

IN THE CHANCERY COURT OF KNOX COUNTY, TENNESSEE
FOR THE SIXTH JUDICIAL DISTRICT AT KNOXVILLE

JOHN BECKER,

Petitioner,

v.

THE UNIVERSITY OF TENNESSEE,

Respondent.

No. 208439-1

REPLY IN SUPPORT OF BECKER’S PETITION FOR ACCESS TO PUBLIC RECORDS AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS

Pursuant to the Court’s order, Petitioner John Becker (“Petitioner” or “Mr. Becker”) hereby files this Reply in Support of his Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access (the “Petition”). For the reasons set forth in the Petition, his Memorandum of Law, and this Reply, the Court should grant the Petition, order the University of Tennessee (“Respondent” or “UT”) to immediately produce the requested public records to Mr. Becker, and grant Mr. Becker reasonable costs, including reasonable attorneys’ fees.

ARGUMENT

I. Mr. North could not and did not withdraw or narrow Mr. Becker’s public records request at issue in this case.

UT claims that one of Mr. Becker’s colleagues withdrew or narrowed Mr. Becker’s records request in a phone conversation with a UT employee, UT Mem. 1, 6,

30, but its argument is based on inaccurate facts and, in any case, the law does not recognize waiver of a TPRA claim in the manner alleged.

First, Tenn. Code Ann. § 10-7-505(a) permits Tennessee citizens, like Mr. Becker, Pet. ¶ 1, to file a petition when their “right of personal inspection ... has been in whole or in part denied by the official” There is no question that Mr. Becker made the request at issue, Pet. ¶ 12, Becker Decl. ¶ 6, Attach. 1, UT Mem. at 3; and that UT denied, in part, Mr. Becker’s November 8, 2022 public records request, Pet. ¶¶ 19–21; UT Mem. at 3 (“On March 15, 2023, The University denied the request in part ...”). Nothing Mr. Becker’s colleague Mr. North did in a call with Ms. Tindell in July 2023 can change these basic, undisputed facts and that is sufficient for the Court to reject UT’s argument to the contrary.

Second, the facts do not even suggest Mr. North sought to withdraw or narrow Mr. Becker’s November 8, 2022 request. While Mr. North did note to Ms. Tindell that Mr. Becker was hoping to find salary information on UT-Battelle employees and receive the original operating agreement in the records he requested, there is no evidence to support the notion that he asked to withdraw or narrow Mr. Becker’s request, 2d North Decl. ¶¶ 6–7 (attached at Exhibit A), nor could he have waived Mr. Becker’s rights under the TPRA. Moreover, UT’s disclosure of the redacted 2007 operating agreement in August 2023 undercuts its argument because, according to UT, that record would not have been subject to the alleged narrowed request, yet UT

provided it within a month of Mr. North's July 2023 phone call with Ms. Tindell, suggesting UT did not view the record request as narrowed or waived in any way.

Third, UT has not and cannot show waiver by Mr. North of Mr. Becker's rights under the TPRA. Ms. Tindell's account of the July 2023 phone call does not show that Mr. North's acts or declarations "manifest[] an intent and purpose not to claim the supposed advantage" of Mr. Becker's public records request. *See Chattem, Inc. v. Provident Life & Acc. Ins. Co.*, 676 S.W.2d 953, 955 (Tenn. 1984) (explaining criteria for express waiver) (citation omitted). Similarly, UT cannot show implied waiver, which requires "(1) Lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially." *Id.* at 955 (citation omitted). In fact, UT has not alleged, nor could it, that it has changed its position prejudicially as a result of Mr. North's conversation with Ms. Tindell, an essential requirement for implied waiver.

UT cannot escape this basic fact: it denied Mr. Becker's November 8, 2022 request in part and Mr. Becker, therefore, has a right to sue under the TPRA on that denial pursuant to Tenn. Code Ann. § 10-7-505(a). UT's effort to limit the scope of this case based on a later conversation between a UT employee and one of Mr. Becker's colleagues should be rejected by the Court.

II. Petitioner's request constituted a proper request under the TPRA.

In partially denying Mr. Becker's request, UT alleged that Mr. Becker's "request is overly broad and not sufficiently detailed to enable the University to

identify the specific records for inspection and copying, [and] would require the University to sort through files and search through voluminous records[.]” McAdoo Decl. Attach. 4. During discussions with UT’s counsel, Mr. Harold Pinkley informed the undersigned that UT was withdrawing this argument. 3d McAdoo Decl. ¶ 11, Attach. 8 (attached at Exhibit B). However, it appears that UT has recanted that position. Accordingly, Mr. Becker writes to address the propriety of his TPRA request.

Tenn. Code Ann. § 10-7-503(a)(4) mandates that “[a] request for inspection or copying of a public record must be sufficiently detailed to enable the governmental entity to identify responsive records for inspection and copying.” Mr. Becker’s request did just this, seeking records of seven University personnel received from UT-Battelle and Oak Ridge National Laboratory along with “operating agreements ... regarding the formation and operation of UT Battelle between and including UT and Battelle Memorial Institute.” Becker Decl. Attach. 1. There is simply no authority to support the proposition that such a clearly defined request is not sufficiently detailed to enable UT to identify responsive records, which is all the TPRA requires.

The cases UT cites in support of its contention are inapposite. *First Community Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.3d 369 (Tenn. 2015), cited on page 6 of UT’s brief, is not even a public records case. UT also cites *Hickman v. Tennessee Board of Probation & Parole*, No. M200102346COAR3CV, 2003 WL 724474 (Tenn. Ct. App. Mar. 4, 2003)—a case which, frankly, supports Mr. Becker’s position. In *Hickman*, the plaintiff’s request contained approximately twenty-two

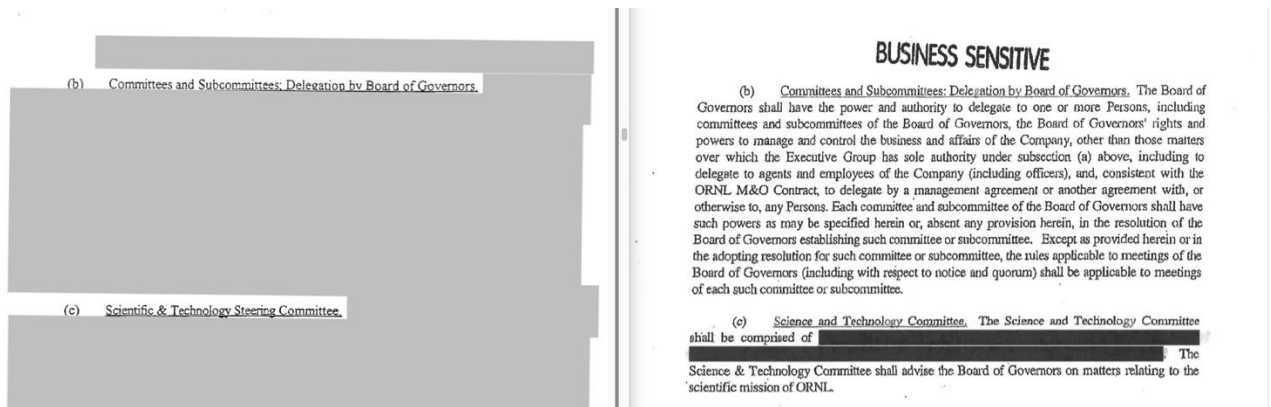
subparts and sought records from 1992 onward. *Hickman*, 2003 WL 724474 at *6–7. Despite not being a model of clarity, the court stated it “**cannot determine** ... exactly what fatal lack of specificity exists in Mr. Hickman’s request.” *Id.* at *11 (emphasis added). Here, in comparison, Mr. Becker’s request seeks records of just seven identified personnel over a discrete eleven-month period. There is no lack of specificity therein.

This Court’s Memorandum Opinion in *Conley v. Spangler* (No. 197897-1, Chancery Ct. Knox Cnty, 2020), *aff’d*, *Conley v. Knox County Sheriff*, No. E2020-01713-COA-R3-CV, 2022 WL 289275, at *4 (Tenn. Ct. App. Oct. 13, 2021), is instructive. 3d McAdoo Decl. Attach. 10. There, this Court emphasized that the government’s claims of “burden” are “not an excuse” to avoid compliance under the TPRA. *Id.* at 15. In *Conley*, this Court also opined on the information asymmetry that inheres in the records requesting process; specifically, in discussing whether laser precision is required in a TPRA request, this Court noted that such a requirement would mean that “the requestor would already have to have pre-existing knowledge of the documents composing the public records.” *Id.* at 17. Thus, “[t]he requestor is not required to request a specific document containing the information sought.” *Id.* Mr. Becker’s request satisfies the mandate of Tenn. Code Ann. § 10-7-503(a)(4) as well as this Court’s interpretation thereof.

Accordingly, Mr. Becker’s request constitutes a proper request under the TPRA, and any records withheld should be made available to Mr. Becker.

III. UT's trade secrets claims continue to be unavailing.

For over a year, UT withheld swaths of information from its operating agreements from Mr. Becker yet it has now determined that nearly one hundred lines of text it previously contended were trade secrets are no longer so. *Compare* North Decl. Attach 4, *with* UT Mem. Ex. 4. In so doing, UT has conceded it has been employing a vastly overbroad interpretation of Tennessee's trade secrets law to the instant records. *See, e.g.,*:



(Reproduced from North Decl. Attach 4 and UT Mem. Ex. 4, respectively.).

For instance, UT previously withheld text explaining that some proportion of UT-Battelle's board members are appointed by UT, and that some proportion are be appointed by Battelle Memorial—a fact utterly unsurprising given the 50-50 partnership of those same two entities that comprises UT-Battelle. UT Mem. Ex. 4 § 4.1(a). UT also withheld, as a trade secret, the expectation that UT-Battelle's board members would bring “relevant scientific, educational, and research experience and resources to bear for the benefit of the Company.” *Id.* § 4.1(b). Again—unsurprising—as this is what board members tend to do. *Cf. State ex rel. Maner v.*

Leech, 588 S.W.2d 534, 540 (Tenn. 1979) (encouraging employment by judges of the “saving grace of common sense”).

Rather than explaining the basis for its glaring contradictions, UT instead devotes six pages of its Memorandum to explaining that the Tennessee Uniform Trade Secrets Act (“TUTSA”), Tenn. Code Ann. § 47-25-1701 *et seq.*, qualifies as an exemption to disclosure under state law. UT Mem. at 7–12. Petitioner has at no point suggested that TUTSA cannot, in appropriate circumstances, shield records otherwise subject to the TPRA. *Compare* UT Mem. at 7 (“It is unclear whether the Petitioner is contending that there is no trade secrets exemption to the Public Records Act”), *with* Pet.’s Mem. at 17 (“To receive trade secret protection for the withheld or redacted public records, UT must establish that they, in fact, contain trade secrets. And even then the proper remedy is limited redaction, not wholesale withholding.”). Mr. Becker’s contention has always been that TUTSA simply does not apply to the records at issue *here*.

In contrast to its six-page exposition on TUTSA as a means for withholding, UT’s brief devotes just two paragraphs to describing how, exactly, the information it seeks to withhold *here* actually qualifies as trade secret. UT Mem. at 14. Specifically, UT claims that disclosure of certain information from the operating agreements “*could* reveal the particulars of how UT-Battelle does business that would be useful to a potential competitor, for example, who might be interested in competing for the contract to run ORNL” UT Mem. at 14 (emphasis added). As an initial matter, such speculation is not sufficient for UT to carry its burden. *See, e.g., In re*

Est. of Thompson, 636 S.W.3d 1, 22 (Tenn. Ct. App. 2021) (“Indeed, a specific harm [resulting from the] documents be[ing] disclosed is unclear, and Appellees have never offered more than speculation”). UT’s argument also fails to address the six factors that are consulted by courts in this state to evaluate whether information constitutes a trade secret. *See* Pet.’s Mem. at 16–17 (listing the six factors).

Again, those factors are:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the business to guard the secrecy of the information;
- (4) the value of the information to the business and to its competitors;
- (5) the amount of money or effort expended by the business in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others[.]

Wright Med. Tech., Inc. v. Grisoni, 135 S.W.3d 561, 589 (Tenn. Ct. App. 2001) (citation omitted); *see also* Pet.’s Mem. at 16–17 (stating same). UT’s failure to engage with these factors is fatal to its withholdings.

For instance, information about similarly situated LLCs’ operating agreements are readily available online, cutting against UT’s argument that “reveal[ing] the particulars of how UT-Battelle does business,” UT Mem. at 15, would necessarily cause it harm. *See, e.g.*, 3d McAdoo Decl. ¶ 12, Attach. 9 (discussing detailed information about Savannah River Nuclear Solutions (“SRNS”), LLC’s operating agreement, including about “key personnel commitments” and how SRNS’s

team members and “key personnel” can be substituted, if necessary, during performance of a contract-project “with contracting officer approval”).

Mr. Smith’s use of verbiage such as “operating model” or “formulae,” Smith Decl. ¶¶ 5, 8, appears intended to evoke a mystique surrounding what is likely quite general, non-trade secret information. For instance, Mr. Smith declares that UT-Battelle’s “formula for filling board seats,” Smith Decl. ¶ 8.d., is somehow a trade secret, which is incomprehensible. Notwithstanding that information related thereto has existed in the public domain for years, *see, e.g.*, 3d McAdoo Decl. ¶ 9, Attach. 6 (describing that the Florida State University President re-appointed Vice President for Research Kirby Kemper to serve as FSU’s representative on UT-Battelle’s board), as the Eighth Circuit noted in analyzing Minnesota’s Uniform Trade Secrets Act—which is substantially the same as Tennessee’s—“knowledge of industry contact people does not rise to the level of a trade secret because this type of unprotected information is readily ascertainable within a trade.” *Fox Sports Net N., L.L.C. v. Minn. Twins P’ship*, 319 F.3d 329, 336 (8th Cir. 2003). Applying this principle here, the “revolving door” through which past, present, and future UT-Battelle board members travel is not a secret formula as Mr. Smith suggests. Take, for example, the fact that Mr. Brett Bosley serves on Brookhaven National Lab’s board, McAdoo Decl. Attach. 10; Mr. Bosley has also served on UT-Battelle’s board, because his experience rendered him an appropriate candidate for board service, *see* 3d McAdoo Decl. ¶ 5, Attach. 2. Dr. Stacey Patterson, who has served on the UT-Battelle board, *see* 3d McAdoo Decl. ¶ 4, Attach. 1, has a doctorate in microbiology, has experience

contracting with the Department of Energy, and, of course, served among UT's leadership, *id.* ¶ 14, Attach. 11. That UT-Battelle strives to, and does, in fact, recruit seasoned and accomplished personnel to join its board is not a trade secret, even if Mr. Smith prefers to call this process a “formula.” *Cf. Alpha Sch. Bus Co. v. Wagner*, 910 N.E.2d 1134 (2009) (explaining that information about a transportation company's employees was not a trade secret under the state's UTSA because the information could be very easily acquired by competitors by simply following the company's drivers on their routes and asking them for their contact information).

Accordingly, what Mr. Smith calls an “operating model” is nothing more than a recognized business practice. *See* 3d McAdoo Decl. ¶ 9, Attach. 7 (explaining that “[t]he UT-Battelle, LLC ... us[es] a group of southeast regional universities as part of the team. These core universities include Virginia Tech, the University of Virginia, Georgia Tech, North Carolina State, Duke, and Florida State”). To put a finer point on it, it is understood that:

- UT-Battelle leverages “university participation and collaboration” and optimizes for the skills of “materials synthesis, biological science, [and] computational sciences,” *id.*;
- UT-Battelle allots “each of the core universities ... special input into the management and programs of ORNL,” including through “a seat on the board of governors of the UT-Battelle, LLC, and representation on the Science and Technology Steering Committee that advises the Board of Governors, and on the Science and Technology Council reporting to the deputy laboratory director for science and technology,” *id.*;
- such persons “rotat[e] as chair of the User Facility Council,” and “participat[e] in technical-review opportunities throughout the laboratory, joint-professorship appointments at ORNL,” *id.*;

• and that the “university connection” is a hallmark of UT-Battelle’s strategic planning and administration of ORNL, *see id.* (describing university site visits by UT-Battelle senior management)—

—and none of these matters constitute a trade secret. *Compare id., with Better Holdco, Inc. v. Beeline Loans, Inc.*, 666 F. Supp. 3d 328, 347–48 (S.D.N.Y. 2023) (describing an actual “operating model” which contained “proprietary compensation information,” “cash positions,” information on the “financing” of the business, “detailed ... projections,” “quantifiable measures of ... financial and operational performance, including ... counts of loan applications, interest rate locks, loans funded, and the associated revenues and profits earned”—“information [that] would permit a competitor to ... benchmark the revenues they need to [] secure fundraising”).

Harkening back to first principles, the threshold inquiry into what constitutes a trade secret is whether the information “[d]erives independent economic value ... from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.” Tenn. Code Ann. § 47-25-1702(4)(A). The redacted information containing, *inter alia*, how many board members sit on UT-Battelle’s board, the obligations and tasks of the board’s executive committee, and its approach to filling board seats, Smith Decl. ¶8, are, to put it plainly, all common-sense procedures and information whose contours are common knowledge. *See, e.g.*, 3d McAdoo Decl. ¶ 7, Attach. 4 (explaining that boards of governors can vary in size, but the median tends to be 15; that there are pros and cons of both smaller and larger boards; and that, ultimately, size isn’t

particularly material compared to the paramount task of meaningfully engaging the board members). Similarly, the standard tasks of an executive committee or group of a governing board are generally known. *See, e.g.*, 3d McAdoo Decl. ¶ 8, Attach. 5 (explaining that executive committees “can be on the lookout for issues that warrant consultation and discussion among the CEO, CFO, general counsel, and other senior management” and can “serve as a sounding board for the general counsel and CEO”); *id.* ¶ 19, Attach. 16 (explaining that executive committees generally consist of the “officers, board chair, and executive director”; should be “willing to ask tough questions, vet all issues thoroughly, and steer the full board toward responsible leadership”; and that their primary responsibilities consist of hiring and firing the organization head, setting compensation, and assisting in strategic planning).

For the aforementioned reasons, UT’s attempts to invoke TUTSA to withhold information from the two operating agreements¹ is unavailing and the records should be disclosed.

IV. Drafts are public records under the TPRA.

UT argues that the Court should depart from the plain language of Tenn. Code Ann. § 10-7-503(a)(1)(A) and find that drafts are not public records under the TPRA. The Court should reject this invitation. Public records are defined as “all documents ... regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any

¹ In its Memorandum, UT does not assert that any other withheld public records contain trade secrets.

governmental entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A)(i). The definition is not limited to “final” documents, but instead, purposefully, encompasses all documents made or received in connection with the transaction of official business.

UT would have the Court graft the word “final” onto this definition based on a dictionary definition of “draft” and a separate section of Tennessee’s Code related to the Public Records Commission. UT Mem. at 15. These purported authorities are unpersuasive. Tenn. Code Ann. § 10-7-301, which pertains to the Public Records Commission and is not part of the TPRA, *Memphis Publ’g Co. v. City of Memphis*, 871 S.W.2d 681, 685 n.1 (Tenn. 1994), makes no mention of drafts, including in its definition of “temporary records.” In contrast, the TPRA contains no definition for “temporary records.” UT claims that the Public Records Commission’s Records Disposition Authorization for “temporary records” includes drafts in its definition, but at most this shows that drafts may not need to be retained for as long as some other public records, not that they are not public records in the first place.²

Drafts are public records under the TPRA based on the plain language of Tenn. Code Ann. § 10-7-503(a)(1)(A) and this conclusion is buttressed by the General Assembly’s requirement that the TPRA be interpreted broadly in favor of public

² UT’s reliance on a case discussing the public record exception to the hearsay rule found at Tenn. R. Evid. 803(8) is also unavailing. UT Mem. at 15–16 (citing *Tire Shredders, Inc. v. ERM-N. Cent., Inc.*, 15 S.W.3d 849, 861–63 (Tenn. Ct. App. 1999)). The *Tire Shredders* decision, which held that a draft agreement was not a public record, is unsurprising because the document at issue was a draft agreement between two private parties and thus, of course, would not be a public record.

access. Tenn. Code Ann. § 10-7-505(d). UT's arguments to the contrary should be rejected.

V. UT's federal law arguments should be rejected.

UT persists in arguing that Tenn. Code Ann. § 10-7-504(a)(9)(C) creates an umbrella federal law exemption to the TPRA and that the Federal Procurement Integrity Act prohibits release of public records responsive to Mr. Becker's request. Both of UT's assertions are incorrect.

A. Tenn. Code Ann. § 10-7-504(a)(9)(C) is inapplicable.

UT's Memorandum does not address the inherent conflict between the plain limitation that exceptions to the TPRA are limited to state law in Tenn. Code Ann. § 10-7-503(a)(2)(A), and its reliance on Tenn. Code Ann. § 10-7-504(a)(9)(C). Instead, UT would have the Court interpret Tenn. Code Ann. § 10-7-504(a)(9)(C) as essentially rewriting Tenn. Code Ann. § 10-7-503(a)(2)(A) to say, "unless otherwise provided by federal or state law." Such an interpretation is not harmonious. UT would also have the Court ignore the crystal-clear legislative history.

The only authority UT relies upon to apply Tenn. Code Ann. § 10-7-504(a)(9)(C) in the manner it advocates is a Tennessee Attorney General opinion that is entirely devoid of analysis on the point.³ UT Mem. at 20. Tennessee Attorney General Opinion No. 07-165 claims without discussion that based on Tenn. Code Ann. § 10-7-504(a)(9)(C), "Tennessee statutes incorporate the confidentiality restrictions

³ The other administrative opinions cited by UT do not mention or discuss Tenn. Code Ann. § 10-7-504(a)(9)(C). UT Mem. at 20–21.

contained in the federal Medicaid regulations.” 2007 WL 4800784, at *2.⁴ The opinion fails to reckon this conclusion with the rule that laws must be read in harmony and the Attorney General’s reading of Tenn. Code Ann. § 10-7-504(a)(9)(C) is anything but harmonious with Tenn. Code Ann. § 10-7-503(a)(2)(A). Here, the Court should interpret Tenn. Code Ann. § 10-7-504(a)(9)(C) the way the General Assembly intended it to be applied—limited to agricultural matters. Pet.’s Mem. at 13–14.

B. The Federal Procurement Integrity Act does not apply and does not preempt the TPRA.

UT appears to (correctly) be dropping its argument that federal FOIA preempts the TPRA, UT Mem. at 25 (“UT is not relying on any aspect of FOIA in this case at this point.”), but with respect to the FPIA, UT has double downed on its position. UT initially argues that Mr. Becker “has not properly challenged (and, by not challenging, has conceded) UT’s position that the records in question do in fact

⁴ This opinion was contradicted by the Tennessee Attorney General just a few years later in Opinion No. 15-48 in which the Tennessee Attorney General correctly explained that

There is no HIPAA violation when disclosure of information, even protected health information, is required by state law. Disclosure of the information at issue was made in response to a request for access to that information under Tennessee’s Public Records Act. The Public Records Act mandates that the information be disclosed. Therefore, release of the information was “required by law.” Because the release of the information was required by state law, its disclosure is permitted by the Privacy Rule and does not violate HIPAA.

2015 WL 3642440, at *3.

contain information made confidential by the [FPIA].” UT Mem. at 22. That is not accurate. Pet. ¶ 51 (claiming that the FPIA, among others, is “inapplicable and [] not the proper basis for withholding public records under the TPRA”). As Mr. Becker argued in his Memorandum, 41 U.S.C. § 2102(a)(1)-(3) does not apply to any of the withheld public records because “no UT employee subject to Mr. Becker’s request qualifies as a federal government employee or contractor.” Pet.’s Mem. at 14.; *see also id.* at 15 (“Even if one of the prohibitions in 41 U.S.C. § 2102 (or elsewhere in the FPIA) did prevent the release of the requested public records (and they do not), release would still be permitted (and thus required under the TPRA) ...”). Of course, Mr. Becker does not know what is in the requested public records that were withheld so he cannot make a more document specific argument, but he plainly did not concede that the FPIA applies to any of the withheld public records.

Oddly, UT cites to no actual provision of the FPIA as a basis for its withholding. Instead, UT references an outdated citation to 41 U.S.C. § 423, which is now 41 U.S.C. § 2101, which only sets forth “definitions.” UT Mem. at 22–24. UT then claims without specific citation to the FPIA that the Act prohibits “the disclosure of procurement information by a person, which includes source selection information, before the award of a Federal agency procurement contract to which the information relates.” *Id.* at 23. Presumably, UT is referencing 41 U.S.C. § 2102(b), which provides in whole: “Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.” UT

conveniently omitted the qualifier “[e]xcept as provided by law.” As noted in Mr. Becker’s Memorandum, that qualifier should be interpreted to permit disclosure pursuant to the state public records laws, just as a similar provision is interpreted under HIPAA. Pet.’s Mem. at 14–15. UT has proffered no counterargument. The same is true regarding the applicability of 41 U.S.C. § 2107(2) and (7), both of which permit disclosure here. Pet.’s Mem. at 15.

Nor does the FPIA preempt the TPRA, for many of the same reasons. As a starting point, the U.S. Supreme Court has consistently expressed a reluctance to preempt state law. *E.g.*, *Pharm. Rsch. and Mfrs. of Am. v. Walsh*, 538 U.S. 644, 661–62 (2003) (in addressing whether federal statute preempted state program, a court will start “with a presumption that the state statute is valid” and ask whether the party asserting preemption “shouldered the burden of overcoming that presumption” (citation omitted)); *Dalton v. Little Rock Fam. Plan. Servs.*, 516 U.S. 474, 476 (1996) (“state law is displaced only to the extent that it actually conflicts with federal law”) (citation omitted); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) (“a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find pre-emption,” so “pre-emption will not lie unless it is the clear and manifest purpose of Congress”) (citation and quotation marks omitted). Tennessee courts, including our Supreme Court, have come to similarly conclusions. *E.g.*, *LeTellier v. LeTellier*, 40 S.W.3d 490, 497 (Tenn. 2001) (“We begin with the presumption that Congress did not intend to preempt [a law].” (citation omitted)); *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 670–71 (Tenn. Ct. App. 1997)

(explaining that “the courts work from the assumption that the historic powers of the states are not displaced by a federal statute unless that was the clear and manifest intent of Congress” and that “[t]he proper approach is to reconcile the federal and state laws, rather than to seek out conflict where none clearly exists” (citations omitted)).

In *Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595 (Tenn. 2013), the Tennessee Supreme Court explained in great detail that:

In analyzing whether federal law preempts a state statute, the courts should never assume that Congress has derogated state regulation. Instead, courts should start with the presumption that Congress does not intend to supplant state law and that the historic police powers of the states are not superseded by the federal act unless preemption was the clear and manifest purpose of Congress. This anti-preemption presumption erects a high threshold; implied preemption analysis requires much more than a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.

Id. at 605 (citations and quotation marks omitted). UT has done nothing to carry its burden to overcome the high threshold presumption that the FPIA does not preempt the TPRA. And, as stated, there is no conflict between the FPIA and the TPRA because the FPIA specifically permits obtaining otherwise confidential information when “provided by law,” 41 U.S.C. § 2102(b), does not “restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information,” 41 U.S.C. § 2107(2), and does not “limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation,” *id.* § 2107(7), which would include the TPRA. *Dalton*, 516 U.S. at 476

(“state law is displaced only to the extent that it actually conflicts with federal law” (citations omitted)).

The FPIA does not apply, either factually or legally, to the withheld public records and the FPIA does not preempt the TPRA. Nothing UT has argued persuasively indicates otherwise.

VI. The University continues to improperly withhold records related to academic appointments.

UT continues to ask that the Court permit withholding public records related to job applicants and academic appointments notwithstanding that it cannot point to a single qualifying exemption in support. UT instead claims that such information is protected under the “the First and Fourteenth Amendments [which] provide protection for ‘privacy in one’s associations,’” UT Mem. at 25. However, UT’s novel constitutional argument does not stretch quite as broad as it would hope. *See, e.g., Sullivan v. Univ. of Wash.*, 60 F.4th 574, 576 (9th Cir. 2023) (“Appointees to a university committee ... sought to enjoin the university from releasing the letters appointing them to the official committee. The appointees claimed that the disclosure of such letters, which contain their personal identifying information, would violate their First Amendment right of expressive association. ... ***We disagree.***” (emphasis added)); *see also Buffalo Police Benevolent Ass'n, Inc. v. Brown*, 69 Misc. 3d 998, 134 N.Y.S.3d 150 (N.Y. Sup. Ct. 2020) (where police and firefighter associations raised due process and equal protection claims as a basis to block disclosure of public records, and the court ruled that the associations failed to demonstrate a likelihood of success on such constitutional claims).

To support its bold claim that applicants for public employment have a federal constitutional privacy right based on substantive due process that supersedes the TPRA, UT cites a quartet of cases that are both distinguishable and inapposite. UT Mem. at 25–26. As an initial matter, surely UT is not equating the alleged privacy rights of public employment applicants with the associational rights of NAACP members in 1950’s Alabama. UT Mem. at 26. In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), upon which UT relies, UT Mem. at 26, the U.S. Supreme Court found that members of the NAACP had an associational right under the 14th Amendment to the U.S. Constitution that prohibited the State of Alabama from requiring disclosure of its membership list because, among other things, “[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association” as other forms of restraint. *NAACP*, 357 U.S. at 462. That is a far cry from the unsupported right for which UT advocates.

The other cases UT relies upon are also infirm. In *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998),⁵ the Sixth Circuit held that Ohio undercover officers have a “fundamental liberty interest” in their personal information: “specifically their interest in preserving their lives and the lives of ... their family members, as well as preserving their personal security and bodily integrity.” *Id.* at 1062. The *Kallstrom* court cautioned that any asserted

⁵ Decisions of federal appellate courts are not binding on Tennessee’s courts; only U.S. Supreme Court’s decisions are. *In re: All Assessments*, 67 S.W.3d 805, 818–19 (Tenn. Ct. App. 2001).

constitutional right in informational privacy “**must be restricted** to ‘those personal rights that can be deemed “fundamental” or “implicit in the concept of ordered liberty.’”” *Id.* at 1062 (emphasis added) (quoting *J.P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981)). There is of course, no such fundamental or implicit right to obtain employment at UT or elsewhere—and UT does not cite to any cases for that proposition. In fact, the Tennessee Supreme Court has favorably noted that “other courts considering the issue have declined to extend substantive due process protections to property interests in employment or to ‘occupational liberty interests.’” *Rowe v. Bd. of Educ. of City of Chattanooga*, 938 S.W.2d 351, 353 n.1 (Tenn. 1996) (citations omitted).

Similarly, in *Déjà vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001),⁶ the court extended *Kallstrom’s* holding to apply to exotic dancers based on “significant evidence that the requirement that applicants submit their names and past and current addresses to a public forum poses serious risks to their personal security.” *Id.* at 394; *see also id.* at 395 (noting testimony that release of a dancer’s name and address to local organizations who oppose exotic dancing “will result in such groups harassing her at her home as a result of her choice to engage in erotic speech”). UT has not and cannot allege that applying to work at UT involves a specific personal security risk of the sort identified in

⁶ UT also cites *Déjà Vu of Cincinnati, L.L.C. v. Union Township Board of Trustees*, 411 F.3d 777, 794 (6th Cir. 2005 (en banc) and explains that it follows the *Deja Vu Nashville* case. For the same reasons *Deja Vu Nashville* is unpersuasive, so too is its companion case from Ohio. UT Mem. at 26.

Kallstrom and *Deja Vu*. UT simply has not shown that there is a federal constitutional privacy right that exempts public disclosure of information submitted to UT by applicants for public employment.

Moreover, the parties and the Court already have the benefit of directly relevant case law: the Court of Appeals' decision in *Board of Education of Memphis County Schools v. Memphis Publishing Co.*, 585 S.W.2d 629, 631 (Tenn. Ct. App. 1979). There, the court held that applications for the position of superintendent of city schools "were received by that body in its official capacity in connection with aforesaid business"—hence—" [t]hose applications became part of that body's records[,] " such that their disclosure was required under the Act. So, too, here. *See also* Tenn. Code Ann. § 10-7-503(f) (stating that "[a]ll records, employment applications, credentials and similar documents *obtained by any person in conjunction with an employment search* for a director of schools or any chief public administrative officer shall ... be open for personal inspection by any citizen") (emphasis added); Tenn. Att'y Gen. Op. 16-16 (May 4, 2016) (explaining that Tenn. Code Ann. § 10-7-503(f) applies to records in the hands of the Tennessee School Board Association and the Tennessee Organization of School Superintendents).

Public records from academic jobs searches, including applicant materials are not exempt from the TPRA and do not carry with them substantive due process

concerns warranting the recognition of a federal constitutional privacy right. As such, the Court should order the withheld public records released to Mr. Becker.

VII. UT has failed to meet its burden to show cause why Mr. Becker’s petition should not be granted on the basis of asserted attorney-client and common interest privileges.

Peculiarly, UT puts forward no arguments regarding what specific records or facts support its assertion of the attorney-client and common interest privileges. UT Mem. at 27. Instead, UT claims that:

[T]here are few, if any documents that UT is withholding on the basis of the attorney-client privilege or the [common interest] privilege that are not also covered by some other exemption, and the assertion of these privileges has been largely to avoid waiver. If the court does not uphold UT’s position on the substantive merits of other exemptions claimed, UT respectfully requests the opportunity to conduct an additional privilege review and provide a privilege log.

Id. In other words, UT wants a second bite at the apple if it is unsuccessful on its other arguments and does not appear to have even determined which records (or portions of records) it believes are covered by the two privileges. That is not how TPRA cases work, and UT should be found to have waived these two privileges or, in the alternative, to not have carried its burden to show cause why the public records should not be produced to Mr. Becker.

As an initial matter, the Court has ordered UT to appear and “show cause why the Petition in this Tennessee Public Records Act case should not be granted...” Order Setting Show Cause Hearing. This process is consistent with the TPRA, which provides that “[u]pon filing of the petition, the court *shall*, upon request of the

petitioning party, issue an order requiring the defendant or respondent party or parties *to immediately appear and show cause*, if they have any, why the petition should not be granted.” Tenn. Code Ann. § 10-7-505(b) (emphasis added). Pursuant to the TPRA, “[a] formal written response to the petition shall not be required, and the generally applicable periods of filing such response shall not apply in the interest of expeditious hearings.” *Id.* Finally, “[t]he decision of the court on the petition shall constitute a final judgment on the merits.” *Id.* In other words, petitions for access are decided at expedited show cause hearings, not in multiple parts; public entities, like UT, get one bite at the apple, not two.

The Court of Appeals addressed this issue in *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 358 S.W.3d 213, 220, 222–23 (Tenn. Ct. App. 2010). There, the question for the court was “whether the trial court erred in refusing to allow the Hospital to assert new state law defenses to production [of public records] on remand.” *Id.* at 222. The court approvingly quoted the trial court’s decision, which succinctly explained that

[t]he legislature has set out the procedure to be followed by [the] Chancery Court when judicial review of actions denying access to public records is requested in Tenn. Code Ann. § 10-7-505(b) This provision seems to contemplate that *any, and all, grounds for refusing access to public records will be promptly addressed by the Court at the show cause hearing.*

Id. at 220 (quoting trial court’s order) (emphasis added). Relying on this interpretation of Tenn. Code Ann. § 10-7-505(b), the *Konvalinka* Court explained, “[i]t would not promote public access for us to hold that an opponent to production may piecemeal its defenses, raising a new one each time it loses an appeal.” *Id.* at 223.

To permit UT to hold back an argument only to be able to raise it later is inconsistent with the TPRA.

UT has not carried its burden to show that the attorney client privilege or the common interest privilege apply to any records and its wishful thinking that it may later fill in the gaps should be rejected as inconsistent with the TPRA.

VIII. Records received by UT employees who UT appoints to serve on the UT-Battelle Board are public records based on the totality of the circumstances.

Contrary to UT's assertion, Mr. Becker is not conflating UT and UT-Battelle and is not seeking a ruling that UT-Battelle is the functional equivalent of a governmental entity under the TPRA. UT Mem. at 27–29. Rather, Mr. Becker is arguing that under a plain language interpretation of Tenn. Code Ann. § 10-7-503(a)(1)(A)'s definition of public record, records received by UT employees in their capacity as UT appointed members of the UT-Battelle Board from UT-Battelle are public records.

The TPRA defines public records as “all documents ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A)(i). This definition must be broadly construed in favor of public access. Tenn. Code Ann. § 10-7-505(d). The Tennessee Supreme Court tackled a similar issue in *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991). In deciding whether a suicide note collected and relied upon by the Knoxville police in investigating a death was a public record, prior to Tenn. Code Ann. § 10-7-503(a)(1)(A)(i)'s enactment, the Tennessee Supreme Court

explained that applying the requisite definition “requires an examination of the totality of the circumstances.” *Id.* at 924. The *Griffin* Court found that the suicide note was a public record and this Court should do the same for the records UT seeks to withhold based on its employees serving on the UT-Battelle board at its request.

The only UT employee that evidence suggests currently serves on the UT-Battelle Board is UT’s President Randy Boyd, but there may be others. In the first paragraph of Mr. Boyd’s biography on UT’s website, UT explains that “[t]he UT system also manages Oak Ridge National Laboratory through its UT-Battelle partnership, where Boyd serves as co-chairman.” 2d McAdoo Decl. Attach. 1.; *see also* McAdoo Decl. Attach. 8 (noting in UT announcement that Mr. Boyd was “president of the University of Tennessee system and vice chair of the UT-Battelle Board of Governors”). This public UT statement establishes that serving on the UT-Battelle board is a part of Mr. Boyd’s job as UT’s President and records he receives in that capacity are public records.

UT-Battelle is also regularly discussed at meetings of UT’s Board of Trustees. In the UT Executive Committee minutes for January 26, 2024, it was noted that “the University made a number of changes designed to further enhance its research initiatives, including filling several key positions” including “Dr. Stephen Streiffer, Director of Oak Ridge National Labs.” 3d McAdoo Decl. ¶ 15, Attach. 12. At the UT Board’s June 30, 2023 meeting, it was noted that “the search for the next Director of the Oak Ridge National Laboratory is progressing, with final candidates scheduled to be interviewed in July. President Boyd is optimistic that the Director will be

selected in the next four to eight weeks.” 3d McAdoo Decl. ¶ 16, Attach. 13; *see also id.* ¶ 17, Attach. 14 (“President Boyd advised that searches are still underway for the Vice President of Research and for the Director of the Oak Ridge National Laboratory.”); *id.* ¶ 18, Attach. 15 (“President Boyd indicated that there are searches for three positions that will play a significant role in advancing the University’s research initiatives ... (iii) Director of the Oak Ridge National Laboratory.”). Similarly, UT also publicly claims that “[t]he UT System manages Oak Ridge National Laboratory through its UT-Battelle partnership.” 2d McAdoo Decl. Attach. 5.

For others, like Mr. Smith and Dr. Patterson, interacting with UT-Battelle is a critical part of their jobs and whether they serve on the UT-Battelle Board does not change that fact. Mr. Smith’s biography on the UT website explains that “Jeff serves as vice president for national labs, the University of Tennessee System’s primary liaison to the ORNL leadership team, the U.S. Department of Energy and Battelle Memorial Institute on matters related to the UT-Battelle management and operations contract for ORNL.” 2d McAdoo Decl. Attach. 3; *see also id.* Attach. 4 (job announcement regarding Mr. Smith’s position, noting that, among other things, the job “will have primary responsibility within the University of Tennessee for UT-Battelle management and operations contract for the Oak Ridge National Laboratory”); *id.* Attach. 5 (press release from UT noting that Mr. Smith would be recommended for his current role, in which he would “serve as the UT System’s primary liaison to the Oak Ridge National Laboratory (ORNL) leadership team, the

U.S. Department of Energy and Battelle Memorial Institute on matters that relate to the UT-Battelle management and operations contract for ORNL”). Dr. Patterson’s current biography also notes that “[i]n her position for the UT system, [she] had broad responsibilities related to Oak Ridge National laboratory and serves as the primary liaison to Battelle Memorial Institute, UT’s partner in the management of ORNL, where she helped align the lab and university interests with innovation across the state.” 2d McAdoo Decl. Attach. 8. Dr. Patterson also served on the UT-Battelle Board. 3d McAdoo Decl. Attach. 1.

The totality of the circumstances indicates that UT employees who serve on the UT-Battelle Board do so as part of their employment at UT. As such, records individuals like Mr. Boyd received from UT-Battelle in their role as UT-Battelle Board members are public records under the TPRA.

IX. Mr. Becker Should Be Awarded Attorneys’ Fees and Costs.

UT is wrong regarding the applicable standard for an award of reasonable costs, including reasonable attorneys’ fees, pursuant to Tenn. Code Ann. § 10-7-504(g). The “bad faith” standard from *Arnold* advocated by UT has been repeatedly repudiated by the Court of Appeals. *The Tennessean v. City of Lebanon*, No. M2002-02078-COA-R3-CV, 2004 WL 290705, at *9 n. 9 (Tenn. Ct. App. Feb. 13, 2004), court explained that “[w]e do not believe that inserting [bad faith] into the statutory standard is consistent with the [TPRA] or the purpose of the attorney fee provision.”); *Friedmann v. Marshall County*, 471 S.W.3d 427, 436–41 (Tenn. Ct. App. 2015) (rejecting the “bad faith” standard discussed in *Arnold*). “[W]illfulness’ is not to be

measured in terms of ‘moral obliquity’ or ‘dishonest purposes,’ but rather, in terms of the relative worth of the legal justification cited by a [governmental entity] to refuse access to records.” *Friedmann*, 471 S.W.2d at 439. This “relative worth” approach has been applied in the Court of Appeals on multiple occasions, in both published and unpublished opinions, and in every Grand Division.⁷

The “relative worth” approach makes sense given the demands of a bad faith inquiry and the expedited statutorily mandated process for resolving public records cases. Generally, bad faith, motive and dishonest purpose are proven through discovery. Discovery, however, is rarely necessary in public records cases given the General Assembly’s creation of an expedited show cause hearing as the means for resolving TPRA cases. Tenn. Code Ann. § 10-7-505(b). To hold that the *Arnold* bad faith standard is necessary to warrant an award of reasonable costs, including reasonable attorneys’ fees, under Tenn. Code § 10-7-505(g) would be to require discovery in every public records case on that issue and would unnecessarily prolong resolution of TPRA cases. That is not what the General Assembly intended. Instead, consistent with the overwhelming majority of cases, *see supra* n.7, it is the relative worth of UT’s arguments against disclosure that are the basis for deciding costs and fees under the TPRA.

⁷ *Miller v. City of LaFollette*, No. E2023-00197-COA-R3-CV, 2024 WL 263172, at *7 (Tenn. Ct. App. Jan. 24, 2024); *Conley v. Knox Cnty. Sheriff*, No. E2020-01713-COA-R3-CV, 2022 WL 289275, at *5 (Tenn. Ct. App. Feb. 1, 2022); *Jetmore v. City of Memphis*, No. W2018-01567-COA-R3-CV, 2019 WL 4724839, at *10 (Tenn. Ct. App. Sept. 26, 2019); *Taylor v. Town of Lynville*, No. M2016-01393-COA-R3-CV, 2017 WL 2984194, at *5–6 (Tenn. Ct. App. July 13, 2017); *Clarke v. City of Memphis*, 473 S.W.3d 285, 290 (Tenn. Ct. App. 2015).

Here, the relative worth of the arguments UT makes against disclosure are sufficiently weak to warrant an award under Tenn. Code § 10-7-505(g). For example, UT willfully and improperly withheld those portions of the 1999 UT-Battelle operating agreement that it has now released as Exhibit 4 to its Memorandum. While UT claims that this less redacted version was released “[i]n an effort to resolve this matter,” UT Mem. at 6 n.3, it should be seen for what it is: a concession that its prior position that the previously redacted portions were trade secrets was untenable.⁸ UT’s remaining arguments are similarly unavailing.

CONCLUSION

For the reasons herein and in his Petition and supporting Memorandum, Mr. Becker respectfully requests that the Court grant his Petition and the relief sought therein.

Respectfully submitted,

/s/ Paul R. McAdoo

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⁸ Similarly, after counsel for Mr. Becker argued in detail that the deliberative process privilege does not apply, UT has now altered its initial position and “is not relying on that doctrine in this case.” UT Mem. at 16; *see also id.* (explaining that UT is not relying “on the deliberative process privilege”). UT could have informed Mr. Becker of its shifting position prior to Mr. Becker fully briefing the issue, but chose not to do so.

