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**SUPREME COURT
OF THE STATE OF WASHINGTON**

DUANE STORTI, and a class of faculty members,

Petitioners-Appellants,

vs.

UNIVERSITY OF WASHINGTON

Respondent.

**ANSWER TO STATEMENT OF GROUNDS FOR DIRECT
REVIEW BY THE SUPREME COURT**

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FILED
AUG 22 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ORIGINAL

I. INTRODUCTION

This straightforward contract dispute does not meet the standard for direct review under RAP 4.2(a)(4). Plaintiff Duane Storti is seeking to reinstitute a two percent raise that was suspended by the University of Washington in accordance with the terms of its University Handbook. The Handbook expressly warned faculty the raises could be reevaluated “without the influx of new money or in the event of decreased state support.” Facing severe budget cuts in 2009, the University properly suspended two percent faculty raises by following the procedures spelled out in the Handbook. Storti’s challenge to that suspension was properly dismissed on summary judgment based on the language of the Handbook.

In his Statement of Grounds for Direct Review, Storti fails to mention that another University faculty member, Peter Nye, asserted the same claim in a lawsuit filed 14 months before this case was filed. Nye’s case was also properly dismissed on summary judgment, and is currently on appeal. The Court of Appeals heard oral argument in April 2011, and could issue a decision any time.

Storti’s case does not present an issue of broad public import, and there is no urgent reason for the Supreme Court to hear this case now, particularly with the Court of Appeals nearing a decision in the

substantially similar *Nye* case. Direct review should be denied, and this case should be transferred to Division I of the Court of Appeals.

II. FACTUAL BACKGROUND¹

A. The University Followed Established Procedures to Suspend Faculty Raises in Light of Budget Cuts.

In 2009, the University faced the beginning of what has turned out to be years of continually shrinking budgets. In response to significant impending budget cuts, the University exercised its authority under the University Handbook to suspend two percent faculty raises for the 2009-10 and 2010-11 academic years.

Before their suspension, the raises were provided for in Executive Order No. 64 of the University President. The President is the chief executive officer of the University. He has the authority to issue rules, regulations and executive orders for the governance of the University, including executive orders concerning utilization of available resources. University Handbook § 12-12(B) (Handbook excerpts are as Appendix A).

Before issuing an executive order, the President must send it to the Faculty Senate for review. Handbook § 12-21(B)(1). The review by the Faculty Senate must take place “within a reasonable time, but in any event

¹ The facts contained herein are based on the University’s Motion for Summary Judgment. Clerk’s Papers numbers were not yet available at the time this brief was submitted. Key documents are attached hereto as appendices for the Court’s convenience.

no longer than sixty days after receipt of such request for review.” *Id.* (emphasis added). If the Faculty Senate suggests revisions to the proposed order, the President must consult with the Chair of the Faculty Senate to seek to resolve those differences. *Id.* “Following such consultations, **the decision of the President is final.**” *Id.* (emphasis added).

Executive Order No. 64 was implemented following this process, and provided for annual two percent raises for qualifying faculty. Executive Order No. 64 also contained a “Funding Cautions” provision, which explicitly informed faculty members the raises were not guaranteed:

This Faculty Salary Policy is based upon an underlying principle that new funds from Legislative appropriations are required to keep the salary system in equilibrium. Career advancement can be rewarded and the current level of faculty positions sustained only if new funds are provided. Without the infusion of new money from the Legislature into the salary base, career advancement can only be rewarded at the expense of the size of the University faculty. **Without the influx of new money or in the event of decreased State support, a reevaluation of this Faculty Salary Policy may prove necessary.**

Appendix A to Statement of Grounds for Direct Review at 3 (emphasis added).

Against the backdrop of difficult budget cuts, in 2009 President Emmert found it necessary to reevaluate Executive Order No. 64. Appendix A (Decl. of President Mark Emmert at ¶ 8). President Emmert and Faculty Senate Chair David Lovell appointed a Committee to Re-

Evaluate Executive Order No. 64, which included faculty and administration members. *Id.* The outcome of the reevaluation was a proposed new executive order suspending the two percent raises, which President Emmert submitted to the Faculty Senate for review in accordance with the procedures outlined in the University Handbook. Handbook § 12-21(B)(1). Following consultation with the Faculty Senate, the President issued Executive Order No. 29, which suspended the two percent raises for the 2009-10 and 2010-11 academic years. *Id.*

In April 2009, the Board of Regents reviewed the President's new Executive Order. Before passing a resolution endorsing the order, the Regents invited Faculty Senate Chair David Lovell to speak. He praised the process that had been followed, saying:

Well sure, I will make, I will comment about it. Mostly just to confirm what your chair has said that we've been talking about this very actively for several months. And the Executive Order which the Resolution is endorsing and declaring as the policy of the University is an executive order that was the work of a joint committee appointed by me and the President. And that executive order was reviewed in a Faculty Senate meeting. As I reported to you at your previous meeting and what has happened since then is that the Secretary of the Faculty and I in accordance with the Faculty Code prepared a set of comments for the President's consideration, reflecting what we took to be the concerns of the faculty as expressed in that meeting and other venues. And made some suggestions about the wording of the Executive Order—what should be and what should not be in it. Mostly additional things that should be in it. And those suggestions were incorporated into the

Executive Order. We were very pleased to see that our advisory role—not only did we advise but we were listened to and in fact our advice was taken. So we believe the process—it’s a cliché—but we believe that the process worked in this case. And appreciate the Regents’ respect for that process.

Appendix D (Decl. of David Lovell at ¶ 4). The Board of Regents passed a resolution endorsing Executive Order No. 29, and resolved that the new Order “will prevail over any University policies, rules, or codes or regulation to the extent they may be inconsistent.”² Appendix B.

The University’s authority to make this change is based on at least three specific provisions of the University Handbook. First, Executive Order No. 64, which authorized the raises, expressly stated the raises could be reevaluated in the event of decreased funding. Second, the University Handbook gives the University President sole discretion for passing executive orders pursuant to a specified process, and that process was followed here both to implement the raises and to suspend them. Finally, the Regents retained the express authority to change any University rules, regulations, or executive orders at any time.

² The University is a state agency governed by a Board of Regents appointed by the governor. RCW 28B.20.100(1). The Board of Regents has full control over the University and its property. RCW 28B.20.130(1). Although the Board of Regents has delegated some of its authority to the President of the University, the Board retains the “right to intervene and modify any rule, regulation, or executive order formulated by the President or the faculty, the right to amend or rescind any existing rule, regulation, or executive order, and the right to enact such rules, regulations, and orders as it deems proper for the government of the University.” Appendix A (University Handbook § 12-12(A)).

Despite this clear authority, two University faculty members brought lawsuits challenging the suspension.

B. Nye Filed a Lawsuit in October 2009.

Peter Nye filed a class action lawsuit against the University in 2009, claiming the University lacked authority to change the salary policy for 2009-10 and 2010-11, and, even if it had that authority, that the change could not apply to the 2009-10 academic year. Opening Brief of Appellant at 36–37, 47–48, *Nye v. Univ. of Wash.*, No. 65143-9-I (Aug. 19, 2010). Nye’s case was dismissed on summary judgment in March 2010.³ The Court of Appeals heard argument on Nye’s appeal in April 2011.

