

FACULTY SENATE EXECUTIVE COMMITTEE MEETING

Sept. 20, 2013

In attendance:

Clint Buhler (CB)

Robert Carlson (RC)

Jennifer Ciaccio (JC)

Ami Comeford (AC)

Timothy Francis (TF)

Sara Gallo (SG) (for Del Parson)

Jerry Harris (JDH; secretary)

Curtis Larsen (CL)

Scott Lindsey (SL)

Sandy Petersen (SP)

Samuel Tobler (ST)

Drew Wilcox (DW)

RC: Our only action item for this meeting is to approve the minutes from the last meeting. Has everyone had a chance to look at them, or at least move to approve those minutes? (AC moves; SP seconds.) Is there any discussion—did anyone notice anything about the minutes? (None.) All those in favor? (Passed unanimously.) Excellent. Now, this is an unusual meeting. We appreciate having guests here—we invited the Board of Trustees and President Nadauld to this meeting—they've been very willing to work with us on understanding new policies, particularly the Tobacco policy, and we appreciate their wanting to coordinate with faculty on these matters. (Introduces Board of Trustees members, Carlos Morgan as Student Body President, and Brad Last.) We appreciate all of you coming. The purpose of this meeting is to discuss the Tobacco policy—we've disseminated it to everyone multiple times, so hopefully everyone's had a chance to look at it, and we've solicited a lot of feedback from faculty. The first matter of business will be to go through the different areas that the Faculty Senate Executive Committee members represent to hear the feedback that they've received from faculty in their areas. I somewhat arbitrarily ordered the feedback in alphabetical order by discipline/subject area.

JC: From what I've heard from my faculty, the smoking ban is well supported; a few of the faculty members have issue with it being more than just smoking because they see that while smoking has an effect on other people, with second hand smoke, on people with asthma and on people who don't want to get cancer, so there's an actual reason for the ban.

Whereas with things that *don't* affect others, like nicotine gum or e-cigarettes, they're not as clear on a reason to ban it.

RC: Were there any comments regarding enforcement issues or the issue of smoking in cars?

JC: No, other than that it's incredibly unhealthy alternative and might affect people's asthma in addition to that, because if you've been in your car and then go near somebody with asthma, it's actually a trigger. If you're looking for health benefits from it, that seems like a bad option.

SL: You mean smoking with the windows up?

JC: Yes. Even if you disregard your own personal health issues, you're then becoming an asthma trigger for others. There were no comments on enforcement.

SL: Our feedback was similar to JC's. There was almost unanimous support for policy; I wouldn't call it *rousing*, but support nonetheless. The only concern was the banning of the cigarette derivatives and analogs. What does that mean? They'd like to see e-cigarettes and nicotine gum and things like that allowed in policy. We had some discussion about the car issue, and I suppose it'd be whatever the legal direction is to allow it.

RC: Someone can correct me if I'm wrong, but my understanding is that legally we can't preclude someone from smoking in their car, but the "windows up or down" concept was something that we chose to add to the policy...? I don't know that the law requires the windows to be up. Does anyone know what the legal issue is related to that?

Jon Pike: Mike just mentioned that we saw comments on-line that the hospital has a policy that allows e-cigarettes to be used in rooms, but that's not correct; in fact, they're not allowed on any of our campuses in the Southwest region, or the Utah area.

RC: Right, but we're talking specifically about the issue of smoking in cars. I was under the impression that legally cars were considered their property and that we couldn't ban it.

Jon Pike: Well, at least on our campus we don't allow smoking in cars on campuses, period.

CL: While we feel it's great for us to enforce Utah law to protect from second hand smoke, we think that this policy *way* overreaches the need to police that. We feel that this policy appears unenforceable, if it's just reminding people—it makes it look very difficult to enforce. We don't see how it's necessary to kick people completely off campus in order to

protect people from second-hand smoke. Students or faculty that are teaching or taking courses back to back should have an option for having their smoke or whatever and still be able to leave class and get back to class on time.

