

July 29, 2008

Chancellor Richard H. Herman
Office of the Chancellor
317 Swanlund
601 E. John Street
MC-304

RE: Final Report of the Chancellor's Advisory Committee on the Academy on Capitalism and Limited Government Fund

Dear Chancellor Herman:

This is to submit the final report of the Advisory Committee on the Academy on Capitalism and Limited Government Fund. As you know, we have been laboring to craft a principled and viable relationship between the Academy and the University since last October. After considerable effort and mature reflection, we believe there to be no prospect for such a relationship consistent with maintenance of a free and distinguished University. Accordingly, we recommend that you terminate the agreement between the Academy and the University.

You will recall that our report to you of October 29, 2007 (included as Appendix 1 to this report), found two fundamental defects in the original Memorandum of Understanding. The first was that the donors called for the Academy's funding only those University activities that reached particular conclusions favored by the donors—namely, that capitalism and limited government produce the most desirable effects for society. We cited principles of over 100 years' standing within the modern university that abjure faculty's conducting research projects to achieve predetermined results, particularly results suggested by financial benefactors of the university.

The second defect was that the donors envisioned themselves or some entity of their devising operating within the University as the governing body of the donors' generous gift. That is, the donors would determine with particularity how their gift was to be used. This proposal violated a long-standing principle under which the direction of the university's programs must be determined by the university, through the institution of shared governance by the faculty of the university, not by bodies external to the university.

Our October 29, 2007, report maintained that these two principles of university governance, which have guided the University for over 100 years, retain compelling force today and that a great university like ours should continue to embrace them. Indeed, we view this as a fundamental matter of institutional academic freedom.

Because we found that the original Memorandum of Understanding violated both of these principles, we undertook to suggest that the MOU be revised so as to come into compliance with them. And we outlined very generally what those revisions might be.

You reported to us late in the Fall Semester, 2007, that you had communicated the thrust of our report to the donors and that, happily, they appreciated the principles and desired to work with this Advisory Committee to amend the MOU in line with the report's suggestions. You asked the Committee to continue in that role and to report to you on developments. We accepted that charge, gladly.

The donors asked Professor Emerita Emily Watts—a distinguished scholar of English literature and a former Chair of the Urbana-Champaign Senate—to assist them in addressing the Committee's report. To that end, Professor Watts and Professor Ulen of this Advisory Committee met several times during the Winter of 2007-2008 to craft a response. They easily agreed on removing the tendentiousness from the MOU's description of sponsored research and other activities at the University. They devoted most of their discussion to the topic of devising a governing mechanism for the Academy's activities within the University that would comply with both this Committee's findings and the donors' legitimate desires to have broad input into the uses and purposes to which their generous donations were to be put.

The mechanism upon which they hit was one in which the Chancellor would appoint a Faculty Advisory Board¹ that would be in charge of administering the funds placed within the Foundation by the donors. They anticipated that this board would solicit ideas from the campus for activities consistent with the donors' legitimate desires, evaluate proposals, award funds, and do all the other things that faculty committees do in similar situations. They also contemplated that the Faculty Advisory Board would report from time to time to the donors. Professor Watts and the members of this Advisory Committee expected that this Faculty Advisory Board alone would administer the donors' funds housed in the Foundation.

Professors Watts and Ulen met with the donors in Harker Hall in late February, 2008, to present their proposals. They had a wide-ranging and cordial conversation with the donors. Ulen suggested to them that the next step was for the donors to draft a document that incorporated the matters that Professor Watts and he had just discussed with

¹ At the cost of confusion, we refer to a "Faculty Advisory Board" throughout this report. We mean this phrase to refer to precisely the same group spoken of in some of the appended documents as a "Faculty Advisory Committee."

them. Then, this Advisory Committee would have to study the suggested changes and approve them before this Committee could report back to the Chancellor that we thought that the defects of the original MOU had been corrected. There was some discussion at the Harker Hall meeting about whether the changes should take the form of an addendum to the original MOU or simply be an entirely new MOU—a “novation”—replacing the original. Ulen suggested that his sense was that this Advisory Committee would much prefer a new, clean document rather than an addendum.

After the meeting, Ulen reported to the members of this Advisory Committee that he thought that the donors understood the Committee’s concerns and appreciated the manner in which the proposals put to them by Professors Watts and Ulen addressed those concerns. (That e-mail report is Appendix 2.) Ulen wrote, “[The donors] seemed to me to be people of good will, who had the best interests of the University at stake, and who were willing to take our advice.”

In early March the donors sent a letter containing some proposed language meant to address the matters raised at the late February meeting in Harker Hall. The letter also indicated that the suggested changes, which they contemplated as an addendum to the original MOU, not a novation, were about as far as the donors were willing to go in changing their original agreement with the University—an agreement that they consider to be signed, binding, and fully operational.

Professors Finkin and Ulen studied the suggested changes together and were extremely disappointed in what was there proposed. None of the suggestions seemed, in their estimation, to address this Advisory Committee’s October, 2007, concerns. So, Finkin and Ulen wrote an entirely new MOU—a novation—that addressed the Committee’s concerns, attached a cover letter, and sent a reply to one of the donors on March 20, 2008. (That letter and the novation proposed by Finkin and Ulen are Appendix 3 to this report.)

We heard nothing back from the donors in April or May and were convinced that they found our March 20 novation unacceptable. In late May the Chancellor contacted the Chair of this Advisory Committee and discussed what next steps might be taken to revive the discussion between the donors and this Advisory Committee. Professor Ulen, who was out of the country till early June, agreed to contact the donors when he returned to see if discussions might continue. Before that could happen, a chance meeting between the Chancellor and Professor Jeff Brown of the Department of Finance, an advisor to the donors, served as the occasion to reopen discussions between the donors and this Advisory Committee.

Professor Brown, Professor Jon Solomon, and Professor Ulen met in late June to see where matters stood and to see if discussions might be reopened. All three were delighted to discover that there were sufficient areas of agreement and expressions of good will to proceed forward anew. Brown, Solomon, and Ulen discussed some explicit ideas

about the powers of the Faculty Advisory Board (as proposed by Professor Watts and Ulen in February), its composition, and its relationship with the donors. To give an illustration of how explicit and concrete these discussions were, consider this example. In a discussion about the power of the Faculty Advisory Board, Professor Ulen was asked how this Advisory Committee would feel about this arrangement: proposals—presumably from the faculty—about the use of ACLGF funds would be submitted to the Faculty Advisory Board; that board would then evaluate them and pass on to the donors those that they thought worthy; the donors would then make a proposal-by-proposal decision about funding. Ulen said that that would not be acceptable to this Advisory Committee: such an arrangement would continue the operational role of the donors in the conduct of the University's program and so would be totally antithetical to the principle of institutional autonomy laid out in the October, 2007, report.