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Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on May 28, 2024, a true and correct copy of the foregoing was served by email, as agreed by the parties, on:

T. Harold Pinkley, BPR No. 9830
University of Tennessee
505 Summer Place UT Tower 1155
Knoxville, TN 37902
Tel. (865) 974-3416
Harold.Pinkley@tennessee.edu

Counsel for Respondent University of Tennessee

/s/ Paul R. McAdoo
Counsel for Petitioner

Exhibit A

IN THE CHANCERY COURT OF KNOX COUNTY, TENNESSEE
FOR THE SIXTH JUDICIAL DISTRICT AT KNOXVILLE

JOHN BECKER,

Petitioner,

v.

THE UNIVERSITY OF TENNESSEE,

Respondent.

No. 208439-1

**SECOND DECLARATION OF JOHN NORTH IN SUPPORT OF
PETITION FOR ACCESS TO PUBLIC RECORDS AND
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

I, John North, hereby declare as follows:

1. I have been a journalist for more than 35 years and am currently the senior investigative journalist for WBIR in Knoxville, Tennessee, where I am a colleague of Petitioner John Becker.
2. The facts stated in this Declaration are within my personal knowledge and are true and correct.
3. I have reviewed the University of Tennessee's Memorandum of Law in this case, including the supporting declarations.
4. Melissa Tindell called me on July 24, 2023 to discuss my colleague, John Becker's public records request from November 8, 2022.
5. I recall that during that call, Ms. Tindell asked me what we wanted with Mr. Becker's public records request because she said she may be able to help. I noted that we were hoping to get salary information and copies of the original operating agreement for UT-Battelle.

6. At no point in my conversation with Ms. Tindell did I limit or narrow the scope of the request made by Mr. Becker on November 8, 2022 and it was not my intent to do so.

7. At no point in my conversation with Ms. Tindell did I withdraw any portion of Mr. Becker's November 8, 2022 public records request and it was not my intent to do so.

8. I was merely assisting Mr. Becker with his public records request, and I was not the lead on it.

9. I had no authority to alter, in any way, the public records request that Mr. Becker made.

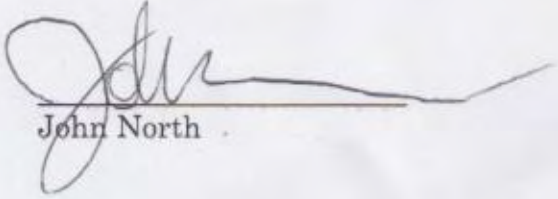
10. It is a mischaracterization of that conversation to say that I "withdrew" Mr. Becker's November 8, 2022 public records request, as noted on page 1 of UT's Memorandum.

11. It is a mischaracterization of that conversation to say that I "narrowed" Mr. Becker's November 8, 2022 public records request, as noted on page 6 of UT's Memorandum.

12. It is a mischaracterization of that conversation to say that I withdrew most of (or any of) Mr. Becker's November 8, 2022 public records request, as noted on page 30 of UT's Memorandum.

13. Any other similar characterizations by UT in its Memorandum of Law are also inaccurate.

14. I declare under penalty of perjury under the laws of Tennessee that the foregoing is true and correct.



John North

28th day of MAY, 2024

Exhibit B

IN THE CHANCERY COURT OF KNOX COUNTY, TENNESSEE
FOR THE SIXTH JUDICIAL DISTRICT AT KNOXVILLE

JOHN BECKER,

Petitioner,

v.

THE UNIVERSITY OF TENNESSEE,

Respondent.

No. 208439-1

**THIRD DECLARATION OF PAUL R. MCADOO IN SUPPORT OF JOHN
BECKER'S PETITION FOR ACCESS TO PUBLIC RECORDS
AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

I, Paul R. McAdoo, hereby declare as follows:

1. I am an attorney for Petitioner John Becker in this action.
2. The facts stated in this Declaration are within my personal knowledge and are true and correct.
3. I submit this Declaration in support of this action with knowledge of my pleading obligations under the Tennessee Rules of Civil Procedure.
4. A true and correct copy of a Form 990 for UT–Battelle Development Corporation is attached as **Attachment 1**, which I obtained through the IRS website at the following link: https://apps.irs.gov/pub/epostcard/cor/621867598_202109_990_2022030919708523.pdf.
5. A true and correct copy of a LinkedIn page is attached as **Attachment 2**, which I obtained from the following link: <https://www.linkedin.com/in/brett-bosley-8b61b31b6/>.

6. A true and correct copy of a Vanderbilt University webpage eulogizing Dennis Hall is attached as **Attachment 3**, which I obtained from the following link: <https://news.vanderbilt.edu/2024/01/16/dennis-g-hall-emeritus-dean-professor-and-vanderbilts-first-associate-provost-for-research-has-died/>.

7. A true and correct copy of a webpage on corporate governance is attached as **Attachment 4**, which I obtained from the following link: <https://www.boardeffect.com/blog/board-size-nonprofit-governance/>.

8. A true and correct copy of a webpage on executive committees is attached as **Attachment 5**, which I obtained from the following link: https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-august/why-a-company-should-consider-using-an-executive-committee/.

9. A true and correct copy of a Florida State University webpage is attached as **Attachment 6**, which I obtained from the following link: <https://news.fsu.edu/news/science-technology/2008/08/21/fsu-vp-serve-board-national-laboratory/>.

10. A true and correct copy of a Virginia Tech news article is attached as **Attachment 7**, which I obtained from the following link: <https://scholar.lib.vt.edu/vtpubs/spectrum/2000/sp2000-1006.pdf>.

11. A true and correct copy of an email chain between myself and UT's counsel is attached as **Attachment 8**.

12. A true and correct copy of a Government Accountability Office report is attached as **Attachment 9**, which I obtained through the GAO website at the

following link: <https://www.gao.gov/products/b-311126%2Cb-311126.2%2Cb-311126.3%2Cb-311126.4#>.

13. A true and correct copy of a prior opinion of this Court in *Conley v. Knox County Sheriff* is attached as **Attachment 10**.

14. A true and correct copy of a biography of Dr. Stacey Patterson is attached as **Attachment 11**, which I obtained through the Florida State University website at the following link: <https://www.research.fsu.edu/about/about-the-vp/>.

15. A true and correct copy of UT Board of Trustees meeting minutes is attached as **Attachment 12**, which I obtained through the UT website at the following link: <https://trustees.tennessee.edu/wp-content/uploads/sites/3/2024/05/Minutes-Exec-Committee-1-26-24-final.pdf>.

16. A true and correct copy of UT Board of Trustees meeting minutes is attached as **Attachment 13**, which I obtained through the UT website at the following link: <https://trustees.tennessee.edu/wp-content/uploads/sites/3/2023/10/Minutes-Annual-Meeting-BOT-06-30-23.pdf>.

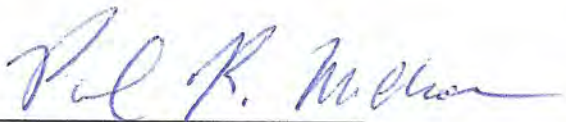
17. A true and correct copy of UT Board of Trustees meeting minutes is attached as **Attachment 14**, which I obtained through the UT website at the following link: https://trustees.tennessee.edu/wp-content/uploads/sites/3/2023/06/2023-Executive-Committee-Minutes_01-20-2023.pdf.

18. A true and correct copy of UT Board of Trustees meeting minutes is attached as **Attachment 15**, which I obtained through the UT website at the

following link: <https://trustees.tennessee.edu/wp-content/uploads/sites/3/2023/03/Minutes-Fall-Meeting-BOT-10-28-22approved.pdf>.

19. A true and correct copy of a webpage on executive committees is attached as Attachment 16, which I obtained through the following link: <https://www.boardeffect.com/blog/what-role-nonprofit-executive-committee/>.

20. I declare under penalty of perjury under the laws of Tennessee that the foregoing is true and correct.


Paul R. McAdoo

28th day of May, 2024

Attachment 1

Form **990**
Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047
2020
Open to Public Inspection

A For the **2020** calendar year, or tax year beginning **10-01-2020**, and ending **09-30-2021**

B Check if applicable:
 Address change
 Name change
 Initial return
 Final return/terminated
 Amended return
 Application pending

C Name of organization
UT-BATTELLE DEVELOPMENT CORPORATION

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) Room/suite
PO BOX 2008 MS-6432

City or town, state or province, country, and ZIP or foreign postal code
OAK RIDGE, TN 378316432

D Employer identification number
62-1867598

E Telephone number
(865) 241-2976

G Gross receipts \$ 25,092,560

F Name and address of principal officer:
JEFF AULT
PO BOX 2008 MS-6289
OAK RIDGE, TN 378316289

H(a) Is this a group return for subordinates? Yes No

H(b) Are all subordinates included? Yes No
If "No," attach a list. (see instructions)

H(c) Group exemption number ▶

I Tax-exempt status: 501(c)(3) 501(c) () (insert no.) 4947(a)(1) or 527

J Website: ▶ N/A

K Form of organization: Corporation Trust Association Other ▶

L Year of formation: 2001

M State of legal domicile: TN

Part I Summary

1 Briefly describe the organization's mission or most significant activities:
MANAGEMENT OF SCIENTIFIC FACILITIES

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets.

3 Number of voting members of the governing body (Part VI, line 1a)	3	6
4 Number of independent voting members of the governing body (Part VI, line 1b)	4	3
5 Total number of individuals employed in calendar year 2020 (Part V, line 2a)	5	0
6 Total number of volunteers (estimate if necessary)	6	0
7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
b Net unrelated business taxable income from Form 990-T, line 39	7b	0

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1h)	0	0
9 Program service revenue (Part VIII, line 2g)	11,808,077	11,612,493
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	110,108	69,968
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	35,669,964	13,410,099
12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	47,588,149	25,092,560

13 Grants and similar amounts paid (Part IX, column (A), lines 1–3)	0	0
14 Benefits paid to or for members (Part IX, column (A), line 4)	0	0
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
16a Professional fundraising fees (Part IX, column (A), line 11e)	0	0
b Total fundraising expenses (Part IX, column (D), line 25) ▶ 0		
17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	44,866,848	22,937,551
18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	44,866,848	22,937,551
19 Revenue less expenses. Subtract line 18 from line 12	2,721,301	2,155,009

	Beginning of Current Year	End of Year
20 Total assets (Part X, line 16)	85,515,755	76,867,878
21 Total liabilities (Part X, line 26)	65,513,570	54,710,684
22 Net assets or fund balances. Subtract line 21 from line 20	20,002,185	22,157,194

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here
Signature of officer: *****
Date: 2022-02-28
JEFF AULT CFO
Type or print name and title

Paid Preparer Use Only
Print/Type preparer's name: Preparer's signature: Date: 2022-02-28
Check if self-employed PTIN: P01217490
Firm's name ▶ COULTER & JUSTUS PC Firm's EIN ▶ 62-1532536
Firm's address ▶ 9717 COGDILL ROAD SUITE 201 KNOXVILLE, TN 37932 Phone no. (865) 637-4161

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:

MANAGEMENT OF SCIENTIFIC FACILITIES

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ 22,893,098 including grants of \$) (Revenue \$ 25,022,592)
See Additional Data

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe in Schedule O.)
(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses ▶ 22,893,098

Part IV Checklist of Required Schedules

		Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A	Yes	
2	Is the organization required to complete Schedule B, Schedule of Contributors (see instructions)?		No
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I		No
4	Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II		No
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? If "Yes," complete Schedule C, Part III		No
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I		No
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II		No
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III		No
9	Did the organization report an amount in Part X, line 21 for escrow or custodial account liability; serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV		No
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi endowments? If "Yes," complete Schedule D, Part V		No
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI	Yes	
b	Did the organization report an amount for investments—other securities—in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII		No
c	Did the organization report an amount for investments—program related—in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII		No
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX		No
e	Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X	Yes	
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? If "Yes," complete Schedule D, Part X		No
12a	Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI and XII	Yes	
b	Was the organization included in consolidated, independent audited financial statements for the tax year? If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional		No
13	Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E		No
14a	Did the organization maintain an office, employees, or agents outside of the United States?		No
b	Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? If "Yes," complete Schedule F, Parts I and IV		No
15	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? If "Yes," complete Schedule F, Parts II and IV		No
16	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? If "Yes," complete Schedule F, Parts III and IV		No
17	Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I (see instructions)		No
18	Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II		No
19	Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III		No
20a	Did the organization operate one or more hospital facilities? If "Yes," complete Schedule H		No
b	If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?		
21	Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? If "Yes," complete Schedule I, Parts I and II		No

Part IV Checklist of Required Schedules (continued)

Table with 3 columns: Question, Yes, No. Rows 22-38 covering various organizational requirements and schedules.

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V []

Table with 3 columns: Question, Yes, No. Rows 1a, 1b, 1c regarding Form 1096, Forms W-2G, and backup withholding rules.

Part V Statements Regarding Other IRS Filings and Tax Compliance (continued)

<p>2a Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return</p>	<p>2a <input type="text" value="0"/></p>		
<p>b If at least one is reported on line 2a, did the organization file all required federal employment tax returns? Note. If the sum of lines 1a and 2a is greater than 250, you may be required to e-file (see instructions)</p>			<p>2b</p>
<p>3a Did the organization have unrelated business gross income of \$1,000 or more during the year?</p>			<p>3a <input type="text" value="No"/></p>
<p>b If "Yes," has it filed a Form 990-T for this year? <i>If "No" to line 3b, provide an explanation in Schedule O</i></p>			<p>3b</p>
<p>4a At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?</p>			<p>4a <input type="text" value="No"/></p>
<p>b If "Yes," enter the name of the foreign country: <input type="text"/> See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).</p>			
<p>5a Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?</p>			<p>5a <input type="text" value="No"/></p>
<p>b Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?</p>			<p>5b <input type="text" value="No"/></p>
<p>c If "Yes," to line 5a or 5b, did the organization file Form 8886-T?</p>			<p>5c</p>
<p>6a Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?</p>			<p>6a <input type="text" value="No"/></p>
<p>b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?</p>			<p>6b</p>
<p>7 Organizations that may receive deductible contributions under section 170(c).</p>			
<p>a Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?</p>			<p>7a <input type="text" value="No"/></p>
<p>b If "Yes," did the organization notify the donor of the value of the goods or services provided?</p>			<p>7b</p>
<p>c Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?</p>			<p>7c <input type="text" value="No"/></p>
<p>d If "Yes," indicate the number of Forms 8282 filed during the year</p>	<p>7d <input type="text"/></p>		
<p>e Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?</p>			<p>7e <input type="text" value="No"/></p>
<p>f Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?</p>			<p>7f <input type="text" value="No"/></p>
<p>g If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?</p>			<p>7g <input type="text" value="No"/></p>
<p>h If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?</p>			<p>7h <input type="text" value="No"/></p>
<p>8 Sponsoring organizations maintaining donor advised funds. Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?</p>			<p>8</p>
<p>9 Sponsoring organizations maintaining donor advised funds.</p>			
<p>a Did the sponsoring organization make any taxable distributions under section 4966?</p>			<p>9a</p>
<p>b Did the sponsoring organization make a distribution to a donor, donor advisor, or related person?</p>			<p>9b</p>
<p>10 Section 501(c)(7) organizations. Enter:</p>			
<p>a Initiation fees and capital contributions included on Part VIII, line 12</p>	<p>10a <input type="text"/></p>		
<p>b Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities</p>	<p>10b <input type="text"/></p>		
<p>11 Section 501(c)(12) organizations. Enter:</p>			
<p>a Gross income from members or shareholders</p>	<p>11a <input type="text"/></p>		
<p>b Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)</p>	<p>11b <input type="text"/></p>		
<p>12a Section 4947(a)(1) non-exempt charitable trusts. Is the organization filing Form 990 in lieu of Form 1041?</p>			
<p>b If "Yes," enter the amount of tax-exempt interest received or accrued during the year.</p>	<p>12b <input type="text"/></p>		
<p>13 Section 501(c)(29) qualified nonprofit health insurance issuers.</p>			
<p>a Is the organization licensed to issue qualified health plans in more than one state? Note. See the instructions for additional information the organization must report on Schedule O.</p>			<p>13a</p>
<p>b Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans</p>	<p>13b <input type="text"/></p>		
<p>c Enter the amount of reserves on hand</p>	<p>13c <input type="text"/></p>		
<p>14a Did the organization receive any payments for indoor tanning services during the tax year?</p>			<p>14a <input type="text" value="No"/></p>
<p>b If "Yes," has it filed a Form 720 to report these payments? <i>If "No," provide an explanation in Schedule O</i></p>			<p>14b</p>
<p>15 Is the organization subject to the section 4960 tax on payment(s) of more than \$1,000,000 in remuneration or excess parachute payment(s) during the year? If "Yes," see instructions and file Form 4720, Schedule N.</p>			<p>15 <input type="text" value="No"/></p>
<p>16 Is the organization an educational institution subject to the section 4968 excise tax on net investment income?</p>			<p>16 <input type="text" value="No"/></p>
<p>If "Yes," complete Form 4720, Schedule O.</p>			

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI



Section A. Governing Body and Management

Table with 3 columns: Question, Yes, No. Rows include: 1a (6), 1b (3), 2, 3, 4, 5, 6, 7a, 7b, 8a, 8b, 9.

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

Table with 3 columns: Question, Yes, No. Rows include: 10a, 10b, 11a, 11b, 12a, 12b, 12c, 13, 14, 15a, 15b, 16a, 16b.

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed TN
18 Section 6104 requires an organization to make its Form 1023 (or 1024-A if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
20 State the name, address, and telephone number of the person who possesses the organization's books and records: JEFF AULT CFO PO BOX 2008 MS-6289 OAK RIDGE, TN 378316289 (865) 241-1256

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, or highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

See instructions for the order in which to list the persons above.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
(1) DR RON D TOWNSEND CHAIR	0.00	X						0	0	0
(2) STACEY PATTERSON DIRECTOR	0.00	X						0	0	0
(3) DAVID BRADSHAW DIRECTOR	0.00	X						0	0	0
(4) DR ROBERT VAN HOOK DIRECTOR	0.00	X						0	0	0
(5) MR JEFFREY W SMITH PRESIDENT	0.06 40.00	X		X				0	630,474	22,066
(6) STEVE JONES DIRECTOR	0.00	X						0	0	0
(7) MR JIMMY STONE EXECUTIVE VICE PRESIDENT	0.10 40.00			X				0	380,844	23,131
(8) MR JEFF AULT CHIEF FINANCIAL OFFICER	2.02 40.00			X				0	224,185	12,715
(9) MS NICOLE PORTER GENERAL COUNSEL AND SECRET	0.70 40.00			X				0	234,908	21,119

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

Table with 6 main columns: (A) Name and title, (B) Average hours per week, (C) Position, (D) Reportable compensation from the organization, (E) Reportable compensation from related organizations, (F) Estimated amount of other compensation.

Summary rows: 1b Sub-Total, 1c Total from continuation sheets to Part VII, Section A, 1d Total (add lines 1b and 1c).

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization 0

Table with 3 columns: Question, Yes, No. Contains questions 3, 4, and 5 regarding compensation reporting.

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

Table with 3 columns: (A) Name and business address, (B) Description of services, (C) Compensation. Lists contractors like OPTIMECH, WALKER ELECTRIC, and FORTIER LOSS CONTROL CONSULTANTS.

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization 3

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512 - 514	
Contributions, Gifts, Grants and Other Similar Amounts	1a Federated campaigns	1a					
	b Membership dues	1b					
	c Fundraising events	1c					
	d Related organizations	1d					
	e Government grants (contributions)	1e					
	f All other contributions, gifts, grants, and similar amounts not included above	1f					
	g Noncash contributions included in lines 1a - 1f:\$	1g					
	h Total. Add lines 1a-1f ▶						
Program Service Revenue	2a RENT INCOME AFFILIATE	Business Code 541700	11,612,493	11,612,493			
	b						
	c						
	d						
	e						
	f All other program service revenue.						
	g Total. Add lines 2a-2f. ▶		11,612,493				
Other Revenue	3 Investment income (including dividends, interest, and other similar amounts) ▶		69,968			69,968	
	4 Income from investment of tax-exempt bond proceeds ▶						
	5 Royalties ▶						
	6a Gross rents	(i) Real	(ii) Personal				
		6b Less: rental expenses					
		6c Rental income or (loss)					
		d Net rental income or (loss) ▶					
	7a Gross amount from sales of assets other than inventory	(i) Securities	(ii) Other				
		7b Less: cost or other basis and sales expenses					
		7c Gain or (loss)					
		d Net gain or (loss) ▶					
	8a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18	8a					
		b Less: direct expenses	8b				
		c Net income or (loss) from fundraising events ▶					
	9a Gross income from gaming activities. See Part IV, line 19	9a					
b Less: direct expenses		9b					
c Net income or (loss) from gaming activities ▶							
10a Gross sales of inventory, less returns and allowances	10a						
	b Less: cost of goods sold	10b					
	c Net income or (loss) from sales of inventory ▶						
Miscellaneous Revenue		Business Code					
11a TENANT MOD REIMBURSEMENT	541700	13,410,099	13,410,099				
b							
c							
d All other revenue							
e Total. Add lines 11a-11d ▶		13,410,099					
12 Total revenue. See instructions ▶		25,092,560	25,022,592	0	69,968		

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21				
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16.				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees				
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7 Other salaries and wages				
8 Pension plan accruals and contributions (include section 401 (k) and 403(b) employer contributions)				
9 Other employee benefits				
10 Payroll taxes				
11 Fees for services (non-employees):				
a Management				
b Legal	17,409		17,409	
c Accounting	12,365		12,365	
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				
g Other (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O)				
12 Advertising and promotion				
13 Office expenses				
14 Information technology				
15 Royalties				
16 Occupancy				
17 Travel				
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings				
20 Interest	3,959,195	3,959,195		
21 Payments to affiliates				
22 Depreciation, depletion, and amortization	3,054,750	3,054,750		
23 Insurance	208,617	208,617		
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a PROJECT MANAGEMENT	13,940,407	13,940,407		
b PROPERTY TAXES	1,730,129	1,730,129		
c OFFICE EXPENSE	14,679		14,679	
d				
e All other expenses				
25 Total functional expenses. Add lines 1 through 24e	22,937,551	22,893,098	44,453	0
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720).				

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part IX

		(A) Beginning of year		(B) End of year
Assets	1 Cash—non-interest-bearing		1	
	2 Savings and temporary cash investments	9,844,747	2	4,463,215
	3 Pledges and grants receivable, net		3	
	4 Accounts receivable, net	2,637,457	4	1,925,863
	5 Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		5	
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), and persons described in section 4958(c)(3)(B)		6	
	7 Notes and loans receivable, net		7	
	8 Inventories for sale or use		8	
	9 Prepaid expenses and deferred charges	0	9	500,000
	10a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a 122,239,026		
	b Less: accumulated depreciation	10b 52,260,226	73,033,551	10c 69,978,800
	11 Investments—publicly traded securities		11	
	12 Investments—other securities. See Part IV, line 11		12	
	13 Investments—program-related. See Part IV, line 11		13	
	14 Intangible assets		14	
	15 Other assets. See Part IV, line 11		15	
16 Total assets. Add lines 1 through 15 (must equal line 33)	85,515,755	16	76,867,878	
Liabilities	17 Accounts payable and accrued expenses	7,688,950	17	2,600,617
	18 Grants payable		18	
	19 Deferred revenue		19	
	20 Tax-exempt bond liabilities		20	
	21 Escrow or custodial account liability. Complete Part IV of Schedule D		21	
	22 Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		22	
	23 Secured mortgages and notes payable to unrelated third parties		23	
	24 Unsecured notes and loans payable to unrelated third parties		24	
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17 - 24). Complete Part X of Schedule D	57,824,620	25	52,110,067
	26 Total liabilities. Add lines 17 through 25	65,513,570	26	54,710,684
Net Assets or Fund Balances	Organizations that follow FASB ASC 958, check here <input checked="" type="checkbox"/> and complete lines 27, 28, 32, and 33.			
	27 Net assets without donor restrictions	20,002,185	27	22,157,194
	28 Net assets with donor restrictions		28	
	Organizations that do not follow FASB ASC 958, check here <input type="checkbox"/> and complete lines 29 through 33.			
	29 Capital stock or trust principal, or current funds		29	
	30 Paid-in or capital surplus, or land, building or equipment fund		30	
	31 Retained earnings, endowment, accumulated income, or other funds		31	
32 Total net assets or fund balances	20,002,185	32	22,157,194	
33 Total liabilities and net assets/fund balances	85,515,755	33	76,867,878	

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	25,092,560
2	Total expenses (must equal Part IX, column (A), line 25)	2	22,937,551
3	Revenue less expenses. Subtract line 2 from line 1	3	2,155,009
4	Net assets or fund balances at beginning of year (must equal Part X, line 32, column (A))	4	20,002,185
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain in Schedule O)	9	0
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 32, column (B))	10	22,157,194

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

- 1** Accounting method used to prepare the Form 990: Cash Accrual Other _____
 If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.
- 2a** Were the organization's financial statements compiled or reviewed by an independent accountant?
 If 'Yes,' check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both:
 Separate basis Consolidated basis Both consolidated and separate basis
- b** Were the organization's financial statements audited by an independent accountant?
 If 'Yes,' check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both:
 Separate basis Consolidated basis Both consolidated and separate basis
- c** If "Yes," to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?
 If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.
- 3a** As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?
- b** If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.

	Yes	No
2a		No
2b	Yes	
2c	Yes	
3a		No
3b		

Additional Data

Software ID:

Software Version:

EIN: 62-1867598

Name: UT-BATTELLE DEVELOPMENT CORPORATION

Form 990 (2020)

Form 990, Part III, Line 4a:

A PUBLIC BENEFIT NOT-FOR-PROFIT CORPORATION ORGANIZED TO SUPPORT THE MANAGEMENT OF ORNL IN CONNECTION WITH THE PROVISION OF RESEARCH FACILITIES.

SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support
Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ Attach to Form 990 or Form 990-EZ.
▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2020

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

Name of the organization

UT-BATTELLE DEVELOPMENT CORPORATION

Employer identification number

62-1867598

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

- 1 A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i)**.
 - 2 A school described in **section 170(b)(1)(A)(ii)**. (Attach Schedule E (Form 990 or 990-EZ).)
 - 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii)**.
 - 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii)**. Enter the hospital's name, city, and state:
 - 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv)**. (Complete Part II.)
 - 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v)**.
 - 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
 - 8 A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
 - 9 An agricultural research organization described in **170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land grant college of agriculture. See instructions. Enter the name, city, and state of the college or university:
 - 10 An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2)**. (Complete Part III.)
 - 11 An organization organized and operated exclusively to test for public safety. See **section 509(a)(4)**.
 - 12 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2)**. See **section 509(a)(3)**. Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
 - a **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**
 - b **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**
 - c **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**
 - d **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**
 - e Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.
- f Enter the number of supported organizations 1
- g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 10 above (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
			Yes	No		
(A) UT-BATTELLE LLC	621788235	7	Yes		447,446	0
Total	1				447,446	0

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)

(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization failed to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶		(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
1	Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grant.") . . .						
2	Tax revenues levied for the organization's benefit and either paid to or expended on its behalf. . . .						
3	The value of services or facilities furnished by a governmental unit to the organization without charge..						
4	Total. Add lines 1 through 3						
5	The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f). . .						
6	Public support. Subtract line 5 from line 4.						

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶		(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
7	Amounts from line 4. . .						
8	Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources. . . .						
9	Net income from unrelated business activities, whether or not the business is regularly carried on. .						
10	Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.). . .						
11	Total support. Add lines 7 through 10						
12	Gross receipts from related activities, etc. (see instructions)					12	
13	First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here ▶ <input type="checkbox"/>						

Section C. Computation of Public Support Percentage

14	Public support percentage for 2020 (line 6, column (f) divided by line 11, column (f))	14	
15	Public support percentage for 2019 Schedule A, Part II, line 14	15	
16a	33 1/3% support test—2020. If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization ▶ <input type="checkbox"/>		
b	33 1/3% support test—2019. If the organization did not check a box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization ▶ <input type="checkbox"/>		
17a	10%-facts-and-circumstances test—2020. If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and stop here. Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization ▶ <input type="checkbox"/>		
b	10%-facts-and-circumstances test—2019. If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and stop here. Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization ▶ <input type="checkbox"/>		
18	Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions ▶ <input type="checkbox"/>		

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ►		(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
1	Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.") .						
2	Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3	Gross receipts from activities that are not an unrelated trade or business under section 513						
4	Tax revenues levied for the organization's benefit and either paid to or expended on its behalf. . .						
5	The value of services or facilities furnished by a governmental unit to the organization without charge						
6	Total. Add lines 1 through 5						
7a	Amounts included on lines 1, 2, and 3 received from disqualified persons						
b	Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year.						
c	Add lines 7a and 7b.						
8	Public support. (Subtract line 7c from line 6.)						

Section B. Total Support

Calendar year (or fiscal year beginning in) ►		(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
9	Amounts from line 6.						
10a	Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources. . .						
b	Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975.						
c	Add lines 10a and 10b.						
11	Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on.						
12	Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13	Total support. (Add lines 9, 10c, 11, and 12.)						

14 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here.**

Section C. Computation of Public Support Percentage

15	Public support percentage for 2020 (line 8, column (f) divided by line 13, column (f))	15	
16	Public support percentage from 2019 Schedule A, Part III, line 15	16	

Section D. Computation of Investment Income Percentage

17	Investment income percentage for 2020 (line 10c, column (f) divided by line 13, column (f))	17	
18	Investment income percentage from 2019 Schedule A, Part III, line 17	18	

19a 33 1/3% support tests—2020. If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization

b 33 1/3% support tests—2019. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3% and line 18 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization

20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions

Part IV Supporting Organizations

(Complete only if you checked a box on line 12 of Part I. If you checked box 12a, of Part I, complete Sections A and B. If you checked box 12b, of Part I, complete Sections A and C. If you checked box 12c, of Part I, complete Sections A, D, and E. If you checked box 12d, of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

		Yes	No
1	Are all of the organization's supported organizations listed by name in the organization's governing documents? <i>If "No," describe in Part VI how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.</i>		
1		Yes	
2	Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? <i>If "Yes," explain in Part VI how the organization determined that the supported organization was described in section 509(a)(1) or (2).</i>		No
3a	Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? <i>If "Yes," answer lines 3b and 3c below.</i>		No
b	Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? <i>If "Yes," describe in Part VI when and how the organization made the determination.</i>		
3b			
c	Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? <i>If "Yes," explain in Part VI what controls the organization put in place to ensure such use.</i>		
3c			
4a	Was any supported organization not organized in the United States ("foreign supported organization")? <i>If "Yes" and if you checked box 12a or 12b in Part I, answer lines 4b and 4c below.</i>		No
4a			No
b	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? <i>If "Yes," describe in Part VI how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.</i>		
4b			
c	Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? <i>If "Yes," explain in Part VI what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.</i>		
4c			
5a	Did the organization add, substitute, or remove any supported organizations during the tax year? <i>If "Yes," answer lines 5b and 5c below (if applicable). Also, provide detail in Part VI, including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).</i>		No
5a			No
b	Type I or Type II only. Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
5b			
c	Substitutions only. Was the substitution the result of an event beyond the organization's control?		
5c			
6	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? <i>If "Yes," provide detail in Part VI.</i>		No
6			No
7	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? <i>If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).</i>		No
7			No
8	Did the organization make a loan to a disqualified person (as defined in section 4958) not described in line 7? <i>If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).</i>		No
8			No
9a	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons, as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? <i>If "Yes," provide detail in Part VI.</i>		No
9a			No
b	Did one or more disqualified persons (as defined in line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? <i>If "Yes," provide detail in Part VI.</i>		No
9b			No
c	Did a disqualified person (as defined in line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? <i>If "Yes," provide detail in Part VI.</i>		No
9c			No
10a	Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? <i>If "Yes," answer line 10b below.</i>		No
10a			No
b	Did the organization have any excess business holdings in the tax year? <i>(Use Schedule C, Form 4720, to determine whether the organization had excess business holdings).</i>		
10b			

Part IV Supporting Organizations (continued)

		Yes	No
11	Has the organization accepted a gift or contribution from any of the following persons?		
a	A person who directly or indirectly controls, either alone or together with persons described in lines 11b and 11c below, the governing body of a supported organization?		
b	A family member of a person described in 11a above?		
c	A 35% controlled entity of a person described in line 11a or 11b above? <i>If "Yes" to 11a, 11b, or 11c, provide detail in Part VI.</i>		
		11a	No
		11b	No
		11c	No

Section B. Type I Supporting Organizations

		Yes	No
1	Did the officers, directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? <i>If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.</i>		
		1	No
2	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? <i>If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised or controlled the supporting organization.</i>		
		2	No

Section C. Type II Supporting Organizations

		Yes	No
1	Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? <i>If "No," describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).</i>		
		1	

Section D. All Type III Supporting Organizations

		Yes	No
1	Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?		
		1	
2	Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization (s) or (ii) serving on the governing body of a supported organization? <i>If "No," explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).</i>		
		2	
3	By reason of the relationship described in line 2 above, did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? <i>If "Yes," describe in Part VI the role the organization's supported organizations played in this regard.</i>		
		3	

Section E. Type III Functionally-Integrated Supporting Organizations

1	Check the box next to the method that the organization used to satisfy the Integral Part Test during the year (see instructions):		
a	<input type="checkbox"/> The organization satisfied the Activities Test. Complete line 2 below.		
b	<input type="checkbox"/> The organization is the parent of each of its supported organizations. Complete line 3 below.		
c	<input type="checkbox"/> The organization supported a governmental entity. Describe in Part VI how you supported a government entity (see instructions)		
2	Activities Test. Answer lines 2a and 2b below.		
a	Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? <i>If "Yes," then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.</i>	Yes	No
		2a	
b	Did the activities described in line 2a constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? <i>If "Yes," explain in Part VI the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.</i>		
		2b	
3	Parent of Supported Organizations. Answer lines 3a and 3b below.		
a	Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? <i>If "Yes" or "No" provide details in Part VI.</i>		
		3a	
b	Did the organization exercise a substantial degree of direction over the policies, programs and activities of each of its supported organizations? <i>If "Yes," describe in Part VI the role played by the organization in this regard.</i>		
		3b	

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations

- 1** Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970 (*explain in Part VI*). **See instructions.** All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

Section A - Adjusted Net Income		(A) Prior Year	(B) Current Year (optional)
1	Net short-term capital gain	1	
2	Recoveries of prior-year distributions	2	
3	Other gross income (see instructions)	3	
4	Add lines 1 through 3	4	
5	Depreciation and depletion	5	
6	Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	6	
7	Other expenses (see instructions)	7	
8	Adjusted Net Income (subtract lines 5, 6 and 7 from line 4)	8	
Section B - Minimum Asset Amount		(A) Prior Year	(B) Current Year (optional)
1	Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):	1	
a	Average monthly value of securities	1a	
b	Average monthly cash balances	1b	
c	Fair market value of other non-exempt-use assets	1c	
d	Total (add lines 1a, 1b, and 1c)	1d	
e	Discount claimed for blockage or other factors (<i>explain in detail in Part VI</i>):		
2	Acquisition indebtedness applicable to non-exempt use assets	2	
3	Subtract line 2 from line 1d	3	
4	Cash deemed held for exempt use. Enter 0.015 of line 3 (for greater amount, see instructions).	4	
5	Net value of non-exempt-use assets (subtract line 4 from line 3)	5	
6	Multiply line 5 by 0.035	6	
7	Recoveries of prior-year distributions	7	
8	Minimum Asset Amount (add line 7 to line 6)	8	
Section C - Distributable Amount			Current Year
1	Adjusted net income for prior year (from Section A, line 8, Column A)	1	
2	Enter 85% of line 1	2	
3	Minimum asset amount for prior year (from Section B, line 8, Column A)	3	
4	Enter greater of line 2 or line 3	4	
5	Income tax imposed in prior year	5	
6	Distributable Amount. Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions)	6	
7	<input type="checkbox"/> Check here if the current year is the organization's first as a non-functionally-integrated Type III supporting organization (see instructions)		

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations (continued)

Section D - Distributions	Current Year
1 Amounts paid to supported organizations to accomplish exempt purposes	1
2 Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity	2
3 Administrative expenses paid to accomplish exempt purposes of supported organizations	3
4 Amounts paid to acquire exempt-use assets	4
5 Qualified set-aside amounts (<i>prior IRS approval required - provide details in Part VI</i>)	5
6 Other distributions (<i>describe in Part VI</i>). See instructions	6
7 Total annual distributions. Add lines 1 through 6.	7
8 Distributions to attentive supported organizations to which the organization is responsive (<i>provide details in Part VI</i>). See instructions	8
9 Distributable amount for 2020 from Section C, line 6	9
10 Line 8 amount divided by Line 9 amount	10

Section E - Distribution Allocations (see instructions)	(i) Excess Distributions	(ii) Underdistributions Pre-2020	(iii) Distributable Amount for 2020
1 Distributable amount for 2020 from Section C, line 6			
2 Underdistributions, if any, for years prior to 2020 (reasonable cause required-- <i>explain in Part VI</i>). See instructions.			
3 Excess distributions carryover, if any, to 2020:			
a From 2015.			
b From 2016.			
c From 2017.			
d From 2018.			
e From 2019.			
f Total of lines 3a through e			
g Applied to underdistributions of prior years			
h Applied to 2020 distributable amount			
i Carryover from 2015 not applied (see instructions)			
j Remainder. Subtract lines 3g, 3h, and 3i from line 3f.			
4 Distributions for 2020 from Section D, line 7:			
\$			
a Applied to underdistributions of prior years			
b Applied to 2020 distributable amount			
c Remainder. Subtract lines 4a and 4b from line 4.			
5 Remaining underdistributions for years prior to 2020, if any. Subtract lines 3g and 4a from line 2. If the amount is greater than zero, <i>explain in Part VI</i> . See instructions.			
6 Remaining underdistributions for 2020. Subtract lines 3h and 4b from line 1. If the amount is greater than zero, <i>explain in Part VI</i> . See instructions.			
7 Excess distributions carryover to 2021. Add lines 3j and 4c.			
8 Breakdown of line 7:			
a Excess from 2016.			
b Excess from 2017.			
c Excess from 2018.			
d Excess from 2019.			
e Excess from 2020.			

Part VI **Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; Part III, line 12; Part IV, Section A, lines 1, 2, 3b, 3c, 4b, 4c, 5a, 6, 9a, 9b, 9c, 11a, 11b, and 11c; Part IV, Section B, lines 1 and 2; Part IV, Section C, line 1; Part IV, Section D, lines 2 and 3; Part IV, Section E, lines 1c, 2a, 2b, 3a and 3b; Part V, line 1; Part V, Section B, line 1e; Part V Section D, lines 5, 6, and 8; and Part V, Section E, lines 2, 5, and 6. Also complete this part for any additional information. (See instructions).

Facts And Circumstances Test

990 Schedule A, Supplemental Information

Return Reference	Explanation
<p>PART IV, SECTION B - TYPE 1 SUPPORTING ORGANIZATIONS, LINE 1</p>	<p>THE SUPPORTING ORGANIZATION, UT-BATTELLE DEVELOPMENT CORPORATION (UTBDC), WAS ORGANIZED ON APRIL 19, 2001, UNDER THE TENNESSEE NONPROFIT CORPORATION ACT AS A PUBLIC BENEFIT CORPORATION IN CONNECTION WITH A FACILITIES REVITALIZATION PROJECT AT THE OAK RIDGE NATIONAL LABORATORY (ORNL). AS STATED IN THE BY-LAWS AT ARTICLE 5, UTBDC WAS FORMED "SOLELY FOR THE SUPPORT AND ENCOURAGEMENT OF THE SCIENTIFIC AND EDUCATIONAL MISSIONS OF THE UNITED STATES DEPARTMENT OF ENERGY, OAK RIDGE NATIONAL LABORATORY (ORNL), AND ITS MANAGING CONTRACTOR, UT-BATTELLE, LLC, THROUGH THE PROVISION OF NEW RESEARCH FACILITIES FOR ORNL. ORNL, WHICH IS OWNED BY THE U.S. DEPARTMENT OF ENERGY (DOE), HOUSES A VAST ARRAY OF SOPHISTICATED SCIENTIFIC FACILITIES AND EQUIPMENT USED BY SCIENTISTS FROM ALL OVER THE WORLD TO CONDUCT BASIC AND APPLIED RESEARCH AND DEVELOPMENT. ORNL IS MANAGED BY UT-BATTELLE, LLC (UT-BATTELLE), THE SUPPORTED ORGANIZATION. UT-BATTELLE IS A NOT-FOR-PROFIT LIMITED LIABILITY COMPANY, WHICH WAS ESTABLISHED IN MAY 1999 UNDER THE LAWS OF THE STATE OF TENNESSEE SOLELY TO MANAGE AND OPERATE ORNL, A FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER, UNDER CONTRACT WITH DOE. WHILE THE SUPPORTED ORGANIZATION, UT-BATTELLE, CURRENTLY DOES NOT HAVE THE UNCONDITIONAL POWER TO REMOVE, REPLACE, OR APPOINT A MAJORITY OF THE SUPPORTING ORGANIZATION'S (UTBDC'S) DIRECTORS OR TRUSTEES, IT DOES HAVE A SUBSTANTIAL DEGREE OF DIRECTION OVER THE POLICIES, PROGRAMS, AND ACTIVITIES OF UTBDC, AS UTBDC OPERATES IN RESPONSE TO THE NEEDS OR DEMANDS OF UT-BATTELLE/ORNL. UTBDC MAINTAINS A SIGNIFICANT ROLE IN THE ORGANIZATIONAL STRUCTURE AND OPERATIONS OF UT-BATTELLE/ORNL. THE OFFICERS OF UTBDC ARE THE PRESIDENT, VICE-PRESIDENT, CHIEF FINANCIAL OFFICER, GENERAL COUNSEL, AND SECRETARY - ALL OF WHOM ARE EMPLOYEES OF UT-BATTELLE. TWO OF THE OFFICERS, JEFF SMITH, ORNL DEPUTY DIRECTOR FOR OPERATIONS, AND JIMMY STONE, ORNL ASSOCIATE LAB DIRECTOR FOR OPERATIONS, HOLD SENIOR MANAGEMENT POSITIONS WITHIN THE UT-BATTELLE/ORNL ORGANIZATION STRUCTURE, WHICH ENABLES THEM TO ENSURE UTBDC OPERATIONS ARE ALIGNED WITH ORNL FACILITY PLANS AND OPERATIONS. JEFF SMITH IS ALSO AN OFFICER OF UT-BATTELLE AND A KEY PERSON LISTED IN THE UT-BATTELLE CONTRACT WITH DOE FOR THE MANAGEMENT AND OPERATION OF ORNL. UTBDC HAS NO EMPLOYEES AND CARRIES OUT ITS ACTIVITIES THROUGH ITS OFFICERS AND OTHER UT-BATTELLE PROFESSIONAL STAFF. THIS INCLUDES ACCOUNTING, CONTRACTING, LEGAL, PROJECT MANAGEMENT, FINANCIAL, ETC. THE ONLY OFFICE MAINTAINED BY UTBDC IS LOCATED AT ORNL. JEFF SMITH ALSO SERVES ON THE UTBDC BOARD OF DIRECTORS ALONG WITH RON TOWNSEND, EXECUTIVE VICE PRESIDENT OF GLOBAL OPERATIONS, BATTELLE MEMORIAL INSTITUTE, AND STACEY PATTERSON, VICE PRESIDENT FOR RESEARCH, OUTREACH, AND ECONOMIC DEVELOPMENT, UNIVERSITY OF TENNESSEE. RON TOWNSEND AND STACEY PATTERSON ARE ALSO MEMBERS OF THE UT-BATTELLE BOARD OF GOVERNORS, REPRESENTING THE TWO MEMBER INSTITUTIONS OF UT-BATTELLE, BATTELLE MEMORIAL INSTITUTE AND UNIVERSITY OF TENNESSEE. T</p>

990 Schedule A, Supplemental Information

Return Reference	Explanation
PART IV, SECTION B - TYPE 1 SUPPORTING ORGANIZATIONS, LINE 1	THESE THREE UTBDC BOARD MEMBERS WORK WITH THE REMAINING THREE BOARD MEMBERS TO ENSURE UTBDC 'S ACTIVITIES ALIGN WITH THE ORGANIZATION'S PURPOSE WHICH IS TO SUPPORT THE MANAGEMENT OF ORNL IN CONNECTION WITH THE PROVISION OF RESEARCH FACILITIES. ANY UTBDC BOARD VACANCY IS FILLED UPON THE RECOMMENDATION OF JEFF SMITH. THE AUTHORITY UT-BATTELLE HAS OVER UTBDC THROUGH THE UT-BATTELLE EMPLOYEES WHO PERFORM ALL THE WORK, SIT ON THE UTBDC BOARD, AND HOLD ALL THE OFFICES OF UTBDC, GIVE UT-BATTELLE THE PRACTICAL ABILITY TO OPERATE UTBDC AND SUPERVISE ALL ACTIONS TAKEN AND NOT TAKEN BY UTBDC.

