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By Email

The Honorable Newt Gingrich
Former Speaker
U.S. House of Representatives
Washington, DC

Re: University of Delaware Biden Records

Dear Mr. Speaker:

I am writing to provide information regarding documents (the “Biden Records”) donated by President Joseph R. Biden, Jr. to the University of Delaware (or the “University”). Both my partner, Bill Green, Esq., and I have been representing Judicial Watch, Inc. and the Daily Caller News Foundation over nearly three years in the Delaware courts to obtain access to the Biden Records under Delaware’s version of the Freedom of Information Act (“FOIA”). To date, my clients have not been able to obtain any records under FOIA.

Based on what is currently being alleged with respect to the mishandling of classified material by President Biden, I believe that it is imperative in the interest of national security for the United States House of Representatives to subpoena the Biden Records as well as other related materials. This would include the instrument effecting the donation of the Biden Records (the “Gift Agreement”), information regarding who is funding the handling of the Biden Records, and information regarding who has had access to the Biden Records since their donation.

A. The Biden Records and the Gift Agreement.

The following is what we know about the Biden Records: first, the number of records are substantial. Based on what we have learned, there are **1,850 boxes of documents** and **415 gigabytes of electronic records**. To place this in perspective, we have described the amount of boxes alone as filling approximately two tractor trailer trucks. We have also been advised that these documents only comprise documents from President Biden’s term in the United States Senate. Finally, we have been told that the donation of the Biden Records was made to the University of Delaware under the terms of the aforementioned Gift Agreement, a copy of which we have not been able to obtain under FOIA.

The Biden Records were purportedly donated to the University of Delaware in 2012. The University claims that “[t]he records will be available no sooner than the later date of December 31, 2019, or two years after the donor retires from public life.” The University claims that the records are being reviewed and archived, but the University has not made public who has had access to the documents.

The Gift Agreement is a key document which the University has refused to produce. While the University claims that no public funds have been spent on the housing and archiving of the Biden Records, my clients have questioned who has been funding this effort.

B. The Delaware Court Proceedings.

My clients initiated their efforts to obtain access to the Biden Records by filing a FOIA request to the University of Delaware in April 2020, seeking, among other things, access to the Biden Records, a copy of the Gift Agreement, records of interactions between representatives of President Biden and the University, and visitor logs. The University of Delaware is the largest and oldest higher-education institution in the State of Delaware, and is the alma mater of President Biden. The University of Delaware has a unique status under Delaware law: it is neither a fully public or fully private institution. Rather, the University enjoys elements of both being public and private. The University carries significant political clout in the State of Delaware, and Delaware's FOIA statute was drafted with significant exceptions for documents held by the University. The University denied access to the requested records, and my clients filed an appeal to the Delaware Attorney General (as required under FOIA). This was summarily denied.

Thereafter, my clients filed an appeal of the Delaware Attorney General's decision to the Superior Court of the State of Delaware on July 2, 2020. *See Judicial Watch, Inc. and The Daily Caller News Foundation v. University of Delaware*, C.A. No. N20A-07-001 MMJ. After briefing on the matter, the Court denied the effort to obtain access to all of the documents requested in an opinion dated January 4, 2021. However, in a footnote to the opinion (footnote 38), the Court requested that the University verify that the Gift Agreement did not relate to the "expenditure of public funds," which the Court deemed to be the hook triggering production under FOIA. The University provided this verification two days after the Court's opinion was issued, effectively ending proceedings in the Superior Court.

My clients filed an appeal to the Delaware Supreme Court on January 29, 2021. *See Judicial Watch, Inc. and The Daily Caller News Foundation v. University of Delaware*, Case No. 32, 2021. In briefing to the Delaware Supreme Court, my clients deemed it necessary to narrow their requests under FOIA. Instead of seeking the Biden Records themselves, they determined to pursue the disclosure of the Gift Agreement and documents related to interactions with Biden's staff concerning the handling of the Biden Documents. In a substantial win for my clients, the Delaware Supreme Court disagreed that the University had carried its burden of proof, reversing in part and remanding the Superior Court's decision in an Opinion issued December 6, 2021.

Thereafter, my clients pursued the documents again in the Superior Court following remand. After the University submitted one affidavit of the University's FOIA Administrator, my clients challenged the affidavit as being insufficient. The Court agreed, and in a Memorandum Opinion on June 7, 2022, ordered that the University provide additional information. The University submitted a Supplemental Affidavit on July 22, 2022. My clients objected to the Supplemental Affidavit, challenging a number of facial deficiencies. The Superior Court overruled the objections, and again denied the FOIA request in a Memorandum Opinion issued on October 19, 2022.

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My clients appealed again to the Delaware Supreme Court. *See Judicial Watch Inc. and The Daily Caller News Foundation v. University of Delaware*, Case No. 402, 2022. Briefing will be completed on this appeal on Friday, January 27, 2023.

C. Next Steps.

Given the state of the law in Delaware, our efforts to obtain the underlying Biden Records have been blocked under FOIA. What remains open are my clients' efforts to obtain the Gift Agreement and the records of communications between Biden's office and the University. Of key interest is who is funding the handling of the Biden Records. While we have identified that certain grants were given by the National Endowment for the Humanities, the University insists that no public funds have been used. This raises the question: where are the funds coming from to house and archive the Biden Records? We have heard rumors that comments on a draft of the Gift Agreement may have been located on the Hunter Biden laptop, raising further questions: why would Hunter Biden be commenting on the donation of the Biden Records, and what was his role with respect to the donation?

In our view, the United States House of Representatives would have the power to subpoena all of these documents. Unlike an effort to obtain public disclosure of documents under FOIA, a subpoena would have the power to compel the release of these documents. We believe that given President Biden's alleged mishandling of documents, it is imperative for the House to review the Biden Records to determine that no classified materials are in the collection, especially given the fact that we do not even know if the person or persons reviewing these documents have security clearance. The House should also be interested in who has funded what is obviously a substantial donation. With the Gift Agreement out of reach, this remains an unanswered concern. Finally, the House should have particular interest in who has had access to the Biden Documents. Even if we were able to obtain access to the Biden Records, we have no idea if there have been documents removed during the course of the Delaware litigation.

I remain available to discuss these issues in more detail, or to provide any of the underlying filings. Please feel free to reach me at my office number (302) 257-2025, or by my cell (302) 252-7498, or by email at tk@hfk.law.

Very truly yours,



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