



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

 JUDICIAL WATCH, INC. and THE
 DAILY CALLER NEWS FOUNDATION,

*Petitioners Below-
 Appellants,*

v.

UNIVERSITY OF DELAWARE,

*Respondent Below-
 Appellee.*

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) C.A. No. N20A-07-001 MMJ
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PETITIONERS’ MOTION FOR RELIEF FROM JUDGMENT

Petitioners Judicial Watch, Inc. (“Judicial Watch”) and the Daily Caller News Foundation (“DCNF”) (together “Petitioners”) move pursuant to Superior Court Rules 60(b)(2) and (6) to set aside the Memorandum Opinion dated October 19, 2022 (D.I. 36) (the “Memorandum Opinion” or “Mem. Op.”) in light of newly discovered evidence. In support hereof, Petitioners state as follows:

1. In February 2024, the United States Department of Justice publicly released the Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr. (the “Special Counsel Report” or “Report”).¹

2. Factual findings in Chapter 15 of the Report, titled “Classified

¹ A copy of the Report is available at <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf> (last visited Mar. 20, 2024).

Documents Found at the University of Delaware,”² contradict representations by the University of Delaware (the “University”) in the Supplemented Affidavit of Jennifer M. Becnel-Guzzo, Esq., University FOIA Coordinator and Deputy General Counsel, dated July 22, 2022 (the “Supplemented Affidavit”),³ on which the Court relied in determining that the University had “met its burden of creating a record from which the Court can determine that the University performed an adequate search for responsive documents.” Mem. Op. at 6.

3. The Supplemented Affidavit provides, in relevant part, that no consideration was paid to President Biden, “*State funded or otherwise*,”⁴ in connection with the Senatorial Papers. To the contrary, the Special Counsel Report found that “Mr. Biden asked two of his former longtime Senate staffers to review his boxes in courtesy storage,” and that “[t]he staffers were paid by the University of Delaware to perform the pre-gift review.” Ex. 1 at 313 & n.1247. “These former staffers reviewed and catalogued the boxes and recommended to him which papers to donate.” *Id.* at 313. One staffer emailed President Biden: “I have not forgotten about the boxes and files at your house. I am looking to start on those just after Thanksgiving.” *Id.* n.1251. Another email notes that a staffer was “looking through about 20-25 boxes in the garage.” *Id.* The search for Senate documents took place

² An excerpt of Chapter 15 of the Report is attached as **Ex. 1**.

³ D.I. 25, attached hereto as **Ex. 2**.

⁴ Ex. 2 at ¶ 8 (emphasis added).

at Mr. Biden’s direction, required the participation of many, and was paid for by the University. Even the University General Counsel was involved in coordinating with Mr. Biden’s Chief of Staff. *Id.* n.1246.

4. In sum, the Report shows that President Biden directed his former staffers’ work in reviewing and cataloging the Senate Papers, received the benefit thereof—and the University paid for it. Such payments constitute consideration paid on President Biden’s behalf in connection with the donation of Senatorial Papers to the University—contrary to the representations in the Supplemented Affidavit.

5. On February 20, 2024, Petitioners wrote to counsel for the University seeking clarification and additional information regarding the discrepancies between the Special Counsel Report and the Supplemented Affidavit. *See* **Ex. 3**.

6. On March 13, 2024, the University responded, dismissing Petitioners’ concerns and doubling down on the representation that “no consideration was paid to Mr. Biden for the gift of his Senate Papers,” (**Ex. 4** at 1), and that “[y]our apparent assertion that payment for services provided to the University by *former* Biden staffers who were independent contractors, constitutes a payment of consideration to Mr. Biden for the gift of his Senate Papers, is simply false.” *Id.* at 2 (emphasis in original). Counsel’s assertion, however, directly contradicts the Special Counsel Report, which found that (1) Mr. Biden solicited and directed his former staffers’ work, (2) the former staffers performed the work for Mr. Biden—rather than the

University, and (3) the University paid the former staffers. Ex. 1 at 313 & n.1247.

