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6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

9  
10 GOVERNMENT ACCOUNTABILITY  
& OVERSIGHT, P.C.,

11 Petitioner,

12 v.

13 THE REGENTS OF THE UNIVERSITY OF  
14 CALIFORNIA,

15 Respondent.  
16

) Case No. 20STCP01226

) **DECLARATION OF SCOTT WALTER IN**  
) **SUPPORT OF PETITION FOR WRIT**

) Trial Date: December 14, 2021 (*Reserved*)

) Time: 9:30 a.m.

) Place: Dept. 82

) Petition filed: April 1, 2020  
17

18 I, Scott Walter, declare:

19 1. I currently reside at 1513 Sixteenth Street, NW, Washington, DC 20036. I make  
20 this declaration in support of the Petition for Writ filed by Petitioner Government Accountability  
21 & Oversight, P.C. (“GAO”) in the above-captioned proceeding. Except as qualified, this  
22 declaration is based on my personal and firsthand knowledge of those facts hereinafter set forth  
23 and I could and would testify competently thereto under oath if called as a witness.

24 2. I am President of the Capital Research Center in Washington, D.C., a think tank  
25 founded in 1984 that specializes in the study of persons and institutions, especially nonprofits,  
26 that influence public policy. We are known as a “watchdog” of the nonprofit world, and our  
27 research has been cited in countless publications, including the *New York Times*, the *Wall Street*  
28 *Journal*, the *Washington Post*, and the *Chronicle of Philanthropy*.

DECLARATION OF SCOTT WALTER IN SUPPORT OF PETITION FOR WRIT

1           3.       All of the research conducted by the Capital Research Center is prepared as part  
2 of our charitable mission to educate the public. Neither I nor the Capital Research Center have  
3 received any compensation from Petitioners or Petitioners' Counsel, and we would not accept it  
4 if offered.

5           4.       I have personally studied, worked in, and raised funds in the nonprofit world for  
6 decades, including five years as Vice President for Publications and Research at the Philanthropy  
7 Roundtable, before serving in a previous presidential administration as Special Assistant to the  
8 President for Domestic Policy. This followed my earning an A.B. at Georgetown University. I  
9 have been published and quoted in leading publications in this sector, including the *Chronicle of*  
10 *Philanthropy*, *Philanthropy Magazine*, and *Philanthropy Daily*, often on the topics of higher  
11 education and donor privacy.<sup>1</sup> Other leading publications for which I have written or been quoted  
12 in include the *Wall Street Journal* and the *New York Times*.<sup>2</sup> During my half-decade as Vice  
13 President of the Philanthropy Roundtable—a membership group for hundreds of donors, both  
14 individual and institutional—I edited the Roundtable's prestigious *Philanthropy Magazine* and  
15 numerous books on charitable giving, such as guidebooks for donors who wish to support

19 <sup>1</sup> For example, Scott Walter, "Mysterious Donors," *PhilanthropyDaily.com*, January 25, 2013  
20 (discussing a longtime Stanford University board member and donor),  
21 <https://www.philanthropydaily.com/mysterious-donors/> accessed September 26, 2021; Scott Walter,  
22 "Secret Donor Man," *Philanthropy* (Winter 2008) (discussing billionaire donor Charles Feeney who  
23 for years tried to keep secret his giving to universities and other grantees),  
24 <https://www.philanthropyroundtable.org/philanthropy-magazine/article/secret-donor-man> accessed  
25 September 26, 2021; quoted in Alex Daniels, "A Makeover for Capitalism: Some high-profile  
26 foundations and donors want a check on corporate power and more equal distribution of wealth,"  
27 *Chronicle of Philanthropy* (January 7, 2020), [https://www.philanthropy.com/article/a-makeover-for-](https://www.philanthropy.com/article/a-makeover-for-capitalism/)  
28 [capitalism/](https://www.philanthropy.com/article/a-makeover-for-capitalism/) accessed September 26, 2021.

