

# TRANSCRIPT

University Council  
Wednesday, April 3, 2024, 3 p.m.  
Altgeld Hall 315  
Northern Illinois University  
DeKalb, Illinois

**VOTING MEMBERS PRESENT:** Beyer, Davis (for Richter), Elish-Piper, English, Falkoff, Freeman, Hartman, Howell, Martin, Monteiro, Morris, Myung, Nicholson, Njue, O’Grady, Phares, Pitney, Rogers (for Middlemist), Stoker, Sutcliffe, Walther, Ziarati

**VOTING MEMBERS ABSENT:** Bohanon, Johnson, Larkin, Middlemist, Richter, Vaughn

**OTHERS PRESENT:** Bryan, Creed, Kettering, Kruse, Perry, Reneau, Saborío, Sumner

## I. CALL TO ORDER

**L. Freeman:** Good afternoon. I’d like to call the meeting to order, remind everybody that it is April 3 despite the weather outside, and just hope that April snow brings April flowers within a couple of weeks. If we’re getting it now, maybe we won’t get it for commencement, that’s my hope.

## II. VERIFICATION OF QUORUM

**L. Freeman:** Pat or Ferald, can you verify, please, that we have a quorum?

**F. Bryan:** We do have a quorum.

## III. ADOPTION OF THE AGENDA

**L. Freeman:** Thank you, and with that verification, may I have a motion to adopt the agenda?

**T. Hartman:** So moved.

**B. Pitney:** Second.

**L. Freeman:** Okay, we have a motion and a second. Thank you for remembering to identify yourselves; I really appreciate that. All in favor?

**Members:** Aye.

**L. Freeman:** Any opposed? All right.

#### **IV. APPROVAL OF THE FEBRUARY 28, 2024, MINUTES**

**L. Freeman:** Our next item, Roman numeral IV, is approval of the February 28, 2024, minutes. May I have a motion to approve?

**S. Stoker:** So moved.

**L. Freeman:** Thank you, Shannon. A second?

**B. Pitney:** Second.

**L. Freeman:** You're getting good at this, Bill. Thank you. Any discussion? All in favor?

**Members:** Aye.

**L. Freeman:** Any opposed? All right.

#### **V. PUBLIC COMMENT**

**L. Freeman:** We've now reached the point in the agenda when public comment is appropriate for any members of the public who have indicated their desire to speak to this meeting. Have any done so?

**P. Erickson:** No, not today.

**L. Freeman:** All right, so we have no public comment.

#### **VI. NIU PRESIDENT LISA FREEMAN'S ANNOUNCEMENTS**

##### **A. Budget and Planning Update**

**L. Freeman:** And in that case, we'll move on to agenda item Roman numeral VI. My announcements and comments and, as always, I'll try to tie those to budget and planning. I think Pat sent out an article from Inside Higher Ed where there was a nice write-up on the state of Illinois' continuing efforts to create a funding formula for the public universities that simultaneously addresses adequacy, equity and sustainability. We have seen that effort continue to move forward. There will be a subject matter hearing in Springfield next week. There will be some advocacy groups and three presidents testifying. I believe it will be the SIU system president, the CSU president and the EIU presidents. I've been asked to be on a couple of panels along with IBHE leadership to talk to some funders. Although there will be a lot of discussion going on this session, it does not appear that, even though legislation may be drafted before the end of the session, that there will be any legislative action this session on this item. So, we are anticipating that we will go forward with the governor's recommended budget for a two percent plus in our appropriations, and a fairly reasonable increase in deferred maintenance – in dollars for deferred maintenance – we know that there's a significant increase in deferred maintenance, regardless of what the governor does – Andrew's smiling at that, I see.

There is a subject matter on deferred maintenance next week also, called by a joint meeting of the higher ed working group, which is sort of like legislators who care about higher ed, but aren't necessarily on appropriating committees, and the Appropriations Committee. And that's really an opportunity for all of us to highlight all of the roofs that are leaking and all of the elevators that aren't working and all of the sidewalks that are cracked across all of our campuses. We will be there, I believe that we're going to have John Heckmann testify; but in any case, NIU's half a billion dollars in deferred maintenance will be represented at that meeting.