SP: My faculty were generally in favor of the policy exactly as written, not because of particularly strong feelings about the issue, but because it's a student-led initiative, and they want to support the students. There was no particular feedback at all.

AC: English largely echoes the comments of the previous faculty representatives and departments—more of them support a smoking ban but feel that a ban on *all* tobacco is an overreaches if it doesn't impact other individuals. A number of them also suggested that regulation of individual health choices, when it doesn't impact others, is a slippery slope, as you can imagine, toward other kinds of regulations about health—soda machines, etc. The other area they specifically mentioned was the enforceability—many said to me directly “I will not enforce it, and I will not be asked to enforce it.” One person particularly mentioned that the weak enforcement penalty will probably promote contempt for the policy specifically and for college policy in general. Either we should have strong enforcement positions or we should back off a campus-wide prohibition. But the smoking ban was more accepted, although not for everyone; some faculty members specifically mentioned how it might impact diversity measures and how it might impact certain people in certain populations that we might want to recruit to campus. But the overreaching into the tobacco area beyond smoking and the enforcement were the two largest concerns. So the “analog and derivatives” part was problematic for some faculty.

DW: Overall, the comments I got in Health Sciences were in strong favor of the policy, including *all* tobacco products. There were comments of including e-cigarettes if it wasn't part of the tobacco derivatives as it's written—that was a big push. I had multiple comments that wanted it to mimic what hospitals are doing now: prohibiting tobacco products and smoking, no options at all on those campuses and no questions asked. Overall, they really like this. The only question was enforcement—how do we do it? But even about that, one person said even if we have a policy just to have a policy, it's better than nothing.

CB: Presenting humanities, I got a more-or-less collective shrug of “sounds good.” They're fine with the policy and have no strong objections to it—they probably won't go out and picket for it, but it's fine.

TF: I don't have much to add to what's already been said—having had very little dialog with faculty in the Music Department. But my general feeling is that Music is going to be very in favor of the policy just because anything like smoking is a detriment to Music majors. That kind of thing is just going to get in the way especially of wind players, but of high performance in any kind of instrument. Other nicotine products wouldn't apply directly, though I would frown on any of my students using such things because of the influence it could have on you as an artist.

ST: Overall approval in Physical Science; nothing really different than what we've been hearing from other departments—kind of similar with the “shrug.” There were no outstanding complaints or comments that were given to me.

RC: My part of the campus has widest range of opinion! I had one faculty member report absolute support for this, and I had one with absolute contempt for this, and everything between. The vast majority of the feedback I received was focused on concern for how one's individual choices affect others, such as second-hand and third-hand smoke. Other issues related to addiction of nicotine were less of a concern because that's the slippery slope AC talked about. One of the things that I heard is that nicotine and caffeine are similar in their physiological additive properties, so if nicotine is a problem, why not the other? That would be a difficult road, and some people were against going that far. Some also had confusion about what “tobacco derivatives and analogs” meant—the vagueness of the term was a problem for a lot of faculty. If that's to stay in the policy, many wanted that clarified in concrete terms. We've made allusions to patches, gums, etc., and don't know if those are technically part of the policy. As Faculty Senate President, the comments you've heard here mimic the exact kinds of comments I received from the faculty in general, and they run the gamut. I have comments from 4-5 faculty that were against policy as it's currently written and were disappointed that other options for smoking areas outside of high traffic areas were not pursued diligently in the preparation of the policy, and that those might be more appropriate avenues. More seem in favor of it than are against it, but it seems that the majority are somewhere in between. That's why we've invited the Board of Trustees—the comments that you've received mirror the comments that I've heard. One faculty member thought it would have a negative impact on recruiting students, but conversely another doubted it would have an effect at all based on what's happened on other campuses— even with lax enforcement, it just seems to work, and people are polite and respectful and it just seems to work. Again, it's a range of comments and opinions. So thanks for all the feedback! The next issue for this body is to try to synthesize all this. What should the faculty position be given the range of feedback we've received? The table is open to the Faculty Senate Executive Committee for now.