Immediately after this meeting with Professors Brown and Solomon, Professor Ulen spoke to the Senate Executive Committee, which had an on-going interest in the discussions between the donors and this Advisory Committee. Ulen described the state of discussions since February, including the very recent meeting, and expressed cautious optimism that a revised agreement would be developed soon.

After apparently discussing the meeting among Brown, Solomon, and Ulen with the donors, Professor Brown sent some very thoughtful e-mails in an effort to clarify some of the points discussed. (Appendix 4 contains six bullet points of apparent agreement on fundamental principles from one of those e-mails.) On the basis of those e-mails, Ulen reported some enthusiasm to this Advisory Committee about the prospects of an acceptable agreement being reached.

On Monday, July 21, 2008, Professors Brown and Solomon met with Professor Ulen again and delivered a draft of a new addendum. (The Addendum is included as Appendix 5.) Ulen expressed his gratitude for their efforts and said that he would present this Addendum to this Advisory Committee soon.

This Advisory Committee then met at the College of Law on Friday, July 25, 2008, to discuss two matters. The first was Professor Brown's proposal to use ACLGF funds to sponsor a conference on Schumpeter on October 16, 2008.² The second was an evaluation of the proposed Addendum to the original MOU. The Committee took up the Addendum first.

² The Chancellor had originally appointed this Advisory Committee to serve in the capacity of a committee to advise him on the use of ACLGF funds. At this Committee's first meeting the Chancellor asked us, instead, to advise him on the terms and conditions of the Academy's relationship with the University of Illinois at Urbana-Champaign. Professor Brown had asked this Committee to revert to its original role so as to advise the Chancellor on the use of ACLGF funds for his conference. In light of our conclusion that the agreement between the University and the ACLGF should be terminated, we all felt that our approval of use of ACLGF funds to sponsor Professor Brown's Schumpeter Conference was moot, although we made no specific substantive analysis of the proposal.

It was the unanimous conclusion of those present³ that the proposed Addendum failed to address the Committee's principled objections expressed in its October, 2007, report. The discussion focused on two particular points.

Paragraph A of the proposed Addendum does address some of this Advisory Committee's concerns about the tendentiousness of ACLGF activities insofar as it undertakes to abjure any predetermined outcomes when its activities are "translated into a scholarly setting." But this qualification is appended to the Academy's existing mission statement, which has continuing vitality and does not limit what it does to the "scholarly setting." Indeed, the original MOU, other Academy documents, and public statements from the donors and their representatives, have explicitly called for a much broader agenda. This distinction is truly vexing: if there were some extracurricular activities of the Academy that did not adhere to the same academic openness standards as applied to the activities within the University and if that distinction were not evident to external observers, then the University might well be perceived to have lent its name and reputation to them. If, however, the activities of the Academy were limited exclusively to those sponsored within the University, then the Committee would have found the sentiments of Paragraph A fully acceptable.

Far more troubling was Paragraph B. The proposed relationship between the donors and the Faculty Advisory Board is simply unacceptable. The Board would not have the independence that this Advisory Committee has championed for at least nine months. Under the text before the Advisory Committee, the donors would have a proposal-by-proposal funding veto over the decisions of the Faculty Advisory Board. Indeed, the language seems to us to take a disturbing and large step backward from the advances discussed and communicated in June.

After repeated rounds of negotiating over the composition and role of a Faculty Advisory Board, it became apparent to this Advisory Committee that there was actually a deeper and more fundamental disagreement between the donors and the University over the very nature of a self-governing entity such as that envisioned by the donors, housed in the UI Foundation, with a self-described and nonnegotiable advocacy mission. For all the progress we might have made over some matters that we raised last October, we realized that on this basic issue the donors insisted on the inviolability of the original MOU. And yet it is in that basic structure that the underlying problems remain, and we saw no willingness to reconsider that basic structure.

In light of this extensive history and total lack of progress, we believe that it is pointless to pursue any further relationship between the University and the ACLGF. We have, since our October, 2007, report, welcomed and continue to welcome the diversity of views that the donors champion for this campus. But we do not believe that that laud-

³ Kathy Young and Barclay Jones were not able to attend.

able goal can be accomplished in a fashion acceptable to both sides. The donors may, of course, choose to establish an off-campus entity to further their goals and may invite members of the University faculty to apply for their generous funding. But we do not believe that there is scope for that activity to be conducted within the University in a manner consistent, as our October report put it, "with the principles that define a free and distinguished University."

Please don't hesitate to let us know what more we might do to help you and the University with this or any other matter.

All the very best wishes,

The Chancellor's Advisory Committee on the Academy on Capitalism and Limited Government Fund

Thomas S. Ulen, Chair
Swanlund Chair and Professor of Law, College of Law

Matthew W. Finkin
Albert J. Harno and Edward W. Cleary Chair in Law, College of Law

Robert Fossum
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William Maher,
University Archivist, Professor of Library Administration

Joyce Tolliver,
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Kathy Young,
Director, Office of Sponsored Programs and Research Administration

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APPENDIX 1

REPORT OF THE CHANCELLOR'S ADVISORY COMMITTEE ON THE ACADEMY ON CAPITALISM AND LIMITED GOVERNMENT FUND

October 29, 2007

On July 20, 2006, a Memorandum of Agreement (MOA) was signed between a group of donors and the University of Illinois Foundation regarding a gift to create and administer an entity, to be housed within the Foundation, called the "Academy on Capitalism and Limited Government Fund." (For ease of discussion this will be referred to simply as the "Academy.") After the faculty convened in the Fall of 2007, the agreement became publicly known. Serious questions were then raised by the campus Senate and numerous others about the purposes and structure of the Academy, as well as the manner of its coming into being, from the perspective of the University's *Statutes*. In response, on September 24, 2007, the undersigned committee was appointed by the Chancellor. It was given a charter of specifics, set out below,⁴ but was also charged with the larger question of whether the Academy, as currently fashioned, is consistent with the University's mission and policies. The committee met on October 1 and 22, 2007. It was given the complete cooperation of the Chancellor's Office and the Foundation staff, to whom we express our appreciation.