<sup>2</sup> For example, Scott Walter, "Inside the Left's Web of 'Dark Money,'" *Wall Street Journal*  
(September 22, 2020), [https://www.wsj.com/articles/inside-the-lefts-web-of-dark-money-](https://www.wsj.com/articles/inside-the-lefts-web-of-dark-money-11603408114?page=1)  
25 [11603408114?page=1](https://www.wsj.com/articles/inside-the-lefts-web-of-dark-money-11603408114?page=1) accessed September 26, 2021; and Kenneth P. Vogel and Katie Robertson,  
26 "Top Bidder for Tribune Newspapers is an Influential Liberal Donor," *New York Times* (April 14,  
27 2021), p. B-1, [https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-](https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-buyer.html)  
28 [buyer.html](https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-buyer.html) accessed September 26, 2021; and William McGurn, "Solyndra and a Billionaire's Guilt  
Trip," *Wall Street Journal* (October 3, 2011),  
<https://www.wsj.com/articles/SB10001424052970204524604576609102333605120> accessed  
September 26, 2021.

1 educational institutions, groups active in environmental giving, groups that help the poor, and  
2 groups that conduct public policy research.<sup>3</sup>

3 5. Giving to educational institutions was a top focus of the Philanthropy  
4 Roundtable's meetings and research, and I spent many hours talking to donors large and small  
5 about their educational giving, in addition to commissioning, editing, and publishing lengthy  
6 articles in this area; for example, a cover story in *Philanthropy Magazine* on a major project at  
7 Princeton.<sup>4</sup>

8 6. For many years after leaving the employ of the Philanthropy Roundtable, I  
9 remained a Contributing Editor to *Philanthropy Magazine*. In addition, I was a contributor to the  
10 Roundtable's definitive *Almanac of American Philanthropy*.<sup>5</sup>

11 7. In my position as President of Capital Research Center, which I have held for the  
12 past six years, I have raised \$20 million for this charitable nonprofit from donors of all types. I  
13 habitually interact with wealthy individual donors and with leaders of various types of  
14 institutional donors (e.g., private foundations and donor-advised fund-providers), and I oversee  
15 this institution's entire fundraising effort. I am often sought out for advice on fundraising from  
16 leaders of other charitable nonprofits and have for years conversed with numerous leading  
17 fundraisers in the sector. In addition, my think tank's research regularly involves advising  
18 charitable donors and groups of donors, and so my colleagues and I frequently counsel individual

19  
20 <sup>3</sup> Examples of publications I commissioned, edited, and published include Thomas J. Bray, *Soaring*  
21 *High: New Strategies for Environmental Giving* (Washington, DC: Philanthropy Roundtable, 2005);  
22 Brian C. Anderson, *A Donor's Guide to School Choice* (Washington, DC: Philanthropy Roundtable,  
23 2004); Paul Rhoads and Stephanie Denby, *Starting a Private Foundation* (Washington, DC:  
24 Philanthropy Roundtable, 2002); John J. Miller, *Strategic Investments in Ideas: How Two*  
25 *Foundations Reshaped America* (Washington, DC: Philanthropy Roundtable, 2003); Terry Ryan,  
26 *Jump-starting the Charter School Movement: A Guide for Donors* (Washington, DC: Philanthropy  
27 Roundtable, 2004); Michael E. Hartmann, *Helping People to Help Themselves: A Guide for Donors*  
28 (Washington, DC: Philanthropy Roundtable, 2005).

<sup>4</sup> Timothy Webster, "A New Birth of Civic Education on Campus: Giving wisely to colleges is hard,  
but an innovative Princeton program shows it can be done," *Philanthropy* (Nov./Dec. 2002),  
<https://web.archive.org/web/20060601231229/http://www.philanthropyroundtable.org/magazines/2002/november/index.html>, accessed September 26, 2021. Another example would be John Walton  
and John F. Kirtley, "Salute to Effective Education Philanthropy," *Philanthropy* (Jan./Feb. 2003),  
<https://web.archive.org/web/20060411084356/http://www.philanthropyroundtable.org/magazines/2003/january/salute.html>, accessed September 26, 2021.