DW: It seems to be overly supportive for it.

RC: What do you mean by “it”?

DW: Well, the policy.

RC: A policy.

DW: Yes, a policy, not *the* policy.

RC: One of the concerns that the faculty have had was that when the policy was first presented it was a *smoking* policy, and later it morphed into a *tobacco* policy by the end of last year. The additions started to make a few people uncomfortable. I'm not sure how much that "few" has grown, though.

President Nadauld: Could I ask for a clarification? I think I know what e-cigarettes are—they look like cigarettes and they vaporize something in there that apparently has nicotine in it.

RC: And other stuff.

President Nadauld: Yes...but apparently there's not a lot of evidence that there is a second hand smoke issue with that? Is that correct?

RC: Yes—when I looked at the FDA, and the American Cancer Association's site, the data on whether or not e-cigarettes helped people to quit is quite mixed, with no consensus one way or the other—they have *potential* to help, and some studies show they do. But there's no known negative impact of second-hand smoke.

President Nadauld: What do we mean by "analogs"?

AC: That's part of what confused faculty, too.

RC: We assume it means "nicotine," but we honestly don't know at this point.

President Nadauld: And as far as nicotine gum, I'm quite sure that there's no impact on others, other than just spitting it out on the sidewalk.

BoT Chair Steve Caplin: I want to clarify something: the e-cigarette definition was not added after the fact; it was in the original proposal students made, and that's what the Board of Trustees saw and responded to.

RC: I just meant added between the time it was presented to faculty and when the final white paper was presented to you. When we were given an earlier draft version, it did not include these "derivatives and analogs."

President Nadauld: Does an e-cigarette get thrown away, or does it get reloaded?

AC: Reloaded.

RC: Yes; it's quite expensive.

President Nadauld: So there's no waste associated with them; they won't be lying around everywhere.

SL: Cartridges don't get ejected; they're just vaporized.

Brad Last: I'd like to respond to that. I've been involved with the Legislature and in legislation for this; a couple of years ago, I ran amendments for definitions of "smoking" in Utah where the Clean Air act is concerned, and we dealt with a lot of the struggles you're talking about with respect to the e-cigarettes. The decision that I came to, and what I came to in working on that legislation is that the data regarding second-hand smoke from e-cigarette vapor is inconclusive in *either* direction—the American Cancer Society would like you to believe that there's real problem with it; the other side says there's absolutely no problems with it. But the way that we've defined it in the state law right now is that e-cigarettes are treated exactly the same way as regular cigarettes are with respect to smoking. So if you're on a train or a public place of any kind—even in bars and taverns, you can't use them. So I don't know if that changes how you want to deal with this right now, but there's no conclusive evidence that suggests that being in close proximity to an e-cigarette user has *no* hazard.

DW: In the FDA release, when they cleared e-cigarettes, they said that there *are* carcinogens in the vapor. So they actually issued a warning with it. The Mayo Clinic has also come out and said they are dangerous.

Christina Durham(?): OK, but in the "analogs and derivatives" are the other issue; what about nicotine patches or gum?

RC: We're not sure if those are considered "analogs" or "derivatives."

CB: I think that should be spilled out as allowed—it's contradictory to say "no gum" but we will offer smoking-cessation programs because that *is* a smoking cessation item. Maybe make exceptions for "smoking cessation products."

RC: Does anyone know what the students' intent was in having such vague or potentially inclusive language as "tobacco derivative" or "tobacco analog"?

Carlos Morgan: I think they were going for—and I actually know these students personally; for student government, we've been behind this for years; it didn't start last year. It's been going on for a long time, and we've been collecting data about it, and we're pretty heavily invested in having it go. That said, the idea behind this policy is that it's a health issue, and in my opinion that's why we're including things other than smoking. We don't want tobacco because—well, for example chewing has bad effects on our health, and it's same with e-cigarettes although evidence is inconclusive. We still wanted to get rid of them anyway. One other thing I wanted to mention: in Utah, we know the general culture, but there are no schools that have a smoking ban, except BYU, which is private. But throughout the country, though, over 700 schools have anti-smoking policies.

