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*Counsel for Defendant North Idaho College*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

DOMINIC SWAYNE, an individual,

Plaintiff,

v.

NORTH IDAHO COLLEGE, a community  
college in the State of Idaho,

Defendant.

Case No.: CV28-22-7712

*Hon. Cynthia K.C. Meyer*

**DECLARATION OF LAURA  
RUMPLER IN SUPPORT OF  
DEFENDANT’S MOTION FOR  
RECONSIDERATION**

I, LAURA RUMPLER, declare as follows:

1. I am the Chief Communications and Government Relations Officer for North Idaho College (“NIC”). I have personal knowledge of the information contained in the declaration and if called as a witness in this matter, I could and would testify thereto under oath.

2. My job description’s summary states that I am “responsible for providing stewardship of the college’s community relations, local-state-federal governmental relations, media relations, marketing, and external and internal communications. I serve as a strategic advisor to the president and other campus leaders with respect to communications and public relations issues.” I have sat on President’s Cabinet for 6 years. My position reports directly to the

DECLARATION OF LAURA RUMPLER

president. I serve on the Strategic Enrollment Management (SEM) Steering Committee. Over the past 6 years I have served our college's Cultivate NIC, Integrated Planning 2020 and other strategic planning efforts.

3. I was asked to review the transcript of Dr. Swayne's testimony from the hearing on February 24, 2023. However, I have been extremely concerned about becoming involved in this litigation for fear of losing my job. Since Dr. Swayne was reinstated, during a Cabinet meeting on Wednesday March 15, he instructed the President's Cabinet not to respond to direct questions from NIC's defense counsel and to "go through Sarah [Garcia] to go to Kelly Drew" for all legal issues related to NIC. Dr. Swayne also stated to the Cabinet the following:

*I am not going to put this in writing but I want you to listen very carefully. You are not to communicate directly with Greg McKenzie or Art Macomber. I don't care what they say.*

I took this as an instruction that I could not communicate with NIC's general counsel or the Board on any legal matter. Dr. Swayne also told me during the President's Cabinet meeting, regarding people questioning his knowledge of accreditation, to "stop digging," "tread lightly" because it "pisses him off when people question [him]." He also indicated we should not create documents related to the litigation, because "creating documents that are discoverable is stupid if you are in the middle of litigation." This puts me in an impossible position because Dr. Swayne is my direct supervisor, but I also have a duty to protect the best interests of NIC as an institution and tell the truth in regards to underlying facts in this lawsuit.

4. I have reviewed Dr. Swayne's testimony from the hearing on his Motion for Preliminary Injunction. Upon my review of Dr. Swayne's testimony, I found what I perceived to be inaccuracies therein.

5. Below is a summary of the inaccuracies in Dr. Swayne's testimony with my annotations of true and accurate testimony.

DECLARATION OF LAURA RUMPLER

6. Dr. Swayne testified to the following in regards to the strategic plan:

*“Strategic planning and planning to address shortcomings and improve what was going on at the college. Those are all the things that we’re engaged with building community relations.”*

*Q: “And were you working on a strategic plan prior to being placed on leave?”*

*A: “Correct.”*

Hearing Transcript, p. 49: 4-10 (emphasis added)

7. I have sat on President’s Cabinet for 6 years. I serve on the Strategic Enrollment Management (SEM) Steering Committee and have served our college’s Cultivate NIC, Integrated Planning 2020 and other strategic planning efforts. There were no strategic planning meetings that Dr. Swayne held from August 1, 2022 – until his administrative leave where he pulled his leadership team together. Dr. Swayne has not asked for my input on strategic planning. I have not seen a framework nor a draft of a strategic plan from Dr. Swayne.

8. Dr. Swayne testified to the following in regards to community-building:

*“I met with all of the regional superintendents or representatives, principals of high schools and guidance counsellors. I think I met with every guidance counsellor in the northern counties.”*

Hearing Transcript, p. 68: 17-20.

9. In my role as a strategic advisor to the president and the point person on community relations, to my knowledge, Dr. Swayne attended a scheduled meeting of the region 1 high school athletics directors and principals last fall. He gave brief welcoming remarks at a region 1 counselors meeting at the DeArmond Building in September. I was not asked by Dr. Swayne to set up meetings with any high school counselors or to set up public high school site visits for any of the twelve public high schools in Kootenai County, the three high schools in Bonner County, the one high school in Boundary County and the three high schools in Shoshone County.

DECLARATION OF LAURA RUMPLER

10. In regards to the presidential evaluation form, Dr. Swayne testified to the following:

*“I negotiated that, built that form with the help of an organization called ACCT, they do that sort of thing, so we worked together to make a very professional presidential evaluation.”*

Hearing Transcript p.19:21-24.

11. One of the responsibilities of my office is to publicly notice the Board of Trustees agendas and meeting packet materials. On October 20<sup>th</sup> I received the October 24<sup>th</sup> Board of Trustees meeting packet materials. I reviewed it prior to public release. I saw a ***Not for Distribution***. ©***Association of Community College Trustees*** mark on the top of each page of the ***President’s evaluation survey tool***. Accordingly, I believe the draft form was duplicated from the ***Association of Community College Trustees***, a true and correct copy of which is attached hereto as **Exhibit A** for comparison with Plaintiff’s Exhibit 2 during Plaintiff’s Hearing for a Preliminary Injunction. I emailed the President’s office, asking if prior to NIC posting publicly, if the **ACCT** give permission for NIC to use the copyrighted tool. I received an email response from the President’s Senior Executive Assistant stating that the president interpreted the copyright mark to mean the document was not to be utilized without authorization.

12. Regarding dual credit agreements, Dr. Swayne testified to the following:

*“Are you aware of, since you have been placed on administrative leave, whether NIC has lost any of the dual credit agreements with any institutions?”*

***Dr. Swayne statement: “I have been made aware, yes.”***

Hearing Transcript, p. 70:24-71:2.

13. In my role, I manage the media relations and community relations for the college. On January 9 the college received a letter from the STEM Charter Academy that they had accreditation concerns and were scaling back in-person dual credit offerings but were remaining

partners with NIC. Subsequent to the college receiving the letter I managed media inquiries. **An article in the Coeur d'Alene Press was published on January 10 with the Executive Director of the STEM Academy stating the school was not severing its relationship with NIC. Accordingly, to my knowledge, NIC has not "lost" any of the dual credit agreements.**

14. Regarding declining enrollment, Dr. Swayne testified to the following:

*"So increased expenses on any number of fronts and as was reported at the last board meeting – the last board of trustees meeting on the 22nd of February, apparently declining enrollments as well."*

Hearing Transcript, p. 84:24-85:2.

15. **Enrollment at NIC has declined for the past 10 years.** As a senior leader for the college, it is my role to attend Board of Trustee meetings. I attended the February 22, 2023, board meeting where it was stated that some areas of our enrollment declines are starting to turn around. Specifically shared at the February 22 board meeting, for example, NIC's spring 2023 dual credit enrollment compared to last year's spring 2022 enrollment increased by 4.9%.

16. Regarding relationship-building, Dr. Swayne testified to the following:

*"So now I've got to go back and build relationships with the legislators that are going to be -- instead of concentrated in Boise during education week, **I've got to go find them and make time to meet with them and build relationships** that may or may not conflict with what the interim president may have told them while he was meeting with them. So there's -- it is not just building relationships, it is maybe corrective action for relationships that may not represent the goals and objectives and priorities of the institution."*

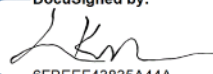
Hearing Transcript, p. 90:24- 91:5.

17. I manage government relations and legislative affairs for the college. To my knowledge, Dr. Swayne has not built relationships with any of the region's legislators. From August 1, 2022 – until his administrative leave, Dr. Swayne did not ask me to schedule any meetings with legislators. I introduced him to several legislators when he attended the December

DECLARATION OF LAURA RUMPLER



I declare under penalty of perjury that the foregoing is true and correct, and that I executed this document on this 17th day of March 2023, in Coeur d'Alene, Idaho.

DocuSigned by:  
  
6F85EF42825A44A  
LAURA RUMPLER

# EXHIBIT A





**DRAFT North Idaho College Presidential Evaluation  
Survey NOT FOR DISTRIBUTION 10072022**

Please rate the President using the following scale:

1 = does not meet expectations; 2 = meets some expectations; 3 = meets expectations;  
4 = exceeds expectations; 5 = significantly exceeds expectations; DK = Don't Know

Please provide comments on the performance of the President in specific functions of the job,  
and for any rating below 3.

**LEADERSHIP**

	1	2	3	4	5	Don't Know
1. Possesses a vision, assists the board in establishing institutional goals, and provides leadership for others to progress toward vision and goals.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Communicates effectively and appropriately with public media to present a positive image of the college as a first-choice option for the students and community it serves.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Promotes inclusiveness in the College community and provides for involvement of faculty, students and staff in decision-making which affects them and exhibits respect for all groups in the process.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Promotes the College through effective interactions with stakeholders at the college (e.g., college senate, the foundation); and actively takes part in campus and community activities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Provides a long-term and strategic vision through the development of a master plan for enrollment, retention, and completion.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Maintains and supports the value of excellence and quality within the institution and maintains high standards for ethics, honesty and integrity in all personal and professional matters.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and any rating below 3.

**Finance and Accountability**

	1	2	3	4	5	Don't Know
7. Provides sound fiscal management, including addressing budgetary matters in a way that achieves more efficient and effective use of resources without compromising student success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. Allocates resources and prioritizes the budget to meet the College mission, goals, and strategic plans.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Audits reflect appropriate management of financial resources.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Ensures accountability measures are in place to maintain quality and appropriate resource allocation to promote student success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. Maintains consistent funding and seeks to maintain current funding levels.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. Effectively interacts with the Board to maintain and develop funding policy, (i.e, the budget) to meet strategic goals.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and any rating below 3.

### Academic and Student Affairs

	1	2	3	4	5	Don't Know
13. Ensures the overall quality and continuous improvement of instruction to meet student needs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. Ensures credit and non-credit programs meet community needs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. Provides effective leadership in establishing and maintaining accessible, comprehensive student services that promote student success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. Promotes access to higher education for underserved and minority populations and programs that ensure their success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and any rating below 3.

### Student Success

	1	2	3	4	5	Don't Know
17. Lead a student-centered culture focused on achieving educational excellence that will translate into viable employment and diverse learning goals.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. Builds community partners contributing to student success and career readiness through effective interactions at the community, state and county levels.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. Ensures collaboration between academic/instructional affairs and student services on efforts to improve student success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. Recommends budgets based on evidence of program effectiveness and linked to plans to increase rates of student success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and for any rating below 3.

**Capital Development/Facilities**

	1	2	3	4	5	Don't Know
21. Ensures maintenance of all capital assets of the College.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
22. Provides effective stewardship of institutional resources including financial, physical, and professional.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
23. Ensures technology is continuously upgraded and used as a tool to promote greater student access, learning options, service, efficiencies and productivity.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
24. Provides effective leadership for implementing technological support of teaching, learning, and the operations of the college to accomplish the strategic goals and priorities of the college.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comment



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Please provide comments on the performance of the President in specific functions of the job and for any rating below 3.

**Human Resources**

	1	2	3	4	5	Don't Know
25. Ensures College compliance with employment and non-discrimination laws and regulations.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
26. Provides leadership and resources for the professional development of staff and maintains own currency about developments in education and particularly community colleges.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
27. Promotes a positive work environment for employees and seeks ways to continuously improve and creates an atmosphere which contributes to positive morale.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
28. Ensures the College recruits and retains a diverse, qualified and talented workforce.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
29. Develops and executes sound personnel policies and procedures.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and for any rating below 3.

**Relations with the Board of Trustees**

	1	2	3	4	5	Don't Know
30. Offers professional advice to the board based on thorough study, data analysis and sound educational principles on items requiring board action.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
31. Provides effective and timely communication to the board to inform and resolve issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
32. Provides timely and appropriate reports to the Board on all aspects of College operations.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
33. Provides data and information to the Board so that the Board can make informed decisions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
34. Effectively and respectfully interacts with the members of the Board.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments





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Please provide comments on the performance of the President in specific functions of the job  
and for any rating below 3.

**Advocacy & Communication**

	1	2	3	4	5	Don't Know
35. Effectively promotes the College and advocates for its needs to appropriate federal and state level legislators.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
36. Addresses accrediting agency recommendations to bring the college into compliance with standards.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
37. Ensures college excellence with national and regional accrediting agencies.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
38. Effectively represents the College in the community and at state and national events.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
39. Works effectively with external constituents to strengthen and expand partnerships with community organizations, K-12 schools, state and local government, and other institutions of higher education, governmental agencies, foundations, and corporate entities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
39. Works effectively to build collaborative alliances with business and industry to successfully meet the emerging and immediate educational needs through innovative approaches.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
40. Projects a positive profile and reputation of the College.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
41. Active engagement in strategic fundraising activities and grant-seeking opportunities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



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Please provide comments on the performance of the President in specific functions of the job and for any rating below 3.

**Personal Qualities**

	1	2	3	4	5	Don't Know
42. Demonstrates a collaborative work style with internal and external constituents (e.g., faculty, staff, board of trustees, other community stakeholders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
43. Possess sound judgment and is an effective problem-solver.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
44. Demonstrates consistent behavior that reflects integrity, high ethical values, authenticity, and a sense of optimism, and one who inspires conviction and enthusiasm in others.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
45. Demonstrates commitment to diversity, equity, racial equality and social justice.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
46. Is visible, approachable, and accessible to the college and the community.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
47. Is an engaged leader and effective listener.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
48. Is a diplomatic communicator who is firm on principle and engages with all constituency groups.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments



**DRAFT North Idaho College Presidential Evaluation  
Survey NOT FOR DISTRIBUTION 10072022**

Please note areas that the president has demonstrated positive outcomes.