<sup>5</sup> Karl Zinsmeister, *The Almanac of American Philanthropy* (Washington, DC: Philanthropy  
Roundtable, 2016).

1 and institutional donors on their giving. Further, publications produced by my think tank that  
2 provide advice to donors range in length from brief blog posts to entire books.<sup>6</sup>

3 8. I have also testified to the Internal Revenue Service, the U.S. Senate Judiciary  
4 Committee, and multiple state legislatures on issues involving the regulation of charitable  
5 donations.<sup>7</sup> While my think tank is a leader in advocating for donor privacy in private  
6 institutions, my think tank and I have also strongly advocated for transparency, not privacy, in  
7 the place where transparency properly belongs in a free republic, namely, governmental actions  
8 and funding, foreign and domestic.<sup>8</sup>

9 9. The issues raised in this lawsuit are unusual, combining as they do donors and  
10 government. They are not identical to cases that involve only private donors giving to private

11 <sup>6</sup> A book-length example would be Martin Morse Wooster, *How Great Philanthropists Failed and*  
12 *You Can Succeed at Protecting Your Legacy* (Washington, DC: Capital Research Center 2018). Note  
13 that this is the fourth edition we have published of this book.

14 <sup>7</sup> See “Testimony of Scott Walter before the Department of the Treasury, Internal Revenue Service,  
15 Public Hearing on Proposed Regulations, ‘Guidance under Section 6033 Regarding the Reporting  
16 Requirements of Exempt Organizations,’ IRS Auditorium, Washington, DC, February 7, 2020,”  
17 <https://docs.google.com/viewer?url=https%3A%2F%2Fcapitalresearch.org%2Fapp%2Fuploads%2FWalter-S-Testimony-for-IRS-Hearing-on-Schedule-B-Disclosure.pdf> accessed September 26, 2021;  
18 and “Testimony before the U.S. Senate Judiciary Committee Subcommittee on Federal Courts,  
19 Oversight, Agency Action and Federal Rights Hearing on ‘What’s Wrong with the Supreme Court:  
20 The Big-Money Assault on Our Judiciary,’ Scott Walter, President, Capital Research Center, March  
21 10, 2021,”  
22 <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Walter%20Testimony%20before%20Subcommittee%20on%20Federal%20Courts.pdf> accessed September 26, 2021; and “Testimony before  
23 the Pennsylvania House of Representatives State Government Committee, Chaired by Seth M.  
24 Grove, Scott Walter, President, Capital Research Center, April 15, 2021,  
25 <https://capitalresearch.org/app/uploads/Scott-Walter-Testimony-to-PA-House-April-15-2021.pdf>  
26 accessed September 27, 2021; “Testimony before the Arizona Senate Committee on Government,  
27 Chaired by Michelle Ugenti-Rita, Scott Walter, President, Capital Research Center, March 15,  
28 2021,” <https://capitalresearch.org/article/scott-walter-testifies-before-the-arizona-senate/> accessed  
September 27, 2021; Testimony before the Arizona House Committee on Government and  
Elections, Chaired by John Kavanaugh, Scott Walter, President, Capital Research Center, February  
17, 2021,” <https://capitalresearch.org/article/election-irregularities-involving-ctcl-scott-walter-testifies-before-arizona-house-committee/> accessed September 27, 2021; “Testimony before the  
Georgia Senate Judiciary Subcommittee on State Elections Processes, Chaired by Sen. William  
Ligon (R-Brunswick), Scott Walter, President, Capital Research Center, December 3, 2020,”  
<https://capitalresearch.org/app/uploads/Testimony-to-GA-Senate-Judiciary-Subcommittee-on-State-Elections-Processes-12-3-20-Fn.pdf>, accessed September 27, 2021.