???: It's up to 1600 now.

Carlos Morgan: So why the other things were included is because of the health issues to students—we were trying to encompass anything that threatens students' well being.

BoT Chair Steve Caplin: President Nadauld asked for the definition of "analog." I just was looking at a few sources online, and it means "conventional cigarette," whereas e-cigarettes are considered "digital cigarettes."

President Nadauld: So it's just a higher quality?

RC: But I don't think that's what would be legally interpreted as to what this phrase means—"analog" means "related to" or "analogous to." That's what the vagueness is bad to many faculty—they don't know what else might be related to it that may end up being prohibited or not.

SL: I have a question for the Student Government: this effort has been going on for three years...? Can you characterize the degree of support from student body over that three years? Has it waxed or waned with new students, or been consistent?

Carlos Morgan: From what I've seen it's been consistent. It's something we've always had and will always be interested in. It started three years ago with Abbi Hirschi.

AC: Two things: (1) Based on the student comment—and I can entirely appreciate the importance of being a steward of student health—and that speaks to one of the concerns I've heard from faculty. I had a discussion of this policy in one of my honors classes, and the students in there, while a small sampling, were very disconcerted by some of this once they started to talk about it—figuring out that it could mean things like nicotine patches and gum. They quickly saw that it was antithetical, like Clint said. What is the intention? In this policy, there are two intents behind it: one to protect health and well-beings of students that are non-tobacco users, but on the other hand it's also to protect the well-beings of tobacco users. While those are not mutually exclusive, they are difficult to merge, and that needs to be addressed in how the policy goes forward in its final form—that's a lot of the feedback I'm getting from both faculty and these students. So I'm wondering if there's a way to address that sort-of bifurcated aspect of the policy in a way that's more cohesive? A lot of that has to do with the "tobacco" aspect. This was an issue that came up when the Student Government initially came to the faculty in our very first meeting about this, that was a question that came up immediately: was it a "tobacco" ban or a "smoking" ban, and the students that were there weren't clear on that—even at that point it was apparently an issue.

RC: To follow up with that: when we hear from faculty, most are in favor of preventing second-hand smoke consequences. Some have severe asthma and have had severe attacks as a result of second-hand smoke and everyone is in favor of creating a better policy. Current state law doesn't seem to be adequate because there are air intakes in places that people don't know about, so people end up smoking close to them, and accidents happen. So we understand that the smoking ban part is widely supported. But the other part, about protecting a smoker or tobacco user from themselves, that's where the faculty tend to have more questions. Some faculty are very strongly supportive of individual rights, and they are uncomfortable with the paternalistic nature of telling people what they can and can't do with their bodies. And some faculty said "Yes, sometimes we have to tell people what's best for them when it's clear"; they've made the analogy with seat-belt laws—in a way, that's a law to protect people from themselves. For example, with chewing tobacco: not everyone is for a ban on chewing tobacco (though the vast majority are) because the health consequences are fairly clear, even though it probably doesn't affect other people. That's where we get these two parts; when it goes to how it affects individual choice. That's where faculty as a whole have more qualms and more diversity of opinions.

Elizabeth Bingham: From what I've seen heard, it seems like it would be fairly easy to clear up the vagueness—say "everything but ___." In my mind, it seems like patches and gum would be fine. But we do need to be specific—when we're not, it open floodgates for anyone that can think of something else. It wouldn't be difficult to just change the language in it; whomever the students are can change it and run it by us.

President Nadauld: I think I understand "analogs"; what about "derivatives"?

BoT Chair Steve Caplin: I've looked up a few definitions that consistently say that "analog cigarette" is a slang term that sprang up as a way to distinguish cigarettes made with tobacco from electronic cigarettes.