C. Storti Waited until December 2010 to File Similar Lawsuit.

Storti was aware of Nye’s lawsuit and was offered the opportunity to join. Instead, he waited more than a year and then filed his own case in December 2010. Unlike Nye, Storti does not claim the University lacked authority to suspend the raises. Storti in fact expressly acknowledges the University had the necessary authority and followed a proper process to enact the suspension. Storti’s Complaint at ¶ 26. Storti’s only argument, which was also made by Nye, is that the change should not have been effective for the 2009-10 academic year because he had already worked

³ Nye’s case was dismissed before class certification.

part of the 2008-09 academic year with the alleged expectation of getting a raise the following year.

Storti has previously sued the University related to salary issues. Although Storti claims his current case is the same as his previous case, the two cases are different. In addition to involving different years, the University followed different procedures in each case. In 2002, the University failed to fund the raises **without** first taking action to reevaluate the raises or officially suspend them. Storti sued, and obtained a summary judgment ruling in favor of University faculty. The Superior Court reasoned that, although the University retained the right to change Executive Order No. 64, it could not leave the policy on the books and simply fail to fund salary increases. *Storti v. University of Washington*, King County Superior Court Cause No. 04-2-16973-9 SEA, Order Granting Plaintiff's Mot. for Summ. J., Oct. 25, 2005 (J. Yu) at 5-6 (attached as Appendix B to Storti's Statement of Grounds). The court found that "the word 'reevaluation' reserves the right of the University to change the policy at some future date." *Id.* at 5. The court expressly did **"not reach the question of what process would have been utilized to repeal, evaluate, or modify the Faculty Salary Policy."** *Id.* at 6 (emphasis added)

That case settled, and no final judgment on this issue was entered by the trial court. The settlement agreement, approved by the superior court, expressly provided that it could not be used to establish liability in any subsequent proceeding. Appendix B to Storti's Statement of Grounds (Class Action Settlement Agreement at 1).

The present case deals with a different year and different facts. This time, the University engaged in a reevaluation process and suspended Executive Order No. 64 after undisputedly following the requirements of the University Handbook. Faced with competing summary judgment motions from Storti and the University, Judge Hilyer dismissed Storti's case.

III. ARGUMENT

A. **This Employment Contract Dispute is Not Suitable for Direct Review.**

Storti seeks direct review pursuant to RAP 4.2(a)(4), which authorizes direct review of "[a] case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." This appeal does not meet those criteria.

This case does not involve a "fundamental" issue of "broad public import." Indeed, this case can be decided by simply reading the University Handbook. Although the Handbook must be read in light of Washington law, it alone provides the terms that govern resolution of this

appeal. The issues in this case therefore do not extend beyond the University (the only place where the Handbook has any relevance), and do not involve “fundamental” issues of “broad public import” that would change existing law or affect anyone outside of the parties in this case. As Storti himself concedes, “This contract is subject to a traditional contract analysis.” Statement of Grounds at 8.

This appeal is unlike any case cited by Storti in which the Court granted direct review. *See* Statement of Grounds at 12. Each case cited by Storti involved constitutional questions or significant legislative action (or both). *See id.*⁴ In fact, in many of those cases a basis for direct review was RAP 4.2(a)(2), which covers laws declared unconstitutional by a trial court.

By contrast, this appeal involves a simple contract dispute between a single state employer and some of its employees. The mere fact that a

⁴ *Federal Way Sch Dist v. State*, 167 Wn.2d 514, 522-23, 219 P.3d 941 (2009) (involving constitutional challenge to state funding formula for public schools); *Wash State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 289, 174 P.3d 1142 (2007) (involving statutory challenge to new taxes imposed by legislature); *State ex rel Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 230, 88 P.3d 375 (2004) (involving various challenges, including constitutional challenges to legislative action, relating to construction of second Tacoma Narrows Bridge); *City of Burien v. Kiga*, 144 Wn.2d 819, 822, 31 P.3d 659 (2001) (involving constitutional challenge to Initiative 722, which eliminated certain taxes and placed limits on new property tax increases); *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 191, 11 P.3d 762 (2000) (involving constitutional challenge to Initiative 695, which dealt with car license fees and future state-and local tax increases); *Caritas Servs, Inc v. Dep't of Soc & Health Servs.*, 123 Wn.2d 391, 395, 869 P.2d 28 (1994) (involving unconstitutional legislative action); *Carlstrom v. State*, 103 Wn.2d 391, 393-94, 694 P.2d 1 (1985) (same)

state agency is involved does not automatically make the case suitable for direct review. This employee handbook appeal has no “broad public import” and touches on no “fundamental” issues that would affect anyone besides the parties.⁵

Nor does this case involve an “urgent” issue that requires “prompt” resolution. Storti did not file this action until approximately 21 months after the University suspended two percent raises, 14 months after Nye filed his similar complaint, and 9 months after Nye’s claims were dismissed on summary judgment. Storti plainly never considered this to be an “urgent” issue and, in fact, the relief he seeks—reinstatement of the raises plus any necessary back pay or front pay—would make the plaintiffs whole no matter when a final decision is rendered.

B. This Appeal Should Follow the Same Path as the Nye Action Already Pending in the Court of Appeals.

The Nye case involves the same alleged contract (the University Handbook), the same alleged claim (breach of that contract), based on the same facts (the University’s suspension of the raises in 2009). The *Nye*

⁵ Storti also claims his res judicata and collateral estoppel arguments are suitable for direct review. Statement of Grounds at 1. The Superior Court rejected his arguments on those theories twice, by denying a motion for judgment on the pleadings and denying Storti’s summary judgment motion. And for good reason. The facts of this case are different from Storti’s previous lawsuit, so neither res judicata nor collateral estoppel applies. Moreover, by their nature res judicata and collateral estoppel relate to the specifics of a dispute between the same parties. Even Storti does not argue that the res judicata and collateral estoppel issues are of such broad public import that they require direct Supreme Court review.

case has already been fully briefed and argued before the Court of Appeals, and a decision could issue at any time.

Storti does not provide any reason why he should leapfrog ahead of *Nye* in the appellate process. The pendency of the *Nye* appeal underscores the wisdom of appellate consideration of the *Storti* case in the normal course. Following *Nye*, the *Storti* case may end at the Court of Appeals level. At a minimum, the Court of Appeals decisions will help illustrate for this Court whether these issues merit Supreme Court review.

IV. CONCLUSION

Storti's case does not involve an "urgent issue of broad public import which requires prompt and ultimate determination." Storti cannot claim urgency after waiting nearly two years to file this claim. The case also does not involve any issues of broad public import. It is simply a breach of contract case that turns on the specific language of an employee

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handbook. This case should follow the same path as *Nye*, which involves similar issues and is currently pending before the Court of Appeals.

RESPECTFULLY SUBMITTED this 22nd day of August, 2011.

HILLIS CLARK MARTIN & PETERSON P.S.

By



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Appendix A

Excerpts from University Handbook, attached as Exhibit A to the Declaration of Mark Emmert, attached as Exhibit 1 to the Declaration of Louis D. Peterson in Support of Defendant's Motion for Summary Judgment filed on May 27, 2011.