In terms of the budget for next year, the thing that is actually the most frustrating to the university at this point is also the thing that's the most frustrating to the parents, families and students, who wish to attend NIU. And that is the incredibly dysfunctional roll out of the Federal Application for Student Financial Aid, or the FAFSA form. Every time, Vice President Jensen, who's over Financial Aid, thinks that there's a glimmer of hope, that glimmer of hope is quickly shot down by the recognition that the Department of Ed has made yet another error that some university was able to detect, errors that are really impeding the abilities of families and students to know what they're going to get in financial aid and what choices they should be making. It's very frustrating for them, and it's very frustrating for us, because, as I think all of you know, the vast majority of our students fill out that form and receive aid in the form of Pell Grants, MAP Grants and institutional aid from NIU. Many are the first in their families to go to college; a significant fraction are from undocumented or mixed status families. And so having this information is very important to them. And their propensity to just give up on themselves when things don't go smoothly is high. We are doing everything possible as public universities together, and as NIU, to reach out to students to encourage them to stay engaged with us, to fill out the form. We've extended our priority notification deadlines, not just for committing to NIU, but also for housing. But we are definitely seeing an impact, particularly on new freshmen. And so, trying to understand what that impact will be on enrollment has implications for budget and planning. And so, I wish I could tell you I knew when the story was going to end and how the story is going to end, but what I can say right now is, stay tuned. Please rest assured that we're trying to do everything we can do. The state of Illinois is signaling students the latitude that we have been given by the Department of Ed to communicate and to act, we're going to take advantage of, but it is not a situation that anyone wanted to find themselves in, and it's not a situation that's very helpful in any way. I don't know – Provost, if you want to add anything?

**L. Elish-Piper:** I think you covered it.

**L. Freeman:** So, we'll do everything that we can. We're continuing to work with continuing students, who also need to fill out that form. But it's easier to work with them, because they've been through it once. So, our focus is really on the new students and our financial aid advisors and everyone in Student Assistance. And everywhere across the campus is working hard to try to send the message.

I will end there, because I know we have a presentation today, and it's one I'm looking forward to hearing. And so, at this point, I think, Ben, I give you the gavel, and you get to introduce Bryan.

## VII. ITEMS FOR UNIVERSITY COUNCIL CONSIDERATION

- A. Supreme Court Decision on Affirmative Action and its Impact on NIU  
Bryan Perry, Vice President and General Counsel

**B. Creed:** Happy to do so. As we move on to item VII, which is a presentation from Vice President and General Counsel Bryan Perry on another federal issue, that is the Supreme Court decision on Affirmative Action and its Impact on NIU. And with that, I'll turn it over to General Counsel Perry.

**B. Perry:** I think some of you have already heard this presentation either at the Board of Trustees meeting or at Faculty Senate or just through me talking to you through our usual contacts. But I think it is good for the group to hear if this is your first time. The Supreme Court case we've been living with for a year now that really has redefined race in admissions for colleges and universities. So, don't steal the punch line, let people kind of catch up, and we'll get to the ending all together.

The case I want to talk about is Students for Fair Admissions versus Harvard and University of North Carolina. We'll do a brief discussion of the case, talk about the holding the Supreme Court reached, a little bit about the guidance we've received from the Department of Ed and some of the responses to this decision, as well as some of the practical considerations. It's been a year now, so some things have become a little more in focus, and there's a lot that still is unclear.

