determined that there is a need for confidentiality of the signatures on a completed petition.

2. The timing of this determination (i.e., following the receipt of a completed referendum petition) does not preclude any prospective petitioner from discussing the content of the prospective petition with the Executive Committee during, or prior to, the petition's circulation. However, the final determination of the need for confidentiality will not be made by the Executive Committee until the receipt of the completed referendum petition.

b. After making its determination, and regardless of its outcome, the members of the Executive Committee shall verify that the signatures on the petition are both authentic and valid, in accordance with the Faculty Senate's desire for accountability and due diligence in the discharge of its duties.

c. The Chair of the Faculty Senate shall inform the Faculty Senators of the results of the verification process in a written report. The written report will include the following elements: (1) the total number of signatures on the petition, (2) the number of signatures verified, which is not to be less than 30% of the total number of signatures on the petition, (3) any and all methods that were used to verify the signatures, (4) the current minimum number of signatures which is required to initiate the referendum process, and (5) the final determination that the completed petition has been satisfactorily verified or not.

d. If the completed petition does not have the minimum number of verified signatures required to initiate the referendum process, then the petition and signature pages shall be returned to the author(s) of the petition, and the case of that particular petition shall be closed with prejudice. If the completed petition does have at least the minimum number of verified signatures required to initiate the referendum process, then the Chair of the Faculty Senate's written report will determine that the completed petition has been satisfactorily verified, and the completed petition will become a verified petition. The Chair of the Faculty Senate shall retain one copy of the verified petition, and one copy of all signature pages.

e. The Faculty Senate shall distribute a copy of the verified petition to all Faculty eligible to vote in Faculty Elections. It is imperative that the author(s) of any verified petition attend a meeting of the Faculty Senate following the issuance of the written verification report, and prior to the conduct of the referendum. At that meeting, the author(s) of the verified petition should be prepared to both discuss the petition with Faculty Senators and with any other attendees of the meeting and respond to their pertinent questions.