This report first sets out the terms on which the Academy was created and addresses areas of ambiguity in the governing instruments. The report then discusses two basic principles that define the modern research university in general and the University of Illinois in particular: institutional neutrality and institutional autonomy. This report analyzes the purpose and administration of the Academy in the light of these fundamental principles.

The Committee's conclusion, to be explained in greater detail, is that the Academy as currently conceived and configured is fundamentally inconsistent with the two central principles that define a free and distinguished University. In view of the manifest

⁴ The Chancellor's letter of appointment of September 24, 2007, charges the committee as follows:

1. To assist in reviewing and evaluating proposals for funding that come to the Fund for approval.
2. To work to assure that any academic activity which involves an identification with the Urbana campus is subject to appropriate review by our faculty within a structure of shared governance.
3. To work to assure that the Fund retains its identity as a funding source to support faculty scholarship and teaching, and to guarantee that any future proposal to acquire status as an independent entity is subject to appropriate review and approval.
4. To work to assure that this entity, like all university activities, upholds the highest standards of quality, academic freedom, and respect for multiple points of view.

good will of the donors, the Committee sees no reason why they would not be amenable to a reconfiguration of the terms of the gift to conform to these principles. In the regrettable event that is not achievable, however, the Committee concludes that the gift's provision for an "alternate application of income" should be invoked. A final forward-looking recommendation will be offered at the close.

I. The Academy

In this section we examine the Academy's purpose and its structure and administration.

A. Purpose

The Academy's purpose as stated in the MOA is "to promote scholarly research, teaching and public outreach in areas pertaining to free market capitalism, individual freedom, individual responsibility, limited government and the role of these concepts in ensuring a productive and successful society." These purposes are expanded upon in the MOA as including the sponsorship of courses of instruction, research grants, endowed appointments, lectures, scholarships (undergraduate), and fellowships (graduate). The "promotion" clause is outcome-neutral respecting the nature of the research, teaching, and public outreach it expects to support and so is completely congruent with the University's mission. The "pertaining to" clause, however, is another matter insofar as its final clause either does or can reasonably be read to predispose the teacher or researcher as to specific outcomes.

This reservation is grounded in the MOA's express incorporation by reference of an attached "Governing Document." The Governing Document reiterates the foregoing Mission Statement, but it sets out the Academy's goals and activities in greater detail. Akin to the Mission Statement, several of the areas of academic support stated in the incorporated Governing Document are outcome-neutral—for example, to support research on, "the philosophical, moral and economic underpinnings of capitalism," and on the "societal impact of new technologies and the mechanisms that will promote economic and social well being as science progresses." But other areas would seem to invite Academy support only if researchers or teachers base their teaching or research on a tacit assumption of what can be accomplished—or better accomplished—by free market capitalism. Thus, the Academy proposes to support research on "economic growth as a function of tax policy," to "study the relationship between economic growth and reduced government size, lessened regulatory controls and expenditures," and to show that "free market capitalism can

- become even more effective in providing opportunities and prosperity for individual nations;
- find solutions to social challenges such as healthcare distribution, intransigent poverty, environmental pollution and failing educational systems where they exist; [and]
- provide quality human services using market drive creativity and non-governmental organizations.

It may be that the results of these initiatives are not intended to be foreordained. If so, the governing documents needs to be clarified on questions such as:

- Would the Academy's purpose of exploring economic growth as an element of tax policy preclude recipients from examining whether there is any connection between tax policy and economic growth?⁵
- Would the Academy's purpose of studying the "relationship between economic growth and reduced government size, lessened regulatory controls and expenditures" foreclose investigation tending to show that more exacting or more extensive government regulation can conduce toward a more robust free market.⁶

However, some of the Academy's purposes and proposed activities unmistakably signal an ideological predisposition or presupposition. For example,

- The Governing Document states that "[t]he Academy will support studies asking why communism, socialism, government bureaucracy and high taxation have failed to bring prosperity, and how capitalism brings material wealth to a broad spectrum of society." (What is meant by "government bureaucracy" or "high" taxation is unexplained.)

That governmental regulation and high taxation, whether separately or in tandem, have in fact failed to bring prosperity is surely academically contested terrain, as the experience of in the Nordic countries evidences.⁷ Equally contested in academic research is the assertion that capitalism in the U.S. has brought material wealth to that rather large segment of the American workforce that has experienced wage stagnation despite rising productivity over the past several decades.⁸

⁵ The Organization for Economic Cooperation and Development (OECD), which includes the United States, has recently issued a report on taxes as a percentage of gross domestic product (GDP) worldwide. Christopher Heady, head of tax policy for the organization, was quoted as saying of the report's conclusions:

"There is some evidence that countries with higher tax-to-G.D.P. ratios grow somewhat slower and have lower G.D.P. per head, controlling for other factors, but this is not a very clear relationship," he said.

As an example, he cited Sweden, which "has the highest tax-to-G.D.P. ratio in the O.E.C.D., just over 50 percent, and yet it is one of the O.E.C.D. countries with the strongest economic performance over the past 20 years or so."

David Cay Johnson, *Taxes in Developed Nations Reach 36% of Gross Domestic Product*, N.Y. TIMES, Oct. 18, 2007, at C3.

⁶ Richard Taub, *Research on Entrepreneurship, Culture, and Law*, 28 COMP. LAB. L. & POL'Y J. 893, 896 (2007):

[T]he world abounds in examples of cases where the state facilitates business growth. . . . In the United States, an organic food standard established by the United States Department of Agriculture helped to raise the sale of organic products to an entirely new level. . . . The point is that not all interventions of the state hamper business activity.

⁷ See *supra* note 2, concerning Sweden.

⁸ The data are supplied in LAWRENCE MISHEL, JARED BERNSTEIN & SYLVIA ALLEGRETTO, *THE STATE OF*

Additionally,

- The Academy proposes to support academic programs and investigations on how free market capitalism can, “[e]ncourage individual rights and individual responsibility as a counterpoint to the culture of entitlement, dependency and victimhood.”

It is surely an academically contested proposition, however, that Social Security, an archetypical “entitlement,” has conduced toward economic independence and so toward individual freedom in old age and would continue better to perform that function than market alternatives.⁹

In sum, it would appear that studies that do not share the Academy’s premises would not qualify for institutional support.