LEGAL ARGUMENT

A. The Court Should Grant Petitioners Relief from Judgment Under Rule 60(b)(2) in Light of Newly Discovered Evidence.

7. Delaware Superior Court Civil Rule 60(b)(2) provides that a party may be relieved from a judgment or order in the event that there is “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Delaware courts consider five factors when considering a motion to vacate or amend a final judgment under Rule 60(b)(2):

(1) the newly discovered evidence has come to his knowledge since the judgment; (2) that it could not, in the exercise of reasonable diligence, have been discovered for use before the judgment; (3) that it is so material and relevant that it will probably change the result; (4) that it is not merely cumulative or impeaching in character; and (5) that it is reasonably possible that the evidence will be produced at the trial.⁵

8. The findings of the Special Counsel Report constitute “newly discovered evidence,” since the underlying facts existed, but were hidden when the Memorandum Opinion was issued.⁶ No amount of diligence could have allowed Petitioners to independently find the facts set forth in the Report, as the Report had not been released when the Memorandum Opinion was issued in October 2022, and Petitioners have had no opportunity to take discovery in this proceeding. These

⁵ *Levine v. Smith*, 591 A.2d 194, 202 (Del. 1991) (cleaned up), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000).

⁶ *Bachtle v. Bachtle*, 494 A.2d 1253, 1255-56 (Del. 1985).

findings only came to light after a special counsel with investigative authority was able to uncover these facts. Had Petitioners been permitted discovery, the University's omissions may have been discovered.

9. The Report's factual findings are material, relevant, and may change the holding of the Memorandum Opinion, as they directly contradict representations in the Supplemented Affidavit. The Supplemented Affidavit was the sole basis for the Court's holding that the University had satisfied its "burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents."⁷ The contradictions alone cause concern. More importantly, they call into question the veracity of *all* of the representations in the Supplemented Affidavit, and undermine the factual grounds for the finding that the University's denial of Petitioners' requests did not violate FOIA.⁸ Moreover, the Special Counsel Report is not merely cumulative or impeaching, and it is suitable for production at an evidentiary hearing in this matter.

B. The Court Should Grant Relief from Judgment Under Rule 60(b)(6).

10. Rule 60(b)(6) incorporates equitable principles of fairness by calling for the Court to grant relief for "any other reason justifying relief from the operation

⁷ Mem. Op. at 6; *Judicial Watch, Inc. v. University of Delaware*, 267 A.3d 996, 1012-13 (Del. 2021).

⁸ See *Taylor v. Taylor*, 102 A.3d 151, 154 (Del. 2014) (reversing default judgment and noting that "[j]ust like attorneys have duties of candor to the tribunal, so too do parties themselves").

of the judgment.” Super. Ct. Civ. R. 60(b)(6). Although not specifically identified in the rule, “[e]quitable principles may be taken into account by a court in the exercise of its discretion under Rule 60(b).”⁹ “The decision of whether to grant vacatur under Rule 60(b)(6) lies in the sound discretion of the trial court and will be disturbed only on an abuse of that discretion.”¹⁰

11. Petitioners submitted their requests nearly four years ago. After multiple bites at the apple, the University provided only the bare minimum information necessary to satisfy its burden of proof, and some of that information is now in question. In light of the University’s obfuscation as to its use of funds to acquire the Senatorial Papers, the Court should vacate the judgment and order the University to produce all documents—including all agreements and emails—cited in Chapter 15 of the Special Counsel Report, and/or reopen the record to permit Petitioners to take discovery to vet the University’s representations in the Supplemented Affidavit.

CONCLUSION

Petitioners respectfully request that the Court grant relief from the Court’s Memorandum Opinion and enter the form of order filed herewith.

⁹ 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed.) Westlaw (database updated Apr. 2022).

¹⁰ *Cox v. Gen. Motors Corp.*, 239 A.2d 706, 707 (Del. 1967).

Dated: March 21, 2024

HALLORAN FARKAS + KITTILA LLP

/s/ William E. Green, Jr.