SCHEDULE D (Form 990) Department of the Treasury Internal Revenue Service

Supplemental Financial Statements

OMB No. 1545-0047 2020 Open to Public Inspection

Complete if the organization answered "Yes," on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b. Attach to Form 990. Go to www.irs.gov/Form990 for instructions and the latest information.

Name of the organization: UT-BATTELLE DEVELOPMENT CORPORATION Employer identification number: 62-1867598

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows 1-4 for total number and aggregate values. Rows 5-6 for donor/donor advisor notification questions.

Part II Conservation Easements. Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply). 2 Complete lines 2a through 2d if the organization held a qualified conservation contribution... 3 Number of conservation easements modified... 4 Number of states where property subject to conservation easement is located... 5 Does the organization have a written policy regarding the periodic monitoring... 6 Staff and volunteer hours devoted to monitoring... 7 Amount of expenses incurred in monitoring... 8 Does each conservation easement reported on line 2(d) above satisfy the requirements... 9 In Part XIII, describe how the organization reports conservation easements...

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets. Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under FASB ASC 958, not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items. 1b If the organization elected, as permitted under FASB ASC 958, to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items: (i) Revenue included on Form 990, Part VIII, line 1. (ii) Assets included in Form 990, Part X. 2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under FASB ASC 958 relating to these items: a Revenue included on Form 990, Part VIII, line 1. b Assets included in Form 990, Part X.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

- 3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):
a Public exhibition
b Scholarly research
c Preservation for future generations
d Loan or exchange programs
e Other
4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.
5 During the year, did the organization solicit or receive donations of art, historical treasures or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? Yes No

Part IV Escrow and Custodial Arrangements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

- 1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? Yes No
b If "Yes," explain the arrangement in Part XIII and complete the following table:
Table with columns: Amount, 1c Beginning balance, 1d Additions during the year, 1e Distributions during the year, 1f Ending balance
2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? Yes No
b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided in Part XIII

Part V Endowment Funds.

Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

Table with 5 columns: (a) Current year, (b) Prior year, (c) Two years back, (d) Three years back, (e) Four years back. Rows include: 1a Beginning of year balance, b Contributions, c Net investment earnings, gains, and losses, d Grants or scholarships, e Other expenditures for facilities and programs, f Administrative expenses, g End of year balance.

- 2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:
a Board designated or quasi-endowment
b Permanent endowment
c Term endowment
The percentages on lines 2a, 2b, and 2c should equal 100%.
3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:
(i) Unrelated organizations
(ii) Related organizations
b If "Yes" on 3a(ii), are the related organizations listed as required on Schedule R?
Table with columns: Yes, No. Rows: 3a(i), 3a(ii), 3b
4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Table with 4 columns: (a) Cost or other basis (investment), (b) Cost or other basis (other), (c) Accumulated depreciation, (d) Book value. Rows include: 1a Land, b Buildings, c Leasehold improvements, d Equipment, e Other, Total. Add lines 1a through 1e. (Column (d) must equal Form 990, Part X, column (B), line 10(c).)

Part VII Investments—Other Securities.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives		
(2) Closely-held equity interests		
(3) Other _____		
(B)		
(C)		
(D)		
(E)		
(F)		
(G)		
(H)		
(I)		
Total. (Column (b) must equal Form 990, Part X, col. (B) line 12.)		

Part VIII Investments—Program Related.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
Total. (Column (b) must equal Form 990, Part X, col.(B) line 13.)		

Part IX Other Assets.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
(10)	
Total. (Column (b) must equal Form 990, Part X, col.(B) line 15.)	

Part X Other Liabilities.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

1. (a) Description of liability	(b) Book value
(1) Federal income taxes	
(2) CAPITAL LEASE OBLIGATION	52,110,067
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
Total. (Column (b) must equal Form 990, Part X, col.(B) line 25.)	52,110,067

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII

Part XI Reconciliation of Revenue per Audited Financial Statements With Revenue per Return.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 12a.

1	Total revenue, gains, and other support per audited financial statements		1	25,092,560
2	Amounts included on line 1 but not on Form 990, Part VIII, line 12:			
a	Net unrealized gains (losses) on investments	2a		
b	Donated services and use of facilities	2b		
c	Recoveries of prior year grants	2c		
d	Other (Describe in Part XIII.)	2d		
e	Add lines 2a through 2d		2e	0
3	Subtract line 2e from line 1		3	25,092,560
4	Amounts included on Form 990, Part VIII, line 12, but not on line 1:			
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a		
b	Other (Describe in Part XIII.)	4b		
c	Add lines 4a and 4b		4c	0
5	Total revenue. Add lines 3 and 4c . (This must equal Form 990, Part I, line 12.)		5	25,092,560

Part XII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 12a.

1	Total expenses and losses per audited financial statements		1	22,937,551
2	Amounts included on line 1 but not on Form 990, Part IX, line 25:			
a	Donated services and use of facilities	2a		
b	Prior year adjustments	2b		
c	Other losses	2c		
d	Other (Describe in Part XIII.)	2d		
e	Add lines 2a through 2d		2e	0
3	Subtract line 2e from line 1		3	22,937,551
4	Amounts included on Form 990, Part IX, line 25, but not on line 1:			
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a		
b	Other (Describe in Part XIII.)	4b		
c	Add lines 4a and 4b		4c	0
5	Total expenses. Add lines 3 and 4c . (This must equal Form 990, Part I, line 18.)		5	22,937,551

Part XIII Supplemental Information

Provide the descriptions required for Part II, lines 3, 5, and 9; Part III, lines 1a and 4; Part IV, lines 1b and 2b; Part V, line 4; Part X, line 2; Part XI, lines 2d and 4b; and Part XII, lines 2d and 4b. Also complete this part to provide any additional information.

Return Reference	Explanation	
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Part XIII **Supplemental Information (continued)**

Return Reference	Explanation
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Schedule J
(Form 990)

Compensation Information

OMB No. 1545-0047
2020
Open to Public Inspection

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees
▶ **Complete if the organization answered "Yes" on Form 990, Part IV, line 23.**
▶ **Attach to Form 990.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

Department of the Treasury
Internal Revenue Service

Name of the organization
UT-BATTELLE DEVELOPMENT CORPORATION

Employer identification number
62-1867598

Part I Questions Regarding Compensation

	Yes	No
1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.		
<input type="checkbox"/> First-class or charter travel		
<input type="checkbox"/> Travel for companions		
<input type="checkbox"/> Tax idemnification and gross-up payments		
<input type="checkbox"/> Discretionary spending account		
<input type="checkbox"/> Housing allowance or residence for personal use		
<input type="checkbox"/> Payments for business use of personal residence		
<input type="checkbox"/> Health or social club dues or initiation fees		
<input type="checkbox"/> Personal services (e.g., maid, chauffeur, chef)		
b If any of the boxes on Line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain	1b	
2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, officers, including the CEO/Executive Director, regarding the items checked on Line 1a?	2	
3 Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.		
<input type="checkbox"/> Compensation committee		
<input type="checkbox"/> Independent compensation consultant		
<input type="checkbox"/> Form 990 of other organizations		
<input type="checkbox"/> Written employment contract		
<input type="checkbox"/> Compensation survey or study		
<input type="checkbox"/> Approval by the board or compensation committee		
4 During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:		
a Receive a severance payment or change-of-control payment?	4a	No
b Participate in, or receive payment from, a supplemental nonqualified retirement plan?	4b	No
c Participate in, or receive payment from, an equity-based compensation arrangement?	4c	No
If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.		
Only 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5-9.		
5 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:		
a The organization?	5a	No
b Any related organization?	5b	No
If "Yes," on line 5a or 5b, describe in Part III.		
6 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:		
a The organization?	6a	No
b Any related organization?	6b	No
If "Yes," on line 6a or 6b, describe in Part III.		
7 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described in lines 5 and 6? If "Yes," describe in Part III.	7	No
8 Were any amounts reported on Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III.	8	No
9 If "Yes" on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?	9	

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1 MR JEFFREY W SMITH PRESIDENT	(i)	0 -----	0 -----	0 -----	0 -----	0 -----	0 -----	
	(ii)	429,450	201,024	0	0	22,066	652,540	
2 MR JIMMY STONE EXECUTIVE VICE PRESIDENT	(i)	0 -----	0 -----	0 -----	0 -----	0 -----	0 -----	
	(ii)	296,737	84,107	0	0	23,131	403,975	
3 MS NICOLE PORTER GENERAL COUNSEL AND SECRET	(i)	0 -----	0 -----	0 -----	0 -----	0 -----	0 -----	
	(ii)	214,981	19,927	0	0	21,119	256,027	
4 MR JEFF AULT CHIEF FINANCIAL OFFICER	(i)	0 -----	0 -----	0 -----	0 -----	0 -----	0 -----	
	(ii)	206,545	17,640	0	0	12,715	236,900	

Part III **Supplemental Information**

Provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

Return Reference	Explanation
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SCHEDULE O
(Form 990 or 990-EZ)**Supplemental Information to Form 990 or 990-EZ**

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047

2020**Open to Public Inspection**

Department of the Treasury

Name of the organization

UT-BATTELLE DEVELOPMENT CORPORATION

Employer identification number

62-1867598

990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990, PART VI, SECTION B, LINE 11B	FORM 990, PART VI, LINE 11B: FORM 990 IS REVIEWED AND APPROVED BY THE PRESIDENT AND THE CFO PRIOR TO FILING.

990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990, PART VI, SECTION B, LINE 12	UT-BATTELLE DEVELOPMENT CORPORATION DOES NOT CURRENTLY HAVE THE POLICIES IN SECTION B IN PLACE, AS ANY PERSONNEL ASSOCIATED WITH THE CORPORATION ARE GOVERNED BY THE RELATED ORGANIZATION'S ORNL POLICIES.

990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990, PART VI, SECTION C, LINE 19	UT-BATTELLE DEVELOPMENT MAKES THESE DOCUMENTS AVAILIABLE TO THE PUBLIC, UPON REQUEST.

990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990, PART XII, LINE 2C	NO CHANGE

990 Schedule O, Supplemental Information

Return Reference	Explanation
FORM 990 SCHEDULE R:	UT-BATTELLE DEVELOPMENT CORPORATION AND UT-BATTELLE, LLC ARE RELATED DUE TO COMMON MANAGEMENT. NO COMMON OWNERSHIP EXISTS.

**SCHEDULE R
(Form 990)**

Related Organizations and Unrelated Partnerships

OMB No. 1545-0047

2020

**Open to Public
Inspection**

▶ **Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37.**
▶ **Attach to Form 990.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

Department of the Treasury
Internal Revenue Service

Name of the organization
UT-BATTELLE DEVELOPMENT CORPORATION

Employer identification number

62-1867598

Part I Identification of Disregarded Entities. Complete if the organization answered "Yes" on Form 990, Part IV, line 33.

(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity

Part II Identification of Related Tax-Exempt Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity?	
						Yes	No

Part III Identification of Related Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income(related, unrelated, excluded from tax under sections 512- 514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations?		(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
							Yes	No		Yes	No	
(1) UT-BATTELLE LLC 1201 OAK RIDGE TURNPIKE SUITE 100 OAK RIDGE, TN 37830 62-1788235	MANAGEMENT OF NATIONAL LABORATORY IN OAK RIDGE, TN	TN							No		No	

Part IV Identification of Related Organizations Taxable as a Corporation or Trust. Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of- year assets	(h) Percentage ownership	(i) Section 512(b) (13) controlled entity?	
								Yes	No

Part V Transactions With Related Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

Note. Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

	Yes	No
1 During the tax year, did the organization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?		
a Receipt of (i) interest, (ii) annuities, (iii) royalties, or (iv) rent from a controlled entity	1a	No
b Gift, grant, or capital contribution to related organization(s)	1b	No
c Gift, grant, or capital contribution from related organization(s)	1c	No
d Loans or loan guarantees to or for related organization(s)	1d	No
e Loans or loan guarantees by related organization(s)	1e	No
f Dividends from related organization(s)	1f	No
g Sale of assets to related organization(s)	1g	No
h Purchase of assets from related organization(s)	1h	No
i Exchange of assets with related organization(s)	1i	No
j Lease of facilities, equipment, or other assets to related organization(s)	1j	Yes
k Lease of facilities, equipment, or other assets from related organization(s)	1k	No
l Performance of services or membership or fundraising solicitations for related organization(s)	1l	No
m Performance of services or membership or fundraising solicitations by related organization(s)	1m	No
n Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1n	No
o Sharing of paid employees with related organization(s)	1o	Yes
p Reimbursement paid to related organization(s) for expenses	1p	No
q Reimbursement paid by related organization(s) for expenses	1q	Yes
r Other transfer of cash or property to related organization(s)	1r	No
s Other transfer of cash or property from related organization(s)	1s	No

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved
(1)UT-BATTELLE LLC	J	11,612,493	ACCOUNTING RECORDS
(2)UT-BATTELLE LLC	O	447,446	ACCOUNTING RECORDS
(3)UT-BATTELLE LLC	Q	13,410,099	ACCOUNTING RECORDS

Part VI Unrelated Organizations Taxable as a Partnership. Complete if the organization answered "Yes" on Form 990, Part IV, line 37.

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners section 501(c)(3) organizations?		(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations?		(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
				Yes	No			Yes	No		Yes	No	

Part VII **Supplemental Information**

Provide additional information for responses to questions on Schedule R. (see instructions).

Return Reference	Explanation

Attachment 2

Contact

www.linkedin.com/in/brett-bosley-8b61b31b6 (LinkedIn)

Top Skills

Manufacturing finance and accounting

Performance-oriented corporate finance leadership

Chemical, research, and life science industries

Brett Bosley

Co-Founder at Boron Specialties
Valencia, Pennsylvania, United States

Summary

Strategic financial leader with senior management team experience at growth-oriented chemical, materials, manufacturing, and science-based companies and institutions from venture to global scale in commercial and government sectors. Board member and audit committee chair at Oak Ridge and Brookhaven National Laboratories.

Experience

BORON SPECIALTIES, LLC

Co-Founder & Chief Financial Officer

August 2018 - Present (5 years 10 months)

Ambridge, Pennsylvania, United States

Boron Specialties (boron.com) is a world leader in the development and manufacture of advanced boron-based chemicals for electronics, aerospace/defense, and advanced materials markets. We often serve as a chemistry technology development partner for our customers. Founded in 2003.

Responsibilities include:

- All aspects of finance and accounting, including costing/pricing, procurement, systems, workflows, controls, FP&A, payroll, budgeting, reporting, banking, and tax
- Strategic business development
- Global raw material procurement
- Corporate security & compliance officer. Experienced with ITAR/EAR, OFAC, CFATS.
- Contracts and other legal matters
- Intellectual property assessment, protection, and licensing

Battelle

10 years

Acting Chief Financial Officer

August 2017 - May 2018 (10 months)

Member of senior leadership team reporting to CEO. As of 2017, Battelle's revenue was \$5 billion.

Led corporate finance organization (\$22 million budget; 150 people) with responsibility for all GAAP and government accounting & compliance, financial reporting, planning, and analysis for operating businesses, board of directors, and external stakeholders, AP/AR, payroll and treasury services, pricing, business process re-engineering and ERP, consolidation of subsidiaries, and oversight of internal and external audits and outside consultants. With the senior leadership team under an exceptional CEO, made strategy and competitiveness changes that delivered material increases in profit, cash flow, equity, and customer value, as well as reduced enterprise risk, all within a year of restructuring.

Board Member & chair of Finance & Audit Committees (~2013 – present)
For M&O prime contractors UT-Battelle, LLC (ORNL) and Brookhaven Science Associates, LLC (BNL). Continuing these roles in 2023 as a consultant to Battelle.

Responsible to perform independent diligence and provide assurance to the DOE site office, the LLC board, and the LLC parents regarding performance and risk in the following areas:

- Financial management & outlook of the laboratory and the LLC, and the alignment of the finance team to the lab's mission and strategy
- Culture, succession, and leadership in CFO, IT/cybersecurity, Internal Audit, and Legal organizations
- Efficiency, effectiveness, and compliance related to IT systems, data, and cybersecurity, the procurement organization, and the system of internal controls
- Emerging risks and enterprise risk management

VP Science & Technology
2008 - 2018 (10 years)

Responsible for corporate-level multidisciplinary R&D portfolio to grow Battelle's business, capabilities, and intellectual capital, including the breakthrough NeuroLife program (with OSU). Coordinated technology commercialization across labs operated by Battelle for DOE's Office of Science & Energy. Board member & chair of Commercialization Committee at National Renewable Energy Laboratory. LP liaison to Battelle Ventures and its portfolio

companies. Managed techno-economic analysis business unit responsible for widely-recognized studies as the annual Global R&D Forecast.

Experienced in strategic engagement with universities, R&D management at institutional scale, and the US national public research enterprise.

Positions held during this time period included

Earlier experience: finance & management roles in science/technology companies

1987 - 2008 (21 years)

SIEMENS MOLECULAR IMAGING BIOMARKER RESEARCH - Director of Operations

Managed cGMP production of 18F-labeled PET imaging radiopharmaceuticals for use in preclinical and clinical studies by Siemens as well as experimental companion diagnostic use by pharmaceutical customers.

CALLERY CHEMICAL - General Manager

Reporting to President of MSA, a publicly-traded company. Full P&L responsibility for specialty chemical manufacturing business supplying global pharmaceutical market with high-value reagents for synthesis of developmental and launched drugs.

FLUOROUS TECHNOLOGIES - Corporate Controller

Venture-backed fluorine chemistry technology startup. Reporting to CEO. Responsible for all finance, accounting, and banking.

COELACANTH CORPORATION - Corporate Controller

Venture-backed drug discovery chemistry company founded by Nobel Laureate. Reporting to CEO. Responsible for all finance, accounting, and banking & credit line with Imperial Bank. Supported fundraising & investor relations with MPM, Oxford Bioscience, and others.

GENERAL CHEMICAL CORPORATION - Financial analyst for plant operations at Delaware Valley Works.

PITTSBURGH SUPERCOMPUTING CENTER (affiliated with Carnegie Mellon)
- System Programmer

NSF-funded scientific computing & networking in the early NSFnet era.

Programming in support of supercomputing operations and deployment of groundbreaking network-based file systems.

United States Marine Corps

System Programmer

1983 - 1986 (3 years)

Camp Pendleton, CA

Part of a team attached to 1st Marine Amphibious Force that developed communications and tactical application software for IBM Series/1 computers as well as some of the first PC's and ethernet networks used in the field by the Marine Corps. Honorably discharged on completion of service; attained rank of sergeant (E-5).

Education

Carnegie Mellon University

Master of Business Administration - MBA, Finance · (1990 - 1993)

National University

Bachelor of Science - BS, Computer Science · (1984 - 1987)

Attachment 3

MYVU

Dennis G. Hall, dean emeritus, professor and Vanderbilt's first associate provost for research, has died

Dennis G. Hall, Vanderbilt's first associate provost and later vice provost for research, dean emeritus of the [Graduate School](#), professor emeritus of physics and professor emeritus of electrical engineering and computer science, died Jan. 6 in Nashville. He was 75 years old.

“As the university's first associate provost for research, Dennis played an outsized role in moving Vanderbilt into the nation's elite research universities,” said [Timothy P. McNamara](#), interim dean of the [College of Arts and Science](#). “He was a close colleague, a man of values and a cherished friend. Dennis left a permanent imprint on the university and on all who knew him. He will be missed dearly.”

In his position as associate provost, Hall served as a campus advocate for research and, at a time when the university and [Vanderbilt University Medical Center](#) were one entity, he partnered with the associate vice chancellor for research at the medical center to provide broad oversight of Vanderbilt's research enterprise, particularly the

university's interschool research centers and institutes and the internal research grant programs that provided seed funding for promising research projects.

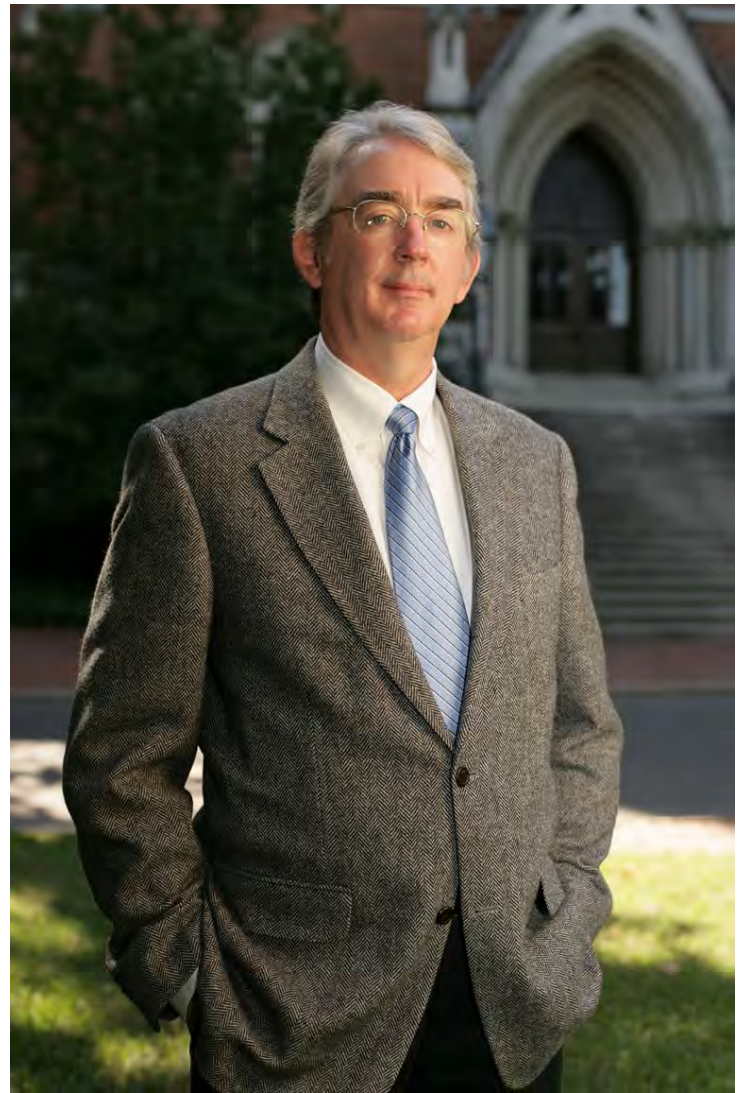
"I've known Dennis since 1990 when both of us taught at the University of Rochester's Hajim School of Engineering and Applied Science," said [Philippe Fauchet](#), Bruce and Bridgitt Evans Dean of Engineering, Emeritus, and Distinguished Professor of Electrical and Computer Engineering. "Before he left Rochester for Vanderbilt in 2000, we collaborated on several scientific papers that were well received. It is then that I saw firsthand the high standards he held in conducting scientific experiments and writing the results for publication.

When I joined Vanderbilt as the dean of the [School of Engineering](#) in 2012, I

was so pleased to work with Dennis again. I interacted with him in his dual role of vice provost for research and dean of the Graduate School until his retirement. I thoroughly enjoyed my interactions with him and learned a lot from him. He was a strong advocate for science and engineering."

Hall served for nearly 15 years as associate provost and then vice provost and dean of the Graduate School. In addition, he oversaw the Vanderbilt University Press and the Jean and Alexander Heard Libraries and served on the provost's Budget Allocation Committee and as the permanent member of Vanderbilt's Promotion and Tenure Review Committee.

"Following Dennis's arrival as associate provost in 2000, the campus experienced a period of outstanding growth in research activity and research funding. He promoted



Dennis Hall (Vanderbilt University/Daniel Dubois)

interdisciplinary collaborations, the visibility of the Vanderbilt research enterprise and elevated the importance of Ph.D. education,” said [Kenneth Galloway](#), Distinguished Professor of Engineering Emeritus, and dean emeritus of engineering. “His advocacy in Kirkland Hall and advocacy to external constituencies greatly benefitted the School of Engineering.”

From 2001 to 2008, Hall served as a member of the Board of Directors of Oak Ridge Associated Universities. From September 2004 through December 2014, Hall served as Vanderbilt’s representative on the governing board that oversees the management of the Oak Ridge National Laboratory. In 2015, he left his administrative positions to focus on his research and writing. His occasional essays on a variety of topics have appeared in local and national venues, and he often wrote opinion pieces published in *The Tennessean*. His [last submission](#) on the topic of how science and technology shapes our everyday lives appeared on Dec. 29, 2023. In addition, he was a licensed and active amateur radio operator (KK4RVW, Amateur Extra Class license).

In a 2011 Vanderbilt news article, [Jeff Balsler](#), president and CEO of Vanderbilt University Medical Center and dean of the Vanderbilt School of Medicine, categorized Hall as one of the more brilliant and creative science administrators in the country. “Dennis utilizes his grounding in science and problem solving to ... find great solutions and move us forward. ...He doesn’t really accept at face value the status quo ... He questions everything, and that’s why he’s such a refreshing person to work with.”

Research in Optics

When Hall came to Vanderbilt from the University of Rochester in 2000, he had established a world-wide reputation in the field of optics. Throughout the 1980s and 1990s, he and his students carried out a program of theoretical and experimental investigations of the optical effects of confined systems: systems like optical fibers that change the way that light travels or is emitted, absorbed or detected. As recorded in the pages of more than 125 research articles and 21 doctoral dissertations and six master’s theses that he supervised, Hall and his students explored confined systems in pursuit of deeper understanding of the nature of light. As a consequence, they discovered or demonstrated a number of subtle or

unexpected optical effects, fabricated unusual confinement structures and made a variety of first-ever measurements.

In 1992, Hall's research team gained international attention for designing and building an unusual surface-emitting semiconductor laser based on a novel two-dimensional structure. By pushing the limits of the technology, the researchers successfully constructed a laser that forced light waves to travel as two-dimensional circular waves, mimicking the way that water waves travel when a stone is dropped into a pond. Other experiments used a layer of light-emitting organic molecules to demonstrate that under the right conditions light can shine through a layer of metal that is normally opaque: a finding with potential application in advanced flat-panel computer and television displays. His research resulted in three patents.

Hall was appointed director of the University of Rochester's Institute of Optics in 1993. Three years later he was named to an endowed chair, the William F. May Professorship in Engineering and Applied Sciences. Rochester's Undergraduate Engineering Council, a student organization, honored him twice with its teaching award, and in his last outing in a graduate course, students rated him the perfect instructor. His commitment to teaching extended beyond the classroom: At the Institute of Optics, he was responsible for winning \$2 million in grants from the U.S. Department of Education to attract graduate students in optics and optoelectronics. He also collaborated with the chair of the English Department to create a joint optics/English course. It was titled Clockwork to Chaos and discussed the ways that scientific ideas enter and influence important literature and how those portrayals contribute to popular views of the natural world.

"I knew Dennis for 25 years, dating back to the time when I was an undergraduate student in Dennis's electromagnetics class at the University of Rochester. Dennis was an eminent scholar in optical waveguide and surface plasmon phenomena who was widely recognized in the optics community," said [Sharon Weiss](#), Cornelius Vanderbilt Professor of Engineering and director of the Vanderbilt Institute of Nanoscale Science and Engineering. "In his role as vice provost for research, I will always remember him as being among the visionaries at Vanderbilt who supported the creation and growth of the trans-institutional Vanderbilt Institute of Nanoscale Science and Engineering at the outset of the nanotechnology revolution. In his role as dean of the Graduate School, I will always remember his classic Dennis graduation

speeches, full of data and statistics and always supporting science and critical thinking. For his kindness and quiriness, scholarship and leadership, mentorship and friendship, Dennis will be missed.”

Hall was named a fellow of the Optical Society of America and the International Society for Optical Engineering, and in 1995 he was named a fellow of the American Physical Society. He served as a topical editor of the *Journal of the Optical Society of America*, as a member of the board of directors of OSA, on the executive committee of the National Nanofabrication Facility of Cornell University and on the board of directors of Oak Ridge Associated Universities. In 2005, his scientific contributions were recognized when he was named a fellow of the American Association for the Advancement of Science.

Hall was also well known for his sense of humor. One example dates back to the 1980s: When he was interviewed by a local reporter about Rochester’s newly formed Center for Advanced Optical Technology, he said, “We’re just 12 guys trying to save the universe.” The quote ran in the paper, was the subject of a great deal of good-natured ribbing by his colleagues and was posted in big letters in the front of the center for several weeks.

Hall received a bachelor of science in physics from the University of Illinois, Urbana-Champaign, and a Ph.D. in physics from the University of Tennessee, Knoxville; his dissertation research in theoretical solid-state physics was carried out at the Oak Ridge National Laboratory. However, he started his education at Southwestern Illinois College, originally founded in 1946 as a junior college to help educate World War II veterans. In 2009, Hall was given a distinguished alumni award by the Illinois Community College Trustees Association. “It was SWIC ... that introduced me to the world of higher education, got me started and then sent me on my way,” he told the college newsletter.

He is survived by his wife, Rita, three children, Katie, Christy and Greg, and four grandchildren. A memorial service will be Saturday, Jan. 20, 2–6 p.m. at the West Harpeth Funeral Home, 6962 Charlotte Pike, Nashville, TN 37209.

Jan 16, 2024, 12:00 PM

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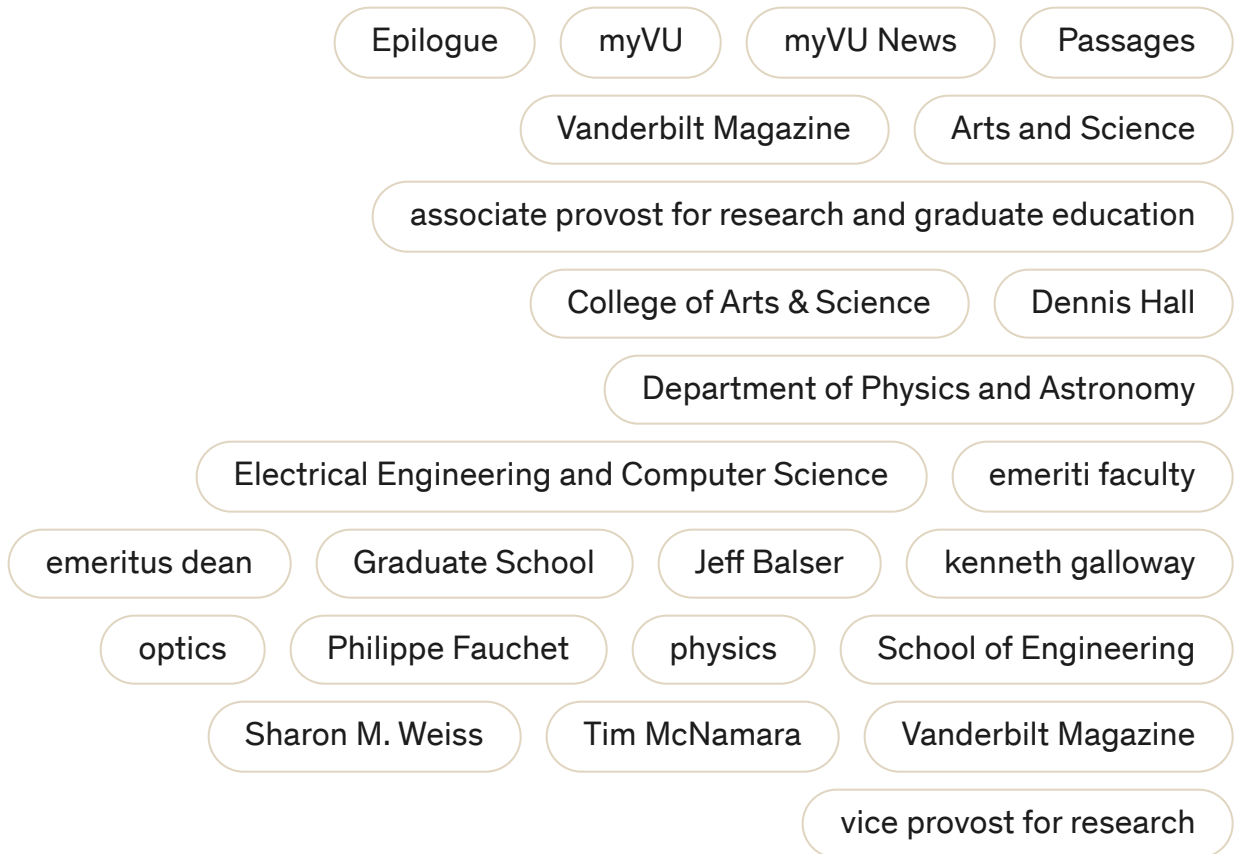
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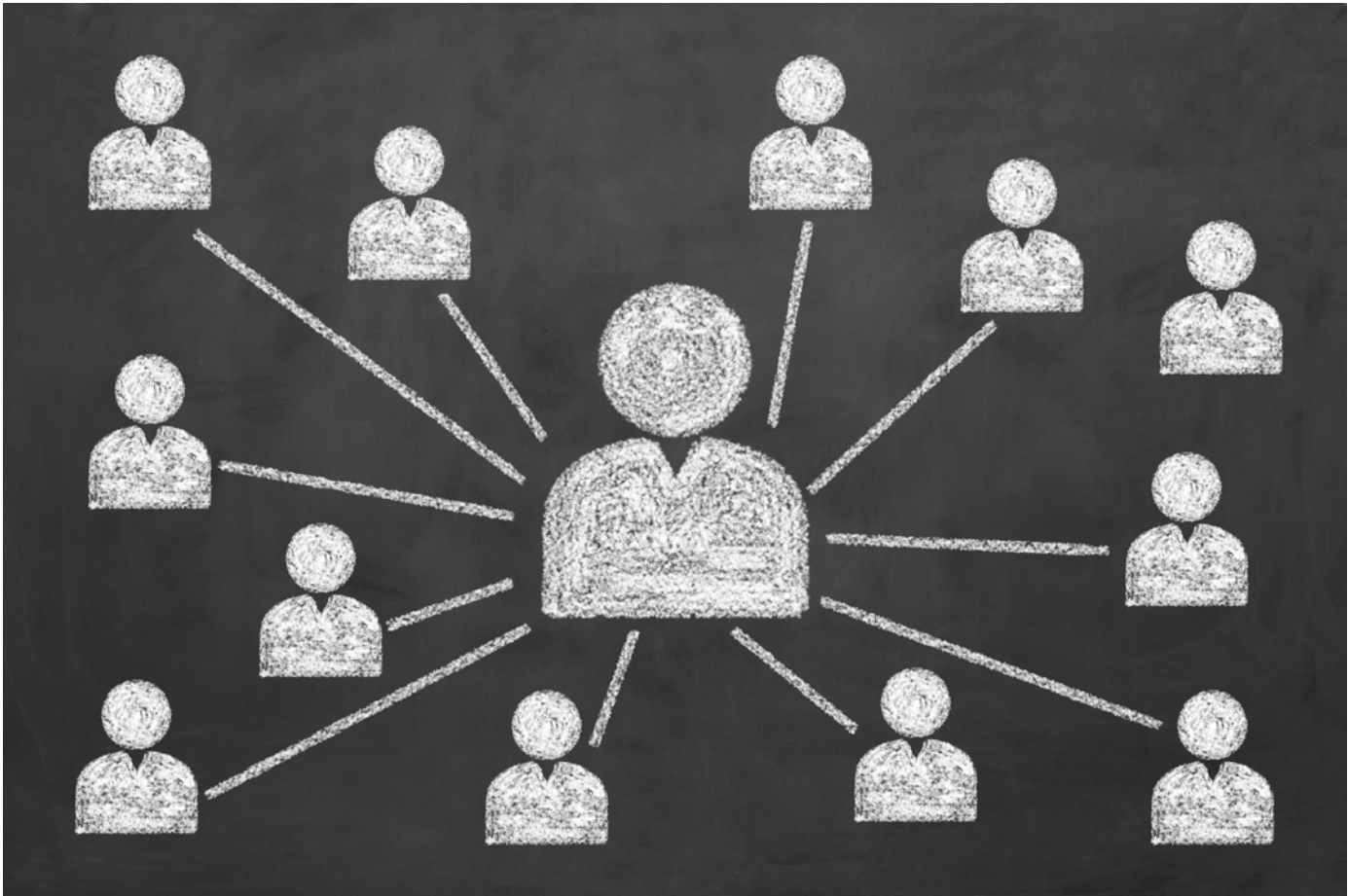
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Attachment 4



September 13, 2017

Board Size and Nonprofit Governance

Written by Nick Price

With the large number of different types of organizations that can file for nonprofit status, it's easy to see how a non-profit board could be a board of one or 51. As volunteers become invested in an organization's cause, their passion grows, causing some people to seek a leadership position. Serving on the board gives them a leadership role while offering them valuable board experience. Nonprofit boards sometimes worry about being able to get enough people on their boards, and they elect or appoint everyone who's willing to serve. That's frequently how nonprofit boards become too large.

For many nonprofit board directors, serving on a nonprofit board is their initial exposure to all that goes into board service. With the new regulatory demands on corporate boards, nonprofit boards are also seeing their fair share of scrutiny and increased expectations. Today's regulatory bodies expect nonprofit boards to perform governance according to regulations and law, even when they are novices.

Similar to corporate boards, nonprofit organizations are beginning to question their board composition, diversity and size. Changes are on the horizon as nonprofit boards seek to work as efficiently as possible so they can focus on the organization's mission and still meet regulatory requirements.

Is There an Average Size for Nonprofit Boards?

BoardSource, a nonprofit board leadership and educational corporation, did a [survey](#) in 2000 and found that the average size of nonprofit boards, not including churches, was 17 directors. The number decreased slightly to 16 members in 2007, and the median number is 15. BoardSource notes that these statistics tell us that the average board size of nonprofits is slowly decreasing, and that the average size is still more than most experts recommend.

State laws determine the minimum number of board directors, which is usually two or three. Depending on the state, there could be a board of one, but it might be difficult to attain 501(c)(3) status with just one board member.

Nonprofit organizational budgets are sometimes a factor in the number of board members. Nonprofit organizations with budgets of over \$10 million have an average of 18 board members, whereas nonprofit organizations with budgets of less than \$1 million have about 14 board directors.

[Arts and cultural organizations](#) like ballet, dance, museums and performance organizations tend to have larger board sizes and robust sponsorships. Certain other nonprofit organizations guarantee representation to their constituencies as determined by geography, political office or some other relationship to the organization, and they also commonly have larger boards. Examples of such nonprofits are universities, chapters or national nonprofits, and political groups such as [Women's Institute for Leadership](#).

With regard to board size, evaluating the [pros and cons of board size](#) can help get it right.

Pros and Cons of Smaller Nonprofit Boards

The pros of smaller boards strongly outweigh the cons. Smaller boards tend to meet more often because it's easier to accommodate everyone's busy schedules. Board discussions are generally shorter and more focused than those of larger boards, which typically leads to faster and better decision-making. Since smaller boards spend much time together, they form close bonds, and are typically willing to give everyone a fair say.

There's one glaring negative to smaller board size for nonprofit organizations. Being an all-volunteer board, board members are usually volunteering for additional events and activities because of the lack of other

volunteers. Board members who serve on the board and invest much of their time and energy in volunteering as well often feel overworked and overburdened and believe these activities take too much time away from family and paid work.

Pros and Cons of Larger Nonprofit Boards

While getting lots of board members around the conference room table is difficult with so many schedules to consider, having many board directors shares the load of fundraising and other activities.

Having larger numbers of board members gives boards the advantage of “institutional memory,” where longtime board members remember much of the organization’s history. Larger numbers of board directors bring a larger network, as directors are likely to know many local business professionals such as lawyers, bankers and accountants.

Board dynamics also differ with larger boards. Board discussions are typically longer with larger boards, as they bring forth a greater variety of perspectives. On the flip side, having many opinions around the table allows quieter members to kick back and [disengage](#), causing them to feel like their voice has no meaning. It’s also easier for cliques to form with larger boards, which can isolate some board members even further. Many large boards alleviate some of these problems by using an executive committee as a steering committee.

Having many board members places a larger burden on the executive director, who is required to meet all of their expectations. Larger boards also tend to have more committees, which means the nonprofit will need to hire more paid staff to manage them.

Finding the Right Size for a Nonprofit Board

[Finding the right size](#) for a nonprofit board is somewhat the same as finding the right size for a corporate board. Both types of corporations need to answer two questions – 1) what do they need to accomplish? and 2) do they have the right expertise on the board to achieve it?

According to a [study](#) by Bain Capital Private Equity, the optimal number of directors for boards to make a decision is seven. Every added board member after that decreases decision-making by 10%. Nonprofits can use that as a starting metric before considering the organization’s life cycle, mission and fundraising needs.

Boards that have national, state and local affiliates will likely need larger numbers of board members at the national level.

It's generally best to have an odd number of board directors, although the bylaws may state that they can use the board chair's vote as a tie-breaker.

Large nonprofit boards that need to pare down the size of the board may change their bylaws to state smaller numbers. Most nonprofit boards have staggered terms. As board members' terms end, the idea is to not replace them with new directors. Directors stepping down from the board may be interested in reinvesting their time in a [committee](#) or in other volunteer service.

Board members can disengage quickly when they don't find meaningful purpose during their tenure on the board. Nonprofit boards that assess board composition strategically will make the most of board members' talents and expertise.

It's not enough to look at board numbers in isolation. Before changing the organization's bylaws to reflect smaller numbers, nonprofit boards would do well to assess whether their board issues stem from some other source, such as a lack of commitment or a lack of leadership.

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Attachment 5

Why a Company Should Consider Using an Executive Committee of Its Board of Directors

[H Stephen Grace](#), [Susan Koski-Grafer](#), and [S Lawrence Prendergast](#)

Jul 17, 2020 ⌚ 5 min read

Summary

- In companies of all sizes, the fact that board meetings occur only on a periodic basis can make it challenging for boards to meet their obligations.
- The creation of an “executive committee” can improve the flow of information that assists a company’s management and board in governing effectively.
- An enhanced ability to monitor and consult can aid a company’s CEO, board of directors, and general counsel/chief legal officer in carrying out effective corporate governance.



The role of a public corporation's in-house general counsel/chief legal officer has always been a difficult balancing act. The general counsel must be an expert advisor to the company's CEO and board of directors. He or she must fulfill significant legal obligations to the company's owners and creditors. An effective general counsel also must function as a knowledgeable business partner in senior management. The complex responsibilities of the position have been written about extensively in numerous professional publications and have been amplified by laws passed, regulations issued, and court cases over many years. ¹

Similar complexity is involved in the obligations of boards of directors to monitor, oversee, and direct the affairs of a public corporation—to carry out effective corporate governance. In companies of all sizes, the fact that board meetings occur only on a periodic basis can make it challenging to meet these obligations. To fulfill governance responsibilities, a board must be able to understand and address issues and developments that can arise in a company at any time.

Given that management is a continuous process and boards of directors processes are intermittent, the creation of an "executive committee" can improve the flow of information that assists a company's management and board in governing effectively. Providing relevant and timely information is one of the important checks and balances in managing and directing the affairs of a company.

What Is a Board Executive Committee?

Public company boards of directors typically have three standing committees that are mandated by regulators and listing exchanges: an audit committee, a nominating and governance committee, and a compensation committee. The responsibilities of these standing committees are described and discussed in a company's public disclosures. Financial institutions are also mandated to have a committee to address risk.

Companies may have other committees of the board to specialize in such matters as technology; risk identification and management; safety and security; environmental issues; human capital; and other subject areas. In addition, some companies have created an executive committee to address matters that may need monitoring and attention between regularly scheduled board meetings. The roles of such executive committees can vary among companies and with changing circumstances within a company. One company describes its executive committee in its annual report as follows:

Executive Committee (3 directors) is to, as more fully specified herein, (1) monitor and review the operations of the Company and its subsidiaries (collectively, the "Group"), (2)

exercise specific delegated powers of the Board, (3) review and provide recommendations on matters that would require the approval of the Board and (4) exercise such other powers and responsibilities as may be delegated to the Committee by the Board from time to time consistent with the Company's Amended and Restated Certificate of Incorporation (the "Certificate") and Amended and Restated Bylaws (the "Bylaws"), within the parameters delegated by the Board. *The Committee shall meet as and when any member of the Committee deems necessary or desirable, subject to notice (or waiver of notice) being given in accordance with the rules and procedures of the Committee.* ²

Charters for executive committees may also describe specific limitations on committee activities. Information about a company's board committees and board committee charters can generally be obtained from annual reports, proxy statements, or upon request to a company's investor relations organization.