RC: But that's using the term "analog" in a different format. That's a pun on the concept of "analog information" versus "digital information."

AC: Is that language typical of anti-tobacco policies? It must have come from somewhere.

President Nadauld: That's my question. Obviously it needs some clarification. "Derivatives," Steve are then...? I think you're right: we're picking up phrases from somewhere else.

BoT Chair Steve Caplin: I'll check on "derivatives."

AC: I'm wondering if it's based on a legalistic definition when schools have had to make their policies to get through their legal counsels.

SL: Whatever we choose for words, the intent is that we want a policy restricting the use of smoke and smokeless tobacco. We want to allow the use of patches, gum, and things of that nature.

RC: And e-cigarettes are gray area that we're not sure about.

SL: Yes, but I think that's the intent of what we're trying to achieve.

RC: The other, smaller issue is the smoking in cars with the windows up—that seems to be counter to the issue of health because it creates a concentrated environment for the smoke, for both the smokers and anyone potentially exposed to third-hand smoke, which is particularly unhealthy. That was a big concern.

???: Who are we trying to protect? The person from himself, or other people from that person?

DW: It also goes back to the point made earlier that when you're smoking in your car, smoke clings to you and becomes third-hand smoke.

RC: One faculty member that is a smoker that has had experience at his former institution, where windows were allowed to be down, where amount of smoke is minimal, whereas the third-hand smoke is a more significant issue.

SL: Who among us is going to rap on someone's door if they're smoking in their car with the windows rolled up?

RC: Current policy *requires* windows to be up. The issues was that most smokers that smoke in their car; in the summer here, there are two bad options. That was another concern.

AC: I don't know the answer to this, but hope someone does: on whose policy was ours modeled, or was it an amalgamation of a variety of other policies? Is ours standardized to these other 1600 schools? That comes back to the issue of the language—do some allow windows down, and some don't?

President Nadauld: As I understand it, the general principles and the wishes of students were communicated along with some documents to Martha Talman, our policy writer, to write it up. So I think the language came from her. How much of the specific language came from elsewhere, I don't know, but it shouldn't be difficult to have Martha do a little research and to clarify the issue here about smoke and smokeless tobacco; we don't want to disallow gum and patches, and I don't know what the e-cigarette solution is. But I'm sure that Martha could fix the other parts.

AC: It sounds like we've isolated the major problem areas. I'd propose as Faculty Senate person is that we find out the models of those problem areas from outside, since there's no models in state, on other campuses, to see that we're in line in those areas, and we have something to point to. It sounds like we need to take the best of what's out there and know that we're modeling what's standard.

RC: Carlos, do you happen to know: of those 1600 other campuses that have a policy like this, how many have more expansive policies like this and how many focus exclusively on smoking?

Carlos Morgan: I don't know.

President Nadauld: I think in fact the original campuses were designated as "smoke free," but more recently have been designated "tobacco free." I'm guessing it's more than half at this point, and some of the ones that started out as "smoke free" have become "tobacco free." We could get some data on that, but that's my sense as I've looked at some data.

AC: And language on how those policies are crafted would be useful.

President Nadauld: We could definitely get Martha to do a search of other policy language.

AC: That would help me and my faculty.

DW: I'm kind of pushed to get rid of smoking in cars possibility—make this campus-wide, like the alcohol policy: legal-aged or not, they can't bring alcohol on campus. I don't know why we need to allow smoking in areas on campus—if we do that, we go back to having booths all over campus. I think we push this, however we word it, no smoking or tobacco on campus.

RC: That would require a lawyer—I've heard conflicting things about whether or not we can legally prevent people from doing what they want in their cars. Alcohol is easy because that's already illegal in cars.

DW: I'm not sure how that would differ on campus.

RC: I was told that some legal decisions is that *inside* your car is *your* property, even if the car is parked on someone else's property. The campus can't ban what you do in your property. That's what I was told. Obviously, we need to verify that.