Please note areas that the president could improve on.

What areas should the president place special emphasis on in the next year?



**DRAFT North Idaho College Presidential Evaluation  
Survey NOT FOR DISTRIBUTION 10072022**

Please select DONE to record your responses. ACCT thanks you for taking the time to complete and return your candid responses for this evaluation. All responses will remain anonymous and the confidential final report is for board use only.

# EXHIBIT A

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

---oOo---

DOMINIC SWAYNE, )  
)  
Plaintiff, )  
) Case No. CV28-22-7712  
vs. )  
)  
)  
NORTH IDAHO COLLEGE )  
)  
Respondent. )  
-----)

MOTION FOR PRELIMINARY INJUNCTION

AT: Kootenai County Courthouse  
Coeur d'Alene, Idaho  
ON: February 24, 2023  
  
BEFORE: The Honorable Judge Cynthia K.C. Meyer

APPEARANCES:

For Dominic Swayne:  
SMITH & MALEK  
601 E Front Ave Suite 304  
Prosecuting Attorney  
Coeur d'Alene, ID 83814  
BY: TARA MALEK  
KATIE DANIEL  
  
For North Idaho College:  
ANDERSON JULIAN & HULL LLP  
250 S 5th Street #700  
Boise, ID 83702  
BY: BRET WALTHER (Appearing by Zoom)  
  
GORDON REES SCULLY MANSUKHANI LLP  
601 W 1st Ave Suite 1400  
Spokane, WA 99201  
BY: KELLY DREW

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**I N D E X**

PROCEEDINGS:  
MOTION FOR PRELIMINARY INJUNCTION

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**I N D E X**

PROCEEDINGS:  
MOTION FOR PRELIMINARY INJUNCTION

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1 **FRIDAY, FEBRUARY 24, 2023**

2 **P R O C E E D I N G S**

3 --oOo--

4 THE COURT: Good morning, I'm Judge Meyer.

5 And we're here for a preliminary injunction  
6 hearing in the case of Dominic Swayne versus North Idaho  
7 College, Case Number CV28-22-7712.

8 We have Mr. Walther appearing by Zoom as we  
9 discussed.

10 Will counsel please come forward.

11 I'll go ahead and have counsel in the  
12 courtroom make appearances if you would please.

13 Ms. Malek, why don't we start with you.

14 MS. MALEK: Tara Malek for Dominic Swayne,  
15 Your Honor.

16 MS. DANIEL: Katie Daniel for Dominic Swayne,  
17 Your Honor.

18 MS. DREW: Kelly Drew for North Idaho  
19 College.

20 THE COURT: Are there any preliminary matters  
21 before we begin the preliminary injunction hearing?

22 Ms. Malek.

23 MS. MALEK: Your Honor, I do have a copy of  
24 -- for the court of the exhibits that we are intending  
25 to introduce today.

1           And if the court is inclined to accept it  
2 right now, I can hand you the court's copy.

3           THE COURT: Certainly. I can certainly take  
4 the court's copy.

5           Thank you.

6           Anything further?

7           MS. MALEK: No, Your Honor. Thank you.

8           THE COURT: Mr. Walther, anything further  
9 from you before we get going?

10          MR. WALTHER: Yes, Your Honor, just one quick  
11 point while I'm thinking of it.

12          Following the discipline in this matter and  
13 of course with or without the granting of the motion for  
14 preliminary injunction, the college would ask the court  
15 to order mediation in this case to see if the parties  
16 can find an informal resolution of the underlying issues  
17 without proceeding all the way to trial.

18          THE COURT: Okay. That's certainly something  
19 that can be discussed.

20          I did send out scheduling forms after last  
21 week's hearing and that's one of the boxes that can be  
22 checked, so to speak, and if either side asks for  
23 mediation in civil cases, I typically grant that.

24          MR. WALTHER: Thank you, Your Honor.

25          THE COURT: Thank you.

1           And, you know, while I have everyone here and  
2 before we get going, we do have Mr. Walther who is still  
3 on for NIC. We have Ms. Drew who just a day or so ago  
4 made her notice of appearance.

5           Who is appearing on behalf of NIC today or  
6 both of you?

7           MS. DREW: Your Honor, both of us are  
8 appearing today, but Mr. Walther will be arguing the  
9 motion for preliminary injunction.

10          THE COURT: Okay. And with respect to  
11 evidence, would he also be engaging in objections and  
12 cross-examinations?

13          MS. DREW: Yes, Your Honor.

14          THE COURT: Okay. So you're just appearing  
15 today?

16          MS. DREW: Yes, Your Honor.

17          THE COURT: Thank you, Ms. Drew.

18          Any preliminary opening statements?

19          MS. MALEK: No, Your Honor.

20          THE COURT: All right. And, Mr. Walther?

21          MR. WALTHER: No, Your Honor.

22          THE COURT: Thank you.

23          Ms. Malek, you may call your first witness if  
24 you are calling witnesses.

25          MS. MALEK: Thank you, Your Honor.

1           Your Honor, we'd call Dominic Swayne to the  
2 stand.

3           THE COURT: Dr. Swayne, if you'd come forward  
4 and be sworn please.

5           When you get to this open area, if you would  
6 face madam clerk and raise your right hand please.

7                                           **DOMINIC SWAYNE, PhD**

8 called as a witness, was sworn and testified as follows:

9           THE CLERK: Do you solemnly swear that the  
10 testimony you are about to give before this court is the  
11 truth, the whole truth and nothing but the truth, so  
12 help you God?

13           THE WITNESS: I do.

14           THE COURT: Go ahead and take a seat at the  
15 witness stand here.

16           Make sure you speak into the microphone.

17           THE WITNESS: Yes, ma'am.

18           THE COURT: And it is bendy and movable and  
19 also there's some water there, which you can see.

20           When he's ready, Ms. Malek, you may proceed.

21           MS. MALEK: Thank you Your Honor.

22                                           **DIRECT EXAMINATION**

23 BY MS. MALEK:

24           Q       All right. Could you please state your name  
25 and spell your last name for the record?

1           A           Dominic David Swayne. My last name is  
2 S-W-A-Y-N-E.

3           Q           All right. And are you employed?

4           A           Yes, I am.

5           Q           Where is it that you're employed?

6           A           North Idaho College.

7           Q           How long have you been employed at North  
8 Idaho College?

9           A           My contract start date was the 1st of  
10 August 2022.

11          Q           Can you tell me a little bit about your  
12 educational background? Where did you go to college?

13          A           Sure. I graduated from -- with a bachelor's  
14 from the University of Idaho in 1983.

15                   MR. WALTHER: Your Honor, if I may object  
16 here.

17                   THE COURT: Mr. Walther.

18                   MR. WALTHER: The underlying matter involves  
19 the interpretation of a contract and the words of the  
20 contract.

21                   Getting into testimony with regard to  
22 Dr. Swayne's qualifications is irrelevant to any of the  
23 matters before the court either pursuant to the  
24 complaint or especially with regard to the preliminary  
25 injunction.

1 THE COURT: Thank you.

2 Response, Ms. Malek.

3 MS. MALEK: Your Honor, I believe that this  
4 is foundational and it is relevant to the issue of  
5 whether or not there's irreparable harm. Later on in  
6 the testimony we're going to be asking about  
7 Dr. Swayne's observations and opinions as to what's  
8 going on at North Idaho College. So I do believe his  
9 background and education would help inform the court.

10 THE COURT: I'm going to go ahead and  
11 overrule the objection at this point.

12 You may proceed.

13 MS. MALEK: Thank you, Your Honor.

14 BY MS. MALEK:

15 Q Dr. Swayne, you were telling us where you  
16 went to college.

17 A Right.

18 Bachelor's at University of Idaho, 1983. I  
19 have a master's in public administration from  
20 Northeast University in Boston in 1994. And a PhD in  
21 postsecondary strategic leadership -- I'll say that  
22 again -- postsecondary strategic leadership, 2020, from  
23 James Madison University.

24 Q Can you tell for those of us who don't have a  
25 degree in postsecondary strategic leadership what

1 exactly that means?

2 A It is essentially a doctorate in how to run a  
3 college or university.

4 Q Okay. And as part of that program for  
5 postsecondary strategic leadership, what types of topics  
6 were covered or do you learn about?

7 A Budget management, human resource management,  
8 change management. All of the elements you would expect  
9 to run essentially a small city, which of course is a  
10 university or college.

11 Q Prior to working at North Idaho College,  
12 where did you work?

13 A I was in the U.S. Army.

14 Q For how long?

15 A I'm sorry, I was at James Madison University.  
16 I went back too far.

17 Q All right.

18 A I was at James Madison University.

19 Q And what did you do at James Madison  
20 University?

21 A I held a number of jobs. My last was the  
22 executive director of 4-Virginia. That's the number 4  
23 Virginia.

24 Q What is that?

25 A It is a statewide organization that pulls



1 together the eight large state institutions to try to  
2 innovate higher education across the state.

3 Q In that role what were your duties?

4 A Coordinating with the eight university  
5 presidents and the eight executive directors or campus  
6 directors from the other campuses.

7 Q All right. And as part of that work, were  
8 you focussed on relationship building?

9 A Absolutely. We had no authority over those  
10 other campuses, so getting them to do things and  
11 cooperate and collaborate was all about relationships.

12 Q All right. And I think you mentioned that  
13 you were also in the Army --

14 A Correct.

15 Q -- at some point in time?

16 How long were you in the Army?

17 A Twenty-six years.

18 Q What were your roles in the Army?

19 A The last role, I ran the ROTC program at  
20 James Madison University for a period of six years. So  
21 I was dual slotted both as Army and academic.

22 Before that I was the -- it is a military  
23 term that nobody's going to understand what it was --  
24 but I was the deputy fire support coordinator for the  
25 4th infantry division as an artillery officer. I was a

1 brigade XO there as well and an operations officer.

2 Those are my three big last jobs, yeah.

3 Q And while you were in the Army, were you ever  
4 in charge of any sort of budget?

5 A Sure. As a brigade XO, I managed -- from  
6 memory -- around \$200 million budget from our brigade  
7 headquarters and the four subordinate battalions that  
8 were assigned to us.

9 Q All right. And in the Army, were you also in  
10 charge of personnel?

11 A Sure. And also as a brigade XO, I was the  
12 personnel manager for the brigade. So I had about 27  
13 direct reports and I was also responsible for the  
14 planning replacement of those people as they rotated  
15 through.

16 Q Okay. While you were at James Madison  
17 University, did you also have the opportunity to oversee  
18 personnel?

19 A Sure. I had a direct team of between five  
20 and eight people that worked for me and then the  
21 coordinators at the other campuses as well.

22 Q Okay. Any other positions in the Army which  
23 you were overseeing other individuals?

24 A Oh, my whole career. I was a lieutenant --  
25 started out as lieutenant, so I started out -- my first

1 job was supervising people. And throughout my career  
2 the number of people, direct and indirect that I  
3 supervised, was -- grew at every assignment.

4 Q And how large of a group did you ultimately  
5 oversee while you were in the Army?

6 A Well, as the brigade XO, each battalion had  
7 600 people, there were four of them, and about --  
8 probably 100 people at the brigade, so 2,500 people.

9 Q All right. Do you have an employment  
10 contract with NIC?

11 A I do.

12 Q Okay. And I'm going to show you what's been  
13 marked for identification purposes only as Plaintiff's  
14 Exhibit Number 1.

15 Your Honor, may I approach?

16 THE COURT: You may.

17 MS. MALEK: Thank you.

18 BY MS. MALEK:

19 Q Will you take a look at what's been marked as  
20 Plaintiff's Exhibit Number 1, just for identification  
21 purposes, and let me know whether you recognize it.

22 A Yes, this is -- I recognize it.

23 Q And what is it exactly?

24 A This is my employment contract.

25 Q Okay. And is your signature on that

1 contract?

2 A It is.

3 Q And is that a contract that you received from  
4 North Idaho College?

5 A It is.

6 Q Do you remember who you received it from?

7 A Um, I believe it was Mark Lyons.

8 Q All right. And who is Mark Lyons?

9 A He was the attorney for the board at the  
10 time, the attorney for the college at the time.

11 Q Okay. And is that a true and accurate copy  
12 of your contract with North Idaho College?

13 A It is.

14 MS. MALEK: Okay. Your Honor, I'd move to  
15 admit Plaintiff's Exhibit Number 1 into evidence.

16 THE COURT: Thank you.

17 Mr. Walther, any objection?

18 MR. WALTHER: No objection.

19 THE COURT: Exhibit 1 will be admitted.

20 MS. MALEK: Thank you, Your Honor.

21 BY MS. MALEK:

22 Q Dr. Swayne, does that agreement provide the  
23 terms of your employment with NIC?

24 A It does.

25 Q Okay. Is there a purpose portion or section

1 in your agreement?

2 A Yes, there is.

3 Q And where is that?

4 A It is Section 1.

5 Q Okay. And are your -- can you read out  
6 Section 1, that purpose?

7 A Sure.

8 This document reflects the Agreement between  
9 the President and the Board of Trustees of North Idaho  
10 College, in parentheses "the Board", as to the terms of  
11 the President's employment at North Idaho College, and  
12 then in parentheses "the Agreement".

13 Q All right. And are your responsibilities  
14 listed in this agreement?

15 A They are.

16 Q Okay. And Section 1 mentions terms of  
17 employment, are those also listed in the agreement?

18 A The terms are listed under Section 3, yes.

19 Q All right. Under -- can you read the heading  
20 for Section 2 in the agreement?

21 A Responsibilities.

22 Q Okay. Can you read the -- just a second  
23 here.

24 Can you read the first two sentences under  
25 that section?

1           A           Sure.

2                       Under Section 2, Responsibilities:

3                       The President is appointed by the Board as  
4 the Chief Executive Officer of NIC. Reports directly to  
5 the Board. The President is authorized and responsible  
6 for the administration of NIC and has the authority over  
7 all matters affecting NIC at the operational level in  
8 accordance with applicable laws as well as the policies,  
9 rules, and regulations approved and/or sanctioned by the  
10 Board.

