VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, Petitioners,	)	
v.	)	Civil Action No. CL-11-3236
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	)	
CITY OF CHARLOTTESVILLE	)	
COMMONWEALTH OF VIRGINIA	)	

AFFIDAVIT OF JOHN D. SIMON

On this day, John D. Simon personally appeared before me, a certified Notary Public in and for the Commonwealth of Virginia, and after first being duly sworn to tell the truth, testified as follows:

1. My name is John D. Simon. I serve currently as the Executive Vice President and Provost of the University of Virginia. I am also the Robert C. Taylor Professor of Chemistry at the University. Previously, I served as the Vice Provost for Academic Affairs and as the George B. Geller Professor at Duke University. I hold an undergraduate degree from Williams College and graduate degrees from Harvard University.
2. Since obtaining my PhD from Harvard in 1983, I have worked continuously as researcher, scholar, teacher, and later administrator, at United States research educational institutions, both public and private.

3. I have received the following awards or honors: Photon Award, American Society for Photobiology, 2008 William J. Maschke, Jr. Memorial Award, Duke University, 2008; North Carolina ACS Section Distinguished Speaker Award, 2006; Elected Fellow of the American Physical Society, 2003; Elected Fellow of the American Association for the Advancement of Science, 2000; Hans A. Schaeffer Award, Society of Cosmetic Chemists, 1999; Professor of the Year, Sigma Chi Fraternity, UCSD, 1994; Fresenius Award in Pure and Applied Chemistry, 1992; Camille and Henry Dreyfus Teacher Scholar, 1990-1995; Alfred P. Sloan Research Fellow, 1988-1990; Presidential Young Investigator Award NSF, 1985-1990; Celanese Graduate Fellow, 1981-1982; Charles R. Sanger Fellow, 1980-1981; Elected to Sigma Xi, 1979; American Institute of Chemists Award, 1979.

4. I have held editorial positions on the following advisory boards: Advisory Board, Journal of Physical Chemistry, 1990-1995, 1999-2004; Advisory Board, Review of Scientific Instruments 1991-1993; Advisory Board, Biopolymers 1991 – 2001, 2007-present; Advisory Board, Institute for Nonlinear Studies (Springer-Verlag Series) 1991 – 1998; Associate Editor, Photochemistry and Photobiology, 2002-2004; Editor-in-Chief, Photochemistry and Photobiology, 2004-2008; Advisory Board, Pigment Cell and Melanoma Research. 2008-2013; Advisory Board, Photochemistry and Photobiology, 2009- present.

5. I have authored or co-authored close to 250 scientific articles and several books, and have been an invited speaker at over 200 scientific seminars and professional meetings since 1985. I hold a patent issued by the U.S. Patent Office #6,124,002: "Apparatus and method for the rapid spectral resolution of confocal images."

6. I have been funded by entities such as the National Institutes of Health, the National Science Foundation, the Office of Naval Research, the Department of Energy, the California Space Institute, the North Carolina Biotechnology center, the Lord Foundation of North Carolina, the Petroleum Research Foundation, Unilever Research US, and the Beckman Foundation virtually continuously throughout my career.

7. The observations provided in this affidavit are based on my experiences as a scientist, scholar, teacher, inventor, editor, and administrator at both private and public institutions of higher education.

8. Research and scholarly activities in American institutions of higher education are subject to important mechanisms of peer review, governmental and grants compliance, and public accountability. However, these existing mechanisms critically afford protections of privacy and security to the unpublished communications, data, and informal observations of scientists and other scholars. This zone of privacy enables science and research to flourish for the many reasons that follow.

9. Scientific research is unpredictable and research results that may seem trivial or inconclusive can become meaningful only later, when additional research is conducted and new data uncovered. Typically, a scientific paper or publication will disclose only portions of a scientist's research results in a particular area. Compelling and important research data may not be deemed ready for publication or release at any given point in time because it requires additional experimentation, rigorous reinterpretation, or simply more time for reflection. Science has traditionally afforded

the researcher considerable discretion to determine when to publish and how to describe the work.

10. Further, prestigious scientific and scholarly journals will not publish work that has already been made public. For this reason, scientists and scholars are very careful to integrate planning for future publications in their decisions about when and how to release or discuss research results.