The Committee wishes to make it abundantly clear that it takes no position whatsoever on any of these contested questions of public policy. The foregoing is simply to observe that these *are* contested and that some of what the Academy is purposed to do plainly does or reasonably can be read to foreordain the general thrust of the conclusions it expects the research, lectures, professorships, courses, and students it supports to draw. It is surely within the mission of the research university to sponsor studies relating to economic growth and the relation of tax policy, government size and bureaucracies to individual rights and responsibilities. But a university cannot sponsor research, teaching, and public programs based on an assumption of what the results need be. As the report will explain in greater detail, such would be inconsistent with the fundamental nature of a university and inconsistent with the founding principles of a land-grant public university such as the University of Illinois at Urbana-Champaign.

B. Structure and Administration

The Governing Document provides for a continuing, self-perpetuating Advisory Board of Directors housed within the University of Illinois Foundation and composed of persons who support the purposes of the Academy. It also allows for the funding and hiring of an Executive Director with the approval of the Foundation and the UIUC Chancellor. As the Committee understand it, however, the Foundation’s function is to raise and husband funds for the support of the University; it should have no responsibility for making academic decisions in the expenditure of such funds. Housing the Academy in the Foundation is thus highly problematic.

The Academy’s Board of Directors is given authority to “make funding decisions with the UIUC Chancellor’s concurrence.” That provision is echoed in the MOA, save that the latter adds that the Chancellor “shall have approval [authority] as to the funding of any grant requirement *as it applies to the campus.*” (Emphasis added.) Thus, it is not

WORKING AMERICA 2004–2005 (2006); *see also* RICHARD B. FREEMAN, AMERICA WORKS ch. 3 (2007).

⁹ *E.g.*, DEAN BAKER & MARK WEISBROT, SOCIAL SECURITY: THE PHONY CRISIS (1999); SOCIAL SECURITY REFORM (Richard Leone & Greg Anrig eds., 1999); JOSEPH WHITE, FALSE ALARM (2001); PETER DIAMOND & PETER ORSZAG, SAVING SOCIAL SECURITY (2004).

clear whether the Academy, acting through its Board, may authorize funds without the Chancellor's approval when the project or program it supports does not "apply" to the UIUC campus—that is, is undertaken by itself as a free-standing body.

The MOA, echoing the Governing Document, provides that the Academy's Board may not revise, alter, or amend the Mission Statement. The MOA and the incorporated Governing Document also allow for the assets of the Academy to be diverted to another qualifying institution if the University of Illinois determines that it is not "practical" for the Academy to function in accordance with these instruments.

II. Compatibility with the University's Mission and Policies

The University is governed by *Statutes* that have the force and effect of law. These acknowledge at the outset the University's observance of "such self-imposed restraints as are essential to the maintenance of a free and distinguished University."¹⁰ The creation of the Academy presses upon us the question of what conditions *are* essential to the maintenance of a free and distinguished University.

Part of the Academy's Mission Statement says that one of the Academy's goals is to "encourage intellectual diversity and civil debate." This is completely concordant with the University's mission. The Mission Statement proceeds to qualify this desideratum by stating that the manner in which this will be realized is by "opening campus discourse to a greater range of perspectives." The tacit assumption of the "greater range" qualification is that the particular perspective the Academy intends to support is either not reflected or, perhaps, is inadequately reflected in the University's current display of offerings, lectures, research, programs, and the like: the donors perceive a need to broaden the University in that regard. Such would seem to explain those parts of the Academy's program that have or can reasonably be read to have a specific doctrinal or ideological predisposition. And it explains the additional operational feature of the Academy's providing for an active role for its Board in grant-making, a co-determinative role to ensure its predisposed ends are being realized. In the Committee's judgment these two features are irreconcilable with two principles that characterize a free and distinguished university—neutrality and autonomy.

A. Institutional Neutrality

¹⁰ The University of Illinois, *Statutes*, Preamble:

The University of Illinois, as a state university, is subject to the control of the Illinois General Assembly. The General Assembly, subject to the limitations of the state constitution and to *such self-imposed restraints as are essential to the maintenance of a free and distinguished University*, exercises control by virtue of its authority to change the laws pertaining to the University and its power to appropriate funds for the maintenance and improvement of the University. Under existing state law the University of Illinois is a public corporation, the formal corporate name of which is "The Board of Trustees of the University of Illinois."

Italics added. The *Statutes* can be found at <http://www.uillinois.edu/trustees/statutes.cfm>.

The Committee wishes to reiterate that it has no position whatsoever concerning the economic or social positions the Academy's donors wish to advance. It does not question the donors' good will toward the University, evident in their very generosity; nor the depth of commitment that impels them. It is altogether laudable that a person or a group would wish to contribute to the robustness of public debate on those contested economic and social questions that so vex the nation; and in so doing they are free to put a particular ideological stamp on their contribution. But it is not the proper function of a university to advance a donor's ideological agenda, whatever it might be.

The imperative of institutional neutrality as a defining condition of modern American higher education is best understood in historical context. We start by reference to Andrew White, founding president of Cornell University, reflecting on his days on the faculty of the University of Michigan circa 1860, when Henry P. Tappan was president: "Up to that time the highest institutions of learning in the United States were almost entirely under sectarian control," he observed.¹¹ Tappan struggled to free the University of Michigan in just that regard. When he addressed the Christian Library Association in 1858, he argued that service to sectarian interest is contrary to the idea of what a university is.¹² The claim was to resound even more strongly when non-sectarian institutions were founded or supported, in the words of Alton B. Parker, by those "whose sole business in life [is] making money."¹³ Parker maintained that they had the right to "insist [that] the doctrines they believe to be true, and for the propagation of which they have expressly and avowedly founded the institution, or endowed the chairs, shall be taught in such institutions."¹⁴ The regnant assumption of the time was of the right of the payer to call the piper's tune.

As the modern research university developed over the course of the late nineteenth and early twentieth century, presaged by the Morrill Act of 1862, encouraged by the professionalization of the American professoriate, and driven by the manifest societal need for professional expertise to be brought to bear on all manner of pressing problems and challenges—scientific, economic, social, and moral—the wisdom of the 1915 *Declaration of Principles on Academic Freedom and Tenure* took deep root: The university "should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen

¹¹ Quoted in II AMERICAN HIGHER EDUCATION: A DOCUMENTARY HISTORY 546 (Richard Hofstadter & Wilson Smith eds., 1961).

¹² Henry Tappan on the Idea of the True University, 1858 quoted *id.* at 515. Tappan was anticipated by J.B. Turner in 1851 in his *Plan for an Industrial University for the State of Illinois*: "No species of knowledge should be excluded, practical or theoretical; unless, indeed, those specimens of 'organized ignorance' found in the creeds of party politicians, and sectarian ecclesiastics should be mistaken by some for a species of knowledge."