Excerpts from University Handbook

Sections 12-12, 12-21, and 22-54

EXHIBIT A

PART I: Delegations of Authority

Chapter 12

THE ADMINISTRATION

Section 12-01. The President: Statutory Provisions Relating to the President [For the text of statutory provisions relating to powers and duties of the President, see Volume I, "Statutes," RCW 28B 20 130(2), 28B 10 528, and 28B 20 200]

Section 12-11 The President and Other Officers

- A The President of the University shall be elected by the Board upon receiving the affirmative votes of not less than two-thirds of the members of the Board, and shall serve at the pleasure of the Board. The President of the University shall be the chief executive officer of the University and shall be responsible directly to the Board for the management and conduct of all the affairs of the University except those which by law, these By-laws, the Standing Orders, or other orders of the Board are the specific responsibility of other persons or bodies. The President of the University is authorized to attend all regular and special meetings of the Board and its committees unless requested otherwise in specific instances by the Board or committee, and is authorized to bring matters before the Board or any of its committees for discussion and action.
- B The President of the University is authorized and encouraged to recommend for appointment by the Board such number of vice presidents, deans, and other officers as may be necessary for assistance in carrying out efficiently the manifold responsibilities of the chief executive officer of the University. All such officers of the University shall be under the general supervision of and shall exercise such powers and duties as may be prescribed by the President of the University.

By-laws of the Board of Regents, Article IV, September 17, 1971, as amended January 21, 1972, December 17, 1976

Section 12-12. Delegation of Authority to the President and Channel of Authority

- A *Authority of the Board* Under state law the Board of Regents has full control of the University and its property of various kinds. Any authority delegated by the Board shall always be subject to the ultimate authority of the Board. In retaining the ultimate authority over the University with which it is charged by law to exercise within constitutional and statutory limitations, the Board shall exercise the right of periodic review of any and all aspects of government of the University, the right to intervene and modify any rule, regulation, or executive order formulated by the President or the faculty, the right to amend or rescind any existing rule, regulation, or executive order, and the right to enact such rules, regulations, and orders as it deems proper for the government of the University.
- B *Government of the University.* For the purpose of effecting the government of the University under and by the Board of Regents, the President of the University or the President's designee is authorized to act for the Board of Regents in formulating, prescribing and issuing rules, regulations, and executive orders not inconsistent with the By-laws, Standing Orders, and other orders of the Board and applicable state law for the immediate government of the University. The President is specifically authorized to establish emergency rules and amendments; to establish expedited rules and amendments in order to correct typographical errors, make address changes, or clarify language of a rule without changing its effect; and to make expedited repeals. In carrying out these duties, the President or the President's designee shall consult the University faculty and may delegate in whole or in part the responsibility for formulating such rules, regulations, and executive orders to said faculty. It is not intended that such consultation or delegation shall remove from the President or the President's designee the authority and the responsibility vested in the President by the Board of Regents for such decisions, among others, as those concerning the utilization of available resources, organizational structure, and administrative personnel.

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The channel of authority from the Board of Regents to the faculty, staff, and other officers and employees of the University shall be through the President of the University. All faculty, staff, and other officers and employees of the University shall, through appropriate channels, be responsible to the President of the University and through the President to the Board of Regents.

- C Faculty, Classified Staff, and Professional Personnel** The President of the University or the President's designee is authorized to act for the Board of Regents regarding all personnel and employment matters concerning the faculty, classified staff, and professional personnel except the following: new appointments of vice presidents, deans, department chairs, and directors of academic units; new appointments to the rank of professor, associate professor, and assistant professor; new appointments to faculty positions with tenure; new appointments of full-time instructors and lecturers; new appointments of full-time acting and visiting faculty in professorial ranks, instructorships, and lectureships; appointments to endowed chairs or professorships; appointments of distinguished visitors; policy changes in retirement, insurance, and other fringe benefit provisions; and initial collective bargaining agreements with representatives of newly certified bargaining units.
- D Grant and Contract Awards** The President of the University or the President's designee is authorized to act for the Board of Regents regarding all matters concerning grants and contracts for research, development, service, and training except the acceptance of initial contract awards exceeding \$1,000,000; provided, that the President or the President's designee is authorized to accept initial contract awards exceeding \$1,000,000 whenever the period between scheduled Board of Regents meetings exceeds 45 days, with a report of all such awards to be submitted to the next scheduled monthly meeting of the Board.
- E Student Body** The President of the University or the President's designee is authorized to act for the Board of Regents in the management of the student body and other matters incident thereto, including athletics, except the following: the establishment of written standards of student conduct and formal hearing procedures for student discipline.
- F Execution of Instruments, Business Affairs, and Operations** The President of the University or the President's designee is authorized to act for the Board of Regents regarding the execution and administration of instruments and the general business and financial affairs of the University which occur in the usual course of business except the following:
1. The naming of University buildings or outdoor areas in recognition of individuals or organizations;
 2. The execution of instruments relating to real property, including the Metropolitan Tract, where the anticipated cost or value to the University exceeds \$1,000,000;
 3. The appointment of external auditors; insurance brokers; investment bankers, managers and advisers; and financial custodians;
 4. The selection of depositories other than national or state chartered institutions;
 5. The use of University facilities by individuals or organizations for non-University events that would significantly affect normal campus activities or the surrounding community;
 6. Any instrument, prior to its execution, that the President, the Executive Vice President, or any Regent deems appropriate for Regental consideration;
 7. When a capital project budget is anticipated to exceed \$1,000,000, approval of that capital project budget, appointment of project architects, award of construction contracts, and single increases to the capital project budget where the increase is greater than 10% of the approved project budget. However, when the anticipated capital project budget exceeds \$1,000,000 and is less than \$5,000,000, the President or the President's designee may approve and execute all instruments related to the capital project and report all such actions to the Board of Regents no less often than quarterly.

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- 8 The execution of any other instruments, including but not limited to instruments related to acquisitions of goods and services, where the anticipated cost or value to the University exceeds \$1,000,000. However, when the cost or value to the University exceeds \$1,000,000 and is less than \$5,000,000, the President or the President's designee may approve and execute the instruments and report all such actions to the Board of Regents no less often than quarterly. When the ultimate aggregate cost to the University is not known in advance for instruments relating to the acquisition of goods or services on a continuing or intermittent basis (e.g. rental, service, or supply contracts), the amounts set forth in this paragraph shall be calculated on a per month basis.
- 9 Notwithstanding the dollar limits specified in 2, 7, and 8, the President or the President's designee is authorized to act for the Board of Regents regarding the execution and administration of all instruments, business affairs, and operations relating to:
- a The procurement of utility services;
 - b Subcontracts for collaborative research entered into in furtherance of sponsored research programs;
 - c The procurement of goods and services made by participating in contracts entered into by nonprofit cooperative hospital group purchasing organizations, or awarded by the state of Washington Department of General Administration and Department of Information Services;
 - d The procurement of equipment and furnishings that are included in capital project budgets that have been authorized by the Board of Regents;
 - e The procurement of goods and services for sponsored research programs when the source of the goods or services is directed by the sponsor, or the sponsor retains title to the goods acquired;
 - f The settlement of claims or lawsuits brought against the University;
 - g The procurement of property or casualty insurance;
 - h Leases of real property and modifications thereto of up to 20 years;
 - i Deferred gift assets;
 - j Real property acquired through gift or devise;
 - k Actions necessary to protect the University's interests and operations in response to an emergency situation; and
 - l The execution of all time-critical instruments and business affairs requiring action between scheduled Board of Regents meetings, provided that the President of the University or the President's designee secures approval of the Chair or Vice Chair of the appropriate Regents Committee and submits a report of any actions taken pursuant to this delegation to the Board of Regents at its next regularly scheduled meeting.
- G *Commencement of Legal Action* The President of the University or the President's designee is authorized to act for the Board of Regents regarding all legal action necessary to protect the interests of the University; provided, that no litigation shall be instituted against a public entity or official or in exercise of the power of eminent domain without consultation with the President of the Board of Regents or, in the absence of the President, the Vice President of the Board of Regents.
- H *Gift Evaluation and Acceptance* The Board of Regents of the University of Washington authorizes the