<sup>8</sup> For example, Sarah Lee and Robert Stilson, “Biden Transition Illustrates the Need for Foreign-  
Funding Transparency,” *Washington Examiner* (December 15, 2020),  
<https://www.washingtonexaminer.com/opinion/biden-transition-illustrates-need-foreign-funding-transparency> accessed September 26, 2021; and Robert Stilson, “Combating Foreign Government  
Influence in American Institutions” (October 28, 2020),  
<https://capitalresearch.org/article/combating-foreign-government-influence-in-american-institutions/>  
accessed September 26, 2021.

1 charitable institutions. At issue are records created by governmental institutions, albeit records  
2 containing information about private donors. The public interest in governmental transparency is  
3 not in my judgment outweighed by the privacy interests of the donors involved, and proper  
4 governmental transparency does not threaten to gravely hinder the government university's  
5 desire to fundraise from private donors.

6 10. Nor should the governmental employees involved in this case have had an  
7 expectation that all or most of their communications with donors would somehow be beyond  
8 transparency requirements placed on government. Above all, the government's fundraisers  
9 should have recognized two facts. First and most obviously, that as governmental employees  
10 they could never imagine the records they were creating at a governmental institution would  
11 remain private in the way records created at a private institution would. Second, it is grossly  
12 unprofessional for any fundraiser, whether working for a governmental or a private institution, to  
13 record intimate details about donors that would embarrass them if those records became public.

14 11. Experienced fundraisers recognize that written records are inherently susceptible  
15 to public exposure no matter whether they are precisely covered by federal or state public  
16 records laws. At my private institution, I realize that our records may become public through  
17 litigation with private or public parties, or through investigation by governmental agencies, or  
18 accidentally, or by willful employee actions. For example, state attorneys general have  
19 subpoenaed a private charity's records in connection with a private company (my think tank  
20 works with the charity that was subpoenaed).<sup>9</sup> Similarly, when I served as Special Assistant to  
21 the President for Domestic Policy at the White House, my emails were not covered by the federal  
22 Freedom of Information Act (FOIA), but they were requested by the Senate Health, Education,  
23 Labor, and Pensions Committee, and the White House acceded to the request, sending a large  
24 number of my emails to that Committee. My disclosed emails all involved higher education  
25 policy and the interplay of governmental and private dollars at colleges, and these emails fit the  
26 Regents' description in their "Fundraising Exemption Explanation" of "pre-decisional internal

27 <sup>9</sup> See "First Amendment Fight: CEI's Climate Change Subpoena," (April 20, 2016),  
28 <https://cei.org/publication/first-amendment-fight-ceis-climate-change-subpoena/> accessed September  
26, 2021.

1 discussions, which are deliberative processes.” This phenomenon of government disclosure  
2 explains why, even though we staff at the White House recognized that FOIA laws theoretically  
3 did not apply to any record we created, we still knew that we were creating government records  
4 and therefore should follow what was humorously known as “The *Washington Post* rule”: never  
5 put in writing something you would not want published in the *Washington Post*.

6 12. The area of donor communications with universities is especially well known for  
7 being fraught with the possibility of disclosure. I know, and any experienced fundraiser should  
8 be expected to know, that litigation over disclosure of private donors’ communications has  
9 occurred repeatedly in recent years. To name only a few examples: First, Princeton University, a  
10 private institution, faced a multimillion-dollar lawsuit over its use of funds from the Robertson  
11 family, in the course of which information the university had failed to disclose *even to those*  
12 *donors* became public.<sup>10</sup> Second, a multi-year battle occurred at George Mason University, a  
13 public institution, over the details of contributions from billionaires Charles and David Koch—  
14 details that became public as records exchanged between the donors and elements of the public  
15 university were disclosed.<sup>11</sup> Third, the University of Illinois at Urbana–Champaign was ordered  
16 by a judge to release donors’ emails regarding the school’s firing of a tenured professor.<sup>12</sup>  
17 Fourth, a Texas newspaper this year used open records laws to obtain emails from donors to the  
18 University of Texas at Austin.<sup>13</sup> Fifth, perhaps the biggest news story this year involving donors’

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22 <sup>10</sup> See John Hechinger and Daniel Golden, “Poisoned Ivy Fight at Princeton Escalates Over Use of a  
23 Family’s Gift,” *Wall Street Journal* (February 6, 2006), [https://www.sflaw.com/poisoned-ivy-fight-  
24 at-princeton-escalates-over-use-of-a-family-gift/](https://www.sflaw.com/poisoned-ivy-fight-at-princeton-escalates-over-use-of-a-family-gift/) accessed September 26, 2021.