Three Reasons for a Company to Consider the Use of an Executive Committee

First, an executive committee can be a flexible resource to monitor a wide range of developments on a continuous basis. Without a necessity for periodic meetings requiring scheduling or travel, and with good use of technology, such a group can be nimble in staying abreast of internal and external developments affecting the business and can act *whenever such matters arise*. It can be on the lookout for issues that warrant consultation and discussion among the CEO, CFO, general counsel, and other senior management.

Second, an executive committee can serve as a sounding board for the general counsel and CEO, other members of senior management, and/or independent directors to explore emerging issues or concerns that may or may not ultimately require a presentation to the full board. Having a small, knowledgeable group with whom the CEO and general counsel can consult can facilitate preliminary evaluation of a matter and provide practical and useful advice. Such an approach enables issues to be discussed and evaluated—and possibly in some cases resolved—before they progress to a point needing to be placed upon the formal board agenda. Preliminary evaluation also facilitates definition and preparation of matters that do go forward to the full board.

Third, the effectiveness of a company's corporate governance—its system of "governing the corporation"—is heavily dependent on creating the right checks and balances and information flows. A small executive committee can institute flexible and efficient information processes that start, stop, and change easily as needed.

Executive committee access to “inside the company” sources, with an ability to inquire about matters as needed, can strengthen the checks and balances in the corporation. One cannot help but wonder if better communications and stronger information flows at early stages might have helped to avoid the widespread and highly publicized control breakdowns that occurred at Enron, Worldcom, and more recently at Wells Fargo. In these cases, massive reputational and financial damage was done to companies and individuals.

Some Caveats for Creating and Using an Executive Committee

It is important to distinguish between “monitor, discuss, and advise” versus “make decisions.” In creating an executive committee, a company must not create an undesirable “two-tier” power dynamic inside the board, whereby the executive committee takes on decision-making authority that under the bylaws properly belongs with the full board. To minimize this risk, the committee should have a well-defined charter with clearly described delegations, along with its own internal set of checks and balances.

An executive committee’s processes for information gathering should be relevant, timely, and efficient, as well as cognizant of the need to avoid placing unnecessary burdens on management. Reporting to the full board should similarly be efficient, using written summaries to advantage in order to avoid taking up time on routine matters in periodic board meetings.

An executive committee should be small, generally not more than three to five people, including the CEO. It should include two independent directors who have relevant experience and business knowledge, as well as a mix of desirable personal and professional attributes.

The authors wish to thank other members of the Grace & Co. Board of Advisors and Senior Paralegal, Allison Hawkins, for their input and assistance.

Endnotes

1. See E. Norman Veasey & Christine T. Di Guglielmo, *Indispensable Counsel* (Oxford University Press, 2012) (a comprehensive description of the responsibilities and obligations of counsel, the relevant legal environment, and numerous experiences of job incumbents).
2. BOE Annual Report 2019, at www.cboe.com.

Authors



H Stephen Grace

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Dr. Stephen Grace is President and Founder of H.S. Grace & Company, Inc., a litigation support, expert testimony and business consulting firm serving corporate officers and directors and their counsel as well as other...



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S Lawrence Prendergast

Larry Prendergast is Chairman of the Turrell Fund and serves on the advisory boards of several investment funds, including JPMorgan. He is a member of the Board of Advisors for H.S. Grace & Company and provides expert...

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https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-august/why-a-company-should-consider-using-an-executive-committee/

Attachment 6

FSU VP to serve on board for national laboratory

PUBLISHED: AUGUST 21, 2008 | 12:00 AM | SHARE:  (HTTPS://WWW.FACEBOOK.COM/SHARER/SHARER.PHP?

U=HTTPS%3A%2F%2FNEWS.FSU.EDU%2FNEWS%2FSCIENCE-TECHNOLOGY%2F2008%2F08%2F21%2F2FFSU-VP-SERVE-BOARD-NATIONAL-LABORATORY%2F)  (HTTP://WWW.LINKEDIN.COM/SHAREARTICLE?MINI=TRUE&URL=HTTPS%3A%2F%2FNEWS.FSU.EDU%2FNEWS%2FSCIENCE-TECHNOLOGY%2F2008%2F08%2F21%2F2FFSU-VP-SERVE-BOARD-NATIONAL-

LABORATORY%2F&TEXT=FSU+VP+TO+SERVE+ON+BOARD+FOR+NATIONAL+LABORATORY)  (HTTPS://X.COM/INTENT/TWEET?SOURCE=HTTP%3A%2F%2FHTTPS%3A%2F%2FNEWS.FSU.EDU%2FNEWS%2FSCIENCE-TECHNOLOGY%2F2008%2F08%2F21%2F2FFSU-VP-SERVE-BOARD-NATIONAL-

LABORATORY%2F&TEXT=FSU+VP+TO+SERVE+ON+BOARD+FOR+NATIONAL+LABORATORY:%20HTTPS%3A%2F%2FNEWS.FSU.EDU%2FNEWS%2FSCIENCE-TECHNOLOGY%2F2008%2F08%2F21%2F2FFSU-VP-SERVE-BOARD-NATIONAL-LABORATORY%2F)

Florida State University President T.K. Wetherell has re-appointed Vice President for Research Kirby Kemper to serve as FSU's representative on the board that oversees Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tenn.

Kemper, who has served on the UT-Battelle Board of Governors since 2003, will serve another two-year term. The appointment follows the board's decision to retain FSU as one of eight university partners of UT-Battelle, a private, not-for-profit company that manages and operates the national laboratory for the U.S. Department of Energy.

"We have expertise in numerous research areas that make us natural collaborators, so that they want to work with us in the future," Kemper said. "The partnership gives us a powerful insight into future scientific enterprises and helps us align our research activities with national priorities."

FSU was asked to join the UT-Battelle team of university partners in 1999, the same year the Department of Energy awarded a \$2.5 billion, five-year contract to UT-Battelle, a partnership between the University of Tennessee and Battelle Memorial Institute. The contract was renewed in 2005, and the team will soon begin preparing a proposal to the Department of Energy to extend the contract.

FSU was asked to join the team because of the university's more than 50-year relationship with Oak Ridge, said Kemper, who as a physics professor conducted his own first experiments in nuclear reactions there in 1969. In addition, many FSU alumni are among the lab's 4,000-member staff and 3,000 guest researchers.

Besides FSU, other core institutions that make up the research team are Duke University, the Georgia Institute of Technology, North Carolina State University, Oak Ridge Associated Universities, Vanderbilt University, the University of Virginia, and Virginia Polytechnic Institute and State University.

Scientists and engineers at ORNL are working on projects that will strengthen the nation's leadership in key areas of science; increase the availability of clean, abundant energy; restore and protect the environment; and contribute to national security.

Oak Ridge also is the world's foremost center for neutron science research with the upgraded High Flux Isotope Reactor and a new \$1.4 billion Spallation Neutron Source, for which National High Magnetic Field Laboratory researchers at FSU are currently designing a magnet to conduct neutron scattering experiments.

Kemper, a Robert O. Lawton Distinguished Professor and former chairman of FSU's physics department, has served as vice president for Research at FSU since 2003.

ORNL was established in 1943 as part of the secret Manhattan Project to pioneer a method for producing and separating plutonium. During the 1950s and '60s, ORNL's mission broadened to include a variety of energy technologies and strategies, and this mission was greatly expanded with the creation of the Department of Energy in the 1970s.

Engineering dean receives prestigious fluids engineering award

(<https://news.fsu.edu/news/science-technology/2008/08/26/engineering-dean-receives-prestigious-fluids-engineering-award/>)

RELATED STORIES

FSU mathematician elected to board of directors for renowned international scientific society (<https://news.fsu.edu/news/science-technology/2024/05/22/fsu-mathematician-elected-to-board-of-directors-for-renowned-international-scientific-society/>)

FSU to host international astrophysics conference May 20-24 (<https://news.fsu.edu/news/science-technology/2024/05/20/fsu-to-host-international-astrophysics-conference-may-20-24/>)

Layer by layer: FAMU-FSU College of Engineering professor develops new 3D printing technology (<https://news.fsu.edu/news/science-technology/2024/05/13/layer-by-layer-famu-fsu-college-of-engineering-professor-develops-new-3d-printing-technology/>)

FSU neuroscientists discover two specific brain differences linked to how brains respond during tasks (<https://news.fsu.edu/news/science-technology/2024/04/30/fsu-neuroscientists-discover-two-specific-brain-differences-linked-to-how-brains-respond-during-tasks/>)

FSU research team receives \$1 million grant to develop AI-powered tool to help improve understanding of lab test results (<https://news.fsu.edu/news/health-medicine/2024/04/23/fsu-research-team-receives-1-million-grant-to-develop-ai-powered-tool-to-help-improve-understanding-of-lab-test-results/>)

RECOMMENDED STORIES

Experienced school administrator to serve as interim executive director of Florida State University Schools (<https://news.fsu.edu/news/education-society/2024/05/24/experienced-school-administrator-to-serve-as-interim-executive-director-of-florida-state-university-schools/>)

Florida State University's Flying High Circus begins long road to recovery after May 10 tornadoes (<https://news.fsu.edu/news/students-campus-life/2024/05/22/florida-state-universitys-flying-high-circus-begins-long-road-to-recovery-after-may-10-tornadoes/>)

FSU mathematician elected to board of directors for renowned international scientific society (<https://news.fsu.edu/news/science-technology/2024/05/22/fsu-mathematician-elected-to-board-of-directors-for-renowned-international-scientific-society/>)

FSU awards 339 honors medallions to Spring 2024 graduates (<https://news.fsu.edu/news/students-campus-life/2024/05/21/fsu-awards-339-honors-medallions-to-spring-2024-graduates/>)

Fairview Middle School visual arts teacher receives Opening Nights at FSU Arts Advocate Award (<https://news.fsu.edu/news/arts-humanities/2024/05/21/fairview-middle-school-visual-arts-teacher-receives-opening-nights-at-fsu-arts-advocate-award/>)

SEARCH FLORIDA STATE NEWS

NEWS ARCHIVES

Attachment 7

Provost search begins

Committee seeks exemplary scholar, experienced administrator

By Richard Lovegrove

The Provost Search Committee has started its work and plans to present its short list of candidates to President Charles W. Steger by early April, 2001.

"Filling this position will be one of the most important decisions of my presidency. The provost will set the academic course for the university for many years," Steger said. "This individual will be crucial to Virginia Tech as it embarks on its goal to become one of the top 30 research universities in the country."

Peter Eyre, dean of the Virginia-Maryland College of Veterinary Medicine, is chairing the committee, which met last week and will start advertising the position by the end of this week.

"We're looking for a very strong academic leader and somebody who has exemplary scholarly credentials, as well as a person who has had major administrative leader-

ship experience, Eyre said. "The two somehow have to be married together."

The committee has already looked at the position announcement, which will be finalized this week and then will be sent out to the appropriate higher-education journals. In addition, the university has retained the services of Jerry Baker of Baker-Parker Associates Inc., an Atlanta, Ga., executive search firm experienced in finding senior executives for higher education. "We're very pleased to have him working for us. This is a very important search for Virginia Tech," Eyre said.

During October, November, and December, the committee will be advertising and recruiting and assembling a pool of candidates. In early January, they will start working that pool down and assemble a list of perhaps six to eight semi-finalists, who will be interviewed off campus. This phase will be done in absolute confidence, Eyre said. Beginning in February or March, the committee will bring three to four

finalists to campus for full and open interviews with all university constituencies, Eyre said. A final list of qualified candidates will then go to Steger for his choice.

"I have charged the committee, which represents and reflects the will of our community, to find the very best academic leadership in the country. I would like to complete the process and extend an offer by early April," Steger said.

"This individual is the chief academic officer of the university, and there could be no more important appointment after the president," Eyre said.

In addition to Eyre, members of the committee are Sarah Airey, undergraduate BOV representative; Jacqueline Bixler, professor, foreign languages and literature, College of Arts and Sciences; Rosemary Bliezner, professor, family and child development, College of Human Resources and Education; Harold Burkhart, university distinguished professor,

T.M. Brooks professor and department head, Forestry; Benjamin Dixon, vice president for multicultural affairs; Charles Dudley, director, University Honors Program; J. Michael Duncan, university distinguished professor, civil and environmental engineering, College of Engineering; Kriton Hatzios, associate dean for research and director, Virginia Agricultural Experiment Stations, College of Agriculture and Life Sciences; Delbert Jones, Staff Senate, laboratory specialist advanced, College of Veterinary Medicine; Judith Jones, associate director, administration and program support, Virginia Cooperative Extension Service; Marquee King, Graduate Student Assembly, Office of Student Activities; Arthur J. Keown, R.B. Pamplin professor of finance, Pamplin College of Business; Paul Knox, university distinguished professor and dean, College of Architecture and Ur-

(See PROVOST on 4)

Women, minority artists, scholars recipients announced

The Office of the Provost has announced the recipients of the Women and Minority Artists and Scholars Lecture Series grants for 2000-2001. The fund, as in past years, provides up to \$500 to supplement departmental or college funds in support of guest lecturers and performances from women and minority members.

The purpose of the program is to increase the diversity of perspectives and creative expression available on campus and to increase the number of women and minority role models for our students.

Award recipients, speakers, and the subject and anticipated date of the talk for 2000-2001 are listed below.

Ananda Abeysekara, assistant professor of religious studies, Center for

Interdisciplinary Studies. David Scott, associate professor of anthropology, Columbia University. "Identity, Pluralism, and Democratic Futures." March 22-23, 2001.

Ingrid Banks, assistant professor of black studies, Center for Interdisciplinary Studies. France Winddance Twine, associate professor of sociology, University of California—Santa Barbara. "Comparative Research on Racism and Anti-Racism in Brazil and Great Britain." February, 2001.

Brian Britt, assistant professor, Center for Interdisciplinary Studies. Leila Ahmed, professor, women's studies in religion, Harvard University. "Autobiographical Approaches to Women and Gender in Islam." April 5, 2001.

William J. Crone, associate professor, music. Tony Baker, assistant professor of music,

University of North Texas and H. Keith Jackson, associate professor of music, West Virginia University. Appalachian Trombone quartet recital and master class. Nov. 1, 2000.

Harry Dyer, permanent instructor, English Department. Henrietta Mann, endowed chair, Center for Native American Studies, Montana State University. "1492: An Indigenous Perspective." Oct. 9, 2000.

April L. Few, assistant professor, human development and **Laura Gillman**, director of women's studies, Center for Interdisciplinary Studies. M. Jacqui Alexander, Fuller-Maathai associate professor, director of gender and women's studies, Connecticut College. "Diversity and Global Women's Issues." Sept. 28, 2000.

Elizabeth Fine, director of humanities (See WOMEN on 4)

University Internet domain-names use disallowed

Virginia Tech is no longer allowing registrants of Internet domain names to use the university's trademark names in their URL's.

The university owns federal trademarks for both the names Virginia Tech and Hokies and has sent letters to registrants informing them of the decision. "This was a difficult decision for us," said Larry Hincker, associate vice president for University Relations. "Several of these registrants are simply fans. Many are commercial enterprises. Some are inactive and may be held by cyber-squatters. However, our primary reason for taking action is to protect the integrity of Virginia Tech's name. Our trademarks imply a representation of, by, or about the institution."

Hincker said that examples of the URL's that are unfairly using the university's name include *virginatech.org*, *hokie.org*, *virginatech.com*, and *hokieshop.com*. About 125 URL's use a variation of Hokie or Virginia Tech. Hincker said federal law requires that trademark owners enforce and protect the use of their marks. Moreover, the 1999 Anti-Cyber Squatting Act passed by Congress gives trademark owners the right to dominion of its trademarked names on the Internet.

The university will not target alumni chapters, or other organizations officially affiliated with the university, that are using trademarked names.

Many corporations and individuals have had their names taken over by cyber companies who then try to re-sell these

(See UNIVERSITY on 4)

Oak Ridge management explores collaborations

By Susan Trulove

Members of the Virginia Tech research community are invited to an open forum Thursday, Oct. 12, to meet with Oak Ridge National Laboratory senior managers—including Director William Madia, a Virginia Tech Ph.D. graduate in chemistry.

Madia has served as director of the Pacific Northwest Lab and several Battelle corporate laboratories.

The forum will be from 3 to 4 p.m. in 1060 Torgersen Hall.

The Oak Ridge National Laboratory (ORNL) is a large multi-program laboratory of the U.S. Department of Energy. The laboratory is managed under contract from DOE. In the past year, the contract was awarded to a new management team formed by the University of Tennessee and Battelle Me-

morial Institute. The UT-Battelle, LLC team bid the contract with a new approach—using a group of southeast regional universities as part of the team. These core universities include Virginia Tech, the University of Virginia, Georgia Tech, North Carolina State, Duke, and Florida State.

A number of features were built into the proposal that involve university participation and collaboration—joint faculty positions; new joint institutes in materials synthesis, biological science, computational sciences; the Oak Ridge Center for Advanced Studies; and enhanced collaboration with the university community.

According to the management proposal, each of the core universities will have special input into the management and programs of ORNL. Membership includes a seat on the board of governors of the UT-Battelle, LLC, and representation on the Science and Technology Steer-

ing Committee that advises the Board of Governors, and on the Science and Technology Council reporting to the deputy laboratory director for science and technology. Membership also includes rotation as chair of the User Facility Council, participation in technical-review opportunities throughout the laboratory, joint-professorship appointments at ORNL, summer faculty/student program participation, and travel grants for short-term visits

"These privileges should lead to enhanced research collaborations/sponsorships in areas of ORNL program thrusts," said John S. Wilson, assistant vice provost for Research and Graduate Studies administration and ORNL liaison. "For example, the University of Tennessee has about \$20-million annual funding for research between their faculty and ORNL. Virginia Tech

(See OAK RIDGE on 4)

ACTIVITIES

EVENTS

Friday, 6

Organization of Women Faculty Coffee Hour, 8-9 a.m., Easy Chair, University Mall: Call 1-9214 for information.
ACITC Dedication, 3 p.m., ACITC: By invitation.
TA-UT Production, 8 p.m., Squires Studio Theatre: *Sabbath Night in the Church of the Piranha*.

Saturday, 7

Football, Homecoming, noon, Lane Stadium: Temple.
University Chamber Music, 8 p.m., Squires Recital Salon: Chamber Orchestra of Southwest Virginia.
TA-UT Production, 8 p.m., Squires Studio Theatre: *Sabbath Night in the Church of the Piranha*.

Sunday, 8

Yom Kippur Begins (Sundown).
YMCA Hike, 1:30 p.m., Lancaster House parking lot.
University Chamber Music, 3 p.m., Squires Recital Salon: Chamber Orchestra of Southwest Virginia.

Monday, 9

Columbus Day Staff Holiday.
Yom Kippur.
Hispanic Heritage Program, noon, 116 Squires: Elisa Montalvo, Office for the Hispanic Apostolate, Catholic Diocese of Richmond.
Native American Program noon, Drillfield: Henrietta Mann.
Native American Program, 7 p.m., Squires Haymarket Theatre: Henrietta Mann.

Tuesday, 10

CEUT, 12:30-2 p.m., Hillcrest large conference room: Call 1-6995 for information.

Hispanic Heritage Program, 4:30-7 p.m., Dietrick Dining Hall: Call 1-8266 for information.

Hispanic Heritage Program, 7:30 p.m., Squires Haymarket Theatre: Pablo Davis, UVA.

Wednesday, 11

ULD Training Program, 8 a.m.-noon, DBHCC Room A: 1-7627 to register.
Family/Work/Life Resources Program, noon-1 p.m., DBHCC, conference room G.
CEUT, 2:30-5 p.m., DBHCC: Call 1-6995 for information.
Sexual Assault Awareness Summit, 6-9 p.m., Owens Banquet Hall.

Thursday, 12

YMCA Slide Show, noon, Cranwell Center: John Ashby.
Faculty Women's Club Luncheon, noon, Mountain Lake Inn: Call 951-1402 for reservations.
Alpine Project Event, 7 p.m., Squires Colonial Hall: 1-5888 for information.
Football, 8 p.m., Lane Stadium: WVA.

Friday, 13

Last Day to Resign.
Sexual Assault Awareness Month Video Discussion, noon, Women's Center.
Faculty Recital, 8 p.m., Squires Recital Salon: David Jacobsen.

SEMINARS

Friday, 6

Highlands in Chemistry, 11 a.m., 3 Davidson: Paul A. Deck.
MCBB, 12:20-1:10 p.m., 102 Fralin: Bruce Webb,

University of Kentucky.

Physics, 2:30 p.m., 210 Robeson: Mike Hochella.
Geological Sciences, 3 p.m., 4069 Derring: John Warne, Colorado School of Mines.

Communication Studies, 3:30 p.m., Hillcrest honors conference room: Stephanie Lee Sargent.

STS, 3:30 p.m., 132 Lane: Robert D'Amico, University of Florida.

Philosophy, 4 p.m., 225 Major Williams: Sarah Holtman, University of Minnesota.

Monday, 9

Horticulture, 4-5 p.m., 409 Saunders: Richard Harkess, Mississippi State University.

Wednesday, 11

Geological Sciences, 9 a.m., 4069 Derring: David Lumley, 4th Wave Imaging Corp.
ESM, 4-5 p.m., 110 Randolph: Petri Piironen.
PPWS, 4 p.m., Fralin auditorium: Laura Good.

Thursday, 12

CSES, 4 p.m., 246 Smyth: Steve Phillips.
Geological Sciences, 4 p.m., 4069 Derring: Bob Hazen, Geophysical Lab.

Friday, 13

Highlands in Chemistry, 11 a.m., 3 Davidson: Maitland Jones Jr., Princeton University.
MCBB, 12:20-1:10 p.m., 102 Fralin: Don Champagne, University of Georgia.
Statistics, 3:45 p.m., 204 Hutcheson: Bimal Sinha, University of Maryland.
Philosophy, 4 p.m., 225 Major Williams: James Buchanan.

BULLETINS

Lassiter delivers talk on Kiowa hymns

On Friday, Oct. 20 at 4 p.m. in the Squires Black Cultural Center, Luke E. Lassiter, anthropologist and ethnomusicologist at Ball State University, will deliver a multi-media presentation entitled "Kiowa Hymns: on the Power of Song and Collaborative Ethnography."

Lassiter is the author of several works on indigenous music in Oklahoma, including *The Power of Kiowa Song* and a forthcoming collaborative work with Kiowa musicians called *The Jesus Road: Kiowas, Christianity, and Indian Hymns*. His presentation will focus on his inter-subjective method of interpreting culture and his reflexive writing style.

Alpine Project event offered

The "Focus on Switzerland and the European Alpine Region" project is offering an upcoming panel discussion. The event is free and open to the general public.

On Thursday, Oct. 12 at 7 p.m. in Squires Colonial Hall, a panel of three environmental scholar-activists will examine "Sustainability Issues and Green Urbanism in the European Alpine Region." Call 1-5888 for information.

Presenters include Richard Rich, professor of political science and director of the new Institute for Environmental and Energy Studies, Suzanne Warsinsky-High, an independent

consultant in the areas of policy development and project-implementation research, and Sybille Klendendorf, doctoral candidate in the Department of Fisheries and Wildlife.

Faculty Women's Club holds fall luncheon

The Virginia Tech Faculty Women's Club Fall Luncheon will be held on Thursday, Oct. 12 at Mountain Lake Inn. The guest speaker will be Jean Jadhon, news anchor for WDBJ-TV 7. She will speak on the topic "On the Air: My Experiences as a TV Journalist."

Reservations are required. For information, call Gloria Parry at 951-1402.

Cheyenne educator to give two talks

Endowed chair of Native American Studies at Montana State University Henrietta Mann will present "1492: A Millennial Perspective" on Monday, Oct. 9, at 7 p.m. in Squires Haymarket Theater.

Mann will also speak at noon on the Drillfield on October 9 for "A Celebration of Survival." The celebration will feature a Native American drum, speakers from Virginia's Indian nations, and Mann's keynote address "Columbus: His-story and THE Story."

Leave donations requested

Virginia Tech employees in Physical Plant, Communications Network Services, and Residential and Dining Programs have requested leave donations.

Donation forms can be downloaded from the Personnel Services web site at <http://www.ps.vt.edu/ps/forms/forms.html>.

ULD offers training program

As part of the series of programs developed for faculty and staff members to improve organizational effectiveness, University Development is offering Effective Meeting Management on Wednesday, Oct. 11 from 8 a.m.-noon in DBHCC room A. The cost is \$25, and registration is required. Call Terri Tishman at 1-7627, or e-mail ULD@vt.edu.

CommonHealth medical screenings in October

CommonHealth medical screenings are being offered to employees, retirees, and their family members October 9-18. Screening appointments will be held in various locations on campus. To request a registration form, contact 1-7810. The cost is \$5 per person, or \$7 per household.

By Sally Harris

The Philosophy Colloquia speakers for the remainder of fall semester have been announced.

All talks are open to the public at no charge. The schedule is as follows:

Friday, Oct. 6, 4 p.m., 225 Major Williams: Sarah Holtman from the University of Minnesota will speak on "Kantian Justice and Poverty Relief."

Friday, Oct. 13, 4 p.m., 334 Major Williams: James Buchanan, university distinguished professor of economics and

philosophy emeritus, will speak on "Game Theory, Mathematics and Economics."

Friday, Oct. 27, 4 p.m., 225 Major Williams: Rose-Mary Sargent, visiting professor from Merrimack College, will speak on "Experimental Reasoning in the History of Philosophy and the Sciences."

Thursday, Nov. 30, 3:30 p.m., 132 Lane: George Gale from East Tennessee State will speak on "Clashing Paradigms, Dying Vines: The Debate over the Cause of the Great Grapevine Phylloxera Plague, France 1867-1875." Co-sponsored by Science and

Technology Studies (STS) and the Department of Philosophy

Saturday and Sunday, Dec. 16-17, Lane 132: "Between History and Philosophy," a conference in honor of Marjorie Grene, co-sponsored by the Department of Philosophy, STS, and the College of Arts and Sciences. Speakers include Richard Rorty, Phillip Sloan, and Alan Gabbey. For more information, contact Moti Feingold at feingold@vt.edu.

For more information on the colloquia, contact William FitzPatrick at wfitzpat@vt.edu or 1-7543.

Philosophy Colloquia set

EMPLOYMENT

CLASSIFIED POSITIONS

The following classified positions are currently available. More details of these positions, specific application procedures and position-closing dates may be found on the Personnel Services web site at <http://www.vtc.edu>. Available positions are also listed on the Job Line, a 24-hour recorded message service. For information on all job listings, call 1-5300. Some of the following positions include state benefits. Positions with numbers beginning with a "W" are hourly and do not include state benefits. Individuals with disabilities desiring assistance or accommodation in the application process should call by the application deadline. Closing date for advertised positions is 1 p.m. Monday. An EO/AA employer committed to diversity.

FULL TIME

Administrative and Research Assistant, 007674T, Grade 0, Electrical/Computer Engineering.

Animal Care Supervisor, 006998J, Grade 11, Veterinary Teaching Hospital.

Animal Care Technician B, 496J, Grade 5, Veterinary Teaching Hospital.

Applications Analyst, 001226L, Grade 0, Web Application Research/Development.

Applications Analyst, 002145L, Grade 0, Web Application Research/Development.

Assistant Manager, 001033H, Grade 8, RDP/Dietrick Dining Center.

Assistant Manager, 006522H, Grade 6, RDP/Dietrick Express.

Assistant to Director of Annual Giving, 002226L, Grade 6, University Development.

Banquet Manager (Food Operations Manager Assistant), 001118G, Grade 6, DBHCC.

Building and Grounds Superintendent B, 002749G, Grade 0, Facilities/Mechanical Utilities.

Buyer Senior (Contracts Officer), 002440F, Grade 0, Purchasing.

Cold Prep Production Worker, 000973H, Grade 2, RDP/Owens Food Court.

Computer Systems Engineer, 0180T, Grade 14, Computer Science.

Computer Systems Engineer, 006991J, Grade 14, Research/Graduate Studies.

Development Associate, 002102L, Grade 0, University Development.

Development Associate, 002179L, Grade

6, University Development.

Editor, Virginia Tech Magazine, 000654L, Grade 12, University Relations/Outreach Communications.

Electrician, 007565G, Grade 7, Physical Plant.

Electronics Technician, 007656J, Grade 9, VTTI.

Enrollment Services Technical Leader, 002734L, Grade 0, AIS.

Executive Assistant, 004001T, Grade 7, CPES.

Executive Assistant, 007672T, Grade 0, VBI.

Executive Chef, 000266H, Grade 10, RDP/Shultz Dining Center.

Facility Manager, 007240J, Grade 8, Recreational Sports.

Financial Aid Counselor, 001683R, Grade 0, Scholarships/Financial Aid.

Fiscal Assistant, 007129G, Grade 0, Facilities/VTES.

Fiscal Assistant, 003794F, Grade 0, University Controller.

Fiscal Technician, 003167M, Grade 0, FST.

Fiscal Technician Sr, 001988F, Grade 0, Bursar's Office.

Three full-time food-operations positions available; three part-time positions.

Grounds Worker Senior, 001546G, Grade 3, Physical Plant.

Highway Equipment Operator A, 001971G, Grade 4, Physical Plant.

Highway Equipment Operator A, 000203G, Grade 0, Physical Plant/Grounds.

Housekeeping Supervisor, 000824H, Grade 4, RDP.

Housekeeping Worker, 001631G, Grade 1, DBHCC.

Housekeeping Worker, 000278H, Grade 1, RDP.

Housekeeping Worker Senior, 002745H, Grade 3, RDP.

Housekeeping Worker Senior, 006926H, Grade 3, RDP.

Interpreter for Deaf, 007472J, Grade 8, Dean of Students.

Lab Specialist, 001972M, Grade 0, CVM/MDL-Academic Affairs.

Laboratory Specialist Advanced, 003373M, Grade 11, BSE.

Laboratory Specialist Advanced, 003068M, Grade 11, BSE.

Laboratory Specialist Senior, 007302M, Grade 9, Biochemistry.

Medical Technologist, 002596J, Grade 9, Veterinary Teaching Hospital.

Medical Technologist (Surgical Ward Technician), 2637J, Grade 9, Veterinary Teaching Hospital.

Oracle DbA, 002250D, Grade 0, ISE.

Program Support Technician, 003350M, Grade 6, FWS.

Program Support Technician, 000028T, Grade 6, Scholarships/Financial Aid.

Program Support Technician, 001522T, Grade 6, Political Science.

Receptionist/Secretary, 001990T, Grade 0, GIS.

Receptionist/Secretary, 007345T, Grade 5, ME.

Recycle Coordinator, 006724H, Grade 2, RDP.

Research Software Developer, 7637T, Grade 14, VBI.

Secretary, LC000010J, Grade 0, Athletics.

Security Lead Guard (Parking Enforcement Off.), W020119G, Grade 3, Parking Services.

Security Lead Guard (Parking Enforcement Off.), 007038G, Grade 3, Parking Services.

Security Lead Guard (Parking Enforcement Off.), 007653G, Grade 3, Parking Services.

Shopleader Supervisor, 000390H, Grade 3, RDP/West End Market.

Shopleader/Cashier, 000552H, Grade 2, RDP.

Sous Chef, 000940H, Grade 8, RDP/Southgate Bake Shop.

Special Projects/Utilities Crew, 000216H, Grade 2, RDP.

Student Services Specialist, 007648T, Grade 8, University Honors—Provost.

Telecommunications Analyst, 000157A, Grade 8, CNS.

Undergraduate Secretary, 001535T, Grade 0, ESM.

PART TIME

Animal Care Tech B, W022914J, Grade 5, CVM.

Animal Care Technician A, W022155J, Grade 3, Veterinary Teaching Hospital.

Animal Care Technician B, W020556M, Grade 0, CVM.

Audiovisual Technician, W023110T, Grade 0, University Registrar.

Bus Driver, W023140R, Grade 0, Motor Pool.

Computer Technician, W023142R, Grade 0, VTTI.

Fiscal Assistant, W023088T, Grade 5, Women's Center.

Fiscal Assistant, W022977M, Grade 5, Biochemistry.

Fiscal Assistant, W023137J, Grade 0, Teaching/Learning.

Housekeeping Worker, W022490H, Grade 1, RDP.

Housekeeping Worker, W020574G, Grade 1, DBHCC.

Housekeeping Worker, W020214J, Grade 0, Health Center.

Laboratory Technician Senior, W022934M, Grade 5, FWS.

Laboratory Technician Senior, W020117G, Grade 5, EHSS.

Lead Dispatcher, W023136R, Grade 0, VTTI.

Office Assistant, W023138J, Grade 0, Teaching/Learning.

Office Assistant, W02228T, Grade 0, Provost.

Office Services Assistant, W020838J, Grade 4, Veterinary Teaching Hospital.

Office Services Assistant, W022390T, Grade 4, Registrar.

Office Services Specialist, W023141F, Grade 0, Dean's Office, Pamplin.

Office Services Specialist, W023097F, Grade 0, Bursar's Office.

Office Specialist, W023139J, Grade 0, Career Services.

Overnight ICU Vet Technician, W022218M, Grade 0, Veterinary Teaching Hospital.

Payroll Technician, W023145M, Grade 0, Veterinary Teaching Hospital.

Pharmacy Assistant A, W020839J, Grade 4, Veterinary Teaching Hospital.

Program Support Technician, W023123H, Grade 6, RDP/Marketing/Conference Services.

Radiologic Technician, W022412M, Grade 0, Veterinary Teaching Hospital.

Radiologic Technologist, W022238J, Grade 7, Health Center.

Secretary Senior, W023132L, Grade 0, University Relations.

Storekeeper, W022291J, Grade 4, Veterinary Teaching Hospital.

Student Health Staff Physician, W023144J, Grade 0, Health Center.

Truck Driver, W023114T, Grade 0, Chemistry.

Web Designer, W022976H, Grade 8, RDP/Marketing/Conference Services.

FACULTY POSITIONS

INSTRUCTIONAL

Materials Science/Engineering. Associate Director/Instructor of Writing/Communication Skills. Contact: Eric Pappas, 14 Holden (0237). Deadline: October 27.

NON-INSTRUCTIONAL

Crop/Soil Environmental Sciences. Analytical Chemist. Contact: R.B. Reneau, 330 Smyth (0404). Review begins December 15.

Natural Resources. Assistant Dean for Administration/Finance. Contact: Geza Ifju, 210 Cheatham (0323). Review begins October 25.

Virginia Cooperative Extension. District Director, Southwest District. #FA870. Abingdon. Contact: Judith Jones, 105B Hutcheson (0437). Review begins November 1.

Nominations sought for Diversity Award

By Sally Harris

The Cultural Diversity Committee and the Student Advisory Board in the College of Arts and Sciences are seeking nominations for the annual Diversity Award within the college.

The Diversity Award, established in 1996, honors College of Arts and Sciences faculty and staff members who have made significant contributions to improving campus climate for women and persons of color at Virginia Tech.

Eligibility requirements are as follows: Successful nominees should have taken a leadership role beyond the expectations of their position to a) improve the quality of life for women and persons of color; b) plan and implement institutional change related to issues

of diversity; and c) educate members of the campus community to appreciate an increasingly pluralistic society.

Faculty and staff nominees must be employed in the College of Arts and Sciences. A measure of preference will be given to faculty and staff members whose work on diversity may not have been previously recognized through this or similar awards.

The committee and board will select either one or two recipients for this year's award(s) totaling \$1,000.

One nomination letter must be accompanied by two letters of support. Letters of nomination and support should clearly describe the nominee's qualifications and contributions to the university

community as they relate to diversity. Virginia Tech faculty and staff members, students, and citizens of Montgomery County may submit letters of nomination and support. Guidelines for preparation of nomination materials can be obtained by contacting Ingrid Banks at ibanks@vt.edu or 1-8174.

Letters of nomination and support should be addressed to the Cultural Diversity Committee and the Student Advisory Board and submitted to Sherryll Allen or Teresa Price, Cultural Diversity Committee, College of Arts and Sciences (0405) by 5 p.m. Friday, Oct. 20.

Results of the diversity award will be announced in the spring.



VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

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University to host Governor's School for Agriculture

By Stewart MacInnis

Virginia Tech is moving ahead with plans to establish a month-long Governor's School for Agriculture next summer following action today by the state Board of Education, said Andy Swiger, the university's dean of agriculture.

"We certainly appreciate the Board of Education looking favorably upon our proposal," Swiger said. "We also appreciate the strong support for this project shown by Delegate Jay Katzen and the Virginia Farm Bureau Federation."

Katzen was a major proponent of establishing a Governor's School for Agriculture, and he was a strong advocate for the program with both the governor and General Assembly.

"Agriculture is the largest industry in Virginia, and it's only appropriate that a Governor's School be dedicated to this important area," Katzen said. "With the involvement of Virginia Tech, I'm sure this school will provide a world-class educational opportunity for Virginia's students."

The board's designation of Virginia Tech as the host for the annual school is renewable for five years.

Admission is expected to be competitive, with seats for just 100 students, said William G. Camp, professor of agricultural education and director of the school. Applications will be accepted from rising juniors and seniors at all Virginia public and private high schools and from home-schooled pupils.

Camp said the school's definition of agriculture will be broad.

"We're talking about not just what happens on farms, but about the science and business of an industry that has a \$35-billion annual impact on Virginia," Camp said. "Our instruction will be about natural resources, it will be about economics, it will be about genetics and biotechnology, it will be about veterinary medicine. Some of our instruction, in fact, will be tailored to the interests expressed by the

students."

The school will be conducted on the Virginia Tech campus from July 8 to August 4 next year. Instruction will be provided by Virginia Tech professors from the university's College of Agriculture and Life Sciences, College of Natural Resources, College of Human Resources and Education, and the Virginia-Maryland Regional College of Veterinary Medicine. Faculty members in agriculture and natural-resource programs in other state institutions will be invited to participate, as well.

In addition, agricultural-education teachers from school divisions around the state will be members of the school's faculty.

"This will be among the highest-quality faculties instructing high-school students in the nation," Katzen said. "Many of these people have international reputations as instructors and as research scientists. They need to be the

best, because I expect the students to be among the best Virginia has to offer."

He said the high quality of the faculty and the rigorous instruction will make students who complete the school competitive for the most-selective universities in the nation.

There will be no cost to students, who will live in supervised dormitories on the Virginia Tech campus and eat in university dining facilities. The school is being funded by Virginia's taxpayers through a \$150,000 appropriation by the General Assembly, by matching funds from the school districts of participating students, and by Virginia Tech.

The curriculum is being designed specifically to provide a balanced and diverse learning experience for gifted learners. Camp said. Each student will take six core courses, four of which will be discipline-based, one will be a computer-applications course, and

one will be a communications course.

Each student will be assigned to a "major," consisting of 20 students, based on the interests of the students. Students in each major will complete the same two specialized courses designed to provide major-specific instruction and to prepare them to work on a major-specific project. Each major will be divided into work groups to undertake a group project that will culminate in a symposium and poster session on the last day of the school.

Applications will be available from the coordinator of gifted programs in each school division. Information is available at the school's web site (www.gsa.vt.edu).

West Virginia Game Advisory

Virginia Tech will host West Virginia University for a nationally televised football game on Thursday night, October 12. The traffic impact on the university community of an event like this is especially acute on a weekday. Therefore, the university will take steps to ensure the orderly flow of traffic and minimize impacts on class schedules.

President Charles Steger has approved closing of all university offices at 4 p.m. on October 12, with the exception of faculty and staff members directly supporting classroom instruction, critical positions, the libraries, and other key groups such as Residential and Dining Programs. Classes will not be cancelled. Faculty members are advised to consider the impact of the game on classroom instruction. The university registrar is available to help re-schedule class periods should a faculty member deem it necessary.

For more information, call Parking Services at 1-3200 or, after regular business hours, the University Police Department at 1-6411.

Pamplin to offer Winterim 2001

By Sookhan Ho

The Pamplin College of Business will offer a two-week course, U.S. Foreign Economic Policy and the New Global Environment, in Washington D.C. during January 8-19.

The short course, known as Winterim 2001, will be taught by two professors of international studies at Thunderbird, the American Graduate School of International Management. It is an opportunity for students and professionals to update their knowledge of developments in the U.S. and around the world that will have an impact on business, said Robert Sumichrast, associate dean for graduate and international programs at Pamplin.

The course will explore U.S. trade policy, current WTO, OPEC, and NAFTA issues, global-risk assessments, and the economic prospects of Eastern Europe, Southeast Asia, Africa, and other regions.

Participants will hear lectures and engage in discussions with experienced policy makers, business executives, and university faculty members. The sessions will meet at the offices of the American Management Association and the Brookings Institution, but participants will also visit several Washington-based agencies and corporate headquarters.

The course is another aspect of the continuing partnership between Pamplin and Thunderbird. Both institutions are collaborating on a dual-degree program that allows students to earn a Pamplin MBA and a Thunderbird master of international management at the same time.

For Winterim registration and more information, call Pat Brown at (703) 538-8410 or e-mail patbrown@vt.edu

OAK RIDGE

Continued from 1

has had limited collaborative research with ORNL. With all we have in common, we definitely expect that to increase," Wilson said.

Work to build collaborative arrangements has been under way since the beginning of the new contract in April, including a university research-managers meeting in Oak Ridge on May 4 attended by Virginia Tech associate deans, a three-day workshop with university faculty in Oak Ridge on August 2-4 attended by 15 of Virginia Tech faculty members, and now the Oak Ridge management team's visit to the universities, stopping first at Virginia Tech.

Members of the senior management team that UT-Battelle brought to ORNL will be on campus all day to learn more about Virginia Tech and to present their views about the importance of the university connection to ORNL's future. They will meet with the university and college leadership, and will visit several research programs and centers, the Corporate Research Center, and Virginia Tech Intellectual Properties, Inc. At the 3 p.m. open forum, they will describe progress they are making with the core universities to implement some of the proposal promises.

"The open forum will be a good opportunity for interested individuals to hear, first hand, the new management philosophy for ORNL involving the core university team, which includes Virginia Tech," Wilson said. "There will be an opportunity to ask questions and gain additional insights about the potential for collaboration that will be available through our membership on the team."

More information is available at www.rgs.vt.edu/oakridge/Oakridge.htm. Contact Wilson at wilsonj@vt.edu or call 1-5188.

UNIVERSITY

Continued from 1

unique Internet URL's back to the highest bidder. Recently, Harvard University forced a web business, NOTHARVARD.COM to drop its usage of Harvard's name.

Locke White, licensing director for Virginia Tech, said, "In today's dot-com world, the misappropriation of a URL address is a serious infringement on a business's ability to operate. A university is not any different. We have to protect the integrity of our name."

Virginia Tech's unique school nickname, Hokies, is the modern-day descendant of a turn-of-the-century cheer, "hoki, hoki, hoki, hy" penned by O.M. Stull in 1896. The word Hokies has no special meaning but is now uniquely identified with Virginia Tech.

PROVOST

Continued from 1

ban Studies.

Also, Anne McNabb, professor, Biology College of Arts and Sciences; Thomas H. Ollendick, university distinguished professor, Child Study Center, College of Arts and Sciences; Barbara Pendergrass, dean of students; Raymond Smoot, vice president for administra-

WOMEN

Continued from 1

programs, Center for Interdisciplinary Studies. Brian Williams and Step Afrika! USA, founding director, Step Afrika!, and residency artist, John F. Kennedy Center for the Performing Arts. "Stepping and Its Relationship to African Dance Traditions." April 7, 2001.

Ann-Marie Knoblauch, assistant professor of art history, art and art history. Lee

tion and treasurer; Nammalwar Sriranganathan, associate professor, biomedical sciences and pathobiology; F. William Stephenson, Hugh P. and Ethel C. Kelly professor of electrical and computer engineering and dean, College of Engineering; Mitzi Vernon, president, Faculty Senate, assistant professor of architecture and industrial design.

Ann Riccardi, assistant professor of art history, College of New Jersey. "Hairstyles of the Rich and Famous: The Constructed Image of Roman Imperial Women." February, 2001.

F.M. Anne McNabb, professor of biology. Joseph L. Graves, professor of evolutionary biology, Arizona State University West. "The Biology of Race." Nov. 10, 2000.