The lawsuit is Students for Fair Admissions, and they sued Harvard over violations of Title VI. We know that, as a private university, Harvard's not subject to constitutional rules and mandates, so Title VI is a way – because they receive federal funds, they're not allowed to discriminate, so that's the avenue that Students for Fair Admissions chose to bring suit. The allegation is that Harvard admitted using race as one, but not the only, but one of many factors, in its admissions process. And they argued in their court briefing that their process adheres to the requirements for race-based admissions outlined by the Supreme Court in *Grutter v. Bollinger*. For those who didn't go to law school, the *Grutter* case is a case involving the University of Michigan Law School from, I believe, 2003. In that, the Supreme Court set forth a test for when race could be used in admissions. Race could be used in admissions if it was partly processed to achieve a compelling interest of achieving diversity, as long as it's narrowly tailored to do so. And in that Michigan case, the admissions process that Michigan used, race was one of many factors they considered. At the time, the court considered that an acceptable use and narrowly tailored enough, because it was very specialized as to how they commenced with the criteria to achieve the increase of diversity on a public university campus. So, it was allowable. And so, Harvard argued essentially they were doing the same thing.

They also sued the University of North Carolina, which is a public university and subject to the constitution alleging they violated the 14<sup>th</sup> amendment or the equal protection clause by using race as a factor in their admissions. Again, UNC admitted they used race as one of many factors in the admissions process, but argued that their process adhered to the same requirements laid out in the *Grutter* case.

And so, on June 29, I'll never forget when it came out, because Tom O'Grady and I and a bunch of other higher ed attorneys were all at a conference of higher ed lawyers; and when the Supreme Court opinion came out, we pretty much crashed the servers at the hotel conference, because we were all logging on to figure out what our world was going to look like. On June 29, the opinion came out, and the Supreme Court ruled that Harvard's and UNC's Affirmative Action programs did violate the 14<sup>th</sup> amendment and Title VI, the Civil Rights Act of 1964.

So, what the court actually said in its holding, sort of the specifics of how they reached that decision, they ruled consideration of an applicant's racial status is prohibited. That the educational benefits of diversity supported by race-conscious admissions is not a compelling interest, which is a complete departure from what they ruled in the Grutter case. Diversity is not sufficiently measurable and cannot be subjected to meaningful judicial review, which is kind of interesting, because they say you can't measure diversity. But if an argument would have been put forth that we want to achieve a certain percentage, then they would say quotas aren't allowed, and you would have been in trouble. So, interesting kind of Catch-22.

The admissions programs at both universities disadvantaged some racial groups. There was no logical end point where it could determine whether diversity had been achieved. And that comes out of the Grutter decision. If you can't sleep at night and you want to read a Supreme Court decision, in the Grutter case, Sandra Day O'Connor had mentioned that she knew diversity, as a compelling interest, would end at some point in time – I think she threw out 20 years. And so, that came up in the opinion quite a bit, saying we think it's time to end, because in Grutter, there was mention of a timeframe, although she never said, as part of the holding, but that was something that came up. And the Supreme Court came back again and said, there's no logical end point, so since we can't measure it, we don't know when it ends, it's not permissible.

So, although an applicant's race may not be considered – and this is where I think most of the work over this last year has been around, trying to figure out what this is really saying – is although an applicant's race may not be considered in admissions, it is permissible for an applicant, through personal statements or essays, to discuss how race has impacted their lives. And so, that has been a lot of this last year, figuring out how broad is that, what does it mean, what's acceptable and what's not.

After the Supreme Court opinion came out, we did get some clarification and advice from the Department of Ed through how they usually administer advice to universities, through a Dear Colleague letter and some advisory memoranda.

This is what was missing from the court's decision. While it's very clear that race in admissions was no longer permitted, the court did not explicitly say anything about scholarships and financial aid, outreach and recruitment programs, pipeline and pathway programs, data collection, employment, or give any actual race neutral strategies with what was permissible other than just saying, talking about lived experience through personal essays.

To just sort of summarize some of the advice that came out of the Department of Ed – and since I don't have my glasses on, I have to look at my actual paper here. Colleges still can legally work to diversify their student bodies through targeted recruitment efforts, including using race, and by redoubling retention efforts aimed at supporting students of color once they arrive on campus. Officials also said the bridge and pathway programs for high schoolers aimed at diversifying applicant pools are still legal.