Theodore A. Kittila (DE Bar No. 3963)

William E. Green, Jr. (DE Bar No. 4864)

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Phone: (302) 257-2025

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Counsel for Petitioners

CERTIFICATE OF SERVICE

I, William E. Green, Jr. (DE Bar No. 4864), certify that on March 21, 2024, I caused copies of the foregoing PETITIONERS' MOTION FOR RELIEF FROM JUDGMENT to be served on the following counsel of record in the manner indicated below:

By File&ServeXpress

William E. Manning (Bar No. 697)
James D. Taylor, Jr. (Bar No. 4009)
Marisa R. De Feo (Bar No. 6778)
SAUL EWING ARNSTEIN & LEHR LLP
1201 N. Market Street, Suite 2300
P.O. Box 1266
Wilmington, Delaware 19899-1226

Counsel for University of Delaware

/s/ William E. Green, Jr.

William E. Green, Jr. (Bar No. 4864)



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JUDICIAL WATCH, INC. and THE
DAILY CALLER NEWS FOUNDATION,

*Petitioners Below-
Appellants,*

v.

UNIVERSITY OF DELAWARE,

*Respondent Below-
Appellee.*

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) C.A. No. N20A-07-001 MMJ
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NOTICE OF PETITIONERS' MOTION FOR RELIEF FROM JUDGMENT

To: William E. Manning, Esq. (Bar No. 697)
James D. Taylor, Jr., Esq. (Bar No. 4009)
Marisa R. De Feo (Bar No. 6778)
SAUL EWING ARNSTEIN & LEHR LLP
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Wilmington, Delaware 19899-1226

PLEASE TAKE NOTICE that the attached Petitioners' Motion for Relief
From Judgment will be heard at the convenience of the Court.

Dated: March 21, 2024

HALLORAN FARKAS + KITTILA LLP

/s/ William E. Green, Jr.

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Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned certifies that on March 21, 2024, the foregoing Notice of Petitioners' Motion for Relief From Judgment was caused to be served on the following counsel of record by File & ServeXpress:

William E. Manning, Esq. (Bar No. 697)
James D. Taylor, Jr., Esq. (Bar No. 4009)
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Dated: March 21, 2024

/s/ William E. Green, Jr. _____
William E. Green, Jr. (No. 4864)

EFiled: Mar 21 2024 09:33AM EDT
Transaction ID 72570893
Case No. N20A-07-001 MMJ



EXHIBIT 1

CHAPTER FIFTEEN

CLASSIFIED DOCUMENTS FOUND AT THE UNIVERSITY OF DELAWARE

In January, February, and June 2023, FBI agents identified and recovered just over a dozen marked classified documents in Mr. Biden's Senate-era papers housed at the University of Delaware. Almost all of these documents predate the Senate's establishment of rules for the tracking and handling of classified information. The evidence does not suggest that Mr. Biden willfully retained these documents. Rather, they appear to have been included in his large collection of Senate papers by mistake.

I. FACTS

A. Mr. Biden donated hundreds of boxes of senatorial records to the University of Delaware library

As a senator, Mr. Biden accumulated hundreds of bankers boxes of records. During his time as vice president, his staff shipped these records on a rolling basis to the National Archives storage facility in Maryland, where they were stored for Mr. Biden as a courtesy. The Senate records consisted of his personal senatorial files, those of his staffers, and campaign materials.¹²⁴³ While the records were not supposed to include committee records, which belong to the Senate, senators' staff commonly intermingled committee documents with their senators' personal papers.¹²⁴⁴ By the time Mr. Biden became vice president, the National Archives had over 2,000 boxes and 415 gigabytes of electronic data in courtesy storage for him.¹²⁴⁵

¹²⁴³ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

¹²⁴⁴ *Id.* at 4; Senate Staffer 1 Tr. at 25-26, 43.

¹²⁴⁵ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

Within the first year of his vice presidency, Mr. Biden's staff began preparations to donate his senatorial papers to the University of Delaware.¹²⁴⁶ In spring 2011, Mr. Biden asked two of his former longtime Senate staffers to review his boxes in courtesy storage.¹²⁴⁷ These former staffers reviewed and catalogued the boxes and recommended to him which papers to donate.¹²⁴⁸ During the review, neither staffer expected to or did find any marked classified documents.¹²⁴⁹

In fall 2011, Mr. Biden formally agreed to donate his Senate papers and other records to the University of Delaware.¹²⁵⁰ Between 2012 and 2015, the University's Morris Library received over 2,000 boxes of Mr. Biden's senatorial papers shipped from the National Archives, the Russell Senate Office Building, and Mr. Biden's Delaware home.¹²⁵¹ Upon their arrival at the University of Delaware, the boxes were

¹²⁴⁶ FBI Serial 349 1A420; *See, e.g.*, July 2009 e-mails between University of Delaware general counsel and Mr. Biden's Chief of Staff, SCOH-000712.