25 <sup>11</sup> See Erica L. Green and Stephanie Saul, “What Charles Koch and Other Donors to George Mason  
26 University Got for Their Money,” *New York Times* (May 5, 2018),  
27 <https://www.nytimes.com/2018/05/05/us/koch-donors-george-mason.html> accessed September 26,  
28 2021.

29 <sup>12</sup> See “Judge Orders Release of University Donor Emails in Salaita Freedom of Information Act  
30 Case,” Center for Constitutional Rights, [https://ccrjustice.org/home/press-center/press-  
31 releases/judge-orders-release-university-donor-emails-salaita-freedom](https://ccrjustice.org/home/press-center/press-releases/judge-orders-release-university-donor-emails-salaita-freedom) accessed September 26, 2021.

32 <sup>13</sup> See Kate McGee, “‘UT needs rich donors’: Emails show wealthy alumni supporting ‘Eyes of  
33 Texas’ threatened to pull donations,” *Texas Tribune* (March 1, 2021),  
34 <https://www.texastribune.org/2021/03/01/ut-eyes-of-texas-donors-emails/> accessed September 26,  
35 2021.

1 communications with a public university was the controversy at the University of North Carolina  
2 over the question whether to grant tenure to Nikole Hannah-Jones, a *New York Times* author.<sup>14</sup>

3 13. These examples, which could easily be multiplied, date back 14 years and include  
4 two stories from this year alone. No competent fundraiser could plausibly claim that he or she  
5 assumes communications with donors are not liable to public disclosure, nor should any  
6 experienced major donor be ignorant of the possibility of such disclosure, and this is the case  
7 even when the institution of higher education is private, much less when it is public. As noted,  
8 public records requests may come from journalists, and they certainly may come in the course of  
9 litigation, when even more extensive disclosure is likely.

10 14. Admittedly, fundraisers including myself are not experts in the details of the  
11 many cases I have cited, nor are we experts in the relevant state laws under which those cases  
12 have been litigated. But no experienced fundraiser could claim to be ignorant of the fact that  
13 numerous cases have arisen, year after year, in which communications between donors and  
14 institutions of higher education have been made public, and therefore no donor or fundraiser  
15 should expect to be able to shield such communications.

16 15. In the course of preparing this affidavit, I have consulted, among others, a veteran  
17 attorney in the field of higher education, who has served in the general counsel's office of a  
18 leading state university and also in the general counsel's office at the U.S. Department of  
19 Education. I explained all of the points I am making in this affidavit, and the attorney concurred  
20 in all of them, observing that she had given the same advice to members of the state university  
21 where she served, namely, that no written records created at a public university should be  
22 assumed to be protected from public disclosure.

23 16. The attorney and I observed that if information were deemed so sensitive that it  
24 must be kept from public disclosure, multiple means of communication can achieve that goal:  
25 First, all oral forms of communication, whether in-person or via electronic means such as  
26 telephones and video calls, can obviate the need for written records; second, it is standard

27 <sup>14</sup> Associated Press, "Donor's Concerns Voice Before Hannah-Jones' Tenure Stalled" (June 1,  
28 2021), <https://apnews.com/article/nc-state-wire-technology-race-and-ethnicity-education-b42f12dff621afb2d05d3fb2c9cf4f96> accessed September 26, 2021.

1 practice at public universities to create independent foundations and supporting organizations  
2 that are not subject to public records laws.

