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6 SUPERIOR COURT FOR THE STATE OF WASHINGTON
7 IN THE COUNTY OF KING

8 WASHINGTON COALITION FOR OPEN
9 GOVERNMENT, a Washington nonprofit
corporation,

10 Plaintiff,

11 v.

12 BOARD OF REGENTS OF THE
13 UNIVERSITY OF WASHINGTON and
individual regents WILLIAM S. AYER,
14 KRISTIANNE BLAKE, JOANNE R.
HARRELL, JEREMY JAECH, CONSTANCE
15 W. RICE, ROGELIO RIOJAS, PATRICK
SHANAHAN and HERBERT B. SIMON,

16 Defendants.
17

NO:

COMPLAINT

18 INTRODUCTION

19 After a King County judge found that the University of Washington's Board of Regents
20 repeatedly violated the Open Public Meetings Act (OPMA) on 24 different occasions from 2012
21 to 2014, the regents violated the law – and the public trust – yet again. Last October, they chose
22 a new president for the state's flagship university, their “most important duty” as regents, in a
23 three-hour meeting that was closed to the public.

24 COMPLAINT - 1

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1 Because the regents acted in secret, more than 55,000 students, 79,000 employees and
2 millions of state taxpayers affected by University of Washington (UW) leadership will never
3 know the whole story of how the current presidency was launched. The public saw only a
4 predetermined “vote” that was literally scripted in advance and conducted six days after the real
5 decision, concealing any debate about filling one of the state’s highest-paid and most important
6 jobs. Despite mandatory open-government training and the April 2015 ruling that UW regents
7 had violated open-meeting requirements 24 times, the regents still failed to respect the public’s
8 right to know not just *what* they decide, but *how* they decide the public’s business.

9 The Washington Coalition for Open Government (WCOG) is bringing this lawsuit to
10 hold regents accountable for a sham public process in selecting a UW president in October 2015,
11 and to defend the integrity of the OPMA’s citizen enforcement provision, RCW 42.30.120. If
12 repeat offenders can continue to violate the OPMA without any personal liability, the penalty
13 provision will be useless and the public will lack any effective deterrent to government secrecy.
14 This year, the Legislature increased penalties from \$100 to \$500 for governing body members
15 who knowingly violate the OPMA, underscoring the seriousness of flaunting public trust. With
16 its history of illegal meetings, the UW Board of Regents is a poster child for penalties.

17 WCOG does not seek to overturn the selection of UW President Ana Mari Cauce. This
18 case is about the process, not the wisdom, of the presidential selection. Above all, it is about
19 defending the public’s right to observe the entire decision-making process so that citizens can
20 play a meaningful role in important decisions.

21 I. JURISDICTION AND VENUE

22 1.1 This Court has jurisdiction pursuant to RCW 42.30.120.

23 1.3 Venue lies in this court pursuant to RCW 4.92.010(1) and RCW 4.92.010(2).

1 II. PARTIES

2 2.1 The Washington Coalition for Open Government is an independent, nonpartisan,
3 nonprofit organization that works through the courts and the Legislature to defend and strengthen
4 Washington's open government laws. Its mission is to help foster open government processes,
5 supervised by an informed and engaged citizenry, which is the cornerstone of democracy.
6 WCOG's Board of Directors is a diverse group of volunteers including elected officials,
7 journalists, attorneys, professors, business persons and representatives of other nonprofit
8 organizations.¹ WCOG's principal office is in Seattle, Wash.

9 2.2 The University of Washington is a state-owned institution of higher education
10 organized under Chap. 28B.20 RCW. It is a public agency as defined by RCW 42.30.020(1).
11 The University of Washington Board of Regents ("the UW Board") is vested with governance of
12 the university under RCW 28B.20.100. The UW Board is a governing body as defined by RCW
13 42.30.020(2). It has ten members.²

14 2.3 Upon information and belief, William S. Ayer is a retired chairman and chief
15 executive officer of Alaska Air Group. He was appointed to the UW Board by former Gov.
16 Christine Gregoire in 2012. Mr. Ayer chaired the UW Board during the presidential selection
17 process in the fall of 2015. He attended the UW Board's closed meeting on October 7, 2015.

