

William Link

vs.

Manny Diaz

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Deposition of:

Marshall Criser, III

August 19, 2022

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*Vol 01*

**PHIPPS REPORTING**

*Raising the Bar!*

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

CASE NO. 4:21cv271-MW/MAF

WILLIAM A. LINK, et al.,

Plaintiffs,

vs.

MANNY DIAZ, JR., in his  
official capacity as Florida  
Commissioner of Education,  
et al.,

Defendants.

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VIDEO-RECORDED DEPOSITION OF 30(b)(6) REPRESENTATIVE OF  
BOARD OF GOVERNORS  
(Marshall McAllister Criser, III)

Friday, August 19, 2022

9:01 a.m. - 4:12 p.m.

GRAY|ROBINSON

301 South Bronough Street, #600

Tallahassee, Florida 32301

STENOGRAPHICALLY REPORTED BY:

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22

23

24

25

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1 The following proceedings began at 9:01 a.m.

2 THE VIDEOGRAPHER: We are now on the  
3 record. The time is now 9:01 a.m. This is the  
4 video-recorded deposition of Marshall Criser, a  
5 corporate representative of the Florida Board  
6 of Governors, in the matter of William Link vs.  
7 Manny Diaz.

8 This deposition is being held in  
9 Tallahassee, Florida, on August 19, 2022. The  
10 videographer is Jordan McHugh, and the  
11 stenographer is Sandra Nargiz, both in  
12 association with Phipps Reporting.

13 Will counsel and all parties present state  
14 their appearances and who they represent, after  
15 which the court reporter will swear in the  
16 witness.

17 MS. JASRASARIA: Good morning. My name is  
18 Jyoti Jasrasaria, I am here on behalf of  
19 plaintiffs and I'm at Elias Law Group.

20 MR. HANCOCK: William Hancock, also from  
21 Elias Law Group, also for plaintiffs.

22 MS. FROST: Elisabeth Frost, also Elias  
23 Law Group, also for plaintiffs.

24 MS. SHIRLEY: Vikki Shirley, general  
25 counsel, Board of Governors, defendants.

1 MS. LUKIS: Ashley Lukis, GrayRobinson,  
2 Board of Governors.

3 THE WITNESS: Marshall Criser, chancellor  
4 for the State University System and the Board  
5 of Governors, defendant.

6 THE STENOGRAPHER: Would you raise your  
7 right hand, please? Do you swear or affirm  
8 that the testimony you are about to give will  
9 be the truth, the whole truth, and nothing but  
10 the truth?

11 THE WITNESS: I do.

12 THE STENOGRAPHER: Thank you.

13 Thereupon,

14 30(b)(6) REPRESENTATIVE OF THE BOARD OF GOVERNORS

15 CHANCELLOR MARSHALL McALLISTER CRISER, III

16 having been first duly sworn or affirmed, as

17 hereinafter certified testified as follows:

18 DIRECT EXAMINATION

19 BY MS. JASRASARIA:

20 Q Good morning, Chancellor. As I said, my  
21 nay is Jyoti Jasrasaria, and I'm an attorney with  
22 the law firm Elias Law Group, and I represent  
23 plaintiffs in this matter.

24 Could you please state your full name for  
25 the record.

1           A     Marshall McAllister Criser, III.

2           Q     **Have you ever been deposed before,**  
3     **Chancellor?**

4           A     I have.

5           Q     **About how many times?**

6           A     Once.

7           Q     **Okay. Do you know -- do you remember when**  
8     **that was?**

9           A     More than 20 years ago, 25, 30 years ago.

10          Q     **Okay. And was that in your personal**  
11     **capacity or on behalf of the Board of Governors?**

12          A     No. That was a matter at the Florida  
13     Public Service Commission, and I was working for --  
14     I think at that time it would probably have been  
15     BellSouth.

16          Q     **Okay. Have you ever testified in court?**

17          A     I have not.

18          Q     **Okay. So let's spend a few minutes**  
19     **talking about how a deposition works to refresh your**  
20     **memory and to ensure that we're all on the same**  
21     **page.**

22                     So I'll be asking questions; you will be  
23     **answering. You understand that, correct?**

24          A     Yes.

25          Q     **And your answers will be under oath,**



1 meaning that you're swearing to their truthfulness  
2 and accuracy, the same as if you were in court  
3 today.

4 Do you understand that?

5 A Yes.

6 Q The court reporter is here to take  
7 everything down, and we'll need a clear verbal  
8 record. And so can you agree to provide verbal  
9 answers rather than shaking your head or saying  
10 something like "uh-huh" or "uh-uh"?

11 A Yes.

12 Q And I'll try my best not to interrupt you,  
13 I would appreciate if you could do the same for me.

14 Will you agree to listen to each question  
15 before you answer?

16 A Yes.

17 Q And if you answer a question, I'll assume  
18 that you understood the question; is that fair?

19 A That's fair.

20 Q And if you don't understand or don't hear  
21 a question, please let me know and I am happy to  
22 repeat it.

23 Does that work?

24 A Yes.

25 Q If you need a break at any time, please

1 just let me know. I will try to take a break, but  
2 I'm not going to be following my watch. And so feel  
3 free if you need a bathroom break or just like to  
4 stretch your legs or whatever, please let me know.  
5 The only thing I'll ask is that if you -- if there  
6 is a question pending, if I've asked a question,  
7 that you answer the question before we break.

8 Does that work?

9 A Yes.

10 Q And if you're answering a question then  
11 and you think of something that might help you  
12 remember or give a more accurate answer -- for  
13 example, if there is a document or something like  
14 that -- please tell me and we might be able to get  
15 them.

16 Does that work?

17 A Yes.

18 Q Great. We can get started.

19 So as you know, this deposition was  
20 noticed pursuant to Federal Rule of Civil Procedure  
21 30(b)(6) and directed at the Board of Governors.

22 Have you seen the notice for this  
23 deposition?

24 A Yes, I believe I have.

25 Q Okay. I would like to show you the

1 **document.**

2 (Exhibit 1 was marked for identification.)

3 MS. JASRASARIA: So I am going to be  
4 marking the fifth amended notice of deposition  
5 as Exhibit 1.

6 BY MS. JASRASARIA:

7 **Q Have you seen this document before?**

8 A (Examining Document.)

9 Yes.

10 **Q What is it?**

11 A What is it?

12 **Q What -- how would you describe the**  
13 **document? Like what is the document?**

14 A It notices that a deposition would be  
15 taken.

16 **Q Great.**

17 A Is that --

18 **Q That's sufficient. Thank you.**

19 **And have you been designated by the Board**  
20 **of Governors to testify to the topics that are**  
21 **listed on pages 7 through 9 of this document? And I**  
22 **know that it's everything except for certain**  
23 **portions of Topic 3 and perhaps any discovery**  
24 **associated with that topic.**

25 A Yes. With regard to House Bill 233?

1           Q       Yes, with regard to House Bill 233. And I  
2 believe there may be a couple of topics that cover  
3 general policies of the board and -- and the board's  
4 views with regard to certain terms; for example,  
5 Topic 10.

6           A       Yes.

7           Q       Okay. And you have been -- do you  
8 understand that this means that you will be  
9 providing answers on behalf of the Board of  
10 Governors today?

11          A       Yes.

12          Q       And so your testimony is the testimony of  
13 the Board of Governors?

14          A       Yes.

15          Q       Are you prepared to testify regarding the  
16 topics listed on pages 7 through 9, save for, again,  
17 a couple of topics that we previously discussed  
18 Mr. Kovacs would be handling?

19          A       Yes.

20          Q       And have you read the complaint in this  
21 case?

22          A       I did at one time.

23          Q       You are aware that plaintiffs are  
24 challenging House Bill 233 which was passed by the  
25 2021 general assembly?

1           A       I am aware of that.

2           Q       **And throughout this deposition I may refer**  
3       **to the law as HB 233. If I refer to it as such,**  
4       **will you understand that I am referring to House**  
5       **Bill 233 which was passed in 2021?**

6           A       Yes.

7           Q       **Have you ever read HB 233?**

8           A       Yes.

9           Q       **Okay.**

10                   MS. JASRASARIA: I'll now mark the text of  
11       HB 233 as Exhibit 2.

12                   (Exhibit 2 was marked for identification.)

13       BY MS. JASRASARIA:

14           Q       **Have you seen this document before?**

15           A       I'm not sure I recall this exact document.  
16       I think the last time I looked at it, it was the  
17       enrolled version.

18           Q       **Okay. If I represent that this is the**  
19       **committee substitute for House Bill 233, feel free**  
20       **to flip through it, but does that sound right to**  
21       **you?**

22           A       (Examining Document.)

23           A       Yes.

24           Q       **Okay. Please keep Exhibits 1 and 2 handy.**  
25       **We'll move through a series of documents, but I**

1 think we'll be returning to these regularly.

2 A Okay.

3 Q When did you first become aware of this  
4 lawsuit?

5 A I don't recall that.

6 Q If I represent that this lawsuit was filed  
7 in July -- or July of 2021, would that refresh your  
8 recollection as to when you became aware of it?

9 A I wouldn't dispute that.

10 Q Okay. And did you become aware shortly  
11 after the complaint was filed, from what you recall?

12 A Yes.

13 Q Who do you understand to be the plaintiffs  
14 in this case?

15 A There is a named complainant, who I  
16 believe is Mr. -- Professor Dr. Link. My other  
17 understanding would be that the parties is United  
18 Faculty of Florida.

19 Q Okay. Any other plaintiffs that you can  
20 recall?

21 A Not that I recall.

22 Q How did you prepare for your deposition  
23 today?

24 A I went back through documents and material  
25 that had been produced in my office. I also

1 reviewed a meeting with counsel, both my general  
2 counsel at the Board of Governors, Vikki Shirley and  
3 with the GrayRobinson counsel. They provided  
4 documents to me that I then went through and  
5 reviewed.

6 **Q Are you aware of whether plaintiffs have**  
7 **been given those documents that you reviewed in**  
8 **advance of today's deposition?**

9 A I believe that we've produced all the  
10 documents to the best of our ability into this, and  
11 I would assume those were provided to the  
12 plaintiffs.

13 **Q Do you recall which documents you reviewed**  
14 **in advance of today?**

15 MS. LUKIS: I'm going to object and  
16 instruct him not to answer as to anything that  
17 was provided by counsel.

18 MS. JASRASARIA: Are you -- on what basis?

19 MS. LUKIS: Work product.

20 BY MS. JASRASARIA:

21 **Q And do you intend to follow your counsel's**  
22 **instruction?**

23 A I do.

24 **Q What other documents did you review in**  
25 **advance of today's deposition?**

1           A       I specifically recall the report that we  
2     produced on civil discourse, which is a -- it's also  
3     a document, I believe, on our website.

4                    I'm trying to think of anything in  
5     addition to that. There was -- there were I guess a  
6     fairly large number of documents which I would  
7     assume were part of the production in this that I  
8     was provided to go through.

9           **Q       Did you meet with anyone other than your**  
10    **attorneys to prepare for today's deposition?**

11           A       In terms of preparing for today, no.

12           **Q       Going back to documents for a second, are**  
13    **there any -- can you ask me which -- can you tell me**  
14    **which documents you reviewed to inform you in**  
15    **preparation for the deposition or refresh your**  
16    **recollection without telling me whether counsel**  
17    **provided them or not, so just -- you don't need to**  
18    **explain which documents were received from counsel,**  
19    **but just any documents that you reviewed.**

20                    I know you already mentioned the civil  
21    discourse report, but were there other documents  
22    that you reviewed? Again, you don't have to tell me  
23    whether counsel provided them or not.

24           A       I can tell you generally. I mean, I guess  
25    I -- I understood that my -- I did not understand my



1 job to be to memorize the documents that I looked  
2 at.

3 I could tell you generally that I looked  
4 at responses to interrogatories that were provided.  
5 I have looked at communi- -- I think that would --  
6 that would cover a lot of -- you know, that would  
7 also include -- some of that was documents, formal  
8 documents that were filed as well as documents that  
9 were probably produced, meaning as background to  
10 things like interrogatories and the discovery.

11 **Q And you mentioned that you did not meet**  
12 **with anyone besides counsel to prepare for today's**  
13 **deposition, correct?**

14 A In terms of preparing for today's  
15 deposition, no.

16 **Q So you didn't meet with anyone else at the**  
17 **Board of Governors?**

18 A Again, in terms of preparing for today,  
19 no.

20 **Q Okay. Are you aware that other**  
21 **depositions have taken place in this case?**

22 A Yes.

23 **Q Did you speak with Chancellor Hebda about**  
24 **today's deposition?**

25 A I recall -- not about the substance. I

1 recall speaking to her -- so she was deposed  
2 yesterday, so I would say we probably talked on  
3 Wednesday about another matter, and I acknowledged  
4 that I knew she was being deposed yesterday and that  
5 I would be deposed today.

6 Q Have you reviewed a transcript of her  
7 deposition from yesterday?

8 A No.

9 Q Did you speak with Jon Rogers about  
10 today's deposition?

11 A Not about today's deposition. I meet  
12 regularly with Jon Rogers.

13 Q Is he aware that you're being deposed  
14 today?

15 A He is.

16 Q Did you review a transcript of his  
17 deposition in June?

18 A No.

19 Q You haven't reviewed the transcript from  
20 his deposition at any point, even a couple months  
21 ago?

22 A No.

23 Q Did you speak with Alex Kelly from the  
24 Governor's Office about today's deposition?

25 A No.

1           **Q     Did you review a transcript of his**  
2 **deposition?**

3           A     No.

4           **Q     Did you speak with Tim Chapin, Deana**  
5 **Rohlinger, or Lonna Atkeson about today's**  
6 **deposition?**

7           A     No.

8           **Q     Did you review transcripts of their**  
9 **depositions that took place earlier this summer?**

10          A     No.

11          **Q     About how long did you meet with counsel**  
12 **to prepare for today's deposition?**

13          A     I would say we've met now three times.  
14 That's the best I can recall. Each of those  
15 sessions was an hour or less. They were scheduled  
16 for an hour.

17          **Q     And that includes your meetings with both**  
18 **Ms. Shirley from your office as well as GrayRobinson**  
19 **attorneys?**

20          A     No. I'm sorry. That would be  
21 specifically to meetings with GrayRobinson. Vikki's  
22 my general counsel. We've probably talked off and  
23 on. We meet and talk regularly. We've probably  
24 talked about this specific matter. I don't have a  
25 good feeling for -- this would typically have been

1 shorter conversations but more of them over time. I  
2 also would talk to her sort of keeping apprised of  
3 what the status of this case was and where it was.

4 Q Have you reviewed the Board of Governors'  
5 document productions in their totality?

6 A I believe I have.

7 Q And did that production appear complete to  
8 you?

9 A Yes.

10 Q Have you reviewed any productions from the  
11 Board of Education made in this case?

12 A I recall one document that appeared to be  
13 a college system chart, a one-page chart, that I  
14 believe was part of -- I don't -- I actually believe  
15 that was a communication from someone at the college  
16 system to someone in our office. I don't know that  
17 it was their formal production.

18 It was a status chart of the elements of  
19 the bill, had a blue head -- banner on the top. I  
20 had to read it to -- it didn't look familiar to me,  
21 and that's why I spent more time. And it appeared  
22 to be a college -- it referred to the colleges  
23 specifically; not in the heading -- there wasn't a  
24 heading to it, but it was in the body of it.

25 Q And you said that was an analysis of the

1 **bill?**

2 A It --

3 MS. LUKIS: Object to form.

4 Go ahead. You can answer.

5 A It's what I would have called an after  
6 session -- what would you describe it as? It looked  
7 to me to be an after session -- like a work plan --  
8 what, you know -- we call it a postmortem in our  
9 office and then have a status report.

10 BY MS. JASRASARIA:

11 **Q And was the document specific to HB 233?**

12 A I believe so. It did not have a heading,  
13 but it referred to elements that I was familiar with  
14 in HB 233.

15 **Q Are you aware of whether that document has**  
16 **been produced to plaintiffs?**

17 MS. LUKIS: Object to form.

18 You can answer.

19 A I don't know. I don't know that it  
20 wasn't.

21 MS. JASRASARIA: Counsel, could we just  
22 make sure that that's been produced?

23 MS. LUKIS: I have no idea what document  
24 he's talking about, so ...

25

1 BY MS. JASRASARIA:

2 Q Okay. Would it be possible for you to  
3 confer with your counsel at some point during the  
4 break or soon after the deposition to confirm that  
5 that's something we've received?

6 A (Nods affirmatively.)

7 Q Okay. Before we move into questioning, I  
8 do have to you ask this: Are you under the  
9 influence of any drugs or alcohol that might affect  
10 your ability to testify accurately today?

11 A No.

12 Q Is there anything else that might impair  
13 your ability to testify accurately and truthfully  
14 today?

15 A No.

16 Q Did you attend a college, Chancellor?

17 A I attended a university.

18 Q Which university was that?

19 A University of Florida.

20 Q And what year did you graduate?

21 A 1980.

22 Q What was your degree?

23 A It's a bachelor of science in business  
24 administration.

25 Q You attended the University of Florida.

1     **While you were a student, did you ever feel like you**  
2     **were being indoctrinated?**

3             MS. LUKIS: Object to form.

4             You can answer.

5             A     No.

6     BY MS. JASRASARIA:

7             **Q     Did you complete any postgraduate**  
8     **education?**

9             A     No.

10            **Q     Where do you currently work?**

11            A     At the State University System office, or  
12     work for the Board of Governors.

13            **Q     And how long have you worked for the Board**  
14     **of Governors?**

15            A     I started in 2014, so eight and --  
16     eight years, eight months.

17            **Q     And what is your title there?**

18            A     Chancellor.

19            **Q     The chancellor is voted upon by the Board**  
20     **of Governors, is that right?**

21            A     That's correct.

22            **Q     You recently announced that you're**  
23     **stepping down; is that right?**

24            A     Yes.

25            **Q     And when will your last day be?**

1           A     December 31 of this year.

2           **Q     Are you involved in the selection of your**  
3 **successor?**

4           A     No.

5           **Q     Are you aware that the governor has**  
6 **recommended Senator Rodrigues to be the next**  
7 **chancellor?**

8           A     No.

9           **Q     Have you spoken to any of the candidates**  
10 **about the position?**

11          A     No.

12          **Q     Is the governor typically involved in the**  
13 **hiring of the chancellor?**

14                MS. LUKIS: I'm going to object. To what  
15 topic does this relate?

16                MS. JASRASARIA: Can I ask as to his  
17 personal knowledge?

18                MS. LUKIS: Of what?

19                MS. JASRASARIA: If it's not within the  
20 topics, my understanding is that the chancellor  
21 can still answer --

22                MS. LUKIS: I'm not instructing him not to  
23 answer, but I'm objecting to form. And it's  
24 not binding on the board.

25



1 BY MS. JASRASARIA:

2 Q You may answer as to your personal  
3 knowledge.

4 A Do you mind repeating it then?

5 Q Sure. Is the governor typically involved  
6 in the hiring of the chancellor?

7 MS. LUKIS: Object to form.

8 You can answer if you know.

9 A I don't know.

10 BY MS. JASRASARIA:

11 Q Do you know if the governor at the time of  
12 your appointment was involved in selecting you for  
13 your current position?

14 A I don't know.

15 Q Have you ever held any other job titles  
16 within the Board of Governors or the State  
17 University System?

18 A I was a trustee at the University of  
19 Florida until 2013. That would be the only other  
20 thing.

21 Q And how long were you a board trustee  
22 there?

23 A I would have to double-check, but I would  
24 estimate four years.

25 Q Have you held any other positions in the

1 **field of higher education?**

2 A I -- I have served on committees and  
3 business organizations that took positions in higher  
4 education policy. That's more general, but that  
5 would be it.

6 Q **What is the official role of the Board of**  
7 **Governors?**

8 A Board of Governors is the constitutional  
9 entity that is responsible for the governance of the  
10 State University System which is the 12 public  
11 universities in the state of Florida.

12 Q **And what is the official role of the State**  
13 **University System?**

14 A The State University System is probably  
15 more of a category. We -- we have the system office  
16 which is what I am head of. And then more broadly,  
17 it's the individual institutions and the -- not just  
18 the institutions but the -- the trustee, the boards  
19 of trustees of those individual institutions.

20 Q **Are the boards of trustees considered part**  
21 **of the State University System?**

22 A Yes, I believe so.

23 Q **Who do you currently report to?**

24 A The chair of the Board of Governors.

25 Q **And who is that?**

1           A     Brian Lamb.

2           **Q     And do you report to any of the other**  
3 **governors?**

4           A     I work for each of the board members, but  
5 typically the administration of my job is between  
6 myself and -- and my chair.

7           **Q     How often do you meet with Chair Lamb?**

8           A     Normal -- normally would be a meeting or a  
9 call once a week; more often -- typically calls,  
10 sometimes face to face, depending on the time of  
11 year and other reasons, he and I might be in the  
12 same location.

13                     We may talk at other times about certain  
14 matters. Typically, we talk more as we approach --  
15 in -- in group meetings with my staff and myself --  
16 as we approach things like our agendas, when we have  
17 board meetings.

18           **Q     How often do you typically communicate**  
19 **with the other governors?**

20           A     Again, more often as we prepare for board  
21 meetings, particularly meeting with committee chairs  
22 as we prepare individual agendas. We also provide  
23 briefings to each of our board members in advance of  
24 a board meeting.

25                     If there are specific activities such as a

1 search for a president and a board member is  
2 assigned to that, that's part of the protocol, is  
3 that one of our board members serves on the search  
4 committee, I would spend more time there. And  
5 it's -- really sort of depends on what is the work  
6 and what does the calendar look like in terms of who  
7 I would talk to and when.

8 **Q How often does the Board of Governors**  
9 **meet?**

10 A I almost editorialized and said too often,  
11 but I guess I'll just editorialize.

12 We aim -- so we -- rather than me  
13 counting, I'll just say we typically meet in  
14 January, March, June, September, November.

15 We also have held days in the month of May  
16 and in the month of August for -- if needed. There  
17 have been -- not really when a board -- when the  
18 board would meet. There -- there may have been  
19 other times when a member of my board would meet  
20 with one of the universities, depending on the  
21 nature of the business that was at hand.

22 **Q What would an example of that be?**

23 A We are currently working through -- we are  
24 working on strategic plans of the university, and it  
25 may -- more often that's probably me and my staff

1 but -- for them to get -- we may have a strategic  
2 planning chair who would participate in that.

3 Or our innovation and online committee, as  
4 it was developing its strategic plan, had a series  
5 of -- there were subgroups that would meet and a  
6 board member -- whoever the chair at that time of  
7 the committee was, they would -- they would meet  
8 with that group. That would have been  
9 representatives from different parts of the  
10 universities, as well as someone from my staff  
11 and -- and our -- and the chair of that committee.

12 **Q And those meetings, do they include boards**  
13 **of trustees from the universities?**

14 A They do, they do occasionally. So, for  
15 example, obviously a search committee meeting would  
16 have a member of our board as well as the members  
17 who were assigned to the search committee.

18 **Q What role does the commissioner of**  
19 **education play with respect to the Board of**  
20 **Governors?**

21 A The commissioner of education is an  
22 ex officio member of our board, so participates as  
23 one of the board members.

24 **Q Is his role on the Board of Governors**  
25 **similar to the role of the other nonchair members?**

1           A     His role is -- or her role, because when I  
2     came into this, Pam Stewart was the commissioner --  
3     his or her role is I would say in some ways more  
4     similar to our faculty representative and our  
5     student representative. They are all ex officio,  
6     but they all are voting members of the board.

7                     They are member -- they serve on  
8     committees, and maybe where I say there is a  
9     distinction is it's not uncommon for any one of  
10    those three to make a report to the board from the  
11    perspective of their office. We have the faculty  
12    senate president and we have the student -- student  
13    association president represented, and so they might  
14    speak again on behalf of the students, the faculty  
15    or the Board of Education.

16           **Q     What's the relationship between the Board**  
17    **of Governors and the Board of Education, generally?**

18                     MS. LUKIS: Object to form.

19                     You can answer. Go ahead.

20           A     I would say generally collaborative. We  
21    make an effort to work closely together. We really  
22    focus on our students. And when you do that, then  
23    you start talking about the interaction we have  
24    between college -- it's really the colleges and  
25    the -- and the board; though we do some outreach

1 within the Department of Education on -- on things  
2 like advising and guidance at the high school level,  
3 working with admissions issues and things like that.

4 But I think we've made a lot of efforts to  
5 make sure that our institutions and the colleges are  
6 working together, particularly around interaction  
7 when students may transfer from one to the other and  
8 how their credits are handled, how other items in  
9 the -- in the academic process are managed.

10 BY MS. JASRASARIA:

11 **Q Is there a formal relationship between the**  
12 **Board of Governors and the Board of Education?**

13 MS. LUKIS: Objection to the form.

14 You can answer.

15 A Other than that the commissioner is a  
16 member of our board, I don't know -- I don't believe  
17 so, no.

18 BY MS. JASRASARIA:

19 **Q Is the Board of Governors part of the**  
20 **executive branch?**

21 MS. LUKIS: Object to form.

22 You can answer.

23 A No.

24 BY MS. JASRASARIA:

25 **Q Where would you put the Board of**

1 **Governors, if you know, on a -- where does it sit**  
2 **with respect to the executive branch?**

3 A We are a constitutional agency. I want  
4 to -- I'm tempted to look at my general counsel and  
5 she can say this better than I can -- but we are a  
6 constitutional agency. I am trying to recall  
7 another example but, you know, our responsibility is  
8 to -- from a process perspective -- is to work with  
9 the legislature and the Governor's Office in  
10 advocating on behalf of the State University System.

11 Q **Would it be fair to say that the Board of**  
12 **Governors is independent from both the executive**  
13 **branch and the legislative branch?**

14 MS. LUKIS: Objection to the form.  
15 You can answer.

16 A Yes.

17 BY MS. JASRASARIA:

18 Q **Can governors be removed from their**  
19 **position?**

20 MS. LUKIS: Object to form.  
21 You can answer.

22 A To my knowledge, I believe there is a  
23 process -- I've never seen it happen, but I -- I  
24 would say I believe it's possible.

25



1 BY MS. JASRASARIA:

2 Q Who would remove a governor from the board  
3 based on your understanding of how that process  
4 might work?

5 A It's actually -- if I understand it right,  
6 it's a two-step process. But I believe ultimately  
7 the senate, who confirms our board members, would  
8 also have to agree with the -- I guess arguably the  
9 option could be taken by the governor, but it would  
10 require -- confirmation doesn't sound like the right  
11 word -- but it would require the agreement of the  
12 senate.