3 17. In addition, the lawyer and I note that, despite the extensive number of cases in  
4 which communications between public universities and donors have become public, those  
5 disclosures have not resulted in noticeable diminishment of fundraising, either at the public  
6 universities involved or in the broader higher education sector. Indeed, voluntary giving to  
7 higher education has done quite well for years, with fiscal year 2019 marking the tenth  
8 consecutive year of growth as measured by the Council for Advancement and Support of  
9 Education.<sup>15</sup>

10 18. The attorney and I also agree on another issue under dispute in the present  
11 litigation, namely, the claim that development efforts are equivalent to a “trade secret.” If that  
12 were true, the development efforts being hidden from the public would need to be something on  
13 a par with business processes that are patentable, a risible claim. As a longtime fundraiser and  
14 student of the charitable sector, I know that the kinds of matters spelled out in this litigation as  
15 worthy of keeping from the public are not esoteric but straightforward and widely known.

16 19. I and my colleagues at Capital Research Center have reviewed all of the  
17 documents we were provided in this litigation, and we observe that the “fundraising exemption  
18 explanation” makes unreasonable claims. “Fundraising strategies and targets” are, in the business  
19 of fundraising, not entirely secretive or hidden. “Targets,” that is, *donors*, are normally well  
20 known to the broader fundraising community precisely because they are pre-existing donors to  
21 other causes and, most often, to the fundraiser choosing the target as well. The “strategies”  
22 employed are likewise not arcane. First, experienced fundraisers like myself typically attend  
23 training sessions by companies that help fundraisers use the same type of strategies across a vast  
24 array of grantees. Second, a particular grantee—and especially a grantee like a public university,  
25 which seeks support from thousands of donors—will craft a general strategy that is used, with as

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27 <sup>15</sup> Ann E. Kaplan, *Voluntary Support of Education: Key findings from data collected for the 2018–*  
28 *19 academic fiscal year for U.S. higher education institutions* (Washington, D.C.: Council for  
Advancement and Support of Education, 2020), p. 4, <https://files.eric.ed.gov/fulltext/ED611086.pdf>  
accessed September 30, 2021.



1 much publicity (not secrecy) as the fundraising department can achieve, with as many donors as  
2 possible. True, major donors are often approached with a slightly personalized version of this  
3 broader strategy, but that hardly constitutes anything remotely close to a “trade secret” or  
4 information whose disclosure would endanger future fundraising. Such personalization typically  
5 involves such “private” matters as, “Dear Mr. and Mrs. Smith, it was a pleasure to speak with  
6 you at the homecoming football game last month.”

7 20. That raises yet another issue in the litigation: the claim that fundraisers could have  
8 extensive communications with major donors that are purely personal. First, this is not true,  
9 given that any competent fundraiser sees all interactions with donors as part of the cultivation of  
10 those donors and thus part of the business of fundraising. In fact, experienced fundraisers know  
11 that it is better for *most* of their interactions with major donors *not* to involve direct monetary  
12 business. One of the most common ways to conduct this kind of cultivation is for fundraisers to  
13 attend fundraising events held by *other* grantees. This provides a chance for interaction with  
14 donors without the donors’ feeling that they are being pursued at the time for additional support.  
15 But it is likely that these interactions will be put into the fundraising department’s records for the  
16 donor involved.

17 21. Of the countless authorities in fundraising who could be cited on this point, let me  
18 quote William Sturtevant, who with Jerold Panas co-founded the Institute for Charitable Giving  
19 decades ago, during which time it has trained over 9,000 professional and volunteer fundraisers.  
20 Sturtevant is Of Counsel to Jerold Panas, Linzy & Partners, one of the leading fundraising  
21 consultancies in America. He previously spent years working for the University of Illinois  
22 Foundation, where he served in multiple leadership roles and “was directly involved with over  
23 \$600 million in major gifts, and during the University’s recently completed campaign, the  
24 Principal Gifts Office [which] guided the effort to secure 65 gifts of \$5 million or more plus  
25 numerous major gifts below that level.”<sup>16</sup> Sturtevant could not be clearer about the role of donor  
26 interactions that do not explicitly discuss fundraising, but are nonetheless a critical part of the  
27 process of fundraising:

28 <sup>16</sup> <https://panaslinzy.com/staff/william-sturtevant/> accessed September 27, 2021.