Multicultural Diversity Committee, Pamplin College of Business. Ancella Livers, manager for African-American Leadership Program and Women's Leadership Program, Center for Creative Leadership. "African-American and Women's Leadership Programs: Understanding the Differences." March, 2001.

Edward J. Smith, associate professor, animal and poultry sciences. Patricia King, Carmack Waterhouse professor, Georgetown University. "The Dilemma of Difference: Race and the New Genetics." Feb. 14, 2001.

Sarah G. Speir, coordinator of special programs, University Office of International Programs. Elise Witt, artist-in-residence, musician/performer/educator. "World Music: A Celebration of Alpine Folk Traditions." Nov. 1, 2000.

Virginia Tech Chapter of Phi Beta Kappa. Joan Breton Connelly, associate professor of fine arts, New York University. "Women and Ritual: Priestesses in Ancient Greece." Sept. 21, 2000.

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Virginia Tech

Attachment 8

RE: Becker v. UT

1 message

Pinkley Jr, Harold <Harold.Pinkley@tennessee.edu>

Fri, May 10, 2024 at 1:25 PM

To: Paul McAdoo <pmcadoo@rcfp.org>

Cc: Gunita Singh <gsingh@rcfp.org>, "Lancaster, Frank" <flancast@tennessee.edu>, "Pinkley Jr, Harold" <Harold.Pinkley@tennessee.edu>

Yes.

Harold Pinkley

Associate General Counsel

The University of Tennessee

505 Summer Place

Knoxville TN 37902

865.974.3416

harold.pinkley@tennessee.edu

From: Paul McAdoo <pmcadoo@rcfp.org>

Sent: Friday, May 10, 2024 2:23 PM

To: Pinkley Jr, Harold <Harold.Pinkley@tennessee.edu>

Cc: Gunita Singh <gsingh@rcfp.org>; Lancaster, Frank <flancast@tennessee.edu>

Subject: Re: Becker v. UT

Hi Harold,

Thanks for letting us know. It sounds like UT is withdrawing the Jakes-related argument. Am I reading that right?

Thanks again,

Paul

On Fri, May 10, 2024 at 1:17 PM Pinkley Jr, Harold <Harold.Pinkley@tennessee.edu> wrote:

Paul and Gunita,

You asked me to let you know if there are any arguments we have made in response to Mr. Becker's Public Records Act Requests. Since you are not pursuing the research records, we obviously will not make any argument on that issue. In addition, we will not make the argument contained in the penultimate paragraph on page 2 of my letter to you of July 14, 2023.

Please let me know if you have any questions.

Harold Pinkley

Associate General Counsel

The University of Tennessee

505 Summer Place

Knoxville TN 37902

865.974.3416

harold.pinkley@tennessee.edu

--



Paul R. McAdoo (*he/him*)
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RCFP Legal Defense Hotline
800-336-4243 · www.rcfp.org/hotline

Attachment 9



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Savannah River Alliance, LLC

File: B-311126, B-311126.2, B-311126.3, B-311126.4

Date: April 25, 2008

Kenneth B. Weckstein, Esq., Tammy Hopkins, Esq., Pamela A. Reynolds, Esq., and Amy T. Kingston, Esq., Brown Rudnick Berlack Israels, LLP, for the protester. James J. McCullough, Esq., Deneen J. Melander, Esq., Steven A. Alerding, Esq., and William S. Speros, Esq., Fried, Frank, Harris, Shriver & Jacobson, LLP, for Savannah River Nuclear Solutions, LLC, an intervenor.

H. Jack Shearer, Esq., Charmaine A. Howson, Esq., Timothy P. Fischer, Esq., and Jeffrey Galan, Esq., Department of Energy, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's selection of higher-priced, higher-rated proposal for award is reasonable, where the key discriminator between proposals was under the key personnel factor, which was one of the most heavily weighted factors in the evaluation and was "critical" to successful performance, and where the agency reasonably concluded that awardee's superior key personnel were worth the additional price; protester's disagreement with the evaluation of multiple other factors and subfactors does not render the evaluation unreasonable.
2. Allegation that a key personnel reference had a personal conflict of interest that tainted the evaluation of key personnel is denied, where the reference was provided by the offeror and did not have an official role in the procurement, and the information provided by the reference had no impact on the evaluation.
3. Allegation that organizational conflicts of interest exist due to the employment of several of the awardee's key personnel is denied, where any conflict, if it exists, is personal to the employees, and not the organization, and is too speculative to impute to their employers.

DECISION

Savannah River Alliance, LLC (SRA) protests the award of a contract to Savannah River Nuclear Solutions, LLC (SRNS), issued by the Department of Energy (DOE) under request for proposals (RFP) No. DE-RFP09-06SR22470 for the management and operation of the Savannah River Site, a DOE-owned facility in South Carolina. SRA alleges myriad evaluation errors.

We deny the protest.

BACKGROUND

The Savannah River Site is a 310-square-mile industrial complex in the southern part of South Carolina adjacent to the Savannah River. The site is dedicated to environmental management cleanup, developing and deploying technologies to support the cleanup mission, providing capability for supporting the enduring nuclear weapons stockpile, and processing and storing nuclear materials in support of the United States' nuclear non-proliferation effort. RFP § C-1.1. DOE's Office of Environmental Management is the landlord for the site and, since 1989, has contracted with Washington Savannah River Company (WSRC) to manage and operate the site. Agency Report (AR), Tab B.2, Source Evaluation Board (SEB) Report, at 2.

The RFP sought to restructure the workscope of the predecessor contract and implement a performance-based contract, whereby the selected contractor would provide all of the "personnel, facilities, equipment, materials, supplies, and services" necessary to manage and operate the site and its mission activities. RFP § C-1.2. Included in the RFP's scope of work are environmental closure activities (soil and water remediation, deactivation and decommissioning, solid waste handling, and nuclear materials management), Savannah River National Laboratory (SRNL) activities,¹ National Nuclear Security Administration (NNSA) activities² (tritium³ operations, nuclear nonproliferation, and radiological assistance), and landlord/site services (environmental, safety, and health [ES&H], engineering and construction, operations support, and business services). RFP § C-3; AR, Tab E.1, Source Selection Decision, at 1. The RFP advised offerors to "challenge the status quo and existing paradigms in formulating and implementing safe, high quality, timely, and

¹ The SRNL is a DOE operated and federally funded research and development laboratory. RFP § C-1.1.

² The NNSA is responsible for supporting the nuclear weapons stockpile programs and nonproliferation activities on the site. RFP § C-1.1.

³ Tritium is a radioactive isotope of hydrogen.

cost-effective programs and operations” at the site and encouraged the use of “innovative methods of accomplishing this Scope of Work consistent with the most efficient and effective means of performance.” Safety, also, was identified as an “integral part of mission accomplishment” and offerors were advised to “systematically integrate safety, security, and environmental protection into management and work practices at all levels” of performance. RFP § C-1.2.

The RFP provided for the award of a cost-plus-award-fee contract for a 5-year base period with one 5-year option. *Id.* § B-2.3. Award was to be made on a best-value basis, considering key personnel (worth 25 percent of the non-price portion of the evaluation), organizational structure and management approach (25 percent), technical management approach (20 percent), ES&H (15 percent), past performance (7.5 percent), relevant experience (7.5 percent), and cost and fee. *Id.* § M-2. Key personnel, which was one of the most important evaluation factors, was to be evaluated based on written proposal submissions (including resumes, reference checks, and letters of commitment) and oral presentations during which the offerors’ key personnel would be asked to respond to three managerial problems. The remaining factors were to be evaluated based on written proposals. Cost and fee were to be evaluated for reasonableness and realism, based on the evaluated key personnel compensation costs for the first 2 years of contract performance and fee for the entire potential 10 years of contract performance. *Id.* The RFP stated that the non-price factors were “significantly more important than” price, and advised that DOE was “more concerned with obtaining a superior [m]anagement and [b]usiness proposal⁴ than making an award at the lowest evaluated price.” *Id.* § M-3.

The RFP required the selected contractor to be devoted entirely to this contract; the contractor was prohibited from performing any other commercial or government work for the duration of the contract, and was required to be established as a separate corporate entity from its parent company. *Id.* § H-41. To satisfy this requirement, SRA and SRNS were formed as new corporate entities. SRA was comprised of corporate affiliates of the incumbent WSRC team: Washington Group International, Inc.; Bechtel National, Inc.; CH2MHill Constructors, Inc.; BWXT Services, Inc.; and subcontractor Battelle-Savannah Rivers, LLC. SRNS was comprised of Fluor Federal Services, Inc.; Newport News Shipbuilding and Drydock Company (a Northrop Grumman Newport News business unit); Honeywell International, Inc.; subcontractor teaming partner Lockheed Martin Services, Inc.; and subcontractor Nuclear Fuel Services, Inc. Contracting Officer’s Statement at 1 n.1; AR, Tab B.2, SEB Report, at 14.

Both offerors submitted proposals in response to the RFP, and their key personnel participated in oral presentations. The SEB evaluated each offeror’s proposal under

⁴ The management and business proposals addressed the non-price factors. RFP § L-4.

each of the evaluation factors, noted a variety of “significant strengths,” “strengths,” and “weaknesses” for each proposal, and assigned proposals the following adjectival ratings:

		SRA	SRNS
Key Personnel (25%)		Good	Excellent
Organizational Structure & Management Approach (25%)		Good	Good
Technical Management Approach (20%) ⁵			
	EM Closure Activities	Good	Good
	SRNL Activities	Excellent	Excellent
	NNSA Activities	Good	Good
	Landlord Services & Site Support	Good	Good
ES&H (15%)		Good	Good
Past Performance (7.5%)		Good	Good
Relevant Experience (7.5%)		Excellent	Excellent
Evaluated Price		\$424,859,509	\$473,146,404

AR, Tab E.1, Source Selection Decision, at 4.

The SEB compared proposals under the various factors and subfactors and described several areas of distinction, but concluded overall that the proposals were “substantially equivalent” under all but the key personnel factor. For that factor, the SEB concluded that while the two offerors proposed chief executives and laboratory directors who had “substantially equivalent” experience, the rest of SRNS’s key personnel had more “extensive experience,” which the SEB found “important” to meet the performance expectations in the contract. In addition, the SEB concluded that the SRNS team performed better during the oral presentation; as the SEB stated, “SRA did not function as an integrated team and overall was less interactive than the SRNS team,” whereas the SRNS team performed more “effectively, efficiently[,] and seamlessly together[,] with all personnel engaged in some aspect of problem solving, response development and/or presentation for all three [managerial] problems.” AR, Tab B.2, SEB Report, at 19-20.

The SEB reported its findings to the source selection authority (SSA), who agreed with most of the SEB’s conclusions. For example, the SSA found “no significant discriminators” between the two proposals under the organizational structure and management approach, technical management approach, ES&H, past performance, or relevant experience factors. The SSA acknowledged that while there were “differing technical approaches and strengths” in each proposal, as was documented

⁵ The SEB did not assign overall ratings for the technical management approach factor.

by the SEB, there were “no discernable advantages between offerors” under these evaluation factors. AR, Tab E.1., Source Selection Decision, at 5.

However, for the key personnel factor, the SSA disagreed in part with the SEB’s conclusions. Specifically, the SSA disagreed with the SEB’s finding that the experience of the offerors’ chief executives was substantially equivalent. The SSA found a “substantial difference in the magnitude of [the chief executives’] past responsibilities” that persuaded the SSA to conclude that SRNS’s chief executive provided a “greater range of demonstrated performance” when compared to SRA’s chief executive. This, coupled with the “extensive and diverse” experience of the other members of the SRNS key personnel team, and the superior performance of the SRNS team during oral presentations, led the SSA to conclude that the SRNS team would be better able to satisfy the scope of work and provide the best value to the government. Id. at 6. As the SSA stated:

It is my determination that the superior executive team proposed by SRNS, with their broader level of federal and commercial experience will challenge the status quo, drive innovation[,] and significantly improve overall site productivity. Based on my experience, a highly capable and high performing senior executive management team is a highly significant factor in achieving productivity improvements and successful problem solving on DOE sites. The SRNS leadership team’s ability to bring in relevant lessons learned as a result of their broader experience base increases the likelihood that innovative practices will be successfully implemented that will result in work being accomplished more efficiently.

The [Savannah River Site] is at a critical juncture in its evolution with the implementation of a program strategy that will increase the number of prime contractors on site as well as increase the performance risk for the [management and operations] contractor. Key personnel are critical to successfully and safely manag[ing] the various critical [site] programs and the change ahead for [the site] which requires the best and brightest management team. Consequently, that is why the key personnel criterion was assigned the relatively high weight of 25%. Therefore, I believe the advantages in leadership, innovation, efficiency, and productivity improvements possible through the superior SRNS Key Personnel team as compared to the SRA team more than outweigh the evaluated price differential of \$48.3 million over ten years or \$4.8 million per year.

Id. at 7-8. Award was made to SRNS and this protest followed.

DISCUSSION

SRA complains that the agency should have rated SRA's proposal higher, and SRNS's proposal lower, under each of the evaluation factors. SRA contends that the assessment of strengths and weaknesses in the SEB report was unreasonable, unfair, and inconsistent with the RFP. SRA asserts that the source selection decision is flawed because the SSA did not fully consider or document the numerous asserted advantages that SRA's proposal offers over SRNS's.⁶

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Id.

In its protest, SRA selectively identifies some of the SEB's comments in the final report, or isolated comments of a technical advisor or evaluator, and contends that these comments should have resulted in lower ratings for SRNS's proposal and higher ratings for SRA's proposal. However, as discussed below, these arguments ignore the many other comments that support the agency's evaluation conclusions. In response to the protest, DOE provided a detailed record of its evaluation and source selection decision, which shows that the agency evaluated the relative merits of the proposals and assessed ratings in a fair and impartial manner consistent with RFP. Although the source selection decision may not have discussed each and every

⁶ Several of the protest grounds were raised as supplemental protests, based on information contained in the SEB report and source selection decision that the agency provided in response to the protest. The intervenor requested dismissal of these grounds, arguing that they were untimely raised. The intervenor asserts that SRA had reviewed unredacted copies of the SEB report and source selection decision during the debriefing, and thus SRA was required to raise its protest grounds based on these documents in its initial protest. SRNS's Request for Partial summary Dismissal, at 2. While it is true that SRA's representative were allowed to review unredacted copies of the SEB report and source selection decision during the debriefing, the agency limited the review to 3 hours and only permitted five representatives to review the documents. Those representatives were prohibited from taking notes; were not allowed to bring pens, pencils, recording devices, or personal belongings into the review room; and were not allowed to take any materials with them at the end of the 3-hour time frame. Considering that the two documents exceeded 135 single-spaced pages in length, we do not find that SRA was sufficiently on notice of its bases of protest contained in these documents, from the limited review allowed, so as to give rise to an obligation to protest within 10 days.

asserted strength and weakness as the protester would have liked, or agreed with the protester as to the significance of certain identified strengths or weaknesses, the record demonstrates that the SEB and SSA considered all of the information available, and issued a well-reasoned and rational SEB report and source selection decision that fairly highlighted the key discriminators among the offerors' proposals. SRA disagrees with the conclusions regarding key discriminators, but as noted above, mere disagreement with the agency's conclusions is insufficient to sustain a protest. Cherry Road Techs.; Elec. Data Sys. Corp., supra, at 6. Based on our review of the record, including the agency's discussion and assessment of relative advantages and disadvantages associated with the specific content of proposals, we find the evaluation to be reasonable. Specific challenges raised by SRA are discussed more fully below.⁷

Key Personnel Factor

SRA contends that its key personnel should have been rated superior to SRNS's. As stated above, the evaluation of key personnel included the evaluation of the offerors' written submissions (including resumes, reference checks, and letters of commitment) and the offerors' responses to three managerial problems during oral presentations. The RFP stated that the written submissions would be evaluated "for the extent of [the key personnel's] qualifications and experience with respect to the functions they are proposed to manage." Oral presentations were to be evaluated to determine, among other things, "[w]hether the Offeror's management team understands the management challenges created in the problems," the "observed interaction and participation of the Offeror's Key Personnel in dealing with the presented problems as an integrated team," and the "quality and effectiveness of communicating the response." RFP § M-2(a)(1) and (2).

The RFP identified two required key personnel (chief executive and SRNL director); the selection of all other key personnel was left to each offeror's discretion. Id. § M-2(a)(1). SRA proposed [REDACTED] key personnel, and SRNS proposed [REDACTED]. SRA's key personnel consisted of persons that possessed DOE and site-specific experience; some had worked at the site under the incumbent contract. SRNS's key personnel had a broader range of experience managing projects and programs with broad scopes and complexity, including projects at DOE, in the commercial sector, and other government agencies. AR, Tab B.2, SEB Report, at 20. In accordance with the RFP, the SEB evaluated each position and specifically discussed elements of each person's background and experience in its report. The SEB identified 6 significant strengths and 8 strengths for SRA's key personnel, and 11 significant strengths and 4 strengths for SRNS's key personnel. The SEB did not assess any formal weaknesses to either offeror's key personnel under this factor, but

⁷ Although we do not discuss each and every argument raised by SRA, we have considered all of SRA's arguments and find them to be without merit.

noted weaknesses throughout its report to explain why a particular key personnel position was rated only a strength instead of a significant strength.⁸

As stated above, the SSA concluded that, overall, SRNS' key personnel were superior to SRA's, largely because the agency determined that the broader, more diverse experience of SRNS's key personnel (especially with regard to SRNS's chief executive) was more advantageous to accomplishing the RFP's requirements, and the SRNS team performed better during the oral presentations. AR, Tab E.1, Source Selection Decision, at 6-8.

SRA protests the SSA's favorable recognition of the diverse backgrounds of the SRNS key personnel, especially with regard to the chief executive position. According to SRA, the SSA should have given more favorable consideration to DOE and site-specific experience; "diversity of experience," the protester argues, is an unstated evaluation criteria. Protest at 27-28. However, the RFP did not require DOE or site-specific experience, or suggest that incumbency would result in more advantageous evaluation ratings. Rather, the RFP contemplated a broad scope of work and encouraged offerors to be "innovative" in their technical approaches, "challenge the status quo and existing paradigms," and adopt practices that foster "continuous improvement." RFP §§ C-1.2; C-1.3. Specifically with regard to the chief executive, where the SSA found breadth of experience to be a significant discriminator between the proposals, the RFP required consideration of the "depth and breadth of his/her qualifications in the management and administration of organizations." *Id.* M-2(a). Thus, based on the RFP's expressed desire for innovation and improvement, rather than the status quo, coupled with the specific reference to broad experience (at least for the chief executive), we find reasonable the SSA's determination that the more diverse experience of SRNS's key personnel was deserving of a higher rating.⁹

SRA contends, also, that four of SRNS's proposed key personnel [REDACTED] lacked essential experience for their positions, which should have translated into weaknesses instead of strengths in the evaluation. In contrast, SRA argues that four of its proposed key personnel [REDACTED] should have been credited with significant strengths. Protest at 20-28; SRA's Comments at 13-44. In failing to assess SRNS's proposal weaknesses and SRA's proposal significant strengths, SRA

⁸ For example, the SEB assigned SRA's proposed [REDACTED] a strength and not a significant strength because, although he posed 25 years of experience in [REDACTED], including experience at the site, his experience "was for scopes of lesser complexity than that of the proposed position." AR, Tab B.2, SEB Report, app. A, at 4.

⁹ Based on our review of the record, we also find reasonable the SSA's determination that SRNS's proposed chief executive had broader, more diverse experience than SRA's proposed chief executive.

contends, the agency failed to take into account qualitative differences in the proposals,¹⁰ disregarded the evaluation criteria that required consideration of experience as it relates to the function each individual was proposed to manage, and evaluated offerors' key personnel disparately.

As an initial matter, we note that the record evidences that the agency took into account qualitative distinctions in the proposals. While it may be true that some of SRA's key personnel are more experienced than SRNS's in certain areas, in other areas, SRNS's personnel were found to be more experienced.¹¹ Although SRA focuses on a few positions in its protest, it does not challenge the many significant strengths and strengths assessed for the many other identified key personnel in both offerors' proposals, which resulted in SRNS's proposal receiving nearly twice as many significant strengths as SRA's proposal. Also, SRA does not challenge the agency's evaluation of the oral presentation, and the record shows that the SRNS team performed far better as an integrated unit in responding to the managerial problems than did SRA, thus demonstrating "superior leadership" capabilities to the agency.¹² AR, Tab E.1, SSA Decision, at 7. Based on our review of the record, including the oral presentations, we find the agency's evaluation of key personnel to be reasonable.

For example, SRA asserts that SRNS's [REDACTED] lacked [REDACTED] experience, which SRA argues should have translated to a weakness in the evaluation and not a strength. The agency disagreed, explaining in the SEB report that the individual had over 25 years of relevant experience, had managed large staffs with budgets [REDACTED], and had participated in [REDACTED]—all of which the SEB found advantageous to performing the functions he was proposed to manage. The SEB explained, nonetheless, that this experience did not rise to the level of a significant strength because most of the individual's experience was with [REDACTED]; his [REDACTED] experience, the SEB recognized, was "limited." AR, Tab B.2, SEB Report, app. A, at 10.

¹⁰ For example, SRA contends that its [REDACTED] is more experienced than SRNS's [REDACTED], its SRNL director is more experienced than SRNS's director, and its [REDACTED] is more experienced than SRNS's [REDACTED].

¹¹ For example, SRNS's proposed [REDACTED] was assessed a significant strength and SRA's proposed [REDACTED] was assessed a strength, based, in part, on the fact that SRA's manager comparatively had fewer years of relevant experience and his experience was for "scopes of lesser complexity" than that of the proposed effort. AR, Tab B.2, SEB Report, app. A, at 4, 9.

¹² Ultimately, as noted above, oral presentation performance (which was part of the stated evaluation criteria) became a key discriminator between proposals under the key personnel factor.

In comparison, the SEB assessed SRA's [REDACTED] a strength for possessing [REDACTED] experience, but also determined that this individual did not deserve a significant strength because he "does not have extensive experience with [REDACTED]." *Id.* at 5. Since the RFP expressly identified activities involving [REDACTED], see RFP § C-3.3(a), we find no error or inconsistency in the agency's evaluation of either offeror's proposed [REDACTED] key personnel under this factor.¹³

Similarly, the agency fairly evaluated both offerors' proposed SRNL directors. For this position, the RFP provided that, in addition to considering experience and qualifications, the agency would consider the individual's "recognition for scientific or engineering accomplishments and recognition for successfully managing a multidisciplinary nuclear research and development organization." RFP § M-2(a); see also id. § L-4(a)(1) (requiring key personnel to identify "Publications, Awards, Honors, and Professional Recognition"). Both offerors' proposals received strengths for these positions. For SRNS's director, the SEB favorably considered his PhD in nuclear engineering, his work experience successfully managing a multidisciplinary nuclear research and development organization, his experience establishing consortia with universities and industry, his strong research background, and the extensive professional recognition he had received for his work. However, the SEB did not assign this individual a significant strength because his experience managing a multidisciplinary organization was "at the division level." AR, Tab B.2, SEB Report, app. A, at 9-10.

Likewise, SRA's proposed SRNL director was favorably recognized for his PhD in health sciences, his experience with several national laboratories, and his work in

¹³ Although SRA contends that tritium experience is more critical to performance than budget, real estate, and personnel experience, SRA's Comments at 30-31, the agency explains (and the RFP notes) that tritium operations must be operated as a "defined, severable cost center," and budget, real estate, and personnel experience are specifically identified in the RFP as being necessary to operating a center in this manner. Contracting Officer's Statement at 23; see also RFP § C-3.3(a). In addition, SRNS proposed [REDACTED], which the agency evaluated in accordance with the key personnel evaluation criteria. See AR, Tab B.2, SEB Report, app. A, at 7 (giving a significant strength to SRNS's proposed [REDACTED] for, in part, his "over 40 years of experience" in support of [REDACTED]); AR, Tab D.1, SRNS's Proposal, at 8 ([REDACTED]). SRA complains that the agency did not similarly evaluate, or give credit for, SRA's proposed [REDACTED], who possessed experience that SRA's key personnel lacked, e.g., First Supp. Protest at 14, 19-20; SRA's Comments at 31, but the RFP did not require the evaluation of [REDACTED] since they were not proposed as key personnel, and SRA did not provide the information required under the key personnel evaluation criteria for the agency to evaluate such individuals.

forming university alliances. However, the individual had received only “limited recognition for scientific or engineering accomplishments,” which was a criteria for evaluation of this factor as stated in the RFP.¹⁴ Id. at 4. Thus, even though SRA’s proposed SRNL director had managed multidisciplinary organizations above the division level, he had not received the scientific and engineering-related awards and recognition that SRNS’s proposed SRNL director had received, and thus the agency reasonably determined that SRA’s director also was not deserving of a significant strength under the evaluation criteria.¹⁵

The record also confirms that the agency properly assessed strengths, and not significant strengths or weaknesses, to SRNS’s proposed [REDACTED], and SRA’s proposed [REDACTED], based on each individual’s more limited experience as relevant to their proposed functions. Id. at 4, 10. SRA disagrees with the agency’s conclusions and contends that the areas where SRNS’s key personnel lack experience are more critical to performing “primary” functions than the areas where SRA’s key personnel lack experience, and that this should have resulted in discriminators in favor of SRA. E.g., SRA’s Comments at 23-24, 40. However, this reflects only SRA’s disagreement with the assessment of significant discriminators in the evaluation. The record here is well-reasoned and shows that the agency reasonably considered experience relative to proposed function and did not evaluate the offerors unequally.

Organizational Structure & Management Approach Factor

SRA contends that SRNS’s proposal should have received a lower rating under the organizational structure and management approach factor because [REDACTED] of SRNS’s proposed key personnel are not directly employed by SRNS, but remain employees of SRNS’s team members.

For evaluation under this factor, the RFP required each offeror to propose a “management approach (functional organization, lines of authority, roles and responsibilities, and interface with DOE and NNSA) to safely and seamlessly perform the Statement of Work . . . and to achieve the safe and efficient

¹⁴ Although SRA correctly notes that the resume of its SRNL director reflects some scientific accomplishments, we agree with the agency’s assessment that the vast majority of the accomplishments are “management focused.” Contracting Officer’s Statement at 18; AR, Tab C.2, SRA’s Key Personnel Resumes, at 32-34.

¹⁵ To the extent that SRA complains that the weakness assessed to its SRNL director was less critical to performance than the weakness assessed to SRNS’s director, this argument is contrary to the RFP, which specifically stated that SRNL directors would be evaluated for scientific accomplishments and recognitions in addition to their qualifications and experience. See RFP § M-2.2(a)(1).

accomplishment of [Savannah River Site] missions.” RFP § M-2(b). The RFP stated that the agency would evaluate each approach for, among other things, “the extent to which it provides an efficient and realistic approach to meet the general performance expectations.”¹⁶ *Id.* SRA contends that because SRNS’s key personnel are not directly employed by SRNS, they cannot “seamlessly” perform the work like SRA can, whose key personnel ([REDACTED])¹⁷ are directly employed by SRA. Protest at 29.

The RFP did not require that key personnel be direct employees of the offeror; it required only that each key personnel provide a 2-year commitment to the contract. RFP §§ L-4(a)(1), M(a)(1). All of SRNS’s key personnel provided a 2-year commitment to the contract without any “contingencies or constraints” on their employment.¹⁸ SRNS’s Second Supp. Comments, Tab 4, Key Personnel Commitment Letters. The RFP required, and SRNS provided, the “Name of [the] Company/Partner [each] Key Person will work for,” thus contemplating that entities other than SRNS could remain as the employer for the individual. RFP § L-4(a); see also *id.* § L-4(b) (contemplating that teaming arrangements will be used to perform the work). Although SRA contends that section H-41 of the solicitation, which required that a “separate corporate entity must be set up solely to perform this Contract,” mandates that personnel also be employed by the offeror, no such limitation is stated in section H-41 or elsewhere in the solicitation.

Here, in evaluating the organizational structure and management approach factor, the SEB evaluated each offeror’s management organization, lines of authority, roles and responsibilities, and how the team members would function together as a

¹⁶ Also evaluated under the organizational structure and management approach factor was the offeror’s approach to involving small businesses and implementing contractor assurance requirements. RFP § M-2(b).

¹⁷ [REDACTED].

¹⁸ We find no merit to SRA’s argument that SRNS’s Limited Liability Company Operating Agreement rendered meaningless the key personnel commitments and was inconsistent with the solicitation. SRA contends, in this regard, that the Operating Agreement allows for SRNS’s team members to “remove” key personnel from SRNS at any time “without approval of DOE.” SRA’s Third Supp. Protest and First Supp. Comments at 57-59. This is not the case. The operating agreement does not reflect an intention that key personnel will be removed from the contract, and does not suggest that removal can occur over the objection of DOE. To the contrary, we find nothing in the operating agreement that is inconsistent with the solicitation, which allows for the substitution of key personnel during performance with contracting officer approval.

seamless unit. AR, Tab B.2, SEB Report, at 21-22; *id.*, app. B. As part of this evaluation, the SEB considered the key personnel commitments, corporate guarantees, and the corporate governance structure proposed by SRNS. Contracting Officer's Statement at 29. Based on this, the SEB found no risks to seamless operation and, instead, reasonably concluded that SRNS's approach warranted many significant strengths and strengths in the evaluation. Among other things, the SEB found that SRNS's approach established clear "lines of authority," "detailed roles and responsibilities," and a "functional organizational structure" that the agency determined "increases the probability of successful contract performance."¹⁹ AR, Tab B.2, SEB Report, app. B, at 5. SRA disagrees with this assessment, but has not shown it to be unreasonable.²⁰

Technical Management Factor

SRA protests the evaluation of three of the equally-weighted subfactors under the technical management factor: EM closure activities, SRNL activities, and landlord services and site support.²¹

1. EM Closure Activities

EM closure activities, as described in the statement of work, include soil and water remediation efforts, deactivation and decommissioning of facilities and structures, solid waste handling and removal, and nuclear materials management. RFP § C-3. Offerors' overall technical management approaches were to be evaluated "to ensure EM Closure Activities are conducted in a safe, secure, environmentally sound and fiscally responsible manner and fully comply with all applicable law, regulations, DOE directives, and terms and conditions of the contract." *Id.* § M-2(c)(1). Under this subfactor, each offeror was required to propose two "innovative" approaches that were to "challenge the status quo" in performing EM closure activities; these

¹⁹ Although the key personnel oral presentation was not considered in evaluating the organizational structure and management approach factor, we note that SRA's management team was less "integrated" and performed less "efficiently and seamlessly" than SRNS's team during the oral presentation, which tends to contradict SRA's argument that direct employment by the contracting entity necessarily translates into more "seamless[]" performance. AR, Tab B.2, SEB Report, at 20.

²⁰ To the extent that SRA contends that the key personnel evaluation also is flawed because the agency did not adequately consider the fact that [REDACTED] of SRNS's key personnel were not directly employed by SRNS, we similarly find the protest to be without merit.

²¹ SRA did not protest the fourth subfactor--NNSA activities.

proposed innovations were to be evaluated for “strategy for implementation,” “feasibility,” and “resultant benefits.”²² Id.

Each offeror’s proposal was rated “good” under this subfactor. The SEB found that both offerors’ proposed approaches, overall, were “substantially equivalent,” even though proposals “differ[ed] in some areas and in the level of detail provided.” For example, the SEB noted that both offerors “demonstrated excellent fiscal responsibility,” but that SRA’s proposal provided more detail than SRNS’s as to “how all current nuclear material activities will be conducted in a secure manner.” AR, Tab B.2, SEB Report, at 23-24. With regard to the offerors’ four proposed innovations, the SEB noted that all “had sound strategies for implementation,” but that SRA’s two innovations were “more feasible” than SRNS’s. The SEB noted, however, that SRNS’s [REDACTED] was an “order of magnitude higher [than SRA’s proposed innovations] with respect to challenging the status quo and could facilitate dramatic change at [the Savannah River Site].” Id. at 24.

SRA contends that the agency’s concerns regarding the “feasibility” of SRNS’s proposed innovations and the lack of detail in addressing how nuclear material activities will be conducted in a “secure” manner (both of which were reflected as weaknesses in the evaluation of SRNS’s proposal) should have resulted in SRNS’s proposal receiving a lower rating under the EM closure activities factor, given that feasibility and security were two elements of the evaluation criteria. Protest at 33-40. However, the agency convincingly explains that these weaknesses were not fatal to the viability of SRNS’s proposed approach. For example, contrary to SRA’s characterizations, SRNS’s proposal did not completely fail to address nuclear material security; the proposal simply was not as detailed as the agency would have liked and was less detailed than SRA’s proposal. SRNS’s proposal did, however, generally address security issues in connection with EM closure activities. See Contracting Officer’s Statement at 32; SRNS’s Comments at 68-69. With regard to the agency’s expressed concerns regarding the feasibility of SRNS’s proposed innovations, the agency explains that these concerns did not reflect a lack of viability of SRNS’s proposed innovations, but instead pertained to scheduling (whether SRNS’s [REDACTED] could be implemented “in the proposed timeframe”) or issues for which there were possible solutions (SRNS’s [REDACTED]).²³ Supp. Contracting Officer’s Statement at 14, 17; AR, Tab B.2, SEB Report, app. C, at 8-9.

²² SRA’s proposed innovations were its “[REDACTED]” and “[REDACTED].” SRNS’s proposed innovations were its “[REDACTED]” and “[REDACTED].” AR, Tab. B.2, SEB Report, at 24.

²³ The agency points out that SRA also received weaknesses for its proposed innovations. AR, Tab B.2, SEB Report, app. C, at 4, 6. Although SRA contends that the weaknesses its proposal received for innovations were less severe than SRNS’s proposal weaknesses, SRA’s arguments rely on a strict comparison of only weaknesses and omit any consideration of the variety of strengths and significant
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In any event, the agency considered these weaknesses and reasonably determined that they were outweighed by numerous other strengths and significant strengths identified in the evaluation of SRNS's proposal under this factor. For example, the SEB found numerous strengths because SRNS' proposed approach to EM closure activities was "safe and fiscally responsible," "safe and disciplined," "environmentally sound and compliant," and "cost effective"²⁴ AR, Tab B.2, SEB Report, app. C, at 6-7. In addition, SRNS's proposed innovations received significant strengths because they "significantly challeng[ed] the status quo"²⁵ and had "great potential to positively impact" the EM closure workscope.²⁶ *Id.* at 8. Similarly, the agency considered the numerous strengths, significant strengths, and weaknesses of SRA's different

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strengths that each offeror's proposal received, many of which the protester did not challenge. Considered together, the record supports the agency's conclusion that there were no significant discriminators between proposals under this evaluation subfactor.

²⁴ The record does not support SRA's complaint that the agency did not consider its proposed cost savings under the technical factor and subfactors, including EM closure activities. In myriad places, the agency gives credit to both offerors' proposals for proposed cost efficiencies or savings, except where the agency found the savings to be "speculative" or "unsubstantiated." *See* Contracting Officer's Statement at 51-55. The record further shows that both offerors' proposals were evaluated similarly in this regard.

²⁵ Although SRA contends that the agency should not have given SRNS's proposed innovations credit for challenging the status quo, especially since the agency identified weaknesses based on feasibility, as discussed above, challenging the status quo was an important objective of the statement of work, and thus was reasonably considered, and feasibility was only one aspect of the evaluation under the EM closure activities subfactor. RFP §§ C-1.2, M-2(c)(1).

²⁶ SRA contends that some of the touted benefits of SRNS's proposed innovations were unrelated to, or broader than, EM closure activities workscope, and therefore should not have been credited with strengths or significant strengths. Protest at 35-40; Second Supp. Protest at 33-38. However, the agency has explained, and our review of the record confirms, that each of the benefits credited in the evaluation are related in some way to the broad scope of work for EM closure activities, and thus these benefits were properly considered in the evaluation. To the extent that the agency also credited SRNS's innovations because, in addition to benefiting EM closure activities, they more broadly benefited other DOE activities, we find nothing in the solicitation that prohibits consideration of the additional benefits, especially where, as here, offerors were encouraged to be "innovative" and "challenge the status quo and existing paradigms" in implementing programs and operations. RFP § C-1.2.

approach and innovations, and concluded that any advantages or disadvantages between SRA's and SRNS's proposals were not significant. SRA has not shown that the agency's comprehensive evaluation was flawed.

2. SRNL Activities

As stated above, the SRNL is a DOE operated and federally funded research and development laboratory. RFP § C-1.1. The RFP provided that proposals would be evaluated under the SRNL subfactor for "completeness, balance, and feasibility" to develop the SRNL "into a multi-program world class National Laboratory while operating safely and maintaining the technical expertise to address emerging DOE scientific challenges." This evaluation was to include, among other things, consideration of the offeror's approach to "building external collaborations, and employing innovative or best-in-class approaches." RFP § M-2(c)(2).

Each offeror's proposal was rated "excellent" under this subfactor. Both were found to "provide a good plan for improving [the] SRNL and positioning it for the future," both "identified excellent potential external collaborations," and both proposed to position the SRNL as a "distinct business unit." Although the SEB noted differences in the management approaches, overall it determined that the proposals were "substantially equivalent" under the SRNL subfactor. AR, Tab B.2, SEB Report, at 25-26.

SRA contends that its proposal should have been rated superior to SRNS's under the SRNL subfactor because SRA's approach to "building external collaborations" included an "already existing university consortium" supported by [REDACTED]. First Supp. Protest at 33. In contrast, SRA argues, SRNS only offered "plans to form . . . consortiums in the future." *Id.* at 34. The SEB recognized this distinction and gave SRA's proposal a significant strength for its approach based on the existing relationships and [REDACTED], and gave SRNS's proposal a strength because it also proposed partnerships that were found to be advantageous to the government. AR, Tab B.2, SEB Report, at 26, app. C, at 10-11, 14. The record does not evidence that SRNS proposed only future plans to build collaborations as SRA contends; rather, SRNS's proposal identifies several "existing collaborative relationships," for which the agency properly gave SRNS credit. AR, Tab D.1. SRNS's Proposal, at 110-11. Thus, the record shows that, on the issue of forming collaborations, SRA's proposal was rated higher than SRNS's due, in part, to having [REDACTED]; but considering the other strengths and significant strengths identified in each offeror's proposal under this subfactor, the agency found no significant discriminator between proposals. Although SRA disagrees with this assessment, it has not shown it to be unreasonable.²⁷

²⁷ SRA complains that the agency failed to properly consider four items proposed by SRA under the SRNL subfactor: [REDACTED]. First Supp. Protest at 34 n.17.

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3. Landlord Services & Site Support

Landlord services and site support activities include providing engineering and construction management, operations support, and business services.²⁸ RFP § C-3.4. For this subfactor, the RFP stated that the agency would evaluate “the comprehensiveness and feasibility of the Offeror’s proposed plan to interface with other site contractors and tenant site entities both as it performs its own work and as it provides landlord services to others in accordance with Section C-4 of the [statement of work].” *Id.* § M-2(c)(4). Section C-4 required, “[w]ithin 60 days after the start of transition,” that the contractor develop a [site] “Interface Management Plan (IMP) to identify and manage all site interfaces and to provide site landlord services to DOE, NNSA, DOE/NNSA contractors, and tenant entities engaged in onsite activities” *Id.* § C-4.

Both proposals were rated “good” under this evaluation subfactor and were found to be “substantially equivalent.” Both were found to provide a “very well structured approach to interface with other site contractors and tenants,” and both reflected a “good understanding of the complexities of the [site] interfaces in the future as new DOE contracting strategies are implemented.” AR, Tab B.2, SEB Report, at 27-28. Both proposals received a significant strength and a strength, and only SRA’s proposal received a weakness. This weakness was assessed because SRA’s proposal “fail[ed] to discuss how it would fit DOE into” its interface plan, which was important because “SRA’s direct interface with DOE prime contractors will have to be coordinated with DOE.” *Id.*, app. C, at 23.

SRA complains that the assessed weakness reflects consideration of unstated evaluation criteria. According to SRA, the RFP required only coordination with site contractors and did not specify that consideration would be given to “how DOE fit[s] into the interfacing process.” Protest at 48. However, the RFP, in section C-4, clearly contemplates DOE involvement, and thus we find no merit to this protest ground.

ES&H Factor

The RFP required offerors to “conduct a comprehensive ES&H program that provides for the protection of workers, the public, and the environment,” and to

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However, SRA does not explain, and we are unable to determine, why these should have resulted in a higher rating under the SRNL subfactor.

²⁸ Landlord services and site support also include ES&H activities, but these activities were evaluated under a separate evaluation factor in the solicitation.

implement a “program that will ensure that nuclear safety requirements are implemented consistently across [the site].” RFP § C-3.4(a)(1) and (2). Section M of the solicitation advised that the agency would evaluate each offeror’s proposed approach “to enhance the existing ISMS [Integrated Safety Management Systems] for all work on the [site] and ensure continual improvement in ES&H performance.” In addition, the agency would evaluate the offeror’s plan for managing the site’s “nuclear safety program.” *Id.* § M-2(d).

Both offerors’ proposals were rated “good” and were found to have “comparable good approaches” to enhancing the existing ISMS, implementing ES&H requirements across the site, and managing the site’s nuclear safety program. After considering the various strengths, significant strengths, and weaknesses associated with each proposal, the agency found both proposals to be “substantially equivalent.” AR, Tab B.2, SEB Report, at 28-29.

SRA complains that SRNS’s proposal should have been rated lower because the evaluators found that the proposal “lacked understanding” of the implementation of the ISMS and DOE’s hierarchy of controls for safety systems, which SRA asserts “inherently are basic elements of the evaluation criterion for the ES&H factor.” Protest at 54-55. However, SRA misinterprets and mischaracterizes both the evaluation record and SRNS’s proposal. As the agency explains, the SEB identified two weaknesses in SRNS’s proposal under the ES&H factor, both relating to proposal statements that were inconsistent with the RFP. This led the SEB to assess weaknesses because these proposal inconsistencies called into question the offeror’s “complete understanding” of the RFP requirements in particular areas. AR, Tab B.2, SEB Report, app. D, at 5-6. The agency further explains, however, that its review of SRNS’s entire proposal did not evidence a complete lack of understanding, as suggested by SRA. Rather, the proposal included “comprehensive details” and “demonstrated a good understanding” of the requirements, which in fact is reflected in the numerous assigned strengths and significant strengths. Contracting Officer’s Statement at 43-45; AR, Tab B.2, SEB Report, app. D, at 3-5. Nevertheless, the inconsistencies were found to pose a risk to performance, which was duly noted by the SEB in the evaluation.²⁹ AR, Tab B.2, SEB Report, app. D, at 5. Based on our review of the record, we find no error in the agency’s judgment.

SRA also contends that SRNS failed to provide a plan for managing the site nuclear safety program. Protest at 55. Again, SRA is factually inaccurate. The SEB report noted (as “[n]either a [s]trength nor a [w]eakness”) that SRNS’s proposal “will take

²⁹ SRA’s proposal was similarly assessed a weakness based on proposal inconsistencies with regard to contractor oversight. SRA contends that these inconsistencies were mere “clerical errors,” but the agency reasonably considered the proposal statements to be discrepancies in the proposal and not clerical errors. Contracting Officer’s Statement at 46-48.

the first 30 days of transition to evaluate the [incumbent contractor's] work scope to prepare a transition plan." AR, Tab B.2, SEB Report, app. D, at 6. However, contrary to SRA's characterization, the proposal did include a plan to ensure that nuclear safety work will continue without interruption or reduction of quality, as required by the solicitation. See AR, Tab D.1, SRNS's Proposal, at 166-69. Given that the contract transition period is 90 days and SRNS's proposal meets the RFP requirements, we see no reason why the agency was required to assess a weakness to SRNS's proposal.

Past Performance & Relevant Experience Factors

SRA challenges the evaluation of past performance and relevant experience, essentially arguing that its performance history and experience were deserving of higher ratings than SRNS's.

The RFP provided that the agency would evaluate each offeror's past performance "to determine the degree to which the quality of the past performance demonstrates [the offeror's] ability to successfully perform the [statement of work]." RFP § M-2(e). Relevant experience was to be evaluated "to determine the degree to which the similarity and extent of that experience demonstrates the ability to successfully perform the mission areas of the [statement of work]." Id. § M-2(f). The RFP further stated, however, that "experience need not be directly associated with DOE programs and facilities" to be favorably considered. Rather, "[o]perational, engineering, research and development, facilities and business experience that from a technical perspective is reasonably similar to the types of work identified in the [statement of work] is acceptable." Id. § L-4(f).