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President, or the President's designee, to accept all current and deferred gifts to the University, including gifts to establish quasi-endowed or permanently endowed funds

1. Not Included in this delegation are the following:

- a Gifts to the University of Washington Foundation, which shall continue to be accepted by the University of Washington Foundation in accordance with the terms and conditions of the Agreement for Services between the University and the Foundation dated October 18, 1988 (as may be amended from time to time);
- b Gifts that create obligations on the part of the University for expenditures or costs for which there is no established funding source;
- c Gifts with a value exceeding \$5,000,000 which are:
 - 1 for construction of facilities not previously approved, or
 - 2 of non-traditional investment assets (such as real estate, debt instruments, closely held stock, partnership interests, permanent insurance policies, royalties, copyrights, licenses, and other illiquid assets); provided such gifts with a value between \$1,000,000 and \$5,000,000 will be reported to the Board of Regents quarterly;
- d A gift requiring naming of a permanent University building; and
- e Any other gift that the President, the Vice President for Development and Alumni Relations, or any Regent deems appropriate for Regental consideration

2. Concurrence Required in Certain Gift Transactions

- a The following types of gifts shall be accepted only upon the recommendation of the Vice President for Development and Alumni Relations and the concurrence of the Treasurer of the Board of Regents, or their designees:
 - 1 Current gifts of non-traditional investment assets, charitable lead trusts where the University is to act as trustee, bargain sale gifts of property, and partial interest gifts
 - 2 Deferred gifts, if the University is to act as trustee or custodian of the deferred gift
- b Gifts of real estate, interests in real estate, or gifts of debt instruments secured by real estate shall be accepted only with the concurrence of the University's Real Estate Officer. The Real Estate Officer shall determine in each such case whether a hazardous waste inquiry or other due diligence is required, and the scope and extent of such inquiry. The Real Estate Office, in consultation with the Development Office, shall establish further policies and procedures regarding evaluation of gifts of real estate, as may be necessary or desirable from time to time. The Real Estate Officer shall, when appropriate, engage the Attorney General, or a Special Assistant Attorney General appointed thereby, in legal matters pertaining to the evaluation and administration of gift real property
- c Gift credit for discounted purchases shall be awarded only upon the recommendation of the Dean or Director of the recipient unit and the Director of Corporation/Foundation Relations, and the concurrence of the Executive Vice President or designee
- d Any gift with unusual terms or conditions affecting an academic program shall be

accepted only with the concurrence of the Provost, or the Provost's designee, to the proposed terms or conditions

- 3 *Use of Legal Counsel* The President shall, when appropriate, engage the Attorney General, or a Special Assistant Attorney General appointed thereby, in legal matters pertaining to the Development Program. The Vice President for Development and Alumni Relations or the Vice President's designee shall assist the President in evaluating technical considerations regarding gift acceptance, and shall advise the Financial Management staff of potential fiduciary concerns affecting the administration of charitable trusts and life income gifts

All written agreements substantially shall follow the format of the specimen gift agreements approved by the Office of the Attorney General. Because the University does not provide legal advice to prospective donors, all prospective donors shall be urged to seek their own legal counsel in matters relating to their gift planning, taxes, and estate planning

- 4 *Negotiation of Planned Gifts* The Vice President for Development and Alumni Relations and the Vice President's designees charged with securing deferred gifts are authorized to negotiate with prospective donors regarding the terms of lead trusts, partial interest gifts, bargain sale gifts, gifts of non-traditional investment assets and deferred gifts benefiting the University, following program guidelines and prototype agreements approved by the Office of the Attorney General. Where appropriate, they shall consult with the Treasurer of the Board of Regents and the Real Estate Officer in negotiating such gifts

- I *Disposition of Gifts* The proceeds of any gift, devise, bequest, or contribution received by the University shall be administered in accordance with the intention of the donor and any directions of the Board of Regents in accepting the gift. The President of the University or the President's designee is authorized to act for the Board of Regents regarding:

- 1 The disposition of gifts; and
- 2 The expenditure of the accumulated and current income of the Walker-Ames Fund in accordance with the terms of the resolution and memorandum of agreement adopted by the Board on August 29, 1931; provided, that a plan for such expenditures has been first approved by the President and the Vice President of the Board

Standing Orders of the Board of Regents, Chapter I, September 17, 1971, revised June 23, 1972, January 9, 1981; July 11, 1985; February 5, 1992, March 20, 1992; January 21, 2000; September 17, 2004; March 19, 2009

Section 12-20.* The Office of the President The Office of the President of the University consists of the President, the Provost, the several Vice Presidents, and other administrative officers and staff who report directly to the President. These general officers of the University exercise such powers and duties as prescribed by the President

Executive Order No. 1 of the President, June 1, 1972; revised February 21, 1978, October 1, 1982

* This exception to the numbering system has been made to accommodate added material

Section 12-21. The President

A. Functions and Responsibilities

As the chief executive officer of the University, the President has responsibility for the general welfare of the institution, including its programs in instruction, research, and public service. The President is responsible directly to the Board of Regents for the management of the University. The President is the University community's official representative to the Board of Regents. For example, the President is authorized to bring matters to the Board of Regents, or to any of its committees for action. With the advice and consent of

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the Board of Regents, and after consultation with the Provost, other appropriate members of the University administration, and such groups as the Faculty Senate, the President develops and directs the administration of policies, regulations, and procedures that affect the entire University. The establishment and maintenance of effective relationships with officers of federal and local governments, including the Governor, the State Legislature, members of Congress, and Federal agencies are among the important continuing responsibilities of the President. The President represents the University before the Higher Education Coordinating Board (HEC Board) and to the presidents of other state higher education institutions. The President also serves as the University's principal liaison officer with such other external bodies as national higher education associations, accrediting agencies, the chief executive officers of the member institutions of the Pacific Athletic Conference (Pac-10), and a variety of other organizations. In addition to communication and interaction with the faculty, staff, and the student body, the President is concerned with a number of important external support groups and constituencies identified with the institution's diverse interests, such as alumni, advisory, and visiting committees; private donors; and civic, professional, and community organizations.

Executive Order No. 2 of the President, June 1, 1972, revised February 21, 1978; October 1, 1982

B Executive Order and Administrative Order Procedure

1 Before an Executive Order is promulgated or revised by the President, it shall be reviewed by the Faculty Senate. Additionally, the President may request reviews of the Executive Order from other individuals or campus bodies as desired. The President shall forward the proposed Executive Order (or revision) to the Faculty Senate Chair and to the Secretary of the Faculty, noting reviews that have taken place and requesting appropriate Faculty Senate review. The Faculty Senate Chair shall arrange a review and notify the President of the outcome of the review within a reasonable time, but in any event no longer than sixty days after receipt of such request for review. If revisions to the proposed order suggested by the Faculty Senate are not approved by the President, there shall be consultations with the Chair of the Faculty Senate to seek to resolve the differences. Following such consultations, the decision of the President is final. When signed by the President, the original of the Executive Order shall be retained in the Executive Order file in the President's Office. The Rules Coordination Office shall assign a number to any new Executive Order and publish all orders. Executive Orders become effective on the day signed by the President, unless otherwise noted within the text of the order.