The court's decision does not require institutions to ignore race when identifying prospective students for outreach and recruitment, provided that their outreach and recruitment programs do not provide targeted groups of prospective students preference in the admissions process. Once again, what the case was about – admissions.

The Department of Ed also clarified that the Supreme Court ruling did not make it illegal for institutions to collect demographic data on applicants, nor did it prohibit admissions officers from looking at that data, as long as they did not consider it when making admissions decisions.

In DOE guidance that was issued, there still was no mention of how the Supreme Court decision might apply to the consideration of race in hiring. There was some language in the opinion, which is about 240 pages, and I think just about every justice had a [inaudible] opinion. There was some language indicating that employment contacts affirmative action would not be allowed, but that's not what this case explicitly ruled. There is also no reference in the DOE guidance about how the Supreme Court's decision would impact race-conscious scholarships.

So, some of the considerations now that universities are still grappling with are, although use of race in admissions is no longer prohibited ["permitted" on slide], working on finding race neutral strategies. Now, of course, NIU, we've always served in the lead of trying to do things that benefit all students, regardless of color, socio-economic circumstances, so many of these things do not even apply to us, because we've already taken steps to ensure that our application and admissions process is open to everybody. So, this really was more toward more specialized schools that are highly selective, highly competitive universities, where even the top of the top, you are struggling for each individual spot. But developing race neutral alternatives is still something that I think every university is working and looking at.

There was no clarification on what racial neutral strategies are actually permitted. And in some states, more conservative states, even race neutral things that the Supreme Court allows, such as discussing lived experience through personal essays and statements, some conservative states are looking at that as it's really a back door to get around this opinion. So, again, there's not direct clarification on what is race neutral and what's allowed, but we do have the guidance of the Supreme Court and what they said and from the Department of Ed and what they have said so far.

Again, no clear articulation of whether federal financial aid and race conscious scholarships are still permitted, although I can point to a case that was just decided last month. It wasn't in an education context, but there was an advocacy group called Do No Harm. And they sued the Pfizer Company. And Pfizer had a fellowship program where they would have students in sort of a pipeline program. And the Do No Harm group sued Pfizer alleging that white and Asian students were being excluded because of race. And in the district court, they lost. And in the appeals court, Do No Harm lost again. What is interesting – and let's go back to the Students for Fair Admissions case for a second. Just to be clear, Students for Fair Admissions is an advocacy group. It wasn't a group of students who got together and then got a lawyer. This was a group that was sort of created to attack these issues. So, one issue that didn't come up in the Supreme Court case was an issue called standing, of being able to actually bring a case before the court. One of the things you learn in law school is you need standing to bring certain kinds of cases. Basically, you need someone to represent, I've been injured by this law, by this decision or something, so this is why I'm coming before the court. With the Students for Fair Admissions, you didn't have that context. You had an organization that sued on behalf of a number of students, whereas there was not an actual student that said, me personally, I am bringing this suit.

So, it's very analogous to this Do No Harm case where, again, you have an advocacy group. But in this case, the court in the district and the court of appeals have ruled that they did not have standing, and so they didn't even look at the merits of the case. So, why did the Supreme Court take a case and not question standing, and in these cases they did. I'll let you figure that out and make your own

conclusions, but it is a real interesting new tool that a lot of groups are using to get in front of courts, because it's been difficult to get individual plaintiffs, so now these groups are kind of combining and creating their own way of getting in front of the court and bringing really hot button issues, not just in the education context, but in other meaningful issues that have an impact on a large group of people.

Again, considerations we are at now are looking at, not just the race neutral admissions, but now looking at the future. What is going to happen with race in the affirmative action context, because, again, there was language in the Supreme Court opinion that indicates if a case comes before them, they will be looking at this and possibly overrule it. As well as legacy admissions; interestingly enough, the Department of Education, after the ruling in Students for Fair Admissions, they immediately turned their attention to legacy admissions. And so, for those who may not be familiar with legacy, there was an argument put forth that if you really want to increase diversity at universities, it's not through race, but through legacy. And legacy could have been you're a son or daughter of an alumni or a large donor or athletics or something other than a traditional student; and that is how you gain admission to a university.