11           Q           All right. Is there a term for your contract  
12 with NIC?

13           A           There is.

14           Q           And where is that?

15           A           Under Section 3.

16           Q           Okay. And what is the term of your contract  
17 with NIC?

18           A           The term under the contract started on  
19 August 1st, 2022 and continues until June 3, 2025,  
20 unless terminated consistent with Section 12.

21           Q           Okay. Are you to be compensated for your  
22 employment as well?

23           A           Yes, I am.

24           Q           And how much is that?

25           A           The compensation is covered under Section 5

1 with an annual base salary of 230,000, and there are  
2 other forms of compensation identified.

3 Q Okay. Are you subject to any sort of  
4 performance review under this contract?

5 A Yes, I am.

6 Q Okay. And is that listed in the agreement?

7 A It is.

8 Q Where is that?

9 A Under Section 11.

10 Q Okay. And how often are you to receive a  
11 performance review?

12 A Under Section 11 it identifies an annual  
13 performance, or more frequently if determined by the  
14 Board.

15 Q Okay. Who performs your annual review?

16 A The board individually as a whole.

17 Q I want to turn to termination.

18 Is there a termination clause in your  
19 contract?

20 A There is.

21 Q Okay. And does that section address the ways  
22 in which you may be terminated?

23 A It does.

24 Q Okay. And can you read Section 12.1?

25 A Sure. Section 12 is termination.

1           And 12.1: This agreement may be terminated  
2 by mutual agreement of the parties by the President  
3 without cause or by the Board for cause. Notice of  
4 termination must be in writing and delivered to the  
5 non-terminating party.

6           Q       Does the agreement address any sort of  
7 administrative leave?

8           A       It does.

9           Q       And where is that?

10          A       Under Section 12.2.

11          Q       Okay. And can you read the provision that  
12 deals with administrative leave?

13          A       Um, it is the second sentence.

14                   The obligation of both parties under this  
15 agreement cease when the terminate -- sorry -- the Board  
16 may in its discretion place a President on  
17 administrative leave during part or all of the 60-day  
18 notice period.

19          Q       And what is the 60-day notice period?

20          A       If I take another job or choose to depart,  
21 then I have to give 60 days notice.

22          Q       Okay. And it is during that 60-day notice  
23 period that you may be placed on administrative leave?

24          A       That is as specified in 12.2.

25          Q       Is administrative leave addressed anywhere



1 else in this agreement?

2 A It is not.

3 Q Okay. Are you familiar with the Board of  
4 Trustees for NIC?

5 A I am.

6 Q Can you tell me who sits on the board  
7 currently?

8 A Sure. Todd Banducci, Greg McKenzie,  
9 Mike Waggoner, Tarie Zimmerman, and Brad Corkill.

10 Q Are you aware of whether or not there are  
11 board meetings for this board?

12 A I am.

13 Q How do you know that?

14 A They are noticed and part of any job as  
15 president was to participate in that notification  
16 process.

17 Q Okay. Is there a written form for your  
18 evaluation?

19 A There is.

20 Q Okay. And how are you aware of that?

21 A I negotiated that, built that form with the  
22 help of an organization called ACCT, they do that sort  
23 of thing, so we worked together to make a very  
24 professional presidential evaluation.

25 Q Do you know if the board has adopted that

1 evaluation?

2 A Yes.

3 Q And how do you know that?

4 A It was submitted to them on -- for  
5 consideration during the October board meeting where it  
6 was approved.

7 Q Okay. And this is a written evaluation; is  
8 that correct?

9 A Correct.

10 Q Okay.

11 A It is actually provided to them online, so it  
12 is in an online...

13 Q Format?

14 A Like a survey almost.

15 MS. MALEK: Okay. Your Honor, may I approach  
16 the witness?

17 THE COURT: You may.

18 MS. MALEK: Thank you.

19 BY MS. MALEK:

20 Q Dr. Swayne, I'm handing you what's been  
21 marked for identification as Plaintiff's Exhibit  
22 Number 2.

23 Can you tell me if you recognize that  
24 document?

25 A I do, yes.

1 Q And what do you recognize it to be?

2 A This is my evaluation as approved by the  
3 board in October.

4 Q All right. Is that the form or your actual  
5 evaluation?

6 A This is just the form, yeah.

7 Q Okay. And can you read through -- well, is  
8 it a true and accurate copy of the form for your  
9 evaluation?

10 A Yes, it is.

11 Q Okay.

12 MS. MALEK: Your Honor, I'd move to admit  
13 Plaintiff's Exhibit Number 2 into evidence.

14 THE COURT: Any objection, Mr. Walther?

15 MR. WALTHER: No objection.

16 THE COURT: Exhibit 2 will be admitted.

17 BY MS. MALEK:

18 Q Dr. Swayne, can you read the broad categories  
19 for your evaluation?

20 A Sure. Leadership, finance and  
21 accountability, academic and student affairs, student  
22 success, capital development and facilities, human  
23 resources, relations with the Board of Trustees,  
24 advocacy and communications and personal qualities.  
25 Those are the major categories.

1 Q Okay. All right. Do you recall attending a  
2 board meeting on December 5th of 2022?

3 A I do.

4 Q Okay. And was anyone present at that board  
5 meeting on behalf of NIC?

6 A Yes.

7 Q And who was there on behalf of NIC?

8 A Four trustees were there.

9 Q Okay.

10 A Do you want the names?

11 Q Yes, who were they?

12 A Mike Waggoner, Greg McKenzie, Todd Banducci,  
13 and Tarie Zimmerman.

14 Q And was there anything that occurred at the  
15 December 5th board meeting that was unusual?

16 A Sure. The --

17 MR. WALTHER: Your Honor, I object to this  
18 line of questioning.

19 Again, the resolution on December 5th is  
20 irrelevant to any of the issues in the underlying  
21 litigation or the issues before the court done at  
22 preliminary injunction.

23 THE COURT: Thank you, Mr. Walther.

24 Response, Ms. Malek.

25 MS. MALEK: Your Honor, I do think that this

1 is relevant, how NIC got to and Dr. Swayne had got to  
2 being placed on administrative leave and how the board  
3 treated his authority both prior to placing him on  
4 administrative leave I believe goes directly to the  
5 irreparable harm portion of the analysis.

6 THE COURT: Thank you.

7 And, Mr. Walther, do you have anything  
8 further on this objection?

9 MR. WALTHER: Yes, Your Honor.

10 Again, what happened previously has nothing  
11 to do with interpreting the contract and whether or not  
12 there's any irreparable harm as a result of the  
13 administrative leave that would have occurred after this  
14 date. So it is irrelevant and likely prejudicial in  
15 light of the issues properly before the court.

16 THE COURT: I'm going to overrule the  
17 objection.

18 It seems to the court that this is not only  
19 relevant, but potential -- I don't know what the  
20 evidence is going to be -- but potentially key to the  
21 issues that are properly before the court in this motion  
22 for preliminary injunction.

23 You may proceed, Ms. Malek.

24 MS. MALEK: Thank you, Your Honor.

25 BY MS. MALEK:

1 Q Dr. Swayne, I think my question was: Was  
2 there anything that occurred during the December 5th,  
3 2022 board meeting that struck you as unusual?

4 A Yes, a couple of things.

5 First, there were two resolutions that were  
6 presented at the meeting that were not part of the board  
7 packet. That is highly unusual.

8 And then one -- one of the other issues is  
9 Mr. Macomber was appointed legal counsel at the meeting,  
10 first introduced and then appointed at the meeting, and  
11 arose out of the audience, came forward and joined the  
12 board at the dais.

13 Q Who is Mr. Macomber?

14 A Mr. Macomber is apparently an attorney, a  
15 local attorney, and was approved to be -- serve as the  
16 attorney for NIC at that meeting.

17 Q Okay. Is this Art Macomber that you're  
18 speaking of?

19 A Correct.

20 Q Why was it unusual there are resolutions  
21 introduced at the board meeting?

22 A Well, open meeting laws mandate that any  
23 resolutions -- anything that's being considered for  
24 action be included in the board packet and be made  
25 available to the public, so the public can read and make

1 comments.

2 And so if those resolutions were not part of  
3 that packet, it is something that the other board  
4 members nor the public would have an opportunity to read  
5 or make comment on.

6 Q Did you have an opportunity to review the  
7 resolutions that were introduced at that meeting?

8 A Yes, I did.

9 Q And did you receive them from someone?

10 A I received them from Mr. Banducci.

11 Q This is Todd Banducci, a trustee?

12 A Correct.

13 MS. MALEK: Your Honor, may I approach the  
14 witness again?

15 THE COURT: You may.

16 And, Ms. Malek, you may approach without  
17 permission.

18 MS. MALEK: Thank you, Your Honor.

19 THE COURT: Thank you.

20 BY MS. MALEK:

21 Q I'm handing you what's been marked for  
22 identification as Plaintiff's Exhibit Number 3.

23 Could you take a look at that and tell me if  
24 you recognize it?

25 A Yes.

1 Q Okay. And can you tell me what it is?

2 A These are the two policies that were  
3 presented by Mr. Banducci at the hearing on the 5th.

4 Q All right. And what is -- and are those true  
5 and accurate copies of the resolutions that Mr. Banducci  
6 had handed to you at the meeting?

7 A They are.

8 MS. MALEK: Okay. Your Honor, I'd move to  
9 admit Plaintiff's Exhibit Number 3 into evidence.

10 THE COURT: Any objection, Mr. Walther?

11 MR. WALTHER: No additional objections,  
12 Your Honor.

13 THE COURT: Thank you.

14 Exhibit 3 will be admitted.

15 BY MS. MALEK:

16 Q What's your understanding, Dr. Swayne, of  
17 Exhibit Number 3, the resolutions?

18 A This was to suspend the policy by which we  
19 hire professional board members -- sorry -- professional  
20 services.

21 Q All right. Did this policy affect your  
22 position as president in any way?

23 A It did, because it -- I would normally be  
24 part of the process of doing an RP and soliciting impute  
25 and hiring a well qualified attorney. And so suspension



1 of the policy suspended my ability to do that.

2 Q All right. I'd like you to turn to the third  
3 page of that exhibit, Resolution 2022-04. And just let  
4 me know when you get there.

5 A Okay.

6 Q All right. Can you read the heading of that  
7 resolution?

8 A President's Counsel Hiring?

9 Q Yes.

10 Do you recall reading this resolution when  
11 Mr. Banducci handed it to you?

12 A Yes.

13 Q And did this resolution have any affect on  
14 your authority as president of the college?

15 A Oh absolutely, yes.

16 Q And what did it do?

17 A This essentially stripped away all of my  
18 authority to conduct business as the operational head of  
19 NIC.

20 Q Had anyone at NIC talked to you about this  
21 resolution prior to the board meeting?

22 A No.

23 Q Do you recall another board meeting on  
24 December the 8th of 2022?

25 A Yes.

1 Q And did you attend that board meeting?

2 A Yes, I did.

3 Q Where are these board meetings conducted?

4 A The board meetings are either conducted in  
5 the Student Union Building on the second floor and  
6 there's been at least one that was conducted in Schuler  
7 Auditorium, but typically in the Student Union Building.

8 Q The Student Union Building of North Idaho  
9 College?

10 A North Idaho College, yeah.

11 Q All right. Did you attend the board meeting  
12 on December the 8th of 2022?

13 A Yes, I did.

14 Q Are these meetings also broadcast in any sort  
15 of way?

16 A Right, they're available via Zoom and I think  
17 YouTube as well. It is broadcasted live on both.

18 Q And also recorded on YouTube?

19 A And recorded, right.

20 Q Okay. Who was present on December 8th of  
21 2022?

22 A Trustees.

23 Q And who were the trustees specifically that  
24 were attending?

25 A So it was Greg McKenzie, Todd Banducci,

1 Mike Waggoner, and Tarie Zimmerman.

2 Q Okay. Was Mr. Macomber present?

3 A Mr. Macomber was present, yes.

4 Q And where were the trustees sitting in  
5 relation to anybody else who may have been present?

6 A They're sitting at the front on a table at  
7 dais.

8 Q Where was Mr. Macomber?

9 A In the middle of that. I don't remember  
10 exact placement, but he was up at the front table.

11 Q Okay. Did anything unusual occur at this  
12 meeting on December the 8th of 2022?

13 A Yes.

14 Q What was that?

15 A Mr. Macomber presented a resolution that  
16 would put me on administrative leave.

17 Q All right. Had anyone talked to you prior to  
18 this meeting about being placed on administrative leave?

19 A No.

20 Q Prior to this meeting had anyone told you you  
21 engaged in any sort of misconduct?

22 A No.

23 Q What happened after Mr. Macomber discussed  
24 placing you on administrative leave?

25 A The chair asked for a vote.

1 Q Who is the chair?

2 A Greg McKenzie.

3 Q All right. Did the board vote?

4 A They did.

5 Q And did the motion pass?

6 A Yes, it did, 3 to 1.

7 Q Who voted in favor of that motion?

8 A Um, Banducci, McKenzie, and Waggoner voted in  
9 favor.

10 Q And who voted against?

11 A Zimmerman.

12 Q Did anyone from NIC, whether it was  
13 Art Macomber or any of the board of trustees, indicate  
14 why you were being placed on administrative leave?