¹²⁴⁷ Senate Staffer 1 Tr. at 30-31. Senate Staffer 2 3/14/23 Tr. at 25. The staffers were paid by the University of Delaware to perform the pre-gift review. Senate Staffer 2 3/14/23 Tr. at 65.

¹²⁴⁸ Senate Staffer 1 Tr. at 35. Senate Staffer 2 3/14/23 Tr. at 25-26.

¹²⁴⁹ Senate Staffer 1 Tr. at 43; Senate Staffer 2 11/3/23 Tr. at 13, 26.

¹²⁵⁰ FBI Serials 282 1A302, 349 1A420; *See* 2/12/14 Letter from Mr. Biden to the National Archives, SCOH-000011. The "Ceremonial Agreement to Gift" was signed in a ceremony at the University of Delaware on September 16, 2011, while the actual deed of gift was not fully executed until July 2016. *See, e.g.*, July 2011 and September 2011 e-mails amongst University of Delaware staff, OVP Counsel, and personal counsel to the Vice President, SCOH-000783, SCOH-000706; 7/15/16 Deed of gift, SCOH-000578.

¹²⁵¹ FBI Serials 79 1A89, 282 1A301, 349 1A420; 5/30/12-6/5/12 e-mails between former Senate staffer, current Senate staffer, and the University of Delaware, SCOH-000005, SCOH-000007, SCOH-000008, SCOH-000010; 10/23/11 e-mail from former Senate staffer to Mr. Biden, 1B001_02683701 ("However, I have not forgotten about the boxes and files at your house. I am looking to start on those just after Thanksgiving. However, I know that you want to get them out of there sooner rather than later."); 1/31/13 e-mail from Archivist to UDel Morris Librarian and UDel library employee, SCOH-000714 (former Senate staffer was "looking though about 20-25 boxes in the garage From that group, he has about 2 boxes of Senate material so far.") When interviewed, the former Senate staffer did not recall

placed in a secure storage area, and the materials were reviewed over time by archivists and other university staff.¹²⁵²

B. Marked classified documents discovered at the Morris Library

In fall 2014, the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder.¹²⁵³ In late 2015 or early 2016, the intern discovered, among committee records, one document that was marked classified.¹²⁵⁴ She placed a sticky note on the document indicating the number of the box in which she found it and the fact it was marked “Secret.”¹²⁵⁵

In February 2023, an archivist reviewed the box the intern had flagged, discovered the marked classified document within the box, secured the document in a vault, and reported it to the FBI.¹²⁵⁶ Agents retrieved the document that same day.¹²⁵⁷ The classified document is a two-page State Department cable from 1987, marked Secret concerning the NATO alliance.¹²⁵⁸ A classification review by the State Department determined that the document was declassified in 2012.¹²⁵⁹

reviewing Senate-era boxes at Mr. Biden’s Delaware residence and transporting them to the University of Delaware. Senate Staffer 2 11/3/23 Tr. at 9-10, 18-20.

¹²⁵² Archivist Tr. 2/27/23 at 32.

¹²⁵³ Intern Tr. at 6-9.

¹²⁵⁴ *Id.* at 10, 12-13.

¹²⁵⁵ *Id.* at 21-22. The intern expressed confidence that she advised her supervisor of this discovery. *Id.* at 16-18. We were unable to determine why this issue went unaddressed at that time.

¹²⁵⁶ Archivist Tr. at 84; Report of Archivist interview, FBI Serial 79.

¹²⁵⁷ FBI Serials 79, 71.

¹²⁵⁸ Recovered document F1.

¹²⁵⁹ FBI Serial 676.

EXHIBIT 2



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JUDICIAL WATCH, INC.,)
a District of Columbia corporation,)
and THE DAILY CALLER NEWS)
FOUNDATION,)

*Petitioners Below-
Appellants,*

v.