13 MS. JASRASARIA: Excuse me. Could I  
14 interrupt real quick.

15 (Discussion off record.)

16 BY MS. JASRASARIA:

17 Q Who appoints the governors to the board?

18 A The governor does, subject to confirmation  
19 by the senate.

20 Q Is that a majority vote confirmation of  
21 the senate?

22 MS. LUKIS: Object to form.

23 You can answer.

24 A I believe ultimately it's a two-thirds  
25 vote, but I'm -- I'm not totally confident in that

1 answer.

2 BY MS. JASRASARIA:

3 Q Can you be removed from your position?

4 A I would expect that's true.

5 Q By whom?

6 A By my board. I believe that's -- that's  
7 the right answer to that.

8 Q Could the governor remove a chancellor?

9 MS. LUKIS: Object to form.

10 You can answer.

11 A I don't know the answer to that.

12 BY MS. JASRASARIA:

13 Q What's the relationship between the Board  
14 of Governors and the Governor's Office -- oh,  
15 sorry -- I was going to clarify, governor of  
16 Florida's office rather than a governor from the  
17 Board of Governors?

18 MS. LUKIS: Object to form.

19 You can answer.

20 A Do you mind repeating it?

21 BY MS. JASRASARIA:

22 Q Sure. What -- what is the relationship  
23 between the Board of Governors and the governor of  
24 Florida's office?

25 A It seems like a very broad context, is

1 what I'm -- if I said good ...

2 Q What is -- what does the relationship look  
3 like day to day?

4 MS. LUKIS: Object to form.

5 You can answer.

6 A I would say day to day we work with  
7 individuals in the Governor's Office, similar --  
8 similarly to the way we work with individuals at  
9 the -- in the legislature, typically at the staff  
10 level.

11 In the Governor's Office, it would be  
12 both -- there is a deputy chief of staff who is  
13 responsible -- has education as part of his  
14 responsibilities. That position has somewhat  
15 changed over time, but that's kind of generally  
16 what -- there is someone there that we know is that  
17 point person.

18 We also work with the Office of Policy and  
19 Budget. We do present a budget each year to the  
20 legislature, and we communicate what that  
21 presentation is going to be so that they -- they  
22 know what's coming.

23 I think that would -- that would pretty  
24 much describe, that's the points of connection.

25

1 BY MS. JASRASARIA:

2 Q You've served as chancellor under two  
3 different administrations; is that right?

4 A That's correct.

5 Q Has the Board of Governors completely  
6 turned over during your tenure as chancellor?

7 A Not completely.

8 Q How long is a governor's term on the  
9 board?

10 A Testing my -- seven years. Sorry I  
11 glanced at her. I shouldn't have done that. I  
12 don't want to get that wrong, I'll get in trouble  
13 with my board.

14 Q And is there -- are they term limited?

15 A No, the -- the governor's appointments are  
16 not term limited.

17 Q So a governor on the board could  
18 theoretically serve for multiple terms?

19 A In theory.

20 Q Has the relationship between the Board of  
21 Governors and the Governor's Office changed from the  
22 previous administration to the present  
23 administration?

24 MS. LUKIS: I'm going to object. To which  
25 topic does this relate?

1 MS. JASRASARIA: This generally relates to  
2 the Florida governor's operations, and it is  
3 relevant to the HB 233, given some of the  
4 interrogatory responses mentioning the  
5 Governor's Office and some of the discovery  
6 that was produced in this litigation.

7 MS. LUKIS: Okay. I'm going to object to  
8 form. I'm going to object that it's outside  
9 the scope of the topics.

10 But you can answer.

11 A No.

12 BY MS. JASRASARIA:

13 **Q Who are the individuals at the Governor's**  
14 **Office that you typically -- that the Board of**  
15 **Governors typically interacts with?**

16 A And when you say "Board of Governors," you  
17 mean the entity the Board of Governors?

18 **Q Correct, I mean the entity the Board of**  
19 **Governors on whose behalf you are testifying today.**

20 A The deputy chief of staff who is Alex  
21 Kelly. And I'm going to embarrass myself because I  
22 don't remember last names. There is Shelby, who is  
23 in the Office of Policy and Budget. I'll make it  
24 even worse. There's Brandy. I'm not sure Brandy's  
25 still there. But that would be two individuals both

1 in the Office of Policy and Budget. In most recent  
2 times, those would be the individuals that we would  
3 meet with, talk with.

4 Q And would that be Shelby Cecil?

5 A That's right. Thank you.

6 Q I don't know Brandy's last name, so I  
7 can't help you on that one.

8 Does the Board of Governors train members  
9 of each university within the statewide system?

10 A We do an orientation session, and then on  
11 certain fiscal topics, we have developed training  
12 materials. The title of the product is "Colors of  
13 Money," which we worked with the universities in  
14 developing.

15 Q And those orientations and presentations  
16 are directed towards the board of trustees at each  
17 university?

18 A Yes. Particularly for new trustees are  
19 required to attend an orientation session. Those  
20 are the board's appointments to the boards of  
21 trustees. We invite the governor's appointees to  
22 those as well. And then we also hold a -- what we  
23 call a trustee summit every year, which is a more --  
24 it's a broader -- the orientation, really, is to  
25 introduce myself and our staff, to look at the

1 topics that each of my staff covers so that they're  
2 familiar with who the subject matter experts are.  
3 The summit talks about more broad policy or big  
4 initiative kind of topics.

5 **Q Does the Board of Governors have a duty to**  
6 **ensure compliance with state laws among each**  
7 **university within the statewide university system?**

8 MS. LUKIS: Object to form.

9 You can answer.

10 A I would answer that yes, though certain  
11 elements of that are delegated to the universities  
12 themselves to -- when we talk about compliance, not  
13 just -- not just sort of guidance, but the actual  
14 operational side, the universities themselves have  
15 delegated authority for many aspects of that.

16 BY MS. JASRASARIA:

17 **Q Does the Board of Governors have a duty to**  
18 **ensure compliance with the Board of Governor's**  
19 **regulations among each university within the**  
20 **statewide system?**

21 MS. LUKIS: Object to form.

22 You can answer.

23 A Yes.

24 BY MS. JASRASARIA:

25 **Q How is that duty typically exercised?**

1           A       On certain matters, it is -- I'd call it  
2 more a -- sort of a formal process where we receive  
3 reports, and they are reviewed by my staff to ensure  
4 that we have complied with either what the statute  
5 or one of our regulations -- typically our  
6 regulations follow the statutes, but between the  
7 two, making sure that we have enough information to  
8 be able to look at that.

9                   Our inspector general works very closely  
10 with the chief audit executive at each of the  
11 universities. There are certain matters there where  
12 there are expected or required audits that are done,  
13 so we work with them in developing a plan for that  
14 and a reporting process around that.

15                   From time to time we will -- not very  
16 often, but we may from time to time receive a  
17 complaint, and we work through a process of -- you  
18 know, particularly when it looks at statutory or  
19 regulatory compliance, we work through that, again,  
20 with the responsible department at the university.

21           **Q       Do you have an example of what a complaint**  
22 **might look like?**

23           A       A broad spectrum. Most recently, you  
24 know, with the start of a new school year, we've  
25 seen issues with individuals who were on wait lists



1 for housing, and people will find -- will see us as  
2 a potential audience for things like that.

3 Those aren't really compliance issues as  
4 much, but a lot -- a lot of the complaints are more  
5 general practice or general day-to-day activity and  
6 someone's not comfortable with an answer they got.

7 **Q Who do the complaints typically come from?**

8 A Almost anywhere. It's students, parents,  
9 occasionally we -- we've seen complaints come from  
10 within a university. We get -- occasionally get  
11 constituent complaints that are referred from either  
12 the legislature or from the Governor's Office, when  
13 they have to deal with the university system. That  
14 would be, I think, the main sources.

15 **Q And when you mentioned earlier that they**  
16 **typically might file a complaint with the Board of**  
17 **Governors if they don't like the answer that they**  
18 **received, whose answer would they have sought first?**

19 A I would say first it's not just that they  
20 didn't -- that they didn't like an answer. Many  
21 times someone will send it to a lot of people at the  
22 same time.

23 I would say most often when it's from  
24 outside the system, they may have seen -- they may  
25 have attempted to get some kind of resolution from

1 the individual university that they have a concern  
2 with.

3 Q You testified earlier that the Board of  
4 Governors presents a budget to the legislature and  
5 that you communicate the budget so that they know  
6 it's coming.

7 I just wanted to clarify, what's the  
8 budget for that you present to the legislature?

9 A It's our request for state appropriations  
10 for the next fiscal year.

11 Q And do you share that document informally  
12 before you formally submit it to the legislature?

13 A We have conversations typically at the  
14 staff level, probably focused more on new  
15 initiatives, but anything that we see is as a  
16 significant change, we socialize it. You know, the  
17 goal at the end of the day is to gain approval, and  
18 we would socialize it with the budget and finance --  
19 budget committee staff, people like that.

20 We will also get input from them if a  
21 member has a particular initiative, same as we would  
22 get from the university -- universities actually  
23 submit to us their proposed legislative budget  
24 request, so that it's a process of pulling  
25 information together, deciding what we will present

1 as a staff to our board and then the board making  
2 its decisions about what it wants to put forward.

3 **Q Who are the people within the legislative**  
4 **branch that you would share a budget with or**  
5 **socialize a budget with?**

6 A So the house has changed a few times.  
7 Individuals -- Tim Elwell has been the lead senate  
8 budget staff I think as long as I've been in this  
9 job.

10 In the last couple of years, a lady by the  
11 name of -- first name is Kara, would have played --  
12 would have performed the same role.

13 At some point in the process, we would  
14 also meet with the -- particularly the subcommittee  
15 chair of the legislative budget -- each chamber's  
16 legislative budget area that covers higher  
17 education.

18 **Q Do you ever make changes based on the**  
19 **socialization conversations that you're having**  
20 **before a formal submission of the budget?**

21 A At the end of the day, it's presented to  
22 the board and many times the budget is enhanced or  
23 changed based on the board's direction.

24 We -- if you think about what we take in  
25 is all the things that the universities have

1 submitted to us as well as what we see as system  
2 priorities. And at some point, you boil that down  
3 to what you feel is a reasonable request. So, yes,  
4 I would say it's a process where it starts with a  
5 big number and it needs by its nature to come down  
6 to a smaller -- much smaller number most times  
7 because the wish list is much bigger than the what's  
8 reasonable list.

9 **Q And does some of that narrowing and**  
10 **prioritizing come from the conversations that the**  
11 **Board of Governors' staff or your staff is having**  
12 **with budget staff in the Senate and the House?**

13 A At some level, it's really -- it's not  
14 just the number -- if I could give you an example in  
15 the area of performance funding.

16 It's an area that's driven by  
17 accountability, which is sometimes a more difficult  
18 conversation than just saying we want money. It's a  
19 lot more substantive conversation. And there are  
20 both discussions, feedback about -- there is about  
21 how do you do this as much as how much do you do.

22 **Q And who are those conversations with?**

23 A Typically would be with budget staff,  
24 getting their insights on -- and they have feedback  
25 for us in terms of -- sometimes there are

1 initiatives that they've been looking at -- again.  
2 It's where a lot of it occurs around me. There's  
3 \$265 million in performance funding, and so it's  
4 obviously an area that the metrics are -- have  
5 always been -- somebody's always talking about  
6 tweaking something.

7 **Q And when you refer to metrics that would**  
8 **be tweaked, are those the metrics along which the**  
9 **Board of Governors evaluates the universities for**  
10 **performance?**

11 **A** They are part -- there are 10 metrics that  
12 are a subset of a larger group of metrics that we  
13 track, measure, evaluate every year. It's the kinds  
14 of -- the discussions are things like should you  
15 measure two-year graduation rate for college  
16 transfers or three-year transfers. That's the most  
17 recent one I can recall; or three-year graduation  
18 rates for college transfers coming into the  
19 university system.

20 **Q And so just to make sure I'm**  
21 **understanding, so the conversation with the budget**  
22 **staff in the legislature is a conversation about**  
23 **what -- about the specifics of some of these**  
24 **metrics?**

25 MS. LUKIS: Object to form.

1                   You can answer.

2           A        Within the metrics themselves, yes.

3   BY MS. JASRASARIA:

4           Q        You also mentioned that sometimes the  
5   legislature itself has priorities that they may  
6   share with your staff to include in a budget.

7                   Is that -- did I understand that  
8   correctly?

9           A        That's correct.

10          Q        And can you give me an example of  
11   something that might be incoming from the  
12   legislature to include in -- in your budget?

13          A        The most recent was this discussion about  
14   gradu- -- the graduation rate for college. There  
15   was a -- there was actually legislation for a couple  
16   of years that was being worked on and was looking at  
17   two elements. One was access which would be how we  
18   measure Pell student enrollment within the system.

19                   The other was the mechanics of measuring  
20   college transfers. And actually, you know, there  
21   was an initial directive, direction that we would  
22   measure that based on two-year performance versus  
23   three-year performance.

24          Q        Did that pending legislation ever get  
25   enacted?

1           A     Yes.

2           Q     **And so the change to the metric that the**  
3     **board uses was in part based on enacted legislation?**

4           MS. LUKIS: Object to form.

5           You can answer.

6           A     The -- the performance funding itself is  
7     contained in the statutes and over time, the types  
8     of metrics that are included in performance funding  
9     have been identified in the statute.

10          BY MS. JASRASARIA:

11          Q     **And are there any examples of incoming**  
12     **initiatives from the legislature that are separate**  
13     **from -- from legislation but more like some**  
14     **initiative that committee members are considering**  
15     **that has not yet made its way into legislation?**

16          MS. LUKIS: Objection to form.

17          You can answer.

18          A     I don't know, and I guess I would -- I  
19     would add the -- so this year is a good example,  
20     where we are going to take a budget to our board in  
21     September. This is an election year. We won't know  
22     who -- the reason we are having this conversation at  
23     the staff level is we don't know who the members  
24     will be that will chair or be members of committees.

25                 So the work that we are doing is -- is

1 essentially positioning this around the best  
2 information we can gain, but knowing that at the end  
3 of the day, just like my board makes the final  
4 decision, what the legislature does is controlled by  
5 the legislature.

6 BY MS. JASRASARIA:

7 Q And once a budget is approved by the  
8 board, it's then formally submitted to the  
9 legislature?

10 A Yes.

11 Q And at that point, is the -- are there  
12 ever changes made after it's submitted to the  
13 legislature?

14 A Yes.

15 Q And where do those changes come from?

16 A There is a window when you can submit an  
17 amended budget request, and those come from -- a  
18 good example last year is that we went to that  
19 meeting, presented the budget, our board became  
20 interested in an initiative to request more capital  
21 dollars than were reflected in our budget request,  
22 and we went -- there were conditions around that  
23 that we went and worked on fulfilling those  
24 conditions, and then submitted that as part of a  
25 significant amendment to our budget ask.



1           **Q     Are those amendment requests ever informed**  
2 **by conversations outside of the Board of Governors,**  
3 **so external conversations?**

4           A     I don't -- I don't know that I can say  
5 never. I -- I would say typically that's a -- a  
6 conversation driven -- and this example in  
7 particular was an example where that was driven by  
8 my board members and -- and sort of looking at an  
9 opportunity that they sort of pressed us.

10           I do recall that that particular request  
11 followed I guess what I would call a challenge from  
12 the legislature that we needed to be more  
13 accountable for how that type of money -- how it was  
14 actually identified and how it was spent. So we had  
15 to develop not only a budget ask but a framework of  
16 accountability around it.

17           **Q     Does the governor of Florida also have to**  
18 **approve budgets for the Board of Governors?**

19           A     No.

20           **Q     Okay. So the approval simply comes from**  
21 **the legislature?**

22           A     The governor signs the budget. So at the  
23 end of the day, he approves the full state budget,  
24 but -- but our budget request is submitted by -- is  
25 decided and submitted by my board.

1           **Q     Do you all ever informally share the**  
2 **budget before it's formally submitted with the**  
3 **Governor's Office?**

4           A     Before it's submitted to the legislature?

5           **Q     (Nods head.)**

6           A     Similar to the way we do with legislative  
7 staff as well. I mean, we have -- we do this in an  
8 open meeting.

9           **Q     By open meeting, do you just mean like an**  
10 **open meeting under the --**

11          A     Sunshine -- under Sunshine Law we publish  
12 our budget before our agenda. We -- we have that  
13 meeting, we have those discussions, we develop, and  
14 it's part of the record on our website of  
15 everything.

16          **Q     And are these conversations with the**  
17 **Governor's Office also with Alex Kelly and Shelby**  
18 **Cecil and Brandy?**

19          A     I don't know that Mr. Kelly is involved on  
20 them -- in them. I -- I do know that Shelby and  
21 Brandy would normally be. I would expect they would  
22 provide it to him.

23          **Q     Do you ever make changes to the budget**  
24 **based on feedback from the Governor's Office?**

25          A     I don't recall doing that.

1 MS. JASRASARIA: Okay. We've been going  
2 for an hour. So should we take just a quick  
3 5-minute break?

4 THE WITNESS: I am fine. Whatever -- but  
5 I've got other people in the room.

6 MS. SHIRLEY: I'm fine to keep going.

7 MS. JASRASARIA: Okay. We can keep going.

8 BY MS. JASRASARIA:

9 Q Did you or anyone in the Board of  
10 Governors see a draft of HB 233 or SB 264 before it  
11 was introduced in the legislature?

12 MS. LUKIS: Object to form.

13 A I don't believe so.

14 BY MS. JASRASARIA:

15 Q Are you including the commissioner of  
16 education, which I believe was Commissioner Corcoran  
17 at the time, in your answer?

18 MS. LUKIS: Object to form.

19 A I am not aware of anything that he would  
20 have seen.

21 BY MS. JASRASARIA:

22 Q Were you or anyone on the Board of  
23 Governors involved in any way in HB 233 or SB 264  
24 before it was introduced in the legislature?

25 A I am not aware of any.

1           **Q**     **Are you aware of whether the Commissioner**  
2     **of Education Corcoran was involved in HB 233 or**  
3     **SB 264 before it was introduced?**

4           MS. LUKIS: Object to form.

5           A     I am not aware of it.

6     BY MS. JASRASARIA:

7           **Q**     **Did you or anyone in the Board of**  
8     **Governors have any conversations with anyone in the**  
9     **legislature about SB 264 or HB 233 before it was**  
10    **introduced?**

11          A     Not that I am aware.

12          **Q**     **What about while it was pending, while it**  
13    **was being considered in the legislature?**

14          A     With regard to 264, if that was -- let me  
15    be clear that that was Representative Roach's bill  
16    which had the shielding language in it?

17          **Q**     **Correct. So to clarify, HB 233, which is**  
18    **the subject of this lawsuit, that was the proposal**  
19    **by Representative Roach and SB 264 was its**  
20    **companion; Senator Rodrigues I believe was the**  
21    **sponsor.**

22          A     Okay. That was the anti-shielding  
23    language?

24          **Q**     **Correct.**

25          MS. LUKIS: Is there a pending question?

1           What's the pending question?

2           BY MS. JASRASARIA:

3           **Q       The pending question was whether anyone in**  
4           **the Board of Governors had conversations with anyone**  
5           **with the legislature about SB 264 or HB 233 while it**  
6           **was being considered?**

7           A       After it was filed?

8           **Q       Correct.**

9           A       Yes.

10          **Q       Who had those conversations on -- in the**  
11          **Board of Governors?**

12          A       I believe my general counsel had a  
13          conversation with Representative Roach explaining to  
14          him what the current process was within the system.

15          **Q       Can you explain what you mean by "current**  
16          **process"?**

17          A       What the -- what the process was in our  
18          system for addressing freedom of expression,  
19          provided background on what the current status was.

20          **Q       And can you explain what that current**  
21          **status was at the pre-HB 233's passage?**

22          A       In a couple of -- I am trying to think of  
23          the time frame exactly, but in particular we had a  
24          statement of intellectual freedom that had been  
25          signed by my chair and myself and by each of our

1 institutions which stated broadly what our -- what  
2 the environment was on our campuses with regard to  
3 freedom of speech and intellectual freedom.

4 **Q Anything else besides that?**

5 A That's all I am aware of.

6 **Q What was the origin of the statement of**  
7 **intellectual freedom?**

8 A I would say it arose from -- I am trying  
9 to think of the exact timing. There were reports or  
10 assessments from a group called FIRE that was  
11 critical of some of the processes on our campuses in  
12 particular that looked at particular -- I think one  
13 of the big areas was this issue of free speech zones  
14 versus free speech across campus.

15 We were also sensitive to communicating to  
16 our campus community, both our students and our  
17 employees and -- and others who visited our  
18 campuses, you know, what our position was, given the  
19 context as public institutions, that we were open to  
20 individuals coming on campus being able to share  
21 their views.

22 There were -- I am trying to remember  
23 what -- the chicken or the egg -- but there was a --  
24 there was an event at the University of Florida -- I  
25 believe the individual's name was Richard Reeves --

1 requested the ability to speak on campus, and there  
2 was a lot of preparing for that, requiring a fair  
3 amount of logistical discussion.

4 So we sort of -- it was kind of an  
5 environment, I think when you looked at it -- there  
6 were other universities or university systems that  
7 had adopted statements similar to what we did. We  
8 felt it created value.

9 **Q Do you recall which other systems had**  
10 **adopted?**

11 A There was -- I think what they called The  
12 Chicago Agreement. It's not really an agreement,  
13 but it's, you know -- but that was kind of the --  
14 there was a point in time when I had an opportunity  
15 to go to -- and hear from a guy named Robbie George  
16 who is a professor at Princeton. He is one of the  
17 national advocates for civil discourse, so some of  
18 this blended into that. And what we wanted to do  
19 was emphasize our policy of protecting individuals'  
20 rights to express themselves.

21 **Q Did you go see Professor George in**  
22 **conjunction with this initiative, or did it predate?**

23 A I am trying to recall. That's the chicken  
24 or egg part. I don't -- I don't have that in my  
25 head. All of it was -- is sort of -- it's been --

1 it was more than just a piece of paper that we  
2 signed.

3 My board since then has also engaged in a  
4 more detailed civil discourse initiative, worked  
5 with the universities, with stakeholders at the  
6 universities to develop what I would call kind of a  
7 plan as well as expectations. And then -- and then  
8 we do follow up with the universities, talking about  
9 best practices and how we share those, lessons  
10 learned.

11 **Q Do you recall when this statement of**  
12 **intellectual freedom was being contemplated, when it**  
13 **first was being contemplated within the Board of**  
14 **Governors?**

15 A I'd say the statement itself was  
16 probably -- it would have been 2018, 2019 generally.  
17 I can recall working with President Thrasher, who  
18 was at FSU at the time, though he'd been there -- he  
19 was there prior to that. But I know it was John and  
20 it wasn't Eric Barron.

21 **Q Did the idea for a statement of**  
22 **intellectual freedom originate within the Board of**  
23 **Governors or elsewhere?**

24 A I think it also -- I want to say that that  
25 discussion also originated with some of the



1 universities with the boards of trustees as well.

2 That's my recollection.

3 Q And you mentioned that part of the reason  
4 it was developed was in response to some criticisms  
5 from the organization FIRE; is that right?

6 A Yes.

7 Q Do you recall whether FIRE was focused on  
8 specific campuses in its criticisms?

9 A My understanding of their report is they  
10 actually rotate, so they didn't -- I don't believe  
11 they, for example, come to Florida and look at 12  
12 universities and then issue a report. They rotate  
13 around within a state.

14 What I recall specifically -- maybe my --  
15 John and I spent some time working on it -- was that  
16 FSU was a school that did not have a favorable FIRE  
17 rating.

18 Q And this was around 2018, you would guess?

19 MS. LUKIS: Object to form.

20 A I'm doing that the best I can recall. I  
21 don't -- I don't have a specific time.

22 BY MS. JASRASARIA:

23 Q How was the statement intellectual freedom  
24 developed? Who was involved?

25 A I was, I believe Governor Cerio was. I

1 don't recall all the individuals, I would say, but  
2 we definitely worked with some of the universities;  
3 spent some time and read the Chicago statement,  
4 talked about -- and I believe we had some -- this  
5 is -- you know, I'll say to the best of my  
6 recollection, we had some material already on our  
7 campuses that we were able to also look at. Didn't  
8 kind of come out of nowhere; it was sort of looking  
9 at taking sort of the best ideas from different  
10 places and formalizing it in a system statement.

11 **Q Do you recall which campuses you were able**  
12 **to draw from existing materials for?**

13 A Other than FSU, I honestly don't.

14 **Q And when you say that you consulted with**  
15 **universities, who at the universities would you**  
16 **consult with on this statement?**

17 A Typically something like this would have  
18 been -- we would typically go to the general  
19 counsels or the provosts would be the individuals  
20 that would have -- some universities have student  
21 affairs vice presidents that are not under the  
22 provost, but it would have been looking at what were  
23 existing statements and existing policies.

24 **Q Did you consult with faculty at the**  
25 **universities?**

1           A       Not directly, though I've had a practice  
2 of meeting with faculty senate and use that venue as  
3 an opportunity to keep them advised of the things  
4 that we're doing.

5                    Again, our -- we have a board member who  
6 serves on the faculty senate, so ... I guess I'd  
7 say -- I've had a pretty good reception from that  
8 group, I think, over time to be able to -- they have  
9 a regular meeting and they invite me to come and  
10 share kind of what I understand is going on in the  
11 system.

12           **Q       How frequently do you attend their**  
13 **meetings?**

14           A       When I am invited. So very frequently  
15 over the last couple of years, frankly, because of  
16 COVID. I'd say at least once a year, but in recent  
17 times was probably more at least once a quarter.

18           **Q       What was the faculty senate's reaction to**  
19 **the statement of intellectual freedom in particular?**

20                    MS. LUKIS: Object to form.

21           A       I don't recall. I would say positive  
22 would be my answer. That's what I do recall.

23 BY MS. JASRASARIA:

24           **Q       Did the board consult with -- and when I**  
25 **say "the board," I mean you and the board -- consult**

1 with experts in the formulation of the statement?

2 MS. LUKIS: Object to form.

3 A I don't recall.

4 BY MS. JASRASARIA:

5 Q You also mention the civil discourse  
6 initiative, correct?

7 A Yes.

8 Q What would you say the goals of that  
9 initiative were?

10 A We recognized, based on things that had  
11 happened in other parts of the country, that it was  
12 important for us to be sensitive to individuals on  
13 our campuses believing that they were welcomed, that  
14 their viewpoints were welcomed, that their  
15 contribution to the university community had value.

16 And we also believed that there is a  
17 friction that happens when people disagree but don't  
18 really understand, I guess I'd say, how -- you know,  
19 it was kind of about how do you disagree  
20 respectfully, which is more than the First  
21 Amendment, but we wanted to take it to that level.

