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

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

11 Petitioner,

12 v.

13 THE REGENTS OF THE UNIVERSITY OF
14 CALIFORNIA,

15 Respondent.

) Case No. 20STCP01226

) **DECLARATION OF WILLIAM HAPPER**
) **IN SUPPORT OF PETITION FOR WRIT**

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

) Time: 9:30 a.m.

) Place: Dept. 82

) Petition filed: April 1, 2020

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18 I, William Happer, declare:

19 1. I am the Cyrus Fogg Brackett Professor of Physics, Emeritus, at Princeton
20 University, located in the state of New Jersey of the United States of America. I make this
21 declaration in support of the Petition for Writ filed by Petitioner Government Accountability &
22 Oversight, P.C. (“GAO”) in the above-captioned proceeding. Except as qualified, I make this
23 declaration based on my personal and firsthand knowledge of those facts hereinafter set forth and
24 could and would testify competently thereto under oath if called as a witness.

25 2. I studied physics at the University of North Carolina, graduating in 1960. I then
26 earned my doctorate at Princeton University in 1964. My academic career began at Columbia
27 University, where I eventually became a full professor and director of the Columbia Radiation
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1 Laboratory. In 1980, I went to Princeton University, where I was the Class of 1909 Professor of
2 Physics from 1988 to 1991.

3 3. In 1990, I joined the United States Department of Energy (“DOE”) as Director of
4 the Office of Energy Research. In that position, I supervised a research budget of some \$3.5
5 billion, a sizable part of which was directed toward environmental and climate science.

6 4. After leaving DOE in 1993, I returned to Princeton University, where I have
7 remained a Professor of Physics, named as the Cyrus Fogg Brackett Professor of Physics in 2003
8 and designated Emeritus in 2014. In the course of my academic and non-academic career, I have
9 published over 200 peer-reviewed scientific paper, many of them on the interaction of radiation
10 with matter, the basic physics that determines how greenhouse gases influence Earth’s climate. I
11 am the inventor of the sodium guide star, that is used in most new ground-based telescopes to
12 measure and correct for the degradation of astronomical images by atmospheric turbulence.

13 5. Since 1976, I have been a member of JASON, which is accurately described in
14 Wikipedia at [en.wikipedia.org/wiki/JASON_\(advisory_group\)](http://en.wikipedia.org/wiki/JASON_(advisory_group)) as follows: “JASON is an
15 independent group of elite scientists which advises the United States government on matters of
16 science and technology, mostly of a sensitive nature. The group was created in the aftermath of
17 the Sputnik launch as a way to reinvigorate the idea of having the nation's preeminent scientists
18 help the government with defense problems, similar to the way that scientists helped in WWII
19 but with a new and younger generation. It was established in 1960 and has somewhere between
20 30 and 60 members. Its work first gained public notoriety as the source of the Vietnam
21 War's McNamara Line electronic barrier. Although most of its research is military-focused,
22 JASON also produced early work on the science of global warming and acid rain. ... JASON
23 members, known informally as ‘Jasons,’ include physicists, biologists, chemists,
24 oceanographers, mathematicians, and computer scientists, predominated by theoretical
25 physicists. They are selected by current members, and, over the years, have included
26 eleven Nobel Prize laureates and several dozen members of the United States National Academy
27 of Sciences. All members have a wide range of security clearances that allow them to do their
28 work.” From 1987 to 1990, I was chairman of the steering committee for JASON.

1 6. From 2018 to 2019, I served as the Deputy Assistant to the President and Senior
2 Director for Emerging Technologies at the National Security Council in the White House.

3 7. I am a fellow of the American Physical Society and was elected as a member of
4 the American Academy of Arts and Sciences in 1995 and a member of the National Academy of
5 Sciences in 1996. I received a Sloan Research Fellowship in 1967, the Herbert P. Broida Prize in
6 1997, the Davison-Germer Prize and the Thomas Alva Edison Patent Award in 2000.