DELAWARE DEPARTMENT OF)
JUSTICE and UNIVERSITY OF)
DELAWARE,)

*Respondents Below-
Appellees.*

) C.A. No. N20A-07-001 MMJ

) Appeal from Attorney General
) Opinion No. 20-IB19 and
) Opinion No. 20-IB20

**SUPPLEMENTED AFFIDAVIT OF JENNIFER M. BECNEL-GUZZO, ESQ.
UNIVERSITY FOIA COORDINATOR AND DEPUTY GENERAL COUNSEL**

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BEFORE ME, the undersigned authority, personally appeared Jennifer M. Becnel-Guzzo, Esq., who first by me duly sworn, deposes and says:

1. Under the University’s Access to Public Records Under the Delaware Freedom of Information Act (“FOIA”) Policy (Legacy Policy 3-30), I am designated, *ex officio*, as the University’s FOIA Coordinator, with responsibility for managing the University’s responses and assistance to those who request

information under FOIA. I have served as the University's FOIA Coordinator for approximately six years. I am also Associate Vice President and Deputy General Counsel at the University and have served in that capacity for approximately six years.

2. Typically, the State of Delaware appropriates approximately \$120 million to the University in the annual budget legislation. That appropriation makes up approximately 11% of the University's annual budget. This means that many activities and programs of the University are not supported with State funds. I have responded to dozens of FOIA requests over the years and am generally familiar with how the University spends its State funds.

3. Because 29 *Del. C.* § 10002(l) provides that only those “[U]niversity documents related to the expenditure of public funds¹ shall be ‘public records’” for purposes of the University's compliance with FOIA, my inquiries to the University's Budget Office, which tracks the University's expenditures of public funds, frequently begin, and often end, with this question: “have State funds been expended by the University on the activity or program that is the subject of a particular FOIA request?”

¹ “‘Public funds’ are those funds derived from the State or any political subdivision of the State.” 29 *Del. C.* § 10002(n).

4. In addition, when appropriate, I contact the Office of the Vice President and University Secretary to inquire whether matters about which we receive FOIA requests were discussed at meetings of the full Board of Trustees. I have also reviewed the Board of Trustee meeting materials posted publicly to determine if any of those materials are responsive to FOIA requests.

5. In recent years, I have responded to numerous FOIA requests having to do with the University's relationship to Joseph R. Biden, Jr. Indeed, there were earlier FOIA requests regarding the Biden Senate Papers. Thus, on several occasions I inquired of University personnel, including the University's Budget Director, Lionel Gilibert, and the University's Vice Provost of Libraries and Museums, Trevor Dawes, whether State funds have been spent on a variety of matters or undertakings related to Mr. Biden, including the Biden Senate Papers. The particular communications on which I relied in responding to Petitioners' later FOIA requests occurred in January 2020. In no case have I found that State funds were spent by the University on any such matter or undertaking.

6. Similarly, in reporting that the Biden Senate Papers were not the subject of any discussions held in meetings of the full Board of Trustees, I relied on communications with the University's Associate University Secretary, Brent Schrader first held in July 2019.

7. In May 2019, after receiving a request for documents related to any payments that might have been made to Mr. Biden, I inquired of Mr. Gilibert, the University's Budget Director, whether the University had made any payments with State funds to Mr. Biden. Mr. Gilibert confirmed the University had not made such payments to Mr. Biden.

8. In May 2019, shortly after receiving earlier inquiries for access to the Biden Senate Papers, I inquired of Mr. Gilibert, the University's Budget Director, and Vice Provost Dawes, whether the University paid any consideration, State funded or otherwise, to Mr. Biden for the Senate Papers. I confirmed it did not.

9. In January 2020, after receiving additional requests for access to the Biden Senatorial papers, I inquired of Mr. Gilibert, the University's Budget Director, and Vice Provost Dawes whether the salaries of any University personnel involved in the custody and curation of the Senate Papers are paid with State funds. I confirmed those salaries are not paid with State funds.

10. I inquired of Mr. Gilibert, the University's Budget Director, in January 2020 whether State funds have been spent on the University's email system over which email communications between University personnel and any representative of Mr. Biden might have been exchanged. I confirmed they were not.

11. I have, on several occasions before and after receipt of the FOIA requests from Petitioners, reviewed the gift agreement between the University and

Mr. Biden relating to the Senate Papers and determined that State funds are not mentioned in the agreement.