22 And we felt that part of the education  
23 process in student life, as well as where possible  
24 even in the classroom, it was important to create  
25 examples where students were asked or challenged to

1 express views and do it in a way where they were --  
2 I guess my word would still be respectful, I guess  
3 somewhat civil.

4 And, you know, it was kind of a, how do  
5 you build life skills to deal with people you don't  
6 agree with but do it in a professional and  
7 respectful manner and a productive -- and at the end  
8 of the day, a productive manner.

9 I think part of our concern to what we'd  
10 seen happen in other parts of the country was that  
11 the alternative to that led to the kinds of violence  
12 and acting out that you don't want and that -- you  
13 know, university campuses in particular, because  
14 we're open, because we don't restrict what our  
15 students can say and do and what our faculty can say  
16 and do, that we need to be thoughtful about what  
17 that looks like.

18 **Q What are you referring to when you mention**  
19 **things happening in other parts of the country that**  
20 **you were responding to?**

21 A There were riots, demonstrations, and  
22 various issues.

23 **Q Anything in particular?**

24 A I don't really -- not any particular  
25 incident. I think there obviously had been a series

1 of events over the last several years, still could  
2 be any day, people who were unhappy with the  
3 decision or believed that someone has been wronged,  
4 you know, trying -- and it's also the day-to-day  
5 interaction of learning.

6 You know, in a university environment, you  
7 expect people to have different backgrounds and  
8 different perspectives, and as certain topics are  
9 debated, they need the ability to think about how  
10 they handle that, how they deal with it, how they  
11 grow from it, how they learn from it.

12 **Q When did the civil discourse initiative**  
13 **originate?**

14 A We just -- we just -- we published the  
15 plan I'd say a year and a half, two years ago.

16 **Q And how did -- whose idea was it?**

17 A I'm trying to recall if it was our -- at  
18 that time, our board chair was Syd Kitson. I'm  
19 trying to recall whether it was Syd's or -- or -- I  
20 do also know that Governor Cerio, Tim Cerio, this is  
21 an area of his interest and passion. I don't recall  
22 who came to me first, but it looked like a good  
23 opportunity for us.

24 **Q Fair to say that the idea originated**  
25 **within the Board of Governors itself?**

1           A     Yes.

2           Q     **And you mentioned that the civil discourse**  
3     **initiative touched both student life and classroom**  
4     **activity as well; is that right?**

5           A     Yes.

6           Q     **Does the statement of intellectual freedom**  
7     **that we have just been discussing also apply to both**  
8     **classrooms and student life?**

9           A     If not -- it's broader than just that -- I  
10    mean, it's everything. It also translates into  
11    every aspect of the campus. I'm not sure what those  
12    things I'd add on that list would be, but it -- I'd  
13    say, if anything, intellectual freedom, it's sort of  
14    the -- it's sort of the fundamental, it's the  
15    platform on which some of these other things rest.

16          Q     **In developing this civil discourse**  
17     **initiative, did the Board of Governors consult with**  
18     **experts?**

19                   MS. LUKIS: Object to form.

20          A     We engaged Bill Mattox with the James  
21    Madison Institute, and Liz Joyner, which I believe  
22    the organization is Village Square, who we -- who we  
23    sort of felt would -- you know, they were -- they  
24    were sort of a local example of -- I guess I'd  
25    describe it as two individuals who probably had

1 ideologically different perspectives on the world  
2 that came and actually presented to our board, so  
3 I'd say that's the -- that's the outside source that  
4 we relied on for that.

5 We also -- I'm sorry, I think I said it  
6 earlier, but we brought Professor George down to  
7 Florida at one of our summits to gain that kind of  
8 national privilege he brings to the table on it.

9 BY MS. JASRASARIA:

10 Q Did you speak to any other academics who  
11 would be experts in the field of academic freedom or  
12 the First Amendment?

13 A I don't recall. I believe that members of  
14 my staff worked with Governor Cerio in developing  
15 the plan, and I would expect that given the  
16 nature -- excuse me -- given the nature of their  
17 normal work, they probably had discussions about it  
18 at the provost level.

19 And again, depending on the organizational  
20 structure at the universities, possibly with student  
21 affairs individuals.

22 MS. JASRASARIA: I'm going to mark an  
23 exhibit, so give me one second.

24 MS. LUKIS: Does it make a sense to take  
25 5 minutes before we get into another document?



1 MS. JASRASARIA: Sure.

2 THE VIDEOGRAPHER: We are now going off  
3 record at 10:25 a.m.

4 (A recess took place from 10:25 a.m. to at  
5 10:35 a.m.)

6 THE VIDEOGRAPHER: We are now going back  
7 on record at 10:35 a.m.

8 BY MS. JASRASARIA:

9 Q Chancellor, did you speak with your  
10 counsel during the break?

11 A About my car, yes.

12 Q Okay. Did you speak about the deposition  
13 at all?

14 A No.

15 Q So we were speaking about the civil  
16 discourse initiative. What were the goals of that  
17 initiative, or what are the goals?

18 A I would say to enhance the campus climate,  
19 to proactively think about how you include civil  
20 discourse not only in the campus environment but  
21 also in the process by which we teach, to take it up  
22 a notch so that -- so that we respect the -- I guess  
23 by making it more comfortable for people to  
24 understand that give and take is part of -- is part  
25 of an education process that happens at a university

1 versus sitting in a classroom listening to a lecture  
2 so that -- and again, it's a combination of the  
3 environment on the campus itself by giving the  
4 students the life skills that they need to be able  
5 to engage in issues wherever they go when they leave  
6 our campuses.

7 Q You had mentioned earlier that it was also  
8 to help students engage with diverse viewpoints in a  
9 productive manner.

10 Is that a fair characterization?

11 A Yes. Yes. I'm sorry.

12 Q Has the civil discourse initiative been a  
13 successful program?

14 A It's not over, so I -- I would not grade  
15 it yet. I think we have made -- I think we have a  
16 blueprint. Part of our conversation going forward  
17 is first at the university level sort of best  
18 practice kind of opportunities and then sharing  
19 those, bringing them, where our board has an  
20 opportunity to bring universities together at some  
21 of our board meetings and present the initiatives  
22 they had and have had and what engagement they say  
23 that they are getting; find out what other feedback  
24 we get that we -- we need to address more.

25 Q So far, have you seen positive progress as

1     **a result of the civil discourse initiative?**

2             MS. LUKIS: Object to form.

3             A     I have seen positive engagement. I -- I  
4     would have to say from the Tallahassee perspective,  
5     I don't know that I could -- I know what people are  
6     doing. I think it's actually a good question to ask  
7     our student representative and our faculty  
8     representative in the future, so I am going to file  
9     that one away.

10            BY MS. JASRASARIA:

11            **Q     Has the -- what has the reaction from**  
12     **stakeholders and -- and faculty and students been on**  
13     **the civil discourse initiative thus far?**

14            A     Everything I have heard has been positive  
15     and well received.

16            **Q     Okay. So we started this conversation**  
17     **because we were discussing HB 233, and I believe**  
18     **your general counsel's conversation with**  
19     **Representative Roach about the current status of**  
20     **intellectual freedom and viewpoint diversity on**  
21     **campus; is that correct?**

22            A     Yes.

23            **Q     What -- what are the concerns that the**  
24     **board has seen in the realm of intellectual freedom**  
25     **and viewpoint diversity?**

1           A       I don't know that it's a matter of what  
2     the board has seen. I believe that what we -- you  
3     know, what we -- what I am aware of is from time to  
4     time there have been incidents on campuses where  
5     process change or -- or thoughtful -- you know, sort  
6     have been worth sort of stopping and thinking about  
7     how would you do this differently.

8           **Q       Can you expand on that a little bit and**  
9     **give me some examples?**

10          A       Okay. One was the example at Florida  
11     State University where you had actually two student  
12     body presidents who were subject to an impeachment  
13     vote. The first one actually was impeached, but it  
14     actually happened twice -- it happened two times,  
15     you know, two times sequentially, where the student  
16     government took a vote to remove someone from office  
17     for their personal expression of their personal  
18     views.

19                    It was actually in -- I think it's  
20     actually in the -- the ultimate bill, you know,  
21     which creates kind of -- and -- and the difference  
22     there would have been should the university have  
23     intervened in the student government process, at  
24     least in a counseling way.

25                    And I think one of the things that was

1 changed in legislation, if I recall correctly, was  
2 that universities have to provide a senior  
3 administration individual who a student can take a  
4 complaint to when something like that happens.

5 That ultimately was resolved by the  
6 courts, but it's a good example. And I guess in  
7 part I would also say, from my perspective, that  
8 it's an example where people focused a lot on the  
9 first vote, not the second vote. But in reality,  
10 neither vote should have been taken.

11 **Q Is that one of the incidents that you were**  
12 **also referring to as a motivation for the civil**  
13 **discourse initiative?**

14 **A** No. I see -- well, I see that more as an  
15 intellectual freedom issue than a civil discourse  
16 issue.

17 Civil discourse to me in some ways is the  
18 mechanics in which you exercise your intellectual  
19 freedom. The fundamental issue is First Amendment.

20 **Q What about the statement on intellectual**  
21 **freedom? Was -- is the example of what you just**  
22 **shared with the student -- student body presidents**  
23 **something that the statement captures in some way or**  
24 **aims to address?**

25 **A** I think it is and it's a matter -- so in

1 the example I gave, it's a matter of understanding  
2 in that particular case the -- the role and process  
3 of student governance versus the institutional  
4 responsibility, and they are not two separate  
5 things.

6 There were a series -- there was probably  
7 reasons why certain things happened the way they  
8 happened, but -- but I think the idea that someone  
9 would have a senior official that they could appeal  
10 to could have dealt with that a lot sooner than --  
11 than it ultimately was resolved.

12 **Q Are there other concerns beyond student**  
13 **governance issues that the board was aware of with**  
14 **regard to intellectual freedom and viewpoint**  
15 **diversity?**

16 A It was the FIRE report. And so you had a  
17 third party group that looks at these things across  
18 the country and evaluate -- and honestly for me,  
19 that was a learning event. I will date myself, but  
20 I grew up when there was a taped off area at the  
21 airport that was the only place someone -- you can't  
22 get to that part of the airport anymore with TSA.

23 But -- but the idea of a free speech zone  
24 to me, I never thought of that as being problematic.  
25 It was helpful to have a third party group raise

1 that issue. You sort of see that, you learn from  
2 it, and then you start thinking about what is it we  
3 should be doing to address that.

4 **Q Anything else?**

5 MS. LUKIS: Object to form.

6 A I think the other one is the one I  
7 mentioned was the Reeves issues at the University of  
8 Florida.

9 BY MS. JASRASARIA:

10 **Q Any others? Or are those the three that**  
11 **come to mind?**

12 A Those are the ones that come to mind.

13 **Q Were there other conversations that the**  
14 **Board of Governors had with anyone in the**  
15 **legislature about HB 233 or SB 264 while it was**  
16 **pending?**

17 A Not that I recall.

18 **Q Did you provide any materials to the**  
19 **legislature as it considered SB 264 or HB 233?**

20 A We typically do a bill analysis. At  
21 least -- and a lot of times there would be -- one is  
22 sometimes we are asked to do one. That obviously  
23 puts it on -- on a priority list. And/or we follow  
24 things where we believe there's particular interest  
25 for the system.

1           And to manage through that -- again, as  
2   you know there is a lot of bills that are filed.  
3   And -- and I recall in particular probably 233  
4   before it was the rolled-up bill, at least I know it  
5   that there was a bill analysis that was done.

6           **Q     Did you have conversations with the**  
7   **Governor's Office about SB 264 or HB 233 before it**  
8   **was introduced in the legislature?**

9           A     No.

10          **Q     What about while it was pending?**

11          A     I don't recall any.

12          **Q     Okay. And just to confirm, the "you"**  
13   **there includes has the board had -- did the board**  
14   **have conversations?**

15          A     I am not aware of anybody else having a  
16   conversation with them on the board.

17          **Q     Including -- that's including while it was**  
18   **pending?**

19          A     I am not aware of anyone else having a  
20   conversation before or during the consideration of  
21   233 and 264.

22          **Q     Do you know whether the governor was in**  
23   **support of the adoption of HB 233?**

24                   MS. LUKIS: Object to form.

25          A     I interpret his signing a bill as being in



1 support of it. That would be my knowledge of it.

2 BY MS. JASRASARIA:

3 Q Are you aware of whether the governor or  
4 anyone acting on the governor's behalf lobbied for  
5 the adoption of SB 264 or HB 233?

6 MS. LUKIS: Object to form.

7 A I don't recall anyone from the Governor's  
8 Office or the governor -- I am trying to think  
9 through committee discussions and things like that  
10 if someone appeared. I don't recall anyone doing  
11 that.

12 BY MS. JASRASARIA:

13 Q Did the commissioner of education or  
14 anyone acting on the commissioner's behalf lobby for  
15 the adoption of SB 264 or HB 233?

16 MS. LUKIS: Object to form.

17 A I don't know.

18 BY MS. JASRASARIA:

19 Q Was the commissioner in support of the  
20 adoption of HB 233?

21 MS. LUKIS: Object to form.

22 A I don't know.

23 BY MS. JASRASARIA:

24 Q Was the Board of Governors in support of  
25 the adoption of HB 233?

1 MS. LUKIS: Object to form.

2 A I would -- I would describe it as more  
3 neutral. We did not take a position on the bill.  
4 And we do have a process if we are going to do that,  
5 and we did not do that.

6 BY MS. JASRASARIA:

7 Q Do you undertake the process for deciding  
8 support for all bills that would affect the Board of  
9 Governors?

10 A No. Some bills are -- some bills we're  
11 asked by a sponsor. I don't recall anyone asking us  
12 to do that. It's really a matter of drinking from a  
13 firehose when you are kind of going through;  
14 particularly the committee process, there is just so  
15 many different bills.

16 I don't see anything in it that -- I mean,  
17 I would say I don't see anything that we would  
18 object to. But we did not take a formal position on  
19 it.

20 Q Did you all consider taking a formal  
21 position on it?

22 MS. LUKIS: Object to form. And whether  
23 or not an agency internally deliberated about  
24 whether or not it was going to formally and  
25 publicly take a position on a bill is protected

1 by the delivery of process privilege, so I am  
2 going to instruct the witness not to answer.

3 BY MS. JASRASARIA:

4 Q Chancellor, are you going to follow your  
5 counsel's instruction?

6 A Yes, I am.

7 Q Do you report back to the legislature  
8 after a bill that involves the Board of Governors  
9 has been signed?

10 A We are from time to time asked to provide  
11 status reports. Some of those are formal and  
12 actually require specific dates. Others are --  
13 typically come from legislative staff, maybe on  
14 behalf of a chair or somebody like that, asking us  
15 for an update on what we are doing, where we are in  
16 that process of implementation. A lot of times the  
17 bill sponsor may ask their staff to check off with  
18 us.

19 Q Do you recall providing any implementation  
20 updates about HB 233?

21 A No, I don't.

22 Q Do you -- do you know whether the board  
23 has been asked to give such an update?

24 A We've been asked -- there are elements of  
25 233 that we have a responsibility to implement by

1 September, but I don't recall any requests or any  
2 updates to the legislature.

3 Q Okay. So you don't recall any -- just to  
4 clarify, you don't recall any requests from the  
5 legislature to update on the status or progress of  
6 implementing HB 233 thus far?

7 A I don't recall any, yes.

8 Q You mentioned the bill analysis. I just  
9 wanted to pull up some bill analyses.

10 MS. JASRASARIA: I'm going to mark

11 Exhibit 3. This is Defendants\_006823.

12 (Exhibit 3 was marked for identification.)

13 BY MS. JASRASARIA:

14 Q This is an e-mail exchange titled "Bill  
15 Analysis Request SB 264," correct?

16 A Yes.

17 Q Are you familiar with this document?

18 A I would recognize -- it looks like a  
19 typical document between individuals on my staff,  
20 and it would have been Heather Page or one other  
21 individual would have been the one to receive that  
22 and pass it up the line.

23 Q What is Heather Page's role?

24 A She works in our communications and  
25 legislative affairs. It's one of two people that

1 are responsible for communications in legislative  
2 affairs. She works in support of the assistant  
3 vice-chancellor, would handle requests like this,  
4 bill analysis, as well as bill tracking reports; and  
5 on the communication side, social media and other  
6 communications for our office.

7 Q Looking at the bottom e-mail on this chain  
8 down at the bottom of page 1 of the exhibit, which  
9 is 6823, the first sentence reads: "We have gotten  
10 a bill analysis request from Senate education for  
11 SB 264, higher education, that I have placed as a  
12 Category 2."

13 Did I read that correctly?

14 A Yes.

15 Q What does it mean to be placed as a  
16 Category 2?

17 A I can't speak to all of the  
18 categorizations. I would say that's a high  
19 priority. I note in this one there was a deadline  
20 when it was requested by, which would cause us to  
21 treat this with a higher priority.

22 Q And if you look at the top e-mail from  
23 Renee, she writes: "This one will also need  
24 Marshall's review once it has gone through all of  
25 the other steps."

1                   **Did I read that correctly?**

2           A       Yes.

3           **Q       And is Marshall referring to you?**

4           A       That would be me.

5           **Q       Why would this analysis require your**  
6 **review?**

7           A       Because it was requested for a -- it  
8 appears, in this case, it was requested by the  
9 Senate education committee. They probably had an  
10 agenda, and I would have needed to be familiar with  
11 what our statements were in case -- some cases I  
12 might appear in front of a committee, might be  
13 contacted by a chair or a member. So that I  
14 wouldn't be surprised by what our bill analysis  
15 said.

16           **Q       Is your review always required for bills**  
17 **that are coming from the higher education**  
18 **committees?**

19           A       Typically because that's our -- they would  
20 be the ones dealing with our subject matter, and I  
21 just don't like to be surprised.

22           **Q       You mentioned attending hearings. How**  
23 **often do you attend legislative hearings?**

24           A       Depending -- really, depending on the  
25 session. Obviously the last couple of years were

1 different, you could watch everything. So it would  
2 be really my own judgment as to, one, if we were  
3 either planning to make a statement or if I was  
4 requested by a committee chair to appear at a  
5 committee versus -- sometimes earlier in the session  
6 just to learn who new committee members are, I'm  
7 more likely to sit in the back of the room and just  
8 get a feel for the flow to familiarize myself with,  
9 you know, I -- in a -- right after an election year  
10 where you've got new members and new chairs.

11 So at times it could be more than once in  
12 a week and at other times it might be nothing in a  
13 week, just depending on kind of where it was.

14 **Q Are you ever invited to attend by the**  
15 **legislature?**

16 A Yes.

17 **Q And what -- when does that typically**  
18 **happen?**

19 A Typically earlier in session, I'm invited  
20 to come and provide an overview presentation on the  
21 State University System. Often it would have been  
22 both by the policy committee and then also the  
23 appropriations committee, but that would be  
24 generally when I would appear.

25 From time to time -- as I said earlier, if

1 we were requested to register comments on  
2 legislation, then either I or someone in my office  
3 would do it, depending on sort of how many  
4 committees were going on and things like that.

5 Q So sticking with the bill analysis --

6 MS. JASRASARIA: I would like to mark  
7 Defendants\_096048 as Exhibit 4.

8 (Exhibit 4 was marked for identification.)

9 BY MS. JASRASARIA:

10 Q So this is a -- it's an offshoot of the  
11 e-mail chain we just looked at. I know the format  
12 is a bit funky, but this is how we received it.

13 If you look at the first -- the top e-mail  
14 in the chain, this is an e-mail from Vikki Shirley;  
15 is that correct?

16 A Yes.

17 Q And it says: "I need to add language  
18 about the chilling effect on speech in the classroom  
19 to the student impact section"; is that right?

20 A That's what it says.

21 Q Do you know what that's referring to?

22 A And this was on -- honestly, I could say I  
23 have an opinion. I don't know that I have -- I  
24 don't know specifically.

25 Q Okay. We can certainly start with your



1 **opinion. What's your opinion about what this --**

2 A I would --

3 MS. LUKIS: Object to form.

4 You can answer.

5 A I believe it would relate to the recording  
6 of -- of the ability of students to record in the  
7 classroom. And I'm trying to understand the timing  
8 of this. This looks like this would have been early  
9 on before some of that language was amended from the  
10 date on the communication.

11 BY MS. JASRASARIA:

12 **Q Is there a specific amendment that you're**  
13 **thinking about?**

14 A No. I just -- I recall there was  
15 discussion and some -- I thought that there was some  
16 changes in language to detail when and how that  
17 could be done or when it could not be done.

18 **Q And you recall that some of those changes**  
19 **addressed the concerns around chilling that are**  
20 **mentioned in this e-mail?**

21 MS. LUKIS: Object to form.

22 A What I recall is a specified what  
23 recording could be used for and what it could not be  
24 used for. That's what I recall.

25

1 BY MS. JASRASARIA:

2 Q Is the Board of Governors aware of any  
3 occasions on which the recording provision has been  
4 used?

5 A No.

6 Q Is that something typically that you would  
7 know if it had been?

8 MS. LUKIS: Object to form.

9 THE VIDEOGRAPHER: Counsel, could I ask  
10 you put your mic on.

11 MS. LUKIS: Me? Okay.

12 A I don't believe we would become aware of  
13 something unless there was a complaint that rose to  
14 our level. May or may not have been a complaint or  
15 some other issue at a university, but that's where  
16 it would have been and should be addressed.

17 BY MS. JASRASARIA:

18 Q Did the board receive any concerns about  
19 the recording provision while the legislation was  
20 pending?

21 A I don't recall specifically.

22 I'll be honest and say I just saw you take  
23 a document out of the box. I'm sure you're going to  
24 show me a complaint, so I want to be honest and say,  
25 yes, I would imagine we probably got something.

1 Yeah, probably did.

2 Q Fair enough.

3 A It wouldn't be unusual for someone to  
4 submit comments to us.

5 Q Who would you typically get comments from?

6 MS. LUKIS: Object to form.

7 A Typically, again, it would be students,  
8 faculty, parents. That's the vast majority.

9 MS. JASRASARIA: I'm going to mark  
10 Defendants\_001502 as Exhibit 5.

11 (Exhibit 5 was marked for identification.)

12 BY MS. JASRASARIA:

13 Q This is an e-mail from Sally McRorie to  
14 Christy England; is that right?

15 A Yes, it is.

16 Q Who is Christy England?

17 A Christy is the vice-chancellor for  
18 academic and student affairs in my office.

19 Q Do you know who Sally McRorie is?

20 A Dr. McRorie is the former provost at  
21 Florida State University.

22 Q So looking at this e-mail here, it starts  
23 with: "Just to add to your misery, here's a sample  
24 of questions from a United Faculty of Florida leader  
25 at FSU, perhaps of CAVP discussion."

1                   **Did I read that correctly?**

2           A       Yes.

3           **Q       Do you know what CAVP discussion would be?**

4           A       Council of Academic Vice Presidents, who  
5 would be the provosts. And that group met on an  
6 every other week, maybe every week basis at times,  
7 but typically meets a couple of times probably a  
8 month.

9           **Q       Does the United Faculty of Florida send**  
10 **complaints to the board directly?**

11          A       They have in the past.

12          **Q       What is the board's relationship with the**  
13 **University Faculty of Florida?**

14                   MS. LUKIS: Object to form.

15          A       You're referring to the Tallahassee office  
16 or in general?

17          BY MS. JASRASARIA:

18          **Q       Either, I suppose, the statewide**  
19 **organization or any of the individual chapters.**

20          A       Uhm --

21                   MS. LUKIS: Object to form.

22                   THE WITNESS: Sorry.

23                   MS. LUKIS: Go ahead.

24          A       I would say generally -- excuse me. It's  
25 actually been a while since I recall anything

1 specific from the United Faculty of Florida.

2 I would say generally somewhere neutral to  
3 positive. When, I believe it was Marshall Goodman,  
4 if I have the name right -- Marshall and I spoke --  
5 used to speak frequently, we probably had one area  
6 of pretty significant disagreement. But I've not  
7 really received outreach from the local group, you  
8 know, since he left.

9 BY MS. JASRASARIA:

10 Q Do you recall when he left or when that  
11 would have been, what period of time?

12 A Few years ago.

13 Q Do you have regular meetings with other  
14 faculty groups beyond the -- I know you mentioned  
15 the Florida Senate -- faculty senate?

16 A I meet with the faculty -- I meet with the  
17 faculty senate. When our board is on a campus for a  
18 board meeting, we typically have a breakfast the  
19 second day with the faculty -- it's a faculty  
20 breakfast -- breakfast with faculty.

21 It is attended by other institution  
22 faculty senate presidents as well as -- it kind of  
23 differs. It's kind of driven by what each campus  
24 wants to do, but sometimes it's other faculty senate  
25 presidents and -- not presidents but the campus, the

1 institutional senate presidents, as well as  
2 individual faculty members at the institution.

3 **Q Do you know whether the complaints --**  
4 **questions in this e-mail that we are looking at were**  
5 **ever responded to by the board?**

6 A I believe this was discussed with CAVP, so  
7 it was responded -- Dr. McRorie was a member. In  
8 fact, she may have been chair, I believe, at that  
9 time of the CAVP. So I know that dialogue would  
10 have occurred.

11 I am looking at -- and the first question  
12 is about FSU policy. I know there were some  
13 conversations between our -- some of these issues go  
14 to the recording requirements, and I know there was  
15 some work between our office and I think with the  
16 general counsels at the universities to come up with  
17 a common understanding of words like "lecture," some  
18 of the terms that would be used in the application  
19 of the statute.

20 MS. JASRASARIA: I would like to mark  
21 Defendants\_002160 as Exhibit 6.

22 (Exhibit 6 was marked for identification.)

23 BY MS. JASRASARIA:

24 **Q Are you familiar with this document,**  
25 **Chancellor?**

1           A     Yes.

2           **Q     Can you describe it?**

3           A     It's a communication to me from  
4     Dr. William Self, Dr. Self is -- was the president  
5     of the faculty assoc- -- I can't remember the  
6     acronym, but it's basically the faculty senate  
7     leadership. He is also -- serves on our board as a  
8     member, as a board member, in his role as president  
9     of the faculty senate.

10          **Q     And do you recall receiving this**  
11 **resolution?**

12          A     Yes.

13          **Q     Is -- is this something -- what -- what**  
14 **action did the board take, if any, after receiving**  
15 **this resolution?**

16          A     The board -- I would say the board did not  
17     take any action. What I did as a part of the normal  
18     meetings that I had with that group is discussed our  
19     perspectives on it, listened to their perspectives.  
20     In fact, I think we had a meeting right before this  
21     was sent; I knew this was coming. And I recognize  
22     it for what it is.