Because both SRA and SRNS are newly formed entities, the agency considered the past performance and relevant experience of each of the team members and, where relevant, their corporate parents. For past performance, the SEB considered ES&H data (e.g., information on workplace fatalities, and accident and injury data), past performance questionnaire responses, performance history in achieving socioeconomic goals, whether prior contracts had been terminated, and performance evaluations. The SEB considered both the positive and negative past performance of all of the team members, and documented its analysis in the SEB report. For relevant experience, the SEB noted differences in the types of experience for individual team members and major subcontractors, but concluded that "cumulatively both Offerors overall have demonstrated extensive experience managing contracts similar to or greater in size to" the contract requirements here. AR, Tab B.2, SEB Report, at 33.

With regard to the evaluation of past performance, SRA complains that the agency failed to recognize SRA's superior team record of ES&H performance as a discriminator in favor of SRA. Second Supp. Protest at 41-47. However, the SEB did, in fact, recognize that SRA's safety data was superior to SRNS's. AR, Tab B.2, SEB

Report, at 30. Although both offerors' proposals received strengths for ES&H data because both offerors' records were "trending positively toward the DOE averages," Id. at 30; id., app. E, at 2,6, SRNS also received a weakness in recognition of the unfavorable ES&H data concerning one of its team members. AR, Tab B.2, SEB Report, app. E, at 7. Thus, the record shows that the agency recognized differences in ES&H data in the evaluation. In any event, there were numerous other aspects of the agency's comprehensive past performance evaluation that revealed strengths and weaknesses and an overall record of performance that was "more favorable than unfavorable" for both offerors. AR, Tab B.2, SEB Report, at 33. When all of this information was considered, the agency reasonably found no significant discriminator between proposals under the past performance factor.³⁰

With regard to the evaluation of relevant experience, SRA contends that it has more extensive experience than SRNS in each of the mission areas of the statement of work, based on the SRA team members' experience on the incumbent contract. Protest at 65. The SEB recognized several significant strengths in the evaluation of SRA's proposal based on the site-specific experience of SRA's team members from the incumbent contract. AR, Tab B.2, SEB Report, app. F, at 1-4. However, since site-specific experience was not required by the RFP, see RFP § L-4(f), the agency reasonably found that the experience of SRNS's team members was also "highly relevant," of "similar scale," reflected experience in "core competencies," and thus was deserving of significant strengths in the evaluation. AR, Tab B.2, SEB Report, app. F, at 5-6. These conclusions were reasonably supported by detailed explanations in the SEB report identifying the relevant experience of both offerors' team members and explaining why the agency believed that the experience increased the probability of successful performance. Id. at 5-8, see also Contracting Officer's Statement at 33-42. Again, SRA disagrees with the agency's assessment, but has not shown it to be unreasonable.³¹

³⁰ SRA also complains that the agency improperly considered negative past performance of one of SRA's team members regarding allegations of [REDACTED], failed to consider negative past performance of one of SRNS's team members with regard to a licensing issue, and did not sufficiently downgrade SRNS's proposal for the negative past performance of one of its team members relating to socioeconomic programs. The record shows that the agency reasonably considered the information before it; we find no error in these aspects of the evaluation.

³¹ SRA points to two tables attached to the SEB report that, for each offeror, listed the team members' prior contracts and then identified how many of the statement of work activities that each of those contracts had covered. Protest at 65. Because the SRA team members comprised the incumbent contractor, SRA had more "checked boxes" than SRNS in the tables. However, as the agency reasonably explains, the number of checked boxes is not indicative of who has more relevant experience. In this regard, the agency looked at each prior contract to determine whether it was relevant to the activities that the team member was proposed to perform. Where, for
(continued...)

SRA also asserts that the agency improperly considered the “corporate resources, experience, and past performance” of [REDACTED], because neither company is a member of the SRNS team.³² Second Supp. Protest at 64-65; SRA’s First Supp. Comments at 46-49; SRA’s Second Supp. Comments at 10-16. This argument is a red herring. While it is true that [REDACTED] is the signatory to the operating agreement that formed SRNS, SRNS’s proposal makes clear that [REDACTED] play significant roles in providing resources and performing work for this contract. Accordingly, the agency properly considered the experience of both. Cobra Techs., Inc., B-280475 et al., Oct. 6, 1998, 98-2 CPD ¶ 98 at 4-5.

Alleged Conflicts of Interest

SRA contends that the key personnel evaluation is tainted by personal and organizational conflicts of interest (OCI) involving an evaluation reference, SRNS’s proposed SRNL director, and several of SRNS’s other key personnel.

SRA first argues that the evaluation was tainted in that one of the individuals who provided references to the SEB in connection with two proposed key personnel provided biased information because she had a personal conflict of interest: at the time of the evaluation, she was married to an employee of one of SRNS’s team members.

The RFP required each proposed key personnel to provide a reference, and stated that these “reference checks” would be part of the key personnel evaluation. RFP § M-2(a)(1). One of SRA’s key personnel and one of SRNS’s key personnel identified a DOE employee as a reference. As was known by SRA at the time of its proposal submission and during the evaluation, but was not known to the SEB or SSA, this DOE employee was married to an employee of one of SRNS’s team members. Supp. Contracting Officer’s Statement at 2-3. The evaluators had no reason to suspect bias

(...continued)

example, a team member of SRNS was proposed only to perform a specific activity, it was not penalized because its prior experience did not include other statement of work activities for which it was not proposed. Thus, even though many of SRA’s team member contracts encompassed multiple areas to a greater extent than SRNS’s team member contracts, this properly was not considered to indicate that SRNS’s team members had less relevant experience. See Supp. Contracting Officer’s Statement at 37-38.

³² [REDACTED]. E-Mail from Agency Counsel to GAO (Mar. 28, 2008). The RFP specifically contemplated consideration of the past performance and corporate guarantees of parent corporations where, as here, the offeror was a new entity formed solely to perform this contract. RFP § L-4(e).

on the part of this reference, given that it was SRA that identified this DOE individual as a key personnel reference, and presumably SRA would not have identified a reference that could be biased against it. *Id.* at 5. The DOE employee reference gave the SRA individual a somewhat negative reference, and gave the SRNS individual a positive reference.

During the evaluation, the SEB noted that, with regard to the one SRA key personnel, the negative reference was inconsistent with the other positive references, and thus the agency requested additional references, all of which were positive. As a result, the SEB “discounted” the negative reference, concluded that the reference checks for this SRA individual were “[f]avorable,” and rated this SRA individual a strength in the key personnel evaluation. Supp. Contracting Officer’s Statement at 6; AR, Tab B.2, SEB Report, app. A, at 5, 11. With regard to the one SRNS key personnel, the DOE reference was found to be consistent with other “[f]avorable” references, and the SRNS individual was also given a strength in the evaluation. Supp. Contracting Officer’s Statement at 6; Tab B.2, SEB Report, app. A, at 5, 11.

We have recognized that an actual or apparent conflict of interest may arise when an agency employee has both an “official role in the procurement” and a “personal stake in the outcome.” *TPL, Inc.*, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 8 (citing examples). Here, however, the DOE reference in question did not have an official role in the procurement—she was not involved in drafting, reviewing or approving the RFP; evaluating proposals; or reviewing or approving the award. She merely provided a personnel reference for two individuals because she was identified by the offerors as a person to contact as a reference check. We have found that a conflict of interest does not necessarily exist, even where the same agency employee provides a reference and performs the evaluation, absent a showing (which has not been made here) of improper influence on the evaluation. *Id.* at 9. Based on this record, we find that the evaluators acted reasonably in dealing with this reference’s comments.³³ In any event, even if the DOE reference were biased or had a conflict of interest, the record shows that this had no impact on the evaluation and thus SRA was not prejudiced as a result. See *Laerdal Med. Corp.*, B-297321, B-297321.2, Dec. 23, 2005, 2005 CPD ¶ 12 at 7 (prejudice is not established where, even if a conflict of interest or bias exists, it has no impact on the evaluation).

³³ Another favorable reference for one of SRNS’s proposed key personnel mentioned to the agency that he was “somewhat concerned about a potential conflict of interest between himself and the proposing contractors.” AR, Tab B.6, Key Personnel Reference Worksheet, at 59. However, we agree with the agency that no conflict existed since the reference was not a federal employee or evaluator, and he did not have a role in the procurement. The information provided was consistent with all other references for this key personnel, does not evidence bias, and was properly considered by the agency.

SRA also complains that several of SRNS's proposed key personnel create the potential for OCIs. Specifically, it contends that the SRNL director's role as the president and owner of a consulting firm "conflicts" with his role as SRNL director for SRNS, and that the director could use information obtained during performance for the competitive advantage of his company and clients in the future. SRA's Comments at 87. SRA also contends that [REDACTED] of SRNS's proposed key personnel have "divided loyalty" because they are employed by SRNS's member companies and not SRNS itself. SRA's Comments at 83. As discussed below, we do not agree with SRA that the situations it describes with regard to SRNS's key personnel present the potential for OCIs.

It is true that contracting officers have a duty to avoid, neutralize, or mitigate potential significant OCIs so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. Federal Acquisition Regulation (FAR) §§ 9.504(a), 9.505; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12-13. As FAR Subpart 9.5 explains, OCIs that must be avoided include situations where a company has divided loyalties that impair its ability to render impartial advise to the government ("impaired objectivity"), or where the company has access to information that its competitors do not that could lead to a competitive advantage for the firm ("unequal access to information").³⁴ FAR § 9.5; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., *supra*, at 12-13. It must be noted, however, that there is a distinction between an OCI and a personal conflict of interest: with an OCI, the conflicted party is the organization; with a personal conflict of interest, the conflict is with the individual. See Daniel I. Gordon, Organizational Conflicts of Interest: A Growing Integrity Challenge, 35 Pub. Cont. L.J. 25, 29 (Fall 2005) (distinguishing personal from organizational conflicts of interests); see also FAR §§ 3.101-1, 9.505, 9.508. The facts here, at most, give rise to personal conflicts of the individual SRNS employees and are not OCIs.

SRA has not alleged, nor does the record evidence, any facts showing that SRNS or its team member organizations have impaired objectivity or that these entities serve multiple, or conflicting, roles that could lead to an impaired objectivity OCI; nor has SRA alleged that SRNS or its team member organizations had unequal access to information that would render this competition unfair. Rather, SRA argues merely that the individual employees are not adequately committed to SRNS and may use their positions to benefit their employing team member companies, or, in the case of the SRNL director, that he will use information in the future that will benefit his own company.

³⁴ A third type of OCI involves "biased ground rules," which is not at issue in this case.

With regard to the SRNL director, the individual's ownership of a consulting business does not appear to "conflict" with his role as SRNS's proposed SRNL director, as SRA asserts. The individual has divested himself of all of his consulting work, except for one unrelated contract which he is performing as a means of income until this protest is resolved. Declaration of SRNS's SRNL director ¶ 5. He and the other [REDACTED] key personnel have signed commitment letters to work solely on the Savannah River Site project without any "contingencies or constraints" on their positions. SRNS's Second Supp. Comments, exh. 4, SRNS Key Personnel Commitment Letters. To the extent that SRA asserts that the SRNL director or others may use information learned during performance to benefit themselves or their employers in future endeavors, this is speculative and insufficient to impute any conflict of interest on these individuals or their employers. See American Mgmt. Sys., Inc., B-285645, Sept. 8, 2000, 2000 CPD ¶ 163 at 6 (possible benefit from current procurement to a contractor is too speculative and remote to establish a significant OCI).

In addition, we see no significant potential for OCIs arising out of the fact that [REDACTED] of SRNS's key personnel will remain employees of the team member companies rather than become direct employees of SRNS. Given that the employers are team members of SRNS working together to perform the site work, we agree with the agency that there is unlikely to be any divergence of interest. Under the incumbent contract, currently performed by SRA's team members, the key personnel are employed by the team members and not the prime contractor, WSRC. OCIs have not arisen under that situation, and as the agency reasonably explains, OCIs are unlikely to happen here. Contracting Officer's Statement at 56. The contracting officer here reviewed SRNS's disclosures regarding potential OCIs, and reasonably determined that there was no basis to question these disclosures. Id. SRA's arguments do not call into question the reasonableness of the contracting officer's judgment.

In sum, the evaluation record evidences a comprehensive and well-documented analysis of proposals under each of the evaluation factors, which supports the SSA's determination that SRNS's proposal presented the best value to the government, notwithstanding its higher evaluated price. As the SSA explained, key personnel were "critical" to successful performance and implementation of program strategy, which is why SRNS's superior-rated key personnel were worth the additional cost.

AR, Tab E.1, Source Selection Decision, at 8. Based on our review of the record, we find the SSA's determination to be reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel

Attachment 10

FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

PART I

2020 APR -9 PM 1:00

HOWARD G. HOGAN

MEGHAN CONLEY,

Plaintiff,

v.

No. 197897-1

**KNOX COUNTY SHERIFF
TOM SPANGLER,**

Defendant.

MEMORANDUM OPINION

This is an open records case. The case is atypical in that the litigation encompasses a series of interactions between the party requesting the records, Meghan Conley, and the governmental party having custody of the records, the Knox County Sheriff's Department, over an extended period of time, August 16, 2017 through March 8, 2019. The matter is more in the nature of a declaratory judgment action than an open records case.

The petitioner, Professor Meghan Conley, Ph.D., is a citizen of the state of Tennessee and a professor of sociology at the University Tennessee, Knoxville. Professor Conley is an author who has been researching immigration enforcement in Knox County, Tennessee. She has been focusing upon the agreement between Knox County and the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"). Professor Conley has sought records from the Knox County Sheriff's

Department in furtherance of her research. However, the purpose or value of Professor Conley's research is irrelevant to this open records suit. The Tennessee Public Records Act (hereinafter referred to as the "Act") is indifferent to the purpose or intent behind a request for access to public records; there is nothing in the Act that applies to the purpose or intent for a request. See Tenn. Code Ann. § 10-7-501 *et seq.*

Professor Conley names Knox County Sheriff Tom Spangler as the respondent in her suit. However, the matters addressed in her petition began prior to Tom Spangler assuming the office of sheriff. Relatedly, at the beginning of the trial, Professor Conley's counsel clarified that Professor Conley is not seeking any relief against Tom Spangler individually.

A difficulty in analyzing this case lies in attempting to navigate all of the interactions between the parties without becoming lost in the details. The history of the case itself is likewise replete with tortuous twists and turns. The Court will first discuss the case's history. The Court will discuss next the legal background applicable to the case as a whole. The Court will follow that discussion with an adjudication of Professor Conley's specific claims.

History of the Case

On April 18, 2019, Professor Conley commenced this action by filing a document titled "PETITION FOR HEARING ON PUBLIC RECORD REQUEST DENIALS AND ACCESS TO PUBLIC RECORDS." As mentioned above, the petition covers a long history of record requests by Professor Conley upon the Knox County Sheriff's Office beginning on August 16, 2017 and continuing through March 8, 2019. The petition is 25

pages in length, exclusive of exhibits. It is divided into eight sections and contains 97 paragraphs in addition to six prayers for relief. As part of the petition, six attachments are filed consisting of approximately 200 pages. With her petition, Professor Conley filed another document titled "MEMORANDUM IN SUPPORT OF PETITION FOR HEARING ON PUBLIC RECORD REQUEST DENIALS AND ACCESS TO PUBLIC RECORDS," consisting of 22 pages.

On April 26, 2019, the respondent Knox County Sheriff Tom Spangler ("KCSO") filed two documents, one titled "MOTION FOR MORE DEFINITE STATEMENT" and the other titled "MOTION TO STRIKE." On May 9, 2019, Professor Conley submitted a proposed ORDER FOR IMMEDIATE SHOW CAUSE HEARING which the Court signed on the same day. The order directed the Clerk and Master to issue an order requiring Sheriff Spangler to appear before the Court on May 22, 2019 and show cause why Professor Conley's petition should not be granted. As directed, the clerk and master issued the order on the same day, May 9, 2019, requiring Sheriff Spangler to appear on May 28, 2019.

On May 17, 2019, KCSO filed a motion for continuance of the May 28, 2019 hearing upon grounds including Sheriff Spangler's counsel having a medical appointment with his wife on the hearing date and Sheriff Spangler having a prior appointment out of town on the hearing date. The Court heard Sheriff Spangler's motion on May 23, 2019 and entered an order on May 24, 2019 resetting the show cause hearing from May 28, 2019 to June 10, 2019. Professor Conley filed a motion on May 29, 2019 to set aside the order of May 24, 2019 but orally withdrew her motion through her counsel on June 6, 2019 as recited in the Court's order entered June 17, 2019.

On June 6, 2019, the Court heard KCSO's motion for more definite statement and motion to strike. As contained in the Court's two orders entered June 10, 2019, the Court granted KCSO's motion to strike and struck "Attachment 1" to Professor Conley's petition and granted KCSO's motion for a more definite statement to the extent of requiring Professor Conley to file "a specific list of her requests for public records that were denied by Sheriff Spangler or his office." Professor Conley filed the list on June 7, 2019.

The Court conducted hearings on the merits on June 10, June 11, December 9, December 10, 2019, January 24, and January 29, 2020. The hearings followed the structure provided by Professor Conley's List of Unfulfilled Requests filed June 7, 2019, mentioned above. Between June and December 2019, the case was continued several times, by agreement of the parties, due to a private matter of one of the participants in the case. Although not required by statute, but with the litigation having the nature of a declaratory judgment action, KCSO filed an answer or response on October 2, 2019 to Professor Conley's petition. *See* Tenn. Code Ann. § 10-7-505(b). The parties filed proposed findings of fact and conclusions of law on January 13, 2020.

The foregoing does not constitute a complete history encompassing all of the parties' skirmishes in the case. However, it accurately and sufficiently sets forth the procedural framework for the Court's adjudication of the parties' disputes and differences.

Legal Background

As previously discussed, neither the value nor the purpose of Professor Conley's research can have any bearing upon the Court's consideration of the case. Likewise, the purpose of Professor Conley's requests is of no relevance to this open records litigation. The case is similar to one under the Freedom of Information Act. *See Amerace Corp., Esna Div. v. N.L.R.B.*, 431 F. Supp. 453 (W.D. Tenn. 1976) (stating the purpose for which disclosure of records under Freedom of Information Act is sought has no bearing on the right to the disclosure.).

The Act is quite complex and convoluted. It has been amended several times over the years. However, "its intent has remained the same.... to facilitate the public's access to records." *The Tennessean v. Metro. Gov. of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016). The legal context for litigation concerning public records is as follows:

There is a presumption of openness for government records. Custodians of the records are directed to promptly provide for inspection any public record not exempt from disclosure. The Public Records Act directs the courts to broadly construe the Act "so as to give the fullest possible access to public records." The Act allows a person whose request for public records is denied to file suit and seek judicial review of the governmental entity's denial. The governmental entity must prove justification for nondisclosure by a preponderance of the evidence. The trial court has the discretion to award costs and attorney fees when the court determines that the governmental entity that denied access to a public record knew that the record was a public record and willfully refused to disclose it.

The Tennessean, 485 S.W.3d at 864-65 (citations omitted).

Within the above context, conflicts have arisen between Professor Conley and the KCSO as to the sufficiency of Professor Conley's requests for records and the adequacy

of KCSO's denials. Although not raised in Professor Conley's petition, a legal issue has arisen as to whether the KCSO can charge for redacting confidential information from public records in preparing them for inspection. Finally, after the closing of the evidence, the Court reopened the evidence to permit Professor Conley to introduce evidence suggesting that the KCSO willfully failed to disclose a document. Previously, the record did not sustain that Professor Conley had actually been denied access to any existing public record except arrest records on an ongoing basis and certain emails more than 30 (thirty) days old, discussed *infra*. Also, the parties depart as to whether Professor Conley is entitled to her attorney fees and costs. Prior to discussing Professor Conley's specific allegations against the KCSO for denying her access to public records, the Court will discuss the general legal issues. The predominant legal issue is the sufficiency of Professor Conley's requests for public records.

Sufficiency of Professor Conley's Requests

This case rests upon the Tennessee Public Records Act which exists "to facilitate the public's access to records." *The Tennessean*, 485 S.W.3d at 864. A request for public records only has "to be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." Tenn. Code Ann. § 10-7-503(a)(4) (formerly Tenn. Code Ann. 10-7-503(a)(7)(B)).¹ On the other hand, the governmental entity is not required "to sort through files to compile information." Tenn. Code Ann. §

¹ The Court notes that the language quoted here is currently in Tenn. Code Ann. § 10-7-503(a)(4). However, this language was previously included in subsection (a)(7)(B) of the same section of the Act. The Act was amended so that the language quoted here was deleted from subsection (a)(7)(B) and incorporated into subsection (a)(4) with virtually the same language. Consequently, the opinions referenced throughout this Memorandum Opinion that were issued before this amendment reference the old section. This Court endeavors to note the difference in citations in the manner indicated above where appropriate.

10-7-503(a)(4). These two provisions in the Act have led to most of the controversy in this litigation.

The KCSO has mainly relied upon the Tennessee Court of Appeals opinion in *Jakes v. Sumner Cty. Bd. of Educ.*, No. M2015-02471-COA-R3-CV, 2017 Tenn. App. LEXIS 515 (Ct. App. July 28, 2017), for arguing that most of Professor Conley's requests were not sufficiently detailed to enable the custodian to identify the records sought. In the *Jakes* case, the Court of Appeals reviewed the following email request:

[a]ny and all communications between you and any other party or parties concerning my first public record request for the [BOE] to provide for my inspection the [BOE's] records policy. This is to include but not be limited to the following[:] All emails sent or received, all audible recordings and voicemail by all members, all letters, all memos, all text messages [and] all text messaging.

Jakes, 2017 Tenn. App. LEXIS 515 at *21-22. The Court found that "the formatting of the email made the request unclear and overly broad" and that it was "insufficiently detailed to enable [the custodian] to identify the records." *Jakes*, 2017 Tenn. App. LEXIS 515 at *22. The court held that the "request was not a valid public records request." *Id.* The Court noted that "[a] governmental entity is not required to 'sort through files to compile information.'" *Id.* (citing Tenn. Code Ann. § 10-7-503(a)(4)). The Court of Appeals, however, does not state how the formatting of the email request made the request unclear and overly broad or how the email request was insufficiently detailed to enable Mr. Johnson to identify the records. *Id.* The KCSO has relied upon the *Jakes* case for the assertion that the use of "any and all" as a preface to a request renders the request overly broad and improperly requires the governmental entity to sort through its records. However, under the statute, the question is simply whether the request is sufficiently

specific to enable the governmental entity to identify the records sought. *See* Tenn. Code Ann. § 10-7-503(a)(4).

In conjunction with *Jakes*, the KCSO cites the case of *Reguli v Vick*, No. M2012-02709-COA-R3-CS, 2013 Tenn. App. LEXIS 733 (Ct. App. Nov. 7, 2013) in its proposed findings and conclusions. However, in *Reguli*, the issue was the applicability of state law confidentiality provisions to prevent disclosure. The KCSO cites note 4 in *Reguli* reciting the trial court's determination that a portion of the request therein was not sufficiently detailed. However, the Court of Appeals did not review the sufficiency of the request as the requestor did not appeal that matter. *Reguli*, 2013 Tenn. App. LEXIS 733 at *5 n.4.

The KCSO also argues that the requests in this case would require it to read through every email and letter of its 1100 employees and sort through them and compile the records that may be responsive to a request. The KCSO further argues that the requests would require it to look through every single record in its possession and determine if it is related to or in regards to an agreement with ICE. The KCSO relies upon the Court of Appeals' 2016 opinion in *Hodges v. DA Gen-20th Judicial Dist.*, No. M2014-00247-COA-R3-CV, 2016 Tenn. App. LEXIS 294, *14-15 (Ct. App. Apr. 27, 2016), for the proposition that it has no such obligation.

This Court notes that the KCSO's 1100 employees are responsible, under the KCSO's Retention Policy, for reviewing their own emails and determining whether they are public records. The Court also notes that the KCSO can easily inquire of its 1100 deputies as to whether they have any particular records by sending out a blanket email making such an inquiry. However, the more important issue is whether the burden of

indexing and producing records may excuse a governmental entity from the mandate of the Act that "[a]ll state, county and municipal records shall, at all times during business hours.... be open for personal inspection by any citizen of the state, and those in charge of the records shall not refuse any such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A).

The scenario in the *Hodges* case, relied upon by the KCSO, was that the petitioner therein wanted the district attorney general to inspect the petitioner's own criminal case file and determine which records fell within those listed in his request. *Hodges*, 2016 Tenn. App. LEXIS 294 at *14-15. The petitioner wanted the Attorney General to furnish the petitioner with the records identified by the attorney general as within the petitioner's request. *Id.* at *10-15. The Court held that the Act did not impose any such obligation on the attorney general. *Id.* at *14-15. The main points in the *Hodges* case were that "[u]nder the statutory scheme, inspection of the records precedes copying; the statute does not impose an additional obligation on General Johnson to search the file and determine which records fell within those listed by Mr. Hodges." *Id.* at 15. The court noted that the attorney general provided the petitioner with access to the file from which the petitioner could identify the records that he wanted for copying. *Id.*

The difference between the *Hodges* case and this case is that Professor Conley was, in some instances, not provided with anything. The KCSO's explanation is that there was no way to identify the specific records without going through each and every record of approximately 1100 employees. However, by maintaining no indexing or means of access, there can be no access to the public records. That does not appear to be in accord with the legislative mandate that all public records, at all times during business hours, be

open for public inspection. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A). It also appears to be contrary to the Act's "crucial role in promoting accountability in government through public oversight of governmental activities." *Taylor v. Town of Linville*, No. M2016-01393-COA-R3-CV, 2017 WL 2984194, *2 (Tenn. Ct. App. July 13, 2017) (quoting *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002)). If there is no reasonable way for the public to access the public records, the public cannot use them to oversee governmental activities.

The KCSO also relies upon the case of *Moncier v. Harris*, No. E2016-00209-COA-R3-CV, 2018 Tenn. App. LEXIS 176 (Ct. App. Apr. 5, 2018), for the supposition that the broad request "to inspect each case file for whether a forfeiture warrant had been received by the Knoxville office of the [Legal Division of the Department of Safety and Homeland Security] since January 1, 2015," was proper but would have been improper if limited to a specific type of vehicle. *Moncier*, 2018 Tenn. App. LEXIS 176 at *2. However, the *Moncier* case does not address this argument, one way or the other. Presumably, the KCSO's rationale is that the more specific request would require sorting through files. *See* Tenn. Code Ann. § 10-7-503(a)(4).

The dichotomy here, according to the KCSO's arguments, is that a request that is specific may require sorting and is impermissible under Tenn. Code Ann. § 10-7-503(a)(4). On the other hand, a request that is broad does not sufficiently identify the record requested and is also impermissible under the specificity requirement of Tenn. Code Ann. § 10-7-503(a)(4). Regardless, in *Moncier*, the request was for civil forfeiture documents from the Tennessee Department of Safety and Homeland Security. *Moncier*, 2018 Tenn. App. LEXIS 176 at *2. The Department notified Mr. Moncier "that there

were 1,790 files responsive to his request and that the records would be provided to him in installments.” *Id.* at *5. However, in this case, in several instances, Professor Conley was presented with no records but simply a response that the request was either too broad or too specific. A reasonable alternative, as in the *Moncier* case, would have been to have given access to her, after required redaction, of all requested public records requiring sorting and permitting her to make the search.

Finally, as to the sufficiency of the request in this case, the KCSO relies upon the 2003 Court of Appeals’ opinion in *Hickman v. Tenn. Bd. of Prob. & Parole*, No. M2001-02346-COA-R3-CV, 2003 Tenn. App. LEXIS 187 (Ct. App. Mar. 4, 2003) for its holding that “the Act does not require a governmental entity to manually sort through the records and compile information gained from those records.” *Hickman*, 2003 Tenn. App. LEXIS 187 at*31. That holding, however, covers only a part of the discussion in *Hickman* pertinent to this case. The requestor, in *Hickman*, sought some information, not placed in the computer, that would have required the governmental entity to manually sort through files to find and compile the information for the requestor. *Id.* at *30-31. The Court of Appeals, as previously mentioned, found that the Act did not require any such manual sorting and compiling. *Id.* However, as to information otherwise contained in the governmental entity’s computer system, the *Hickman* opinion is not favorable to the KCSO’s position.

First, the Court of Appeals points out that the Act “provides no basis for denying access to records because granting such access would be clearly onerous, overly burdensome, time-consuming and expensive.” *Id.* at *33 n. 7. The Court quoted the Tennessee Supreme Court’s quotation from a Kansas case:

We hold that the [public records]’s act implies a duty upon the agency to delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out the act’s purpose of making available for public inspection all disclosable parts of the public record. Were this not so, any record which an agency is required by law to keep could be rendered inaccessible to public scrutiny by including confidential material therein.

Id. at *23, (quoting *State ex rel. Stephen v. Harder*, 230 Kan. 573,583, 641 P.2d 366, 374 (Kan. 1982)).

The *Hickman* court further recognizes that “once information is entered into a computer, a distinction between information and record becomes to a large degree impractical.” *Id.* at *26-27 (quoting *The Tennessean*, 979 S.W.2d at 304). The Court goes on to discuss that if separate pieces of information are in a governmental entity’s computer system “but not in the exact format requested” and “the requested information could be produced by the governmental entity by having a computer program written to extract the requested information and produce it in the requested format,” the governmental entity may be required “to disclose the requested information.” *Id.* at *28. The fact that a “special computer run would have to be performed” does not relieve the governmental entity of the obligation to produce the information. *Id.* at *30. The Court of Appeals made this ruling irrespective of the potential cost. *Id.* However, pertinent to the matter of charging for redacting, discussed below, the Court of Appeals, referring to the Supreme Court’s opinion in *The Tennessean*, stated that the governmental entity may require the requestor to pay for the actual costs incurred in producing the information, including the cost of programming the computer to compile and produce the information. *Id.* at *30. The Court of Appeals does not define what it means by the term, “producing.”

The basic problem with Professor Conley and the KCSO is the reliance upon written communications and precise wording. Contrary to the posture of Professor Conley and the KCSO, the Act does not envision a battle of words. For the purposes of the act of inspection only, the Act does not contemplate that the requestor and the governmental entity will communicate in writing. *See* Tenn. Code Ann. §10-7-503(a)(7)(A). The Act contemplates a face-to-face exchange between a cooperative requestor and a cooperative governmental entity. As stated by the Court of Appeals in *Hickman*:

The Act envisions that the requestor will personally appear to make the request and will be given access to the public records requested. When personal appearance is not possible, a citizen may request that copies of records be sent to him or her....

Hickman, 2003 Tenn. App. LEXIS 187 at *29.

As previously mentioned, “the Act does not require a governmental entity to manually sort through the records and compile information gained from those records.” *Id.* at *31. But that does not relieve the governmental entity from permitting “[a] citizen appearing in person” to “inspect the records and retrieve the information himself or herself.” *Id.* Moreover, where a citizen requests particular documents maintained in voluminous files, the governmental entity may be required to go through the files and manually retrieve the documents requested, irrespective of whether copies are requested or “a citizen appeared in person and requested access to those documents.” *Id.* at *32-33. “Pulling files for review in person does not differ from pulling files to make copies.” *Id.* at *33.

Finally, even where the parties communicate in writing rather than face-to-face, the Court of Appeals’ opinion in *Hickman* points out that making a written request for

inspection or copies “generally phrased in terms of information [sought]” does not render the request insufficient for lack of specificity or detail. *Id.* at *34. The request may be sufficient even though the requestor does not identify or request a specific document containing the information requested. *Id.*

The foregoing is instructive for this case as a whole and Professor Conley’s specific charges discussed below. The *Hickman* case, cited by the KCSO, is particularly informative.

SPECIFIC CHARGES

As mentioned in the history of this case, Professor Conley filed on June 7, 2019 a document titled “LIST OF UNFULFILLED RECORD REQUESTS.” That list is broken down into segments under the headings “Completely Denied Requests for Inspection of KCSO Records” and “Partially or Completely Unfilled Requests for Copies of KCSO Records.” The Court will discuss each charge listed.

Professor Conley makes her first claim as follows:

On November 30, 2018, Professor Conley requested to inspect KCSO arrest reports:

I also wanted to touch base with you about scheduling a time to inspect arrest reports. It is my understanding that arrest reports of inmates in the Knox County jail are public records and that residents of Tennessee are able to access these records without submitting a records request. Are there specific hours to be able to review arrest reports? I would appreciate your guidance on this matter.

KCSO, through its record coordinator, Hillary Martin, responded:

Unfortunately, we don’t have a system that allows the public to inspect arrest reports. The only system we have is for law enforcement use only, but we will be more than happy to provide you with copies of the reports

you would like. There is a "Records Request" button on knoxsheriff.org that allows you to submit your request online.

Professor Conley's above inquiry appears to be a request for a time for her to appear and make a request, in person, to inspect KCSO's arrest records. While a governmental entity may require a request for copies to be in writing or on a form developed by the office of open records counsel, the Act, in general, prohibits a governmental entity from requiring a written request to view a public record. *See* Tenn. Code Ann. § 10-7-503(a)(7). In anticipation of her appearing, the KCSO informed Professor Conley, in effect, that arrest records are not open for inspection. KCSO responded as to its willingness to produce copies, presumably redacted copies, but, according to the evidence at the hearing, the rate of available redacted copies is much less than the rate of arrests.

This is not in compliance with the mandate of Tenn. Code Ann. §10-7-503(a)(2)(A). These records are to "be open for inspection." *Id.* As stated by the Court of Appeals in *Hickman*, the burden on the governmental entity is not an excuse under the Act. *Hickman*, 2003 Tenn. App. LEXIS 187 at *33 n. 7. The Act places a duty upon the governmental entity "to delete confidential and nondisclosable information from that which may be disclosed, and thus, to carry out the act's purpose of making available for public inspection all disclosable parts of the public record." *Id.* at *23. The governmental entity cannot limit access to the obtaining of copies. The governmental entity has the burden of keeping the arrest records, for which there is constant public demand, open for inspection.

Under the heading "Partially or Completely Unfulfilled Requests for Copies of KCSO Records," Professor Conley lists the remainder of her multitude of claims. These claims cover the period of August 16, 2017 through March 8, 2019.

Professor Conley made requests on August 16 and 31, 2017, as follows:

Requested on August 16, 2017:

All public records of communications between Knox County and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knoxville created on or after June 1, 2017.

All public records created on or after June 21, 2013 regarding any intergovernmental service agreement (IGSA) related to detention, transportation, or other services between the Knox County Sheriff's office and the Department of Homeland Security-U.S. Immigration and Customs Enforcement.

Requested on August 31, 2017:

All public records of emails and letters between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, TN created on or after August 25, 2017.

All public records of emails and letters between Media Relations Director Martha Dooley and the Department of Homeland Security-U. S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, TN created on or after August 25, 2017.

Professor Conley's actual requests on August 16, 2017, included a request for training records. However, the KCSO provided those records and they are not in issue.

KCSO's chief counsel, Mike Ruble, responded by email on August 25, 2017, to Professor Conley's requests, as made on August 16, 2017, and stated that her requests failed to comply with the specificity requirement of the Act. Mr. Ruble further responded, however, that he would produce a letter of June 9, 2017, from Immigration and Customs Enforcement ("ICE") and confirmed that Professor Conley already had the Memorandum

of Agreement between the Sheriff's Office and ICE. Mr. Ruble did not state, however, that there were no other records covered by the request. See Trial Exhibit 3.

Mr. Ruble's response points to a lack of specificity from Professor Conley's use of the words "any and all" but the response does not explicitly state that the request is not "sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." Tenn. Code Ann. § 10-7-503(a)(4). The request did begin with the words, "[a]ll public records" but the request would appear sufficient to enable the KCSO to find the public records sought. Mr. Ruble further states that "[e]ven if the request satisfied the specificity requirement the man-hours necessary to review every document, email, etc. would make the response prohibitively expensive." However, Mr. Ruble's reference to the burden that complying with the request would impose upon the KCSO is not a factor under the Act.

The more problematic aspect of Mr. Ruble's response of August 25, 2017, is the posture between the parties. Instead of working out, face-to-face, the facilitation and mechanics of Professor Conley's inspection, the parties embark upon a course of Professor Conley's pitching out requests and the KCSO's calling balls and strikes. However, there is no requirement under the Act that the request point out the specific document requested. To do so, the requestor would already have to have pre-existing knowledge of the documents composing the public records. As previously mentioned, the request may be "generally phrased in terms of information [sought]." *Hickman*, 2003 Tenn. App. LEXIS 187 at*34. The requestor is not required to request a specific document containing the information sought. *Id.* Moreover, for purposes of inspection, as previously mentioned, the Act generally prohibits a governmental entity from requiring

that a request be in writing to inspect a public record. See Tenn. Code Ann. § 10-7-503(a)(7)(A).

Mr. Ruble's above response of August 25, 2017, among other things, welcomes Professor Conley to her review or obtaining a copy of "a June 9, 2017 letter from ICE thanking us for our interest in the 287(g) program." Mr. Ruble's response was respecting Professor Conley's prior request of August 16, 2017, and their face-to-face meeting on August 25, 2017. By another email from Professor Conley on August 31, 2017, she appears to fold her prior request into her above request made on August 31, 2017. Mr. Ruble responds on the same day, by his email of August 31, 2017, appearing to restart the process from the beginning:

I am in receipt of your public records requests. Be advised that the law provides that the public entity has (7) business days to respond to public records requests. I will contact you when the records are available.

No substantive response was made to Professor Conley's request of August 31, 2017 until Mr. Ruble's email of September 15, 2017 stating that he has submitted the responsive documents for review by ICE. That response greatly exceeds the seven days permitted by Tenn. Code Ann. § 10-7-503(a)(2)(B) and does not state the law permitting the delay for review by ICE. By her email dated September 19, 2017, Professor Conley requested that Mr. Ruble inform her of the basis in law for permitting the delay for review by ICE. However, the KCSO made no such further response.

By email on September 28, 2017, Professor Conley made an additional request for public records in the following format:

Mr. Ruble:

I request access to certain public records in your possession, custody or control, pursuant to the Tennessee Public Records Act, TCA section 10-7-503 (a)....

Specifically I request access to:

1. All public records of emails and letters between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.
2. All public records of emails and letters between Captain Terry Wilshire in the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.
3. All public records of emails and letters between Media Relations Director Professor Conley Martha Dooley and the Department of Homeland Security-U.S. Immigration and Customs Enforcement regarding a 287 (g) program in Knox County, Tennessee created on or after August 25, 2017.

KCSO made no written response to this request from Professor Conley. However, with respect to Professor Conley's request of September 28, 2017 and her request of August 31, 2017, Mr. Ruble produced 189 pages of documents to Professor Conley. The only correspondence between Sheriff "JJ" Jones with ICE was the June 9, 2017 letter from ICE, which was, in fact, provided to Professor Conley. The KCSO also provided Professor Conley with email correspondence between Capt. Wilshire and ICE regarding the 287(g) program. Mr. Ruble investigated and determined that there was no other email or letter between Knox County Sheriff Jimmy "JJ" Jones and the Department of Homeland Security-U.S. Immigration and Custom Enforcement and no such email or letter between Media Relations Director Martha Dooley and the Department of Homeland Security-U.S. Immigration and Customs Enforcement. However, Mr. Ruble did not otherwise respond to Professor Conley's request of September 28, 2017 but assumed that she would realize that no other responsive public records existed from the absence of any other such other public records in the 189 pages of documents, including

the absence of any such emails and letters between Ms. Dooley and ICE. However, the Act requires a governmental entity to make the “information” available; to deny the request in writing or by completing a records request response form developed by the office of open records counsel; or by stating the time reasonably necessary to produce the records or information on a form developed by the open records counsel. Tenn. Code Ann. § 10-7-503(a)(2)(B). The Act requires that any written response of denial includes the basis for the denial. *Id.* The KCSO failed to deny the request in writing as to the information not provided.

On June 5, 2018, Professor Conley requested “all public records, including letters, emails and memos, related to the KCSO 287(g) Steering Committee.” However, Professor Conley has discontinued any claim relating to this request.

By email dated July 20, 2019, Professor Conley informed Mr. Ruble that she was “interested in obtaining any documents that show the total yearly number of inmates in the jail and total yearly number of foreign-born inmates in the jail from 2008 through the first six months of 2018.” Her email asks, “Might you be able to suggest any language that I could use to make a formal request for any public documents that contain this data?” This does not appear to be a request for public documents but to be a request for information and advice as to how to make a formal request for any public document that contains the data. Nonetheless, Mr. Ruble denied the “request” as not being sufficiently detailed. Also, as previously mentioned, it should be noted again that Tenn. Code Ann. § 10-7-503 (a)(7)(A) prohibits a governmental entity from requiring that a request be in writing to inspect public records at all. Moreover, as discussed above, the *Hickman* case holds that a public records request, phrased in terms of information, is sufficient.

By email on July 5, 2018, Professor Conley requested “access to and a copy of the following documents from the period of January 1, 2018 to present: Any and all records of communication including letters, emails, and memoranda, exchanged within and among the Knox County Sheriff, DHS agencies and the July 11, 2018 meeting, which was previously scheduled for June 26, 2018 and July 10, 2008.” KCSO produced 28 documents to Professor Conley in response to the request. Mr. Ruble testified that he provided all responsive records he could find and after requesting records from the KCSO’s employees who had been involved more than others with the steering committee. However, Mr. Ruble testified that he could not be certain that all responsive records were produced as the KCSO is unable and not required to review the records of all 1100 of its employees to see if any of their records relate to the steering committee. Professor Conley testified that she meant for her request to only address communications from KCSO employees who were part of the steering committee.

On November 8, 2018, Professor Conley made another request for public records renewing her request of August 31, 2017. However, at the hearing, Professor Conley discontinued any claim based upon the request of November 8, 2018.

By email dated November 19, 2018, Professor Conley submitted the following requests:

I am a resident of Tennessee requesting access to records in your possession pursuant to the Tennessee open records act, Tenn. Code Ann. § 10-7-503.

Specifically, I wish to receive copies of the following documents:

Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Mike Ruble between the dates of August 1, 2017 until the present day.

Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Jimmy "JJ" Jones between the dates of August 1, 2017 through September 2018.

Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Martha Dooley between the dates of August 1, 2000 17th of September 2018.

Email communications mentioning my name (Meghan Conley, Ms. Conley, Dr. Conley, or variations) that were sent or received by Terry Wilshire between the dates of August 1, 2017 through September 2018.

By Hillary Martin's email dated November 21, 2018, the KCSO granted the request as to that part dealing with "Mike Ruble's communications" but otherwise appears to have denied the request on the basis that "our system only retains emails for 30 days." However, the factual basis, putting aside any legal basis, for the denial is not correct. KCSO's General Order-1-026 constitutes its written policy for retaining emails. According to the General Order, emails, which are not public records, are deleted after "a maximum of 30 days" but any deleted email remains in a "deleted items" folder for 30 days after deletion from the user's inbox or outbox. Any email, which is a public record, is to be retained by the user "in printed format or electronically stored in accordance with the records management requirements, under T.C.A. § 10-7-301 through 10-7-308, and also in accordance with the rules of the Public Records Commission." Examples in the KCSO's General Order concerning emails that are to be retained as public records include, "[t]ransactions or information concerning criminal investigations," "[a]ctions," "[d]ecisions," "work related emails, including investigative discussions and phone records" and "arrest records." Those emails that are printed for retention as public records are known as "archived emails." According to the testimony of Ms. Martin, a request for

“emails” is regarded as limited to those emails fewer than 30 days old. In order to receive access to or copies of archived emails, the request would have to ask for “archived emails.” This Court finds and concludes a public records request for “emails” is sufficient to require the KCSO to make all emails available, those less than 30 days old, those more than 30 days old and not yet deleted from the deleted items folder, and those printed or electronically stored as public records or archived emails. However, in this case, the KCSO has searched for emails, including archived emails, subject to the above requests, and located no public records responsive to Professor Conley’s requests. No issue has been raised in the case as to the adequacy of the KCSO’s policy of leaving each of its employees in charge of determining whether a record is a public record and whether a record may be destroyed without going through the Public Records Commission.

On March 4, 2019, (referred to a March 6, 2019) in Professor Conley’s LIST OF UNFULFILLED RECORD REQUESTS, Professor Conley requested access to and “copies of the following documents from the period of January 1, 2019 to present: Any and all records of communication including letters, emails and memoranda, exchanged and among the Knox County Sheriff’s Office, DHS agencies and subagencies (including ICE).”