18 2.4 Upon information and belief, Kristianne Blake is president of Kristianne Gates
19 Blake, P.S., an accounting firm. She first joined the UW Board in 2007 and was reappointed by
20 Gov. Gregoire in 2012. Ms. Blake attended the UW Board's closed meeting on October 7, 2015.

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22 ¹ See <http://washingtoncog.org/our-board/>.

23 ² Two members, attorney Joel Benoliel and student Austin Wright-Pettibone were appointed to
24 the UW Board in 2016 after the meetings at issue. They are not named as defendants.

1 2.5 Upon information and belief, Joanne R. Harrell is Senior Director for U.S.
2 Citizenship and Public Affairs at Microsoft Corp. She was first appointed to the UW Board in
3 2009 and was recently reappointed by Gov. Jay Inslee. Ms. Harrell served as chair of the UW
4 Board in 2012-13. She attended the closed meeting on October 7, 2015 by telephone.

5 2.6 Upon information and belief, Jeremy Jaech, a technology entrepreneur, is
6 currently Vice Chair of the UW Board. He was a co-founder of Aldus, among other ventures.
7 He joined the UW Board in October 2012. He, along with Ms. Blake, Ms. Harrell and regent
8 Rogelio Riojas, served on the presidential search committee last year. Mr. Jaech attended the
9 UW Board's closed meeting on October 7, 2015.

10 2.7 Upon information and belief, Mr. Riojas, president of Sea Mar Community Health
11 Centers, and Constance W. Rice, senior executive fellow for Casey Family Programs, were
12 appointed to the UW Board in 2013 or early 2014. They attended the October 7 closed meeting.

13 2.8 Upon information and belief, Patrick Shanahan is the UW Board's current chair.
14 He is a senior vice president at Boeing. He joined the board in 2012. Mr. Shanahan attended the
15 October 7 closed meeting.

16 2.9 Upon information and belief, Herbert B. Simon is the UW Board's most
17 experienced member, having served since 2005. A commercial real estate developer, he was
18 chair of the UW Board in 2009. Mr. Simon attended the closed meeting on October 7.

19 III. FACTS

20 A. **Prior Violations**

21 3.1 In 1995, The Seattle Times successfully sued the University of Washington under
22 the OPMA concerning the same issue raised here, selecting a president in secret. In a February
23 26, 1995 editorial about the lawsuit, the Times' editor wrote in part:

1 No public institution is more resistant to this state's open-meetings and open-
2 records acts than the University of Washington. Consider the latest example: the
University Board of Regents will select and name a new university president with
no public scrutiny....

3 Various university officials have argued that secrecy is necessary because strong
4 candidates won't participate in an open process. They argue that the job is so
important that the end of finding the right president justifies the means of a closed
5 process.

6 We agree that the job of university president is important, which is precisely why
the public should be allowed to observe the regents' actions and deliberations.
7 It's the law, and good public policy...Secrecy may be efficient, but it breeds
suspicion; openness may be difficult but it breeds public trust.

8 3.2 In November 2014, opponents of an animal research lab sued the UW Board,
9 alleging that numerous dinner meetings at the president's mansion violated the OPMA. In an
10 April 2015 ruling, King County Superior Court Judge Laura Inveen found the UW Board
11 violated the OPMA 24 times from 2012 to 2014 by discussing business at the president's home.

12 **B. The 2015 Hiring Process**

13 3.3 On October 7, 2015, the UW Board held a special meeting at Gerberding Hall.
14 Mr. Ayer, as chair, called the meeting to order at 3:15 p.m. He announced that the UW Board
15 would hold a closed session "to evaluate the qualifications of applicants for public employment,"
16 according to meeting minutes. When the open session resumed, the UW Board simply adjourned
17 at 6:15 p.m. "with no further discussion or action." There was no public vote.