2 Administrative Orders are delegations of authority to University personnel for specific functions and are promulgated or revised by the President without required reviews, as they may involve timely deadlines for compliance with state or federal laws. However, Administrative Orders may be reviewed by individuals or campus bodies as desired by the President prior to finalization. When signed by the President, the original Administrative Order shall be retained in the Administrative Order file in the President's Office. The Rules Coordination Office shall assign a number to any new Administrative Order and publish all orders. Administrative Orders become effective on the day signed by the President, unless otherwise noted within the text of the order.

3 Upon verification, housekeeping changes for both Executive Orders and Administrative Orders may be made by the President's Office or the Rules Coordination Office to correct typographical errors; make address, organization name, or job title changes; or clarify language of an order without changing its effect. These housekeeping changes shall also be retained in the appropriate file in the President's Office and published by the Rules Coordination Office.

Executive Order No. 3 of the President, June 12, 1996, revised January 6, 2003; May 11, 2007

C Delegation of Presidential Authority

1. Business and Financial Affairs

- A Except as otherwise provided in other Administrative Orders or Sections B through E below, or unless otherwise expressly delegated, the Executive Vice President or the Executive Vice President's designee is authorized to act for the President of the University regarding the execution and administration of instruments and the general business and financial affairs of the University.

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which occur in the course of business, except the following:

1. Initial collective bargaining agreements with representatives of newly certified bargaining units;
2. The naming of University buildings or outdoor areas in recognition of individuals or organizations;
3. The execution of instruments relating to real property, including the Metropolitan Tract, where the anticipated cost or value to the University exceeds \$1,000,000;
4. The appointment of external auditors; insurance brokers; investment bankers, managers and advisors; and financial custodians;
5. The selection of depositories other than national or state chartered institutions;
6. The use of University facilities by individuals or organizations for non-University events that would significantly affect normal campus activities or the surrounding community;
7. Any instrument, prior to its execution, that the President, the Executive Vice President, or any Regent deems appropriate for Regental consideration;
8. When a capital project budget is anticipated to exceed \$1,000,000, approval of that capital project budget, appointment of project architects, award of construction contracts, and single increases to the capital project budget where the increase is greater than 10% of the approved project budget. However, when the anticipated capital project budget exceeds \$1,000,000 and is less than \$5,000,000, the Executive Vice President or the Executive Vice President's designee may approve and execute all instruments related to the capital project and report all such actions to the Board of Regents no less often than quarterly.
9. The execution of any other instruments, including but not limited to instruments related to acquisitions of goods and services, where the anticipated cost or value to the University exceeds \$1,000,000. However, when the cost or value to the University exceeds \$1,000,000 and is less than \$5,000,000, the Executive Vice President or the Executive Vice President's designee may approve and execute the instruments and report all such actions to the Board of Regents no less often than quarterly. When the ultimate aggregate cost to the University is not known in advance for instruments relating to the acquisition of goods or services on a continuing or intermittent basis (e.g., rental, service, or supply contracts), the amounts set forth in this paragraph shall be calculated on a per month basis.
10. Notwithstanding the dollar limits specified in 3, 8 and 9, above, the Executive Vice President or the Executive Vice President's designee is authorized to act for the President regarding the execution and administration of all instruments that have been delegated to the President by the Board of Regents and have not been delegated elsewhere under Sections B through E below or under other Administrative Orders. This authority specifically includes instruments relating to:
 - a. The procurement of utility services;
 - b. Subcontracts for collaborative research entered into in furtherance of sponsored research programs;
 - c. The procurement of goods and services made by participating in contracts entered into by nonprofit cooperative hospital group purchasing organizations, or awarded by the state of Washington Department of General Administration and Department of Information Services;
 - d. The procurement of equipment and furnishings that are included in capital project budgets that have been authorized by the Board of Regents;
 - e. The procurement of goods and services for sponsored research programs when the source

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- of the goods or services is directed by the sponsor, or the sponsor retains title to the goods acquired;
 - f The settlement of claims or lawsuits brought against the University;
 - g The procurement of property or casualty insurance;
 - h Leases of real property and modifications thereto of up to 20 years;
 - i Deferred gift assets;
 - j Real property acquired through gift or devise;
 - k Financing documents related to the financing or refinancing of real or personal property up to a term of 30 years;
 - l Actions necessary to protect the University's interests in response to an emergency situation arising out of a fire or other casualty; and
 - m The execution of all time-critical instruments and business affairs requiring action between scheduled Board of Regents meetings provided that the Executive Vice President or the Executive Vice President's designee secures approval of the Chair or Vice Chair of the appropriate Regents Committee and submits a report of any actions taken pursuant to this delegation to the Board of Regents at its next regularly scheduled meeting
- B The Vice President for Student Affairs or the Vice President for Student Affairs' designee is authorized to act for the President of the University regarding the execution and administration of the following types of agreements, except agreements in excess of \$1,000,000 in cost or value to the University:
- 1 Work-study agreements;
 - 2. Agreements for the rental or use of University facilities under the management of the Vice President for Student Affairs;
 - 3 Agreements for student activities sponsored by the Associated Students for the University of Washington (ASUW) or the Graduate and Professional Student Senate (GPSS); and
 - 4 Other agreements for the provision of student services, programs and activities for which the Vice President for Student Affairs has been assigned administrative responsibility
- C Except as provided in Sections D and E below, the Provost or the Provost's designee is authorized to act for the President regarding the execution and administration of affiliation agreements involving academic units
- D The Vice President for Medical Affairs or the Vice President for Medical Affairs' designee is authorized to act for the President regarding the execution and administration of:
- 1 Affiliation agreements, patient care agreements, and other agreements involving the School of Medicine, the University of Washington Medical Center, Harborview Medical Center, or other hospitals or clinics owned or managed by the University, where the anticipated cost to the University does not exceed \$1,000,000 and the authority to execute such agreements has not been delegated to another officer of the University; and
 - 2 The following instruments which occur in the usual course of business for Harborview Medical Center:
 - a Instruments relating to the acquisition of goods or services where the cost to Harborview

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Medical Center does not exceed \$1,000,000, provided, that for instruments relating to the acquisition of goods or services on a continuing or intermittent basis (e.g. rental, service or supply contracts) where the ultimate aggregate cost to Harborview Medical Center is not known in advance, this delegation shall apply only when the expected cost to Harborview Medical Center does not exceed \$1,000,000 per month;

- b Documents relating to the procurement of utility services for Harborview Medical Center;
 - c Documents necessary to protect Harborview Medical Center's interests in response to an emergency situation arising out of fire or other casualty; and
 - d Leases of any real property for a period less than thirty days
- E The Executive Director of Health Sciences Administration or the Executive Director of Health Sciences Administration's designee is authorized to act for the President regarding the execution and administration of affiliation agreements, patient care agreements, and other agreements relating to Health Sciences schools other than the School of Medicine, where the anticipated cost to the University does not exceed \$1,000,000 and the authority to execute such agreements has not been delegated to another officer of the University