KCSO denied the request because it was not sufficiently detailed and because KCSO’s “system only retains emails for 30 days.” This Court agrees that the request, in this instance, was not sufficiently detailed but disagrees, for the reasons discussed above, that the request could be denied on the basis that the emails are only retained for 30 days. Regardless, Professor Conley folded this request into her next request.

On March 8, 2019, Professor Conley made the following request for “access to inspect the following documents from the period of January 1, 2019 to the present:

Any and all records of communication, including letters, emails and memoranda, exchanged within and among personnel of the Knox County Sheriff’s Office (Tom Spangler, Bernie Lion, Kimberly Glenn, William Purvis, Brian Bivens) DHS agencies and subagencies, including ICE (with email addresses ending @ice.dhs.gov)

KCSO responded to this request by producing records. Professor Conley was unable at the hearing to identify any unproduced record. However, unless Professor Conley already knew the identities of the public records responsive to the request, there is no way that she could identify any unproduced records. Moreover, the KCSO has the burden of proof. Tenn. Code Ann. § 10-7-505(c). Also, the KCSO’s record coordinator, Ms. Hillary, did not search for any emails more than 30 days old, such as in the deleted items files or the archived email files. Thus, this request must be treated by the Court as having been denied and without adequate response.

REDACTION

An issue has arisen in the case as to whether the KCSO can assess charges for redacting public records in preparing them for a citizen’s inspection. Yet, there is nothing in Professor Conley’s petition concerning redaction. Professor Conley seeks no relief in her petition or proposed findings of fact and conclusions of law pertaining to redaction. Moreover, the KCSO has never assessed a charge to Professor Conley for redaction. However, the KCSO has informed Professor Conley that it could, within its discretion, charge her for redacting.

The law is clear and no issue has been raised as to a governmental entity's authority to charge for redacting copies. *See* Tenn. Code Ann. § 10-7-503(a)(7)(C)² & 8-4-604(a)(1). On the other hand, the Act expressly prohibits a governmental entity from assessing "a charge to view a public record unless otherwise required by law." Tenn. Code Ann. § 10-7-503(a)(7)(A).

At least one provision of the Act expressly authorizes a governmental entity to charge for redaction even where the redaction is made for the sole purpose of enabling a citizen to inspect and view a public record. *See* Tenn. Code Ann. § 10-7-504(a)(20)(C). Another provision of the Act, at Tenn. Code Ann. § 10-7-503(a)(7)(C)(i) states that "[a] records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material" The KCSO argues this statutory provision means that, while the governmental entity may not charge for viewing the public record, it may charge for producing the record for inspection, which includes the costs of redacting confidential information so that it can be viewed by a citizen.

Other provisions of the Act have similar circular interplay as to whether a governmental entity may charge for redacting in preparing a record for inspection only. Tenn. Code Ann. § 8-4-604(a)(1)(A)(ii)(c) states, "that , in accordance with Tenn. Code Ann. § 10-7-503(a)(7)(A) no charge shall be assessed to view a public record unless

² The Court notes that a search through Lexis would indicate that this language appears in Tenn. Code Ann. § 10-7-503(a)(7)(B) and that a search through Westlaw would indicate that the language is included in Tenn. Code Ann. § 10-7-503(a)(7)(C). The Court further notes, as indicated in the footnote above, that the subsection (a)(7)(B) was deleted and its operative language was incorporated in subsection (a)(4) by amendment. The Court can find no further amendment regarding subsection (a)(7)(B). Regardless which research tool one uses, the quoted operative language is indeed included in the statute in both iterations. Consequently, the Court will cite to Tenn. Code Ann. § 10-7-503(a)(7)(C) for the purposes of this discussion.

otherwise required by law.” According to the KCSO’s argument, it is “otherwise required by law” at Tenn. Code Ann. §§ 10-7-503(a)(5) and 10-7-504(a)(20)(C) that charges be assessed for preparing or producing a public record for viewing. The statutory provision, at Tenn. Code Ann. § 10-7-503(a)(5), states that “[c]osts associated with redacting records, including the costs and copies and staff time to provide redacted copies, shall be borne as provided by law.” Tenn. Code Ann. § 10-7-503(a)(7)(C)(i), as previously mentioned, states that “[a] records custodian may require a requestor to pay the custodian’s reasonable cost incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of the open records counsel pursuant to section 8-4-604.” The other statutory provision, at Tenn. Code Ann. § 10-7-504(a)(20)(C), states that “[t]he entity requesting the record shall pay all reasonable costs associated with redaction of materials.”

The latter mentioned statutory provision would appear to remove any doubt that the governmental entity may charge for redaction of materials, whether for inspection or copying of the materials. However, this statutory provision is part of subdivision (a)(20) which deals with utilities. Nonetheless, the statutory provisions together provide a logical framework in the law for taking the position that the KCSO may charge for redacting materials in making them available for Professor Conley’s inspection. This Court is also cognizant of the commonsense argument that excusing the requestor from paying the expenses of redaction shifts those expenses to the taxpayers. Moreover, there is arguably no rational basis for requiring the requestor to pay for redacting when requesting copies but not when requesting inspection; the same labor costs are involved.

Initially, the above statutory framework seemed persuasive for the KCSO's position that it was entitled to charge for redacting, whether for copies or for inspection only. However, irrespective of the foregoing analysis, it appears that the Tennessee Court of Appeals has held that a governmental entity may not charge for redacting where a citizen requests inspection only and not copies. *See Eldridge v. Putnam*, 86 S.W.3d 572, 574 (Tenn. Ct. App. 2002).

The Court, in *Eldridge*, noted that the requestor had not asked for the governmental entity "to make extracts, photographs or photostat of the records." *Id.* Accordingly, the court held that the governmental entity would not be "permitted to assess the expenses incurred in finding the confidential information that should be redacted" to the requestor. *Id.*

The KCSO seeks to distinguish the *Eldridge* case on the basis that it involved the redaction of confidential information under Tenn. Code Ann. § 10-7-504(f). This Court finds the KCSO's proffered distinction to be one without a difference. This Court is bound by the appellate court's *Eldridge* opinion.

More recently, in *Taylor v. Lynnville*, the town denied the requestor access to inspect records unless he paid an upfront fee of \$150 to "cover the expense for copies and staff time." *Taylor*, 2017WL 2984194 at *3. The court noted, however, that the requestor only sought inspection without copies. *Id.* Since the requestor had not requested copies, the court held that it was unlawful to charge the requestor anything in making the records available for his inspection. *Id.* *See also Id.* at n.5 (concurring opinion "acknowledges that the plain text of the TPRA only permits labor cost to be assessed against a citizen in circumstances where the citizen has requested copies").

The KCSO has followed the Public Records Policy for Knox County, Tennessee in taking the position that it may assess redaction charges to a citizen seeking only to inspect public records, without obtaining copies. See Tr. Exh. 7. That position is directly contrary to the opinion of the Tennessee Office of Open Records Counsel. *See* Tenn. Office of Open Records Counsel Op. No. 08-14 (Nov. 13, 2008).

PROFESSOR CONLEY'S MOTION TO SUPPLEMENT THE RECORD

After the closing of the evidence but prior to closing arguments, Professor Conley filed a motion to supplement the record on January 13, 2020. The Court heard closing arguments on January 24, 2020, as scheduled. However, the Court did not hear Professor Conley's motion to supplement the record until January 30, 2020, at which time the Court granted the motion. Professor Conley's proposed findings and conclusions filed January 13, 2020, were written as if the Court had already granted her motion to supplement the record or reopen the proof.

Professor Conley's additional proof relates to her request for "[p]ublic records created on or after June 21, 2013 regarding an intergovernmental service agreement [IGSA]" between ICE and the KCSO. The KCSO disclosed the public records shown by Trial Exhibits 6 and 9. Professor Conley had acknowledged to Mr. Ruble that she already had the Memorandum of Agreement between ICE and the KCSO shown by Trial Exhibit 6 and that she did not want a second copy. In addition, the KCSO produced a 14-page contract, IGSA 74-13-0015, and a two-page 2018 procurement order, as Trial Exhibit 9. The KCSO maintained that the Memorandum of Understanding, shown by Trial Exhibit 6, was the only IGSA that existed between ICE and the KCSO until July 19, 2018. The 14-page contract dated October 18, 2013, is between the United States Marshals Service

and the KCSO. The two-page procurement order dated July 19, 2018, was issued by ICE to the KCSO on June 26, 2018 and signed by Sheriff "JJ" Jones on July 19, 2018. Mr. Ruble testified that the two-page procurement order was an attachment to the 14-page contract between the United States Marshals Service and the KCSO. He testified, in effect, that when Sheriff Jones signed the procurement order on July 19, 2018, which Mr. Ruble referred to as an addendum, the Marshals contract of October 18, 2013, became an IGSA with ICE. He further testified that when Sheriff Jones signed the procurement order and the Marshals contract became an IGSA with ICE, the KCSO disclosed and produced the documents to Professor Conley.

On October 9, 2019, Professor Conley's counsel made a Freedom of Information Act ("FOIA") request to ICE for "any IGSA between ICE and the KCSO." On December 20, 2019, Professor Conley's counsel received 36 pages from ICE in response consisting of the same 16 pages produced by the KCSO and shown by trial Exhibit 9 as well as 20 additional pages. Professor Conley proffers that ICE's responding with documents to the request for any IGSA proves there was an IGSA in addition to the Memorandum of Understanding. However, ICE produced the very same 14-page contract with the Marshals Service and the procurement order as had been produced by the KCSO to Professor Conley. The signature of Sheriff Jimmy "JJ" Jones dated July 19, 2018, on the procurement order shown by Trial Exhibit 9, does not appear on ICE's copy dated September 27, 2018, but both copies show "code 02589755590000." No other IGSA agreement was produced by ICE.

Professor Conley's counsel stated that the additional (20) pages were relevant for the purpose of showing the IGSA. Those pages appear to have been covered by Professor

Conley's requests of August 3, 2018 and/or November 8, 2018. They would also be relevant to showing that the KCSO failed to maintain them as public records or failed to disclose them but that has not been raised as an issue in this case.

The additional 20 pages consist of orders for supplies or services and documents titled as amendments of solicitation/modification of contract. The remaining 16 pages refer to the documents shown by Trial Exhibit 9 consisting of the IGSA between the Marshals Service and the KCSO and the procurement order issued by ICE to the KCSO. As previously mentioned, the remaining 16 pages are the same documents already produced by the KCSO. However, the KCSO did not disclose or produce the 2013 Marshals contract until ICE's procurement order of July 19, 2018. As previously mentioned, Mr. Ruble testified that he did not consider the Marshals contract as an IGSA with ICE until ICE's order of July 19, 2018. However, the Court notes that the Marshals contract expressly shows ICE as a component.

ATTORNEY FEES

Tenn. Code Ann. § 10-7-505 provides that "[i]f the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such a record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity...." The same statutory section provides that "the court may consider any guidance provided to the records custodian by the office of open records counsel" in determining whether the action was willful. Although Ms. Martin testified that she consults with the office of open records

counsel about twice a month, there was no evidence of any guidance from the open records counsel to the KCSO about the matters in this case.

The three main areas of concern in this case are the KCSO's specificity policy in denying requests for access to public records; its lack of means by which citizens can inspect its arrest records; and its lack of compliance with Tenn. Code § 10-7-505 in failing, in some instances, to deny requests in writing or by completing a records request response form developed by the office of open records counsel, including the basis for denial, within 7 (seven) business days of a request. On the other hand, except for the lack of access to its arrest records, the denial of Professor Conley's request of March 8, 2019, for emails, including archived emails more than 30 days old, and the additional 20 pages of copies of orders for supplies or services and the documents titled as amendments of solicitation/modification of contract, which Professor Conley's counsel obtained from ICE, the record does not sustain that the KCSO failed to produce any public record. As to the 20 pages, Professor Conley, at paragraph 3 of her motion to supplement the record, states that the 20 pages are only relevant for proving "the existence of an IGSA between ICE and KCSO" that was not produced. The KCSO, except for these 20 pages, had already produced all of the records obtained by Professor Conley's counsel pursuant to his FOIA request to ICE, including the same Detention Services Intergovernmental Agreement between the United States Marshals Service and the KCSO dated October 18, 2013 and the Solicitation/Contractor/Order for Commercial Items dated November 26, 2018. However, the lack of access to the KCSO's arrest records, on a current basis, remains as a problem.

As noted in part above, Tenn. Code Ann. § 10-7-505(g) provides:

If the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity. In determining whether the action was willful, the court may consider any guidance provided to the records custodian by the office of open records counsel as created in title 8, chapter 4.

Tenn. Code Ann. § 10-7-505(g).

The statute conditions an award of costs and attorney fees to those incurred in obtaining a record. *Id.* Again, excepting access to arrest records on a current basis and emails more than 30 days old, the record in this case does not sustain the existence of any record that the KCSO has refused to disclose. As stated above, the Court has treated Professor Conley's request of March 8, 2019, to have been denied as to emails, including archived emails more than 30 days old, but Professor Conley has not sought any relief for them.

There are problems with the KCSO's practices concerning public records. The KCSO's specificity policy has been especially troublesome. Yet, the record does not sustain the existence of any record not disclosed or produced because of the KCSO's specificity policy respecting requests for public records. Moreover, the *Jakes* case, discussed above, provides the KCSO with a good faith basis for arguing its specificity policy. The KCSO's redaction policy has also been problematic. On the other hand, there is no evidence that the KCSO has assessed any redaction charges to Professor Conley or that she has paid any such charges. Moreover, Professor Conley has not sought any relief concerning redaction charges.

The Court finds that Professor Conley is entitled to her reasonable costs, including attorney fees, for that part of her case concerned with obtaining access to the arrest records on an ongoing basis and for obtaining a complete written response to her request of March 8, 2019 for emails, including archived emails more than 30 days old. There is an abundance of evidence in the case that the KCSO may have frustrated Professor Conley in her obtaining access to the KCSO's public records. However, access to its arrest records on an ongoing basis as well as access to the emails, including archived emails more than 30 days old, appear to be the only access to public records withheld from her. As to the arrest records and the emails more than thirty days old, the Court finds that the criteria of Tenn. Code Ann. § 10-7-505(g) is sustained for awarding reasonable costs, including attorney's fees, to Professor Conley.

RELIEF

In her petition, Professor Conley prays for the following relief:

1. Professor Conley requests that this Court order Sheriff Spangler to "immediately appear" at a show cause hearing and carry his burden of justifying the denials of Professor Conley's PRA requests and showing why this Petition for record access should not be granted.
2. Professor Conley requests that this Court order Sheriff Spangler to promptly allow Professor Conley access to her requested records.
3. Professor Conley requests that this Court place Professor Conley's requested records under seal for the Court's review prior to the hearing, as permitted by Tennessee Code Annotated section 10-7-505(b).
4. Professor Conley requests that this Court enjoin Sheriff Spangler to : (1) adopt policies for citizen inspection and copying of KCSO records consistent with the PRA, including halting KCSO's policy of providing only a limited number of arrest report copies each day; (2) establish and maintain the required administrative, physical, or technological infrastructure necessary to facilitate record inspection, and; (3) cease violating Professor Conley's PRA rights

through frivolous denials, delays or harassment.

5. Professor Conley requests that she be awarded all reasonable costs incurred in obtaining these records, including reasonable attorney's fees.
6. Professor Conley requests any other relief to which she proves herself entitled.

In her proposed findings of fact and conclusions of law, Professor Conley seeks the following relief:

1. That Professor Conley be permitted to inspect any non-exempt KCSO records as soon she desires.
2. At no cost to Professor Conley and in seven business days, KCSO is to provide her with copies of any existing documents she has previously requested and been wrongfully denied as well as:
 - I. copies of all 48-hour holds issued by ICE to KCSO since the initiation of KCSO's 287(g) agreement;
 - II. copies of all monthly detention invoices (described on page 11 of the 2013 IGSA) sent to ICE from KCSO since June of 2017;
 - III. copies of any KCSO arrest or detention records that Professor Conley deems necessary for her work.
3. That KCSO is to pay Professor Conley all costs associated with obtaining these records, including reasonable attorney fees. A separate hearing will be held for determining these fees.
4. That KCSO is enjoined from committing further violations of Professor Conley's PRA rights.

* * *

5. That Sheriff Spangler must revise KCSO's internal public records policy to accord with existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of new software. See *Tennessee*, 979 s.W.2d at 304. This policy must forbid employees from misrepresenting the records KCSO actually possesses.
6. That upon denying a record request, KCSO must issue to the requesting citizen a written statement explaining precisely why their request was denied. If no records were found, KCSO must issue to the requesting citizen a list of the steps taken in the attempt to find their records. Any written statement must be signed by the record custodian. KCSO must keep a record of how many record request denials it makes each month. This injunction shall remain in place until further notice.

7. That in ten business days, Sheriff Spangler must set up the policies and infrastructure required to allow citizen inspection of KCSO records as required by the PRA.

Initially, the court will address the relief which Professor Conley seeks in her proposed findings of fact and conclusions of law:

Proposed Relief

- 1. That Professor Conley be permitted to inspect any nonexempt KCSO records as soon as she desires.**

This relief is not available not only due to its being open-ended as to time and volume but also due to the statutory requirement that the KCSO redact confidential information.

Proposed Relief

- 2. At no cost to Professor Conley and in seven business days, KCSO is to provide her with copies of any existing documents she has previously requested and been wrongfully denied as well as:**

- I. copies of all 48-hour holds issued by ICE to KCSO since the initiation of KCSO's 287 (g) agreement;**
- II. copies of all monthly detention invoices (described on page 11 of the 2013 IGSA) sent to ICE from KCSO since June of 2017;**
- III. copies of any KCSO arrest or detention records that Professor Conley deems necessary for her work.**

The record does not contain evidence that Professor Conley has ever made a public records request for 48 hour holds or monthly detention invoices. These matters were not raised during the hearing. The parties will need to go through the procedures of the Tennessee Public Records Act. As mentioned above, the record does not sustain that Professor Conley has been denied access to any public records other than arrest or detention records and emails, including archived emails more than 30 days old in response to her request of March 8, 2019.

Currently, the KCSO has no means by which citizens can access its arrest records on a current basis. Unless that means is provided, the lack of such access runs counter to the Act's mandate that the governmental entity shall keep its records open for personal inspection by any citizen of the state. Absent such means of access, the citizens of this state are unable to monitor the activities shown by the arrest records. The Court is aware that the governmental entity is under an obligation to redact confidential information. However, that obligation cannot be used to prevent access. While the *Hickman and The Tennessee* cases support that Professor Conley would have to bear the expense for the development of a means to access the arrest records, such as software that automatically deletes the areas of an arrest record containing confidential information, the disclosure of arrest records is fundamental to a law enforcement agency's openness and accountability. The Act requires the governmental entity to fulfill its obligation to keep its public records open for inspection, not the citizens. The Court finds and concludes that the KCSO should have such a system irrespective of Professor Conley's claims.

Accordingly, the Court finds and concludes that the KCSO should be required to immediately take steps to implement a system whereby its redacted arrest records can be inspected by the citizens of Tennessee on a current basis, either manually or through a computer system maintained by the KCSO. The KCSO's current records coordinator, Ms. Martin, testified that it already has a public version of incident or arrest reports, but that matter was not developed at the hearing.

Proposed relief

3. That KCSO is to pay Professor Conley all costs associated with obtaining these records, including reasonable attorney fees. A separate hearing will be held for determining these fees.

As discussed above, Professor Conley is entitled to an award of costs, including attorney fees, incurred for obtaining access to the KCSO's arrest records on a current basis and a complete written response to her request of March, 2019 for the emails, including archived emails more than 30 days old.

Proposed Relief

Of the remaining requests for relief in Professor Conley's proposed findings and conclusions, requests numbers four, five, and seven are similar. The Court will discuss those requests together:

4. The KCSO is enjoined from committing further violations of Professor Conley's PRA rights.

5. That Sheriff Spangler must revise KCSO's internal public records policy to accord with the existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of new software. *See Tennessee*, 979 S. W.2d 304. This policy must prevent employees from misrepresenting the records KCSO actually possesses.

7. That in 10 business days, Sheriff Spangler must set up the policies and infrastructure required to allow citizen inspection of KCSO records as required by the PRA.

All of the above proposed relief is in the nature of injunctive relief. In order for the injunctive relief requested by Professor Conley to be enforceable, the injunction must "expressly and precisely spell out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden." *Kovvilinka v. Chattanooga-Hamilton County Hosp.*, 249 S.W.3d 346, 355 (Tenn. 2008). The injunction "must, therefore, be clear, specific and unambiguous." *Id.* at 355.

This Court finds and concludes that the injunction requested here, which, in effect, adopts and incorporates the entire Act by reference, would lack the precision and

specificity required to enforce such an injunction. In that same regard, a broad injunction requiring Sheriff Spangler to revise the “KCSO’s internal public records policy to accord with existing law and these findings, especially his policies regarding compilation, specificity, even if this requires creation of a new software... [and forbidding] employees from misrepresenting the records KCSO actually possesses,” would lack the precision and specificity required for enforcement. Moreover, the written public records policy before the court was not adopted by the KCSO but by the Knox County Commission, Trial Exh. 7, other than the KCSO’s GENERAL ORDERS N0s. 1-001 and 1-026, Trial Exhs. 14 & 13, pertaining to email retention.

The proposed relief that the KCSO set up policies and infrastructure compliant with the Act within 10 days embodies an unreasonable time frame. Also, using the entire Act to define the injunctive relief would render the injunction unenforceable under the *Konvalinka* case.

The Act does not contain provisions for punitive actions against a governmental entity other than perhaps the provision for an award of costs, including attorney’s fees, incurred by a citizen in obtaining access to a public record that the governmental entity knew was a public record and willfully failed to disclose. The Act does not authorize the court to issue a broad and blanket injunction for the purpose of placing the court’s contempt power behind undefined, prospective, future violations of the Act. However, any failure to comply with the specific and precise orders of this court will be enforceable by the court’s contempt power. This opinion may also be used on the issue of willfulness in the event of any future violations of the Act concerning the matters addressed herein.

Proposed Relief

6. That upon denying a record request, KCSO must issue to the requesting citizen a written statement explaining precisely why their request was denied. If no records were found, KCSO must issue to the requesting citizen a list of the steps taken in the attempt to find the records. Any written statement must be signed by the record custodian. KCSO must keep a record of how many record request denials it makes each month. This injunction shall remain in place until further notice.

This proposed relief goes beyond the statutory procedure. This Court finds and concludes that the statutory procedure is reasonable and satisfactory. That procedure is set out in Tenn. Code Ann. § 10-7-503(a)(2)(B). The proposed procedure was not raised during the course of the hearing. The proposal that the “KCSO must keep a record of how many record request denials it makes each month” is already addressed by the procedure in Tenn. Code Ann. § 10-7-503(a)(2)(B) that each such denial be in writing and the overall requirement of the Act that each such denial be kept as a public record and open for access to citizens.

The relief proposed in Professor Conley’s proposed findings and conclusions, as written, bears little resemblance to that requested, as written, in her petition. The propriety of the injunctive relief, as reasonable, considering the expense to the taxpayers in complying with the proposed orders and the ability otherwise of the KCSO or Knox County to comply with Professor Conley’s proposed relief, was minimally addressed at the hearing. The relief, as requested in the prayers contained in Professor Conley’s petition, is more reasonable. The Court will address that relief as within the relief actually granted by the Court below.

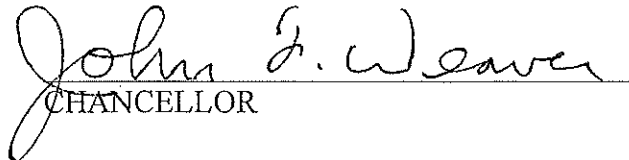
This Court’s Relief

This Court will enter an order with the following provisions:

- (1) That the KCSO shall comply with the provisions of Tenn. Code Ann. § 10-7-503 (a)(2)(B) as follows: “by promptly [making] available for inspection any public record not specifically exempt from disclosure” or “[i]n the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days: (i) [m]ake the information available to the requestor; (ii) [d]eny the request in writing or by completing a records request response form developed by the office of open records counsel. Response shall include the basis for the denial; or (iii) [f]urnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.”
- (2) That the KCSO shall produce to Professor Conley’s counsel, Andrew Fels, within the next 7 (seven) business days, any and all emails, including archived emails, for the period of January 1, 2019 thru March 8, 2019, more than 30 days old as of March 8, 2019, “within and among personnel of the Knox County Sheriff’s office (Tom Spangler, Bernie Lion, Kimberly Glenn, William Purvis, Brian Bivens) DHS agencies and subagencies including ICE (with email addresses ending @ice.dhs.gov)” or respond to Professor Conley’s counsel, Andrew Fels, in writing, within the next seven (7) business days, that KCSO has searched and found no such public record not produced.
- (3) That the KCSO is prohibited from treating any written request for inspection or copies generally phrased in terms of information sought as insufficient for lack of specificity or detail.

- (4) That the KCSO, within the next 30 days, shall begin steps to implement a system, either manually or through a computer program or system, that will enable it to produce its arrest records on a current basis for inspection and viewing by citizens with the confidential information redacted and shall complete implementation of the manual system or computer program or system within a reasonable period of time;
- (5) That the petitioner is entitled to an award of costs, including attorney's fees, incurred in obtaining the relief in paragraphs (2) & (4) above, with the amount of the costs to be determined at a further hearing;
- (6) That the costs of this cause are taxed to the defendant is in his official capacity and not as an individual; and
- (7) That the time limits in paragraph 4 or this Order are tolled and suspended for so long as any executive order of the Governor of this State or order of the Health Department of Knox County mandates the closure of nonessential business to the public.

Signed this 9th day of April, 2020.


CHANCELLOR

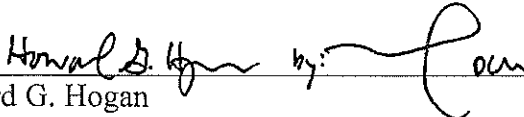
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was placed in the United States Mail, postage prepaid to:

Andrew C. Fels, Esq.
125 S. Central Street, Suite 203
Knoxville, TN 37902

Amanda Lynn Morse
David L. Buuck
Deputy Law Directors
400 Main Street, Suite 612
Knoxville, TN 37902

This 9th day of April, 2020.


Howard G. Hogan
Clerk and Master

Attachment 11

About the Vice President



Vice President for Research Stacey Patterson oversees Florida State University's research operation, which has more than \$320 million annually in expenditures and more than 50 prominent research centers and institutes.

Patterson has spent the past 16 years in various positions in the University of Tennessee system. Starting in a joint role as a research scientist and a licensing associate, she ultimately rose through the ranks to be named the vice president for research, outreach, and economic

development in 2017. She was the first woman to serve in this position in the history of the UT system.

Patterson earned her bachelor's degree from UT Knoxville in biological sciences, followed by a master's degree in environmental health science from East Tennessee State University and a doctorate in microbiology from UT Knoxville.

Following her graduate work, Patterson spent three years in a postdoctoral fellowship at the University of South Florida. She has secured funding from NOAA, the U.S. Army, the National Science Foundation, the U.S. Department of Energy, the National Institutes of Health, and several private sector partners as a principal investigator and has been a contributor on several U.S. patents in the area of sensor development and cancer imaging. Patterson is also one of four co-founders of 490 BioTech, a Knoxville-based startup company.

In her position for the UT system, had broad responsibilities related to Oak Ridge National laboratory and served as the primary liaison to Battelle Memorial Institute, UTs' partner in the management of ORNL, where she helped align the lab and university interests with innovation across the state.

Throughout her career, Patterson has played a significant role in securing extramural funding and developing partnerships and broad coalitions to advance innovation. She led a \$62.5 million solar initiative that was a joint research effort among UT, Oak Ridge National Laboratory, industry and the West Tennessee Solar Farm, one of the largest solar generating facilities in the Southeast. She also helped lead the creation of the Composites Institute, a \$259 million public-private partnership that crosses multiple states and includes more than 130 member institutions from industry, academia and government collaborating on the nation's advances composites ecosystem.

At FSU, Patterson oversees the Office for the Vice President for Research, which employees 125 full time staff and is home to multiple administrative units. These include federal relations, commercialization and the Council of Research and Creativity and others. The office also has direct oversight of five research centers: the Center for Advanced Power Systems, the Coastal and Marine Laboratory, the Florida Center for Reading Research, the High-Performance Materials Institute, and the National High Magnetic Field Laboratory.

Attachment 12



THE UNIVERSITY OF TENNESSEE BOARD OF TRUSTEES

MINUTES OF THE EXECUTIVE COMMITTEE January 26, 2024

The Executive Committee of The University of Tennessee Board of Trustees met at 9:00 a.m. (EST) on Friday, January 26, 2024. The meeting was held virtually with all Committee members participating electronically or by telephone. The meeting was hosted from the University of Tennessee, Knoxville campus.

Committee Members Present: John C. Compton, Board Chair; Decosta E. Jenkins; William (Bill) C. Rhodes III; Donald J. Smith; and Jamie R. Woodson.

Others in Attendance:

Trustees: Charles Hatcher, Commissioner, Tennessee Department of Agriculture; Shanea A. McKinney; Christopher L. Patterson; David N. Watson; Woodi H. Woodland (Student Trustee); and T. Lang Wiseman.

University Officers: President Randy Boyd; David L. Miller, Senior Vice President and Chief Financial Officer; Cynthia Moore, Board Secretary and Special Counsel; Chancellor Steve Angle (UT Chattanooga); Chancellor Peter Buckley (UT Health Science Center); Chancellor Yancy Freeman (UT Martin); Interim Chancellor Linda Martin (UT Southern); and Chancellor Donde Plowman (UT Knoxville). In addition, other members of the UT senior leadership and administrative staff were present.

Ms. Moore announced the presence of a quorum. The meeting was webcast for the convenience of the University community, the general public, and the media.

Remarks of the Committee Chair

Board Chair John C. Compton, who also serves as Chair of the Executive Committee, opened the meeting and provided an overview of the meeting agenda. He also expressed his gratitude to the members of the University community who worked to ensure the safety of the University's campuses during the recent winter weather challenges.

Chair Compton called for a moment of silence in memory of two members of the University community:

- *Waymon Hickman.* Mr. Hickman was a former member of the Board of Trustees. He attended UT Martin and completed his degree at UT Knoxville. In recognition of his generosity and commitment to the University, Mr. Hickman was named one of UT's Top 100 Alumni and further recognized when the Precision Agricultural Technology Unit at the UT Middle Tennessee AgResearch and Education Center was named in his honor.

- *Dr. Bill Stacy.* Dr. Stacey served as Chancellor of UT Chattanooga from 1997 until 2004. As Chancellor, he oversaw the construction of over 1,600 beds of residential housing. Combined with the establishment of UT Chattanooga's first doctoral programs, Dr. Stacy was instrumental in transforming the campus from a commuter college to a residential university, increasing enrollment, and elevating the academic profile of the institution.

Capital Project - Budget Increase (Dorothy and Jim Kennedy Health Sciences Building, UT Chattanooga)

David L. Miller, Senior Vice President and Chief Financial Officer, advised the Board that the Health Sciences Building project was included in the Fiscal Year 2022-23 Capital Budget. In 2023, at the Fall Meeting of the Board of Trustees, the Board approved naming the facility in honor of Dorothy and Jim Kennedy in recognition of the Kennedy Foundation's transformative, lead gift of \$8 million. The approved budget for the project was in the amount of \$60,800,000, which was to be financed with State Appropriations (\$55,936,000) and an Institutional Match (\$4,864,000). To account for scope and cost escalation impacts, the University Administration requested that the Board approve an increase to the budget in the amount of \$19,300,000, resulting in an aggregate project cost of \$80,100,000 (as further described in the meeting materials).

The Committee members discussed the budget approval process for capital projects and inquired as to whether the process could be streamlined similar to the changes made for non-academic buildings funded with gifts or revenue from self-supporting auxiliary projects in order to mitigate such large discrepancies. Mr. Miller noted that until the state has approved a project, the University cannot hire architects and/or project managers, which impacts the veracity of the cost projections. President Randy Boyd indicated that he believes that the state is eager improve the efficiency of the capital project process. Chair Compton requested that the University Administration prepare a report on recent capital projects, to be presented at the next Finance and Administration Committee, that provides more detailed information as to the approved project budget, subsequent adjustments, and the nature of the adjustments.

Upon motion duly made and seconded, a roll call vote was taken, and the Executive Committee, on behalf of the Board of Trustees, unanimously approved *Resolution 001-2024* increasing the project budget for the Dorothy and Jim Kennedy Health Sciences Building and adjusting the financing plan as set forth in the meeting materials (Tab 1).

President's Update

President Boyd began his presentation by observing that the experience the University community gained during the COVID-19 pandemic allowed faculty, staff, and students to quickly transition to remote learning and working during the recent winter storms.

Review of 2023 Objectives and Results

President Boyd highlighted key accomplishments of the prior calendar year as measured against the objectives set for 2023 and organized under the five pillars of the UT System Strategic Plan: Enhancing Educational Excellence; Expanding Research Capabilities; Fostering Outreach and

Engagement; Ensuring Workforce and Administrative Excellence; and Advocating for UT. A copy of the written year-end report (2023 Objectives and Results) was included in the meeting materials under Tab 2 and is filed with these minutes.

Enhancing Educational Excellence. President Boyd noted that enrollment and retention rates across the University System increased by 4.8% and 2.6%, respectively. He expressed his gratitude to the University's Chancellors, their leadership teams, faculty, and staff for their efforts in moving these critical metrics forward.

President Boyd stated that, during 2023, the University continued its efforts to grow enrollment through innovative programs such as the UT Access Collaborative, expand eligibility for the UT Promise, instituted a guaranteed early admissions program, and led other initiatives designed to increase access to higher education. Additionally, in response to increased demand for housing at UT Knoxville, the University worked with the state to introduce a public-private partnership model to expedite the building of new residence halls at that campus.

Expanding Research Capabilities. In 2023, the University made a number of changes designed to further enhance its research initiatives, including filling several key positions, such: (i) Dr. Maha Krishnamurthy, President of the UT Research Foundation; (ii) Dr. Stephen Streiffer, Director of Oak Ridge National Labs; (iii) Dr. Sarah Pruitt, Director of the Institutional Compliance; and (iv) Shana Jennings, Director of Privacy and Associate General Counsel.

Fostering Outreach and Engagement. President Boyd discussed a few of the many ways in which the University is working to expand its outreach and engagement to benefit the state and its residents. In particular, the Grow Your Own Center has made a significant impact on addressing the shortage of teachers in the state since it was established two years ago. By the close of calendar year 2023, the Grow Your Own Center had established partnerships with 73 school districts in 59 counties.

Ensuring Workforce and Administrative Excellence. President Boyd provided a few examples of the University's continuing efforts to ensure on its workforce and administrative excellence. He reported that, for the second consecutive year, the University earned recognition as a "Great Place to Work."

Advocating for UT. President Boyd reminded the Committee that advocating for UT takes many forms, such as fundraising, partnering with the government, and marketing. He provided examples of the University's advocacy during 2023:

- The University achieved its second highest fundraising year in UT's history with donations reaching \$342 million.
- Working with Tennessee's locally governed institutions, the University launched "Value of Higher Education" marketing campaign to promote the importance of a four-year degree.

President Boyd concluded his remarks by announcing that this year's State of the University address be held on February 8, 2024, and will feature a panel discussion with the University's five Chancellors. The panel discussion will be moderated by President Boyd and David Plazas, Director of Opinion and Engagement for the *USA Today Network-Tennessee/The Tennessean*.

Appointment, Initial Compensation, and other Terms of Employment of University Officers

Vice President for Academic Affairs, Research, and Student Success. President Boyd announced that Dr. Linda Martin will continue to serve as Interim Chancellor of UT Southern and presented Dr. Bernard Savarese to serve as Vice President for Academic Affairs, Research, and Student Success (removing the acting title). Dr. Savarese's qualifications, recommended compensation, and other terms of employment were included in the meeting materials under Tab 3.2. Upon motion duly made and seconded, a roll call vote was taken, and the Executive Committee, on behalf of the Board of Trustees, unanimously approved **Resolution 002-2024** appointing Dr. Bernard Savarese to serve as Vice President for Academic Affairs, Research, and Student Success.

Vice President for National Labs. President Boyd recommended that the Executive Committee approve the creation of a new University officer position, Vice President of National Labs, and presented Jeff W. Smith for appointment as the inaugural holder of the position. Dr. Smith's qualifications, recommended compensation, and other terms of employment were included in the meeting materials under Tab 3.1. Upon motion duly made and seconded, a roll call vote was taken, and the Executive Committee, on behalf of the Board of Trustees, unanimously approved **Resolution 003-2024** appointing Dr. Smith to serve as Vice President for National Labs.

Planning for Winter Board Meeting

Chair Compton reviewed key topics planned for the upcoming meetings of the Board and its Committees, which will be held at UT Southern on February 29 and March 1, 2024. Among other things, the agenda for the Board meeting will include the President's Report, including a review of proposed 2024 goals and objectives.

Consent Agenda

Chair Compton asked if there were any requests to remove any items from the agenda. There being none, upon motion duly made and seconded, a roll call vote was taken, and the Executive Committee, on behalf of the Board of Trustees, unanimously approved (i) the Resolution to adopt the minutes of prior meeting, and (ii) the Resolutions pertaining to the other the action items included in the Consent Agenda. (A complete list of the approved items appears at the end of these minutes.)

Other Business and Closing Remarks

Chair Compton directed the trustees' attention to the Executive Summary of Annual Institutional Review of the UT Health Science Center-Memphis (College of Medicine) (Tab 4). He noted that the ACGME's Review Committee has commended UT Health Science Center for its demonstrated

substantial compliance with the Institutional Requirements. Chair Compton extended the Board's gratitude and appreciation of all the work undertaken by Chancellor Buckley and members of the UTHSC team to fully and timely address the concerns that were raised previously.

Chair Compton announced that following the conclusion of today's meeting, the Executive Committee would meet in a nonpublic, executive session pursuant to Tennessee Code §4-35-108 to discuss audits or investigations and litigation as permitted by state law.

Adjournment

With no further business to come before the Committee, the Chair adjourned the meeting.

Respectfully Submitted,

/s/Cynthia Moore

Cynthia C. Moore

Secretary and Special Counsel

Approved Consent Agenda Items

- Minutes of the Prior Meeting (May 5, 2023)
- Resolution Appointing a Managerial Group for U.S. Government Contracts (*Resolution 004-2024*)
- Items from the Education, Research, and Service Committee
 - Change in a Degree Designation to establish a Bachelor of Science in Public Affairs, UTK (*Resolution 005-2024*)
 - Change in the Degree Designation and CIP Code for the Master of Public Policy and Administration, UTK (*Resolution 006-2024*)

Attachments. Copies of the following items are filed with the official minutes of this meeting.

- PowerPoint Presentation - Igniting the Greatest Decade

Information Item

- Executive Summary - Annual Institutional Review, UTHSC-Memphis (College of Medicine)

Attachment 13



THE UNIVERSITY OF TENNESSEE BOARD OF TRUSTEES

MINUTES OF THE ANNUAL MEETING OF THE BOARD OF TRUSTEES June 30, 2023

The University of Tennessee Board of Trustees met at 10:15 a.m. (CDT) on Friday, June 30, 2023. The meeting was held in the Library of the Mooney Building, located at the University of Tennessee at Health Science Center, in Memphis, Tennessee.

Trustees Present: John C. Compton, Board Chair; Bradford D. Box; Hayden Galloway (Student Trustee); Charles Hatcher, Commissioner, Tennessee Department of Agriculture; Shanea A. McKinney; Christopher L. Patterson; William (Bill) C. Rhodes III; Donald J. Smith; David N. Watson; T. Lang Wiseman; and Jamie R. Woodson.

University Officers in Attendance: President Randy Boyd; Cynthia C. Moore, Board Secretary and Special Counsel; Chancellor Steve Angle (UT Chattanooga); Chancellor Peter Buckley (UT Health Science Center); Interim Chancellor Philip Acree Cavalier (UT Martin); Interim Chancellor Linda Martin (UT Southern); and Chancellor Donde Plowman (UT Knoxville). Other members of the UT senior leadership and administrative staff were also in attendance.

Ms. Moore announced the presence of a quorum. The meeting was webcast for the convenience of the University community, the general public, and the media.

Opening Remarks by the Chair

Board Chair Compton opened the meeting and welcomed Pastor Charlie A. Caswell Jr., Outreach Pastor at the Impact Church and a member of the Shelby County Board of Commissioners, who provided the invocation. In his remarks, Chair Compton offered his congratulations to the thousands of students who had earned their degrees from the University, including Student Trustee Hayden Galloway. In doing so, Chair Compton thanked Ms. Galloway for her service on the Board over the past year. Dr. Linda Martin, Interim Chancellor of UT Southern, added her own words of thanks and noted that Ms. Galloway had lobbied for establishing a stole that will be worn by all Student Trustees during commencement ceremonies.

Chair Compton expressed his gratitude to Dr. Andy Puckett for his service as a member of the Education, Research and Service Committee. He also announced that T. Lang Wiseman's appointment to the Board was formally confirmed and welcomed Mr. Wiseman to his first official meeting as a University Trustee. He concluded his remarks by expressing his thanks to Dr. Peter Buckley, Chancellor of the UT Health Science Center (UTHSC) and his team for hosting the Board over the past few days. He also expressed his gratitude to Dr. Buckley for the impact he has made on the institution and the community since he joined UTHSC less than two years ago.

Requests to Address the Board

Board Chair Compton announced that no requests to address the Board were received prior to today's meeting.

President's Address

President Boyd noted that today's meeting marked his 15th Board meeting. He structured his remarks around the pillars of the UT Strategic Plan.

President Boyd stated that the foundation of the University's Strategic Plan is built upon inclusion, diversity, and engagement. In doing so, he defined diversity as providing access to people of all backgrounds, including those from urban areas, rural communities, the underserved, first-generation college students, adult learners, and veterans. He explained that diversity and access go hand-in-hand with UT's mission as a land grant university. President Boyd noted that while the University has done a great deal to expand access, more needs to be done. In the coming months, he will be working with the senior leadership team to develop plans to further advance access to the University.

Enhancing Educational Excellence. In discussing Educational Excellence, President Boyd noted that he had attended nine commencement ceremonies and shook hands with 4,500 of the University's 13,511 graduates. The number of graduates is a new record for the University and a testament to the work being done to increase enrollment and retention across the UT System. President Boyd then turned to the recurring theme of affordability and echoed the sentiments expressed at the meeting of the Finance and Administration Committee regarding the serious consideration given prior to increasing tuition and fees. He stated that the University strives to ensure that it is a good financial steward in order to limit the need to increase tuition and fees, which, if taken as an average, amount to only a 1% increase per year over the last five years. President Boyd noted that students whose families earn less than \$60,000 a year are eligible to participate in the UT Promise, subject to meeting the other qualification requirements, which allows them to attend the University without paying tuition and mandatory fees. He also pointed out that systemwide, over 50% of the University's students are graduating with zero debt.

Expanding Research Capacities. Earlier in the week, Dr. Sethuraman Panchanathan, Director of the National Science Foundation (NSF), visited UT Knoxville to announce that the campus had been selected to receive \$18 million in funding to establish a new Center for Advanced Materials and Manufacturing (CAMM). The new Center will develop sophisticated artificial intelligence (AI) and computational tools and deploy them in the design and synthesis of next-generation materials in two areas (quantum materials and materials for extreme environments). This funding evidences the fact that UT is earning national recognition for its research reputation.

Fostering Outreach and Engagement. In February, the University launched the Grand Challenge initiative, focusing on three key areas impacting the state: (i) advancing K-12 education; (ii)

strengthening rural communities; and (iii) overcoming addiction. To support that work, the University established a \$5 million fund to provide grants to develop innovative, collaborative programs to address these pressing needs. President Boyd stated that since the program was announced, the University has seen an increase in collaborative announcements, including:

- UTHSC unveiled a mobile health unit in May to expand rural health care access in Tennessee. Funded through a four-year, \$3.9 million grant to the UTHSC College of Nursing from the Tennessee Health Resources and Services Administration, the unit will increase health care access in the underserved Lake and Lauderdale counties and allow the College to integrate rural health education into its undergraduate and graduate programs.
- Professor Claire Paul (UT Southern) and John Lacey (UT System) are creating a state-wide collaborative network designed to address the problem of access and awareness of disability services faced by families with children who have intellectual and developmental disabilities living in rural communities.