¹³ Alton Parker, *The Rights of Donors*, 23 EDUC. REV. 16–21 (1902). Parker was Judge of the New York Court of Appeals, president of the National Civic Federation, and candidate for the United States' Presidency.

¹⁴ *Id.*

until finally, and perchance, it may become a part of the accepted intellectual food of the nation or the world.”¹⁵

The principle of neutrality became universally recognized as an inextricable component of, a defining condition for the American research university. The reasoning of the 1915 *Declaration* has withstood the test of time:

The simplest case is that of a proprietary school or college designed for the propagation of specific doctrines prescribed by those who have furnished its endowment. It is evident that in such cases the trustees are bound by the deed of gift, and, whatever be their own views, are obligated to carry out the terms of the trust. ... If, again, as has happened in this country, a wealthy manufacturer establishes a special school in a University in order to teach, among other things, the advantages of a protective tariff, or if, as is also the case, an institution has been endowed for the purpose of propagating the doctrines of socialism [no doubt referring to the Rand school established by the American Socialist Party], the situation is analogous. All of these are essentially proprietary institutions, in the moral sense.¹⁶

A university, however, and especially a public university exists for the common good, not for the propagation of the views of its donors.

The Committee appreciates that the case of the ACLGF is not “the simplest case” dealt with in the 1915 *Report*. The Academy’s donors do not expect the University to deny those faculty members whom the Academy does not finance the ability to pursue lines of research or modes of discourse that depart from the role they conceive for free market capitalism and limited government. On the contrary, the gift is premised on an assumed want of representation of the views it would advance and in the consequent need to expand the diversity represented in the University’s current portfolio of offerings and undertakings in that regard. The empirical basis of that arresting assumption remains to be seen, however; in point of fact, the Committee members find the assertion contrary to their collective institutional experience. Suffice it to say, the one action the University cannot take in regard to a claimed want of diversity in the current complement of faculty and the current display of university offerings, programs, or the like, is to commit itself to the propagation of a specific economic or social theory or doctrine. We emphasize, as did the 1915 Report, that this is so, irrespective of the content of the particular theory or doctrine the donors desire to advance. Were the American Socialist Party to wish to house the Rand School within the University of Illinois, in the very terms of the MOA’s Academy—to “support studies examining how public ownership of the means of production and higher income equality achieved by a redistributational tax system will bring economic and moral well being to a broad spectrum of society”—and were it to defend its School by a claimed lack of diversity, that the obvious want of any manifest socialist presence on campus has skewed the internal market for ideas, the outcome would be ex-

¹⁵ Quoted in Hofstadter & Smith, *supra* note 5, at 870.

¹⁶ *Id.* at 862.

actly the same: the donation would be incompatible with the principle of institutional neutrality and should not be accepted.

When a teacher or researcher advances a particular theory or model, the principle of institutional neutrality expressly abjures the notion of any institutional endorsement of what the faculty member says save that he or she is held to a professional standard of care in saying it. This condition would be contradicted by the institution's adoption of a commitment to expound a sectarian claim whether grounded in religion, economics, or anything else, to which the teacher or researcher should accordingly be held to account. The distinction was drawn by Tappan almost exactly 150 years ago:

The Regents and Faculty may have their own opinions on politics, their own attachments for the sects to which they severally belong, their own views on questions of moral reform. These as men, and as American citizens, they claim to entertain in perfect freedom, without any interference, or any rebuke. But they would violate the trust reposed in them, did they allow these to influence their measures in respect to the University.¹⁷

Moreover, once a public university has accepted a breach of the principle of neutrality, it would be in no position to reject future donations on the ground of the ideas *those* donors wish the University to propagate.¹⁸ Having accepted an Academy dedicated to the pursuit of capitalism and limited government, for example, it could not reject an Academy dedicated to the pursuit of socialism. In this way, the University would become the purveyor of any and all doctrines that donors wish to propagate under the University's imprimatur. Such an institution, whatever it might wish to call itself, would not be a university: it could make no credible claim for the public's support or respect.

B. Institutional Autonomy

A second achievement of the modern research university is recognition of its autonomy, its freedom to make and implement academic decisions by academic processes, processes in which the faculty necessarily plays a critical role. At the University of Illinois these freedoms are provided for in its *Statutes*.

The *Statutes* state at the outset that in matters of educational policy and governance the University "relies upon the advice of the university senates" and that each senate "has a legitimate concern which justifies its participation." The campus Senate is given "legislative functions in matters of educational policy" which are spelled out in some detail. In addition, the *Statutes* provide that, "as the responsible body in the teaching, research, and scholarly activities of the University, the faculty has inherent interests and rights in academic policy and governance." The faculty has primary authority over such matters as curriculum and faculty appointment; even endowed appointments are subject to screening by a faculty committee.

It is deeply troubling that insofar as the functions contemplated for the Academy involve matters of educational policy, authority for which is vested in the faculty and the

¹⁷ Tappan, *supra* note 6, at 544.

¹⁸ See note 20, *infra*.

UIUC Senate, no faculty body was consulted in the matter of the Academy's creation. Insofar as the MOA gives co-determinational authority to the Chancellor, and only the Chancellor, for Academy grants that "affect[]" the Champaign-Urbana campus, these grants simply could not be implemented in this way consistent with the University's *Statutes*. To the extent that the MOA contemplates operational stand-alone authority for the Academy in grants that do not "affect" the Champaign-Urbana campus, the *Statutes* would be completely circumvented.

Putting these rather serious questions to one side, and taking a larger view of the Academy's situation in the University, it becomes immediately obvious that it confronts the fundamental principle of institutional autonomy. So essential is autonomy to the successful conduct of the modern research university that some observers have termed it a matter of "institutional academic freedom."¹⁹ The modern formulation of this concept draws from the opinion of Justice Frankfurter in the case of *Sweezy v. New Hampshire*,²⁰ in which he quoted in turn from the remonstrance, *The Open Universities in South Africa*, thusly:

A university ceases to be true to its own nature if it becomes the tool of the Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—"to follow the argument where it leads." This implies the right to examine, question, modify or reject traditional ideas and beliefs. . . . The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself. . . .

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university—to *determine for itself on academic grounds* who may teach, what may be taught, how it shall be taught, and who may be admitted to study." [Emphasis added.]

The MOA's Academy creates an extra-academic board, self-perpetuating on the basis of ideological sympathy with the donors' intent. At a minimum, it clothes the board with power co-determinative with the administration to decide on the allocation of funds for specific course development, research, conferences, endowed appointments, and more—decisions that lie at the core of the University's functions.