11. Scholarly reputations are built on the formal publications, grants, or public presentations submitted voluntarily and intentionally by scientists. It is the final work, not the interim results, the false starts, the misinterpretations, or the wrong paths, which count. Loss of the ability to decide when to publish would translate into risk-adverse research decisions and a loss of bold and creative exploration. This process can be particularly important in the mentoring of new scientists and post-doctoral fellows who can make a lot of mistakes along that path. Whether it is ill-informed thoughts, immature speculations, or too-eager misinterpretations of data; scientists make mistakes about experiments. Much of the exchange and corrective process between mentors and new scientists now takes place via email. Such exchanges are critically necessary and must be protected.

12. I have personally experienced on any number of occasions the unpredictability of the course of my own research, and the unexpected importance of research results that I initially dismissed or found uninteresting and elected not to offer for publication. In 1997, for example, I was curious whether research from my laboratory might have a have broader significance within the medical research community than I was able to interpret on my own. I reached out to two individuals I did not know personally (two

leading researchers at George Washington University Medical School), and shared my data in confidence with them. I knew that both these individuals worked on related problems from a medical research perspective. Our ensuring communications led to me to understand the greater significance of my work and ultimately resulted in a high profile publication in the Proceedings of the National Academy of the Sciences, extensive media coverage, and even an appearance on Good Morning America. These confidential communications also led to subsequent publications and additional research. Had such data (or the correspondence) been subject to forced disclosure under a state FOIA, the opportunity to reimagine the implications of my research would have been lost; yet this is how the process of science is done.

13. Similarly, sometimes existing data can only be understood through advances that have yet to be made. I have experienced this more than once in my own career. For example, in an attempt to understand melanin degradation in about 2005, my lab initiated some novel imaging studies. We were unable to link our results to any biologically meaningful interpretations. However, over the subsequent five years, researchers in the field of brain pigmentation identified biological processes that could be informed by our earlier studies. This revealed important implications of our work and led to a publication five years after we obtained the original laboratory results. Had we been compelled to disclose these preliminary results or our email communications discussing them, we would likely have been unable to publish the data.

14. Patent filings also depend on the timing of disclosure of research results. Disclosure of research data and communications that a scientist or scientific collaborative group

has chosen to not yet make public can imperil future patenting of research. Similarly, a patent application filed or a publication submitted describing certain specific research, may intentionally omit description of other existing data which the scientific team believes requires additional work. Loss of the ability to keep such information confidential will imperil future patents. Individual scientists and their institutions must have the right to decide when and how to disclose research results to protect university commercialization activities.

15. For the same reasons, compelled disclosure would also threaten licensing and commercialization activities federally authorized under the Bayh-Dole Act and which have led to enormous public benefits through the exploitation of university research—the very intention of that legislation. It is virtually impossible for a university to license intellectual property to a private sector company if the data or research results have been prematurely released and are already publically available.

16. Science has become an increasingly complex and collaborative enterprise, spanning multiple institutions and crossing national boundaries. Electronic tools that enable collaboration have accelerated the ability to be productive and competitive. A University of Virginia scientist collaborating with someone in Japan can easily work across the time differences and distance without difficulty due to new digital mechanisms of communication and data transfer. Such tools, including perhaps most importantly email, have enhanced the speed, quality, and intensity of collaborative possibilities. If the use of such methods of communication comes with the cost of compromising the confidentiality that is afforded by face-to-face interactions, then these tools will lose their ability to support the scientific and research process. Those

institutions and/or countries that protect those rights will dominate technology and science. Thus, if U.S. scientists at public institutions lose the ability to protect their communications with faculty at other institutions, their ability to collaborate will be gravely harmed. The result will be a loss of scientific and creative opportunities for faculty at institutions in states which have not established protections under state FOIAs for such communications.

17. Another arena in which confidentiality of unpublished scholarly communications is essential is in the process of grants and journal reviews. Scholarly societies, granting agencies, and publishers require that reviewers maintain the confidentiality of the review process. I served, for example, as the Editor-in-Chief of the Journal of Photochemistry and Photobiology. This journal imposes strict requirements of confidentiality in the peer review process for submitted articles. If the Virginia FOIA were interpreted to require disclosure of the emails and scholarly reviews of grants and papers previously conducted by or received by University faculty, our faculty would not be able to comply with such standard scholarly and scientific expectations.