15 A Mr. Macomber discussed it as he was  
16 presenting the resolution and it was -- it was not  
17 100 percent clear, but it apparently had something to do  
18 with his -- he had issues with open meeting violation is  
19 what he spoke about.

20 Q Okay. Any specifics that you can recall as  
21 far as what the open meeting violations would be?

22 A He mentioned specifically that the -- there  
23 was a change to the contract that was executed. He got  
24 the dates wrong, he said -- I think he said October, but  
25 it was actually in August. But he said that it was

1 identified by the attorney at the time, Mark Lyons, as a  
2 scrivener's error and he thought it was a substantive  
3 error, so it was improperly identified for open meeting  
4 purposes.

5 Q And that was the basis for placing you on  
6 administrative leave?

7 A That's what he said.

8 Q Okay. Did you receive any followup  
9 communication from anyone at NIC in regards to  
10 administrative leave?

11 A I did.

12 Again, the meeting was on the 8th and on the  
13 9th I received a -- an e-mail from Mr. Macomber with  
14 specifications for conduct during administrative leave.

15 Q I'm handing you what's been marked as  
16 Plaintiff's Exhibit Number 4 for identification purposes  
17 only.

18 Can you review it and let me know whether you  
19 recognize that document?

20 A Yes. This is the document that he provided.

21 Q All right. That's the communication from  
22 Mr. Macomber?

23 A Correct. Correct.

24 Q Okay. And is that a true and accurate copy  
25 of what you received from him?

1           A           It is.

2           Q           All right.  And he e-mailed that to you?

3           A           Correct.

4           Q           Okay.

5                   MS. MALEK:  Your Honor, I'd move to admit  
6 Plaintiff's Exhibit Number 4 into evidence.

7                   THE COURT:  Thank you.

8                   Any objection, Mr. Walther?

9                   MR. WALTHER:  No objection.

10                  THE COURT:  Exhibit 4 will be admitted.

11                  MS. MALEK:  And, Your Honor, I just realized  
12 -- just for the record -- last night I did e-mail the  
13 same exhibits that I provided to the court to opposing  
14 counsel as well, so they should have everything that the  
15 court has and that we're discussing here.

16                  THE COURT:  Thank you.

17 BY MS. MALEK:

18           Q           All right.  Dr. Swayne, in this letter from  
19 Mr. Macomber, are you being accused of any wrongdoing?

20           A           No.

21           Q           Okay.  Does Mr. Macomber give you any details  
22 about any sort of policy that you have violated?

23           A           No.

24           Q           All right.

25                   Okay.  There's a citation in this letter from

1 Mr. Macomber to Procedure 3.02.31. Do you see that?

2 A I do.

3 Q Are you familiar with that policy?

4 A I am.

5 Q And what is that policy?

6 A That's a policy for -- actually for me to put  
7 tenured and nontenured faculty on administrative leave.

8 Q Are you tenured faculty?

9 A I am not.

10 Q Do you believe that policy applies to you?

11 A It does not.

12 Q Are you aware of whether North Idaho College  
13 has any sort of accreditation?

14 A They do.

15 Q And how are you aware of that fact?

16 A It is on the website, the NIC website, all of  
17 the records of accreditation being granted, also  
18 documents are held by the executive assistant to the  
19 president. So I have paper copies as well as versions  
20 online.

21 Q All right. And what is the accreditation  
22 agency for North Idaho College?

23 A NWCCU, Northwest Counsel on Colleges And  
24 Universities.

25 Q Okay.

1           A           Commission on Colleges and Universities.

2           Q           At the time that you accepted employment at  
3           NIC, was there any sort of discussion around NIC's  
4           accreditation?

5           A           Yes.

6           Q           Okay. Can you tell me specifically -- was  
7           that discussion with the board of NIC?

8           A           It was with the board. It was also with  
9           the -- with the attorney for the board to go over it.  
10          And when I visited, it was a topic of discussion.

11          Q           And what was your understanding at the time  
12          that you accepted employment of NIC's accreditation  
13          status?

14          A           NIC was accredited with warning and the  
15          warning -- they identified several things that needed to  
16          be worked on.

17          Q           Okay. Are you familiar with accreditation  
18          agencies for colleges?

19          A           Generally, yes.

20          Q           Okay. And can you explain what accreditation  
21          with warning means?

22          A           It means that -- so there are -- there are  
23          two major categories that are considered for  
24          accreditation: One is student success and the other is  
25          governance.



1           And so those are the -- within them there are  
2 a whole lot of legal language, academic legal language,  
3 that describes all of the things that have to occur.  
4 And so when they put you on warning, they identify what  
5 the issue is.

6           And in this case it was -- the warning was in  
7 regard to governance, not academic success.

8           Q       What was your understanding of the governance  
9 issues that you would have to deal with?

10          A       Um, I would characterize it as erratic  
11 behavior by the board is kind of a general...  
12 unpredictable and not -- not acting within the norms of  
13 expected behavior of college or university trustees.

14          Q       Okay. Are you aware of any communication  
15 from the NWCCU to North Idaho College?

16          A       Yes -- historically or more recent?

17          Q       Both.

18          A       Yes, I'm aware of -- I've read through all of  
19 them, yeah.

20          Q       And are those posted anywhere?

21          A       They are posted on the North Idaho College  
22 website.

23          Q       All right.

24          A       And open to the public for review.

25          Q       Are you aware of what the North Idaho College

1 website is?

2 A nic.edu.

3 Q How do you know that?

4 A Part of the -- part of the role of -- you  
5 Google it, it is part of the identity of the college.

6 Q Okay. All right. Are you aware of whether  
7 the NWCCU has sent any communication or correspondence  
8 to North Idaho College while you've been on  
9 administrative leave?

10 A I am aware, yes.

11 Q Okay. And how are you aware of that fact?

12 A Well, I watch all of the meetings on Zoom, so  
13 I see all of those live. Um, I also follow closely what  
14 gets posted on the website.

15 Q Okay. I'm handing you what's been marked for  
16 identification purposes as Plaintiff's Exhibit Number 6.

17 Can you flip through that and let me know  
18 whether you recognize it?

19 A Yes.

20 Q Can you tell me how you recognize it?

21 A This is the -- this is the letter that the  
22 college received and I reviewed online that's dated  
23 February 9th, 2023.

24 Q Okay. Is there -- is that a true and  
25 accurate copy of what you read online on North Idaho

1 College's website?

2 A It is.

3 MS. MALEK: Your Honor, I'd move to admit  
4 number -- Plaintiff's Exhibit Number 6 into evidence.

5 THE COURT: Any objection, Mr. Walther?

6 MR. WALTHER: Yes, Your Honor.

7 I object to the admission of this letter in  
8 that it is again irrelevant to the complaint and the  
9 issues before the court on a preliminary injunction  
10 motion.

11 Specifically, although the letter identifies  
12 potential harm to the college, nowhere in the letter  
13 does it identify any blame or misconduct or other  
14 negative comments about Dr. Swayne. And indeed on the  
15 letter -- the letter dated February 8th, 2023 is  
16 addressed to Chairman McKenzie and Interim  
17 President South. So clearly this is not Dr. Swayne's  
18 responsibility.

19 And kind of piggybacking this issue the  
20 college is currently addressing to Dr. Swayne's  
21 allegation of irreparable harm is improper.

22 THE COURT: Ms. Malek, your response.

23 MS. MALEK: Your Honor, this letter is  
24 relevant, because it does address Dr. Swayne and in fact  
25 it addresses Dr. Swayne on the second page of the

1 letter.

2 I think it goes directly to irreparable harm  
3 as far as the actions that North Idaho College is  
4 currently taking and as our briefing describes, the  
5 actions that ultimately Dr. Swayne will have to adopt  
6 and live with should he be allowed to return back to  
7 North Idaho College. So I think it is relevant to the  
8 issues here.

9 THE COURT: And final word, Mr. Walther.

10 MR. WALTHER: Yes.

11 The two references to Dr. Swayne are just a  
12 matter of the history. Um, it identifies him being  
13 placed on administrative leave and it identifies  
14 Dr. Swayne filing a lawsuit.

15 Nowhere does -- is there any allegation of  
16 any misconduct or blame in anyway attributable to  
17 Dr. Swayne's performances as president.

18 So again it is irrelevant and prejudicial.

19 THE COURT: Thank you.

20 Given that relevance is broad, it is a broad  
21 concept, and that all of these issues pertain at least  
22 in a broad way to the issues before the court, both in  
23 the litigation and specifically in the motion for  
24 preliminary injunction, which I don't think are really  
25 different.

1 I am going to overrule the objection and give  
2 some leeway in terms of this document.

3 I'm going to go ahead and admit it of course  
4 as the entity that finds facts and makes any  
5 conclusions. I will give it the weight to which I think  
6 it deserves in terms of making any decision.

7 So the objection is overruled.

8 Exhibit 6 will be admitted.

9 MS. MALEK: Thank you, Your Honor.

10 BY MS. MALEK:

11 Q Dr. Swayne, are you concerned about the  
12 letter from the NWCCU to North Idaho College?

13 A Absolutely.

14 Q And why is that?

15 A This ratchets up the level of concern from  
16 NWCCU as the accrediting body. It says we're going to  
17 move you from with warning to a higher level, which is  
18 much more severe.

19 Q And this higher level was not in place at the  
20 time that you contracted with North Idaho College; is  
21 that correct?

22 A It was not.

23 Q Okay. All right. Currently, Dr. Swayne, are  
24 you able to carry out your duties under your employment  
25 agreement with North Idaho College?

1 A No.

2 Q And why is that?

3 A Um, I have to be present to be able to carry  
4 those out and the administrative leave specifically  
5 prevents me from being present.

6 Q Okay. Have you been directly told by  
7 North Idaho College not to appear on campus?

8 A Not to not appear on campus, but not to  
9 conduct myself as president on campus.

10 Q Okay. Do you know how long you're being  
11 placed on leave for?

12 A No.

13 Q How long have you been currently on leave?

14 A Since December -- the evening of  
15 December 8th.

16 Q Of?

17 A Of 2022.

18 Q Have you ever been disciplined at North Idaho  
19 College?

20 A No.

21 Q Have you ever been told that you have done  
22 something wrong?

23 A No.

24 Q Did you receive another letter from  
25 Mr. Macomber?

1           A        Yes.

2           Q        Okay.  And do you recall when that was?

3           A        It was after the December 21st meeting.  I  
4 received another letter on the 22nd of December.

5           Q        Okay.  And do you recall what Mr. Macomber  
6 said during that?

7           A        It was essentially the same letter that he  
8 sent on the 9th.

9           Q        Okay.  I'd like to show you what's been  
10 marked for identification purposes as Plaintiff's  
11 Exhibit Number 7.  Please take a look at that.

12                    Do you recognize it?

13          A        Yes.

14          Q        What is it?

15          A        This is the letter I received, um, notifying  
16 -- reiterating that I was on administrative leave.

17          Q        Okay.  And in this letter is there any  
18 indication as to how long your administrative leave is  
19 to last?

20          A        No.

21          Q        Okay.  Is there any indication in this letter  
22 that you have violated a policy of North Idaho College?

23          A        No.

24          Q        All right.  Are you aware of a third  
25 communication from North Idaho College to you in regards

1 to administrative leave?

2 A Yes.

3 MS. MALEK: Your Honor, I'd move to admit --  
4 excuse me -- Exhibit Number 7 into evidence.

5 THE COURT: Any objection, Mr. Walther?

6 MR. WALTHER: No objection.

7 THE COURT: Exhibit Number 7 will be  
8 admitted.

9 MS. MALEK: Thank you.

10 BY MS. MALEK:

11 Q Dr. Swayne, I'm handing you what's been  
12 marked for identification as Plaintiff's Exhibit  
13 Number 8.

14 Can you look through that and let me know  
15 whether you recognize it?

16 A Yes.

17 Q What is it?

18 A This is a letter I received -- I don't recall  
19 when I received it, but it was dated January 26th. Um,  
20 I think it was mid to late January that I received  
21 further clarification on administrative leave.

22 Q Who sent you this letter?

23 A Mr. Macomber.

24 Q Okay. I'd like you to read -- and is this a  
25 true and accurate copy of the letter that was directed



1 to you by Mr. Macomber?

2 A It is.

3 MS. MALEK: Your Honor, I'd move to admit  
4 Plaintiff's Exhibit Number 8 into evidence.

5 THE COURT: Any objection, Mr. Walther?

6 MR. WALTHER: No objection.

7 THE COURT: Exhibit Number 8 will be  
8 admitted.

9 BY MS. MALEK:

10 Q Dr. Swayne, I'd like you to read the first  
11 two paragraphs, full paragraphs, of Exhibit Number 8 if  
12 you would please.

13 A Um, starting with on December 21st -- on  
14 December 21st the Board of Trustees put Dr. Swayne on  
15 immediate paid administrative leave effective  
16 December 8, 2022.

17 On December 21st, 2022, I reiterated my  
18 letter of December 8th in which I stated for the  
19 duration of my investigation and your leave, which will  
20 roughly coincide, you're not to come onto campus to  
21 discuss or conduct college business, use computer  
22 access, or otherwise college facilities in your role as  
23 President. I should have been clearer, because now it  
24 appears Dr. Swayne believes he may discuss or conduct  
25 college business while off campus.

1           Q           All right.  And if you could go down three  
2 paragraphs to where it starts with:  To be completely  
3 clear.  Can you read that out please?

4           A           Sure.

5                        To be completely clear, Dr. Swayne is not  
6 authorized to do any college business whatsoever while  
7 on administrative leave.  If he has a question, he  
8 should call Trustee McKenzie or you may contact me.

9           Q           All right.  And then can you read the last  
10 two paragraphs on that first page?

11          A           Sure.

12                        Dr. Swayne is not authorized to talk to  
13 Shon Hocker or anyone else about NIC college business on  
14 behalf of the college while he is on administrative  
15 leave.  Dr. Swayne is not authorized to act or speak on  
16 behalf of the college while on administrative leave.