1 “...In major gifts fundraising, cultivational calls, where you listen and nurture,  
2 far outnumber solicitation calls. The ratio of one to the other depends upon the particular  
3 prospect, his or her relationship with the organization, and the level of the solicitation.  
4 But whatever the specifics, it is safe to say that time spent in cultivation outweighs that  
5 expended on solicitation.”<sup>17</sup>

6 22. Another consultant for fundraisers makes the identical point on the website of a  
7 leading charitable trade group, the National Council of Nonprofits, as follows:

8 “Donors like to feel connected. Many fundraising and marketing gurus, including  
9 Kivi Miller Leroux, in her excellent article for Guidestar, “Nine Clever Ways to Thank  
10 Donors,” point out that donors are eager for updates on progress. Donors want to feel a  
11 personal connection with those helped by the nonprofits they supported....

12 “Whatever you do, keep connected with your existing donors. The 2012 AFP  
13 Fundraising Effectiveness Survey recently startled many by pointing out that during the  
14 period studied (2010 - February 2012), for every \$100 of new dollars raised, \$100 was  
15 lost in downgraded or lapsed gifts. Additionally, the report documented that for every  
16 new 100 donors recruited, nonprofits lost 107 donors through attrition. The authors of the  
17 report observe that it “usually costs less to retain and motivate an existing donor than to  
18 attract a new one.” Therefore, “taking positive steps to reduce gift and donor losses is  
19 often the best strategy to increase net fundraising gains.” This report underscores that  
20 charitable nonprofits must continuously nurture the very important relationships they  
21 have with existing donors to maintain those donors as active supporters. Keep your  
22 friends close!”<sup>18</sup>

23 23. So, with all these considerations in mind, let me consider directly the issues raised  
24 in the present litigation with which I am qualified to render judgment as an expert in fundraising.  
25 First, the “Fundraising Exemption Explanation” under which the Regents are keeping in the dark  
26 86 emails with 11 attachments. I begin by noting the unreasonableness of the Regents’ claim  
27 that, “While not all donor information may be protected in all circumstances where the records  
28 relate to formal agreements reached for expenditures of public funds....” This extreme phrasing  
actually presumes that the norm for public records requests to public university fundraisers  
should be to withhold all records from the public, with perhaps a few exceptions only for formal  
written agreements. No fundraiser or employee of government should expect such extraordinary  
secrecy to prevail in his or her records produced on government systems and involving

26 <sup>17</sup> William Sturtevant, *The Artful Journey: Cultivating and Soliciting the Major Gift*, 2nd ed.  
27 (Chicago: Institutions Press, 2004), p. 71.

28 <sup>18</sup> Jennifer Chandler, “Showing Respect for Donors,” National Council of Nonprofits (November 2,  
2012), <https://www.councilofnonprofits.org/thought-leadership/showing-respect-donors>, accessed  
September 27, 2021 (underlining added).

1 governmental business. Again, not even internal White House records receive such privileged  
2 treatment in practice.

3 24. Second, I will assume (only hypothetically) that (a) disclosing of public records  
4 withheld on the basis of the Fundraising Exemption Explanation would reveal “internal  
5 fundraising discussions relating to, among other things, strategies and particular donor  
6 interactions” and (b) the only means of conducting those internal fundraising discussions was by  
7 email. Under such circumstances, let me consider how likely it is that public disclosure of those  
8 records would “chill the candor of such discussions or preclude them entirely.” In my expert  
9 opinion, I would state there is no reason for the discussions to be chilled or prevented from  
10 occurring. The discussions of whom and how much to ask for funds, as noted above, will focus  
11 mostly on publicly available information, such as the names of donors who have previously  
12 donated (either to the public university or other grantees), what amounts they have donated, what  
13 they have said publicly about their gifts, etc. Similarly, the language and arguments that will be  
14 used will be based, mostly or entirely, on the public university’s existing public fundraising  
15 campaigns that explain why the university is a worthy recipient of financial support. Further,  
16 fundraisers know, and their university legal staff will tell them (as my former university-lawyer  
17 friend told me and told her university colleagues) such records should never be presumed to be  
18 above possible disclosure. As I’ve documented above, numerous public and private universities  
19 have had their communications with donors made public through a variety of means, and I, a  
20 careful student of donor privacy issues, have never seen even a single claim made, much less  
21 proven, that the disclosure of those communications significantly harmed a university’s ability to  
22 raise funds.