18. The core purpose of scientific and scholarly peer review is to set the bar. Loss of confidentiality to this process because these communications are captured in emails and attachments at a public institution such as the University of Virginia, will harm the rigor of scientific review. Reviewers will simply no longer be candid, certainly not in any negative way, because their names and comments would no longer be confidential. People will refuse to review papers and grants at public institutions. In my own career, I have often been hardest on the people I know the best—knowing that an appropriately critical review will spur the scientist to a better and higher

effort. The ability to be highly critical creates a high bar that we want in science and expect of the best scientific journals.

19. For all the above reasons, I believe that the request under the Virginia Freedom of Information Act for the scholarly and scientific communications between former University of Virginia scientist Dr. Michael Mann and scientists around the country and the world poses a grave threat to academic institutions, both public and private. For faculty at public institutions such as the University of Virginia, compelled disclosure of their unpublished thoughts, data, and personal scholarly communications would mean a fundamental disruption of the norms and expectations which have enabled research to flourish at the great public institutions for over a century.

20. Scientists at private institutions such as Duke, where I previously worked, that are not subject to state freedom of information statutes, will not feel that it is possible to continue collaborations with scientists at public institutions if doing do means that every email or other written communication discussing data, preliminary results, drafts of papers, review of grant proposals, or other related activities, is subject to public release under a state FOIA in contravention of scholarly norms and expectations of privacy and confidentiality.

21. Compelled disclosure will also impair recruitment and retention of faculty. I have served as the Vice Provost for Academic Affairs at Duke University (a private institution not subject to a state FOIA) and as Provost at the University of Virginia (a public institution subject to the Virginia FOIA). Both of these positions involve the recruitment and retention of key faculty. I can state unequivocally that recruitment of

faculty to an institution like the University of Virginia will be deeply harmed if such faculty must fear that their unpublished communications with scientific collaborators and scholarly colleagues are subject to involuntary public disclosure. We will also lose key faculty to recruitments from other institutions – such as Duke, if their continued work at University of Virginia will render their communications involuntarily public.

22. Twenty three of the top twenty five large research institutions as reported by U.S. News and World Report are private institutions. Alone among them are two great public institutions: The University of Virginia and the University of California, Berkeley. States like Virginia and California have benefitted enormously from research, innovation, and commercialization activities that have been spun off of the research conducted on their campuses. Loss of the personal rights to privacy of thought and exploration; loss of the ability to comply with the norms of scholarly and scientific peer review; and loss of the ability to choose when to disclose and publish one's research, will mean that such great public institutions will no longer be able to attract the scientists and scholars that have made them great.

John D. Simon

Seen to and subscribed before me this 23rd day of July, 2012.

My commission expires: 3/31/2016

RACHEL LEE SILSKI
Notary Public
Commonwealth of Virginia
7520821
My Commission Expires Mar 31, 2016

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

THE AMERICAN TRADITION INSTITUTE, **Complainant,**	)	
v.	)	
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, *et al.*,	)	Case number: CL-11-3236
Respondent.	)	**AFFIDAVIT OF MICHAEL KUBOVY**

CITY OF CHARLOTTESVILLE)
)
COMMONWEALTH OF VIRGINIA)

On this day, Michael Kubovy personally appeared before me, a certified Notary Public in and for the Commonwealth of Virginia, and after first being duly sworn to tell the truth, testified as follows:

1. My name is Michael Kubovy. I am currently employed by the University of Virginia as a tenured Professor of Psychology. I obtained my advanced degrees at the Hebrew University of Jerusalem (Israel) with two professors of psychology, Amos Tversky and Daniel Kahneman, whose joint research eventually led to Kahneman receiving the Nobel Prize for economics (Tversky would have been co-recipient, had he not died a few years earlier). I have held faculty appointments at Yale University, Rutgers University and the University of Virginia. I have received numerous honors, including election to the select Society of Experimental Psychologists (SEP), which inducts only eight new members every year, and serving as its Secretary–Treasurer.

2. I have published about 100 scholarly articles, some in the most prestigious peer-reviewed scholarly journals, such as *Science* and *The Proceedings of the National Academy of Sciences*. I have written or edited four books. I have been the principal investigator on grants

awarded by the National Institutes of Health and the National Science Foundation virtually without interruption since 1974 (about $3,500,000 in the past 20 years).