18 3.4 Two days later, executive search consultant John Thornburgh sent an email to
19 UW Chancellor Emeritus Kenyon Chan, who had chaired the 28-member presidential search
20 committee. The email, with the subject heading "AMC," said:

21 I had a good conversation with Ana Mari last evening and I believe she has a very
22 constructive approach to a potential compensation arrangement (along the lines of
what we spoke of). Also, she indicated that her impression was that the Regents
23 were targeting next Tuesday to announce her appointment. If this is the case you
may want to move up your calls with the committee.

1 Mr. Chan responded, "Yes, I'm pushing everything up," adding that the regents "are
2 trying to meet Tuesday or Wednesday morning." At the time of these emails, there had
3 been no public vote by the UW Board to appoint Ana Mari Cauce, Ph.D., as president.

4 3.5 Minutes after receiving Mr. Thornburgh's October 9 email about the imminent
5 announcement of Dr. Cauce's appointment, Mr. Chan sent the following email to UW media
6 relations chief Norman Arkans:

7 I spoke to Bill Ayer last night and he told me you are working on a statement for
8 the BOR [Board of Regents]. Attached is a statement that I am having the search
9 committee endorse to make sure they are on the same page. They have also been
10 instructed that if they are asked about the search they may say that 'it was a fair
11 and open national search and that they believe that the Regents have selected the
12 right person for this moment in our history' or simply say 'I really can't comment
13 on the search.'

14 Most importantly, Bill and I think that the public should understand that the
15 search committee conducted a national search and reviewed top candidates both
16 external and internal, sent a report to the Regents who then did their due diligence
17 by analyzing and interviewing the top candidates before they arrived at their
18 decision...

19 Mr. Chan then forwarded the email above, along with an attachment labeled "Final Statement,"
20 to Mr. Ayer. In the email to Mr. Ayer, the UW Board chair, the search committee chair wrote:

21 ...in your preliminary statement at the special BOR meeting may I suggest that
22 you might want to read a statement like the one attached to make sure everyone
23 hears that your decision is based on a rigorous national search and that the
24 Regents did their due diligence by analyzing and interviewing top candidates both
25 external and internal before your [sic] reached your decision. You probably
26 already thought about this.

3.6 In an email exchange among UW public relations staffers on Monday, October
12, it was mentioned that "AMC" would have her "very first gathering as president" in the
Petersen room. That is where the UW Board met the following day to publicly vote on the
predetermined appointment.

1 3.7 Meanwhile, also on October 12, Dr. Cauce sent an email to Mr. Arkans along
2 with an attachment entitled “AMC named president.” Her email said: “Made minor changes to
3 my quote. It was a run-on sentence that didn’t quite work. And didn’t sound like me.” At that
4 time, the UW Board still had not publicly voted to name Dr. Cauce as UW president.

5 3.8 Not only was a press release on Dr. Cauce’s appointment prepared before the
6 public vote, there was actually a script for the vote itself. According to public records obtained
7 by The Seattle Times and posted on its Web site, a document entitled “SCRIPT for BILL AYER,
8 BOARD CHAIR” was prepared for the October 13 special meeting of the UW Board. The script
9 began: “The selection of the University President is the most important duty of the Board of
10 Regents.” Then it described “initial steps” in the selection, including the efforts of the search
11 committee and search consultant, public forums “about the future of the University and its
12 leadership needs,” and development of a “Presidential Leadership Profile.” The script
13 continued:³

14 *Last week the Board held a special meeting and met in executive [closed] session*
15 *to evaluate the qualifications of candidates for the position of President of the*
16 *University. We seek a strong leader who best fits the qualities outlined in the*
17 *Leadership Profile...*

18 *I am very pleased to invite Regent Blake to make a motion regarding selection of*
19 *the next President of the University of Washington.*

20 **Regent Blake** will make the motion and comment.

21 **KRISTI:** *I move to select Ana Mari Cauce as President of the University of*
22 *Washington, subject to the negotiation of an employment agreement. Kristi*
23 *comments.*

24 **Regent Harrell** will second the motion and comment.