17                        The next paragraph.

18                        Further, the Board forbids Dr. Swayne to  
19 speak to the media about NIC business.  Of course  
20 Dr. Swayne has freedom of speech, but such freedom has  
21 costs and Dr. Swayne would do well to consider the  
22 effect of his speech on college business.  The design of  
23 the leave is to protect him and the college, but it  
24 depends on his cloistering himself.  NIC needs accurate  
25 information to be provided, which must be provided

1 through a single source to ensure consistency.

2 Q Thank you.

3 Can you tell me who Shon Hocker is?

4 A Shon Hocker is the Superintendent of Schools  
5 for Coeur D'Alene Public Schools.

6 Q Have you ever been contacted by Mr. Macomber  
7 as to the status of whatever his investigation is?

8 A I have not.

9 Q Do you know -- have any idea what the status  
10 is?

11 A No.

12 Q Do you know the scope of the investigation?

13 A No.

14 Q Have you ever been told by anybody at  
15 North Idaho College what the scope of the investigation  
16 is?

17 A No.

18 Q Are you familiar with the policies of  
19 North Idaho College?

20 A Generally, yes.

21 Q How is it that you're familiar with the  
22 policies?

23 A As president that's the role of the president  
24 to generally know the policies and maintain them.

25 They are, again, available on the NIC

1 website, as well as copies kept by the executive  
2 assistant to the president.

3 Q Are they published anywhere?

4 A They are published on the NIC website.

5 Q Those are publically available?

6 A Publically available.

7 Q Are you aware of any policy that provides  
8 that a president may be placed on administrative leave?

9 A I am confident that there is not a policy  
10 that allows the president to be placed on administrative  
11 leave.

12 Q I'm handing you what's been marked for  
13 identification purposes as Plaintiff's Exhibit Number 9.  
14 Can you take a look at that please?

15 A (Witness complies.)

16 Q Tell me whether you recognize it?

17 A Yes.

18 Q What do you recognize it to be?

19 A This is an accurate copy of the policy  
20 identified as 3.02.31.

21 Q Okay. And this was the policy that was cited  
22 to by Mr. Macomber in his letter to you; is that  
23 correct?

24 A That is correct.

25 Q Okay. Is that a true and accurate copy of

1 the policy?

2 A Yes.

3 MS. MALEK: Your Honor, I'd move to admit  
4 Plaintiff's Exhibit Number 9 into evidence.

5 THE COURT: Mr. Walther, any objection to  
6 admitting Exhibit 9?

7 MR. WALTHER: No objection.

8 THE COURT: Thank you.

9 Exhibit 9 will be admitted.

10 BY MS. MALEK:

11 Q And, Dr. Swayne, this policy 3.02.31 we  
12 discussed previously, this is for tenured faculty; is  
13 that correct?

14 A That is correct.

15 Q Okay. And what under this policy, what  
16 authorizes NIC to place tenured faculty on  
17 administrative leave?

18 A For cause.

19 Q Okay. Such as what?

20 A It is probably easier if I read the paragraph  
21 to -- identified in paragraph B.

22 Q Go ahead.

23 A Cause for suspension is defined as an  
24 allegation of any conduct or behavior that may damage or  
25 may be detrimental to the college, its students,

1 faculty, or employees as determined by the  
2 vice president for instruction.

3 Examples include, but are not limited to:  
4 Criminality, dishonesty, unprofessional, unethical  
5 behavior, violations of policies, or abandonment of the  
6 responsibilities, or inability to perform the essential  
7 functions of the position.

8 Q Okay. Has anyone at NIC ever accused you of  
9 criminality?

10 A No.

11 Q Dishonesty?

12 A No.

13 Q Unprofessional or unethical conduct?

14 A No.

15 Q Violation of policies or abandonment?

16 A No.

17 Q Inability to perform the essential functions  
18 of the position?

19 A No.

20 Q Prior to being placed on administrative  
21 leave, can you just summarize the type of work you were  
22 performing for North Idaho College?

23 A Sure.

24 I would say generally the work of the  
25 president is in building relations and aligning capacity

1 and relationships in need of the community, particularly  
2 for a community college, so that was what we were  
3 engaged in.

4 Strategic planning and planning to address  
5 the shortcomings and improve what was going on at the  
6 college. Those are all the things that we're engaged  
7 with building community relations.

8 Q And were you working on a strategic plan  
9 prior to being placed on leave?

10 A Correct.

11 Q Okay. And what was part of that strategic  
12 plan?

13 A The big part of the strategic plan was  
14 repairing and improving the relationships with the  
15 community and -- and primarily focus on enrollment and  
16 retention and recruiting the students.

17 Q And is that part of your job duties to be  
18 focussed on the recruitment and retention of students?

19 A Absolutely, it is part of the core part of  
20 the job.

21 Q Okay. Are you familiar with Greg South?

22 A I am.

23 Q How is it you're familiar with him?

24 A He was identified during the meeting --  
25 during the board of trustees meeting on the 21st and I

1 have since observed him in his role as interim president  
2 at subsequent meetings.

3 Q You mentioned a board meeting on the 21st,  
4 21st of what month?

5 A 21st of December 2022.

6 Q Okay. And who identified him at that  
7 meeting?

8 A Um, I believe it was Trustee Corkill. Well,  
9 I think they -- well, they made a motion to approve and  
10 hire him, so that was done I think by Mr. Banducci. And  
11 then there were items on his contract that were  
12 identified by Brad Corkill.

13 Q So the board of trustees introduced or  
14 mentioned Greg South during the board meeting?

15 A Correct.

16 Q What is your understanding of Mr. South's  
17 position with the college?

18 A He's been identified both publically and  
19 documents that are available as the interim president.

20 Q Okay. Are you aware of whether he has a  
21 contract with North Idaho College?

22 A I have seen a contract that indicates he was  
23 contracted, yes.

24 Q And is the contract published on NIC's  
25 website?



1           A           It is.

2           Q           Showing you what's been marked as Plaintiff's  
3 Exhibit Number 10 for identification.

4                        Can you flip through that document and then  
5 just let me know once you have?

6           A           Sure, yep.

7           Q           Ready?

8           A           Uh-huh.

9           Q           Okay. Do you recognize that document?

10          A           Yes, this is the document that is identified  
11 as Greg South's contract.

12          Q           This is what you observed on NIC's website?

13          A           Correct.

14          Q           Is it a true and accurate copy of what you  
15 observed on NIC's website?

16          A           Yes.

17                        MS. MALEK: Your Honor, I'd move to admit  
18 Plaintiff's Exhibit Number 10.

19                        THE COURT: Thank you.

20                        Mr. Walther, any objections?

21                        MR. WALTHER: Um, no objection to the  
22 foundation that that is a true and correct copy.

23                        Object to any testimony with regard to that  
24 contract, as the issues here are limited to Dr. Swayne's  
25 contract and not the terms of Dr. South's contract.

1 THE COURT: Okay. So the question is: Do  
2 you object to the admission into evidence of the  
3 contract?

4 MR. WALTHER: Yeah. Again, it was a  
5 preliminary objection. I don't object to it being  
6 admitted, but I do object to further testimony about its  
7 terms.

8 THE COURT: Okay. Exhibit 10 will be  
9 admitted.

10 BY MS. MALEK:

11 Q On that Exhibit Number 10, can you read the  
12 Section 1, Purpose?

13 A Yes.

14 Section 1, Purpose: This document reflects  
15 the agreement between the Interim President and the  
16 Board of Trustees of North Idaho College, in parentheses  
17 "the Board", as to the terms of the Interim President's  
18 employment at North Idaho College, again in parentheses  
19 "the Board" -- or sorry -- "the Agreement".

20 Q Is there a responsibilities section in that  
21 agreement?

22 A There is.

23 Q Okay. And could you read the second sentence  
24 under Section 2 Responsibilities?

25 MR. WALTHER: And again, I object to

1 testimony with regard to the terms of the contract.

2 THE COURT: Well, she's asking for it to be  
3 read and the document is in evidence and so I will  
4 overrule that objection.

5 THE WITNESS: Under Section 2,  
6 Responsibilities, second sentence: The Interim  
7 President is authorized and responsible for the  
8 administration of NIC and has authority over all matters  
9 affecting NIC at the operational level in accordance  
10 with applicable laws as well as the policies, rules, and  
11 regulations approved and/or sanctioned by the Board  
12 subject to the Board's guidance under Idaho law as  
13 passed by motions at board meetings.

14 BY MS. MALEK:

15 Q Is there a Term Section in that agreement?

16 A Yes, there is.

17 Q Okay. And could you read the Term Section?

18 A Section 3, Term: The term of this agreement  
19 will commence on December 21st, 2022 and will continue  
20 at least until June 30, 2024, unless terminated  
21 consistent with Sections 4.2 or 12.

22 MS. MALEK: All right. Your Honor, if I  
23 could just have one moment.

24 BY MS. MALEK:

25 Q Could you flip to Section 12 of that document

1 please?

2 A Yes.

3 Q 12.2 specifically.

4 A Yes.

5 Q All right. And I'd like you to read the  
6 second to last sentence of Section 12.2 that starts on  
7 the same line that says Paragraph 12.5 and then "the  
8 Board may" to start with.

9 A So the Board may in its discretion place the  
10 Interim President on administrative leave during part or  
11 all of such a 30-day notice period.

12 The Board's power to impose administrative  
13 leave for other purposes is not limited to the  
14 employment termination circumstances outlined in this  
15 paragraph.

16 Q Okay. Do you have a similar clause regarding  
17 administrative leave in your agreement?

18 A I do not.

19 Q Has NIC posted any sort of biography of  
20 Mr. South on its website?

21 A Yes.

22 Q Okay. And have you observed that?

23 A I have. It's on the website under  
24 nic.edu/president.

25 Q Showing you what's been marked for

1 identification as Plaintiff's Exhibit Number 11.

2 Can you please take a look at that, let me  
3 know if you recognize it.

4 A Yes.

5 Q Okay. And what do you recognize it to be?

6 A This is the information published on the NIC  
7 website under the nic.edu/president.

8 Q Okay. And this is a biography of Mr. South?

9 A No, this is of Dr. Greg South.

10 Q Okay. Are you aware of whether your  
11 information has ever been posted on NIC's website?

12 A Yes.

13 Q And when was that?

14 A It was posted the day I started, August 1st.  
15 It was up on the website.

16 Q Was that on the president's page as well?

17 A Correct.

18 Q Is your information still posted on the  
19 president's page?

20 A It is not.

21 Q Okay. Are you listed on the president's page  
22 anywhere as the President of North Idaho College?

23 A I am not.

24 MS. MALEK: Your Honor, I'd move to admit  
25 Plaintiff's Exhibit Number 11 into evidence.

1 THE COURT: Any objection to Exhibit 11?

2 MR. WALTHER: No objection.

3 THE COURT: Exhibit 11 will be admitted.

4 BY MS. MALEK:

5 Q All right. Are you familiar with or aware of  
6 any changes to the organizational structure or  
7 operations of North Idaho College since you have been  
8 away?

9 A I am.

10 Q And how are you aware of that?

11 A Um, well, since communications has been  
12 essentially cut off, I observe via the web -- the  
13 internet website for NIC, things that have happened and  
14 taken place.

15 Q Can you tell me about what operational  
16 organizational changes you're aware of?

17 A The most prominent one is the change to the  
18 president's cabinet.

19 Q Tell me about the president's cabinet.  
20 What's that?

21 A The president's cabinet is the people -- the  
22 senior executive staff of the president that reports  
23 directly to the president.

24 Q Okay. And what is the change that you're  
25 aware of on the president's cabinet?

1           A           When I was placed on administrative leave,  
2           Dr. Lloyd Duman served as the interim provost who is the  
3           head of the academic side of campus. And since I have  
4           left, he's been replaced by a Dr. Peggy Bradford.

5           Q           Okay. And are you -- do you know  
6           Dr. Peggy Bradford?

7           A           I have never met her.

8           Q           Okay. And is the fact that Ms. Bradford is  
9           in that position a concern to you?

10          A           Yes.

11          Q           Why is that?

12                   MR. WALTHER: Objection. Lack of foundation.

13                   THE COURT: Lack of foundation for what?

14                   MR. WALTHER: He's -- Dr. Swayne testified he  
15           doesn't know her and now he's going to have an opinion  
16           as to whether there's a concern about her being  
17           appointed.

18                   THE COURT: Well, the question went directly  
19           to what his concern is, so I'm not sure I'm  
20           understanding the objection.

21                   Are you claiming that he wouldn't have  
22           foundation for --

23                   MR. WALTHER: He doesn't have foundation --

24                   THE COURT: -- concern?

25                   MR. WALTHER: -- or opinions with regard to

1 her being appointed.

2 THE COURT: All right. And that wasn't the  
3 question that I heard, so I am going to overrule at this  
4 time.

5 Ms. Malek.

6 BY MS. MALEK:

7 Q So, Dr. Swayne, do you remember the question?

8 A Yes.

9 Q Okay.

10 A So the president's cabinet works directly for  
11 the president and the -- their role is to implement the  
12 policies and decisions of the president and collectively  
13 of the president's cabinet.

14 So having a member of the cabinet who is not  
15 of your own choosing is a challenge for the future.

16 Q All right. Had you done any work as far as  
17 vetting or hiring a provost prior to being placed on  
18 administrative leave?

19 A Yes.

20 Q Can you tell us about that?

21 A Yes. We had gone through a national search  
22 supported by a national search firm and a team of  
23 faculty students and staff to review and select a new  
24 provost to replace Dr. Duman, who was serving as an  
25 interim capacity, with someone who was well qualified



1 and selected by all of the constituent groups.