3. In the course of my work I have come to accept the distinction—made by the philosopher Reichenbach—between the "context of discovery" and the "context of justification." He argued that the context of discovery is psychological and is not in itself part of science, even though it is an indispensable precursor to the process of justification, which involves the presentation of analyzed data and systematic arguments regarding these data.

4. It is in the context of justification that scientific debates occur. This is where errors are uncovered through the process of citation in scholarly articles, and where a vigorous intellectual exchange takes place, which is both cooperative and adversarial. One set of data may undermine a theory, which is then modified, which in turn drives researchers to generate new data. This is the cycle that leads to the rapid progress of knowledge that we have been witnessing for over two centuries.

5. The context of discovery is the realm in which most of a scientist's creative energy is expended, but it is also the realm where doubt is rampant and conviction is scant. It is within this context that frank, sometimes jocular, often anxious, and occasionally irreverent exchanges among scholars and their students or their peers take place. It is a delicate time in the life of the mind, one that can bear fruit only in the protective incubator of a trusting environment. Any expectation that such free–wheeling exchanges might be subject to compelled public disclosure is likely to undermine the creative process without which science will wither and die.

6. In the transition from the context of discovery to the context of justification lies peer–review. The wide–spread use of peer–review has been a key contributor to the greatness of American science, because it maximizes the likelihood that bad research will be weeded out. It is

notable that this mechanism of self–correction adheres to strict rules of confidentiality to insure that ideas in a scholar's grant applications or scholarly manuscripts are not misused. Confidentiality in this transition is so important that the rules of confidentiality and anonymity are constantly being re-examined by the governing bodies of granting agencies and professional societies. For example, all scholarly journals maintain the confidentiality of their peer-reviewers; some (*Personality & Social Psychology Bulletin, Psychological Review*) even offer authors the option of *masked reviews*: the authors' names, institutions, and other identifying information are removed from the reviewers' copies (to mitigate the halo–effect of individual or institutional prestige). When I am invited to review a grant application or an article as a peer of a scholar, I do so in part because I am then privy to the new ideas budding in my discipline. And yet, even though this activity satisfies my curiosity, I may not use any of this knowledge to advance my own work. Indeed confidentiality is so important that such knowledge has on occasion made me change the course of my own work to avoid even an *appearance* of influence. The point of all this is to foster trust. Science cannot flourish in an atmosphere of distrust or defensiveness.

7. University professors are expected by their employers to contribute to their discipline by engaging in peer–review. Nevertheless, universities never demand that researchers submit their reviews of the work of others, or others' reviews of their research in order to facilitate the evaluation of their work. *A fortiori*, if such disclosure were ever compelled by a non–academic body, the institution of science would be mortally wounded.

8. UVA is an outstanding research institution; my peers are at the foremost universities—some public, some private. If my colleagues at private universities came to fear that correspondence with me conducted under consensus expectations of confidentiality and the norms of scientific peer review processes were subject to involuntary public disclosure and

review by non-experts, the collaboration would be in jeopardy, and the research undermined. This is a very different issue than the common scientific understanding that published research results (and referenced data) are subject to public access, commentary, and critique.

9. Finally, I want to mention the activities of professional academic societies, such as SEP, which I led for four years. The communications between scholars in their work for such societies must remain confidential. To illustrate this with one simple example, members of SEP nominate about 30 to 40 prominent individuals every year as potential members. Only eight of these are elected every year. If a nominee isn't elected after being on the ballot for two years, this person cannot be put forward for a period of two years. For this reason the Society informs no one outside its membership of the list of nominees, nor are new members told who nominated them—they are informed of their election by the Secretary–Treasurer. Similarly, the annual business meeting of the SEP can be attended by members only. Publications and letters that SEP may chose to issue in relation to scientific issues are of course intended for and understood to be part of a public discourse around the discipline and its research.

10. All of these issues demonstrate the importance of the confidentiality of the discussions, dialogues, debates, and other scholarly communications and interactions of scientists and scholars. Subjecting these raw materials of developing scholarship to mandatory public disclosure would stifle and irrevocably damage intellectual inquiry.

BRANDI L. CRITZER
Notary Public
Commonwealth of Virginia
7343801
My Commission Expires Oct 31, 2014

Michael Kubovy

Sworn to and subscribed before me this 17 day of May, 2011.