It is understandable that donors would wish to see what fruit their generosity has borne and to assure themselves that the funds they donate are directed to their intended use. There is every reason for the Foundation and the University to share that information with and to be appreciative of donor response. These and other outreach efforts are simply good husbandry of funds and of those who so generously give them. But it is

¹⁹ E.g., David Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom Under the First Amendment*, in *FREEDOM AND TENURE IN THE ACADEMY* 227 (William Van Alstyne ed., 1993); Paul Horowitz, *Universities as First Amendment Institutions*, 54 *UCLA L. REV.* 1497 (2007).

²⁰ 354 U.S. 234 (1957).

quite another matter to give co-determinative power over critical academic decisions to an extra-institutional body.

To be sure, *Sweezey* was addressed to an external intrusion—one imposed upon the university from the outside. But the infringement of institutional autonomy, of its institutional academic freedom, is no less, is indeed more seductive and insidious when an institution accepts an infringement conjoined to largesse. Derek Bok's highlighting of the threat posed by aspects of the commercialization of academic research speaks with even greater force here: "By compromising basic academic principles, universities tamper with ideals that give meaning to the scholarly community and win respect from the public."²¹ Such compromises, he noted, have real-world effects.

Defending these academic values, even at the risk of financial sacrifice, evokes the admiration of students, faculty, and alumni, while building the public's trust in what professors say and do. ... Bit by bit [] commercialization threatens to change the character of the university in ways that limit its freedom, sap its effectiveness, and lower its standing in the society.²²

Simply put, the University of Illinois may not accept funds for an endowed appointment conditioned on the donor's having a voice in the selection of the appointee, even if not a determinative voice.²³ Neither may it give donors a co-determinative voice in critical academic decisions over curriculum, research, faculty selection, student support, and the like.

III. Conclusions and Recommendations

1. Aspects of the MOA and Governing Document executed on July 20, 2006, are incompatible with the principles and policies that govern the University of Illinois; they are contrary to the conditions "essential to the maintenance of a free and distinguished university." To that extent, implementation of the MOA is not "practical" within the meaning of the MOA.

2. The Academy created by the MOA of July 20, 2006, is premised on the desire to encourage intellectual diversity and civil debate. The Committee endorses that goal

²¹ DEREK BOK UNIVERSITIES IN THE MARKETPLACE 206 (2003).

²² *Id.* at 207.

²³ As this report is being written a dispute has arisen concerning the acceptance of a gift by the University of New Mexico from the Roman Catholic Archdiocese endowing a chair in Roman Catholic studies. The gift was conditioned on the Archbishop's designation of members of the chair's search committee, subject to the administration's approval. The gift has been defended in terms echoing the Academy, as contributing to the variety of religious traditions represented on the campus. Richard Wood, *Working With Church Beneficial*, NEW MEXICO DAILY LOBO, July 2, 2007. It has been criticized as necessarily opening the door to any religious group that wants to endow a chair and whose participation in the selection process assures that no appointee likely to be critical of the donor group's policies or practices will be selected. NEW MEXICO DAILY LOBO, June 18, 2007. The Committee considers the latter persuasive: once donor designation is accepted there could be no principled ground against its extension well beyond religious groups and purposes.

wholeheartedly as concordant with the University's reason for being and with the life of the mind within it. Although the Committee concludes that the specific manner in which that goal is to be achieved is inconsistent with fundamental principles governing the University, the Committee earnestly hopes that these donors will decide to contribute to intellectual diversity and civil debate within the University in ways that are consistent with these principles.

3. If the donors wish to foster academic investigation, instruction, and debate at the University of Illinois, the following should be done:

- a. The MOA and Governing Document should be redrafted to eliminate those elements of the Academy's program that do or reasonably could be understood ideologically to predispose its mission.
- b. The MOA and Governing Document should be redrafted to eliminate any operational role for an extramural body.

4. If the MOA and Governing Document cannot be amended in compliance with the above conclusion 3, the "alternative application of assets" provision should be invoked.

5. It is deeply troublesome that the MOA of July 20, 2006—a document so at odds with governing principles and that trenches so deeply into areas of primary faculty responsibility—was negotiated without any consultation with the faculty. It is equally troublesome that the terms agreed to were held in confidence for so considerable a period of time.

The Committee sees, however, no benefit in undertaking a review of the institutional process that led to the execution of the MOA. Instead, it believes that the University and the Foundation should make a clear announcement of the principles of institutional neutrality and autonomy that bind it in accepting gifts.²⁴ Academic as well as administrative officers, deans, directors, and unit heads should regularly be made aware of these principles. Provision should expressly be made for consultation with the campus Senate which, under the University's governing *Statutes*, has "a legitimate concern which justifies its participation" in any future situation where a donor's desires might raise questions under the principles of neutrality and autonomy.

Thomas Ulen, Chair

Swanlund Chair and Professor of Law, College of Law

Matthew W. Finkin

Albert J. Harno and Edward W. Cleary Chair in Law, College of Law

Robert Fossum,

²⁴ Professor Arthur Robinson (Civil Engineering) has pointed out that before funds can be accepted for athletic purposes, donors would surely be made aware of the applicable rules of intercollegiate athletics that bind the university; and that donors of buildings should equally be made aware of applicable architectural restrictions. As he points out, it is no different in kind to inform donors of the principles discussed in this report.

Professor, Department of Mathematics

Barclay Jones,
Professor, Department of Nuclear, Plasma & Radiological Engineering

William Maher,
University Archivist, Professor of Library Administration

Justin Randall,
Student Body President, Department of Political Science

Joyce Tolliver,
Associate Professor of Spanish, Department of Spanish, Italian, and Portuguese

Kathy Young,
Director, Office of Sponsored Programs and Research Administration

APPENDIX 2

The following is the text of an e-mail that Professor Ulen sent to the Members of the Advisory Committee on February 22, 2008, regarding his deliberations with Professor Emerita Emily Watts and her and his meeting with the donors:

Dear [Members of the Advisory Committee],

Forgive me for not keeping you and the other members of the committee up to date. Here's where things stand. Emily and I met several times to go over various aspects of a redraft of the foundational document for the Academy. (You'll recall that the members of the Academy hired or asked Emily to help them do a redraft that would accommodate the objections we raised in our report.)