2 Q Okay. Had you found a number of candidates  
3 that were acceptable to you?

4 A We did, yes.

5 Q Okay. And what was your intention with the  
6 individuals that were acceptable to you?

7 A We had -- they had actually interviewed --  
8 come on campus and three of the individuals had come on  
9 campus and interviewed the week of December 5th with the  
10 last one being on campus December 8th and then the  
11 following day we would have made a decision on who to  
12 hire.

13 Q Okay. Have you been able to have any contact  
14 with those individuals since you have been placed on  
15 administrative leave?

16 A No.

17 Q Are there other changes to the operations of  
18 NIC that is concerning to you?

19 A Yes. Yes.

20 Q And what are those?

21 A Um, on the -- at the board meeting on  
22 December 21st there were decisions made to recommend  
23 changes to athletic conferences and the status of  
24 coaching staff.

25 Q And why was that concerning to you?

1           A           Primarily for budget reasons. Both the  
2 employee -- changing the employee status and changing  
3 the conference have significant financial costs involved  
4 that I would have to deal with when I return.

5           Q           Okay. Are you familiar with NIC's budget?

6           A           I am.

7           Q           How is it that you're familiar with the  
8 budget?

9           A           Part of the role of president is to generally  
10 manage the budget and...

11          Q           Okay. And when you took on the role of  
12 president, did you review NIC's budget?

13          A           I did.

14          Q           Okay. So can you tell me specifically what  
15 you said the changes in these athletic conferences could  
16 result or status of employees could result in a cost  
17 increase, what do you mean by that?

18          A           So what they're discussing at the meeting was  
19 increasing their salaries, changing several folks that  
20 were part-time and making them full-time and adding  
21 positions of assistant coaches to several of the teams,  
22 as well as changing from the conference called NWAC and  
23 making a jump to a higher level conference called the  
24 NJCAA.

25          Q           Are you familiar with those two conferences?

1           A           Generally.

2           Q           And what is your concern about changing  
3 conferences?

4           A           Primarily it deals with the cost of the  
5 conferences. The NWAC conference is focussed in the  
6 northwest, so travel is limited generally to the area of  
7 the other community colleges in the northwest; where  
8 NJCAA is a national conference and would require much  
9 more travel.

10          Q           Does NIC pay the travel cost for athletes in  
11 these conferences?

12          A           They do, yes.

13          Q           Do you know approximately if this decision  
14 were made how much of a cost increase that would be to  
15 NIC?

16          A           It is tough to tell exactly until after you  
17 have done it for a year or so, but estimates are between  
18 one and --

19                   MR. WALTHER: Objection. Lack of foundation.

20                   THE COURT: I will sustain that at this  
21 point.

22                   If you can lay some more foundation.

23                   MS. MALEK: Certainly.

24 BY MS. MALEK:

25          Q           Dr. Swayne, prior to being placed on

1 administrative leave, was this idea of changing  
2 conferences explored?

3 A It was.

4 Q And by whom was it explored?

5 A Um, well, Trustee Banducci has brought it up  
6 several times over the past before I arrived, so there  
7 was already a good degree of work done to assess the  
8 cost of changing conferences, as well as discussions  
9 with coaches and other --

10 Q Okay. I didn't mean to interpret you, so  
11 excuse me.

12 So the work that was previously done was done  
13 by North Idaho College?

14 A It was.

15 Q Who at North Idaho College conducted that  
16 type of work?

17 A There are two people that primarily work with  
18 the budget and athletics and that would be the vice  
19 president for admin -- business administration,  
20 Sarah Garcia, and then the dean of students -- or the  
21 interim dean of students, Alex Harris, would -- they  
22 would -- they were the folks that did most of the  
23 analysis.

24 Q And did you while you were at North Idaho  
25 College have occasion to speak with both of these

1 individuals?

2 A Absolutely.

3 Q About the conferences?

4 A Correct.

5 Q Okay. And based on the communications with  
6 the individuals from NIC, had they done research in  
7 regards to the cost of changing conferences?

8 A Yes.

9 Q Okay. And what is your understanding of what  
10 the cost to change conferences would be?

11 A Yeah, likely to be, as I said, 1 to  
12 \$2 million.

13 Q Okay. So 1 to 2 million additional dollars?

14 A Per year, yeah.

15 Q Do you know for sure whether that decision  
16 has been made yet?

17 A It has not.

18 Q Okay.

19 A I'm not aware that it has been made.

20 Q Would it affect your ability to operate the  
21 college within budget if that decision was made?

22 A Sure. To give --

23 MR. WALTHER: Objection, Your Honor.

24 This is going far afield from the issues in  
25 this case and speculating and projecting and providing

1 opinions as to what would happen in the future if he was  
2 restored as president and it doesn't identify any  
3 current irreparable harm in any way.

4 THE COURT: Ms. Malek.

5 MS. MALEK: Well, Your Honor, a preliminary  
6 injunction is not there to correct any past harms, but  
7 potential future harms. I think it is absolutely  
8 relevant.

9 I think we have already admitted into  
10 evidence the evaluation form that Dr. Swayne and -- the  
11 categories on which Dr. Swayne is going to be evaluated.

12 I think it is perfectly appropriate for  
13 Dr. Swayne who's familiar with the operations of NIC,  
14 the budget of NIC to give his opinion and his concerns  
15 about ongoing or future harm and that relates back to --  
16 directly back to his ability and his review at  
17 North Idaho College.

18 So I do think that it is relevant,  
19 Your Honor.

20 THE COURT: And, Mr. Walther, anything  
21 further?

22 MR. WALTHER: Again, Your Honor, it is not a  
23 showing of any irreparable harm to Dr. Swayne going  
24 forward. It may change how he conducts his business in  
25 the future, but that does not equate to harm.

1           It just changes what his job would be going  
2 forward and what the issues may be that he faces, but  
3 that is not harm to Dr. Swayne.

4           THE COURT: Well, and the questions I believe  
5 were going to get there and based on the briefing and  
6 the arguments of both counsel, I'm going to overrule the  
7 objection.

8           This does go to the potential harm to  
9 Dr. Swayne in the future if and when he is reinstated as  
10 president some of these issues that are changed in the  
11 interim and how it affects his performance reviews.

12           Certainly it is all potential, it is all  
13 forward looking, but it is relevant to those potential  
14 issues and the issues that are being presented here  
15 today.

16           So it is highly relevant and I will overrule  
17 the objection.

18 BY MS. MALEK:

19           Q           Dr. Swayne, I think my last question had been  
20 does -- does this -- if this change were made, would it  
21 affect your ability to operate NIC within budget?

22           A           Yes.

23           Q           How?

24           A           Well, NIC's budget is around \$50 million. So  
25 a change in a magnitude of \$2 million represents a

1 four percent increase in its budget expenditures.

2 At the same time, we're experiencing  
3 declining enrollment. So there's declining revenue and  
4 increasing expenditures. That money has to come from  
5 somewhere.

6 So changing programs, academic programs or  
7 other programs, that the community needs in order to  
8 accommodate these added expenditures, that's a huge  
9 burden on a president to make those kinds of changes.  
10 It could mean firing people. There are any number of  
11 issues that might come out of there.

12 Q Okay. You mentioned -- you mentioned a  
13 couple of things there that I want to unpack.

14 So you mentioned revenue streams. Are you  
15 aware of what the revenue streams for North Idaho  
16 College are?

17 A I am.

18 Q How is it that you're aware of that?

19 A Again, part of the inherent role of the  
20 president and the budgeting process.

21 Q All right. Can you tell us what the revenue  
22 streams for North Idaho College are?

23 A Sure. About 24 percent comes from tuition,  
24 about 24 percent comes from the State, 10 percent comes  
25 from career technical education fund, and 35 percent



1 comes from taxes -- Kootenai County tax base.

2 Q Okay. And you mentioned declining  
3 enrollments. How do you know there's declining  
4 enrollments?

5 A Part of that strategic plan we talked about  
6 earlier, the big challenge that I walked into and  
7 noticed was that for the past 10 years, um, NIC had  
8 experienced declining enrollment, 3 to 6 percent a year,  
9 and no one had done much about it.

10 So a concerted effort to turn that around,  
11 because it is a big chunk of our revenue and it reflects  
12 really strongly about what we do as a community college.

13 Q The funds that NIC receives from the State,  
14 are you aware of how you get those funds, how you  
15 qualify for them?

16 A Those come directly from the State, but it is  
17 based on enrollment numbers.

18 Q Okay.

19 A At least partially on enrollment numbers.

20 Q So if enrollments are declining, that would  
21 have an effect potentially on the funding that is  
22 received by North Idaho College from the State?

23 A Correct, correct.

24 Q As president of the college, can you describe  
25 to the court whether good will in the community is in

1 your opinion important to the college's success?

2 A Um, yes. We're a community college. We  
3 function in the community. The good will of the  
4 community is an intrinsic part of your role as a  
5 community college.

6 Q Okay. And when you took office as the  
7 president, did you meet with community members or  
8 stakeholders?

9 A I would say yes, probably 30 percent of my  
10 time was spent meeting with and building relationships  
11 with community members and stakeholders.

12 Q Did you meet with other school administrators  
13 in the area?

14 A Yes.

15 Q And what schools did you meet as president of  
16 the college?

17 A I met with all of the regional  
18 superintendents or representatives, principals of high  
19 schools and guidance counsellors. I think I met with  
20 every guidance counsellor in the northern counties.

21 Q What was the purpose of meeting them?

22 A Well, I needed them -- I needed to build  
23 trust and relationships with them in order to -- you  
24 know, with all the things going on at the college, they  
25 had lost -- they had appeared to lose faith and

1 confidence in the college as a destination that they'd  
2 recommend to their students.

3 The way to rebuild that is to establish  
4 relationships with the superintendents, the principals,  
5 and the guidance counsellors. So I made a concerted  
6 effort to do that and spend a lot of time building those  
7 relationships.

8 Q Okay. Are you familiar with the term dual  
9 credit offerings?

10 A I am.

11 Q And how is it that you're familiar with that  
12 term?

13 A It is one of the -- in terms of numbers, it  
14 is one of the large enrollment indicators for the  
15 college.

16 Q Okay. And what is a dual credit offering?

17 A A dual credit is offered to high school  
18 students that are not going to school full-time, but  
19 they're able to take a class that is a college course  
20 and counts as a high school course.

21 Q Is there any benefit to North Idaho College  
22 for these dual credit offering programs?

23 A Yes.

24 Q What is the benefit to North Idaho College?

25 A Well, in terms of revenue, yes, it -- it's --

1 it's -- the State reimburses us slightly less, slightly  
2 lower rate than we charge for normal credits, but the  
3 really, um, important impact is as a strategic  
4 recruiting tool.

5 Q Recruiting tool to get more students in?

6 A Right. So students -- um, students  
7 understand that North Idaho College is a great place to  
8 be and they participate and -- and then take classes.  
9 Upon graduation of high school, if they haven't  
10 finished, they come and take classes as full or  
11 part-time as regular students.

12 Q In order for a dual credit offering to be  
13 made between North Idaho College and another  
14 institution, what needs to occur?

15 A There has to be an agreement between the  
16 superintendent and the principals.

17 But I think more important is the  
18 relationship between the guidance counsellors. You can  
19 have an agreement, but if the guidance counsellors don't  
20 trust that the college is going to do the right thing,  
21 then they won't recommend students to come to college.

22 So it is a really systems approach to the  
23 dual credit piece.

24 Q Are you aware of, since you have been placed  
25 on administrative leave, whether NIC has lost any of the

1 dual credit agreements with any institutions?

2 A I have been made aware, yes.

3 MR. WALTHER: Objection. Hearsay and lack of  
4 foundation.

5 THE COURT: Sustained.

6 MS. MALEK: Thank you, Your Honor.

7 BY MS. MALEK:

8 Q Dr. Swayne, if NIC continues to make changes  
9 to the college both as far as the organizational aspect  
10 and then operational level as well, could these changes  
11 impact your evaluation?

12 A Yes.

13 Q How?

14 MR. WALTHER: Objection. Calls for  
15 speculation.

16 He's giving opinions as to what the board  
17 members will do with the evaluation in the future.

18 THE COURT: Thank you.

19 Ms. Malek, your response.

20 MS. MALEK: Your Honor, I think that based on  
21 his understanding of the categories on which he's going  
22 to be evaluated, he can testify whether or not he  
23 believes it could or could not affect his evaluation.

24 THE COURT: Anything further, Mr. Walther?

25 MR. WALTHER: The same objection.

1           This is speculation and any such opinion  
2 should be provided by the trustees themselves, not based  
3 on Dr. Swayne's speculation.

4           THE COURT: I'm going to overrule the  
5 objection.

6           Certainly asking what trustees might do in  
7 the future would be seeking speculative information.

8           But asking this individual what his concerns  
9 are based on his knowledge of performance evaluation  
10 categories and what he has to meet is different and I  
11 don't think that calls for speculation, it calls for his  
12 opinions about his own concerns.

13           And so I say this in some detail to provide  
14 some parameters with respect to the direction of the  
15 question and any answers.

16           MS. MALEK: Thank you, Your Honor.

17 BY MS. MALEK:

18           Q       So, Dr. Swayne, can you tell us what your  
19 concerns are in regards to your personal evaluation if,  
20 um, organizational and operational level changes  
21 continue to be made by North Idaho College?

22           A       In general or specific?

23           Q       Well, in general.

24           A       Okay. In general, my role as president is in  
25 building relationships and identifying capacities of the

1 college faculty and staff to meet the needs of the  
2 community.

3 So when you build relationships it is not  
4 something you do with one meeting, it is built over  
5 time. And when those relationships are built on trust,  
6 people will -- people are willing to take a chance and  
7 give you the opportunity to provide service, just like  
8 in any business.