Christina Durham (?): I just have a comment. First, I commend the student body for pushing this for so long; as I've listened to everybody, there's a conflict over whether we want smoke- or tobacco free. But I keep hearing "We want better health for our students." And if that's the focus of this initiative, then it kind of homes in on what our goal is, because it says that interventions that lead to cessations of smoking, like gum and patches, are good. As we move forward, if that's the goal—better health for students and faculty—then some of those things become moot; they become parts of programs that help us create better health. Would that be an accurate representation of where you want this to go? It didn't sound like we want a ban just to ban it—we want better health because it will improve life all around campus for students and faculty. If people quit smoking and damaging themselves, it will help them improve themselves in other areas, too.

Carlos Morgan: That's the perspective that the students had. I do have some more information; I'm sorry I don't have as much information as everyone would like because I wasn't involved from the beginning and I've had to learn from what was written. I want to address how many schools out of that 1600 have tobacco-free policy: I have the white paper from the students, which says (reads) in 2008: 131 campuses that had tobacco-free policies; in 2013: 1129 campuses across the US banned smoking; of those, 766 banned tobacco use of any kind.

RC: So 60% or so.

TF: A couple of points I'd like to make. One, on the legal issue: if there is a precedent that being in your car means being on your property, even if the car is parked on someone else's property, to me that screams "legal problems," even with precedent. If you're in your car you're in your property, but it's still *on* someone else's property, and if the window is open, smoke will get out. But if there's a precedent, it will cause problems. So in the policy, it might just be better to say "off-campus altogether" to avoid those legal problems.

RC: The way it was presented to me was that we *couldn't* ban smoking in cars *because* of the precedent—that's why we need a legal precedent on that aspect.

TF: The other point was regarding looking at other schools' policies—since there are so many, look at ones that have had policies the longest because we can learn from what they've developed and changed and modified in their policies over time.

CB: I started thinking about I came from Ohio, which is instituting their policy as of January 1, and their list of products is up to date. If we're going to be specific, it sounds like we need to go pretty far. (Reads list from web site.) We have to be very extensive and detailed.

DW: Sounds like you need to hit "copy" and then "paste."

RC: That explains why they have that ambiguous language, so they wouldn't have to list all those things.

CB: And that still leaves it open with the "not limited to" part.

RC: If we left the vague language we currently have but added that last part, except for the purpose cessation. There could be new product in the future that we don't know about right now. If we add that phrase, how would the faculty feel about that? That would cause problems with e-cigarettes: some people do use them for cessation purposes. The data are unclear on how helpful they are.

CB: I would rather have something in depth like this so people feel like they have guidance—they know what kinds of things are involved, but leave an ambiguous ending to it.

DW: We could leave e-cigarettes in, because there are things that are *proven* for cessation, like gum and patches, much more than e-cigarettes are.

RC: OK, so the purpose of this is to come to some common ground. And I think we're getting closer. As Faculty Senate Executive Committee representatives, are you more comfortable with *broad* language that allows exceptions for cessation purposes, or would you rather have more detailed language that would have to be updated on an on-going basis because creativity knows no bounds.

AC: I'm more comfortable with the details, specifically language that exempts cessation products. That seems to bridge that gap.

CB: Even if it's broad language, we'll still have to fight those fights with each individual.

RC: And things like "cloves" might not be perceived as tobacco products at all, so having them listed would clear up ambiguity about things like that.

CL: My concern is that we haven't addressed what AC brought up earlier: there's the intent to protect non-users, and I get that, but this feeling that we're the stewards over peoples' choices about their health is uncomfortable to me.

RC: And a lot of other faculty, too; I've heard from some in many departments. It's a minority, but broad viewpoint.

CL: I think it's great that campus has cessation programs, and they should be widely advertised and available, but I don't think we should be *forcing* people to choose that.

SP: How difficult is it to step off campus, if that's the only route you have? I don't feel like it's that difficult—the campus isn't that large that you would have time between.

RC: It would be hard to do in 10 minutes, but I think that example isn't quite the most important issue because you could smoke before a two-hour block or after...it's unusual for people to have 3–4 consecutive classes, where that would be an issue.