12. In the Court's June 7, 2022 Memorandum Opinion, the Court directed that, in addition to the identities of those with whom I communicated in order to gather information and dates on which those communications occurred, I identify documents that I reviewed. The specific responses to the inquiries to which I refer above did not include documents. However, the University's auditors annually produce, and make available to the public, a Statement of State of Delaware Funds Received and Expended, which I frequently review in considering FOIA requests. The responses to my inquiries described above are consistent with that annual report on the University's receipt and expenditure of State funds.

13. Based on the foregoing, I determined that no State funds were spent by the University in any way that related to Mr. Biden or the Senate Papers.


Jennifer M. Becnel-Guzzo, Esq.

SWORN TO AND SUBSCRIBED before me this 22nd day of July, 2022.

JAMES D. TAYLOR, JR.
Attorney at Law
Notary Public, State of Delaware
My Commission Has No Expiration Date
29 Del.C. § 4323(a)(3)

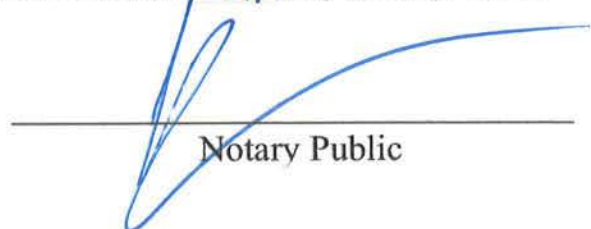

Notary Public

EXHIBIT 3

William E. Green, Jr.
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February 20, 2024

By Email

William E. Manning, Esq.
Saul Ewing LLP
1201 North Market Street, Suite 2300
Wilmington, DE 19801

***Re: Judicial Watch, Inc., et al. v. University of Delaware,
C.A. No. N20A-07-001.***

Dear Mr. Manning:

I write on behalf of my clients Judicial Watch, Inc. (“Judicial Watch”) and the Daily Caller News Foundation (the “Daily Caller”) regarding the above-referenced litigation following the release of the Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr., dated February 2024 (the “Special Counsel Report” or “Report”).¹

We have reviewed the Special Counsel Report, and certain factual findings in Chapter 15 of the Report appear to contradict the representations made by the

¹ A copy of the Report is available online at <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf> (last visited Feb. 16, 2024).

University of Delaware (the “University”) to the Courts, particularly statements contained in the Supplemented Affidavit of Jennifer M. Becnel-Guzzo, Esq., University FOIA Coordinator and Deputy General Counsel, dated July 22, 2022 (the “Supplemented Affidavit”). Before moving to re-open the case, we are writing to determine if there is an explanation for these inconsistencies.

In relevant part, the Special Counsel Report found that “[i]n spring 2011, Mr. Biden asked two of his former longtime Senate staffers to review his boxes in courtesy storage[,]” and that “[t]he staffers were paid by the University of Delaware to perform the pre-gift review.” Report at 313 & n.1247. The Report further found that “[i]n fall 2011, Mr. Biden formally agreed to donate his Senate papers and other records to the University of Delaware,” citing “July 2011 and September 2011 e-mails amongst University of Delaware staff, OVP Counsel, and personal counsel to the Vice President[.]” *Id.* at 313 & n.1250. The Report also found that “[i]n fall 2014, the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder.” *Id.* at 314. Additionally, the intern was apparently supervised by University staff. *See id.* at n.1255.

Before moving to re-open the case pursuant to Superior Court Civil Rule 60(b), we are writing to provide you and your client with an opportunity to explain

the apparent contradictions and/or correct the record. Specifically, we believe answers to the following questions may alleviate the need to seek court intervention:

1. Explain how the University's representation that the "University had not made such payments to Mr. Biden"² is accurate in light of the Special Counsel Report's factual finding that Mr. Biden's "staffers were paid by the University of Delaware"³ in connection with Mr. Biden's donation of the Senate Papers.

2. Explain how the University's representation that the University paid no consideration, "State funded or otherwise, to Mr. Biden for the Senate Papers,"⁴ is accurate in light of the foregoing.