Brandi C. Allen (I was commissioned as Brandi L. Critzer)
Notary Public

My commission expires: 10/31/2014

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, Petitioners,	)	
v.	)	Civil Action No. CL-11-3236
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	)	
CITY OF CHARLOTTESVILLE	)	
COMMONWEALTH OF VIRGINIA	)	

DECLARATION OF HUNTER RAWLINGS

COMES NOW the Declarant, Hunter Rawlings, pursuant to Virginia Code §8.01-4.3, who declares under penalty of perjury as follows:

1. I am President of Association of American Universities ("AAU"). Founded in 1900, AAU focuses on issues that are important to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education. The 59 AAU universities in the United States award

more than one-half of all U.S. doctoral degrees and 55 percent of those in the sciences and engineering. AAU programs and projects address institutional issues facing its member universities, as well as government actions that affect these and other universities. AAU works to maintain the productive partnership between the nation's research universities and the federal government. The major activities of the association include federal government relations, policy studies, and public affairs. Prior to serving as President of the AAU, I served as President of the University of Iowa and Cornell University, both AAU member institutions.

2. Throughout the research process, researchers often collaborate and deliberate with one another, often as part of the peer review process. The peer review process allows researchers to gain insight and perspectives from other experts in the field. Collaboration and deliberation throughout the process allow research and analysis to be refined, resulting in more reliable and valid results. The effectiveness of this process depends on the ability of researchers to have confidential conversations with one another where they can freely critique each other's work. However, this process is threatened by forced disclosure of informal, unpublished scholarly exchanges. The potential to have a comment made during such an exchange exposed or used to discredit a researcher will stifle the willingness and ability of scientists to undertake such frank exchanges and will ultimately adversely affect the quality of resulting research.

3. Furthermore, the quality of research depends on collaboration among researchers and experts from all institutions, and the recognition associated with patenting an idea or research motivates many researchers to make and patent many new

discoveries. Scientists and their institutions must be able to determine what research or inventions will be disclosed or used as the basis of patent applications, and when such filings are made.

4. Compelled disclosures under state freedom of information acts will stifle collaboration between researchers at public and private institutions and affect the motivation of researchers. Researchers employed at private institutions will not collaborate with researchers at public institution for fear that by virtue of working with a public institution, their ideas and research will be subject to records requests, which they are otherwise not subject to, resulting in forced disclosure of confidential material. The motivation to patent an idea or research is lost if researchers, from institutions public or private, have to make guesses about whether their scholarly and research communications and results will be subject to compelled public disclosure which can itself affect patentability under U.S. law. The quality of research and scientific advancements and the ability of public institutions to undertake licensing and technology transfer to the private sector will suffer as a result.

5. The recruitment of faculty to public research institutions is also likely to be adversely affected by subjecting scholarly exchanges to involuntary disclosure. Faculty interested in controversial or political topics will choose an institution where their research is free from forced disclosure, and where they are able to devote their time and resources to conducting research, rather than responding to intrusive public records demands for their unpublished communications and data.

6. In summary, the failure to afford protections to the research and scholarly communications of faculty at public institutions that are comparable to those at private institutions will result in an erosion of the great public research institutions. Ultimately, this will lead to the country's substantial loss of the research and innovations which public institutions have provided as a public good.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on July 18, 2012

Hunter Rawlings

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, Petitioners,	)	
v.	)	Civil Action No. CL-11-3236
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	)	
CITY OF CHARLOTTESVILLE	)	
COMMONWEALTH OF VIRGINIA	)	

AFFIDAVIT OF JOHN L. GITTLEMAN

On this day, John L. Gittleman personally appeared before me, a certified Notary Public in and for the State of Georgia, and after first being duly sworn to tell the truth, testified as follows:

1. My name is John Lind Gittleman. This affidavit represents my personal views and observations and does not purport to be an official representation of the views of the University of Georgia or the Georgia State System of Higher Education. It should further be said that I have no personal or professional relationship with Dr. Michael Mann.

2. I am currently the Dean of the Odum School of Ecology and Professor of Ecology at the University of Georgia. The Odum School, which was founded in 2007, is the first stand-alone college in the nation dedicated to the science of ecology. Previously, I have held tenure-track and tenured appointments at the Smithsonian Institution (1984-1986), University of Tennessee (1986-1999), and the University of Virginia (1999-2006). I have also received adjunct and sabbatical appointments at Harvard University and Oxford University.