Administrative Order No 1 (Revised) April 5, 2001, May 10, 2005

2 Civil Disorders

a In the event of any threatened or actual civil disorder on the campus of the University of Washington, Seattle at a time when the President of the University is absent from the campus, the authority to take all necessary and appropriate actions on behalf of the President of the University is hereby delegated to the following University officers in the order listed below, with such authority being delegated to the highest ranked University officer on the list whom the University Police Department is able to contact:

- (1) Provost and Vice President for Academic Affairs
- (2) Executive Vice President
- (3) Vice Provost for Student Life
- (4) Vice Provost and Dean of Undergraduate Academic Affairs

In the following circumstances, the Chief of the University Police Department or, in the Chief's absence, the senior on-call police supervisor, is hereby delegated the authority to take all necessary and appropriate actions on behalf of the President:

- (1) When neither the President nor any of the University officers listed above can be contacted within a reasonable period of time, given the immediacy and other circumstances of the threatened or actual civil disorder
- (2) When an actual civil disorder is in progress, and immediate action is necessary to protect persons or property from further injury or damage

b In the event of any threatened or actual disorder on the campus of either the University of Washington, Bothell, or the University of Washington, Tacoma, the President delegates authority to take all necessary and appropriate actions on behalf of the University to the Chancellor of each of the respective campuses. The Chancellor shall keep the President as informed as reasonably possible of any threatened or actual disorder. In the event of the Chancellor's absence, authority is delegated to the following officers, in order of availability

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For the University of Washington, Bothell:

- (1) Vice Chancellor for Academic Affairs
- (2) Vice Chancellor for Administrative Services
- (3) Director, Student Affairs

For the University of Washington, Tacoma:

- (1) Vice Chancellor for Academic Affairs
- (2) Vice Chancellor for Administrative Services
- (3) Associate Vice Chancellor for Student Affairs.

Administrative Order No 2 (Revised) June 4, 2001, September 20, 2006; March 7, 2007

3 Legal Actions

a Except as provided in Section b below, or unless otherwise expressly delegated, the Executive Vice President or the Executive Vice President's designee is authorized to act for the President of the University in requesting the Attorney General's Office to commence legal actions on behalf of the Board of Regents which are necessary to protect the interests of the University; provided that no litigation shall be instituted against a public entity or official or in exercise of the power of eminent domain without consultation with the President of the Board of Regents or, in the absence of the President, the Vice President of the Board of Regents

b The Vice President for Student Affairs or the Vice President for Student Affairs' designee is authorized to act for the President of the University in requesting the Attorney General's Office to commence legal actions on behalf of the Board of Regents in cases where tenants in University student-housing facilities have defaulted in payment of rent or have failed to keep or perform other conditions or covenants of their leases or agreements with the University

Administrative Order No 3 (Revised) August 15, 2000

4 Grant and Contract Awards and Amendments for Research, Development, Service and Training

a Except as provided in Section b below, the Provost or the Provost's designee is authorized to act for the President of the University regarding the powers and duties delegated to the President in Chapter I, Section 4 of the Standing Orders of the Board of Regents, effective January 21, 2000, including the execution of grant and contract awards for research, development, service and training, and agreements, assignments and other documents necessary for the implementation of the University's Copyright Policy and Patent and Invention Policy

b The Executive Vice President or the Executive Vice President's designee is authorized to act for the President of the University regarding:

- (1) Negotiation of indirect cost recovery rates; and
- (2) Negotiation and resolution of audit disputes or other prior contract-related disputes

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Administrative Order No 4 (Revised) August 15, 2000

5 Gifts to the University

- a The Vice President for Development and Alumni Relations or the Vice President for Development and Alumni Relations' designee is authorized to act for the President of the University regarding the acceptance of gifts to the University as more fully provided in, and subject to the terms of, Section 8, Chapter 1, Standing Orders of the Board of Regents, effective January 21, 2000
- b The Vice President for Development and Alumni Relations or the Vice President for Development and Alumni Relations' designee is further authorized to act for the President of the University regarding the acceptance of gifts for the University each year during the period following the December Board of Regents meeting and December 31, when the President of the University is absent during this time period
- c The Executive Vice President or the Executive Vice President's designee is authorized to act for the President of the University regarding the disposition of gifts

Administrative Order No 5 (Revised) August 15, 2000

6 Personnel Actions

- a The Provost or the Provost's designee is authorized to act for the President of the University regarding all personnel and employment matters concerning academic personnel except the following: new appointments of deans, department chairs, and directors of academic units; new appointments to the rank of professor, associate professor, and assistant professor; new appointments to faculty positions with tenure; new appointments of full-time instructors and lecturers; new appointments of full-time acting and visiting faculty in professorial ranks, instructorships and lectureships; appointments to endowed chairs or professorships; and appointments of distinguished visitors
- b Except as provided in Sections c, d, and e below, the Provost, Vice Presidents, Deans, Executive Director of Hospitals, and Hospital Administrators are authorized to take all personnel actions concerning any University of Washington classified or professional staff employees within their respective organizations, subject to applicable Washington Personnel Resources Board or University personnel regulations and procedures; and the above-named University employing officials may further delegate to subordinate officers within their respective organizations the authority to take any or all personnel actions for employees under their supervision, provided that any such delegation to subordinate officers must be in writing
- c The Senior Assistant Attorney General or the Senior Assistant Attorney General's designee is authorized to act for the President of the University regarding the execution and administration of personnel actions concerning non-academic personnel within the Attorney General's Division at the University
- d The Director of Intercollegiate Athletics (Director) is authorized to act for the President of the University regarding personnel actions concerning all non-academic personnel employed by or volunteering for the Department of Intercollegiate Athletics (Department); however, all head coach contracts will require a signature from both the Director and the President or the Special Assistant to the President for External Affairs or the Executive Assistant to the President. The Director may further delegate to subordinate officers within the Department the authority to take any or all personnel actions for employees under their supervision, provided that any such delegation to subordinate officers must be in writing. The Special Assistant to the President for External Affairs or the Executive Assistant to the President shall have authority to review personnel decisions as may be required by applicable University and Intercollegiate Athletic Department policies and procedures

Vol 2, Part 2, Chap 22: Constitution of the Faculty Senate

C The Vice Chair shall assume office on August 1 in the calendar year of his or her election. The term shall end on July 31 of the following calendar year.

D If the Senate elects a Vice Chair or Chair who is not a regularly elected senator, he or she shall be a senator *ex officio* with vote and shall be considered a member-at-large to whom the provisions of Section 22-45 do not apply.

E If the Vice Chair position becomes vacant in the course of the academic year, the elected members of the Executive Committee shall designate one of their number to serve as temporary Vice Chair until a new Vice Chair is chosen in a regular election. A temporary Vice Chair shall not succeed to the Chair.

F If for any reason the Vice Chair of the preceding year is unable to succeed to the Chair at the beginning of the next academic year, a new Chair shall be elected at the first regular meeting of the Autumn Quarter. The Vice Chair for the current year shall announce in the agenda for that meeting or if that be impossible, at the meeting itself, after consultation and with the advice and approval of the non-elected members of the Executive Committee, the name of at least one nominee for Chair from among the elected members of the Executive Committee. Additional nominations from among Executive Committee members may be made from the floor. If no nominee receives the required majority vote on the first ballot, all but the two highest shall be eliminated and a second ballot shall be cast.