25 *Before we vote, are there other comments or discussion?*

26

³ (Italics, bold and underlining in original).

Comments from Regents and others...about AMC.
Comments from Bill before or after others.

I now call for the vote. All in favor? Opposed? Any abstentions?
(Regent Kritzer [student] will abstain)

The motion carries!!

Applause! Applause!

Ana Mari, would you like to make a few remarks?

There is one more piece of business. I request you delegate authority to the Board Chair to negotiate an employment agreement with Ana Mari. May I have a motion? Second? All in favor? Opposed? Any Abstentions?
(Regent Kritzer will abstain)

The motion carries.

ADJOURN

Well, this is a great and momentous day for the University. Thank you all for attending.

Ana Mari is available to meet with the media in the back of the Petersen Room in just a few minutes...

3.9 The script above shows that the outcome of the UW Board's vote was already decided before the public meeting.

3.10 Minutes for the October 13 special meeting, posted on the UW Board's Web site, closely follow the script for the meeting. The minutes start with Mr. Ayer describing the presidential selection as the "most important duty" of the regents, then listing the same "initial steps" described above, then referencing the October 7 closed meeting, and then inviting Ms. Blake's motion. According to the minutes, Ms. Blake moved to select Dr. Cauce and Ms. Harrell seconded the motion, exactly as scripted. After various comments praising Dr. Cauce, the UW Board voted unanimously to appoint her as president and to authorize Mr. Ayers to

1 negotiate a salary agreement. Finally, true to the script, “Regent Ayer closed by saying this was
2 a great and momentous day for the University. He thanked everyone for attending.”

3 3.11 At the October 13 public meeting, there was no discussion of any specific
4 applicant besides Dr. Cauce. The public meeting lasted only 25 minutes, whereas the closed-
5 door discussion on October 7 lasted three hours.

6 3.12 The UW Board took final action on Dr. Cauce’s selection in the closed meeting
7 on October 7, not in the public meeting on October 13.

8 3.13 A majority of UW Board members made a collective positive decision to hire Dr.
9 Cauce as president prior to the public meeting on October 13, 2015.

10 3.14 Regents Ayer, Blake, Harrell, Jaech, Rice, Riojas, Shanahan and Simon all served
11 on the UW Board during the period from 2012 to 2014 when their dinner meetings at the UW
12 president’s mansion violated the OPMA. As of April 2015, they were aware of the Superior
13 Court ruling that the UW Board had violated the OPMA 24 times. In light of that history, the
14 regents were aware of the law and should have known not to break it again.

15 3.15 As members of a governing body, all of the regents should have completed
16 OPMA training pursuant to RCW 42.30.205.

17 IV. CAUSE OF ACTION – VIOLATION OF THE OPEN PUBLIC MEETINGS ACT

18 4.1 The University of Washington Board of Regents violated the OPMA by taking
19 final action on hiring President Ana Mari Cauce outside of a meeting open to the public.

20 4.2 Regents William Ayer, Kristianne Blake, Joanne Harrell, Jeremy Jaech,
21 Constance Rice, Rogelio Riojas, Patrick Shanahan and Herbert Simon participated in a meeting
22 where action was taken in violation of the OPMA, with knowledge of the fact that the meeting
23 was in violation thereof.

4.3 The University of Washington's Board of Regents violated the OPMA on October 7, 2015, by exceeding the limited scope of an executive session permitted by RCW 42.30.110.

V. REQUESTS FOR RELIEF

The plaintiff respectfully requests the following:

1. An order declaring that defendants violated the OPMA, and that individual defendants had the knowledge required for personal liability;
2. An order for the University of Washington Board of Regents to pay all costs, including reasonable attorney's fees, incurred in connection with this action pursuant to RCW 42.30.120(2);
3. An order for each individual defendant to pay a fine pursuant to RCW 42.30.120(1);
4. Leave to amend this Complaint upon request in response to discovery; and
5. An order for OPMA training, or such other relief as the court may deem appropriate.

Respectfully submitted this 9th day of August, 2016.

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