3. I have degrees from Miami University (1976, B.A., Philosophy; B.A., Psychology) and from University of Sussex, England (1984, D.Phil.).

4. I have carried out scholarly research for over 25 years, publishing over 200 peer-reviewed papers (including five articles in *Science,* four in *Nature*, and four in the *Proceedings of the National Academy of Sciences*), four books (by Cornell, Cambridge and Chicago University Presses), and sixteen chapters in edited books. I am an elected Fellow of The Zoological Society of London. I am one of sixteen appointed members (the only ecologist) on the Scientific Advisory Board of the Center for Disease Control (CDC) that oversees all biological research of infectious and zoonotic diseases.

5. As Dean of the Odum School, it is my charge to lead and oversee the scientific and educational directions of the unit. My duties include development of strategic plans to prioritize the intellectual foundations, both research and instruction, of any and all scientific matters involving ecology. In the past five years, I have hired all of the new faculty at various academic levels in the Odum School including seven new tenure-track/tenured positions. The Odum School faculty members have built an international reputation in specific fields of disease ecology, ecosystem ecology and

conservation. We have a doctoral program of around 120 students (ranked in the top 10 in the US) and an undergraduate major in Ecology that includes around 110 students.

6. My responsibilities as a senior administrator, reporting directly to the Provost and President, range from budgetary decisions to managing a staff of 14 to overseeing all faculty issues of promotion and tenure at the university. An essential priority as Dean is to understand the core materials that enhance the freedom, creativity and integrity of my faculty as scientific researchers.

7. An essential change over the past 20 years in most scientific fields is that the research process – hypothesis development, data collection, statistical analysis, grant writing, publication in peer-reviewed journals – is not a solitary activity. It is the rare exception today that a grant or publication is single-authored; in high profile journals such as *Science* and *Nature*, over 90% of research papers are multi-authored. This necessarily means that science is collaborative, involving intense interpersonal interactions that take place at many levels and in different forms, but increasingly via electronic communication. In present context, the important point is that if there were a breach of any protection of the communication among scientists, particularly at the formative stages of this process, then the freedom and creativity that lie at the heart of the scientific give-and-take would be hampered and create an air of paranoia, very possibly eliminating many benefits of collaboration.

8. Discovery of new ideas, whether in science or the arts, requires the opportunity to make mistakes and correct them, without fear of involuntary public disclosure or political attacks.. The process of discovery is necessarily idiosyncratic, with methods, results, and hypothesis testing being iterative: creating something new, testing it,

showing it is wrong, developing as new idea, going through this process over and over till tests are consistent and a hypothesis is supported. Failure is a key feature of this iterative process and, rarely, do we want to be transparent when showing such failure. My observation has been that this is even more the case now with the increased prevalence of collaboration among scientists.

9. The point of accountability in scientific disciplines is the moment when the decision is made that work is ready for public distribution; i.e., where a paper is submitted for peer review and is accepted or is not accepted for formal publication. No scientist would claim a right to withhold data or research results described in a published article. We expect to be questioned on and to be accountable for what we elect to publish and present as truth to the broader community. However, a mandatory disclosure of all materials/data/ideas/failures related to this process will lead to less internal discussions, rigor, and ultimately, jeopardize the entire scientific process.

10. In my role as a dean of a school, I also believe that the inability of an institution of higher education to protect the emails, preliminary data, drafts, and other informal communications or information created by its faculty from involuntary disclosure would put the institution at a distinct disadvantage in recruiting faculty as compared to private institutions.

11. For the above reasons it is my firm opinion that the government should not and must not pry into the scientific process by requiring all formative ideas and other preliminary materials to be involuntarily disclosed pursuant to open records laws. Moreover, it is my understanding that the Commonwealth of Virginia has wisely elected to exempt scientific and scholarly materials that have not been published from

disclosure, a wise decision that must reflect understanding of the very concerns I have expressed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

John L. Gittleman

Seen to and subscribed before me this 16th day of July, 2012.