About two weeks ago, Emily and I met with the directors of the ACLGF at the U of I Foundation. It was a very cordial and productive meeting. The thrust of it was that the directors wanted to discuss with me what is next and how they should proceed. I told them that the next step is for them to submit a revised document to this committee. I told them that I was certain that this committee had to bless the rewrite in order to recommend to the Chancellor and the Senate that they approve the document. I stressed the facts that this will be scrutinized carefully and so we need to get it right; that this will be a template for future gifts of this sort; and that the Chancellor is not going to put himself in an awkward position with regard to this document.

They understood and appreciated all that. They seemed to me to be people of good will, who had the best interests of the University at stake, and who were willing to take our advice. All good signs.

The next step is that I'm waiting to receive from them the revised document. When I get it, I'll convene the Advisory Committee. I'll also distribute the new document, and we'll go over it with a fine-toothed comb.

Thanks,

TSU

APPENDIX 3

This is the draft agreement transmitted from the Committee to Tom O'Laughlin and the other donors on March 20, 2008. This appendix consists of a cover letter, a draft agreement, a Mission Statement, and a draft on the administrative structure of the Center.

UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

College of Law

228 Law Building, MC-594
504 East Pennsylvania Avenue
Champaign, IL 61820



Thomas S. Ulen

Swanlund Chair and Professor of Law

March 20, 2008

Mr. Tom O'Laughlin
The Board of the Academy on Capitalism and Limited Government Fund

Dear Tom and other members of the Board of the Academy:

Please find attached to this letter copies of our redrafting of the gift instrument and mission statement for the Academy on Capitalism and Limited Government Fund. Let me explain the background to the attachments and then invite your response.

As you well know, last Fall the Chancellor, with the advice and consent of the Senate Executive Committee, appointed an Advisory Committee on the Academy and asked me to chair that committee. Our committee read the relevant documents and issued a report in late October in which we found two aspects of the original gift instrument to be in conflict with the University's statutes: (1) the gift instrument could be read as mandating certain results in the projects that it funded, thereby violating a core principal of the University in favor of open inquiry, and (2) the instrument placed governance of the Academy outside the control of the faculty and administration of the University.

You and your Board very graciously agreed to work with the Advisory Committee to redraft the gift instrument and governance procedures so as to bring them into compliance with those criticisms. To that end, Professor Emerita Emily Watts and I met several times to discuss new governance procedures and revisions to the original document. Professor Watts and I then met with the Board in February to discuss the next

steps. Then in early March you forwarded to me a revised document and the original Memorandum of Understanding. I suggested to you that before presenting anything to our committee, I would rework those writings with my colleague, Professor Matt Finkin. Our goals in doing so were to craft documents that explicitly addressed the concerns of our late October report and that would win the approval of the Advisory Committee, the Senate, and the Chancellor. We believe that the enclosures meet those goals.

Let me assure you that our re-titling of the Academy is not meant to suggest that your gift needs to be re-titled in that way. We simply used language that was ready to hand. It can, of course, be changed to suit your and the Board's desires.

We look forward to your reactions.

All the very best wishes,



AGREEMENT PERTAINING TO THE CENTER FOR THE STUDY OF THE MAR-
KET, CAPITALISM, AND GOVERNMENT

This AGREEMENT is made and entered into on this ____ day of _____, 2008, between the undersigned donors (hereinafter called the "Donors") and the University of Illinois Foundation, a not-for-profit corporation in the State of Illinois (hereinafter called the "Foundation").

A. Acknowledgement and Name of Gift. The Foundation, in acknowledgement of the fact that the Donors intend to make gifts from time to time to the Foundation, whether inter vivos or testamentary, for the purposes described herein, agrees to hold, administer, and distribute the property received as a result of said gifts as provided herein. The gifts shall be designated on the books and records of the Foundation as for "The Center for the Study of the Market, Capitalism, and Government" (hereinafter

called the "Fund"). The Donors or any other person may at any time make additional contributions to the Fund by gift, will, or otherwise.

B. Investment. The Foundation is authorized to continue investment of the Fund in the assets received as contributions to the Fund, or the Foundation may sell or exchange any of said assets and reinvest the proceeds in any manner it may deem fit.

C. Income from Fund. The principal of the Fund shall be held as an endowment and the principal and/or net income therefrom shall be distributed and administered in accordance with the Statement of Mission and Administration of the Center for the Study of the Market, Capitalism, and Government (hereinafter the "Mission Statement") appended hereto and made part of this instrument.

1. The Donors signatory to this instrument shall constitute a Donor Group. The Donor Group has discretion to add to its number, provide for the duration of terms of service, and provide for the filling of vacancies.

2. In administering the Fund, the Foundation may pay over to the University of Illinois all or part of the net income or principal upon the certification by the University of Illinois that said net income or principal will be applied by it in accordance with the purposes and restrictions designated herein. It is understood that the Donors intend for the Fund to operate as an endowment whereby principal remains invested in perpetuity, but the ability to invade principal is provided to the Foundation in order to ensure flexibility in the funding of programs and activities which serve the purposes for which the Fund was established.

3. The net income of the Fund shall be determined by the Foundation in accordance with established Foundation policies and procedures, after payment of reasonable fees and expenses, including development fees and expenses incurred by the Foundation in the administration of the Fund. These Foundation policies and procedures may be amended from time to time and are incorporated herein by reference.

D. Alternate Application of Income. In the event the University of Illinois determines at some future time that it is no longer practical for the Fund to be used as specified herein, then the Foundation may devote the net income or principal from the Fund to improve the quality of education and research at the University of Illinois in such manner as the Donor Group, the Foundation, and the University of Illinois may agree. Any such alternate application of income or principal shall be as close as possible to the original purpose for which the Fund was established. In any such alternate application of income, the funding source shall be clearly identified as "The Center for the Study of the Market, Capitalism, and Government Fund." In the event there is no unanimous agreement among the aforesaid parties as to an alternative application, the Foundation shall direct the Fund assets, as to both income and principal, less commitments made but not expended, to any charitable organization (qualifying under 501(c)(3) for which contributions are deductible under 170(b)(1)(a) of the IRS Code) that the Donor Group designates.

E. Representatives and Successors Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year hereinabove written.

THE CENTER FOR THE STUDY OF THE MARKET, CAPITALISM, AND GOVERNMENT: STATEMENT OF MISSION AND ADMINISTRATION

Mission

The Center will provide funds for the study of the interrelationship of capitalism, markets, taxation, government spending and regulatory policies as they affect economic growth, income distribution, and the quality of life, including personal economic well-being, social responsibility, and individual liberty. Illustrative of the kinds of issues or sets of issues the Center will address are the following:

1. The historical and moral as well as economic underpinnings of capitalism;
2. The societal impact of new technologies and the mechanisms that promote economic and social well-being in the aftermath of technological change;
3. The relationships of the extent and nature of government regulation to new business development, economic growth, and individual well-being;
4. Whether and the degree to which economic growth is a function of tax policy;
5. Whether and to what extent capitalism can provide an economically sound, social and morally acceptable solution for the problems of poverty, environmental pollution, education and healthcare distribution, and others of society's most pressing problems.