7 8. I have been involved in leadership positions in several nonprofit organizations,
8 including the Richard Lounsbery Foundation, the Marshall Institute and the CO₂ Coalition
9 (carbon dioxide (CO₂) is one of several greenhouse gases). I am a co-founder and board member
10 of the CO₂ Coalition, which was founded in 2015 with a mission to educate the public to these
11 facts: levels of atmospheric CO₂ have been much higher than today's through most of geological
12 history, and increased atmospheric levels of CO₂ closer to the optimum values for
13 photosynthesis in plants, will benefit the world.

14 9. As part of my involvement with the CO₂ Coalition, I have been involved in the
15 fundraising efforts of the CO₂ Coalition to obtain donations from individuals and charitable
16 foundations who are sympathetic to the mission of the CO₂ Coalition. I am sensitive to the danger
17 that the interrelationships between the donors to a nonprofit entity and the principals and
18 employees of such entity may be asserted to influence or bias the positions taken or work done
19 by such entity. Indeed, in December 2015, I was targeted in a sting operation by the
20 environmental activist group Greenpeace. Posing as consultants for a Middle Eastern oil and gas
21 company, they asked me to write a report touting the benefits of rising carbon emissions. I
22 declined a fee for my work, calling it a "labor of love". As I stated in a 2016 interview regarding
23 the sting operation: "I was only interested in helping the 'client' to publicize my long-held views,
24 not to peddle whatever message the 'client' had in mind ... I have never taken a dime for any of
25 my activities to educate the public that more CO₂ will benefit the world."

26 10. I have long been intensely interested in the issue of climate change and the
27 purported scientific consensus that there has been a strong anthropogenic influence on rising
28 global temperatures. Some small fraction of the 1 °C warming during the past two centuries must

1 have been due to increasing CO₂, which is indeed a greenhouse gas. But most of the warming has
2 probably been due to natural causes. Increasing levels of the main anthropogenic greenhouse gas,
3 carbon dioxide (CO₂), will cause a small, beneficial warming of Earth's climate. More CO₂ will
4 be very good for agriculture, forestry, and all photosynthetic life. Atmospheric CO₂
5 concentrations have been dangerously low in our contemporary geological period, with evidence
6 of CO₂ starvation during glacial maxima. Plants are already responding very positively to the CO₂
7 increases of the past century.

8 11. The modest increases of atmospheric CO₂ since 1850 have already substantially
9 increased the productivity of agriculture and forestry. More CO₂ will bring still more benefits.
10 Increases in CO₂ will have a very minor influence on Earth's climate. This can be see clearly
11 from the records of geological history. A major ice age occurred in the Ordovician, when
12 atmospheric CO₂ levels were more than ten time larger than those today. CO₂ levels in Antarctic
13 ice cores rise or fall after temperature proxies rise or fall. For the past million years spanned by
14 the ice cores, temperature changes cause CO₂ changes. CO₂ changes do not cause temperature
15 changes. Other things being equal, an increase in atmospheric CO₂ should cause some relatively
16 small warming. Observations strongly suggest that the warming will be small. The rise in
17 Earth's temperature from 1950 to 2000, about 0.4 C, was approximately the same as that from
18 1900 to 1950, also about 0.4 C, when the increase in atmospheric CO₂ concentration was some
19 six times less. So most of the temperature rise of the past century was probably a recovery from
20 the Little Ice Age, and not due to increasing CO₂ concentrations.

21 12. CO₂ is not a control knob of Earth's temperature or climate. Historically, Earth's
22 temperatures have been higher when atmospheric CO₂ concentrations were lower than present
23 levels, and lower when CO₂ concentrations were substantially higher.