So, the Department of Ed brought suit against Harvard and a few other Ivy League schools now looking at their legacy process of legacy admissions. And there is some data; I think the New York Times did a study, as well as looking at the number of students admitted under legacy. And the percentage of legacy admissions actually was higher than some of the minority groups. And so, there was a serious argument of whether or not that had an impact, and a racial impact, because you're admitting students who are similarly situation because of other means, and depriving opportunities for students from underrepresented groups. So, that's started; I don't know how far that will go. I think there were a couple settlements reached. I know some universities, Johns Hopkins back in Maryland for one, had removed legacy admissions, and that seems to be a trend now. But I do expect to see more developments in that area, as well.

So, that's the quick and dirty of where we are with race-based admissions. The way this court has been very active in some of the issues, I'll probably be seeing you again this time next year on another case or something else related to higher ed or athletics, because those two areas have been hot button areas with just you've seen generational change in the last couple of years.

With that, happy to take questions. If you don't have any now, I'm easy to find. Tom's a member of SPS; he's here, you can find me. So, any questions, shoot an email, but if you have any now, I'm happy to take them. All right, I'll turn the meeting back over to the chair.

**B. Creed:** Thank you so much, and thank you for keeping us up to date on the topic as it emerges.

## VIII. REPORTS FROM COUNCILS, BOARDS AND STANDING COMMITTEES

- A. Faculty Advisory Council to the IBHE – report  
Linda Saborío, NIU Representative to FAC-IBHE

**B. Creed:** Up next is item VIII, Reports from Councils, Boards and Standing Committees. The first one up is from the Faculty Advisory Council to the IBHE, from Linda Saborío.

**L. Saborío:** Good afternoon. The FAC met on March 15 here at NIU, and we had a very productive meeting with several guest speakers. First, President Freeman provided us with some inspiring welcome remarks. Thank you very much for showing up. And then we also had Simón Weffer Alexandro, who gave us an update on the higher education funding formula. This was followed by a very informative presentation by Bryan Flower on [NIU's Edible Campus](#). And then David Tretter, president of the [Federation of Independent Illinois Colleges and Universities](#), shared some insightful information with us on enrollment trends. And lastly, we were joined by the newly appointed [IBHE](#) chair, Pranav Kothari. Our discussion with Mr. Kothari included topics, such as the higher education funding formula, his ideas for changing the narrative on a liberal arts education, the IBHE's perspective on early college credit planning, a timeline for a faculty member to be appointed to serve on the IBHE to fill Jennifer Delaney's spot, and IBHE's plans to create a task force on prior learning assessment, and finally, IBHE's accountability measures for the [Thriving Illinois Plan](#). It was a very robust conversation, and we covered a lot of topics in a short amount of time. More details regarding our discussions – because I was hosting, I didn't take time to take a lot of notes – so more specific details with each of these guests can be found in the minutes once they are approved by the council. So, they'll probably come out next month. And you can read any of the FAC approved documents, including our minutes on our [FAC-IBHE website](#). Our next meeting is scheduled for April 19 at Waubensee Community College, just a short trip for me this time, so no colorful stories about me traveling across the state of Illinois for the rest of this year, I don't think. Any questions, please? Thank you.