23 25. Third, to frame another hypothetical question, I will assume (a) the disclosure of  
24 those public records withheld on the basis of the Fundraising Exemption Explanation would  
25 reveal “internal fundraising discussions relating to, among other things, strategies and particular  
26 donor interactions” and (b) there *were* other available means for conducting sensitive internal  
27 fundraising discussions. In those circumstances, how likely is it that the public disclosure would  
28 “chill the candor of such discussions or preclude them entirely”? This hypothetical, of course, is

1 even easier to answer than the previous one: Such discussions can easily avoid written  
2 documentation through the use of phone calls, conference calls, online video meetings, or the use  
3 of independent private charities that support a public university. So they should not be chilled at  
4 all, much less precluded, in this scenario where alternatives to written government documents are  
5 used. There is absolutely no danger of chilling or preclusion because there need be no such  
6 public documents at all. Even a private institution's fundraisers who deal with private donors and  
7 do not face public records laws often resort to non-written communications to discuss genuinely  
8 sensitive matters.

9         26. Fourth, let us consider the Not Public Record claims used to withhold from the  
10 public 544 documents. I note that over half of those documents are supported in the Not Public  
11 Record Log only by the claim that the email "contains purely personal conversation, and does  
12 not relate to the conduct of the public's business" and is therefore not a truly public record. The  
13 bulk of the remaining documents are asserted to be unrelated to the public's business because the  
14 documents were sent or received by university personnel in their capacity as board members of  
15 external, private institutions.

16         27. If I hypothetically assume that these records were to, from, or relate to Dan  
17 Emmett—a major donor to UCLA's Law School and also a contributor of hundreds of thousands  
18 of dollars through his foundation and living trust to a UCLA-administered personal discretionary  
19 fund under the control of a UCLA Law School employee—the question arises if the allegedly  
20 "not public" records would relate to the conduct of the public's business of fundraising? I insist  
21 they would indeed relate to the public's business of fundraising, because as I've stated, and have  
22 supported from major sources in the fundraising world, all interactions with donors are  
23 considered by experienced fundraisers to be part of the cultivation process. In fact, professional  
24 trainers of fundraisers insist that fundraisers understand that *most* of their interactions with  
25 donors should not entail immediate requests for funding, much less the "formal agreements  
26 reached for expenditures of public funds" that the Regents have had the daring to insist constitute  
27 the outer limits of public records to which the public may possibly by law have a right to see.  
28

1           28.     In sum, as someone with extensive experience both in government service and in  
2 fundraising, who numbers a wide variety of donors as longtime intimates, I cannot imagine that  
3 experienced fundraisers can sincerely believe the claims that are being made on their behalf by  
4 the Regents. On the other hand, I have read many documents that have already been produced in  
5 this litigation which make clear that a number of ideologues are colluding to obtain monies from,  
6 and weaken the position of, large public companies. The same documents reveal that the persons  
7 who are communicating in the documents—businessmen who would benefit from new public  
8 policies, activist groups who would benefit from claims of having changed public policy, state  
9 officials whose political careers would benefit from being able to claim “trophy” in successful  
10 litigation, ideologues on the faculty of UCLA Law School and other schools—appear to be  
11 making efforts to hide their deliberations from public scrutiny, regardless of whether public  
12 record laws actually allow these persons to keep from the public their strenuous efforts to affect  
13 public policy on behalf of the special interests they represent.

14           I declare under penalty of perjury under the laws of California that the foregoing is true and  
15 correct, and that this declaration was executed on September 30, 2021 at Washington, DC.

16  
17   
18 Scott Walter