3. Explain how the University's representation that no salaries of any University personnel involved in the custody and curation of the Senate Papers were paid with State funds⁵ is accurate in light of the Report's findings that "the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder" and that the intern had a University supervisor.⁶

² Supplemented Affidavit ¶ 7.

³ Report at 313 & n.1247.

⁴ Supplemented Affidavit ¶ 8.

⁵ Supplemented Affidavit ¶ 9.

⁶ Report at 314 & n.1255.

4. Identify all payments by the University to Mr. Biden or his staff, State funded or otherwise, in connection with Mr. Biden's donation of the Senate Papers.

5. In light of the Special Counsel Report's factual finding that emails were exchanged among University staff, OVP Counsel, and personal counsel to the Vice President,⁷ does the University now concede that such emails were in fact exchanged?⁸

6. State whether the University will further supplement its representations in the Supplemented Affidavit in light of the factual findings of the Special Counsel Report.

7. Identify all documents reviewed in connection with the preceding questions.

8. Identify all individuals consulted in connection with the preceding questions.

We look forward to hearing from you and hope that that these matters can be resolved without further formal legal proceedings. Please provide your responses to the above inquiries by March 5, 2024.

⁷ *Id.* at n. 1250.

⁸ *See* Supplemented Affidavit ¶ 10 (referencing email communication that "might have been exchanged").

William E. Manning, Esq.

February 20, 2024

Page 5

Sincerely,

/s/ William E. Green, Jr.

William E. Green, Jr.

Attorney-at-Law

Halloran Farkas + Kittila LLP

*Counsel for Judicial Watch, Inc. and the
Daily Caller News Foundation*

cc: James D. Taylor, Esq. (via email)

Theodore A. Kittila, Esq.

EXHIBIT 4

March 13, 2024

By Email wg@hfk.law

William E. Green, Jr.
Halloran Farkas + Kittila LLP
5801 Kennett Pike, Suite C/D
Wilmington, DE 19807

RE: *Judicial Watch, Inc., et al. v. University of Delaware, C.A. No. N20A-07-001*

Dear Mr. Green:

This will respond to your February 20 letter. In short, and while we are happy to discuss at your convenience, we see no inconsistency between representations made by the University in the above-referenced action and the excerpts from the Special Counsel Report (“Report”) to which you refer.

For your convenience, we will provide responses in the order set forth in your letter:

1. Explain how the University’s representation that the “University had not made such payments to Mr. Biden” is accurate in light of the Special Counsel Report’s factual finding that Mr. Biden’s “staffers were paid by the University of Delaware” in connection with Mr. Biden’s donation of the Senate Papers.

We begin by calling out a material omission from your quoted passage. The Report carefully notes that the individuals to whom you refer were “former” Biden staffers. We take it, then, that they were no longer on Mr. Biden’s staff – the reverse of the impression you have attempted to create.

Next, you apparently conflate the University’s payment for those review services with payments to Mr. Biden personally. However, the University’s Supplemented Affidavit from its FOIA Coordinator is precise on that point, reporting that there were no payments *to Mr. Biden* (emphasis provided), regardless of the source of funds. The point of that sworn representation was to ensure that your client and others knew that no consideration was paid to Mr. Biden for the gift of his Senate Papers. Nothing in the Report questions that representation. Reported accurately, the facts found in the Report are unremarkable.

In the “pre-gift”¹ review of the Biden Papers – commencing a long process that will ultimately end with public access to those Papers – it made perfect sense to seek assistance from individuals familiar with Mr. Biden’s service as United States Senator.

Finally, context is important. In the action before Delaware’s courts, your client sought access to documents under Delaware’s Freedom of Information Act, 29 Del. C. Ch. 100. As the Delaware Supreme Court advised, your client was not entitled to such access. We fail to see how the incomplete excerpts you quote have anything to do with the central question in the case – *i.e.* did the documents you demanded have anything to do with the expenditure of State funds? Even if your quotes from the Report had been accurate, they provide no basis to set aside, under Superior Court Rules of Civil Procedure, Rule 60(b), the Court’s final disposition of that issue. Put another way, the passages to which you refer, even if accurately quoted, say nothing about the expenditure of State funds, causing one to wonder how they could possibly be the basis for reopening a case that dealt exclusively with that issue.