9 So when those -- those relationships are  
10 broken or trust is eliminated because of promises made,  
11 but not delivered, going back after the fact and trying  
12 to reestablish those relationships is incredibly  
13 difficult.

14 Q I would like you to take out and put back in  
15 front of you Plaintiff's Exhibit Number 2, if you would.

16 A (Witness complies.)

17 Q That was your -- the evaluation survey.

18 What I'd like to do is to go through the  
19 categories in this evaluation and ask you what your  
20 concern -- your specific concern is if NIC makes  
21 significant organizational or operational changes while  
22 you're on administrative leave, how that would affect  
23 each one of these categories in your opinion.

24 A Sure.

25 Q So let's turn to leadership first.

1 MR. WALTHER: I need to state an objection  
2 here for the record that all of this is speculation  
3 based upon projected evaluations, assuming there will be  
4 evaluations for matters that occurred while he was on  
5 leave. That's a huge assumption that he's making that  
6 he will receive negative evaluations from consequences  
7 that occurred while he is on leave.

8 There's no basis for that opinion. At most  
9 it is a personal concern, but it is not based on any  
10 actual evidence that these concerns will actually occur  
11 in the future with regard to negative evaluations for  
12 matters he did not personally perform.

13 THE COURT: Thank you.

14 I understand your concerns and certainly,  
15 Mr. Walther, these are -- I would anticipate that this  
16 is part of your argument.

17 However, there's not a question pending and  
18 so I am going to allow, of course, Ms. Malek to continue  
19 with her questioning.

20 If you have specific objections to a  
21 question, you can certainly make them and I will keep in  
22 mind the nature of your more overall objection that you  
23 just stated.

24 MR. WALTHER: Thank you, Your Honor.

25 Your Honor, if I may, just to make the



1 proceedings smoother, may I simply have a standing  
2 objection to questions about these categories rather  
3 than me objecting to each one? I think that would just  
4 be more efficient and less disruptive.

5 THE COURT: I certainly appreciate that. I  
6 appreciate the sentiment about it being less disruptive  
7 and more efficient.

8 I think there are some concerns that have  
9 been raised by the Supreme Court with respect to the  
10 notion of a standing objection.

11 If that's what you are wanting to do, I will  
12 certainly allow you to do that, but I can't guarantee  
13 that it ends up having the effect that perhaps you would  
14 want it to based on some case law that we have had in  
15 the recent past few years that -- that I can't pull out  
16 of my brain right now without going and doing some  
17 research, so I can't identify anything in particular,  
18 but I think you may be aware of what I'm talking about.

19 So that's a very long winded --

20 MR. WALTHER: I'll just make brief, one word  
21 objections and we can move on.

22 THE COURT: Very good. Thank you.

23 Ms. Malek.

24 BY MS. MALEK:

25 Q Dr. Swayne, in the first category,

1 leadership, can you please look down the six  
2 subcategories that you're going to be evaluated on  
3 pursuant to your agreement and let me know if you have  
4 concern that significant operational changes made by NIC  
5 in your absence whether it would or would not affect  
6 your evaluation on those categories?

7 A Sure.

8 MR. WALTHER: Objection. Speculation.

9 THE COURT: Overruled.

10 THE WITNESS: So I think from my perspective  
11 I look at these as when I come back, um, what's the  
12 condition going to be?

13 And so, um, as I've said earlier,  
14 relationships are really the foundation of what we do as  
15 presidents. And so when I look at some of these things,  
16 that's kind of in my mind is how is that -- so I've got  
17 to go back and rebuild relationships instead of  
18 continuing momentum that we had, I've got to rebuild  
19 relationships.

20 And so, um, number 2: Communicate  
21 effectively and appropriately with the public media to  
22 present a positive image of the college as its first  
23 choice for the students in the community.

24 There's -- that's a real concern, because if  
25 trust and relationships are broken, you have to rebuild

1 those trust and relationships with the media and there's  
2 a delay effect, because students make decisions about  
3 where they're going to go to college much earlier than  
4 the timeline that I come back, so they've already  
5 potentially made a decision about where they're going to  
6 college because they haven't been communicated with by  
7 me. And so that -- even though that might happen in the  
8 past, the future effect is incredible, long, and  
9 sustaining. So I think that is one.

10           Number 4: Promotes the college through  
11 effective interaction with stakeholders at the college.

12           So in other words, the people at the college,  
13 communicating with them, building relationships with  
14 them, and getting morale up, if -- again, once trust is  
15 lost trying to rebuild those relationships and get the  
16 momentum back to where it was is a delay.

17           So, you know, if I come back on my second or  
18 third quarter, you would expect things to be going much  
19 faster and much more smooth and I'm essentially starting  
20 over. So those are real concerns from a leadership  
21 perspective.

22           Q           What about category number -- subcategory  
23 number 5: Provide the long term strategic vision  
24 through the development of a master plan for enrollment,  
25 retention, and completion.

1           Do you have any concerns in regard to that  
2 subcategory?

3           A       Right. We were in the process of building a  
4 master plan that would -- a strategic plan -- that  
5 addressed those, all of those issues.

6           We hadn't gotten to the point where it was  
7 finalized yet, but we were well on our way for getting  
8 those things done.

9           And I'd say unique to our approach was the  
10 strategic plan that was in place was outdated. I would  
11 say you could drive a truck through it, there were no  
12 standards, objective measures. So we were building  
13 those and making changes while we were going through the  
14 plan.

15           So we had a lot of momentum. We turned dual  
16 credit enrollment around and included those things in  
17 the plan going forward. And so all of that is on hold  
18 and we'd have to restart that process, huge impact.

19           Q       Flip to the next page, finance and  
20 accountability please.

21           Is there any subcategory here on which you're  
22 to be evaluated under your agreement that you're  
23 concerned about in the future if NIC continues to make  
24 organizational and operational changes in your absence?

25           A       Sure. We spoke about this earlier within

1 regard to --

2 MR. WALTHER: Objection. Assumes facts not  
3 in evidence. Speculation. Lack of foundation.

4 THE COURT: Thank you.

5 And overruled.

6 BY MS. MALEK:

7 Q You may go ahead and answer.

8 A As we spoke about earlier, changes to the  
9 athletic conference or the athletic department that  
10 increased cost go directly to item number 8: Allocates  
11 resources and prioritizes the budget to meet the college  
12 admission goals and strategic plans.

13 So changes that affect the budget by, you  
14 know, four percent or more would have a huge impact that  
15 I would have to deal with moving forward that I don't --  
16 that were not part of my contract when I was there.

17 THE COURT: I'm going to stop you here,  
18 Ms. Malek.

19 I think it is a time for a break. We need to  
20 let some hands rest.

21 So everyone please go ahead and take a break.

22 Let's get back on the record in ten minutes.

23 And is that enough time --

24 MS. MALEK: That's plenty.

25 THE COURT: -- for counsel to have a break?

1           And, Mr. Walther?

2           MR. WALTHER: That's appropriate.

3           THE COURT: Okay. So let's go back on at  
4 10:41 and we'll be in recess until then.

5           (Recess taken.)

6           THE COURT: All right. We're back on the  
7 record in Swayne versus NIC.

8           Ms. Malek.

9           MS. MALEK: Thank you, Your Honor.

10 BY MS. MALEK:

11           Q        Dr. Swayne, I think we were on the category  
12 of finance and accountability on Exhibit Number 2.

13           A        Correct.

14           Q        If you can flip back to that. And there are  
15 subcategory 7 through 12 under finance and  
16 accountability.

17                    As you review those, are there any  
18 subcategories that you are concerned about as far as  
19 your own evaluation should NIC continue to make  
20 significant organizational and operational changes?

21           MR. WALTHER: And I'll object. Assumes facts  
22 not in evidence. Speculation. Lack of foundation.

23           THE COURT: Thank you, Mr. Walther.

24           Overruled.

25           THE WITNESS: Yes, number 8: Allocates

1 resources and prioritizes the budget to meet the college  
2 admission goals and strategic plans.

3 So, again, looking -- you know, kind of the  
4 past reflects what's going to happen in the future, so  
5 building those plans and then allocating those resources  
6 is a core function of the president.

7 And so, again, the budgeting process is going  
8 on and it should be starting now, so allocating those  
9 resources gives the president the ability to set the  
10 priorities and establish the college admission goals and  
11 the strategies for moving forward.

12 And so this is a critical one, because if we  
13 change something like the athletic conference and the  
14 plans are shifted accordingly, I would be, you know,  
15 walking into a place where clearly in my view the plans  
16 that are then in place I would have to execute, but they  
17 would not be prioritized according to what I would see  
18 as the college admission goals and strategic plans.

19 Q Okay. So let me just ask a couple questions  
20 for clarification.

21 A Uh-huh.

22 Q Prior to being placed on administrative  
23 leave, you had -- were working on developing a strategic  
24 plan for the college?

25 A Correct.

1 Q And that was for the future of the college?  
2 A Correct.  
3 Q And for the priorities in the future?  
4 A Correct.  
5 Q Okay. And are you aware of whether there is  
6 a new strategic plan for the college right now?  
7 A No.  
8 Q Okay. Are you concerned about that?  
9 A I am.  
10 Q Okay. And why is that you're concerned about  
11 a new strategic plan for the college?  
12 A The strategic plan --  
13 MR. WALTHER: Same objection, Your Honor.  
14 THE COURT: I'm sorry, Mr. Walther?  
15 MR. WALTHER: Yes, same objections as  
16 previously, Your Honor.  
17 THE COURT: Thank you.  
18 Overruled.  
19 THE WITNESS: Strategic plan and strategic  
20 planning particularly at a university where you're based  
21 on semesters, things take a long time to develop. And  
22 so we were well into this planning process of developing  
23 a strategic plan and as I said before implementing that  
24 strategic plan as we were going forward.  
25 And so as far as I can tell all of that



1 momentum has stopped now and so restarting that, getting  
2 that back on has significant consequences for the  
3 future, because it is something that takes momentum to  
4 build, it takes a long time to build, and so now rather  
5 than, you know, maybe in the third quarter we're  
6 implementing that plan, we're actually restarting the  
7 planning process.

8 BY MS. MALEK:

9 Q And are you aware of whose strategic plan you  
10 would be implementing if and when you return to NIC?

11 A I'm not aware of the planning process, so I  
12 can't speak to that.

13 Q All right. Are you concerned about a new  
14 strategic plan that you haven't approved being  
15 implemented at the college?

16 A I would say I'm more concerned --

17 MR. WALTHER: Objection. Same objections as  
18 previously.

19 THE COURT: Thank you.

20 Overruled.

21 THE WITNESS: I would say I'm more concerned  
22 with the lack of a strategic plan and coming back into  
23 an outdated strategic plan that does not meet the  
24 mission goals of the institution.

25 MS. MALEK:

1 Q In your opinion, do you believe you'd have to  
2 own the decisions that were made?

3 A Absolutely.

4 Q Are there any other subcategories under  
5 finance and accountability that you are worried about  
6 personally being evaluated on should and when -- should  
7 you return to office?

8 A Sure. Number 11, we've talked about how the  
9 impact of consistent funding. So if enrollments go  
10 down, that impacts both tuition, revenue, and State  
11 revenues and so maintaining that has a huge impact on  
12 our ability to operate going forward.

13 Q What about the first subcategory 7: Provides  
14 sound fiscal management including addressing budgetary  
15 matters in a way that achieves more efficient and  
16 effective use of resources without compromising  
17 student's success. Do you have any concerns there?

18 A Right, so the fiscal resource. We have  
19 experienced now an inordinate number of expenses that  
20 were not anticipated. And so we're building a budget  
21 deficit as we are operating now that would require  
22 somebody to deal with upon return and then figure out  
23 how we address that going forward as well.

24 So increased expenses on any number of fronts  
25 and as was reported at the last board meeting -- the

1 last board of trustees meeting on the 22nd of February,  
2 apparently declining enrollments as well.

3 Q If you could flip to the next page, academic  
4 and student affairs and review the subcategories there  
5 and let me know if you have any concerns about how NIC's  
6 changes to the operations or to the organization would  
7 affect -- directly affect your evaluation on any of  
8 these items?

9 A Sure.

10 MR. WALTHER: The same objection, Your Honor.

11 THE COURT: Thank you, Mr. Walther.

12 Overruled.

13 THE WITNESS: Number 14 is one that stands  
14 out to me. It ensures credit and noncredit programs  
15 meet the community's needs. And so I had -- I was in  
16 the process of working on several programs that  
17 specifically address this that are now on hold and that  
18 is working with University of Idaho to create four-year  
19 programs, working with LCSC to create four-year  
20 programs, and entrepreneur program where I had six  
21 colleagues come in and do interviews with about 120  
22 stakeholders from the community, staff and faculty, and  
23 students to help identify the entrepreneurship program  
24 needs moving forward.

25 So all of that got put on hold and would have

1 to be restarted. Um, I think the need doesn't go away.  
2 The challenge for me as a president coming back into it  
3 is that the momentum has been lost and all --it just  
4 creates additional work of rebuilding those  
5 relationships to move forward effectively.

6 Q If you could flip to the next page, student  
7 success, and review the subcategories there. Let me  
8 know whether you have any concern about your evaluation  
9 under any of those subcategories as a result of NIC's  
10 changes to the organization or operations.

11 A There are, again, several --

12 MR. WALTHER: Also same objection,  
13 Your Honor.

14 THE COURT: Thank you, Mr. Walther.  
15 Overruled.

16 THE WITNESS: There are several of these that  
17 come up. Number 18: Builds community partners,  
18 contributing to student success and career readiness  
19 through effective interactions with the community.