SP: Well, my point is that we're not necessarily infringing on peoples' rights to make their own choices; we're just saying "when you're presenthere."

CL: If we're really worried about peoples' health, why are we making them run across the street in traffic?

RC: Our property ends at sidewalk—they just have to go to the sidewalk on the side of the street they're on.

Brad Last: I've been involved in these kinds of discussions about a lot of issues for years. First of all, you're never going to make everyone happy. It appear to me that you have a broad majority that feel a certain way. Also, when you're drafting legislation, the more specific you get, the more problematic it gets. Either way can be problematic. We've had this situation in terms of, spice—legislature got very specific on "spice" being percentages of this and percentages of that, so people just adjusted their formulas a little bit to create a legal form of spice. So enforcing is then a problem.

President Nadauld: The city of St. George is in a lawsuit now over an issue like that.

Brad Last: Well, I just throw that out for your consideration. You're on the right track.

DW: So in your opinion, would it be good to go down that list?

Brad Last: Well, I think the list is pretty good, but it opens the door for use of anything not specifically on the list. Anytime someone drafts legislation, the first they do is go out and see who'd already done it. I guarantee your language came from somebody else's policy, and the broad language was purposeful to cut out lots of things and consider many things to be covered under that broad language.

RC: If we knew which ones they looked at, we could see what experience they had with implementation. The issue about protecting someone from themselves vs. protecting others: there's pretty broad support for preventing second-hand smoke as an issue of protecting others. Protecting someone from themselves is more contentious—there's not as broad a majority as Brad suggested, but my sense is that the majority of faculty would support, for example, a ban on chewing

tobacco, which has no effect on anyone else as long as they don't spit *on* people. There's a majority there, but not unanimity. But e-cigarettes—I don't know what to do.

Elizabeth Bingham: I think this is difficult for us in our state because no universities in the state have passed a ban on smoking or tobacco, but my understanding is that in California, every single universities have a ban.

RC: Definitely for public ones, and probably for the private ones.

Elizabeth Bingham: I lived on East Coast for most of my life—to me, a lot more people smoked there than here. I just asked about Harvard, and even *they* have a smoking ban, which is tough because there's a lot more smokers there. And they have separate of campuses; some schools haven't implemented the ban yet. I think it's neat that the students brought this to the table because we could be good leaders on this issue with regard to what goes on in the state, and other universities are watching us to see what we do, and we have to be careful. It's difficult because we're the first ones in.

RC: One observation I would like to make is that when we say that data are inconclusive, that's different than the argument that the tobacco companies made once upon a time that it was all correlational data. When they said that, and that you couldn't prove causation from the data between cigarettes and lung cancer, they were half technically correct, but that's not what we're talking about here. Here, there's not a strong correlation one way or another—some studies show that e-cigarettes are helpful in quitting, some show they're not. Some show second-hand smoke problems; some show there aren't any. It's a different kind of discussion than with cigarettes in the 1950s.

SL: I don't know that we have to address that in policy—in my mind the policy is fairly simple: it's a tobacco or a smoking policy, and causation or correlation is not to be addressed. The policy is either tobacco or tobacco products to be disallowed, and we allow cessation devices, or some combination/permutation of that. We don't have to, in the policy, talk about correlation of what we're trying to do to public health—we're getting into the weeds there. So let's craft a policy that is short and relatively enforceable and understandable and then go on.

RC: OK, having the caveat of cessation devices, potentially allows e-cigarettes, but I guess they'd have to be approved as such...? But we're still back to the issue of being specific or being general: both points are valid. Many faculty nervous about the general language and what could be included in a "derivative."

Jon Pike: It makes sense to try to improve on the language that we have—does everyone agree on that? I'd like to see other colleges' and universities' language and see if it's better than the "derivatives" comment currently in the draft. I think that would help me. I'm OK with the list CB read. If we look at several things, and maybe have Martha take another attempt, and then we look at that.