24 13. My primary interest and concern regarding this issue, however, is how the issue
25 of anthropogenic contributions to atmospheric CO₂, which are a fair proxy for economic activity
26 and lifestyle, have like so many aspects of our culture become intentionally politicized. It is
27 being utilized by ideologues as a basis for attempting not only a fundamental restructuring of our
28 economy, and that of the rest of the world's, and for allocating trillions of dollars to solve a non-

1 existent problem, but also to interfere with our basic freedoms. Based on my own research as to
2 the basic physics that determines how greenhouse gases influence Earth’s climate, my review
3 and supervision of the environmental and climate science done at the DOE while I served as
4 Director of the Office of Energy Research and my involvement in work being done at JASON
5 that related to the science of global warming, I strongly disagree with the persons and institutions
6 which promote the narrative that the “settled science” and the purported “scientific consensus”
7 justify, if not mandate as a matter of global survival, that there should be a fundamental
8 restructuring of our economy and that of the rest of the world in order to slow the anthropogenic
9 influence on rising global temperatures. That is why I co-founded the CO₂ Coalition and, in
10 furtherance of its mission, have diligently reviewed the scientific and political developments
11 relating to global warming, including the identification of all the major players (i.e., scientists,
12 academics, politicians, institutions and individual donors) on both sides of the global warming
13 issue.

14 14. The Emmett Center at UCLA Law School (“Emmett Center”), its namesake and
15 principal founder, Dan Emmett, Professor Ann Carlson and Professor Cara Horowitz have in
16 recent years been deeply and increasingly involved in consistently propagandizing the complete
17 opposite of the above-noted scientific facts, in support of ruinous public policies to combat a
18 “climate emergency” that does not exist (“Climate Emergency Alarmists”). A major mission of
19 the Emmett Center has been to assist legal advocacy urging the imposition of financial and
20 policy obligations on private parties on the basis of that CO₂ is a “pollutant” rather than a
21 beneficial, natural part of life, and indeed building block for richer, freer, safer, healthier and
22 more resilient societies.

23 15. I have reviewed the First Amended Petition for Writ filed by GAO in the above-
24 captioned proceeding, including the attached PRA request (“PRR 19-7464”) on Respondent The
25 Regents of the University of California (“Regents”) seeking any emails sent to or from two
26 UCLA law professors, Ann Carlson (“Carlson”) and Cara Horowitz (“Horowitz”), during the
27 period April 25, 2016 through November 14, 2019 that were to, from or included four specified
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1 email addresses (the “Requested Public Records”). In PRR 19-7464, GAO expressly stated its
2 reason for making the request (the “Climate Litigation/State Institution Interface”) as follows:

3 “This request is being made in the public interest, and furnishing this information will
4 benefit the public’s understanding of recent events regarding climate litigation and
5 municipalities which have been filing lawsuits against energy companies and working
6 closely with attorneys general also to pursue opponents of the ‘climate’ policy/political
7 agenda. This information is being requested for the purpose of understanding how state
8 institutions are involved, if at all, in the larger effort feeding this litigation industry.”

9 16. I have also reviewed the Exemption Log provided by Regents to GAO as part of
10 its response to PRR 19-7464 listing 120 separate documents (the “Exemption Claim
11 Documents”), which I have been asked to assume sets forth the complete factual bases upon
12 which Regents relies in support of its claims of exemption as to all 120 Exemption Claim
13 Documents. In particular, eighty -six (86) of the Exemption Claim Documents are supported in
14 the Exemption Log by one of four variations of the following Explanation:

15 The Fundraising Exemption Explanation:

16 “The record concerns pre-decisional internal discussions, which are deliberative
17 processes in which the public interest in non-disclosure clearly outweighs the public
18 interest in disclosure. The public interest in non-disclosure particularly applies because
19 this record concerns internal fundraising discussions relating to, among other things,
20 strategies and particular donor interactions which, if subject to public disclosure, would
21 chill the candor of such discussions or preclude them entirely. As a result, disclosure
22 would hamper the University’s ability to raise funds that are essential to its public
23 education, scientific, medical and other academic pursuits. While not all donor
24 information may be protected in all circumstances where the records relate to formal
25 agreements reached for expenditures of public funds, see, e.g., California State
26 University, Fresno Assn., Inc. v. Superior Court (2001) 90 Cal. App. 4th 810, 833-835
27 (requiring disclosure of names of donors to Foundation who in return received
28 agreements to lease luxury suites to new arena, as more in the nature of a ‘commercial
29 transaction’), here, these emails are internal discussions among UCLA employees [one of
30 the four variants specified in the footnote below]¹. If such information were disclosed,
31 public university employees will not feel free to candidly discuss potential fundraising
32 strategies and targets, which will severely limit the university’s ability to secure the
33 public funding it needs to operate. This is similar to express exemptions for drafts and
34 constitutes deliberative process such that this information is exempt from disclosure.
35 Further, in some instances, the information contained in internal fundraising discussions

36 ¹ Variation 1: “about potential fundraising strategies” (Exemption Log Documents Nos. 1, 16 and 18
37 through 24).

38 Variation 2: “relating to the negotiations of a specific donation by one individual and do not involve
39 the an actual formal agreement for the expenditure of public funds” (Exemption Log Documents
40 Nos. 3, 25 through 31, 33, 35 through 37, 39, 40, 42 through 55, 72, 73, 75 and 76).

41 Variation 3: “relating to the formulation and presentation of fundraising priorities” (Exemption Log
42 Documents Nos. 15, 17, 71, 74 through 84, 87, 88, 90, 91 and 93 through 107).

43 Variation 4: “relating to the conceptualization and establishment of a scholarship” (Exemption Log
44 Documents Nos. 56 through 62 and 64 through 70).

1 constitutes a trade secret under Evidence Code 1060, which provides that ‘the owner of a
2 trade secret has a privilege to refuse to disclose the secret, and to prevent another from
disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise
work injustice.’”

3 17. An additional nine (9) of the Exemption Claim Documents² are supported in the
4 Exemption Log by the following Explanation:

5 The Pre-Publication Exemption Explanation:

6 “The record concerns pre-publication academic research in which the public
7 interest in non-disclosure clearly outweighs the public interest in disclosure. The public
8 interest in non-disclosure particularly applies because this record concerns drafts of
9 academic texts whose disclosure would chill academic freedom, particularly research into
10 sensitive or controversial topics. See, e.g., Humane Society of the United States v.
Superior Court (Regents of the Univ. of Calif.), (2013) 214 Cal. App. 4th 1233
(upholding Regents’ decision to withhold UC Davis researchers’ prepublication research
data from public records request).”

11 18. I have been asked for my opinion as to the importance of transparency as to
12 communications between two faculty members at the Emmett Center who are Climate
13 Emergency Alarmists that are also (1) to or from Dan Emmett and/or (2) which relate to Dan
14 Emmett, climate change, global warming or fundraising strategies, priorities or uses of or for the
15 Emmett Center. I have also been asked to compare the importance of that transparency to the
16 asserted potential harms to Regents’ ability to raise funds and the academic freedom of its
17 faculty.

18 19. With respect to the importance of transparency as to communications between
19 two faculty members at the Emmett Center who are Climate Emergency Alarmists (1) to or from
20 Dan Emmett and/or (2) which relate to Dan Emmett, climate change, global warming or
21 fundraising strategies, priorities or uses of or for the Emmett Center (the “Emmett/Regents
22 Communications”), given the inescapable economic and social implications of the demanded
23 policies and particularly given the involvement of public institutions in this enterprise, it is hard
24 to imagine a subject in which the public has a more significant interest. Regardless of which side
25 of the climate change debate is correct, or closer to being correct, the public should know all it
26 can about any influence, direct and obvious or indirect and covert, that is being utilized by
27 donors such as Dan Emmett who have a clear political agenda as Climate Emergency Alarmists,

28 ² Exemption Log Documents Nos. 108, 110, 112, 114 and 116 through 120.