23          **Q     The date of this is March 9, 2021; is that**  
24 **right?**

25          A     That's correct.

1 Q So this was before HB 233 was passed?

2 A That would be right.

3 Q Did -- did you or anyone else on the board  
4 communicate these concerns to the legislature?

5 A No. I don't recall, though, that they  
6 didn't -- I think they were published but -- by the  
7 Association of Faculty Senates. I keep trying to  
8 figure out the C in that. There it is.

9 Q Okay. So sorry. Just to clarify, your  
10 understanding is they likely published this?

11 A I thought they were going to disseminate  
12 this, and that was provided to me in advance.

13 Q I know you also mentioned some of the  
14 guidance that the board was working on to define  
15 certain terms in the recording provision; is that  
16 right?

17 A Yes.

18 MS. JASRASARIA: I would like to mark  
19 Defendants\_02496 as Exhibit 7.

20 (Exhibit 7 was marked for identification.)

21 BY MS. JASRASARIA:

22 Q Are you familiar with this document,  
23 Chancellor?

24 A (Examining Document.)

25 I will say I am familiar with the



1 attachment. I am not sure that I'm familiar with  
2 the cover sheet, but the body of it I'm familiar  
3 with.

4 **Q Okay. Is this a draft --**

5 A And I will acknowledge I do see it was  
6 sent to me.

7 **Q Okay. So what is the document that --**  
8 **what is this attachment?**

9 A That is a memo from my general counsel,  
10 Vikki Shirley, to me. It reflects the work that was  
11 being done. I believe this is what I referred to  
12 earlier, was the effort by the general counsels to  
13 have common understandings and application of the  
14 recording provisions that were in the legislation.

15 **Q Where did the effort to develop a common**  
16 **understanding emerge from?**

17 A I believe we were asked, or more  
18 particularly Vikki may have been asked, to work with  
19 them to -- I mean, it's fairly common practice that  
20 when we are working through particularly what is  
21 more of a legal document, it would be normal  
22 whether -- if it's something that requires us to  
23 implement a regulation, we probably implement or  
24 initiate this kind of a conversation.

25 But if I recall correctly, she was getting

1 calls from several of the institutions' general  
2 counsels and asking us to at least convene a group  
3 together -- I think they would have liked us to tell  
4 them what to do, but I think the collaborative  
5 process is how we prefer to approach it and get  
6 their insights and input as we do it.

7 Q So to clarify, your office or the Board of  
8 Governors, the State University System was receiving  
9 calls from university attorneys, so counsel at the  
10 specific schools, asking for clarification about  
11 certain terms in the recording provision?

12 A Yes.

13 Q And was this guidance that's attached  
14 here, was this ever finalized?

15 A I am trying to recall if this is that or  
16 if there was something before it. I'm sorry, I just  
17 don't recall.

18 Q Do you recall whether the board ultimately  
19 issued guidance to the universities about these  
20 terms?

21 A I am trying to sort through in my head  
22 from the different pieces of legislation and rule  
23 making and where things are right now. I am hitting  
24 a blank.

25 Q I am going to switch gears for a second.

1 **Are you familiar with House Bill 7?**

2 A Yes.

3 **Q What does House Bill 7 --**

4 MS. JASRASARIA: First, I am going to mark  
5 the text of House Bill 7 as Exhibit 8.

6 (Exhibit 8 was marked for identification.)

7 BY MS. JASRASARIA:

8 **Q Are you familiar with this document?**

9 A Yes.

10 **Q What is it?**

11 A It's the committee substitute for House  
12 Bill Number 7.

13 **Q And what does House Bill 7 do? And I know**  
14 **it's broad, so I guess with respect to the State**  
15 **University System.**

16 MS. LUKIS: Object to form.

17 You can answer.

18 A Generally, there are two principal parts,  
19 at least from our application. One is the conduct  
20 of an employer or -- or employers with regard to  
21 their employees and has limitations on things that  
22 can be included in orientation or training.

23 There is -- and I am looking at the  
24 university application and not the K-12 --

25 BY MS. JASRASARIA:

1           **Q     Yes.**

2           **A     -- not K-12 application.**

3                   Then the other is -- addresses basically  
4 the classroom and the discussion of some of the same  
5 or all of the same topics, and I guess in my mind  
6 recognizes that in the education -- not the  
7 employer/employee piece, but in the academic  
8 application, the same limitations don't apply as  
9 long as the presentation of those ideas is -- how do  
10 I say it -- is -- is done; it includes and allows  
11 for sort of the development of alternatives to  
12 particular viewpoints as well.

13           **Q     Let's look at the text. Let's look at**  
14 **page 6 of this statute. I am looking at something**  
15 **marked -- marked with Paragraph B and it says:**  
16 **"Paragraph A may not be construed to prohibit**  
17 **discussion of the concepts listed therein as part**  
18 **of" --**

19           **A     I'm sorry. I'm on page 6?**

20           **Q     Yes.**

21           **A     Then I have -- what is the --**

22           **Q     So at the top, I believe the first**  
23 **paragraph is 8, right?**

24           **A     Is 8?**

25           **Q     And then there's one that's B below it?**

1 A Yes, ma'am.

2 Q That's what I am looking at now.

3 A Okay.

4 Q Yeah. So it says: "Paragraph A may not  
5 be construed to prohibit discussion of the concepts  
6 listed therein as part of a larger course of  
7 training or instruction, provided such training or  
8 instruction is given in an objective manner without  
9 endorsement of the concepts."

10 Did I read that correctly?

11 A Yes.

12 Q Is that what you were referring to when  
13 you noted that there are some exceptions to  
14 prohibitions on teaching?

15 A I would say there is almost a different  
16 context for them in the academic setting. It is --  
17 yeah, it says it much better than what I said which  
18 is, I guess, why when we have been asked questions  
19 about Senate Bill 7, we have guided people to read  
20 the bill. It's -- I guess to some extent it's  
21 fairly straightforward.

22 Q Turning back to page 5, just so that we  
23 are all talking about the same thing since I know it  
24 referenced Paragraph A and I didn't actually look at  
25 it.

1                   **Can you just take a minute to familiarize**  
2 **yourself with what's marked 4(a) in kind of the**  
3 **middle of that page.**

4           A       (Examining Document.)

5                   Yes, I read it.

6           **Q       Okay. What does it mean to discuss race,**  
7 **color, national origin, or sex in an objective**  
8 **manner?**

9                   MS. LUKIS: Object to form. Calls for a  
10                   legal conclusion.

11                   You can answer.

12           A       I can answer what I believe is objective.  
13 I don't know that I have the background to evaluate  
14 that.

15                   I just say that to me objectivity is --  
16 it's a balanced view rather -- rather than -- that  
17 you are discussing alternatives or differences of  
18 opinions about whatever the matter is, treating it  
19 in a way that is -- allows the -- if it's in an  
20 academic setting, I would expect that it leaves room  
21 for students and others to have their own views and  
22 to be able to share those and express them.

23 BY MS. JASRASARIA:

24           **Q       You just said that you may not have the**  
25 **background to explain that, so you were providing**

1     **your own opinion; is that right?**

2                   MS. LUKIS: Object to form.

3           A     Yes.

4     BY MS. JASRASARIA:

5           Q     **Who -- who makes the determination whether**  
6     **something is being -- whether any training or**  
7     **instruction is being given in an objective manner?**

8                   MS. LUKIS: Object to form.

9           A     The first recourse would be at the  
10    university.

11    BY MS. JASRASARIA:

12           Q     **And what -- how would the -- how would the**  
13    **issue come to the university's attention?**

14                   MS. LUKIS: Objection to the form.

15           A     I would expect that someone would file a  
16    complaint.

17    BY MS. JASRASARIA:

18           Q     **And would that -- what kind of -- what**  
19    **form would that complaint take?**

20                   MS. LUKIS: Objection to the form.

21           A     It is slightly -- each of the universities  
22    has their own process for this, so slight  
23    differences. But generally, there is a -- and I --  
24    but I believe it's always covered within their  
25    orientation and things like that -- there are places

1 to go, people to talk to. It could take its form in  
2 a lot of places.

3           Someone could -- you know, might -- might  
4 take the issue up directly with the faculty member.  
5 They might take the issue up with a dean or a  
6 department head; might choose to raise the issue.  
7 If I recall in the statute itself, it allows an  
8 individual to take a complaint ultimately to the  
9 courts or the legislature or to our board.

10 BY MS. JASRASARIA:

11           **Q     Is it possible that a complaint under this**  
12 **provision could take the form of a student recording**  
13 **a class and then making a complaint that way?**

14           MS. LUKIS: Objection to form. Calls for  
15 speculation and a legal conclusion.

16           You can answer.

17           **A     I am not sure how to answer it. Can**  
18 **someone file a complaint? They're filed all the**  
19 **time.**

20           Would a complaint have merit? I think it  
21 would depend on -- you'd have to look at the  
22 circumstances.

23 BY MS. JASRASARIA:

24           **Q     And to clarify my question, could a**  
25 **complaint originate from the recording provision?**



1 MS. LUKIS: Same objection. And -- yeah,  
2 same objection.

3 A I think it's the same answer. Are you  
4 saying -- well, same answer.

5 BY MS. JASRASARIA:

6 Q You mentioned that a complaint could  
7 ultimately come to the board.

8 A Uh-huh.

9 Q What would that process look like?

10 A That is a process that today -- there is  
11 no model because we've had no first case. Typically  
12 when we have an issue that rises above the  
13 university's complaint -- you know, above their  
14 resolution of the issue, then at some point I would  
15 expect at a minimum it would end up in front of our  
16 board at a board meeting, possibly -- we really  
17 haven't created a process for that, and it really  
18 would depend on a conversation I'd have to have with  
19 our board leadership about whether they wanted the  
20 full board to take a look at it or whether or not we  
21 would have some form of a subcommittee that would  
22 address it.

23 I think one of the values of the process  
24 that's in place is that it allows the university and  
25 the people closest to the issue to address it first

1 and kind of have all the -- they would have all the  
2 facts, they'd have the information.

3 Q Turning back to page 5 of this exhibit,  
4 which is Exhibit 8, how does the board define --  
5 sorry.

6 How does the board define oppression based  
7 on race?

8 MS. LUKIS: Object to form. And it's  
9 outside the scope.

10 You can answer.

11 A I don't believe we have a definition of  
12 oppression other than to look at the dictionary.

13 BY MS. JASRASARIA:

14 Q How does the board define racial color  
15 blindness?

16 A We don't have a definition of that. I  
17 guess what I would say is, you know, we'd look to  
18 the statute, but then I -- but we don't have a  
19 particular definition of that.

20 Q If a student complained about a professor  
21 teaching about critical race theory, could the  
22 university take action under HB 7?

23 MS. LUKIS: Object to form.

24 A I think the university would have the  
25 obligation to look into the complaint and

1 understand -- when you say "take action," I say at a  
2 minimum that the university would be expected to  
3 take a look at the allegations and what facts  
4 support them and go through their discipline process  
5 to understand if there actually was a violation.

6 BY MS. JASRASARIA:

7 Q How does the board define critical race  
8 theory?

9 A We don't have a definition.

10 Q How would you define it?

11 MS. LUKIS: Object to form. Outside the  
12 scope.

13 A So literally my definition is -- and it's  
14 my personal definition, but I went and read. It  
15 appears to me to be a litigation strategy that was  
16 developed in some law schools by the trial bar to  
17 build empathy with a jury or a judge in making  
18 determinations about suits. I think that's sort of  
19 essentially where it evolved from.

20 But I'm not -- I would dis- -- other than  
21 that's -- I did some reading one day and sort of  
22 tracked back and that was the earliest mention I  
23 found.

24 BY MS. JASRASARIA:

25 Q Are you familiar with the anti-shielding

1 provisions of HB 233, which we can turn back to  
2 Exhibit 2, if you want to look at that?

3 A (Examining Document.)

4 Q I'm sorry, I'm just finding the page.

5 It's on -- on page 2, it says: "Shield means to  
6 limit students, faculty members, or staff members  
7 access to or observation of ideas and opinions that  
8 they may find uncomfortable, unwelcome, disagreeable  
9 or offensive."

10 Do you see that?

11 A Yes, I do.

12 Q And if you turn to page 3, under 3, "right  
13 to free speech activities," there is a provision  
14 that says: "A Florida college system institution or  
15 state university may not shield students, faculty,  
16 or staff from expressive activities"; is that  
17 correct?

18 A Yes. I'm sorry.

19 Q What does the board understand the  
20 shielding provision to entail?

21 A That we cannot differentiate access to our  
22 campus, including the individuals on our campuses,  
23 based on the ideology or the perspective or the  
24 controversy of -- controversialness (sic), whatever  
25 the right word is -- con- -- anyway, you know

1 what -- I hope you know what I mean.

2 Sorry to the court reporter.

3 That I do understand we still have the  
4 ability to have some input on I believe it's time,  
5 manner -- there's a third term I'm not recalling  
6 right now; but that picking and choosing who gets to  
7 express themselves is not allowed.

8 **Q Does the law specifically require that**  
9 **universities cannot shield students, faculty**  
10 **members, or staff members from ideas or opinions**  
11 **that are uncomfortable, unwelcomed, disagreeable, or**  
12 **offensive?**

13 A Yes. That's what it says.

14 **Q And who makes the determination of whether**  
15 **an idea or opinion is uncomfortable, unwelcomed,**  
16 **disagreeable, or offensive?**

17 MS. LUKIS: Object to form.

18 A I don't believe you have to make that  
19 determination if you have -- if you have adopted a  
20 policy of intellectual freedom on your campus where  
21 you are -- you essentially don't make that  
22 determination that something is that, is the way I  
23 would -- is the way I would implement this -- is by  
24 recognizing that we are public campuses and that  
25 individuals' views and expression of their views are

1 allowed.

2 BY MS. JASRASARIA:

3 Q Does the shielding provision apply to  
4 classroom instruction?

5 MS. LUKIS: Objection to form.

6 You can answer.

7 A I would expect that it's the same thing,  
8 that it allows for -- again, I kind of look at it  
9 from the positive side which is you're -- you're not  
10 able to -- it applies to the institution. And the  
11 institution is not able to intervene in what is  
12 discussed, how it's discussed, based on the fact  
13 that someone may be uncomfortable or something else  
14 having that discussion.

15 BY MS. JASRASARIA:

16 Q So if a student complained about a  
17 professor teaching that the Holocaust never happened  
18 and the university decided to take some kind of  
19 action, would the university be running afoul of the  
20 anti-shielding statute?

21 MS. LUKIS: Objection to form.

22 A I don't know that I'm in a position to  
23 make an absolute determination. I would -- I would  
24 say -- step over into the idea of academic freedom.

25 If what you mean is literally what you

1 said, which is simply discussing the issue, then I  
2 don't believe -- I believe this would apply and the  
3 university would not be able to get in the way of  
4 that.

5 BY MS. JASRASARIA:

6 Q How does that -- how is that consistent  
7 with what we just discussed about the HB 7  
8 prohibition?

9 So, for example, if a student complained  
10 about a professor teaching about critical race  
11 theory, the university would be able to take some  
12 sort of action; is that right?

13 MS. LUKIS: Objection to form. Compound.  
14 Calls for speculation. Calls for a legal  
15 conclusion. Outside the scope.

16 MS. JASRASARIA: Counsel, could you please  
17 limit your objections to form objections?

18 MS. LUKIS: Sure.

19 MS. JASRASARIA: Thank you.

20 A Would you restate the question?

21 BY MS. JASRASARIA:

22 Q Sure. So a moment ago we discussed that  
23 if a professor were teaching that -- were, you know,  
24 discussing in class that the Holocaust did not  
25 occur, that under the anti-shielding statute the

1 university would not be permitted to take action  
2 because of HB 233.

3 And so I am just curious, you know,  
4 earlier -- a few minutes ago we had discussed that  
5 if a student complained about a teacher -- a  
6 professor teaching critical race theory in class,  
7 the university could take some action under HB 7 and  
8 perhaps is required to take some sort of action  
9 under HB 7.

10 And so I'm just curious how -- what makes  
11 those two things different?

12 MS. LUKIS: Object to form.

13 A So I will qualify this and say I'm not a  
14 lawyer. I will say I think the difference in the  
15 two scenarios is that in the -- if I recall  
16 correctly, in the discussion around HB 7, in the  
17 classroom, the determination would be whether or not  
18 it was done in an objective manner. It's not the  
19 teaching -- I believe HB 7 allows these topics to be  
20 discussed, but requires them to be discussed in an  
21 objective manner.

22 BY MS. JASRASARIA:

23 Q So you would agree that if it were being  
24 discussed in not an objective manner, that the  
25 university would be able to take some sort of



1     **action?**

2                   MS. LUKIS:  Objection to form.

3           A        I would expect that would be the nature  
4 someone would -- that someone would take -- would  
5 file a complaint about, that it was not objective.

6                   It's -- it's -- there's -- I mean, in my  
7 mind, there's probably several layers somebody has  
8 to walk through in understanding which are the right  
9 things to do.  It's the -- almost the same construct  
10 around academic freedom.

11                   Faculty have the ability to express their  
12 views, they have their ability to engage in debate,  
13 what they -- if I understand it correctly, you know,  
14 for example, what they can't do is hold somebody  
15 accountable in grading for agreeing with them.  That  
16 would be an example of where you have freedom but  
17 there is certain behaviors that aren't allowed or  
18 shouldn't be allowed.

19                   In your case, if you had a true/false  
20 question about the Holocaust and someone believed it  
21 happened, you can't grade them down because they  
22 debated it with you or disagreed with you.

23                   That is this whole other, you know -- and  
24 if they were doing it in a chemistry class, it's a  
25 totally different discussion as to whether it's even

1 relevant.

2 I think that's what HB 7 -- if I -- I  
3 thought I said it earlier. I feel like it allows it  
4 to be discussed but it requires that you do it in  
5 such a manner that you can have an open exchange  
6 about viewpoints and those are respected on both  
7 sides of the conversation.

8 BY MS. JASRASARIA:

9 Q And does HB 7's objective manner  
10 requirement apply to all subjects that might be  
11 taught in university or just specific subjects?

12 MS. LUKIS: Objection to form.

13 A I believe HB 7 delineates the specific  
14 issues that it addresses.

15 BY MS. JASRASARIA:

16 Q So the objective manner requirement would  
17 not apply to -- perhaps it might apply to teaching  
18 about the Holocaust, but would it apply to teaching  
19 about climate change?

20 MS. LUKIS: Object to form.

21 A I don't believe -- I mean, in HB 7, I  
22 don't believe there is any mention -- I mean, there  
23 is a specific list of topics that are addressed in  
24 HB 7. I think the objectivity is not by statute.

25 By practice, the objectivity is present in

1 the notion of academic freedom, not -- not limited  
2 just to objectivity.

3 But again, as I understand the application  
4 of academic freedom, is -- is -- where you start  
5 running outside the lane is when you insist or when  
6 you make students accountable for or somehow impact  
7 their performance based on whether or not they  
8 agreed with you. That's a -- it's on -- and it has  
9 its own process at the universities for being  
10 reviewed and evaluated as well.

11 BY MS. JASRASARIA:

12 Q Is there an objectivity requirement in  
13 HB 233?

14 MS. LUKIS: Object to form.

15 A I don't recall that there is one.

16 BY MS. JASRASARIA:

17 Q If a student complained that one -- that a  
18 professor teaching a public health course did not  
19 include any material about preventing mass shootings  
20 based on -- sorry. Scratch is that. Scratch that.  
21 I am going to ask a different question.

22 If a political science professor  
23 frequently invites guest speakers to class and  
24 refuses to invite a January 6 rioter to the class on  
25 the basis that it's not a view that the professor

1     **wanted to include, could the university or the board**  
2     **make the professor invite that guest speaker?**

3             MS. LUKIS: Object to form.

4             A     I'm not sure I can make a determination on  
5     that. I believe that's why the university would be  
6     involved in that and would be -- you know, I think  
7     there is a lot of things that have to be -- I mean,  
8     I am thinking through a list in my head of, you  
9     know, the relevance to the topic being taught and  
10    other things.

11            It is -- inclusiveness is a -- there's  
12    challenges in thinking about all the different  
13    variables that come under it, but I don't know that  
14    I can make that determination.

15    BY MS. JASRASARIA:

16            **Q     HB 233 specifically mentioned an**  
17    **intellectual freedom and diversity viewpoint**  
18    **assessment; is that accurate? I'm on page 2 of**  
19    **Exhibit 2.**

20            A     Yes. Yes, it does.

21            **Q     Okay. How would the board define the term**  
22    **"intellectual freedom and viewpoint diversity"?**

23            A     For purposes of applying the statute, we  
24    would use -- we would this definition because they  
25    define it here.

1           Q       Would the board consider intellectual  
2 freedom and viewpoint diversity to encompass, for  
3 example, a gender studies department at a Florida  
4 university that had, you know, 10 faculty members,  
5 all of whom affirmed that -- affirm nonbinary  
6 identities in their academic work but all of whom  
7 hold different views about the range of gender  
8 identities and the degree to which social and  
9 environmental factors might affect one's gender  
10 identity? So everyone agrees on one principle but  
11 have varying views about some of the underlying  
12 concepts. Would that be considered intellectual  
13 freedom and viewpoint diversity?

14                   MS. LUKIS: Objection to form.

15           A       I don't believe I can answer that. I -- I  
16 think there would be other questions that would have  
17 to be asked.

18                   MS. JASRASARIA: Why don't we take a short  
19 break right now? I know we have been going for  
20 over an hour. Just 5 minutes.

21                   THE VIDEOGRAPHER: We are now going off  
22 the record at 11:47 a.m.

23                           (A recess took place from 11:47 a.m. to  
24 12:03 p.m.)

25                   THE VIDEOGRAPHER: We are now going back

1 on record at 12:03 p.m.

2 BY MS. JASRASARIA:

3 Q Good afternoon, Chancellor.

4 A Good afternoon.

5 Q Did you speak to your counsel during the  
6 break?

7 A Yes.

8 Q Did you speak about the deposition?

9 A I asked a procedural question.

10 Q Okay. Did you speak about the substance  
11 of the questions and answers?

12 MS. LUKIS: Object to form.

13 A No.

14 MS. LUKIS: Attorney/client privilege.

15 Don't answer any questions about what we  
16 talked about.

17 MS. JASRASARIA: Okay. I am going to mark  
18 the text of Florida Statute 1008.32(2) as  
19 Exhibit 9.

20 (Exhibit 9 was marked for identification.)

21 BY MS. JASRASARIA:

22 Q Are you familiar with this statute,  
23 Chancellor?

24 A Yes.

25 Q And do you see -- I just wanted to point

1 to a couple sections. Section 2 says that the Board  
2 of Governor's constitutional authority -- skipping  
3 ahead a little bit -- mandates that state  
4 universities comply with all requests by Board of  
5 Governors for information, data, and reports.

6 Is that right?

7 A That's what it says.

8 Q Does the Board of Governors frequently  
9 request information, data, and reports from the  
10 universities?

11 A Yes. We have a combination of statutory  
12 requirements or reporting, as well as -- from some  
13 of our regulations, and then individual initiatives  
14 from time to time involve university status reports  
15 or other -- we get annual data from all the  
16 universities on student performance and things like  
17 that.

18 Q Moving to Section 3(a), it states that the  
19 chancellor of the State University System may  
20 investigate allegations of noncompliance with any  
21 law or Board of Governors rules or regulation and  
22 determine probable cause; is that correct?

23 A Yes.

24 Q And the chancellor would be you, correct?

25 A That's correct.

1           **Q     Have you had occasion to investigate**  
2           **allegations of noncompliance during your tenure?**

3           A     The answer is yes.   The answer is yes.

4           **Q     What has that outcome of those**  
5           **investigations been?**

6           A     They were various.   Probably the most  
7           significant one was a -- and I would preface that by  
8           saying I go back to what I said earlier, which is as  
9           we approach these things, we make a determination  
10          about whether or not the university is willing and  
11          able to conduct the investigation itself, and then  
12          we work with them through that process.

13                   Probably one of the more notable ones was  
14          a financial -- seems like several financial issues  
15          at the University of Central Florida where  
16          ultimately their board of trustees undertook the  
17          investigation but with my auditor general or  
18          inspector general basically participating in that  
19          process with them.

20                   Had a -- I mentioned the other incident  
21          was -- had to do with -- I honestly don't recall the  
22          subject matter, but was Florida Gulf Coast  
23          University where we had an item.   And because of the  
24          nature of the allegation and -- and the position of  
25          the chair of their board and the -- was also -- the



1 chair of the board was also the chair of the audit  
2 committee.

3 In that instance, my inspector general at  
4 the time actually went in and did the investigation  
5 himself, made a report back to the university and  
6 back to the board, to my board.

7 **Q What are the consequences of a university**  
8 **failing to comply with a Board of Governors rule or**  
9 **regulation or a law?**

10 A It's hard to -- I don't know that we had a  
11 case where a university refused to comply. We  
12 don't -- we also have learned in the process we  
13 don't have subpoena power. And -- and so the  
14 consequences of it, I think, would -- really would  
15 have to develop.

16 And we -- we do have the ability, for  
17 example, not a -- not a compliance issue so much as  
18 in the construct of around accountability, we do  
19 have a process in place.

20 For example, when a university scores --  
21 in the performance funding model, when they score  
22 below a certain level or they fall back in their  
23 scores two years in a row, there is a delineated  
24 process where dollars can be withheld until they  
25 develop and implement a performance improvement. We

1 call it a student -- student success plan now --  
2 things like that.

3 **Q And just to clarify, have there been**  
4 **occasions where the Board of Governors has had to**  
5 **withhold the transfer of any funds to universities**  
6 **in recent years?**

7 MS. LUKIS: Object to form.

8 You can answer.

9 A In the current year, three of our  
10 universities, under the performance funding model  
11 underperformed, and a certain amount of their  
12 appropriations are held back until they implement  
13 student success plans. And one university is only  
14 eligible for a certain amount, 50 percent of their  
15 funding. This is the -- not the total funding but  
16 the performance funding allocation to them.

17 MS. JASRASARIA: I would like to mark  
18 Florida Statute 1001.92 as Exhibit 10.

19 (Exhibit 10 was marked for  
20 identification.)

21 BY MS. JASRASARIA:

22 **Q Is this the statute that refers to the**  
23 **performance-based funding we were just discussing?**

24 A Yes.

25 **Q And I believe we talked about this a**

1 little bit previously as well, but there are certain  
2 performance-based metrics that are set by statute;  
3 is that right?