Ensuring Workforce and Administrative Excellence. President Boyd advised the Trustees that the search for the new Chancellor of UT Martin is in the final stages. He expects that by mid-July a candidate will be brought before the Board for consideration. In addition, the search for the next Director of the Oak Ridge National Laboratory is progressing, with final candidates scheduled to be interviewed in July. President Boyd is optimistic that the Director will be selected in the next four to eight weeks.

Campus Safety Tour. President Boyd reminded the Trustees that four years ago, the findings contained in the Sunset Audit prompted him to embark on a safety tour of all campuses. He recently completed the second such tour, joined by Brian Daniels (Chief Audit and Compliance Officer) and Mike Gregory (Executive Director of Emergency Management and Public Safety), as well as several Trustees and legislators. The tour found additional opportunities to continue to advance the University's safety and security efforts. President Boyd indicated that the University will be seeking state funding for these initiatives.

Advocating for UT. President Boyd stressed that the University is fortunate to have elected officials who believe in and support higher education in the state. However, that sentiment is not shared by some in the media or public despite the fact that it has been shown that the lifetime income of an individual with a four-year college degree will be \$1.5 million more than that of a person who has not attended college. Therefore, the University, along with the state's locally governed institutions, has launched a state-wide campaign to emphasize the value of higher education.

Fundraising. President Boyd extended his thanks to the University's advancement team and the UT Foundation for their efforts over the past year, which have positioned the University to reach its second best fundraising year in its history, with a projected \$327.7 million raised. To date, the University has raised \$1.15 billion and is on target to raise \$2.7 billion, which would exceed the \$2.245 billion raised in the previous decade. These funds are critical to ensuring that this will be the greatest decade in UT history.

President's Awards. President Boyd closed his remarks by announcing this year's faculty and staff recipients of the President's Awards – Bold and Impactful Honorees: Dr. James Bailey (UTHSC) and Melissa Smith (UTHSC); Embrace Diversity Honorees: Henrietta Giles (UTM) and Michelle Rigler (UTC); Optimistic and Visionary Honorees: Nan Gaylord (UTK) and Destin Tucker (UTM); Nimble and Innovative Honorees: Dr. David Rausch (UTC) and Patricia Page (UTHSC); Excel in All We Do Honorees: Stephanie Kolitsch (UTM) and Abeer Mustafa (UTC); United and Connected Honorees: Clinton Smith (UTM) and Tomi Rogers (UT IPS); and Transparent and Trusted Honorees: Dr. Heather Sedges (UTK/UT Extension) and Charles Primm (UT System).

In response to a questions raised by and comments received from trustees, President Boyd responded that he hopes that the University will find ways to become more accessible and provide more people with the opportunity to secure an education that will allow them to build a life of accomplishment.

Proposed Amendments to the University Bylaws

Board Chair Compton reminded the Trustees that one of the top policy priorities of the University was to work with the State to create a more efficient path for advancing capital projects. That goal was accomplished with the passage of the Higher Education Capital Projects Modernization Act, which will become effective tomorrow. Among other things, the Act provides that the University may, at its discretion, approve and supervise University capital projects where the project: (i) is managed by the University's Department of Capital Projects; (ii) involves a building or facility used primarily for non-academic purposes; and (iii) is fully funded by donations received from a third party and/or with revenue from self-supporting auxiliary projects. Additionally, such projects must be approved by the Board of Trustees or its designee.

In light of the various provisions of the Act, a new Board policy regarding capital planning and capital projects has been developed, which was included as part of the Consent Agenda. As a result, certain amendments to the Bylaws are being proposed to maintain consistency among the Bylaws, the Act, and the proposed Board policy. In addition, further clarifying edits are also being recommended to the Bylaws to improve the efficiency of the Board's operations and to reflect current terminology used in other recently adopted Board policies (as presented under Tab 1 of the meeting materials).

Upon motion duly made and seconded, a roll call vote was taken, the Board of Trustees unanimously approved the amendments to the University Bylaws (*Resolution 029-2023*).

Committee Reports

Board Chair Compton announced that the Audit and Compliance Committee would not be holding a public meeting until October of this year. Therefore, the Committee will not be providing a report at the Annual Meeting.

Education, Research, and Service Committee. Committee Chair Woodson provided an overview of the items discussed at the Committee meeting held on June 29, 2023, including: (i) a presentation by Dr. Altha J. Stewart (Senior Associate Dean for Community Health Engagement) on UTHSC's Center for Youth Advocacy and Well-Being; (ii) an update on UT System performance compared to its peers; (iii) an analysis of UT System enrollment; (iv) an update on the UT-Gallup Climate Survey intended to gauge how comfortable campus constituencies are regarding diversity of thought and free expression; and (v) a review of the ERS Committee Workplan. She also reviewed the action items being brought forward for the Board's approval as set forth on the Consent Agenda.

Finance and Administration Committee. Committee Chair Rhodes provided highlights from the Committee's meeting held earlier in the day, which included: (i) a report on the University's financial performance for the first three quarters of Fiscal Year 2022-23 compared to the same time last year, with revenue up by 10.9% and expenses up by 7%; (ii) an update on the Enterprise Resource Planning Project, which is both on schedule and on budget; and (iii) a report on tuition, fees, and affordability. He also reviewed the action items being brought forward for the Board's approval as set forth on the Consent Agenda, including the revised project and financing plans for the Lindsey Nelson and Neyland Stadiums at UT Knoxville.

Mr. Rhodes advised the Trustees that the Committee is recommending four items, which were not included on the Consent Agenda, for consideration and approval by the Board (as presented in the meeting materials under Tabs 2 through 3.3). Upon recommendation of Board Chair Compton, the Board considered the four agenda items as one action. Upon motion duly made and seconded, the Board of Trustees unanimously approved: (i) FY 2023-24 Operating Budget (including Salary Plan, Student Tuition and Fees, and Room and Board Rates); (ii) Capital Outlay Funding Requests, FY 2024-25 through FY 2028-29; (iii) Capital Maintenance Funding Requests, FY 2024-25 through FY 2028-29; and (iv) Capital Demolition Funding Requests, FY 2024-25 (*Resolutions 030-2023 through 033-2023*).

Annual Presidential Performance Review

Chair Compton indicated that he conducted an annual review of President Boyd's performance in accordance with the Board's Policy on Presidential Performance Reviews. A full copy of the written assessment, which includes a list of 2022 objectives and accomplishments and a list of 2023 goals and objectives, was included in the meeting materials (Tab 4). Chair Compton provided an overview of the review process, which, he noted is one of the most comprehensive in higher education.

Chair Compton spoke with Chancellors and other members of the senior leadership team, who expressed an interest in providing additional feedback beyond the electronic survey. As required under the Board Policy, President Boyd's performance was discussed with Lt. Governor and Speaker of the Senate Randy McNally and Tennessee Speaker of the House of Representatives Cameron Sexton. In this regard, the feedback was very positive with respect to his performance, the overall direction of the University, and the efforts of the Board. Chair Compton also met with President Boyd to discuss his performance and goals, with two members of the Executive Committee (Decosta Jenkins, Chair of the Audit and Compliance Committee) and Jamie Woodson (Chair of the Education, Research, and Service Committee) joining as observers. Chair Compton noted that President Boyd's performance can be measured by the support the State provides in terms of salary increases, new programming, capital project support, as well as federal program support.

Board Chair Compton noted that nearly 98% of the survey respondents (91 individuals/75% response rate) felt that President Boyd's performance exceeded expectations. Notably, the overall approval rating has increased over the prior review period, and the highest performance categories remain generally consistent with previous results. Of the categories measured, President Boyd received the highest ratings for: (i) providing visionary leadership; (ii) integrity; (iii) providing leadership to ensure the University maintains highly effective relationships with the state legislature/state officials and Tennessee congressional delegation members/federal agencies; and (iv) serving as an effective spokesperson for public higher education in Tennessee.

Chair Compton noted that 2022 was another momentous year for the entire UT System. He also commended President Boyd for the remarkable progress the System has seen during his tenure as president. Most notably, for the period beginning Fall 2018 through Fall 2022, the University's enrollment, graduation rates, and number of degrees awarded have all grown:

- Total Enrollment - 10.3% increase;
- 6-Year Graduation - 2.7% increase;
- 4-Year Graduation - 4.1% increase;
- Bachelor's Degrees Awarded - 9.6% increase; and
- Graduate/Professional Degrees Awarded - 15.3% increase.

Under President Boyd's leadership, the University reached a new record in research and sponsored program expenditures of \$437 million. Systemwide, total research expenditures have increased by 32.4% over the last five years. Board Chair Compton offered examples of the extraordinary research support the University has received:

- In 2022, the General Assembly included \$72 million for the University of Tennessee - Oak Ridge Innovation Institute (UT-ORII). This generous contribution completed the state's \$80 million commitment eight years ahead of schedule. In aggregate, the Institute has received funding in excess of \$144 million, including \$6 million of recurring funding from the State of Tennessee.
- The University was also the recipient of a \$50 million grant that will be used to update/modernize equipment and infrastructure at ten AgResearch and Education

Centers across the state. This investment provides much needed resources for support of the University's research and outreach missions and will allow the University to better serve its constituents.

Chair Compton stated that in addition to the 2023 Goals and Objectives set forth by President Boyd at the 2023 Winter Meeting of the Board, he has asked the President to focus on: (i) succession planning; (ii) capitalizing on recent investments and partnerships; (iii) improving the college-going rate; and (iv) continuing to standardize and streamline operations. Board Chair Compton and President Boyd also discussed the importance of: (i) balancing new and existing initiatives; and (ii) continuing to ensure that senior leadership team members are working to meet the top priorities set by the Board and the President.

Chair Compton also reminded those in attendance that President Boyd has repeatedly turned down offers of compensation for what is an extraordinarily challenging position and cited him as the epitome of a servant leader. Other members of the Board shared their perspectives on President Boyd's performance, which were extremely positive, and praised his passion, optimism, energy, and the relationship he has forged with elected officials and students at every campus. President Boyd thanked the Board for their support and words of encouragement. He also thanked the dedicated individuals across the UT System, who have worked to advance the mission of the University.

Upon motion duly made and seconded, the Board approved the Annual Presidential Performance Review (*Resolution 034-2023*).

University of Tennessee Health Science Center Strategic Plan

Chancellor Buckley directed the attention of the Trustees to the UTHSC Strategic Plan: 2023-2028 ("Strategic Plan" or "Plan"), a copy of which was included with the meeting materials (Tab 5) and distributed at the meeting. He began his presentation by offering his thanks to the members of the Steering Committee who contributed to the development of the Plan. Chancellor Buckley explained that rather than engaging an outside consultant, UTHSC chose to use the development of the Strategic Plan as an opportunity for capacity building that would allow the institution to create a roadmap for its future. The Plan was created using a combination of data analysis, surveys, town hall meetings, interviews, and listening sessions. In addition, the Steering Committee employed a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis as they begin developing the Plan.

The foundation of the Strategic Plan is built upon:

- The UTHSC Mission: "Transforming lives through collaborative and inclusive education, research/scholarship, clinical care, and public service."
- The UTHSC Vision, which was condensed and refined by the Steering Committee into four words: "Healthy Tennesseans. Thriving Communities."

- The Be One UT values, combined with the UTHSC values: HHealth Focused, Science Driven, and Caring and Professional.

In addition, the UT System's Strategic Pillars provided a launch pad for the UTHSC Strategic Plan. Chancellor Buckley described the five pillars of the UTHSC Strategic Plan, each of which include goals and objectives, as well as performance indicators that will be used to measure progress:

- Engaging Communities: Strengthening partnerships to engage communities.
 - Goal: To expand mutually beneficial partnerships towards thriving communities, addressing the health and health-related needs across Tennessee.
- Educational Excellence: Promoting quality interprofessional education.
 - Goal: To provide quality educational experiences that are engaging innovative, and interprofessional to highly qualified students that broadly represent Tennessee.
- Expanding Research: Growing research, innovation, and entrepreneurship.
 - Goal: To enhance collaborative statewide efforts in research, scholarship, innovation and entrepreneurship, focusing on priority areas.
- Advancing Health: Expanding quality care across Tennessee.
 - Goal: To advance the health of Tennesseans by pursuing strategic health care alliances to provide quality care, especially in medically underserved communities.
- Developing Talent: Creating an environment of success for all.
 - Goal: To support the well-being and access of all faculty, staff, and students by providing resources and fostering an environment that promotes UTHSC values.

Chancellor Buckley concluded his presentation by stating that the Plan provides a roadmap for the next five years designed to not only advance the mission and values of the University and UTHSC, but to make an impact on the health of the citizens of the State of Tennessee.

Upon motion duly made and seconded, the Board of Trustees approved The University of Tennessee Health Science Center Strategic Plan (*Resolution 035-2023*).

Consent Agenda

Chair Compton asked if there were any requests to remove any items from the Consent Agenda. There being none, upon motion duly made and seconded, the Board approved: (i) the Resolution to adopt the minutes of the prior meeting of the Board, and (ii) the Resolutions pertaining to the other action items included on the Consent Agenda. (A complete list of the approved items appears at the end of these minutes.)

Other Business

President Boyd advised the Board members that the University is continuing to explore new initiatives that would provide opportunities for nontraditional students to further their education.

President Boyd anticipates providing the Board with an update on these efforts in the coming months.

Closing Remarks

In his closing remarks, Board Chair Compton made the following announcements: (i) the Executive Committee will meet on Friday, September 8, 2023; and (iii) the Fall Meeting of the Board will be held on Friday, October 13, 2023, at the University of Tennessee, Knoxville.

With no further business to come before the Board, the Chair adjourned the meeting.

Respectfully Submitted,

/s/Cynthia C. Moore

Cynthia C. Moore

Secretary and Special Counsel

Approved Consent Agenda Items

- Minutes of the Prior Meeting (Winter Meeting of February 24, 2023)
- Appointment to Standing Committee Bylaws – Campus Advisory Board (UT Southern)
- Items from the Education, Research, and Service Committee
 1. Amendments to Education, Research, and Service Committee Charter
 2. New Academic Programs:
 - Master of Science in Management (UTC)
 - Joint Bachelor of Science in Nursing (UTHSC and UTS)
 - Master of Science in Business Cybersecurity (UTK)
 - Master of Music in Music Education (UTM)
 3. Faculty Handbook Revisions (UTHSC and UTK)
 4. 2023 Institutional Mission Profile Statements
 5. Authorization for Conferral of Degrees, 2023-24 Academic Year
 6. Academic Program Modification: Ph.D. in Evaluation, Statistics, and Methodology (UTK)
 7. Grants of Tenure upon Initial Appointment
 8. Grants of Tenure upon early Consideration
 9. Honorary Degrees, UTK (Robert J. “Bob” Booker and Arthur B. “A.B.” Culvahouse)
 10. Honorary Degree, UTM (Rodney M. Thomsen)
 11. Honorary Degrees, UTS (Hurley Calister “Cal” Turner)
- Items from the Finance and Administration Committee
 1. Board Policy on Capital Project Planning and Approvals
 2. Capital Project – Lindsey Nelson Stadium (UTK)
 3. Capital Project – Neyland Stadium (UTK)
 4. Modification to Carl A. Swafford, Jr. Endowment Fund (UTC)
 5. Modification to Charles C. and Mary Elizabeth Lovely Verstandig Endowment Fund (UTHSC)
 6. Ratification of Quasi-Endowments Created during FY 2022-23
 7. Procedures Governing Compensation Increased during FY 2023-24

8. Naming Proposals for Resident Halls (UTM)
9. Utility Easement to City of Springfield (UTIA)

(See Resolutions 036-2023 through 063-2023)

Attachments

Copies of the following materials were distributed at the meeting and are filed with the official minutes of this meeting.

- UTHSC Strategic Plan: 2023-2028

Attachment 14



THE UNIVERSITY OF TENNESSEE BOARD OF TRUSTEES

MINUTES OF THE EXECUTIVE COMMITTEE January 20, 2023

The Executive Committee of The University of Tennessee Board of Trustees met at 9:00 a.m. (EST) on Friday, January 20, 2023. The meeting was held virtually with all Committee members participating electronically or by telephone. The meeting was hosted from the University of Tennessee, Knoxville campus.

Committee Members Present: John C. Compton, Board Chair; Decosta E. Jenkins; William (Bill) C. Rhodes III; Donald J. Smith; and Jamie R. Woodson.

Others in Attendance:

Trustees: Christopher L. Patterson. Also in attendance was T. Lang Wiseman, who has been appointed to the Board by Governor Lee and whose confirmation is pending before the Tennessee General Assembly.

University Officers: President Randy Boyd; Brian Daniels, Chief Audit and Compliance Officer; David Miller, Senior Vice President and Chief Financial Officer; Cynthia C. Moore, Secretary and Special Counsel; Chancellors Steve Angle (UTC), Peter Buckley (UTHSC), Keith Carver (UTM), Linda Martin (UTS), and Donde Plowman (UTK); and other members of the senior leadership team.

Ms. Moore announced the presence of a quorum. The meeting was webcast for the convenience of the University community, the general public, and the media.

Remarks of the Committee Chair

Board Chair John C. Compton, who also serves as Chair of the Executive Committee, opened the meeting and provided an overview of the meeting agenda.

President's Update

Review of 2022 Objectives and Results

President Boyd's update highlighted key accomplishments of the prior calendar year as measured against the objectives set for 2022. His report was organized under the five pillars of the UT System Strategic Plan: Enhancing Educational Excellence; Expanding Research Capabilities; Fostering Outreach and Engagement; Ensuring Workforce and Administrative Excellence; and Advocating for UT. A copy of the written year-end report (*2022 Objectives and Results*) was included in the meeting materials under Tab 1 and is filed with these minutes.

Enhancing Educational Excellence. Many higher education institutions across the country are reporting enrollment decreases in 2022; however, the UT System saw enrollment continue to rise. Based on the most recent data available, President Boyd expects that admissions in 2023 will break the record set in 2022. He noted that housing constraints continue to be a concern for the UT Knoxville campus, but the other campuses have capacity to grow enrollment. President Boyd attributed the increase in enrollment to a number of factors, including:

- *UT Promise.* Since inception, more than 1,000 students have taken advantage of the UT Promise to enroll at the University. In 2022, the household income threshold was raised from \$50,000 to \$60,000, which has further expanded the potential number of prospective, qualified students that may be eligible to attend the University free of tuition and fees.
- *Value.* While the national narrative focuses on the cost of higher education and the levels of student debt, such is not the case at the University of Tennessee. Approximately 50% of students across the UT System graduate with zero debt.
- *Tuition.* Over the past several years, the University and its campuses have worked to avoid tuition increases. UT Knoxville and the UT Health Science Center have not increased tuition in four years. The other campuses have followed that same trend, with only two campuses having imposed very small increases.

The University is also working to increase enrollment by expanding its online presence to assist working adults and those who may not otherwise have convenient access to a University campus. UT Martin continues to receive accolades for its online MBA program, and UT Knoxville is in discussions with Arizona State University regarding a potential affiliation that may further expand UT Knoxville's online offerings.

Expanding Research Capabilities. In 2022, research expenditures reached \$437 million, setting a new record for the University. The University also worked to advance a statewide collaboration (TN GO – Transportation Network Growth and Opportunity) focused on strategically growing and sustaining Tennessee's future mobility innovation economy to make Tennessee a national leader in research and manufacturing of electric vehicles.

Fostering Outreach and Engagement. President Boyd reminded the Executive Committee members that as a land grant institution, it is the University's mission to serve the citizens of the State of Tennessee. In that regard, the University works with state officials to identify opportunities to improve the lives of the residents of Tennessee. A few of the key programs and initiatives from the past year included:

- *Healthy Smiles Initiative.* Funding (\$50 million) will be used to increase the number of dental students and to open six new clinics across the state.
- *Grow Your Own.* The Tennessee Department of Education selected the University as its partner in the federally funded initiative. This \$20 million investment will create an apprenticeship program to address the shortage of teachers in the state.

- *Economic Impact.* As just one example of the University's many contributions to the State, the Institute of Public Service's Center for Industrial Studies facilitated more than \$960 million in economic impact through its work assisting Tennessee businesses.

Ensuring Workforce and Administrative Excellence. During the past year, the University made strides in its work to ensure workforce and administrative excellence, including building the foundation to implement a new enterprise resource planning system (ERP). The new system, known as DASH (Dynamic Administrative Systems for Higher Ed), is on track to go live in July 2024. This past year, the University also participated in the Great Places to Work® employee survey and earned recognition as a "2022 Great Place to Work." The survey also provided the University with additional insight on how to continue to improve employee satisfaction.

Advocating for UT. President Boyd observed that advocating for UT takes many forms. A few examples include the "Everywhere You Look, UT" murals across Tennessee and the statewide tour to promote the UT Promise. He indicated that one of the best measurements of the strength of an institutional brand is the support received from stakeholders. Last year, the University set a record for the number of donors investing in the University and its programs, making it the second highest year in fundraising dollars (\$248.8 million). In addition, the University received record-setting, financial support from the State of Tennessee, which included: \$27.7 million in formula funding; 4.6% in funding for salary pool; \$156.9 million for capital needs; \$50 million for the ERP/DASH system; \$72 million for the UT-Oak Ridge Innovation Institute; and \$4 million in recurring funding for Institute of American Civics, with an additional \$2 million in nonrecurring funds. This extraordinary funding underscores the level of trust and enthusiasm that elected officials have in the University.

In concluding his remarks regarding the year's accomplishments, President Boyd recognized and thanked the faculty and staff from across the entire UT System for their many contributions that contributed to the University's success in 2022.

Leadership Updates

President Boyd provided an update on a number of senior leadership positions.

- *UT Southern Chancellor Update.* In light of the many important initiatives underway at UT Southern, including the efforts pertaining to the development of a new strategic plan and a campus master plan, President Boyd has extended Linda Martin's appointment as Interim Chancellor for another year.
- *President of UT Research Foundation (UTRF).* After a nationwide search lasting over four months, Dr. Maha Krishnamurthy was selected to lead UTRF as its next President.
- *Ongoing Searches.* President Boyd advised that searches are still underway for the Vice President of Research and for the Director of the Oak Ridge National Laboratory.

University of Tennessee Institute of Agriculture (UTIA) Progress Report

President Boyd provided a cumulative progress report for UTIA covering the period since the reunification of UT Knoxville and UTIA in 2019.

Rankings. He reminded the members of the Committee of some of the initial goals associated with the reunification, including the anticipated improvement of the Higher Education Research and Development Survey (HERD) rankings of both UT Knoxville and UTIA. In 2017, while HERD ranked UT Knoxville in the top 100 schools (placing at 71st), UTIA was ranked 123rd. Since reunification, UT Knoxville-UTIA has seen a dramatic rise in the HERD ranking, moving up to 54th, raising the profile of UTIA and advancing its ability to recruit exceptional faculty and students and to better compete for external research funding.

Extension Highlights. President Boyd visited every Extension Office in order to gather input from those working directly on agricultural issues in Tennessee. One issue that came up repeatedly was the need for more Extension agents. After working with the Governor's office, the State provided support for 32 new agents in distressed and at-risk counties across Tennessee. The tour also spotlighted the disparities that exist between the Extension Offices. UTIA partners with counties to provide space for the Extension Offices located in their region. However, not all counties can provide the same level of resources to support these offices. The University is working to improve all of the offices. Over the past three years, funding was made available to renovate or replace ten extension offices.

Research Highlights. In 2022, UTIA saw research expenditure rise to \$80 million, representing a 12% increase and one of the largest increases in many years. One of those awards was a five-year, \$30 million grant from the U.S. Department of Agriculture to support Climate-Smart Grasslands. These research dollars build upon the \$50 million grant awarded by the State at the end of 2021 to update and modernize the equipment and infrastructure at UTIA's ten AgResearch and Education Centers across the state.

Herbert College of Agriculture. Since 2019, enrollment at the Herbert College has increased by 8.5%. In addition, UT Knoxville invested over \$31 million to support "cluster hiring" in four major departments: Bioinformatics; Climate-Smart Agriculture and Forestry; Food and Nutrition Security; and Precision Health. This strategic investment will build the strength and reputation of each of those departments. Additionally, elevation of the Department of Forestry, Wildlife and Fisheries to the School of Natural Resources, which was approved by the Board at its 2022 Fall Meeting, will increase the profile of the School and College.

College of Veterinary Medicine. The College of Veterinary Medicine has made great strides over the past three years, attributable to: (i) enrollment growth (from 340 to 480 students, a 41% increase); (ii) increased funding from the State (\$311,900 recurring in 2021, followed by \$2.9 million recurring in 2022); and (iii) a transformational gift that established the Charles and Julia Wharton Large Animal Hospital.

UT Knoxville Support. In addition to the cluster hiring support, UT Knoxville has also invested close to \$12 million to support extension and administrative salaries, infrastructure upgrades, the One Health Initiative, and the opening of the UT Creamery.

Creating the Best Decade in UTIA History. Looking ahead, UTIA will begin working with internal and external stakeholders to develop a new strategic plan. Other stretch goals and big ideas under consideration include:

- Doubling enrollment at the Herbert College of Agriculture;
- Increasing annual research expenditures to over \$150 million;
- Creating the Tennessee Protein Innovation Center;
- Collaborating with local partners to modernize Extension Offices;
- Providing opportunities for young people participating in 4-H to receive college credit;
- Increasing access through online curriculum offerings to traditional and non-traditional students; and
- Establishing a Veterinary Technician Program in the College of Veterinary Medicine.

President Boyd concluded his remarks by noting that he and his team are currently in the process of developing goals and objectives for 2023, using input from stakeholders throughout the UT System. A draft of those goals will be shared with the Board prior to the Winter Meeting in February.

Following President Boyd's report, Chair Compton, on behalf of the Board, expressed gratitude to the Governor and legislature for the generous support of the University and its programs.

Responding to a question raised by the Chair, Chancellor Donde Plowman advised the Committee members on enhancements to UT Knoxville's admissions process, including increased transparency and efforts to coordinate admissions decisions with other UT campuses. Chancellors Angle, Carver, and Martin expressed their support and added that the campuses are also prepared to assist students in transferring to another UT campus later in their studies. Chancellor Peter Buckley shared that Tennessee's "Healthy Smiles" initiative is having a positive impact on the College of Dentistry.

Letters of Notification

Interim Chancellor Linda C. Martin* explained that the Tennessee Higher Education Commission (THEC) made recent revisions to the process for bringing forward new academic programs for approval. THEC now requires that Letters of Notification (LONs) of new programs/majors be approved by the institution's governing board prior to the initial submission to THEC (as further described under Tab 2 of the materials). Dr. Martin stated that given the time sensitivities for initiating the filing and review process, the Administration is seeking approval of three LONs by the Executive Committee, rather than waiting until the February meetings of the Education, Research, and Service (ERS) Committee and the Board of Trustees. She further highlighted that such approval is limited to the advancing the initial filings with THEC and that the actual approvals for moving forward with the proposed programs/majors will be presented to the ERS Committee at a later date.

* *Dr. Savarese, Acting Vice President for Academic Affairs and Student Success, was unable to attend the Executive Committee meeting due to a scheduling conflict and requested that Dr. Martin present this item.*

Upon motion duly made and seconded, the Executive Committee, on behalf of the Board of Trustees, by unanimous roll call vote approved the following Letters of Notification and authorized submission of the same to THEC: (i) Master of Management Program at UT Chattanooga (*Resolution 001-2023*); (ii) Bachelor of Science in Business in Environmental Engineering at UT Knoxville (*Resolution 002-2023*); and (iii) Doctor of Philosophy in Agriculture, Leadership, and Communication at UTK/UTIA (*Resolution 003-2023*). Following approval of the resolutions, President Boyd indicated that the Administration would be reaching out to THEC to revisit the change to the process and the need for this new requirement.

Planning for Winter Board Meeting

Chair Compton reviewed key topics planned for the upcoming meetings of the Board and its Committees, which will be held at UT Chattanooga on February 23 and 24, 2023. Among other things, the agenda for the Board meeting will include an update on the Institute of American Civics.

Dr. Buckley provided a brief update on the efforts that have been taken over the past year to address the issues, which caused the UT Health Science Center College of Medicine (Memphis) to be placed on probationary status. He advised that in October, the Accreditation Council for Graduate Medical Education (ACGME) removed the College of Medicine from probationary status. In addition, the residency program in Chattanooga received commendation for excellence in its residency training from the ACGME during the reaccreditation process. The College of Medicine is now fully accredited across the UT System. In connection with the Winter Meeting, the materials will include detailed information pertaining to the Annual Institutional Review.

Consent Agenda

Chair Compton asked if there were any requests to remove any items from the agenda. There being none, upon motion duly made and seconded, the Board approved: (i) the Resolution to adopt the minutes of the prior meeting of the Board, and (ii) the Resolution adopting the 2023 Board Meeting Calendar Agenda.

Other Business and Closing Remarks

Chair Compton announced that following the conclusion of today's meeting, the Executive Committee would meet in a nonpublic executive session pursuant to Tennessee Code § 4-35-108 to discuss items designated as confidential or privileged and not subject to public inspection under the state law.

Adjournment

With no further business to come before the Committee, the Chair adjourned the meeting.

Respectfully Submitted,

/s/Cynthia Moore

Cynthia C. Moore

Secretary and Special Counsel

Approved Consent Agenda Items

- Minutes of the Prior Meeting (September 9, 2022)
- 2023 Board Meeting Calendar (*Resolution 004-2023*)

Attachments. Copies of the following items are filed with the official minutes of this meeting.

- President's 2022 Objectives and Results
- PowerPoint Presentation – Igniting the Greatest Decade

Attachment 15



THE UNIVERSITY OF TENNESSEE BOARD OF TRUSTEES

MINUTES OF THE FALL MEETING OF THE BOARD OF TRUSTEES

October 28, 2022

The University of Tennessee Board of Trustees met at 11:15 a.m. (CDT) on Friday, October 28, 2022. The meeting was held in the Duncan Ballroom of the Boling University Center located at the University of Tennessee at Martin, in Martin, Tennessee.

Trustees Present: John C. Compton, Board Chair; Bradford D. Box; Hayden Galloway (Student Trustee); Charles Hatcher, Commissioner, Tennessee Department of Agriculture; Decosta E. Jenkins; Shanea A. McKinney; Christopher L. Patterson; William (Bill) C. Rhodes III; Donald J. Smith; David N. Watson; and Jamie R. Woodson.

University Officers in Attendance: President Randy Boyd; Cynthia C. Moore, Board Secretary and Special Counsel; Chancellor Steve Angle (UT Chattanooga); Chancellor Peter Buckley (UT Health Science Center); Chancellor Keith Carver (UT Martin); Interim Chancellor Linda Martin (UT Southern); and Chancellor Donde Plowman (UT Knoxville). Other members of the UT senior leadership and administrative staff were also in attendance.

Ms. Moore announced the presence of a quorum. The meeting was webcast for the convenience of the University community, the general public, and the media.

Opening Remarks by the Chair

Board Chair Compton opened the meeting and welcomed Reverend Sam Chambers, Campus Minister, UT Martin Wesley Foundation, who provided the invocation. Chair Compton thanked Keith Carver, Chancellor of UT Martin, and his team for hosting the Board over the past two days. He concluded his opening remarks by expressing the Board's gratitude to the Governor and legislature for the unprecedented levels of support provided to the University.

Requests to Address the Board

Chair Compton introduced Tricia Lebkuecher, a Campaigner with the People for the Ethical Treatment of Animals ("PETA"), who registered to address the Board. During her remarks, Ms. Lebkuecher urged the UT Health Science Center ("UTHSC") to discontinue the use of live animals in emergency medical training in favor of human simulation models. She requested that the Board work with UTHSC to ensure that such action is taken. Board Chair Compton, President Randy Boyd, and UTHSC Chancellor Peter Buckley responded by thanking Ms. Lebkuecher for her remarks.

President's Update

President Boyd opened his remarks by thanking the Trustees, campus leaders, faculty, and staff for their service and efforts on behalf of the University. He also recognized Chancellor Carver and the UT Martin community for their contributions to the success of the Board events held over the past two days.

Moving on to his report, President Boyd charted the progress of the University has made as measured against the five pillars of the UT Strategic Plan:

Enhancing Educational Excellence. Echoing the reports provided at the Education, Research and Service Committee meeting, President Boyd noted that over the last five years, the six-year graduation rate has improved. While enrollment growth has been stagnant or dropping at many institutions across the country, over the past year, the University saw total enrollment increase by nearly 4% to more than 56,000 students.

More than 8,800 high school students applied for admission as UT Promise scholarship students, with 1,111 of those applicants being admitted. President Boyd expressed his hope that the recently completed UT Promise tour would result in more applicants and recipients for the next academic year. He highlighted a unique component of the program that requires UT Promise recipients to complete community service every semester. In the last academic year, UT Promise recipients have contributed approximately 12,800 hours of community service, making it one of the most impactful community service projects in higher education.

The University is also working to increase enrollment by expanding its online presence. UT Martin's recently established online MBA has been recognized as one of the top-ranked programs in the country. In addition, UT Knoxville is looking to partner with Arizona State University, one of the leaders in online education, in an effort to enhance the number of its digital degree programs.

Expanding Research Capacities. President Boyd indicated that there are searches for three positions that will play a significant role in advancing the University's research initiatives: (i) President of the UT Research Foundation; (ii) Vice President of Research; and (iii) Director of the Oak Ridge National Laboratory. It is hoped that these searches will be complete in advance of the 2023 Winter Meeting of the Board.

Fostering Outreach and Engagement. Over the past few years, the Office of Governmental Relations and Advocacy has been working with government officials to build an even stronger partnership to benefit the citizens of Tennessee. Recently, the University and the State announced a number of new partnerships:

- *Grow Your Own:* The Tennessee Department of Education selected the University as its partner in a federally funded initiative known as "Grow Your Own." This \$20 million investment will create an apprenticeship program to address the shortage of teachers in the state.

- Governor Bill Lee recently announced the establishment of a \$100 million Violent Crime Intervention Fund that will provide grants to local law enforcement agencies to develop methods to strengthen public safety in communities across Tennessee. The UT Institute for Public Service’s Law Enforcement Innovation Center received a \$5 million grant to develop a program to assist law enforcement agencies in successfully applying for grants from the fund.
- Governor Lee also worked with the state legislature to establish the “Healthy Smiles Initiative.” The Tennessee Department of Health was awarded \$94 million to establish the program. The College of Dentistry, as the recipient of a five-year grant (which could reach \$53 million) will allow the College to increase the dental workforce across Tennessee in rural communities, where the need is greatest. In addition, the College plans to open three new dental clinics in underserved and/or rural areas, with a goal of opening another three additional clinics in the near future.

Ensuring Workforce and Administrative Excellence. President Boyd noted that while the University is honored to be recognized as a “2022 Great Place to Work,” it wants to ensure that it maintains that designation. To that end, the University is continuing to use surveys to gauge how it can better serve faculty and staff. President Boyd stated that he and Board Chair Compton also hold regular meetings with the University Faculty Council (“UFC”). At the most recent meeting with the UFC, they discussed how to continue to support the needs of faculty and students.

The University also continues to work on campus safety. In 2019, President Boyd, Brian Daniels (Chief Audit and Compliance Officer), and Michael Gregory (Director of Special Events and Emergency Management Services) visited the University’s campuses to discuss safety and security. The group will conduct another system-wide visit in 2023.

Advocating for UT. In November, President Boyd and Chancellor Buckley will be embarking on tour to promote UTHSC and the services it provides across the state. The tour – dubbed “Everywhere You Look, UTHSC” – will include stops at several UT-affiliated hospitals and clinics to underscore the leading role that UTHSC plays in efforts to change health outcomes in Tennessee.

President Boyd announced that last year marked the second highest fundraising year in the history of the University. Current data indicates that the University is on track to exceed the levels reached last year, with the first quarter seeing gifts increase 28% from the same period last year. The number of donors is also higher, with a significant number of major gifts in the pipeline.

President Boyd highlighted a few areas that the University will focus on during the upcoming legislative session, including support for: (i) graduate medical education; (ii) College of Veterinary Medicine and UTHSC, which units are not covered by formula performance funding; and (iii) addressing the opioid crisis through the Substance Misuse and Addiction Resource for Tennessee (“SMART”) Initiative.

At a future meeting of the Board, President Boyd hopes to be able to provide more information on the Tennessee Mobility Innovation Initiative (a partnership with University of Tennessee, Oak Ridge National Laboratory, the Tennessee Valley Authority, and Vanderbilt University), which is conducting research designed to assist Tennessee in becoming a national leader in research and development of electric and autonomous vehicles and energy storage by 2026. The University plans to partner with the Tennessee Department of Economic and Community Development to secure the support for resources for these efforts.

Capital Projects. President Boyd concluded his update by providing a brief overview of capital projects. In total, the University has 1,200 different buildings valued at \$9 billion. President Boyd reviewed ongoing and planned major construction projects, including two major buildings that are scheduled for completion in early 2023: (i) the Energy and Environmental Science Research Building at the UT Institute of Agriculture, and (ii) the Delta Dental Building at UTHSC.

President Boyd noted that the Tennessee Higher Education Commission (“THEC”) provides recommendations to the Governor on capital projects. He provided an overview of the University’s capital, maintenance and demolition projects supported by THEC. He concluded his remarks by indicating that the next step in the process will be securing support of the THEC recommendations by the Governor and the state legislature.

Committee Reports

Audit and Compliance Committee. Committee Chair Jenkins provided a brief report on the Committee meeting held earlier in the morning. At that meeting, the Committee received updates on: (i) the Business Continuity Planning Engagement; (ii) Emergency Planning activities; and (iii) the Annual Security and Safety Reports required pursuant to the Clery Act. The Committees members were pleased with the focus on safety and security at the UT campuses; however, members requested that future reports include further information on statistics and metrics so that the Committee and the Board can more easily assess the safety and security at a campus level from year-to-year. There were no action items brought before the Committee for consideration by the Board.

Education, Research, and Service Committee. Committee Chair Woodson an overview of the items discussed at the meeting, including: (i) UT System Student Success Indicators; (ii) the Student Experience Survey; (iii) Periodic Post-tenure Performance Review; and (iv) the annual report on intercollegiate athletics from an academic performance perspective. She noted that the Committee is recommending approval of a number of items, which appear on the Board’s Consent Agenda, most notably - the establishment of a new academic unit (School of Natural Resources at the UT Institute of Agriculture), and the awarding of an honorary degree to former Governor William “Bill” Haslam by UT Knoxville.

Finance and Administration Committee. Committee Chair Bill Rhodes provided highlights from the Committee’s meeting held the day before, noting that Fiscal Year 2022 financial performance was overall positive, driven by enrollment growth, a return to more in-person activities, and awards from the Federal Higher Education Emergency Relief Fund. The Committee also received

reports on: (i) FY 2022 Year-End Fund Balances; (ii) Composite Financial Index scores for the System and its campuses; and (iii) an update on the status of the implementation of the enterprise resource planning project “DASH” (Dynamic Administrative Systems for Higher Ed). Mr. Rhodes also reviewed the action items that have been brought forward for the Board’s approval as set forth on the Consent Agenda.

Mr. Rhodes advised the Board members that the Committee is recommending one item for consideration and approval by the Board that is not on the Consent Agenda, which item is the University’s FY 2023-24 Operating Budget Appropriations Request for Specialized Units (as further described in the meeting materials under Tab 1). Upon motion duly made and seconded, a roll call was taken, and the Board of Trustees unanimously approved the Fiscal Year 2023-2024 Operating Budget Appropriations Request for Specialized Units (*Resolution 081-2023*).

University of Tennessee at Martin Strategic Plan

Keith Carver, Chancellor of UT Martin (UTM), began his presentation with a video featuring members of the UT Martin community expressing their support for the “UT Martin Strategic Plan – Prepare for Takeoff 2.0 (2022-2025).” A copy of the Strategic Plan was included with the meeting materials (Tab 2).

Chancellor Carver provided background information on the campus’ last strategic plan, approved by the Board in 2018, and the progress made against the goals contained in the 2018 Strategic Plan. He indicated that the process of benchmarking progress against the identified goals was interrupted during the pandemic, and it provided an opportunity for the campus to consider ways in which the 2018 Strategic Plan could be updated and aligned with the UT System Strategic Plan.

Work on the updated strategic plan began in April 2022, and it included broad-based community input. The foundation of the refreshed plan is built on UTM’s mission statement: “The University of Tennessee at Martin educates and engages responsible citizens to lead and serve in a diverse world.” Chancellor Carver outlined the goals contained in the new plan:

- *Goal I:* Prepare graduates to be responsible, informed, and engaged citizens in their workplaces and the larger community.
- *Goal II:* Recruit, retain, and graduate students prepared for careers, professions, and life.
- *Goal III:* Ensure a campus that is open, accessible, and welcoming to all.
- *Goal IV:* Promote strategic, sustainable, and responsible stewardship of human, financial, and capital resources in support of university goals and objectives.
- *Goal V:* Through service and advocacy, UTM will improve the vitality and prosperity of West Tennessee and beyond.

UTM will utilize a dashboard to measure the progress made against the stated goals. It is hoped that refreshed Strategic Plan will position UTM to be a leader in educating the workforce needed

for the manufacturing sector, particularly for Ford's Blue Oval City and its affiliated suppliers. UTM also wants to grow enrollment and retention by providing more opportunities for internships, international travel, and undergraduate research. A unique feature of this student-centered approach will be the development of a co-curricular transcript that includes not only a student's academic record, but also their participation in student activities, internships, and community service.

UTM also wants to build on the extraordinary philanthropic support it has received over the course of its capital campaign, which has reached 95% of its goal of \$175 million (\$46 million for student scholarship assistance). UTM also secured the largest gift commitment in UT System history when Melanie Smith Taylor and her family announced the bequest of Wildwood Farm in Germantown, Tennessee to the campus.

Chancellor Carver concluded his presentation by stating that the overarching goals of the strategic plan are: (i) to position UTM to be a vibrant, leading component of the UT System; (ii) to be seen as West Tennessee's public university; and (iii) to improve the vitality and prosperity of UTM's home region.

Board Chair Compton congratulated Chancellor Carver and the UTM community on the progress that has been made on the goals articulated in the 2018 Strategic Plan. He encouraged Chancellor Carver to work with President Boyd and other members of the UT System to achieve the goals stated in the new strategic plan, including focusing efforts on the capital needed to support the construction of new facilities and renovations of existing buildings, particularly the residence halls.

Upon motion duly made and seconded, the Board of Trustees unanimously approved The University of Tennessee at Martin Strategic Plan – Prepare for Takeoff 2.0 (2022-2025) (*Resolution 082-2023*).

Consent Agenda

Chair Compton asked if there were any requests to remove any items from the agenda. There being none, upon motion duly made and seconded, the Board approved: (i) the Resolution to adopt the minutes of the prior meeting of the Board, and (ii) the Resolutions pertaining to the other action items included on the Consent Agenda. (A complete list of the approved items appears at the end of these minutes.)

Closing Remarks

In his closing remarks, Board Chair Compton noted that over the past two days, the Board members have heard presentations that underscore the current state of the US economy. He asked the Board members, President Boyd, and members of the administration to think of ways in which the University might be able to provide additional support to its students and their families at this time.

Board Chair Compton concluded his remarks by expressing his gratitude to the student athletes and coaches at all of the campuses for their efforts on the field and the pride and inspiration it brings to the entire University community.

With no further business to come before the Board, the Chair adjourned the meeting.

Respectfully Submitted,

/s/Cynthia C. Moore

Cynthia C. Moore

Secretary and Special Counsel

Approved Consent Agenda Items

- Minutes of the Prior Meeting (Annual Meeting of June 24, 2022)
- Annual Report to the General Assembly
- Resolution Appointing a Managerial Group for U.S. Government Contracts
- Items from the Education, Research, and Service Committee
 1. Peer and Aspirational Peer Institutions (UT System and UT Campuses)
 2. New Academic Unit - School of Natural Resources, UTK
 3. New Academic Program Modifications
 - Bachelor of Applied Science in Information Technology and Cybersecurity, UTC
 - Bachelor of Science in Business Administration with a Major in International Business, UTK New Academic Programs
 4. Grant of Tenure upon Initial Appointment
 5. Granting of an Honorary Degree, UTK
 6. Approval of the Comprehensive List of Academic Programs
 7. Ratification of Administrative Action to Terminate or Inactivate Academic Programs
- Items from the Finance and Administration Committee
 1. Campus Master Plan Amendment, UTK
 2. College of Business Building Project Increase, UTK
 3. Acquisition of Property in Milan, TN, UTK
 4. Campus Master Plan Boundary, UTS
 5. Voluntary Retirement Incentive Plan, UTM
 6. Report on Uses of FY 2022 Tuition & Fee Revenue