Activities

The following are set out as illustrative of the kinds of undertakings the Center will support:

1. Research: by providing financial support, including compensation and expenses of investigators and graduate students and the publication of the results.
2. Curricular development and teaching: by providing support for course development and instruction including the use of new instructional materials and technologies, compensation for visiting professors, and the like; the appointment of faculty and the authorization for courses of instruction being subject to the University's rules governing curricular approval and faculty appointment by the relevant school or department of instruction.
3. Chairs and Professorships: in designated fields of study subject to unit and University procedures for the award of endowed appointments.
4. Scholarships and fellowship: for the support of students admitted through the University's regular admission procedures for their programs or dissertation topics.
5. Lectures and Conferences: including support for the publication of proceedings and individual lectures.

Administration

The Center will be governed by a Governing Board composed of no fewer than ten members of the full-time faculty of the University of Illinois at Urbana-Champaign appointed by the Chancellor for such terms as the Chancellor designates. The Chancellor will exercise his or her best efforts to assure that membership on the Board will be broadly representative of the sciences, the social sciences, and the humanities, particularly including, but not limited to, faculty members from the following Schools or Departments: Business, Economics, Education, Engineering, History, Labor and Industrial Relations, Law, Political Science, and Social Work. The Governing Board will have the sole authority to authorize the expenditure of Center funds.

The Chancellor will designate a Director for the Center on such terms as the Chancellor decides will best accomplish the Center's mission. Compensation for the Director on a full-time, part-time, or released time basis and the expenses of the administration of the Center will be paid out of the Fund.

The Director will:

1. Publicize the work the Center including the solicitation of requests for the support of research, teaching, and other of the Center's undertakings;
2. Provide staff assistance to the Governing Board, including the processing of requests for funds for research, teaching, fellowship, lectureships, conferences, and the like;
3. Coordinate the Center's outreach program, including facilitating the invitation of lecturers, the holding of conferences, and the like.

The Director of the Center will publish an Annual Report of the Center's activities. The Director will report more frequently to the Chancellor, to the Donor Group, and to the responsible committee of the Faculty Senate as they may request.

APPENDIX 4

The following is the partial text of an e-mail sent on June 19 from Professor Brown to Professor Ulen. Professor Brown was reporting these bullet points as being acceptable, in principle, to the donors:

- 1.) The legal agreement remains unchanged.
2. The addendum language presented in the letter to the Chancellor is appended to the Academy's mission statement.
- 3.) At the start of the year the Academy Board allocates a sum of money from the Academy Fund for general expenditure.
- 4.) A faculty committee is appointed by the chancellor to approve specific expenditures from this general allocation.
- 5.) The Faculty Committee and the Academy Board maintain a steady communication, the Board presenting its suggestions to the committee, the committee reporting regularly to the board on its actions.
- 6.) The Academy Board retains the authority to terminate its agreement with the university, withdrawing all unexpended funds.

APPENDIX 5

This is the Addendum to the original Memorandum of Understanding that was submitted to the Advisory Committee on July 21, 2008.

ADDENDUM TO THE AGREEMENT PERTAINING TO THE ACADEMY ON CAPITALISM AND LIMITED GOVERNMENT

WHEREAS, the undersigned donors (hereinafter called the "Donors") and the University of Illinois Foundation (hereinafter called the "Foundation") entered into the Agreement Pertaining To The Academy On Capitalism And Limited Government (hereinafter called the "Agreement") on July 20, 2006, a copy of which is attached hereto and labeled "Exhibit A,"

WHEREAS, the Donors and the Foundation, in consultation with the appropriate officials at the University of Illinois at Urbana-Champaign (hereinafter called the "University"), wish to supplement and clarify operational issues pertaining to the Agreement;

NOW THEREFORE, the following items are hereby agreed to as additions to the Agreement:

A. The Donors understand that the beliefs and perspectives set forth in the mission statement attached to the Agreement become, when translated into a scholarly setting, hypotheses to be tested, rejected or qualified on the basis of rigorous, objective, and open-minded inquiry. The Donors intend to fund research and teaching undertaken in

this rigorous, unimpeachable spirit and without intention to encourage preordained outcomes. The Donors are committed to ensuring that support is available to all University of Illinois at Urbana-Champaign faculty who wish to explore the nature and consequences of the political, economic and philosophical perspectives described in the afore-said mission statement in these exacting ways.

B. In order to ensure the effective application of grants received through the Academy on Capitalism and Limited Government Fund (hereinafter called the "Fund") it is agreed that the Chancellor of the University of Illinois at Urbana-Champaign shall appoint a faculty committee (hereinafter called the "Committee"), comprised of three to five appointees, for the purpose of reviewing and deciding upon funding proposals. The Advisory Board of the Academy on Capitalism and Limited Government Fund (hereinafter called the "Board") shall periodically create and issue Requests For Proposals (RFPs), or may receive unsolicited requests for funding. The resulting proposals may then be submitted by the Board to the Committee, along with the Board's determination of the total funds available for grant expenditures during the period in question. The Committee shall then decide on those projects and programs to be funded and with the Board determine the level of funding, keeping in mind donor intent in accordance with Foundation policies and procedures. This process shall occur quarterly and as needed. The Committee and the Board shall also meet quarterly to build mutual respect and to the review status of activities. The Board may determine that staffing of its work is necessary espe-

cially for administration and fundraising. Any such staff member may serve the Board and the Committee in an ex officio capacity.

C. In all other respects, the provisions of the Agreement Pertaining To The Academy On Capitalism And Limited Government shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Addendum to be entered into this _____ day of _____, 2008.

UNIVERSITY OF ILLINOIS FOUNDATION

By: _____

Stephen H. Balch, Donor

Its: President

Thomas W. O'Laughlin, Jr., Donor

ATTEST

George T. Shapland, Donor

Secretary

Jon Solomon, Donor

SEAL

James E. Vermette, Donor

Roger L. Yarbrough, Donor

APPROVED AS TO CONTENT

WTS/tlh

Chancellor, University of Illinois at
Urbana-Champaign