4 A That's -- or categories of -- types --  
5 issues to be addressed by a metric, yes.

6 Q And it says kind of halfway on this page  
7 that we're looking at that the Board of Governors  
8 may approve other metrics in a publicly-noticed  
9 meeting; is that right?

10 A Yes.

11 Q Is there -- what's the range of other  
12 metrics that the Board of Governors could approve?

13 MS. LUKIS: Object to form.

14 A I don't know that there is a limitation on  
15 the range. We have a fairly settled approach to  
16 this looking at -- at a set of 10 metrics. What we  
17 have worked with in the past was at one point there  
18 was a board of trustees choice metric and there was  
19 a Board of Governors choice metric.

20 I would say typically a consideration  
21 around this would be focused on all of these metrics  
22 relate to student success. It's been kind of the  
23 focus of this. And we would have to look at what  
24 the impact was of adding additional metrics.

25 We would also -- and our practice has

1 always been that there is a -- we call it a  
2 "normalization period," that when you change the  
3 question, you've got to give the universities  
4 opportunity to respond before you start marking  
5 that. I think it's actually in the statute also.

6 There's -- our practice has always been  
7 that once we receive data, which is typically this  
8 data comes in in November -- once we receive data we  
9 don't change any of the plan. We -- we don't want  
10 to look like we are gaming the system when people  
11 look at it.

12 MS. JASRASARIA: I'd like to mark  
13 Defendants\_001739 as Exhibit 11.

14 (Exhibit 11 was marked for  
15 identification.)

16 BY MS. JASRASARIA:

17 Q Do you recognize this document?

18 A Yes. I mean -- yeah, June of last year,  
19 yes.

20 Q I would like to just start with the second  
21 page which would be like the first e-mail in the  
22 e-mail chain.

23 So looking at the first e-mail, it looks  
24 like it's an e-mail from a reporter to Renee  
25 Fargason and Karla Goodson; is that right?

1 A Yes, that's correct.

2 Q And who are Renee and Karla?

3 A Renee is our assistant vice chancellor for  
4 communications and legislative affairs, and Karla is  
5 the administrative assistant support that supports  
6 Renee and others.

7 Q And one of the questions that's -- that  
8 this journalist is asking -- if you just look at the  
9 third bullet point, the question is: "Will public  
10 Florida colleges potentially lose state funding  
11 depending on the results of the survey?"

12 Did I read that correctly?

13 A Yes, that's what it says.

14 Q And then it looks like Renee forwards this  
15 e-mail chain to Vikki Shirley and Christy England in  
16 your office -- it's right at the top of page 2  
17 there, is that right?

18 A Yes, that's correct.

19 Q And then turning -- looking at the bottom  
20 of page 1, which is Defendants\_001739, Christy  
21 responds and says: "We don't oversee the colleges,"  
22 assuming she means universities. In response to  
23 Number 3 she says: "From here on, we don't know."

24 Is that correct?

25 MS. LUKIS: Object to form.

1           A       Yes, that's what it says.

2       BY MS. JASRASARIA:

3           Q       **What do you understand her to be saying**  
4       **here?**

5           A       What do I understand Christy to be saying?

6           Q       **Correct.**

7           A       Because of the nature of the request, I  
8       believe referred to colleges and not universities,  
9       so it's coming to us, so the assumption either was  
10      that the reporter had the wrong tag on it or meant  
11      it for somebody else. I'd have to go back and ...

12                   I don't know what question that second  
13      answer applies to. I would assume it might apply to  
14      the second question about whether or not it would be  
15      required for all Florida colleges. And then I would  
16      take her Number 3 to apply to everything below that.

17          Q       **Okay. Thanks.**

18                   MS. JASRASARIA: I would like to mark  
19      Florida Statute 1001.706 as Exhibit 12.

20                   (Exhibit 12 was marked for  
21      identification.)

22       BY MS. JASRASARIA:

23          Q       **Do you recognize this document or are you**  
24      **familiar with this statute?**

25          A       Yes. Yes. I recognize -- I'm familiar

1 with this.

2 Q Under this statute, if you turn to page 2  
3 of the exhibit, it states that -- at the top that --  
4 under F that "The Board of Governors shall approve  
5 baccalaureate degree programs that require more than  
6 120 semester credit hours of course work prior to  
7 such programs being offered by a state university."

8 What does that provision mean?

9 MS. LUKIS: Object to form.

10 A That's a governance principle to make sure  
11 we've had an informed decision or discussion before  
12 we require a student to take more than the standard  
13 120 hours to accomplish an undergraduate degree.  
14 It's a discipline in the process that we don't just  
15 add hours to add hours.

16 BY MS. JASRASARIA:

17 Q Are there other examples of the Board of  
18 Governors playing a role in approving curriculum or  
19 degree requirements?

20 MS. LUKIS: Object to form.

21 A In professional degrees, which would be  
22 doctoral programs, typically those come to our board  
23 for review and approval. Again, it -- well, not  
24 again -- it's not the same reason, but it's the  
25 issue of understanding the demand -- the

1 supply-and-demand discussion when someone wants to  
2 offer a new professional program.

3 There are other provisions that have more  
4 to do with tuition and fees in terms of the  
5 requirements of the Boards of Trustees and our board  
6 in terms of approvals.

7 And I would say we've had a collaborative  
8 process with universities where we review degree  
9 programs to see where certain -- certain programs  
10 over time become less used, and so there's a  
11 protocol for kind of going through how -- how viable  
12 a degree program is that we work with the  
13 universities on where we determine if a program has  
14 fallen far enough, may have been -- may become less  
15 relevant to the marketplace or something like that,  
16 where you'd either -- typically you would suspend  
17 the program for a while, teach out and make sure  
18 students who are in there are taught. And it may at  
19 some point terminate the program.

20 BY MS. JASRASARIA:

21 Q How do those decisions come to the board?

22 A That decision actually -- that final --  
23 excuse me. That final issue comes to the board  
24 through the CAVP discussion with our academic and  
25 student affairs group. And we pretty much -- you



1 know, basically that's a report out. I don't know  
2 that our board looks -- our board does not take a  
3 role in that. They would ask questions and evaluate  
4 the -- whether they feel the -- you know, what's  
5 being proposed is appropriate. I'm kind of working  
6 backward with that.

7 Professional degrees actually come into my  
8 office; I believe they're submitted twice a year. I  
9 want to say they probably come into us around July,  
10 and I think the first round's probably January, so  
11 that we can take them up in June and then in  
12 November.

13 The others would be where some proposal on  
14 a campus in terms of tuition and fees passes, once  
15 it's come from a Board of Trustees, would come up to  
16 us, and then the -- okay. My first example, I've  
17 probably forgotten what I said. Give me a second,  
18 I'll ...

19 Oh, it's the degrees over 120 hours.  
20 Basically the universities understand that when  
21 they've got a new degree program and they're  
22 suggesting that it needs to be 120 plus X, then  
23 those come -- those -- they know to send those into  
24 academic and student affairs, and they go through  
25 their agenda.

1 Q Turning to page 4 of this exhibit. I'm

2 looking at the bottom section where it says:

3 "Powers and duties relating to personnel."

4 Do you see that?

5 A My pages aren't numbered, but I --

6 Q Oh, I think at the very bottom --

7 A I found them.

8 Q Yeah.

9 A They were over there in a little -- okay.  
10 I found that.

11 Q So looking at 6B, it says that "The Board  
12 of Governors may adopt a regulation requiring each  
13 tenured state university faculty member to undergo a  
14 comprehensive post tenure review every five years."

15 Is that right?

16 A Yes.

17 Q Is something that the board has adopted a  
18 regulation for?

19 A The board does -- has not had a  
20 regulation. The board is in the -- we are in the  
21 process of developing a regulation for post tenure  
22 review. We're in -- we're in the process of doing  
23 that right now.

24 Q And would that regulation include the  
25 grounds on which one might institute -- sorry. Let

1     **me rephrase.**

2                   **Does the Board of Governors have**  
3     **discretion over what post tenure review could**  
4     **include?**

5                   MS. LUKIS: Object to form.

6                   A     Yes, I believe we do.

7     BY MS. JASRASARIA:

8                   **Q     And have there been discussions thus far**  
9     **about what that might include?**

10                   MS. LUKIS: Object to form.

11                   And you can answer to the extent it's  
12                   reflected in the rule-making documents that  
13                   exist today. Otherwise, internal discussion  
14                   about what the agency's formulation of policy  
15                   is going to look like is privileged.

16     BY MS. JASRASARIA:

17                   **Q     Are you going to follow your counsel's**  
18     **instruction?**

19                   A     I will follow my counsel's instruction. I  
20     believe I can answer generally.

21                   We are -- we are looking at what would --  
22     what would be covered in terms of the cycle for  
23     review; looking at the fact that it needs to be both  
24     recognized achievement as well as lack of  
25     achievement.

1           We are also trying to -- we've done this  
2     in a process where we are working from input that  
3     the Council of Academic Vice Presidents had  
4     developed in a way that allows for and recognizes  
5     that at each university, there are -- there's  
6     differences between each university and sort of  
7     their status, so it's broad enough to allow for what  
8     would be sort of marginal differences between  
9     institutions.

10           **Q     And the post tenure review position --**  
11     **sorry -- provision, was that part of SB 7044?**

12           MS. LUKIS: Object to form. And outside  
13     the scope.

14           A     I don't recall. I could go back to my  
15     exhibit and refresh.

16     BY MS. JASRASARIA:

17           **Q     Sure. No. It's actually a -- yeah, feel**  
18     **free -- you can take a look at that and see if that**  
19     **refreshes your memory, the one that we just looked**  
20     **at. But I have not actually handed you Senate**  
21     **Bill 7044 yet, so ...**

22           A     Oh, I thought you said Senate Bill 7.

23           **Q     No. Sorry. Sorry. Senate Bill 7044.**

24           A     I'm sorry. I misheard you.

25           MS. JASRASARIA: I will mark the text of

1 Senate Bill 7044 as Exhibit 13.

2 (Exhibit 13 was marked for  
3 identification.)

4 BY MS. JASRASARIA:

5 Q Are you familiar with this bill?

6 A Yes.

7 Q Does this document help refresh your  
8 recollection of whether the post tenure review was  
9 part of this bill?

10 A Yes, it's in there. I misheard --

11 Q No, no, no problem.

12 A -- I was trying to think why it would have  
13 been in 7, and somehow I only heard part of the bill  
14 number.

15 Q Yes, it happens. Lots of numbers.

16 Did the board take a position on this  
17 legislation when it was being considered?

18 MS. LUKIS: I'm going to object that.

19 That is outside the scope of the designated  
20 topics.

21 You can answer.

22 A The board did not take a position on this  
23 bill.

24 BY MS. JASRASARIA:

25 Q Did the board consider taking a position

1     **on this bill?**

2                   MS. LUKIS: Outside the scope. And same  
3                   objection as the question about a different  
4                   bill last time. Any internal deliberations  
5                   about whether or not to take a position on a  
6                   bill that is not reflected in the actual  
7                   position of the board, that's privileged.

8                   So I would instruct you to not answer.

9     BY MS. JASRASARIA:

10            **Q     Will you follow your counsel's**  
11     **instruction?**

12            A     Yes.

13            **Q     Are you able to answer the question while**  
14     **following your counsel's instruction on whether the**  
15     **board considered taking a position on Senate**  
16     **Bill 7044?**

17                   MS. LUKIS: I mean, even a yes-or-no  
18                   answer would be -- I think that's invasive of  
19                   the privilege, but -- could you ask the  
20                   question one more time? I'm sorry.

21                   MS. JASRASARIA: Sure. Sure. Let me  
22                   rephrase.

23                   MS. LUKIS: I don't want to instruct if I  
24                   don't have to.

25                   MS. JASRASARIA: Absolutely.

1 BY MS. JASRASARIA:

2 Q Are there any public documents that would  
3 reflect whether the board took a position or  
4 considered taking a position on Senate Bill 7044?

5 MS. LUKIS: You can answer.

6 A No.

7 BY MS. JASRASARIA:

8 Q Does 7044 also affect accredit- --  
9 accredit- -- accreditation of universities?

10 A That word I can actually hit because I've  
11 said it so many times, accreditation.

12 No, because I believe that post- -- post  
13 tenure review is a normal practice, proper  
14 discipline and governance around tenure. And where  
15 we -- where we are today is that each of our  
16 institutions I believe has some protocol around a  
17 post tenure review.

18 I think where we saw opportunities for  
19 improvement was in the formalization of that  
20 process, the practice of that process, sort of  
21 making -- making it a standard rather than observing  
22 that it was standard.

23 Q Does Senate Bill 7044 also, outside of the  
24 ten- -- post tenure review process, also set up a  
25 set of requirements around accreditation agencies?

1 MS. LUKIS: Object to form.

2 BY MS. JASRASARIA:

3 Q You can feel free to look at the document.

4 A Let me keep my bills straight at this  
5 stage.

6 (Examining Document.)

7 MS. LUKIS: Go ahead.

8 A Yes, it does.

9 BY MS. JASRASARIA:

10 Q Do you understand -- could you explain  
11 what this bill does with regard to accreditation,  
12 which I've now learned how to say?

13 MS. LUKIS: Object to form and not within  
14 the scope of the designated topics.

15 But you can -- you can answer.

16 A What the bill requires is that over the  
17 next 10 years, each of our 12 institutions and each  
18 of the colleges, 28 institutions, will leave their  
19 current accreditor and choose a new accreditor. And  
20 they do that in a staggered format that follows  
21 their -- it follows two events they have, whether --  
22 whichever is first.

23 They have a five-year review, and they  
24 have a ten-year reaccreditation. Current accreditor  
25 is SACSCOC. The bill sunsets in 2032, and I believe



1 that is designed so that they make this change one  
2 time to a new accreditor.

3 The bill also requires the Board of  
4 Governors to do an analysis and a report of  
5 potential accreditors that our institutions should  
6 consider.

7 BY MS. JASRASARIA:

8 Q Did the Board of Governors take any public  
9 position regarding this provision?

10 A No.

11 Q And are you aware of why this provision  
12 was -- what -- what the purpose of including this  
13 provision in the legislation was?

14 MS. LUKIS: Object to form.

15 A The -- what I understand to be the stated  
16 concerns is that the current accreditor has sought  
17 to intervene in various matters involving  
18 institutions, that the manner and the method of that  
19 intervention has been disruptive and potentially --  
20 the word would be "derogatory" toward our  
21 institutions.

22 If I -- a personal comment would be that  
23 they were playing this in the press and not  
24 following what I would consider to be appropriate  
25 protocols if they did have questions or concerns to

1 try to resolve them.

2 BY MS. JASRASARIA:

3 Q Is one of those instances that you are  
4 referring to the investigation of the University of  
5 Florida's accreditation?

6 A Yes.

7 Q And are you familiar with a report that  
8 was generated by the faculty senate at UF about  
9 this? And I have it if that's easier.

10 MS. JASRASARIA: I am going to mark  
11 PL000237 as Exhibit 14.

12 (Exhibit 14 was marked for  
13 identification.)

14 MS. LUKIS: What designated topic are we  
15 on?

16 MS. JASRASARIA: Let me take a look. This  
17 would be Topic 7. The report talks about  
18 reports from faculty in Florida's postsecondary  
19 schools regarding the subject matter content of  
20 their research and expert work.

21 MS. LUKIS: Okay.

22 MS. JASRASARIA: Thanks.

23 BY MS. JASRASARIA:

24 Q Have you seen this document, Chancellor?

25 A I am trying to recall.

1 Q Okay.

2 A Does it have a date somewhere on it?

3 Q That is a good question. I know that this  
4 report was done in response to the expert testimony  
5 in the lawsuit regarding Senate Bill 90 which is the  
6 subject of the accreditation investigation. And so  
7 I believe that this report is from late last year,  
8 but I can certainly confirm that at a break.

9 MS. LUKIS: What's the pending question?

10 MS. JASRASARIA: Okay. It's from  
11 December 2021.

12 MS. LUKIS: What's the pending question?

13 MS. JASRASARIA: The pending question was  
14 whether you are familiar with this document?

15 A I am not certain. I believe I am familiar  
16 with some of the issues that were raised by faculty.  
17 I don't know that I -- I don't know that I can  
18 associate all of that with this report or -- or any  
19 of that, but...

20 BY MS. JASRASARIA:

21 Q In -- during this -- during the  
22 accreditors' investigation of UF, did -- did you  
23 meet with the faculty senate or did anyone from the  
24 Board of Governors meet with the faculty senate at  
25 the University of Florida?

1           A       We did not.

2                   MS. LUKIS: Object to the form and that is  
3           outside the scope.

4                   But you can answer if you can answer.

5           A       We did not.

6 BY MS. JASRASARIA:

7           Q       Turning to the last page of this report, I  
8           just wanted to get your response to this. I am  
9           looking at the middle of the first paragraph here,  
10          where it says: "It is evident that faculty  
11          throughout UF are feeling greater and greater  
12          pressure to conform to political pressures and to  
13          stifle or modify their speech and research to avoid  
14          retaliation."

15                   Did I read that correctly?

16          A       That's what the document says.

17          Q       Were you aware of these concerns?

18                   MS. LUKIS: Object to form.

19          A       I would say with the matt- -- with regard  
20          to the matters that were raised at UF and that SACS  
21          raised that -- yes, I am aware of those issues. I  
22          also would say I am aware of the process that was  
23          worked through in -- we can step back and say we --  
24          we -- you know, I am aware of the process also that  
25          was worked through in addressing those issues.

1 BY MS. JASRASARIA:

2 Q Are -- are the views that you learned from  
3 SACS and others in the faculty senate, are those  
4 things that you communicated to the legislature or  
5 the Governor's Office?

6 MS. LUKIS: So I am going to object  
7 that -- not to form necessarily, but this is --  
8 Topic 7 is your, as in the board's policies,  
9 the board's documents, the board's  
10 communications related to reports, da, da, da,  
11 da.

12 This is a plaintiffs' document that the  
13 chancellor testified he wasn't entirely  
14 familiar with. And the accreditation  
15 discussion, discussions with SACS, all of that  
16 I think is outside the scope.

17 But you can answer.

18 BY MS. JASRASARIA:

19 Q Okay. Let -- let me reframe the question.  
20 So has the board had communications  
21 related to grievances from faculty like the one that  
22 we just saw and read in this report had; so I think  
23 that would be well within the confines of Topic 7.

24 But has the board had communications  
25 related to such reports and grievances with the

1 **legislature or the Governor's Office?**

2 A I am not aware of any communication from  
3 the board to the governor or the legislature or the  
4 Governor's Office and the legislature.

5 Q I wanted to move to the survey drafting  
6 process.

7 Were you involved in those -- in the  
8 development of the intellectual freedom and  
9 viewpoint diversity survey?

10 A Yes.

11 Q And what was the level of your engagement  
12 in that project?

13 A Not as much as some others, but I would  
14 say fairly engaged.

15 Q What did your engagement on this project  
16 look like on a day-to-day basis?

17 A At times when there were -- so as you  
18 know, the first endeavor at this was working with  
19 Florida State University. I was engaged in the  
20 discussion and development of what that relationship  
21 would be. At that time it was focused on the  
22 development of the survey, with a discussion to be  
23 held later about administration.

24 I probably -- depending on my schedule and  
25 availability, I -- I participated in some of the

1 actual working sessions that included my staff and  
2 Tim Chapin and Lonna -- there goes names again --  
3 but -- but two individuals at Florida State,  
4 Lonna -- originally with Tim and then -- and then  
5 later Lonna came in.

6           There were other meetings that my staff  
7 had directly with them, particularly more subject  
8 matter-oriented people, where they would get into  
9 some of the deeper detail about how things would  
10 develop, stuff like that.

11           I am -- I -- I guess I -- you know, I  
12 think that's that kind of -- that's the sort of  
13 activity.

14           **Q     Who were the members of your staff that**  
15 **were most engaged in this project?**

16           A     I would say it would be Jon Rogers, Gene  
17 Kovacs, Jason Jones, Vikki Shirley, Tim Jones,  
18 more -- more from the contract administration and  
19 financial side. I believe that's the -- that would  
20 be the -- the core group. Christy England from time  
21 to time I think participated in this as well.

22           **Q     What is Jason Jones' role?**

23           A     He is the chief data officer.

24           **Q     Are you aware of whether any of the**  
25 **individuals that you just mentioned have a**

1 **background in survey design or administration?**

2 A I would -- I would say -- I would describe  
3 Jason and Christy England as having been involved in  
4 academic research and data analysis. Jason would  
5 actually design and -- and develop some of the data  
6 requests that we would have, and also his group  
7 would receive information in from the university.  
8 So they would probably be the two core individuals  
9 in that part of the process.

10 Q **Do you have a background in survey design**  
11 **or administration?**

12 A No.

13 Q **Have you ever studied those subjects?**

14 A I took statistics. I have been involved  
15 in -- in -- from a business perspective, I have been  
16 involved in marketing and other consumer surveys  
17 typically administered by third parties, but I have  
18 been -- I have been involved in sessions and -- and  
19 work process around those.

20 Q **Would you describe Jon Rogers as the lead**  
21 **staff for the statewide university system**  
22 **responsible for implementation of the survey**  
23 **requirement?**

24 A I'd use the term "project manager." But,  
25 yes, I would call Jon the project manager for this.



1           **Q     How did he become the project manager for**  
2 **this project?**

3           A     It's a role that Jon plays in our office.  
4 He has a background in academic and student affairs.  
5 He has the talent of working well with others in a  
6 very collegial manner. He is a good writer and  
7 communicator.

8           **Q     Were any of the governors on the board**  
9 **involved in the survey project?**

10          A     Not as much involved, but, yes, I would  
11 say my board chair and then also Governor Cerio, who  
12 led our civil discourse initiative, were two touch  
13 points that I used for talking to and getting their  
14 perspectives.

15          **Q     So you mentioned the Florida State**  
16 **University Institute of Politics involvement. Why**  
17 **did the Board of Governors originally contact the**  
18 **Institute of Politics?**

19          A     I was familiar with the Political  
20 Institute -- or Institute of Politics -- I may have  
21 gotten the name wrong -- that they -- that was  
22 established at Florida State.

23                   It seemed to be an area that was relevant  
24 to their area of focus. I'm trying to recall -- I  
25 believe Tim Chapin was known to me from before that,

1 and I had a good impression of him individually.  
2 They were close. Sometimes working through  
3 contracts we need a -- even on the administration  
4 side, it's helpful to us to have a partner  
5 university, so they played sort of all those roles.

6 MS. LUKIS: I just got a text that the --  
7 I'm just trying to check -- that somehow Metro  
8 has arrived.

9 (Discussion off record.)

10 THE VIDEOGRAPHER: We are now going off  
11 record. It's 12:51 p.m.

12 (A recess took place from 12:51 p.m. to  
13 1:30 p.m.)

14 THE VIDEOGRAPHER: We are now going back  
15 on the record at 1:30 p.m.

16 BY MS. JASRASARIA:

17 Q Good afternoon, Chancellor.

18 A Good afternoon.

19 Q How was your lunch?

20 A Good. Thank you. Hope yours was good as  
21 well.

22 Q It was good.

23 Did you speak with your counsel during the  
24 lunch?

25 A I did.

1           **Q     Did you speak about the deposition?**

2                   MS. LUKIS:  I'm going to invoke the  
3           privilege and instruct the witness not to  
4           answer.

5  BY MS. JASRASARIA:

6           **Q     Are you going to follow your counsel's**  
7           **instructions?**

8           A     I'm going to follow my counsel's  
9           instructions.

10          **Q     Okay.  So we were talking about the survey**  
11          **when we left off, and I'd like to mark this e-mail**  
12          **exchange, which --**

13                   MS. JASRASARIA:  I'm marking an e-mail  
14           exchange as Exhibit 15.

15                   (Exhibit 15 was marked for  
16           identification.)

17  BY MS. JASRASARIA:

18          **Q     And this was produced to us in discovery,**  
19          **but I realize it's missing a Bates number, so ...**

20                   **Are you familiar with this document?**

21          A     Yes.

22          **Q     Okay.  So this is an e-mail to Brian Lamb;**  
23          **is that correct?**

24          A     Yes, it is.

25          **Q     And what is the nature of the e-mail?**

1           A       I believe this was the contract that we  
2 had with the Political Institute at Florida State  
3 covering the plan to -- engagement with them for  
4 developing the survey -- surveys.

5           Q       **Was this agreement ultimately executed**  
6 **from what you can recall?**

7           A       I believe it was.

8           Q       **Okay. Great.**

9                   **We can set that aside.**

10                   MS. JASRASARIA: I'm going to mark  
11 Defendants\_159637 as Exhibit 16.

12                   (Exhibit 16 was marked for  
13 identification.)

14 BY MS. JASRASARIA:

15           Q       **Do you recognize this e-mail?**

16           A       Yeah, I do recall this.

17           Q       **And this was a response from Chair Lamb,**  
18 **correct?**

19           A       Uh-huh.

20           Q       **He notes here that he's on a plane and**  
21 **wants to read this agreement in detail.**

22                   **"I will also want to talk about it"; is**  
23 **that correct?**

24           A       Yes.

25           Q       **Do you recall whether you ever spoke to --**

1     **whether anyone -- whether you or any of the other**  
2     **members of the statewide university staff -- the**  
3     **State University System staff spoke to Chair Lamb**  
4     **about this agreement?**

5             MS. LUKIS: Object to form.

6             A     I believe that I spoke to him at one  
7     point, and I believe that Tim Jones, who was our  
8     CFO, would have also spoken to him about it.

9     BY MS. JASRASARIA:

10            **Q     Do you recall the nature -- or what was**  
11     **the subject of the conversation?**

12            A     I think he just wanted to understand the  
13     background on why we had selected the Political  
14     Institute and what our anticipated outcomes were for  
15     the contract.

16            **Q     Did he have concerns about engaging the**  
17     **institute?**

18            A     I do not recall any concerns.

19            **Q     And did he ultimately sign off on the**  
20     **agreement?**

21            A     Yes, we did.

22            **Q     Thank you.**

23                    **Did the process with Florida State**  
24     **University Institute of Politics result in draft**  
25     **surveys?**

1           A     Yes.

2           Q     **And you ultimately did not use those**  
3     **surveys in --**

4           A     We did -- we did not use the developed  
5     draft.

6           Q     **And why was that?**

7           A     In the process of working with Florida  
8     State, there were two issues that arose. Somehow --  
9     somehow the discussion evolved to a couple of things  
10    that I had concerns with.

11                    What at one point was presented to us was  
12    an institutional research survey, and there was  
13    discussion about compliance with the IRB process and  
14    potential implications of -- or I guess potential  
15    implications of federal -- say federal law, I  
16    believe, rather than federal regulation --  
17    concerning those types of research.