1 including any fundraising strategies, priorities or uses of the Emmett Center. The political
2 agenda being promoted by Dan Emmett and the Emmett Center (the “Climate Emergency
3 Alarmists’ Agenda”) is inherently one of imposed scarcities. To the extent this agenda is
4 realized, it will affect virtually every aspect of the lives of Californians. All Californians,
5 whether they agree or disagree with the Climate Emergency Alarmists, have an interest in
6 determining whether, and to what extent, the Regents, which is primarily supported by the taxes
7 of its citizens, the UCLA Law School and/or any of its faculty, have been influenced, or subject
8 to bias or an appearance of bias, in the research conducted, the papers published, the opinions
9 expressed, the subjects taught, the scholarships awarded and other influences including a need or
10 a desire to adhere to, or avoid impeding, the Climate Emergency Alarmists’ Agenda.

11 20. As for the asserted potential harms to Regents’ ability to raise funds and the
12 academic freedom of its faculty, the real risk of either harm arising from the disclosure of any
13 public records requested by PRR 19-7464 is entirely speculative, highly unlikely to occur and
14 certainly of greatly less importance than is transparency as to the Emmett/Regents
15 Communications. With regard to the risk that the disclosure of any records relating to internal
16 fundraising discussions relating to fundraising strategies or priorities, particular donor
17 interactions or scholarships would chill the candor of such discussions or preclude them entirely,
18 a two-step analysis is required: (1) what is the actual risk that the disclosure of the records
19 requested by PRR 19-7464 relating to internal fundraising discussions relating to fundraising
20 strategies or priorities, particular donor interactions or scholarships would chill the candor of
21 such discussions or preclude them entirely; and (2) even assuming that that disclosure would
22 chill the candor of such discussions or preclude them entirely, how “severely [would the chilling
23 or preclusion] limit the university’s ability to secure the public funding it needs to operate”?

24 21. As noted previously, I have personally been involved in fundraising activities on
25 behalf of several nonprofit entities. While serving as the President of the Richard Lounsbery
26 Foundation, I also became quite familiar with the funding requests from non-profit entities. I
27 have frequently participated in internal email communications about various aspects of that
28 fundraising, both as a supplicant and a provider. The nonprofit entities I am involved with are not

1 directly subject to any public records act, except to the extent we correspond with public
2 institutions. I was, however, subject to the Federal Freedom of Information Act while disbursing
3 billions of taxpayer dollars from the Department of Energy. I would likely also accept, as do
4 University of California employees, being subject to the PRA in return for the billions of dollars
5 that Regents receives annually from public funds.

6 22. If all internal email communications related to fundraising matters (1) were
7 potentially subject to disclosure to the public and (2) one or more internal communications
8 concerned matters which I would not want disclosed to the public, the prospect of the potential
9 disclosure of such communications if set forth in an email would neither chill the candor of such
10 discussions or preclude them entirely. It would simply mean that instead of using email for any
11 internal communications relating to matters that I did not feel should be at risk of public
12 disclosure, I would do what I previously did, which is arrange an in-person meeting, or a
13 telephonic or Zoom/Teams conference call, for the discussion of such matters. Presumably
14 Regents' expenditure of taxpayer dollars on such technologies is in contemplation of just that.

15 23. Even assuming that for some reason there were no possible alternative means for
16 conducting person-to-person discussions relating to fundraising matters, the implicit assumption
17 that there are numerous internal communications relating to fundraising matters (including 86
18 involving Professors Carlson and/or Horowitz) which, if made public, would "severely limit the
19 university's ability to secure the public funding it needs to operate" is at best speculative, and,
20 more realistically, fanciful. Unless the internal communications in question were insulting or
21 derogatory about existing or prospective donors or evidenced that Regents or Professors Carlson
22 or Horowitz were not true believers in the Climate Emergency Alarmists' Agenda, there are no
23 deep, dark secrets about how and from whom to raise funds in support of the Climate Emergency
24 Alarmists' Agenda. The major donors are all well known, as are the activities such as Climate
25 Rides, symposia and other events that cater to such donors. The success of Regents, the Emmett
26 Center and Professors Carlson and Horowitz in raising funds has not stemmed from some unique
27 fundraising tactic or trade secret, but from the high profile of the Emmett Center's and its faculty
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1 members' advocacy in support of imposing financial and policy obligations on private parties for
2 supporting the narrative that CO₂ is a "pollutant" rather than a beneficial, natural part of life.