Elaine C Dunbar

My commission expires: 12/3/12

NOTARY PUBLIC, ATHENS-CLARKE COUNTY, GEORGIA
MY COMMISSION EXPIRES DECEMBER 3, 2012

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, Petitioners,	)	
v.	)	Civil Action No. CL-11-3236
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, and MICHAEL E. MANN, Respondents.	)	AFFIDAVIT OF GWENETH L. WEST

CITY OF CHARLOTTESVILLE)

COMMONWEALTH OF VIRGINIA)

On this day, Gweneth L. West personally appeared before me, a certified Notary Public in and for the Commonwealth of Virginia, and after first being duly sworn to tell the truth, testified as follows:

1. My name is Gweneth West. I am currently employed by the University of Virginia as a Professor in the Department of Drama in the College and Graduate School of Arts and Sciences. I hold an MFA in Theater: Costume Design from the University of Texas at Austin (1974). I have been a university professor and costume designer since completing that degree. Prior to coming to UVA, I taught at Wayne State University in Detroit and the University of Florida in Gainesville. I was invited to come to UVA as a tenured professor in costume design and as head of the design program in 1990 and have been here ever since.

2. As head of the university's design program, I have also redesigned the graduate curriculum and led the revision of the undergraduate curriculum to bring it into alignment with College of Arts and Sciences mission and goals. I have represented the

Drama Department in the Faculty Senate and have served on the Executive Council of the Senate for the last five years. In 2009, I began a three-year term in the senior leadership of the Faculty Senate, and served as the Faculty Senate Chair this year. In my capacity as a faculty member for over twenty years and senator, I have gained insights into the thinking, experience and perspectives of a great many colleagues across all disciplines at the University of Virginia.

3. The work of a costume designer involves highly complex intellectual and artistic collaborations with a director, actors, and other designers within the context of the underlying dramatic work itself. Within this framework of collaboration, I have designed costumes for over 250 theater productions in a variety of academic and professional venues across the country. As an artist-scholar, I value most the depth and expansiveness of the imagination, creativity and thought shared as I struggle with my professional colleagues to discover solutions to the intense challenges that confront the translation of a written dramatic work to a theatrical production. The germination of an idea in my discipline is fragile. Willingness to share artistic ideas and concepts requires belief that those invited into the process can be trusted. Whether or not any given idea or artistic solution will move forward grows from the response (including the critique) of those trusted colleagues.

4. When I first entered the field of theater design, this creative process took place in person, over the telephone, and via letters and through sharing of draft designs and other print communications. However, over the arc of my career, ever more aspects of this process have begun to rely on email as a substitute for in-person meetings or telephone conversations. Some of these collaborations may occur with colleagues next

door, but others bring together an ever widening circle of artists nationally and internationally. In fact, new forms of technology (including email) have enabled a breadth of conversation, collaboration, and creation that would never have been imagined forty years ago when I began my career as a designer.

5. Ultimately, of course, the aim of collaborative theater design processes is a public performance before an audience. However, the brainstorming, dreaming, and creative thought between trusted colleagues that are necessary to create these creative works would be jeopardized or destroyed by involuntary exposure of our thought processes. It is challenging enough to express such ideas and artistic dreams to another person; the idea that putting such thoughts into email would render them subject to public disclosure, critique, or censure, would paralyze my discipline. By way of analogy, it is a production company's decision whether or not to open up rehearsals prior to opening night. Even a dress rehearsal in a theater is typically closed to the public to protect the artistic process.

6. I recognize that my own creative and professional process is not identical to what colleagues in other fields undertake, but my experience as a member of this academic community suggests strongly that the essential elements of what it means to germinate new ideas and interpretations is common across all disciplines: The ability to engage in trusted, private, critical, open communications with chosen colleagues is essential. We all require the right to determine when our work is ready to be put out into the world of public conversation, whether through publication, performance, or artistic display. This right is crucial to any concept of academic and artistic freedom.

7. As the Faculty Senate Chair over the last year, I have had many conversations with colleagues around the university about the impact of forced or premature public disclosure of our scholarly communications. I believe the impact on this university of a failure to protect such communications would be devastating to our ability to attract and retain the kind of world-class faculty this institution needs and deserves, and is antithetical to the very concept of academic freedom.

Gweneth L. West

Seen to and subscribed before me this 5th day of July, 2012.