18           Q     **I would like to mark Defendants\_008743 as**  
19     **Exhibit 17.**

20                    (Exhibit 17 was marked for  
21    identification.)

22    BY MS. JASRASARIA:

23           Q     **Is this the e-mail you were referring to?**  
24     **Feel free to take a look.**

25           A     Okay.

1 (Examining Document.)

2 I think this is actually -- this is --  
3 this is a FSU-generated e-mail with, I guess, a  
4 cover on it from Jon Rogers who forwarded it to the  
5 rest of the group.

6 It's -- the discussion I had with FSU was  
7 verbal, but it looks like, looking at it, that it  
8 hits at some of the issues that I thought were a  
9 concern. I haven't read it that thoroughly to know  
10 if it's everything, but ...

11 **Q Okay. Let me actually pull out the**  
12 **interrogatory responses which I believe got at those**  
13 **two issues.**

14 MS. JASRASARIA: Okay. I'm going to mark  
15 the amended answers to plaintiffs' first set of  
16 interrogatories dated August 17th as  
17 Exhibit 18.

18 (Exhibit 18 was marked for  
19 identification.)

20 BY MS. JASRASARIA:

21 **Q Do you recognize this document?**

22 A Yes, I do.

23 **Q And is that your signature on the last**  
24 **page -- or sorry. The second-to-the-last page?**

25 A Yes, it is the second-to-the-last, it's

1 two-sided.

2 Q I'm also going to give you the other --  
3 I'm now also handing you the amended answers to  
4 plaintiffs first set of interrogatories dated  
5 May 9th. And I'm marking that as Exhibit 19.

6 (Exhibit 19 was marked for  
7 identification.)

8 BY MS. JASRASARIA:

9 Q And do you recognize this document,  
10 Chancellor?

11 A Yes.

12 Q Is that also your signature at the --

13 A Yes, it is. On page 11.

14 Q Yes.

15 A Sorry. I got ahead of you.

16 Q So if you would turn to page 4 of this  
17 document. The second paragraph discusses that in  
18 February 2002, there were some potential concerns.

19 Can you take a second to read that  
20 paragraph?

21 A (Examining Document.)

22 Yes.

23 Q And if we turn to -- back to Document 18,  
24 I believe page 4 of this document has a similar  
25 paragraph as well.



1           A     Yes.

2           Q     **Is this still accurate?**

3           A     Yes.

4           Q     **Could you explain what the concerns that**  
5 **you had with the FSU developed survey were?**

6           A     Two issues.

7                     One was the issue of being able to include  
8 students who were younger than 18 years old and kind  
9 of the consequence of not -- our plan had been -- it  
10 is/was to survey 100 percent of our students,  
11 100 percent of our faculty -- excuse me -- of our  
12 employees and having to exclude a group, one, I  
13 didn't see as being consistent with that goal; two,  
14 the solution to that, as I understood it, was to get  
15 their parents' approval which I believed  
16 contradicted the anonymity of the survey. So that  
17 was one issue.

18                    And I would say that if you took this --  
19 since we were looking at doing this year over year,  
20 in spring, as you can imagine, that's not as many  
21 students, but if we had done -- and we would -- we  
22 had talked about being able to do this in either  
23 fall or spring and possibly could do it the summer,  
24 but in fall semester, that could be up to about  
25 10 percent of your students, so that seemed a

1 significant -- it just was an issue I felt needed to  
2 be avoided.

3           The other suggestion was because this  
4 started getting into the IRB pipeline that FSU would  
5 be in a position to protect/restrict access to the  
6 underlying data, as I understood it, until after the  
7 report was actually published, and I didn't think  
8 that was going to be acceptable to anybody in  
9 Florida. I felt that we would get into  
10 conversations about the data and things like that,  
11 as we have.

12           So being able to -- I didn't want it to  
13 look like we were using a process that would limit  
14 access and at the same time, I didn't want to  
15 exclude what could potentially in a particular  
16 semester be a significant number of our students.

17           **Q     So to clarify, the final survey did end up**  
18 **surveying those under the age of 18; is that**  
19 **correct?**

20           A     We did not do an institutional research  
21 study. We did a survey using SurveyMonkey, and we  
22 checked off what the appropriate laws were. It was  
23 also what led to talking about a different survey  
24 itself because -- I'm not -- I'm not an expert at  
25 this, but I was concerned about taking a work

1 product that already had been classified as  
2 something -- I didn't feel you could just change the  
3 title on it or change the -- you know, I felt like  
4 you had to really start over in order to not just  
5 be -- I didn't want to be viewed also that we were  
6 somehow playing games with FERPA and other  
7 regulations and laws.

8 **Q How did you learn about these two concerns**  
9 **that you identified?**

10 A Both of those arose in the calls that I  
11 participated in with -- the age limit came up first.  
12 And the second one -- probably back -- you know,  
13 probably two consecutive -- of the meetings or the  
14 calls that we had -- Zoom meetings or calls that we  
15 had with FSU.

16 **Q And did you seek to confirm the -- these**  
17 **concerns with anyone else outside of FSU?**

18 A I talked to members of my staff who were  
19 more knowledgeable, principally probably Christy  
20 England and Vikki Shirley, about what the potential  
21 rules were. I discussed with Gene Kovacs what our  
22 alternatives were.

23 We also were discussing -- we were at a  
24 stage when we were discussing with the college  
25 system how to come to a common survey platform

1 between the two systems, and so we also learned from  
2 them a little bit about what they were planning to  
3 do; gave us sort of a compare and contrast to the  
4 two approaches.

5 Q Looking back at the paragraph on page 4 of  
6 Exhibit 18, which I believe is the one that you are  
7 holding, it mentions close to the bottom of the page  
8 that he, which is you, consulted with Florida  
9 governor's chair Brian Lamb, and Alex Kelly, the  
10 deputy chief of staff to the governor, regarding the  
11 option of drafting a different survey without the  
12 FSU; is that correct?

13 A That's correct.

14 Q And did you discuss the -- under 18 issue  
15 and the public reports issue with Chairman Lamb?

16 A Yes. I believe I did. I believe I  
17 explained my reasons for feeling like I needed to  
18 start fresh.

19 Q And what was the chair's reaction?

20 A He was supportive.

21 Q Did you discuss those two concerns with  
22 Alex Kelly?

23 A Yes. It was actually a meeting that --  
24 between our staff and the college system staff  
25 and -- and that led -- actually led him to call me

1 because he had a message from the colleges, that we  
2 had not been able to put a survey in front of them.  
3 So I explained -- when he called me, I explained to  
4 him why we -- why we did not put a document in front  
5 of him.

6 Q Did you review the transcript of Alex  
7 Kelly's deposition in this case?

8 A No, I didn't.

9 Q Are you aware that Mr. Kelly represented  
10 that he did not recall -- he was unaware of these  
11 two concerns with the FSU survey?

12 A I am not aware of that.

13 Q Do you have any reason to doubt his  
14 testimony on that?

15 A I have no reason to challenge his  
16 testimony. I'm -- I'm telling you what I recall.

17 Q And from what you recall, you had a  
18 meeting -- Alex Kelly reached out to you after  
19 learning of the fact that there wasn't yet a survey?

20 A Yes.

21 Q And do you recall what his reaction to  
22 these two concerns was?

23 A I don't recall a specific reaction. I  
24 think when I offered it as an explanation for why at  
25 the meeting between our two staffs my team had not

1     been able -- we were having a discussion more about  
2     the administration of the survey and not about the  
3     survey itself.

4           **Q     Okay.**

5           MS. JASRASARIA: I would like to mark a  
6     new document. I am marking Defendants\_008746  
7     as Exhibit 20.

8           (Exhibit 20 was marked for  
9     identification.)

10    BY MS. JASRASARIA:

11           **Q     Do you recognize this e-mail?**

12           A     Yes.

13           **Q     And could you describe what this e-mail**  
14    **is?**

15           A     This is the January -- that's the --  
16    that's the copy of the student survey.

17           **Q     And is this the student survey that was**  
18    **drafted by the Institute of Politics or a later**  
19    **version?**

20           A     No. I believe that was -- I am trying to  
21    recall now because there's been so many rounds of  
22    this thing.

23                   I believe this was the Institute of  
24    Politics.

25           **Q     Okay. And it says here that the**

1 attachment was being sent based on a lunch  
2 discussion that day; is that correct?

3 A Yes. That's what it says.

4 Q Do you recall a -- what was discussed  
5 during the meeting on January 21st with the chair?

6 A I think we were just doing a status report  
7 on -- he asked from time to time to be kept up to  
8 speed on, you know, where we were with our progress.  
9 And this was -- I don't recall the nature of that  
10 entire conversation, but this would have been a  
11 status report where he had a copy of it to look at.

12 Q So just to try to get a better  
13 understanding of the timeline, given that -- and  
14 this was January 21, 2022, correct?

15 A Yes.

16 Q And this was the FSU-drafted survey,  
17 correct?

18 A I believe so.

19 Q So at this time, did you already have the  
20 concerns that we just mentioned about under 18 and  
21 public records?

22 A My recollection -- I don't recall. I  
23 don't believe so at this time. I believe those were  
24 two of the status calls. I'm trying to recall the  
25 exact dates of those calls. I don't recall them.

1 MS. JASRASARIA: Okay. I am going to mark  
2 Defendants\_009210 as Exhibit 21.

3 (Exhibit 21 was marked for  
4 identification.)

5 BY MS. JASRASARIA:

6 Q Are you familiar with this e-mail?

7 A I recognize what it is. I don't recall  
8 the exact e-mail.

9 Q Okay. This is an e-mail from Chair Lamb  
10 asking you to call him about the survey, correct?

11 A Yes.

12 Q It's dated on February 3, 2022?

13 A Yes.

14 Q Do you recall whether you called Chair  
15 Lamb on February 4, 2022?

16 A I don't specifically recall. It -- it was  
17 not uncommon that we would send a message from one  
18 to the other. Whether we actually connected the  
19 next day, I don't know.

20 Q Do you know what -- why he wanted you to  
21 call him on that day?

22 MS. LUKIS: Object to form.

23 A I don't.

24 BY MS. JASRASARIA:

25 Q Do you recall any conversations with Chair



1     **Lamb about the survey in early February?**

2           A     I recall that we had -- I mean, a lot of  
3     our conversations at the time were about the -- I  
4     think as much as anything about the administration  
5     versus the survey itself, but I don't -- I don't  
6     recall what that -- it's not uncommon for him to  
7     send me a message like that. And then I would call  
8     and -- let me see what time it is -- that would be a  
9     not unusual thing, that he would send me something  
10    in the evening to -- as kind of a way of reminding  
11    him that he wanted to talk to me about something.

12           Q     **Is it possible that you were talking about**  
13    **the concerns that you just raised?**

14           A     I don't recall.

15           Q     **Okay. So going back to those two**  
16    **concerns, you mentioned that you were worried that**  
17    **restricting the access of the underlying data would**  
18    **not be acceptable to folks in Florida.**

19                    **Could you tell me what you mean by that?**

20           A     Well, we're -- we're a Sunshine Law state.  
21    And as a general practice, whether it's sunshine or  
22    whether it's, you know, discovery or other issues, I  
23    anticipated that this survey would have interest and  
24    that, as it was appropriate, we would get requests  
25    and -- to -- a bigger -- honestly, the bigger

1 concern probably was with the age, but -- but this  
2 was a significant issue for me in terms of the  
3 transparency of the work we were doing.

4 **Q Did anyone express concerns about the data**  
5 **not being accessible?**

6 A I did.

7 **Q And what do you mean by the underlying**  
8 **data?**

9 A That the ... I can't look at him. You  
10 know, the source data from which we would be able  
11 to -- honestly, I would say it was sort of from  
12 beginning to end, that as we had things in a certain  
13 format, if we were to receive a public records  
14 requests or if we were to receive another request  
15 saying, "You can't see it because we did it this  
16 way," did not seem to me to be consistent with what  
17 we try to do in terms of transparency.

18 At the beginning that would have been the  
19 aggregate response data of the survey.

20 But in any form to me saying because of  
21 the way we did it, it's not accessible, I didn't  
22 feel that was an appropriate approach, particularly  
23 we were working under a statutory requirement, and I  
24 knew that there would be interest media and others  
25 that would want to know where we were on it.

1           **Q     Who has access to the data now?**

2           A     That aggregate data?  Gene, I would  
3  presume.  I would say Jason Jones probably has  
4  access to that.  I'm not sure if there's anyone  
5  else.

6  BY MS. JASRASARIA:

7           **Q     Have you given the data to -- have you**  
8  **shared the data with the Board of Education?**

9           A     The aggregate data, no.

10          **Q     What about with the Governor's Office?**

11          A     The aggregate data, no.

12          **Q     What about with the legislature?**

13          A     The aggregate data, no.

14          **Q     Okay.  So to your knowledge, the aggregate**  
15 **data lives simply within the Board of Governors?**

16          A     Yes.

17          **Q     And could someone else request the access?**

18          A     We could get a public records request.

19          **Q     Are you aware of whether you've received**  
20 **any public records request for the data thus far?**

21          A     We have received various public record  
22  requests.  I don't know that we've been asked for  
23  the aggregate data.  I'm trying to -- I don't  
24  believe so.

25          **Q     If the legislature or the Governor's**

1 Office or another agency were to request that data,  
2 how would they go about doing so?

3 A Probably -- I would expect it would be a  
4 written request. And I -- I believe we would have a  
5 response -- if it was a public records request, we  
6 would have a responsibility to respond to it.

7 Q So turning back to what you did after you  
8 had these concerns, you said that you spoke to Chair  
9 Lamb about it, correct?

10 A Yes.

11 Q And you also spoke to Alex Kelly?

12 A Yes.

13 Q Why did you consult Alex Kelly about this  
14 matter?

15 A Well, he called me about the meeting, and  
16 the colleges had raised a concern that we didn't  
17 have a survey, that we did not produce a survey for  
18 them to see when we were having the meeting with  
19 them.

20 That's when I explained to him why I had  
21 held -- I had made the decision not to put anything  
22 out there because I was in the process of trying to  
23 evaluate our ability to take a different approach.

24 Q Going back to the data question, is it --  
25 is it your testimony that if you received a public

1 records request for the underlying data, that the  
2 Board of Governors would have to produce it?

3 A Yes. Again, absent some other cite that  
4 we could make such as institutional research  
5 limitations.

6 Q So turning back to Document 18, which is  
7 the amended answers to the interrogatories dated  
8 earlier this week.

9 A All right.

10 Q I'm now looking at page 5, and this is the  
11 same paragraph that we were just looking at. But it  
12 says here that "Mr. Kelly offered suggestions of new  
13 survey language for the student survey" --

14 A Yes.

15 Q -- is that correct?

16 A Uh-hum.

17 Q How did that process work in terms of  
18 getting language from Mr. Kelly?

19 A Yes. When we talked, he offered that he  
20 had individuals that could assist us with a clean --  
21 kind of new survey. I felt that would be helpful  
22 because my team all had a lot of familiarity with  
23 the prior product.

24 That was -- what they did is came up with  
25 something and then it was provided to me on a flash

1 drive.

2 Q And do you know who worked on that with  
3 Mr. Kelly?

4 A I do not.

5 Q Do you have any sense of who those  
6 individuals could have been or --

7 MS. LUKIS: Object to form.

8 Go ahead.

9 A Never had a discussion about who that was.  
10 BY MS. JASRASARIA:

11 Q And when you received the draft survey on  
12 the USB drive, did you suggest edits?

13 A We made edits, not -- not on the USB  
14 drive. But I think as I explained, it's a USB  
15 drive, I didn't have much I could do with that. I  
16 took that and printed it. I scanned it and I sent  
17 it to my administrative assistant so that it would  
18 be in our system. And then we shared it with the  
19 college system.

20 The conversation about edits was between  
21 me, my staff, and the folks at the college system.

22 MS. JASRASARIA: I am going to mark  
23 Defendants\_0011674 as Exhibit 22.

24 (Exhibit 22 was marked for  
25 identification.)

1 BY MS. JASRASARIA:

2 Q Is this the retyped survey that you're  
3 referring to?

4 A Yes.

5 Q So to clarify, is this retyped survey  
6 exactly what was sent from Mr. Kelly via USB?

7 A Yes. My administrative assistant even  
8 made the comment that she did it as she received it,  
9 not with any fixes.

10 Q Okay. I'd now like to mark  
11 Defendants\_129946 as Exhibit 23.

12 (Exhibit 23 was marked for  
13 identification.)

14 BY MS. JASRASARIA:

15 Q Do you recognize this document?

16 A Yes.

17 Q And what is it?

18 A That is, I believe, the same survey  
19 forwarded to Chancellor Hebda from the college  
20 system to me.

21 Q Were any changes made between February 25  
22 when your assistant retyped Alex Kelly's survey to  
23 February 28 when you sent a survey to Chancellor  
24 Hebda?

25 A Not that I recall.

1           **Q     What did the editing process look like**  
2     **from that point forward?**

3           A     Our two groups together on a Teams call --  
4     Teams or Zoom call, I don't recall for this survey  
5     which one -- which one of us put this up, but we  
6     then went through the document, each question, each  
7     answer, looked at the format -- in addition to the  
8     text, looked at the formatting. There are certain  
9     questions that follow from other questions --  
10    bridges, I believe is what they are called. So we  
11    kind of went through that, and we made edits to it.

12          **Q     Were any of those edits made in writing?**

13          A     They were made -- they were made on the  
14    screen. That's where the editing process occurred.

15          **Q     Are you aware of whether there are any**  
16    **intermediate drafts that are still kind of in**  
17    **existence?**

18                   MS. LUKIS: Object to form.

19          A     I'm not aware of any.

20                   MS. JASRASARIA: I'd now like to mark  
21    Defendants\_009214 as Exhibit 24.

22                           (Exhibit 24 was marked for  
23    identification.)

24    BY MS. JASRASARIA:

25          **Q     Do you recognize this document?**



1           A     Yes.

2           Q     Do you recall whether the student survey  
3 was finalized by this date?

4           A     I don't recall specifically, but we were  
5 moving into -- at this stage, we were moving into  
6 the administration and implementation of the survey,  
7 and I recall the discussion.

8                     This is where we really got into how the  
9 SurveyMonkey platform would work and what we would  
10 have, and we were also talking about directional  
11 memos to the -- each of our systems was going to  
12 basically lay out the timing and the process to the  
13 universities that we anticipated.

14          Q     Looking at Chancellors Hebda's e-mail at  
15 the bottom of this chain, if you look at "Review  
16 dissemination plan" -- are you there? It's the --

17          A     At the bottom?

18          Q     -- second bullet point --

19                     Yeah.

20          A     Yes.

21          Q     It mentions "FCS memo draft and  
22 instructions to institutions attached," and then  
23 there's a question: "If employee survey comes soon,  
24 put in same memo for same time?"

25                     Did I read that correctly?

1           A       That's what it says.

2           **Q       Do you recall whether the employees --**  
3 **what the status of the employee survey was at this**  
4 **time?**

5           A       I don't recall specifically. I believe,  
6 because we were into the administration side -- I  
7 don't recall specifically.

8           **Q       So taking a step back, we've discussed how**  
9 **the student survey came to be, and I'm curious, how**  
10 **did the employee survey come to be?**

11          A       Mr. Kelly also developed the employee  
12 survey. That was provided on a flash drive. I  
13 checked with Kathy Hebda and confirmed that she had  
14 that document and asked her if she could load it  
15 into the system so that the team could work off of  
16 that.

17          **Q       Did Mr. Kelly develop that survey himself?**

18          A       I don't know. I know he provided it to  
19 us. I don't know who developed it.

20          **Q       Did you request for Mr. Kelly to draft the**  
21 **survey?**

22          A       My understanding when I had my first  
23 conversation with him -- let me step back.

24                   I'm not sure that was the first  
25 conversation we had, but I believe at some point

1 that they offered to provide that survey as well --  
2 a version of it for employees as well as a version  
3 of it for students.

4 Q Was the employee survey sent -- or  
5 provided to you after the student survey?

6 A Yes.

7 Q And are you aware of whether Mr. -- of  
8 anyone that Mr. Kelly consulted with in its  
9 development?

10 A I'm not.

11 MS. LUKIS: Object to form.

12 Go ahead.

13 A I'm not.

14 BY MS. JASRASARIA:

15 Q Did Mr. Kelly explain to you why he was  
16 developing just one employee survey?

17 A I don't recall an explanation of why he  
18 did that. I, when I saw the document, felt that the  
19 value to it was the ability -- we were looking for  
20 sort of consistency in the employee group that I  
21 felt that it would be simpler to have one survey  
22 mechanism for all employees, but it gave us the  
23 information about who the respondents were.

24 Q FSU had put together separate drafts for  
25 staff and faculty; is that correct?

1           A       Yeah.

2           Q       **And after you received the draft employee**  
3       **survey from Mr. Kelly, did -- who weighed in on that**  
4       **draft?**

5           A       Our office did, and the college system  
6       office did.

7           Q       **Do you know which individuals in your**  
8       **office weighed in?**

9           A       I would expect -- I can't -- I would say  
10       most likely it was Jon Rogers, Jason Jones, Christy  
11       England, Vikki, and Gene Kovacs -- Vikki Shirley and  
12       Gene Kovacs.

13          Q       **Did you consult FSU at all on the draft**  
14       **survey from Mr. Kelly?**

15          A       No. When we -- I guess I described it as  
16       when I fell like I was going to have something to  
17       work with, it's when I had communicated with Tim  
18       Chapin and let him know that we were going to head  
19       in a different direction.

20          Q       **Did the -- did the Board of Governors**  
21       **consult with any other survey experts on the draft**  
22       **surveys, either the student or the employee survey,**  
23       **that came from Mr. Kelly?**

24          A       Not on the specific survey documents.

25          Q       **Did you consult about something else?**

1           A       We had -- I think I said this earlier. I  
2       may have made this remark in civil discourse. We  
3       also consulted with Bill Mattox at James Madison  
4       Institute and Liz Joyner at Village Square, really  
5       probably in the process development discussion  
6       versus the -- I think they may have -- we may have  
7       had some kind of a draft that they saw. I don't  
8       recall that specifically. But it was to continue to  
9       get their insight and input on -- see if they saw  
10      any -- any issues that they thought we ought to  
11      consider as we went through this.

12           **Q       Did the conversations with, I believe,**  
13      **Bill and -- Bill Mattox and Liz Joyner, did those**  
14      **continue after the engagement with FSU and student**  
15      **politics concluded?**

16           A       I don't believe they did.

17           **Q       Did you engage with any -- anyone outside**  
18      **of the Board of Governors, the Board of Education,**  
19      **or the Governor's Office about Mr. Kelly's survey**  
20      **drafts?**

21           A       Would have just been with the college  
22      system office.

23           **Q       Okay. So just the college system office**  
24      **and internal Board of Governors?**

25           A       Yes.

1           **Q     After you received Mr. Kelly's draft**  
2     **surveys, did you continue to engage with Mr. Kelly**  
3     **on edits?**

4           A     No.

5           **Q     And did you share the draft surveys that**  
6     **Mr. Kelly provided with anyone outside the**  
7     **university or the college systems?**

8           A     I don't recall that we did. I'm trying  
9     to -- I don't recall that we -- that our office did.

10          **Q     Do you know whether any other offices did?**

11          A     I -- I don't know. That's why I was  
12     pausing as I was trying to think if I knew for sure  
13     one way or the other about the college system.

14          **Q     Did Mr. Kelly share the basis or**  
15     **methodology behind the survey drafts that he**  
16     **provided?**

17          A     I don't recall a specific -- any kind of  
18     background such as that.

19          **Q     Did he share where he got the ideas for**  
20     **the questions?**

21          A     I think from the original conversation my  
22     sense was that he knew someone who could help. I  
23     don't -- I don't know whether he actually -- who or  
24     what he may have asked anyone.

25                     You know, I guess I'd say also I felt that

1 we had the ability, and we did, to make edits. I  
2 thought it gave us a good starting point, but it was  
3 our two systems that made the edits to them, to both  
4 surveys.

5 Q Did you inquire from Mr. Kelly who the  
6 individuals that he was planning on --

7 A I did not.

8 Q Do you have a copy of the original  
9 employee survey that Mr. Kelly shared with you?

10 A Only what is -- has been produced which  
11 was the -- the e-mail. I think there was the e-mail  
12 from myself to my administrative assistant that had  
13 the scanned document in it, and then her e-mail back  
14 to me.

15 Q And there is one -- I -- I -- I know that  
16 we just talked about something similar to that for  
17 the student survey --

18 A Oh, I'm sorry. You asked about the  
19 employee survey --

20 Q The employee survey.

21 A -- I apologize.

22 Q No problem.

23 A No, I don't. I didn't -- when -- when the  
24 college system said they had it, I didn't need it.

25 Q So the only version of the final faculty

1 **survey that you have is the final?**

2 A That I have. We saw the document, and we  
3 made edits to it. But, yeah, I don't have any other  
4 version of that survey.

5 MS. JASRASARIA: I'm going to mark  
6 Defendants\_054571 as Exhibit 25.

7 (Exhibit 25 was marked for  
8 identification.)

9 BY MS. JASRASARIA:

10 Q **And I will represent that this was part of**  
11 **the Board of Education's production.**

12 A Okay.

13 Q **Do you recognize this document?**

14 A I don't recognize the document with the  
15 cover letter. It appears to be the survey, the  
16 employee survey.

17 Q **And if you flip to, I guess, 054577, this**  
18 **also looks like a version of the employee survey,**  
19 **correct?**

20 A Yes. It's labeled as that.

21 Q **And do you see the -- on -- on 5 -- 5477,**  
22 **do you see that little comment bubble right above**  
23 **the first question?**

24 A As long as you don't want me to read it,  
25 yes, I see it.



1           Q     I wish I could read it. Do you see -- do  
2     you know what that -- what that might be?

3           A     I have no idea.

4           Q     When you all edited doc- -- these  
5     documents in collaboration with the college system,  
6     how did you typically make edits, like what format  
7     did they take?

8           A     As -- as I recall, some edits -- maybe  
9     both -- I think there were two types of edits.  
10    If -- if they were to the actual text, they were  
11    made during the conversation. I'm trying to recall  
12    if they were mechanical edits which I would -- which  
13    is what I would call this idea of a bridge from one  
14    question to another. I don't recall if someone had  
15    to go do that somewhere else or whether they were  
16    able to do it contemporaneous with the discussion.

17          Q     Do you know whether edits were made in  
18    comments to PDFs?

19          A     I don't know.

20          Q     What about in comments to a Word document?

21          A     I don't know.

22                   MS. JASRASARIA: I'm going to mark  
23    Defendants\_084412 as Exhibit 26.

24                   (Exhibit 26 was marked for  
25    identification.)