Section 13-31, April 16, 1956; S-A 29, June 8, 1964, S-A 30, June 27, 1966; S-A 37, June 8, 1971, S-A 42, June 9, 1972; S-A 86, December 6, 1992; S-A 93, May 17, 1995, S-A 111 June 1, 2004: all with Presidential approval

Section 22-54. Duties of the Chair

A. The Chair presides at all meetings of the Senate, and shall sign the official copies of all Senate actions.

B. The Chair of the Senate shall chair the Executive Committee.

C. The Chair shall coordinate and expedite the work of the Faculty Councils.

D. The Chair shall receive and take or recommend appropriate action on any request for information or any initial proposal relating to general University government from any member of the faculty.

E. On all matters concerning the publication or public explanation of Senate actions the Chair shall be and is the sole spokesperson and representative of the Senate.

S-A 29, June 8, 1964: with Presidential approval

Section 22-55. Duties of the Vice Chair

A. The Vice Chair of the Senate shall preside over the Senate and the Executive Committee in the absence of the Chair.

B. The Vice Chair shall report and explain to the Senate the recommendations of the Executive Committee.

C. In the event of a vacancy in the Chair after the beginning of the academic year, the Vice Chair shall become Chair for the remainder of the Chair's term and shall serve his or her own term as Chair during the following year.

S-A 29, June 8, 1964 with Presidential approval

Section 22-56. The Secretary of the Faculty

A. The Secretary of the Faculty shall be a member of the faculty with tenure. The term of service shall normally be five years.

Appendix B

Resolution of the Board of Regents, attached as Exhibit D to the Declaration of Mark Emmert,
attached as Exhibit 1 to the Declaration of Louis D. Peterson in Support of Defendant's Motion
for Summary Judgment filed on May 27, 2011

UNIVERSITY OF WASHINGTON
BOARD OF REGENTS

ATTORNEY GENERAL'S OFFICE
UW DIVISION

NOV 19 2009

EXCERPT FROM MINUTES OF THE BOARD OF REGENTS

"April 16, 2009

Regents Resolution Regarding Executive Order 29 (Agenda no. BP-1)

MOTION: Upon the recommendation of the Chair of the Board, a motion was made by Regent Blake, and seconded by Regent Gates. Following discussion, comments, and questions, all the Regents voted in favor of adopting the resolution. Regent Willynck abstained.

See Attachment BP-1 "

* * *

CERTIFICATE

I, the undersigned, Joan Goldblatt, hereby certify that the above and foregoing is a true and correct excerpt from the minutes of the Board of Regents of the University of Washington at the special meeting on April 16, 2009.

DATED this 6th day of November, 2009.



Joan Goldblatt
Secretary of the Board of Regents

Attached: Regents Resolution Regarding Executive Order 29 (Agenda no. BP-1)

36700

EXHIBIT D

**University of Washington
Board of Regents
Resolution Regarding Faculty Salaries**

WHEREAS, the President and Faculty Senate worked together in 1999 and 2000 to create a Faculty Salary Policy which states, among other things, that Faculty members deemed in any year to be meritorious are to receive a two-percent pay increase in the following year; and

WHEREAS, the Board of Regents and the President remain committed to the achievement of fully competitive compensation for our faculty, but must contend with the current unprecedented condition of financial adversity; and

WHEREAS, in light of the effects of the global financial crisis and decreasing State support for the University, the President, after extensive review and consultation with the Faculty Senate in accordance with the Faculty Code, concluded he was compelled by fiscal necessity to issue, and has issued, a new Executive Order suspending the award of merit pay increases through the 2009-11 biennium.

NOW, THEREFORE, BE IT RESOLVED:

The Board of Regents:

- 1 Endorses the President's new Executive Order as a financial necessity and approves the suspension of merit pay increases through the 2009-11 biennium, which will prevail over any University policies, rules, or codes or regulations to the extent they may be inconsistent.
- 2 Directs that, through the period of such suspension, a copy of this resolution be inserted in the University Handbook at an appropriate location adjacent to the Faculty Salary Policy.
- 3 Requests that the President, with the Faculty Senate leadership, monitor the effects of this suspension and our current economic circumstance on competitive faculty compensation.
- 4 Requests the President to propose at the earliest possible opportunity the restoration of such faculty merit pay increases as may be feasible.

Appendix C

Declaration of Mark Emmert (excluding exhibits), attached as Exhibit 1 to the Declaration of Louis D. Peterson in Support of Defendant's Motion for Summary Judgment filed on May 27, 2011

The Honorable Carol Schapira

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PETER NYE, and a class of similarly
situated persons,

Plaintiffs,

vs.

UNIVERSITY OF WASHINGTON,

Defendant.

NO. 09-2-37102-4 SEA

DECLARATION OF MARK A.
EMMERT

Pursuant to RCW 9A.72.085, the undersigned hereby declares that:

1. I am the President of the University of Washington, which is the Defendant in this action. I am the chief executive officer of the University. I have personal knowledge of the matters set forth in this declaration and am competent to testify in this matter.

2. The University of Washington was founded in 1861 and is one of the oldest state-supported institutions of higher education on the West Coast. The University is a large research institution with more than 45,000 enrolled students, and more than 40,000 employees, including thousands of faculty members. The University offers more than 250 different degrees across three campuses and 17 colleges and schools. The annual operating budget of the University exceeds \$3 billion.

Declaration of Mark A Emmert
- Page 1

EXHIBIT 1

HILLIS CLARK MARTIN &
PETERSON, P S
1221 Second Avenue, Suite 600
Seattle WA 98101-2925
206 623 1746; fax 206 623 7789

1 3 The University maintains a University Handbook that contains rules,
2 regulations and executive orders related to students, faculty, staff and the administration. The
3 University Handbook contains six volumes, and can be found in its entirety at
4 <http://www.washington.edu/faculty/facsenate/handbook/handbook.html> True and correct
5 copies of sections of the Handbook are attached as Exhibit A to my declaration.
6

7 4 Executive Order No. 64 is also incorporated into the University Handbook. A
8 true and correct copy of Executive Order No. 64 is attached as Exhibit B to my declaration.

9 5 The University funded salary increases of at least two percent in 2000-01,
10 2001-02, 2003-04, 2004-05, 2005-06, 2006-07, and 2008-09.

11 6 The University's state funding was slashed by more than \$214 million in the
12 2009-2011 biennium, the largest percentage cut of any institution of higher education in the
13 state. Even after the injection of \$24.7 million in one-time federal stimulus funds and
14 significant tuition increases, the University had to cut its budget by more than 12 percent.
15 The University also implemented faculty hiring restrictions, which remain in place. Through
16 layoffs and unfilled vacancies, the University has reduced its staff by more than 600 people
17 and reduced its faculty by more than 100 full-time equivalent positions.
18

19 7 In her proposed budget for 2010, Governor Gregoire has called for more than
20 \$20 million of additional cuts for the University, again the largest reduction proposed for any
21 institution of higher education in the state.
22

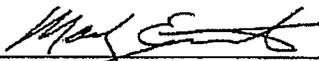
23 8 In response to the budget crisis, I initiated a reevaluation of Executive Order
24 No. 64. With Faculty Chair David Lovell, I appointed a Committee to Re-Evaluate Executive
25 Order No. 64. The committee included members of the faculty and the administration. The
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1 reevaluation also included consultation with the Faculty Senate. I followed the procedures in
2 the University Handbook before issuing a new executive order regarding faculty salaries. I
3 sent my proposed executive order to the Faculty Senate Chair and the Secretary of the Faculty
4 Senate to initiate a review by the Faculty Senate. The Faculty Senate Chair Lovell arranged
5 for that review and reported back to me about the results. I reviewed the comments from
6 Chair Lovell and the faculty committee. I consulted with Chair Lovell in order to resolve
7 differences between my proposed executive order and the suggestions and input I received
8 from the Faculty Senate. I included many of the suggestions by the faculty in my revised
9 executive order. After completing the process outlined in the University Handbook, I issued
10 Executive Order No. 29 on March 31, 2009 and it was added to the University Handbook.
11
12 A true and correct copy of Executive Order No. 29 is attached as Exhibit C to my declaration.