**B. Creed:** Thank you, Linda.

- B. University Advisory Committee to the Board of Trustees – report  
Felicia Bohanon, Natasha Johnson, Ben Creed  
Larissa Garcia, Karen Whedbee, Brad Cripe

**B. Creed:** Next up is the University Advisory Committee to the Board of Trustees report, and I'll be sharing that. I have three items from the March Board of Trustees meeting. First, there was a finalization of the remaining tuition and fee increases, which had been recommended to the Board of Trustees. Second, the Board of Trustees had gone through a process of reviewing their regulations, particularly around financial reporting requirements. And they voted to streamline the process, as well as set reporting thresholds that were in alignment with other institutions across the state, raising the reporting threshold, and that was to be in alignment with other institutions and to ease the amount of time taken to cover off on these reports and to produce the reports. And then finally, and very importantly, they took up and approved the appointment of Dr. Laurie Elish-Piper to be the executive vice president and provost – so, congratulations – into that role. If there is anything else from the Board of Trustees that anybody would like to share?

- C. Rules, Governance and Elections Committee – no report  
Marc Falkoff, Chair

**B. Creed:** Otherwise, we will move on to item C, which there is no report from Rules, Governance and Elections.

- D. Student Government Association – report  
Chris English, Deputy Speaker of the Senate  
Landon Larkin, SGA Treasurer

**B. Creed:** And then Student Government Association report, I saw Chris, if you'd like to come up and share a report.

**C. English:** This will be a quick report. The elections results are currently being tabulated. They should be released late Thursday night. There were 1,999 votes. We need to go through and make sure that they're all legitimate, but 1,999 votes, which is the highest we've had in a long time, so we're really excited about that student engagement.

This week is the last week we'll be doing supplemental funding. Next week, all of the remaining funding will be moved into executive funding. So, there are still some ways for students to get funding for events, but this is the last week for supplemental for student orgs. Next week will be the opening of the re-recognition process, and annual funding will be open, I believe, for one more week. If you are in contact with any faculty advisor, or you are a faculty advisor, or you know a student organization, make sure they fill out the annual funding stuff, as well as the organization re-recognition process. Are there any questions?

**B. Creed:** Thank you, Chris.

- E. Operating Staff Council – report  
Natasha Johnson, OSC President  
Jay Monteiro, Tiffany Morris, Sara Richter, Holly Nicholson

**B. Creed:** Up next is Operating Staff Council report. Is there a report? No report, all right.

- F. Supportive Professional Staff Council – report  
Felicia Bohanon, SPSC President  
Tom O'Grady, Shannon Stoker, Christina Sutcliffe

**B. Creed:** And then Supportive Professional Staff Council, is there a report? It looks like nobody is rushing to the mic, so I think that's an answer.

## IX. INFORMATION ITEMS

- A. [Policy Library](#) – Comment on Proposed Policies (right-hand column on web page)
- B. [Minutes](#), Academic Planning Council
- C. [Minutes](#), Athletic Board
- D. [Minutes](#), Baccalaureate Council
- E. [Minutes](#), Board of Trustees
- F. [Minutes](#), Comm. on the Improvement of the Undergraduate Academic Experience
- G. [Minutes](#), General Education Committee
- H. [Minutes](#), Graduate Council
- I. [Minutes](#), Honors Committee
- J. [Minutes](#), Operating Staff Council
- K. [Minutes](#), Supportive Professional Staff Council
- L. [Minutes](#), University Assessment Panel
- M. [Minutes](#), University Benefits Committee
- N. [Minutes](#), Univ. Comm. on Advanced and Nonteaching Educator License Programs
- O. [Minutes](#), University Committee on Initial Educator Licensure
- P. 2023-24 UC schedule: Sep 13, Oct 11, Nov 8, Dec 6, Jan 31, Feb 28, Apr 3, May 1

**B. Creed:** Which brings us to informational items. The standard ones are there, and you'll note our last meeting of the academic year is May 1. And that will be the last one for UC for the academic year. Not on other, but commencement is coming up, so please, as able, consider attending graduate and undergraduate commencements.

## X. ADJOURNMENT

**B. Creed:** That brings us to item X, Adjournment. Do I have a motion to adjourn? Chris, first. Second? All right, thank you, Jay. All those in favor?

**Members:** Aye.

**B. Creed:** Thank you for the meeting.

Meeting adjourn at 3:30 p.m.