1 BY MS. JASRASARIA:

2 Q Do you recognize this e-mail?

3 A I don't believe I recognize it. I am  
4 double-checking. I don't believe it was sent to me  
5 or to anybody on my staff, unless I am reading too  
6 quick.

7 (Examining Document.)

8 Q It looks like an internal e-mail chain in  
9 the college system; is that correct?

10 A Yes. That's what it looks like.

11 Q Looking at the top e-mail from Chancellor  
12 Hebda, it says: "Note: I have not yet heard back  
13 from Chancellor Criser about the survey content. I  
14 will try to reach him soon so this e-mail does not  
15 include that in this draft."

16 Did I read that correctly?

17 A You said "does not contain that in this  
18 draft."

19 Q "Does not include that in this draft."

20 A I'm sorry. Ask me --

21 Q Sure.

22 A I don't understand the question.

23 Q No, no, no. Of course. I -- I was  
24 just -- I was just reading the e-mail and asking if  
25 I read it correctly.

1           A       It says: "I have not heard back from  
2   Chancellor Criser about the survey content."

3           **Q       And what's the date of this e-mail?**

4           A       That's March 30.

5           **Q       Had -- do you know what survey content is  
6   being referred to here?**

7                   MS. LUKIS: Object to form.

8           A       I don't.

9   BY MS. JASRASARIA:

10          **Q       When were -- when were the employee and  
11   student surveys finalized?**

12          A       That's what I'm trying to be -- to recall  
13   against the date on this because I believe when we  
14   got into the conversation about the -- we went  
15   through the surveys, and then we were developing the  
16   communications, administration guidelines, and I  
17   don't know what would have -- whether they were  
18   waiting for us to give a final or -- I don't know.  
19   I'm not familiar with this e-mail.

20          **Q       Going back to Exhibit 24 -- apologies for  
21   going back and forth a little bit.**

22          A       Is that here?

23          **Q       Yeah. So this is an e-mail from  
24   Chancellor Hebda to you, correct?**

25          A       Yes.

1           Q     So going back down to this section we read  
2     earlier, in the review dissemination plan at the  
3     bottom of this page --

4           A     Uh-huh.

5           Q     -- where it says "if employee survey comes  
6     soon," do you know who the employee survey would be  
7     coming from or who Chancellor Hebda would be  
8     expecting that it might come from?

9           A     I don't know. To my recollection, that  
10    was done before the -- excuse me -- the employee  
11    survey is the second survey. I keep thinking  
12    survey -- I'm trying to recall. I don't understand  
13    that. I guess I just have to say I don't understand  
14    that comment.

15          Q     And ultimately, the survey -- the employee  
16    survey came from Mr. Alex Kelly, correct?

17                   MS. LUKIS: Object to form.

18          A     Sorry. Say that one more time.

19    BY MS. JASRASARIA:

20          Q     Ultimately, when Chancellor Hebda did --  
21    when she received the employee survey, it was -- it  
22    was from Alex Kelly? And I -- I know we are not  
23    sure about the dates.

24          A     There was a draft --

25                   MS. LUKIS: Object to form.

1           Go ahead.

2           THE WITNESS: I'm sorry.

3           MS. LUKIS: No, that's okay.

4           A       There was a draft survey from Mr. Kelly.  
5       Then our two groups, as we had done with the student  
6       survey, went through it, and I honestly -- I'm --  
7       I'm -- probably got survey dates in my head right  
8       now. I am trying to equate one thing with another.  
9       I -- I just don't recall.

10           MS. JASRASARIA: I would now like to mark  
11       copies of the final surveys. I am going to  
12       mark Defendants\_007727 as Exhibit 27.

13           (Exhibit 27 was marked for  
14       identification.)

15       BY MS. JASRASARIA:

16           Q       Do you still have Exhibit 22, Chancellor?

17           A       Yes.

18           Q       Okay. And just to confirm, Exhibit 22 is  
19       the survey draft that Mr. Kelly provided -- the  
20       student survey draft that Mr. Kelly provided in  
21       which your assistant retyped?

22           A       Yes.

23           Q       So I would just like to look through these  
24       questions. I know you mentioned that your team and  
25       the college system team made edits, and so I would

1 just like to get an understanding of what those  
2 edits were.

3 So looking at Question 1 -- why don't we  
4 just take a look at the first four questions because  
5 I think the pages actually line up. So if you can  
6 just take a look at those two and let me know what  
7 changes were made.

8 MS. LUKIS: Object to form.

9 A Your -- your question to me is to go  
10 through line by line or question by question?

11 BY MS. JASRASARIA:

12 Q Yes. Yeah, I'm curious -- if you can just  
13 go through question by question and let me know.

14 A I'll kind of --

15 MS. LUKIS: Object to form. I don't -- I  
16 don't understand. Could you ask the question  
17 one more time?

18 MS. JASRASARIA: Sure. I can rephrase.

19 BY MS. JASRASARIA:

20 Q So I'm reading Question 1 on Exhibit 22  
21 which says: "I feel that it is important to be able  
22 to express my political viewpoints without fear of  
23 reprisal."

24 Did I read that correctly?

25 A Yes.

1           Q       Okay. I am now turning to Question 1 on  
2       Exhibit 27. And the question says: "I feel that it  
3       is important to be able to express my political  
4       viewpoints without fear of negative consequences."

5                    Did I read that correctly?

6           A       Yes.

7           Q       And would you say those two questions are  
8       similar?

9           A       I would say they're not the same, and the  
10       reason is -- if I recall correctly, there is two key  
11       words in the first one, in the original. The word  
12       "fear" and the word "reprisal," those are specific  
13       terms that I think have a specific and negative  
14       connotation. Negative consequences is a broader,  
15       more inclusive discussion. I mean, reprisal is a  
16       particular form of negative consequence versus the  
17       other way around.

18          Q       How would you define "reprisal"?

19          A       Retribution, some sort of -- one action  
20       leads to immediate reaction with a negative  
21       consequence.

22          Q       And how do you describe negative -- how do  
23       you define "negative consequences"?

24          A       I think it could be anything from an  
25       environment, whether or not an individual was

1 comfortable in a particular setting or situation,  
2 whereas the other would be more specific; and so it  
3 would cover the same issue of are you -- do you feel  
4 comfortable that you can engage in discussion on  
5 personal views or listen to someone else's personal  
6 views and do it in a constructive manner and not a  
7 negative manner.

8 Q Turning to Question 2, it looks like on  
9 Exhibit 22 the question is: "My college campus  
10 provides an environment for free expression of  
11 ideas, opinions, and beliefs."

12 Did I read that correctly?

13 A Yes.

14 Q And Question 2 in Exhibit 27 says: "My  
15 college or university campus provides an environment  
16 for free expression of ideas, opinions, and  
17 beliefs."

18 Did I read that correctly?

19 A Yes.

20 Q And I see that a change was made from 2 --  
21 from Exhibit 22 to Exhibit 27 to include "university  
22 campus"; is that correct?

23 A Yes.

24 Q Were any other changes made?

25 A I don't believe so.



1           Q       Turning to Question 3, on Exhibit 2, it  
2       says: "My college classes provide an environment  
3       for free expression of ideas, opinions, and  
4       beliefs."

5                   And Question 3 on Exhibit-- sorry, did I  
6       read that correctly?

7           A       Yes, you did.

8           Q       And Question 3 in Exhibit 27 says: "My  
9       college or university classes provide an envir- --  
10      an environment for free expression of ideas,  
11      opinions, and beliefs."

12                   Did I read that correctly?

13          A       That's correct.

14          Q       And here the only change made was, again,  
15      adding university; is that right?

16          A       Yes.

17          Q       Turning to Question 4. Apologies, I'm  
18      going a little bit quickly, but: "I see examples of  
19      free and welcomed expression such as speeches,  
20      debates with other students or instructors, class  
21      assignments, et cetera, in my classes regularly."

22                   Did I read that correctly?

23          A       Yes.

24          Q       And on Exhibit 27: "I see examples of  
25      free and welcomed expression such as speeches,

1 debates with other students or instructors, class  
2 assignments, et cetera, in my classes regularly."

3 Did I read that correctly?

4 A Yes.

5 Q And those two questions are identical,  
6 correct?

7 A Yes, they are.

8 Q Okay. Turning to the next page.

9 Question 5 in Exhibit 22 says: "My professors or  
10 course instructors use class time to express their  
11 own social or political beliefs."

12 Did I read that correctly?

13 A Yes.

14 Q And on Exhibit 27, Question 5 is: "My  
15 professors or course instructors use class time to  
16 express their own social or political beliefs  
17 without objectively discussing opposing social or  
18 political beliefs."

19 Did I read that correctly?

20 A Yes.

21 Q And could you describe the edit?

22 A It's --

23 MS. LUKIS: Object to form.

24 Go ahead.

25 THE WITNESS: Sorry.

1           A       It's the addition of the phrase "without  
2       objectively discussing opposing social or political  
3       beliefs."

4       BY MS. JASRASARIA:

5           **Q       Do you recall why that edit was made?**

6           A       Draws from our civil discourse discussions  
7       and the -- I guess the general discussion around --  
8       you know, general discussion around objectivity in  
9       the classroom; and made it -- I think was more the  
10      point that we would be concerned with; if someone  
11      felt that they -- if what we would consider to be --  
12      I guess in this case it would be a strongly agree or  
13      agree would -- would potentially be a negative  
14      response than trying to put more context around what  
15      is and what isn't normal classroom behavior where --  
16      or -- or process where you would talk objectively  
17      about issues versus just simply, you know, if you  
18      stop it, if you stop without that, then you haven't  
19      really put it in context.

20          **Q       Is that the reason that you -- it looks**  
21      **like you all added Question 6 in Exhibit 27; is that**  
22      **correct?**

23          A       Yes.

24          **Q       And why did you all add that question?**

25          A       That's a follow-on question. So that's

1 one of these bridges where if you answer it a  
2 certain way, then you try to take it down a level  
3 just to understand sort of, you know, who -- who --  
4 who feels this way as compared to -- as compared to  
5 others.

6 **Q How would you define liberal in the answer**  
7 **choices on Question 6?**

8 A This was asking individuals to identify  
9 themselves. And -- and we did that on purpose  
10 because we felt it was important for an individual  
11 to self-identify. I -- I think the -- me -- my --  
12 my belief is that the use of those terms and -- and  
13 how people define those terms for themselves has  
14 really become more and more their own perspective.

15 **Q To clarify, this question is asking about**  
16 **your instructor's beliefs, correct?**

17 A It -- it's asking -- yes, it's asking  
18 about what your perspective is of those -- of those  
19 comments, their beliefs; what -- what their -- what  
20 their remarks are. Do you believe those are  
21 conservative or liberal.

22 **Q Is it possible that students could have**  
23 **different definitions of conservative and liberal?**

24 A I think that's what I was trying to say.  
25 And -- and it's also why we had "other" in there,

1 because we've got a large population in the state  
2 that self-identify as, you know, nonparty affiliate,  
3 which doesn't necessarily fit one category or the  
4 other.

5 **Q Are students -- do students know what**  
6 **liberal and conservative mean in your experience?**

7 MS. LUKIS: Object to form.

8 A I would -- I would not make a  
9 generalization. I guess it goes to my earlier  
10 comments. That's why we wanted people to  
11 self-identify. I think they have the ability to  
12 self-identify themselves as to how they -- you know,  
13 what -- what they would call themselves.

14 BY MS. JASRASARIA:

15 **Q And to clarify again, this question is not**  
16 **asking them to self-identify their own beliefs?**

17 A No, they're -- but they're looking at --  
18 it's -- it's not -- well, you're right. It -- let  
19 me clarify.

20 It's not what they believe; it's when they  
21 hear someone else believes, how do they categorize  
22 those beliefs. But I believe that is somewhat  
23 dependent on your own filter about yourself and --  
24 and how you would define those terms.

25 We -- we had discussions about whether we

1 needed to -- you know, how far down do you try to  
2 drive this in the -- in the permutations. You know,  
3 sort of we -- we didn't also want to scramble this  
4 too badly.

5 Q Did you consider including more than three  
6 options here?

7 A We talked about it. I think we felt that  
8 we were going to get into -- you know, they call it  
9 comma list. You start doing this comma, that comma,  
10 you -- suddenly, you can't stop; settled on keeping  
11 it simple.

12 Q Okay. I am going to move on to  
13 question -- to the next question in the survey. Let  
14 me see how long this is.

15 So if I am looking at Exhibit 22, Question  
16 Number 6 is: "Students at my college are encouraged  
17 to consider a wide variety of viewpoints and  
18 perspectives."

19 Did I read that correctly?

20 A Yes.

21 Q And Question Number 7 in Exhibit 27 is:  
22 "Students at my college or university are encouraged  
23 to consider a wide variety of viewpoints and  
24 perspectives," correct?

25 A That's right.

1 Q And so here, the only change was adding  
2 university; is that right?

3 A That's correct.

4 Q Moving to the next question in Exhibit 22.  
5 That question is: "I feel comfortable speaking up  
6 and giving my views on noncontroversial topics"; is  
7 that right?

8 A That's correct.

9 Q And on Exhibit 27, the next question is:  
10 "I feel comfortable speaking up and giving my views  
11 on noncontroversial topics," correct?

12 A That's correct.

13 Q And those two are identical questions?

14 A Yes.

15 Q Would you agree that Question 8 on  
16 Exhibit 22 and Question 9 on Exhibit 27 are also  
17 identical?

18 A So I am looking at 8.

19 Q Yeah, 8 on --

20 A And I'm looking at 9. Yes. Yes.

21 Q Okay. Turning the page on Exhibit 27,  
22 would you agree that -- so reading Question 9, which  
23 is -- and now, unfortunately, the pages are no  
24 longer synced.

25 A Yeah. It may be easier.

1 Q Yeah. So Question 9 on Exhibit 22, would  
2 you agree that Question 9 on Exhibit 22 and  
3 Question 10 on Exhibit 27 are identical?

4 A Yes.

5 Q And would you agree that Question 10 on  
6 Exhibit 22 and Question 11 on Exhibit 27 are also  
7 identical?

8 A Yes.

9 MS. LUKIS: Object to form.

10 BY MS. JASRASARIA:

11 Q I'm sorry. I will correct myself. It's  
12 actually -- there is a change. But they're very  
13 similar questions, correct?

14 A We're looking at 10 and 11?

15 Q Uh-huh.

16 A Oh, yes, there is. Sorry.

17 Q But --

18 A Yes, there is a change from "all" to  
19 "most."

20 Q Okay. Moving to the next question, which  
21 is Question 11 and Question 12. Are those two  
22 questions identical?

23 A Yes.

24 Q Moving to Question 12 on Exhibit 22 and 13  
25 on Exhibit 27, are those two questions identical?



1 A Yes.

2 Q And moving to the next question, which is  
3 Question 13 on Exhibit 22 and 14 on Exhibit 27, are  
4 those two questions identical?

5 A Yes.

6 Q What about Question 14 on Exhibit 22 as  
7 compared to Question 15 on Exhibit 27, are those two  
8 identical?

9 A Yes.

10 Q Was about Exhibit 20 -- sorry, Exhibit 22,  
11 Question 15 and Exhibit 27, Question 16?

12 A Yes.

13 Q What about Question 16 on Exhibit 22 and  
14 Exhi- -- Question 17 on Exhibit 27?

15 A Yes.

16 Q Almost done. Question 17 on Exhibit 22 as  
17 compared to Question 18 on Exhibit 27, are those two  
18 questions the same? This is the question: "Are you  
19 of a Hispanic, Latin, or --

20 A Yes.

21 Q -- Spanish origin?"

22 The next question --

23 A I'm -- I'm sorry. Let me -- yes. I'm  
24 sorry. I got --

25 Q Okay.

1           A     I got my order out of whack.

2           Q     No problem.

3                     Now we're moving to Question 18, gender,  
4     and Question 19 on Exhibit 27. Are those both the  
5     same question?

6           A     Yes.

7           Q     Now turning to the second to the last  
8     question on each, are those two questions the same?

9           A     19 and 20?

10          Q     Correct.

11          A     Yes.

12          Q     And finally, Question 20 and 21?

13          A     No.

14          Q     What -- what are the differences?

15          A     21 includes graduate degrees. I believe  
16     that's the difference.

17          Q     Okay. Thank you.

18                     (Discussion off record.)

19     BY MS. JASRASARIA

20           Q     Did you ever reach out to a -- any survey  
21     institutions like HERI or HEDS? Have you heard of  
22     those?

23          A     I have not.

24          Q     Are you familiar with any of the expert  
25     reports submitted in this case?

1           A        Could you explain expert report?

2           Q        **Sure. In the case Link v. Diaz,**  
3       **plaintiffs and defendants have both submitted**  
4       **reports, reports from experts opining -- providing**  
5       **expert opinions on various matters within the**  
6       **litigation. Have you read any of those reports?**

7           A        I don't believe I have.

8                    MS. JASRASARIA: I'd like to mark  
9       Defendants\_085740 as Exhibit 28.

10                   (Exhibit 28 was marked for  
11       identification.)

12   BY MS. JASRASARIA:

13           Q        **Do you recognize this e-mail?**

14           A        I don't recognize it. I see that I was --  
15   I believe I was included in it.

16           Q        **Who is the e-mail from?**

17           A        It's from Kathy Hebda.

18           Q        **And it looks like it's directed to someone**  
19       **named Gavin; is that right?**

20           A        That's what it indicates.

21           Q        **Do you know who that person is?**

22           A        I don't know who Gavin is.

23           Q        **Do you know what the public records issues**  
24       **referenced might be?**

25           A        I don't.

1 MS. LUKIS: Object to form.

2 A I'm sorry. I'm apologizing to everybody.

3 BY MS. JASRASARIA:

4 Q And it looks like this e-mail was sent on  
5 April 28, correct -- or April 27. Hard to say.

6 A April 27. April 27 is what I see on the  
7 e-mail.

8 Q Okay. And it's responding to a Microsoft  
9 Teams meeting invite?

10 MS. LUKIS: Object to form.

11 A I don't know what it's responding to. The  
12 second e-mail is an e-mail. I guess, yes, there is  
13 a Microsoft Teams invite. I'm not familiar with the  
14 e-mail.

15 MS. JASRASARIA: Okay. I would like to  
16 mark Defendants\_147396 as Exhibit 29.

17 (Exhibit 29 was marked for  
18 identification.)

19 BY MS. JASRASARIA:

20 Q Have you seen this e-mail before,  
21 Chancellor?

22 A Yes.

23 Q It looks like an e-mail from your  
24 assistant to the assistant of Chair Lamb; is that  
25 right?

1           A       Yes.  At that time that was the individual  
2       who was his assistant.

3           Q       **And your assistant is requesting a meeting**  
4       **for you and Chair Lamb for an hour about the survey;**  
5       **is that correct?**

6           A       That's correct.

7           Q       **Do you recall why you requested that**  
8       **meeting?**

9           A       I believe we were going to go through -- I  
10      think in that time frame we would have been  
11      preparing to go through the preliminary data that we  
12      had from the survey.

13          Q       **Do you remember what was discussed at that**  
14      **meeting?**

15          A       What I recall is that we would have been  
16      able to show him what the questions were and what  
17      the answers were to each of the questions.

18          Q       **Did Chair Lamb have any reactions to the**  
19      **data that was shared?**

20          A       Not in particular.  He had -- we kind of  
21      walked through it.  If I recall correctly, his  
22      comment is he wanted to think about it and that he'd  
23      circle back with us.

24                    We had some -- I think we probably had  
25      some discussion about ultimately how -- how we would

1 think about the presentation of the material.

2 That's all I recall.

3 Q Had you all started working on the draft  
4 of the report for this survey data?

5 A Yes, we had.

6 Q And will you be publishing that on  
7 September 1?

8 A We will publish that no later than  
9 September 1.

10 MS. JASRASARIA: I would like to mark  
11 Defendants\_147397 as Exhibit 30.

12 (Exhibit 30 was marked for  
13 identification.)

14 BY MS. JASRASARIA:

15 Q This looks like a follow-up e-mail  
16 exchange from your assistant to Chair Lamb's  
17 assistant regarding the same meeting in the previous  
18 exhibit; is that correct?

19 A Yes.

20 Q And your assistant e-mailed Bill saying:  
21 "I am pretty sure they will need the full hour.  
22 It's cray-cray here."

23 Is that correct?

24 A Yes. That's what it says.

25 Q Do you have -- do you know what your

1     **assistant was referring to when saying that it was**  
2     **"cray-cray" here?**

3             MS. LUKIS: Object to form.

4             A     It's been cray-cray for a long time.

5     BY MS. JASRASARIA:

6             **Q     Anything in particular that comes to mind**  
7     **about that day or that period?**

8             A     No. It's just life in general. We have a  
9     lot going on.

10            I haven't used that or heard that word in  
11   a long time.

12            MS. JASRASARIA: Can we just take a  
13   5-minute break? Does that work for people?

14            THE VIDEOGRAPHER: We are now going off  
15   record at 2:59 p.m.

16            (A recess took place from 2:59 p.m. to  
17   3:12 p.m.)

18            THE VIDEOGRAPHER: We are now going back  
19   on record at 3:12 p.m.

20   BY MS. JASRASARIA:

21            **Q     Good afternoon, Chancellor.**

22            A     Good afternoon.

23            **Q     Did you speak to your counsel during the**  
24   **break?**

25            A     I'm sorry?

1           **Q     Did you speak with your counsel during the**  
2 **break?**

3           A     No.

4           MS. JASRASARIA: I'd like to now mark  
5 Exhibit 31, which I will represent is a  
6 printout from a number of Excel files that were  
7 sent to us in your production from the Board of  
8 Governors.

9                     (Exhibit 31 was marked for  
10 identification.)

11           MS. JASRASARIA: So I'll just read into  
12 the record that page 1 is from  
13 Defendants\_130050; page 2 is from  
14 Defendants\_134230; page 3 is from  
15 Defendants\_134231; page 5 is from  
16 Defendants\_130049 -- and that's actually five  
17 pages of the exhibit, all from the same -- and  
18 then the last five pages of the document are  
19 from Defendants\_30048.

20           BY MS. JASRASARIA:

21           **Q     Chancellor, do these documents look**  
22 **familiar to you at all?**

23           A     Yes.

24           **Q     So is this first document here a list of**  
25 **the number of students and staff that were sent the**



1 survey broken down by institution?

2 A Yes.

3 Q And I just wanted to look specifically at  
4 the row labeled UF. It looks like there were 26,412  
5 staff members that received that link; is that  
6 right?

7 A That's what I see, yes.

8 Q Do you know why that number is so much  
9 bigger than the other staff numbers at the other  
10 schools?

11 A Personal opinion?

12 Q Yeah.

13 A I would imagine that the level of  
14 discussion at UF about these very same issues -- and  
15 you've shared earlier the faculty report and some of  
16 the other activity going on -- just believe that  
17 there would have been a higher level of awareness;  
18 maybe even people who knew something was going on.  
19 If they hadn't experienced it themselves, they might  
20 have been more inclined to respond.

21 Q Sure. So just to clarify, my  
22 understanding is that this is a list of -- this  
23 chart shows --

24 A Oh, I'm sorry. You asked -- you didn't --  
25 you asked me about the number who responded.

1 They're bigger.

2 Q Okay. So the 26,000 --

3 A Yes. I'm sorry. Yes. The number that  
4 were actually sent surveys is because they are a  
5 larger institution, significantly larger.

6 Q Okay. So this didn't seem odd to you that  
7 there are 26,000 staff receiving the survey UF  
8 versus only, for example, 14,000 at FSU?

9 A No, it doesn't.

10 Q Okay. Just wanted to confirm as someone  
11 who is not a Florida University person.

12 Turning to the fourth page in this packet,  
13 so you can skip over two, three, and land at four.

14 A I am still fumbling.

15 Q No worries.

16 A Two, three, and --

17 Q Yeah. If you can start at that -- yep.

18 A Is it page under --

19 Q Exactly.

20 A It's this page.

21 Q This page right here. Thank you.

22 And this is titled "2022 Intellectual  
23 Freedom Employee Survey ODA Analysis"; is that  
24 right?

25 A That's correct.

1           **Q     What is ODA analysis?**

2           A     Office of Data Analysis. That's our  
3 internal department headed by Jason Jones.

4           **Q     And the top section of this seems to show**  
5 **the number e-mailed and the response rate for each**  
6 **institution, correct?**

7           A     That's correct.

8           **Q     And again, this is for the employee**  
9 **survey?**

10          A     Yes.

11          **Q     Was there a certain response rate that you**  
12 **all were aiming for in this survey?**

13          A     If I had a total number, it was that  
14 3 percent seemed to be at institutions around the  
15 country who had done something similar to this --  
16 was a number that we saw in their surveys. We  
17 didn't have an official target, but that's kind of  
18 what I hoped we would see in terms of our responses.

19          **Q     And where did you get that 3 percent**  
20 **number?**

21          A     I want to say that was -- what I think I'm  
22 referring to specifically is North Carolina --  
23 wasn't the same type of survey, but it just -- it  
24 was what was out there. And based on that, they had  
25 actually -- I'm rambling, but I'll finish that.

1                   They had actually had a survey where they  
2   incentivized responses, and another one where they  
3   did no incentive for responses. And if I recall  
4   correctly, the 3 percent was the unincentivized  
5   response rate.

6           **Q     Did you ever discuss at the board what the**  
7   **goal response rate should be?**

8           A     I would say we didn't. I had a number in  
9   my head. I don't know that we -- the board did not  
10   have a number, and I don't recall having discussions  
11   about what a goal would be for that.

12           **Q     Did you all ever consider doing an**  
13   **incentivized survey?**

14           A     We had discussions about it. From those  
15   discussions, one, because we were doing a total  
16   population versus a -- what North Carolina had done  
17   was a random sample. The number -- the number of  
18   responses we would have -- the cost of trying to  
19   incentivize something would have been much more  
20   extreme, given our population.

21                   Also, had discussions about whether or not  
22   when you incentivize someone, are you getting sort  
23   of their natural reaction to the survey, or are you  
24   getting their natural reaction to an incentive?

25           **Q     Looking at the response rates here, I know**

1 these are printed relatively small. I apologize for  
2 that.

3 Can you tell me what the two schools with  
4 the highest response rates were for the employee  
5 survey?

6 A I would say, based on this, they are -- as  
7 a total number or as a percentage?

8 Q As a percentage.

9 A As a percentage, would be Florida Poly  
10 and, I guess, UWF.

11 Q What about NCF? New College.

12 A New College? Yeah. I skipped over them,  
13 probably, but I'm still -- I'm sorry. It would have  
14 been New College, and it would have been Florida  
15 Poly.