RC: I'd like to move toward some resolution—I appreciate the comments we've had. Again, we won't have unanimity, but does that approach seem reasonable? To summarize, that approach would be to become more specific with a list, as some other institutions do, with the caveat that cessation devices would always be allowed despite their connections to other items on list.

Carlos Morgan: I'm in contact with the people that originally created the document, and in that, cessation devices were not ever intended to be included, but e-cigarettes were in the draft because of the inconclusive evidence of their usefulness as such.

CB: For those, we could just defer to the Clean Air act as our justification.

RC: So I would like to get a quick vote from the Faculty Senate Executive Committee: is this course of action where we should make our stand? This will come up for discussion in meetings in 1.5–2 weeks, first at the Executive Staff meeting, and then at University Council. Nate (Staheli) and I want to know how to represent faculty as a whole at those given where we stand. Can we get a quick vote—is that the will of the Faculty Senate Executive Committee, to look for more specificity with caveat of allowing cessation products—what about windows in cars?

BoT Chair Steve Caplin: I can share the opinion of our General Council. I asked Michael Carter for an opinion on this—he's our general counsel and works for state Attorney General's office and is general council for both SUU and DSU. He says his understanding was that the policy draft stopped short of prohibiting smoking in private cars with windows up *only* as a place that person would be allowed to smoke—in other words, the policy *didn't* prohibit people smoking in cars with windows up. I think the interior of a car is institutionally protected: if a police officer has reasonable suspicion that there's contraband in a car, they request permission to search. If denied, they impound the car and can place the driver under arrest and "inventory" the impounded car. We're never going arrest over tobacco, so the care represents a privacy standoff, hence it's exclusion from the policy. I asked him if he was involved in counseling Martha or students on the policy, and if he knew the policy at InterMountain Health Care? He said that IMHC prohibits smoking on their campuses in private vehicles, as private entities. So I think we stop at the car and the private space within.

RC: Thank you, that helps a lot! We just don't know about the windows up or down.

CB: So once smoke leaves the vehicle, it's no longer on private property. I would suggest let them have the windows cracked.

AC: I agree.

DW: Do we have to mention it, honestly?

RC: Yes.

BoT Chair Steve Caplin: What's the purpose of mentioning smoking in the car?

AC: It's the only place they could go on campus.

BoT Chair Steve Caplin: If windows are down, what's the difference between smoking in or out of your car?

RC: Because the act is taking place on private property, but sometimes there are effects outside the property.

SL: I think we need to take the direction of counsel—they've given us direction.

RC: Another consideration to vote on: in investigating policies, do we want to see their window policies are?

SL: No.

TF: If it's constitutionally protected, like you said, we don't have to mention it as protected.

RC: "Windows up" comes across as a punitive measure, not a health measure.

AC: It's not as if you can't avoid someone smoking in their car...! You can just go down a different aisle!

RC: That's our recommendation: smoking allowed in cars, but take out the reference to windows. And be more specific and have the caveats of cessation devices.

BoT Chair Steve Caplin: I'm going to go back and counsel with the board. I didn't hear support for e-cigarettes as cessation devices here...? I heard cessation programs, methods, consumables, etc. are fully supported. Can you clarify for me what you mean by "cessation devices"?

RC: That's general language, but it allows for *if* e-cigarettes are ever shown to be helpful as part of a cessation program, they'd be covered without having to update the policy. We could say "FDA-approved cessation devices" because they have control over cessation devices. They haven't approved e-cigarettes for that, and we can defer to them. But do we want to be *more* specific than that? We were specific about tobacco; do we want to be as specific about cessation devices?

CB: Tie it to the FDA.

DW: If we are going to be specific about what we're banning, we have to leave them in, or else they can go both ways.

RC: Fair enough, and we can put in parentheses "unless approved by the FDA."

DW: We don't even have to do that.

CB: You could come back and modify all tobacco things except "FDA approved."

RC: OK, so that's where we stand right now, I think.