3 24. With regard to the risk that the disclosure of any or all of the nine emails
4 exchanged between Professor Carlson and Dan Emmett would constitute a threat to academic
5 freedom, particularly research into sensitive or controversial topics, real scientific research is not
6 threatened by the disclosure of drafts. Even assuming (implausibly) that Professor Carlson was
7 actually engaged in seeking to obtain information or comments from Dan Emmett as part of her
8 preparation of a research paper intended for future publication (as opposed to make a major
9 donor feel catered to and privy to advance information), scientists routinely circulate preliminary
10 results, and report on preliminary results at conferences. In fact, the more attention given to
11 honest scientific work, the better it is for the authors. I also note this on UCLA's website, that,
12 "'It's just gibberish to say these laws stifle research,' said David Cuillier, director of the
13 University of Arizona School of Journalism and a member of the Society of Professional
14 Journalists's [sic] freedom of information committee. 'These are government scientists funded
15 by taxpayers, and the public is entitled to see what they're working on.'" "Article Reminds:
16 Public University emails (and other documents) are not private," March 20, 2016,
17 <https://uclafacultyassociation.blogspot.com/2016/03/article-reminds-public-university.html>
18 (viewed June 21, 2021).

19 25. Sadly, the real threat to academic freedom today, as the Climategate e-mails
20 show, is that posed by the Climate Emergency Alarmists, of which the Emmett Center is a key
21 player. It is the Climate Emergency Alarmists who constitute a threat to academic freedom by
22 routinely ensuring rejection of any scientific papers that fail to support the narrative of
23 impending climate doom. Editors of journals that publish off-message papers are fired. One
24 example of such censorship is a paper submitted to the Proceedings of the National Academy of
25 Sciences by the distinguished atmospheric physicist, Richard Lindzen, then a Professor at MIT,
26 and his coauthor, Dr. Y. S. Choi. A useful discussion of this episode can be found at this site:
27 [\(https://climateaudit.org/2011/06/10/lindzens-pnas-reviews/\)](https://climateaudit.org/2011/06/10/lindzens-pnas-reviews/).

1 26. Just last month, French geophysicist Dr. Pascale Richet was viciously attacked by
2 Climate Emergency Alarmists for a paper he published in History of Geo- and Space Sciences.
3 After threats to the editorial staff of the journal, and to its publisher, the paper, which had
4 undergone through peer review, was flagged for cancellation. The paper, and the attacks on it by
5 the very editors who had it refereed and published, can be reviewed at this link:
6 [\(https://hgss.copernicus.org/articles/12/97/2021/\)](https://hgss.copernicus.org/articles/12/97/2021/). Richet's paper was absolutely correct. It
7 provided a useful history of the fact that temperature changes precede changes in CO₂
8 concentrations in air bubbles of Antarctic ice. This has been common knowledge for nearly
9 twenty years, but since it does not fit the narrative of the Climate Emergency Alarmists, bringing
10 attention to the facts was a threat to them. Not since Lysenko's hijacking of biology in the
11 Soviet Union has honest science been so thoroughly subject to political diktats as contemporary
12 climate science. UCLA's Emmet Center is part of this serious problem.

13 I declare under penalty of perjury under the laws of California that the foregoing is true and
14 correct, and that this declaration was executed on June 26, 2021 at Princeton, New Jersey.

15 *William Happer*
16 William Happer