Bukurije Aljiji
Notary Public

My commission expires : 11/30/2014

BUKURIJE ALJIJI
Notary Public
Commonwealth of Virginia
7073994
My Commission Expires Nov 30, 2014

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, Petitioners,	)	
v.	)	Civil Action No. CL-11-3236
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	)	
CITY OF CHARLOTTESVILLE	)	
COMMONWEALTH OF VIRGINIA	)	

DECLARATION OF MOLLY CORBETT BROAD

COMES NOW the Declarant, Molly Corbett Broad, pursuant to Virginia Code §8.01-4.3, who declares under penalty of perjury as follows:

1. I am President of American Council on Education ("ACE"). Founded in 1918, ACE is the nation's unifying voice for higher education. Its more than 1,800 institutional members include a substantial majority of colleges and universities in the United States. ACE represents all sectors of American higher education—

public and private, large and small, denominational and nondenominational. It serves as coordinating national association on major issues of concern to the higher education community, and addresses public policy through advocacy, research, and program initiatives. I came to ACE after serving as President of the University of North Carolina.

2. Scholarly research and the advancement of knowledge – whether in the natural sciences, the social sciences or the humanities - proceed through a process of analysis of existing knowledge; hypothesis; collection, examination and publication of data; and intellectual exchange. Ideas, hypotheses and evidence are thus tested, honed, revised, rejected, proven, disproven, and supplanted by other evidence and hypotheses. This process – what the Regents of the University of Wisconsin-Madison, in upholding an economics professor's right to pursue politically controversial scholarship, called in 1894 "that continual and fearless sifting and winnowing by which alone the truth can be found" – is central to the missions of colleges and universities.

3. This "sifting and winnowing process" has been remarkably successful at producing the inventions, intellectual breakthroughs, and innovations that benefit society as a whole. American universities and scholars are recognized throughout the world for the freedom of mind, the creativity, the willingness to try out ideas and be thought wrong, and proven wrong, that they embrace. Thus human understanding advances and improves. It is through this process that American universities, their students, faculty and graduates have produced many of the greatest technological advances in the history of humanity.

4. This dialectical process, which is integral to the academy and vital for the advancement of knowledge and the betterment of life, is fragile. Any trepidation that the uninhibited and free exchange of ideas will be subject to intrusion at the behest of litigants would tend to dampen scholars' willingness to participate in the process, to try out novel, controversial, non-mainstream theories and hypotheses. Such a result is bound to have adverse consequences for the quality, productivity, and utility of research that are hallmarks of American higher education. To work well, the winnowing process must be fearless.

5. History is filled with examples of ill-fated meddling in the processes of scientific inquiry. Even as Galileo Galilei signed the forced recantation of his teaching that the Earth revolves around the sun, he is said to have uttered: "And yet it moves." By contrast, democracies today nurture academic freedom. Subtle, even unintended, inhibition of the free exchange of scientific ideas surely would have a harmful effect on society, by impeding the process that gives rise to scholarly insight and valuable innovation.

6. Specifically, collaboration and deliberation between researchers at public institutions and private or international institutions—which are not subject to state FOIA laws—will be adversely affected if those laws are interpreted to lack protections for informal and unpublished scholarly and scientific exchanges. Advancements resulting from research conducted at institutions result in a significant number of patents every year. However, research will be stifled if these exchanges are subject to involuntary disclosure.

7. The recognition and chance of fame associated with new discoveries motivates some researchers. However, this motivation is jeopardized by the compelled release of information which in some cases can affect patentability under U.S. law. It is important that the decision regarding what information to disclose and include in a patent application is made by the researcher and their institution. Further, researchers at private and international institutions will hesitate or even refuse to deliberate or collaborate with researchers at public institutions due to the risk that their confidential materials, which would otherwise not be subject to records requests, could be disclosed.

8. Further, the costs associated with responding to records requests—money, time, staff— that would otherwise be used to further academic research will also discourage the creation of research and scholarship at public universities. Given the nature of some records requests, researchers themselves or their assistants may be the only ones who can review the records to winnow out research information (for example relating to clinical research or human subjects) that has, independent protection under federal or state law . In many cases, institutions are able to recover only a fraction of those costs, making records request a tool subject to abuse, and one which involves costly distractions at a time when public higher education faces increasingly difficult financial challenges. .

9. Another drawback is that public institutions, which educate the majority of U.S. students, will face increasing difficulty in recruiting research faculty. Absent protections from harassing and intrusive FOIA requests, researchers at public institutions are less likely to conduct research on controversial or political topics

which might be the subject of records requests. Researchers interested in such subjects are likely to go to private institutions where their research will not be thwarted by records requests.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on July 19, 2012

Molly Corbett Broad