14 9. On April 16, 2009, the Board of Regents passed a resolution regarding faculty
15 salaries. A certified copy of that resolution is attached as Exhibit D to this declaration.

17 I hereby declare, under penalty of perjury under the laws of the State of Washington,
18 that the foregoing is true and correct.

19
20 Dated this 4th day of February, 2010, at Seattle, Washington

21
22 
23 _____
PRESIDENT MARK A. EMMERT

24 ND: 12662 0/3 4829-3508-5317v2 3/03/10

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28
Declaration of Mark A. Emmert
- Page 3

HILLIS CLARK MARTIN &
PETERSON, P.S.
1221 Second Avenue, Suite 500
Seattle WA 98101-2925
206 623 1745; fax 206 623 7789

Appendix D

Declaration of David Lovell (excluding exhibit), attached as Exhibit 2 to the Declaration of Louis D. Peterson in Support of Defendant's Motion for Summary Judgment filed on May 27, 2011

The Honorable Carol Schapira

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PETER NYE, and a class of similarly
situated persons,

Plaintiffs,

vs.

UNIVERSITY OF WASHINGTON,

Defendant.

NO. 09-2-37102-4 SEA

**DECLARATION OF DAVID
LOVELL**

Pursuant to RCW 9A.72.085, the undersigned hereby declares that:

1. I have personal knowledge of the matters set forth in this declaration and am
competent to testify in this matter.

2. I am a research associate professor in Psychosocial and Community Health,
part of the School of Nursing at the University of Washington. I was Chair of the Faculty
Senate during the 2008-2009 academic year. In this role, the President and I appointed a joint
faculty-administrative committee to reevaluate Executive Order 64. The outcome of this
reevaluation was a proposed Executive Order from President Mark Emmert, which he
forwarded to Marcia Killien, the Secretary of the Faculty, and me to initiate review by the
Faculty Senate. The Faculty Senate reviewed the proposed executive order at its meeting on

1 March 12, 2009. Following the Senate's review on March 16, 2009, the Secretary of the
2 Faculty and I reported back to the President and suggested some revisions. A copy of the
3 revisions is attached as Exhibit A. The President then incorporated most of our suggestions
4 into a revised Executive Order and consulted with me regarding the final Executive Order.

5
6 3. I reported on the outcome of the Faculty Senate review to the Board of
7 Regents. In my March 19, 2009 written report to the Regents, I stated:

8
9 Proposed New Executive Order: Following the guidance of the Storti ruling,
10 the President and Chair of the Faculty Senate formed a joint committee to
11 reevaluate Executive Order No. 64, which required an annual 2% salary
12 increase for all meritorious faculty. The President Proposed a new Executive
13 Order suspending this requirement, and the Faculty Senate and other members
14 of the University community have reviewed it as well.

15
16 Faculty Senate Action: At its March 12th meeting, the Faculty Senate took the
17 action that the Faculty Code empowers and obliges it to take: together with the
18 President it reviewed the Executive Order. While most senators understand
19 that saving jobs and programs outweighs the importance of a salary increase,
20 many senators believed they had not had enough time to discuss issues with
21 their colleagues, saw no harm in waiting until the legislature provides more
22 definition to our budget or preferred a one-year over the biennial suspension of
23 the requirement. The Senate Chair and the Secretary of the Faculty have
24 notified the President of the outcome of the review. Although the Senate took
25 no formal action on the proposed Order, the President has subsequently
26 consulted with the Senate Chair on its content.

27
28 4. I attended the Board of Regents meeting on April 16, 2009 in my capacity as
Chair of the Faculty Senate. I was invited to address the Regents regarding the President's
new Executive Order Number 29. I said:

Well sure, I will make, I will comment about it. Mostly just to confirm what
your chair has said that we've been talking about this very actively for several
months. And the Executive Order which the Resolution is endorsing and
declaring as the policy of the University is an executive order that was the
work of a joint committee appointed by me and the President. And that
executive order was reviewed in a Faculty Senate meeting. As I reported to

1 you at your previous meeting and what has happened since then is that the
2 Secretary of the Faculty and I in accordance with the Faculty Code prepared a
3 set of comments for the President's consideration, reflecting what we took to
4 be the concerns of the faculty as expressed in that meeting and other venues.
5 And made some suggestions about the wording of the Executive Order—what
6 should be and what should not be in it. Mostly additional things that should be
7 in it. And those suggestions were incorporated into the Executive Order. We
8 were very pleased to see that our advisory role—not only did we advise but we
9 were listened to and in fact our advice was taken. So we believe the process—
10 it's a cliché—but we believe that the process worked in this case. And
11 appreciate the Regent's respect for that process.

12
13 5. On April 10, 2009, I sent an e-mail to all voting faculty members, including
14 Professor Nye, informing them of the new Executive Order Number 29 and attaching a copy
15 of that Order.

16 I hereby declare, under penalty of perjury under the laws of the State of Washington,
17 that the foregoing is true and correct.

18 Dated this 1st day of February, 2010, at Seattle, Washington.

19 
20 David Lovell

21 ND: 12662 043 4843-4758-1957v1 2/01/10

No. 86310-5

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

DUANE STORTI, and a class of faculty
members,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

**CERTIFICATE OF
SERVICE**

I, Brenda K. Partridge, am a legal assistant for the law firm of Hillis Clark Martin & Peterson, P.S., 1221 Second Avenue, Suite 500, Seattle, WA 98101. I hereby certify that on the 22nd of August, 2011, I caused to be served via legal messenger true and correct copies of the *Answer to Statement of Grounds for Direct Review by the Supreme Court* and this *Certificate of Service* on the following:

David F. Stobaugh
Stephen K. Strong
Stephen K. Festor
Bendich Stobaugh & Strong PC
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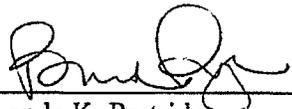
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Via U.S.
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I declare under penalty of perjury under the laws of the State
of Washington that the foregoing is true and correct.

DATED this 22nd day of August, 2011 at Seattle, Washington.


Brenda K. Partridge

ND: 4851-0674-2794v1

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Duane Storti v. University of Washington; Supreme Court No. 86310-5
Mary E. Crego, Hillis Clark Martin & Peterson, 206-623-1745, WSBA #31593, mec@hcmp.com

Attached are the Answer to Statement of Grounds for Direct Review by the Supreme Court and Certificate of Service to be filed in the above-referenced case.

Brenda K. Partridge

Legal Assistant

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