2. *Explain how the University’s representation that the University paid no consideration, “State funded or otherwise, to Mr. Biden for the Senate Papers,” is accurate in light of the foregoing.*

For the several reasons explained above, there is no inconsistency between the facts found in the Report and the University’s sworn representations to the Court in Delaware. Your apparent assertion that payment for services provided to the University by *former* Biden staffers who were independent contractors, constitutes a payment of consideration to Mr. Biden for the gift of his Senate Papers, is simply false.

3. *Explain how the University’s representation that no salaries of any University personnel involved in the custody and curation of the Senate Papers were paid with State funds is accurate in light of the Report’s findings that “the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder” and that the intern had a University supervisor.*

We fail to see how hiring an intern to help in the review process renders inaccurate the University’s representation that no State funds were expended to pay University personnel. As you know, several University personnel have been and will be involved in the curation of the Senate Papers. There is no basis for any assertion that the intern to whom you refer (or, for that matter, any other University personnel) was paid with State funds.

4. *Identify all payments by the University to Mr. Biden or his staff, State funded or otherwise, in connection with Mr. Biden’s donation of the Senate Papers.*

See our previous answers. There were no such payments and nothing in the Report suggests the contrary.

¹ Report, p. 3, n. 1247.

5. *In light of the Special Counsel Report's factual finding that emails were exchanged among University staff, OVP Counsel, and personal counsel to the Vice President, does the University now concede that such emails were in fact exchanged?*

The University never asserted that there was no email communication among the parties you identify; thus, the facts recited in your question require no concession. Indeed, it was obvious that there were email communications about the gift of the Biden Papers (one wonders how it could have been otherwise), and the only question before the Court was whether your client was entitled to see them. Because the University's email system was not acquired with State funds, and because there is no basis to believe that any of them spoke to the University's use of State funds, the Court appropriately concluded that Delaware's FOIA does not require their production.

6. *State whether the University will further supplement its representations in the Supplemented Affidavit in light of the factual findings of the Special Counsel Report.*

No, the University will not further supplement its representations. The portions of the Report that you have cited require no supplements.

7. *Identify all documents reviewed in connection with the preceding questions.*

None. The preceding questions required no review of documents. Further, we do not believe that your clients are entitled to discovery in preparing to seek relief under Rule 60(b).

8. *Identify all individuals consulted in connection with the preceding questions.*

None. There was no need for those preparing these responses to consult with others. Further, we do not believe that your clients are entitled to discovery in preparing to seek relief under Rule 60(b).

As I indicated earlier, we are happy to discuss your suggestion that there is inconsistency between matters included in the Report and representations made by the University in the Delaware litigation. However, for reasons set forth above, nothing in your letter suggests any such inconsistency. Moreover, there is nothing in the Report that provides a basis for the extraordinary relief available under Rule 60(b).

Sincerely,

/s/ William E. Manning

William E. Manning



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

_____)	
JUDICIAL WATCH, INC. and THE)	
DAILY CALLER NEWS FOUNDATION,)	
)	C.A. No. N20A-07-001 MMJ
<i>Petitioners Below-</i>)	
<i>Appellants,</i>)	
v.)	
)	
UNIVERSITY OF DELAWARE,)	
)	
<i>Respondent Below-</i>)	
<i>Appellee.</i>)	
_____)	

**[PROPOSED] ORDER GRANTING PETITIONERS’
MOTION FOR RELIEF FROM JUDGMENT**

AND NOW, Petitioners Judicial Watch, Inc. and the Daily Caller News Foundation, having moved pursuant to Superior Court Civil Rule 60(b) for relief from judgment (the “Motion”), and the Court having considered the Motion, any response thereto, and finding that Petitioners have established good cause therefore;

NOW this ____ day of _____, 2024 it is hereby Ordered:

1. The October 19, 2022 Memorandum Opinion is vacated.
2. The University has failed to carry its burden to create a record from which the Superior Court can determine whether the University performed an adequate search for responsive documents.
3. The University shall produce to Petitioners all documents—to include all agreements and emails—cited in Chapter 15 of the Report of the Special Counsel

on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.

4. The record is reopened for opened further proceedings, to include discovery and any additional evidence or submissions necessary to determine whether the University has violated FOIA.

IT IS SO ORDERED.

The Honorable Mary M. Johnston