16 Q And those are two of the smallest schools  
17 in the -- the two small schools, correct, in the  
18 university system?

19 A Yes, they are.

20 Q Okay. Did the Board of Governors ever  
21 consider operating the survey for a random sample of  
22 students rather than -- random sample of employees  
23 and students, rather, than the entire universe?

24 A In the early stages, in the conversations  
25 with FSU, I think that we had a -- we had some

1 conversations about that. I felt that kind of a  
2 straightforward reading of what the statute required  
3 made 100 percent survey more in line.

4 I think that there were also -- in  
5 designing a random sample, I think at some point you  
6 would also have to -- there isn't -- you either look  
7 at a group as a total population, or you start  
8 getting into there are a lot of subsets within a  
9 population and a university community.

10 And trying to know whether or not you got  
11 enough people from all the different groups becomes  
12 somewhat problematic. It's been done, and many  
13 others have done it. We felt that doing 100 percent  
14 survey was going to be an important way to do it.

15 **Q Do you all consider any ways to increase**  
16 **the response rate? I know that you decided -- aside**  
17 **from incentives?**

18 **A** I think we went to great pains to  
19 emphasize that this was volunteer and it was  
20 anonymous. We communicated that. We worked -- we  
21 asked the universities to assist us in communicating  
22 that.

23 To me, that was probably -- you know, if  
24 you think about, not necessarily in the Senate, but  
25 it was -- it's a roadblock if people think that

1     somehow what they say is -- is going to come back to  
2     them, and we wanted people to be absolutely sure  
3     that this was -- this was totally anonymous.

4           **Q     So to clarify, you didn't -- you focused**  
5     **on voluntariness and anonymity as opposed to**  
6     **response rate?**

7           MS. LUKIS: Object to form.

8           A     I sort of see those as two separate  
9     issues. I mean, to me, we would get a better  
10    response if people trusted the survey element. If  
11    they distrusted it, we would get a lousy survey  
12    response.

13    BY MS. JASRASARIA:

14           **Q     So aside from emphasizing the**  
15     **voluntariness and the fact that the responses would**  
16     **be anonymous, was there anything else that you all**  
17     **did to increase turnout or increase response rate?**

18           A     No.

19           **Q     You mentioned that you've already -- that**  
20     **the board has started drafting a report, correct?**

21           A     Uh-huh.

22           **Q     Have you seen that draft?**

23           A     Yes.

24           **Q     Are you aware of whether that draft has**  
25     **been produced in discovery?**

1           A       We have provided it to our counsel.

2           **Q       Okay.**

3                   BY MS. JASRASARIA:  Okay.  I don't think  
4       we've received it.  So --

5                   MS. LUKIS:  It was after the last --  
6       incredibly recent.  So we'll supplement in due  
7       course.

8                   BY MS. JASRASARIA:  Okay.

9       BY MS. JASRASARIA:

10           **Q       Chancellor, are you aware of whether**  
11       **the -- of -- can you describe to me what the draft**  
12       **report looks like thus far?**

13           A       Yes.  There is a text opening discussion  
14       of the process and the methodology that we followed.  
15       And then I can't necessarily say exact, but I would  
16       say it looks a lot like this document that's in  
17       front of you, in front of me.

18                   In the report itself we have a system  
19       summary which would reflect the aggregate of the  
20       individual university summaries.  And then the index  
21       contains the university information for each of the  
22       12 universities.

23           **Q       So to confirm, the report breaks down --**  
24       **it includes something similar to this which breaks**  
25       **the responses down by university?**



1           A       Yes.  It would -- so, for example, taking  
2   FAMU, there would be a section in the appendix that  
3   would be the FAMU report.  The report itself will  
4   have an SUS aggregate, and it's reported by numbers  
5   of respondents.

6                   We also have the number of people  
7   responding and then the respondents by question.  
8   And -- and there is a SUS summary that's part of the  
9   report, and then behind that is an appendix.  And  
10  then for each university, you would be able to go  
11  through for both surveys.  Both surveys would be  
12  there, and from that you would be able to see the  
13  answers.

14                   And it's -- I'm thinking about when we  
15  probably produced this to you, but it will be very  
16  similar to -- and I -- and I would add, I guess I  
17  would say it was within the last week that we  
18  completed to a point now that we are discussing it.

19                   It is -- it is not yet loaded to our  
20  website, but it has been discussed with our  
21  committee chairs and we are in the process -- we are  
22  in the process in the next few days of going through  
23  briefings with our board members.

24                   MS. JASRASARIA:  Counsel, would you be  
25                   able to produce that survey to us now, given

1           that we're in your office?

2                   MS. LUKIS:  It's not in a -- like -- it's  
3           in the ether somewhere.  It would take us -- we  
4           would have to upload it to our e-discovery  
5           vendor and have them convert before we can  
6           produce it.

7                   It's -- we're going to supplement in due  
8           course.  It's -- we've just received it very  
9           recently.  When we made our last production, we  
10          obviously would have produced it if it existed.

11                  So can we produce it today while we are  
12          setting here?  No.  I don't see how that would  
13          be possible.

14                  I can ask -- I can check on the status of  
15          where it is with one of my co-counsels during  
16          the break, but I don't -- I don't know that we  
17          can actually produce it while we are setting  
18          here.

19                  MS. JASRASARIA:  Okay.  Thanks.  We'd  
20          appreciate if you could check on it, and we can  
21          discuss offline.

22  BY MS. JASRASARIA:

23           **Q       Chancellor, do you know if any of the data**  
24           **in the report will be broken down by any of the**  
25           **demographic categories that were captured through**

1 the survey?

2 A Other than what you would see here? No.

3 Q And I'm not seeing any demographic  
4 breakdowns in this document, is that correct?

5 A I think if you go to the last six  
6 questions -- we are looking -- I think we are  
7 looking at the -- are we looking at the employee?

8 Q Yes.

9 A I lost my heading. If you go -- I think  
10 it starts around 15 or so. If I remember right,  
11 when we were walking -- no, it's not there. If you  
12 go to -- I don't have a page number --

13 Q Right.

14 A -- but it's Question 20 -- 19.

15 Q Okay. And --

16 A It shows you how -- we did not -- we are  
17 not correlating respondents' demographic information  
18 to their survey responses.

19 Q And has the demographic data that was  
20 captured been compared to the overall demographics  
21 of the State University System?

22 A We have not done that.

23 Q Have you done anything to weight the  
24 results such that they reflect the demographics of  
25 the university system?

1           A     No. We simply are publishing the survey  
2 responses as they were received with the addition to  
3 that being a preamble, so to speak, that sort of  
4 describes the background and the process. And with  
5 the exception of a system summary, it's -- it would  
6 look very -- this document would be very similar to  
7 that.

8           **Q     Could you describe the system summary of**  
9 **the process and methodology that's going to be in**  
10 **the report?**

11          A     It just simply totals -- so if you -- in  
12 this chart, if you go out to the total line --

13          **Q     Uh-huh.**

14          A     -- that's the system summary.

15          **Q     What about the preamble, the explanation?**

16          A     It describes the new law and the  
17 requirements, discusses the process by which we  
18 conducted the survey and I think -- I mean,  
19 that's -- that's how I would describe it. It's a  
20 fairly plain statement of why we started and -- and  
21 what we did.

22          **Q     Are you aware that the final survey**  
23 **included an e-mail address to which respondents**  
24 **could direct any questions or concerns?**

25          A     Yes.

1           **Q     Do you know who is monitoring that e-mail**  
2 **address?**

3           A     I believe Jon Rogers did -- does.

4           **Q     Have you seen any of those complaints?**

5           A     Yes, or at least I discussed them with  
6 him.

7           **Q     And could you generally describe the**  
8 **nature of the complaints that you've seen?**

9           A     I think there were -- there are -- there  
10 are probably in terms of a complaint -- because what  
11 we did is we received all kinds of comments and  
12 questions. So we -- we had people who had questions  
13 about how they took the survey.

14                   For example, I don't recall that it was a  
15 large number, but some individuals had a problem  
16 that they went through the survey and read it and  
17 basically went through it front to back, which  
18 closed out, and they needed to be able to go back  
19 and be able to -- they hadn't answered anything, so  
20 they wanted to go back and do that. So we -- we  
21 helped people with the mechanics to make sure that  
22 they could complete the survey.

23                   If I recall, we had some individuals who  
24 did not like the survey, and we had some other  
25 individuals who liked the survey, who thought it was

1 a good idea.

2           They were -- we -- what we -- I believe  
3 what we were able to do is make sure we responded to  
4 everyone who had any -- I guess differentiating  
5 someone's opinion about it versus someone who had a  
6 problem that needed to be solved, and we tried to  
7 make sure we solved the problems.

8           **Q     Did you respond to -- sorry. Let me**  
9 **rephrase.**

10          A     Making sure I'm not moving again.

11          **Q     So the board did respond to questions that**  
12 **came in about taking the survey?**

13          A     Yes.

14          **Q     Did the board respond to any of the**  
15 **comments about the nature of the survey?**

16          A     No.

17          **Q     Were there any other categories of e-mails**  
18 **that came in through that system?**

19          A     Maybe the other category would be -- I'm  
20 trying to think of exactly what came in through that  
21 pipeline but -- but comments about -- I am trying to  
22 recall, but I think the other input we got was one,  
23 there was some notion that or sense that somebody  
24 was intentionally trying to manipulate the survey;  
25 we saw some material about that.

1           The other, I think, was letting us know --  
2   frankly, the United Faculty apparently made some  
3   statements suggesting people not take the survey.  
4   So we got those types of -- I call them or news  
5   or -- or type things like that.

6           **Q     Did you respond to those e-mails?**

7           A     I would say that particularly in the issue  
8   of the -- and -- and Gene has done the work in this  
9   area -- maybe this is my handoff finally -- but with  
10  regard to the idea that we might see manipulation of  
11  the survey, Gene did some investigation to look and  
12  see if there were things that looked suspicious to  
13  us, that we were getting responses that were not  
14  individual human being response.

15          **Q     Have you all started thinking about next**  
16 **year's survey?**

17          A     Yes.

18          **Q     What are your plans for --**

19          A     I don't know that we've had a formal  
20  conversation. I would say everything from the  
21  simple, which is we need to have "the end" at the  
22  end so that people know that they've actually taken  
23  it. That would be a -- you know, a formulating  
24  issue that would be obviously helpful to -- maybe a  
25  thank you and not say "the end." But some kind of

1 closing message so that individuals who took it  
2 would know that they had completed it.

3 We have had conversations. I think given  
4 the timing, I have already raised the issue whether  
5 we would do it at a different semester. How we do  
6 that, have to think through it and -- and it's kind  
7 of tough when you are -- in order to meet the annual  
8 deadline, we kind of get locked into a cycle, but  
9 it's something we've talked about if we could do --  
10 maybe we could do it at universities -- but could we  
11 do it twice.

12 And that's been the general nature of it.  
13 But we haven't -- we haven't really -- I guess I  
14 would honestly say until we get through this one,  
15 that's usually when we step back and say, "Okay.  
16 Let's all get in the room and talk about what --  
17 what do we do next time."

18 **Q Do you plan to use the same survey**  
19 **questions?**

20 A I don't -- we haven't made that  
21 determination.

22 **Q After the report is published sometime in**  
23 **the next two weeks, what is the next step in the**  
24 **survey implementation?**

25 A Honestly, the board's responsibility is



1 complete when we publish the data, other than, I  
2 think, thinking about the next cycle. The  
3 universities will each have at that point their own  
4 data that they can then do an assessment. I mean, I  
5 think of it like a climate-type discussion that they  
6 can have.

7 I think that our -- you know, there is an  
8 opportunity in that to -- for them to be able to  
9 talk about best practices and -- and lessons. I  
10 guess it builds off of these other initiatives.

11 I -- I'd like to -- you know, if -- if  
12 some of these other things that we've also been  
13 enacting around civil discourse and -- and some of  
14 the other initiatives, you know, we can see how well  
15 that the -- how -- how well each of those things  
16 works and -- and try to make -- and try to  
17 understand if there are things that we need to know  
18 differently.

19 I mean, I would comment and say, you know,  
20 one challenge is if -- if -- if the questions do  
21 change, then it -- it's kind of like we do with our  
22 performance funding model; if you change the  
23 question, it's harder to compare answers year  
24 over year.

25 I think, fundamentally, I'd use the word

1 baseline. We have a -- we will have a baseline  
2 that -- that collectively, our institutions can take  
3 a look at. And they're all committed to the  
4 intellectual freedom initiative. They've all  
5 committed to the civil discourse initiative. I  
6 think they -- they've got this opportunity also to  
7 kind of see what feedback they got from their --  
8 from their campus.

9 **Q Will the report break any of the**  
10 **questions -- any of the answers to the questions**  
11 **down by part-time or full-time status for students?**

12 A Not any different than what I described,  
13 is that you go to the final demographic questions  
14 and you can see how many part-time or full-time  
15 students responded. But we're not correlating --  
16 our report does not correlate the types of  
17 respondents to the types of answers, if I said that  
18 correctly. That's my way of expressing it.

19 **Q And the same would be true for faculty**  
20 **versus staff, for example, at the -- on the employee**  
21 **side?**

22 A That's correct.

23 MS. JASRASARIA: I think that's it. Let  
24 me --

25 MS. LUKIS: Do you want to -- we're -- do

1           you want to go off the record just for like  
2           5 minutes --

3           MS. JASRASARIA: Yeah.

4           MS. LUKIS: -- so I can confirm? Because  
5           we're scrambling to see if we can get it -- the  
6           draft without having to go through a vendor.

7           MS. JASRASARIA: Thank you. I appreciate  
8           that --

9           MS. LUKIS: So give me 5 minutes and then  
10          I will have the answer to that.

11          MS. JASRASARIA: Perfect. Yeah, let's go  
12          off the record for 5 minutes and that way I can  
13          confirm whether I have anything else as well.

14          THE VIDEOGRAPHER: We are now going off  
15          record at 3:40 p.m.

16          (A recess took place from 3:40 p.m. to  
17          3:58 p.m.)

18          THE VIDEOGRAPHER: We are now going back  
19          on record at 3:58 p.m.

20   BY MS. JASRASARIA:

21           Q     **Good afternoon, Chancellor.**

22           A     Good afternoon.

23           Q     **Did you speak to your counsel during the**  
24   **break we just took?**

25           A     I don't believe I did, no.

1           **Q     We just marked a document titled**  
2           **"Intellectual Freedom and Viewpoint Diversity 2022**  
3           **Survey" as Exhibit 32.**

4                     (Exhibit 32 was marked for  
5           identification.)

6           BY MS. JASRASARIA:

7           **Q     Do you recognize this document?**

8           A     Yes.

9           **Q     Could you describe it to me, please?**

10          A     That is the draft of what we intend to be  
11          our work product that we will post to our website in  
12          response to the statutory requirement to conduct an  
13          intellectual freedom and divers- -- intellectual  
14          freedom and viewpoint diversity survey.

15          **Q     Do you recall when this document was**  
16          **drafted?**

17          A     It is -- it is still being -- I guess I  
18          would describe it as still being drafted because  
19          when we begin briefing our board members, and  
20          particularly our board chair and committee chair  
21          that's relevant to the document, we can or may from  
22          time to time make changes based on questions or  
23          other issues that they raise to us.

24                     Our expectation, I believe, is that this  
25          would be posted probably by Monday of next week.

1 We've now completed several of those briefings and  
2 we're -- we're close enough to need to get it in the  
3 record for the board meeting that's being held next  
4 Friday.

5 **Q The date on this document says 8-11-2202;**  
6 **is that right?**

7 A That's the -- yeah, that's the draft date  
8 on the document.

9 **Q Is that the date of this document?**

10 A That's the -- that's the date of this  
11 draft, yes.

12 **Q And who has seen this document?**

13 A The board members who we have done  
14 briefings with, who I be- -- if -- is it helpful or  
15 -- to say that, generically, I could say I think  
16 that by now we have discussed this with Chair Lamb,  
17 Governor Lydecker, Governor -- I don't think we've  
18 done -- I can -- my memory is going to fail me now.  
19 I am trying to remember if we've done Governor  
20 Silagy or not.

21 Yeah, I can't look at Vikki because she  
22 can't tell me anything.

23 MS. SHIRLEY: Can I twitch?

24 THE WITNESS: Yeah, give me a --

25 A I mean, Governor Cerio. I didn't get a

1 twitch. I'm -- I'm guessing now.

2 It's -- it's -- it's -- it's been this --  
3 basically, we've gone into this week doing board  
4 member briefings. Some of our board members have  
5 postponed, some of them have not shown up.

6 Oh, gosh, I just said that on the record.

7 But I'm trying to think through the people  
8 that we've attempted to do briefings with. Our --  
9 our goal would be to -- to brief each of our board  
10 members who request a briefing in advance of the  
11 board meeting.

12 BY MS. JASRASARIA:

13 **Q How many board members have requested a**  
14 **briefing?**

15 A I would say somewhere between half and  
16 two-thirds.

17 **Q Has the Commissioner of Education**  
18 **requested a briefing?**

19 A We had a briefing with Commissioner Diaz,  
20 yes. We did that yesterday.

21 **Q What was Commissioner's -- Commissioner**  
22 **Diaz's reaction to this report?**

23 A It was a fairly brief briefing session.  
24 We only had two items. I think he may have made a  
25 comment about it being similar to what the college

1 system was preparing and that was the -- that was  
2 really the discussion we had.

3 **Q Did -- has the faculty representative -- I**  
4 **believe Mr. -- Dr. Sachs or --**

5 A No, we have -- we -- I'm sorry. We -- we  
6 have a new faculty Senate representative Deanna  
7 Michael, and I believe her briefing is either -- it  
8 wasn't today while we were gone, I don't think. But  
9 I think it's next week.

10 **Q Did she request that briefing?**

11 A Yeah, we're actually doing sort of an  
12 orientation and briefing session for her as a --  
13 because she's brand-new on our board.

14 **Q Has the student represent- -- or student**  
15 **board member been briefed?**

16 A I believe his briefing is also still  
17 scheduled. It's Governor Gabadage.

18 **Q Is -- is that governor also new?**

19 A Yes, they both -- they -- they both  
20 change -- summertime, not exactly the same date, is  
21 when we have new faculty and new student.

22 **Q Are student and faculty terms one year**  
23 **only?**

24 A It -- it varies. We -- what we've seen  
25 is -- we've got some people who've been -- who've

1     been asked to serve longer, but it's -- it's not a  
2     limitation, but I think it -- it basically is in  
3     the -- in the summertime is when they have their  
4     elections and they have their rotation in office.

5           **Q     Have any changes to the draft -- have any**  
6     **changes to this report been made in response to**  
7     **conversations with the governors?**

8           A     No.

9           **Q     Who drafted this report?**

10          A     People in my office.  Jon Rogers, Gene  
11     Kovacs on the methodology side, Jason Jones in terms  
12     of the presentation of the survey results.  Others  
13     look -- you know, Vikki and I -- sorry, I should  
14     stop, but Vikki and I and probably Renee Fargason,  
15     who handles communication, have had conversations  
16     with them about more straightforward edits kind of  
17     things.

18          **Q     Has anyone outside the Board of Governors**  
19     **seen this draft report?**

20          A     Not that I'm aware of.  And it's been  
21     available to our board members, but it has not been  
22     made available beyond that.

23          **Q     Has it been shared with the Governor's**  
24     **Office?**

25          A     I don't believe so.



1           **Q     Has it been shared with the Board of**  
2     **Education?**

3           A     Commissioner Diaz as a governor has access  
4     to it, but I don't believe it's been shared with  
5     anyone else.

6           **Q     Hasn't been shared with Chancellor Hebda,**  
7     **for example?**

8           A     No. And, in fact, we had a conversation a  
9     couple of days ago about where their status was,  
10    where our status is. I don't believe we've had an  
11    opportunity to -- we're still -- we hold this tight  
12    within our board. We will -- when we make it --  
13    when we publish it to our website, we would share a  
14    copy with them. I don't believe we've shared a  
15    copy.

16          **Q     When you publish this, you know,**  
17    **anticipated next week, will there be any publicity**  
18    **around sharing it?**

19          A     We do a -- I can't predict what someone  
20    else may generate. I would say the normal practice  
21    for a board meeting is to post items to watch in  
22    advance so it will be known that this is part of our  
23    agenda.

24                   The plan for the board meeting, we're  
25    doing this on -- we have a special board meeting

1 because of the timing of when this needs to be done,  
2 so we're trying to keep the agenda fairly tight. We  
3 don't plan a release. We plan to post this to our  
4 website.

5 It will be on the -- the meeting website  
6 when we put it up next week. We've discussed that  
7 when we complete the board meeting and the board has  
8 received the report, it will be included on our web  
9 page in a section of that area where reports like  
10 this are found.

11 **Q So when it's published next week, will**  
12 **that be accessible to the public?**

13 A Yes, it would be accessible to the public  
14 when we post it to the website. Long-term this will  
15 be -- this will reside on the home page of our  
16 website -- as a link from the home page of our  
17 website.

18 **Q Will there be a press release associated**  
19 **with its publication online?**

20 A Not planning one.

21 **Q Would there typically be a press release**  
22 **for a report like this?**

23 MS. LUKIS: Object to form.

24 Go ahead.

25 A Not necessarily.

1 BY MS. JASRASARIA:

2 Q Have y'all considered issuing a press  
3 release for this report?

4 A Honestly, I think we felt like we're going  
5 to get to the finish line and we're going to say  
6 we're done. But no, we don't -- we have not had  
7 discussions about whether or not to publicize this.

8 Q Turning to page 3 of this report, I  
9 believe is the page number on the bottom, it says at  
10 the top that "The 2021 legislature enacted House  
11 Bill 233" -- skipping ahead a line -- "to promote  
12 intellectual freedom and viewpoint diversity within  
13 the State University System of Florida."

14 Did I read that correctly?

15 A Yes. Yes, that says that.

16 Q Does the board understand the  
17 legislature's purpose in enacting House Bill 233 to  
18 be to promote intellectual freedom and viewpoint  
19 diversity within the State University System of  
20 Florida?

21 A Yes, I believe so.

22 Q Skipping to the second-to-the-last  
23 paragraph on this same first -- or this same page,  
24 it says that "The office of the Board of Governors  
25 and the Division of Florida Colleges worked

1 collaboratively to develop identical assessments for  
2 students and employees in the SUS and the FCS."

3 Did I read that correctly?

4 A That's correct.

5 Q Is there a reason that this sentence does  
6 not mention the contributions of the Governor's  
7 Office to developing the surveys?

8 A No. I think it was because the effort in  
9 the final survey are the collaborative result of our  
10 two systems working together, including the  
11 development of, you know, some of the guiding  
12 principles around having similar questions between  
13 the two systems so -- and having information in a  
14 common format so that if someone was looking at this  
15 for 40 institutions instead of 12 or 28, you'd kind  
16 of understand, you know, which question asks what  
17 and where you find it and things like that.

18 Q Did you consider mentioning the Governor's  
19 Office's role in working collaboratively with the  
20 BOG and the FCS to develop the assessments?

21 A No. But by the same token, we didn't  
22 mention FSU and we didn't mention James Madison or  
23 Village Square. There were inputs to the  
24 discussion. I think -- I don't know that we had  
25 that level of discussion around this statement, just

1 it was a -- it was sort -- it was sort of the work  
2 product that we had worked on with the college  
3 system.

4 Q Skipping ahead to page 46. I just wanted  
5 to take a look at the note that is beneath this  
6 chart which says -- I'm looking at Table B11, and it  
7 says: "Note: Due to skip logic in the survey only  
8 those who identified as faculty or instructors were  
9 asked this question." Is that right?

10 A That's correct.

11 Q And so if I'm understanding correctly,  
12 the -- this -- the employee survey asked certain  
13 questions only of faculty or instructors; is that  
14 right?

15 A Yes. These two, which have the same  
16 footnote, and are all asked of the individual -- I  
17 guess I describe it asked of the individual in the  
18 first person rather than in the third person or the  
19 generic level.

20 Part of the reason for the note is to  
21 explain why the response rate would be different  
22 than the overall employee response rate.

23 MS. JASRASARIA: No further questions. I  
24 will pass the witness.

25 MS. LUKIS: Nothing from me.

1           THE VIDEOGRAPHER: This concludes the  
2 deposition of Marshall Criser. We are now  
3 going off record at 4:12 p.m.

4           (Proceedings concluded at 4:12 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA                    )  
COUNTY OF LEON                    )

I, the undersigned authority, certify that  
Marshall McAllister Criser, III personally appeared  
before me on August 19, 2022, and was duly sworn.

SIGNED AND SEALED on August 22nd, 2022.



SANDRA L. NARGIZ  
RPR, RMR, CRR, CRC, CCR-GA  
snargiz@comcast.net  
Commission #HH239213  
EXPIRES: APRIL 18TH, 2026

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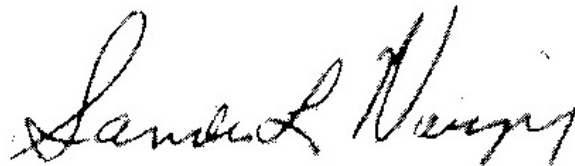
CERTIFICATE OF REPORTER

STATE OF FLORIDA       )  
COUNTY OF LEON       )

I, SANDRA L. NARGIZ, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of 30(b)(6) Representative of Florida Board of Governors, Marshall McAllister Criser, III; that a review of the transcript was requested, and that the foregoing transcript, pages 1 through 221, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED on August 22nd, 2022.



SANDRA L. NARGIZ  
RPR, RMR, CRR, CRC, CCR-GA  
Notary Public in Florida  
snargiz@comcast.net



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August 22, 2022

Marshall McAllister Criser, III  
c/o ASHLEY H. LUKIS, ESQUIRE  
ashley.lukis@gray-robinson.com

RE: Link vs. Diaz  
Case No. 4:21cv271-MW/MAF

Dear Chancellor Criser:

Please take notice that on August 19, 2022, you gave your deposition in the above cause. At that time you did not waive your signature.

The above-addressed attorney has ordered a copy of the transcript and will make arrangements with you to read their copy. Please execute the Errata Sheet, which can be found at the back of the transcript, and have it returned to us at production@phipp reporting.com for distribution to all parties.

If you do not read and sign the transcript within thirty (30) days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court.

If you wish to waive your signature now, please sign your name to the blank at the bottom of this letter and return to the address listed below.

Very truly yours,

Sandra L. Nargiz, RPR, RMR, CRR, CRC, CCR-GA  
Phipps Reporting, Inc.  
1551 Forum Place, Suite 200-E  
West Palm Beach, Florida 33401

I do hereby waive my signature.

\_\_\_\_\_  
Marshall McAllister Criser, III  
Job No. 263784



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