20 So again as I mentioned in the last one,  
21 these programs, building continuing programs for  
22 students to easily transition from a two-year program at  
23 NIC into a four-year program at University of Idaho,  
24 LCSC, or even Boise State.

25 Those were ongoing and based on relationships

1 that I had with those presidents and we were working  
2 actively to do those, which would be a huge benefit to  
3 the members -- to our students and to the community.  
4 And those are all on hold, they're not moving forward.

5           And then number 20: Recommends budget  
6 based on evidence of program effectiveness and link to  
7 plans to increase rates of student success.

8           So that gets to the budget and budget  
9 allocations, the program effectiveness, and increasing  
10 student success which also translates to the programs of  
11 recruiting and retaining students all go towards -- not  
12 just student success, but the foundational success of  
13 the institution and our budget.

14           Q       If you can flip to the next page, capital  
15 development and facilities, and review the subcategories  
16 there and let me know if you are concerned about NIC  
17 making any operational or organizational changes that  
18 would affect you and your evaluation moving forward.

19           A       Um, sure. I think, again, all of these have  
20 a direct impact on me, because of the additional work  
21 required to rebuild relationships and restart programs  
22 where momentum existed.

23                   But I'll highlight number 22, which says:  
24 Provides effective stewardship of institutional  
25 resources including financial, physical, and

1 professional.

2 And so things like changing athletic  
3 conferences, changing the status -- full-time to  
4 part-time status of employees in the athletic department  
5 and giving raises, those things have long term -- they  
6 don't just impact what's going on now, those things have  
7 long term consequences for the college and the ability  
8 to manage it and balance the budget. So those are  
9 incredibly challenging.

10 Q Okay. All right. And then if you can turn  
11 to the next page, human resources.

12 Let me know if any of those subcategories  
13 you're concerned about being evaluated on given -- or if  
14 NIC makes any operational or organizational changes.

15 MR. WALTHER: The same objection, Your Honor.

16 THE COURT: Thank you.

17 The same ruling, overruled.

18 THE WITNESS: So at an academic institution  
19 the major expenses typically are human resources, the  
20 instructors and the support staff. So human resources  
21 are all -- always critically important to an academic  
22 institution's success.

23 And so all of these things are, you know,  
24 changes made that I would have to come in and then own  
25 those changes are important.

1           But also the change from being the president  
2 to not being the president -- not being the active  
3 president, things like number 26: Provides leadership  
4 and resources for the professional development of staff  
5 and maintains own currency about development in  
6 education, in particularly community colleges.

7           So I'm not able to build my staff. We were  
8 in the process of building that, but I've -- my ability  
9 to build my staff stopped on the 8th of December. And  
10 if I come back, I'm now rebuilding that staff instead of  
11 being functional and running things, we're back in the  
12 rebuild process. And so that has an impact, as well as  
13 opportunities to develop my staff.

14           So the places that I would send people to to  
15 get further development, instead of that happening in  
16 the second quarter, would restart in the third quarter  
17 or at some time in the future.

18           So we're restarting the clock on building  
19 teams and those relationships within the college and  
20 that has a huge impact on workload and just the ability  
21 to get things done.

22 BY MS. MALEK:

23           Q           What if staff are hired while you're not  
24 acting president of the college, would that affect any  
25 of these subcategories in any way?

1           A           Absolutely.  Particularly at the senior  
2 level, because I would have to either manage them as  
3 staff that I had no part in hiring and develop them or  
4 find other things for them to do.  And so those are --  
5 neither one of those is without a cost in terms of my  
6 time to make sure that that would happen.

7           Q           Flip to the next page, relation -- two more  
8 -- so relations with the board.  Let's go to advocacy  
9 and communication.

10          A           So --

11                   MR. WALTHER:  The same objections,  
12 Your Honor.

13                   THE COURT:  Thank you, Mr. Walther.  
14 Overruled.

15                   THE WITNESS:  As I started when we were  
16 talking about in generality the relationships and  
17 advocacy and communication are probably the most  
18 important things that a president does in promoting the  
19 college.

20                   So number 35:  Effectively promotes the  
21 college and advocates for its needs to appropriate  
22 federal and state level legislators.

23                   Earlier in January, um, education week, I was  
24 not able to attend.  So now I've got to go back and  
25 build relationships with the legislators that are going



1 to be -- instead of concentrated in Boise during  
2 education week, I've got to go find them and make time  
3 to meet with them and build relationships that may or  
4 may not conflict with what the interim president may  
5 have told them while he was meeting with them.

6 So there's -- it is not just building  
7 relationships, it is maybe corrective action for  
8 relationships that may not represent the goals and  
9 objectives and priorities of the institution.

10 Number 36 and 37 both deal with  
11 accreditation. And when I came to the college, it was  
12 simply with warning. We were accredited with warning  
13 and now we're moving forward under a show cause, which  
14 is the last step before losing accreditation.

15 And so coming back into a college that is in  
16 its last step before losing accreditation is a huge  
17 impact and the direct loss is not -- in this case is not  
18 just on me in terms of my time and commitment to fix,  
19 but it is also in the larger scope of -- kind of outside  
20 the scope of the evaluation, being the president of a  
21 college that loses accreditation is not exactly, you  
22 know, something you want to put as a first bullet on  
23 your resume.

24 So there are significant impacts to coming  
25 back into a college that is potentially losing its

1 accreditation.

2 Q And since you have been on administrative  
3 leave, have you been able to personally address any of  
4 the issues raised by the NWCCU as, you know, concerns in  
5 order to right the ship, so to speak?

6 A No, I don't.

7 Q Do you know whether North Idaho College has  
8 provided a response to the NWCCU's letters?

9 A They responded to the first one on the --  
10 that was -- that came out on December 17th. They  
11 responded on the 4th of January.

12 And then they got another letter later, the  
13 one that has been introduced, on the 9th of February  
14 that took us to show cause.

15 And so there has been other correspondence  
16 back to them asking for an extension, but that's the one  
17 that I know of.

18 Q Have those letters and responses been posted  
19 on NIC's website?

20 A They have.

21 Q Have you been asked by anybody at North Idaho  
22 College to weigh in on the responses back to the NWCCU?

23 A I have not.

24 Q I'm handing you what's been marked as  
25 Plaintiff's Exhibit Number 12 for identification

1 purposes.

2 Can you review that and let me know if you  
3 recognize it?

4 A Yes.

5 Q All right. And what do you recognize it to  
6 be?

7 A This is a letter from the NWCCU dated  
8 December 17th and it was after I had been put on  
9 administrative leave, so it was addressed to acting  
10 co-CEOs Dr. Llyod Duman and Sarah Garcia, the vice  
11 president for the business and finance.

12 Q Is that -- was that posted anywhere  
13 publically?

14 A It is posted on the NIC website, yes.

15 Q All right. Is that a true and accurate copy  
16 of the letter you saw on the NIC website?

17 A Yes.

18 MS. MALEK: Your Honor, I'd move to admit  
19 Plaintiff's Exhibit Number 12 into evidence.

20 THE COURT: Mr. Walther, any objection?

21 MR. WALTHER: No objection, Your Honor.

22 THE COURT: Thank you.

23 Exhibit 12 will be admitted.

24 BY MS. MALEK:

25 Q Dr. Swayne, I'm going to hand you what's been

1 marked as Plaintiff's Exhibit Number 13 for  
2 identification.

3 Do you recognize that document?

4 A Yes, I do.

5 Q Okay. And what do you recognize it to be?

6 A This is the NIC response to that letter that  
7 they had a deadline of the 4th of January. This is  
8 dated the 4th of January 2023.

9 Q And have you seen that document before?

10 A I have.

11 Q Where have you seen it?

12 A It is posted on their website, so I've seen  
13 it from their website.

14 Q Their website meaning?

15 A NIC's website.

16 Q Okay. Is that a true and accurate copy of  
17 the response that you saw on NIC's website?

18 A It is.

19 MS. MALEK: All right. Your Honor, I'd move  
20 to admit Plaintiff's 13 into evidence.

21 THE COURT: Mr. Walther, any objection?

22 MR. WALTHER: No objection, Your Honor.

23 THE COURT: Exhibit 13 will be admitted.

24 BY MS. MALEK:

25 Q Were you -- did you participate in the

1 drafting of that response back to the NWCCU?

2 A No, I did not.

3 Q Does that response include a plan of action  
4 to address some of the concerns of the NWCCU?

5 A Um, it is a tough question to answer.

6 It purports to; although, a subsequent letter  
7 from NWCCU actually addressed that directly.

8 Q All right. Okay.

9 A I think that letter has already been  
10 introduced, that was the letter dated 9 February.

11 Q Okay. Before?

12 A Yep.

13 Q All right. Dr. Swayne, do you believe that  
14 there is a risk of irreparable harm to you personally if  
15 NIC continues to make operational and organizational  
16 changes that would ordinarily be within your purview as  
17 president?

18 A Yes.

19 Q And can you explain that?

20 A Well, it kind of goes back to the -- all  
21 these relationships and the prioritization and the  
22 planning. I have to come back into an organization  
23 basically starting over. And so all of the time and  
24 effort that has gone into building those relationships,  
25 establishing needs, building programs, starting

1 programs, doing the planning process, making  
2 investments, you know, expending -- expenditure of tax  
3 dollars to make those plans come into place, I now have  
4 to go back and reset and restart all of those processes.

5 So it is a significant amount of work and  
6 time that I have to reinvest. Instead of executing  
7 plans, I'm now reinvesting that time because it was  
8 essentially shutdown.

9 Q If NIC makes changes to the expenses -- the  
10 traditional expenditures of the college while you're on  
11 administrative leave, would that have an effect on you?

12 A Absolutely. We've discussed already the  
13 evaluation process and now I have to figure out how to  
14 balance a budget that's at least four percent greater  
15 expenses if they make these changes that they've talked  
16 about during the December 21st board meeting. And so  
17 how do you figure out how to balance that? We have  
18 limited revenue, which might actually decline, and  
19 greater expenses. I've got to figure out how to make  
20 those decisions. Potentially looking people in the eye  
21 and saying, you're fired, because we've -- you know, we  
22 don't have the money to cover your expenses.

23 Q Right.

24 Do you believe that you'll suffer personally  
25 some sort of irreparable harm here as a result of that?

1 A Yes.

2 Q All right. And why is that?

3 A Um, this is intrinsic. This is -- the  
4 operations here, this is me. Everything that is  
5 happening to the college now that I have to fix is a  
6 cost to me personally. My integrity, the trust and  
7 confidence that I have built and then lost, those are  
8 all costs directly to me. Maybe hard to put a dollar  
9 value on, but those are all costs to me in terms of my  
10 reputation and the workload going forward.

11 Q Dr. Swayne, you had mentioned that there were  
12 recordings of the board meetings; is that correct?

13 A Yes.

14 Q Okay. And have you reviewed the recordings  
15 of the December 8th and the December 9th board meetings?

16 A December 5th and 8th.

17 Q I'm sorry, 5th and 8th.

18 A Yes.

19 Q Okay. All right. And have you been provided  
20 a copy of those recordings?

21 A Yes.

22 Q Okay. I'm handing you what's been marked as  
23 Exhibit Number 5 and is that a flash drive.

24 A Correct.

25 Q And are the recordings of the board meetings

1 on that flash drive?

2 A Yes.

3 Q And are those true and accurate recordings?

4 A Yes.

5 MS. MALEK: All right. Your Honor, I'd move  
6 to admit Exhibit Number 5 into evidence.

7 THE COURT: Any objection, Mr. Walther?

8 MR. WALTHER: Well, I haven't heard the  
9 recordings, but assuming his testimony is accurate, I  
10 don't object to the foundation.

11 MS. MALEK: Your Honor, for the record --

12 MR. WALTHER: I have no idea what's on the  
13 flash drive.

14 MS. MALEK: Your Honor, for the record, it is  
15 the same material that was attached to Dr. Swayne's  
16 declaration and I think the court had already received a  
17 copy of it as well as opposing counsel.

18 THE COURT: Okay. With that representation,  
19 Mr. Walther, any objection?

20 MR. WALTHER: No objection.

21 THE COURT: Exhibit 5?

22 MS. MALEK: Yes, Your Honor.

23 THE COURT: Will be admitted.

24 MS. MALEK: I have no further questions,  
25 Your Honor. Thank you.



1 THE COURT: Thank you.

2 Cross-examination, Mr. Walther.

3 MR. WALTHER: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. WALTHER:

6 Q Good morning, Dr. South.

7 I'm just curious, can you see me or are you  
8 just hearing me?

9 A I'm Dr. Swayne.

10 Q I'm sorry, Dr. Swayne. I apologize.

11 Are you able to see me or do you just hear my  
12 voice?

13 A No, I can see you on the screen.

14 Q Okay. Thank you.

15 THE COURT: Excuse me just --

16 BY MR. WALTHER:

17 Q I just have a few questions for you.

18 THE COURT: Mr. Walther, give me just a  
19 moment here.

20 MR. WALTHER: I'm sorry?

21 THE COURT: Give me just a moment. I want to  
22 change the camera view.

23 MR. WALTHER: Oh fine, thank you.

24 THE COURT: Go ahead. I apologize for the  
25 interruption.

1 MR. WALTHER: No problem, Your Honor.

2 BY MR. WALTHER:

3 Q Just a couple clarifying questions here and  
4 some followup to the previous testimony.

5 The first one is, now, during the time you'd  
6 been on paid administrative leave, um, you have received  
7 all pay and benefits due under your contract without  
8 interruption?

9 A No.

10 Q I'm sorry?

11 A No.

12 Q You have not received your pay and benefits  
13 that were identified under the contract?

14 A No.

15 Q What did you not receive as far as  
16 compensation and benefits?

17 A Part of the contract specifies that I'm  
18 supposed to have internet access, e-mail access, and  
19 computer access and all of that has been taken back.

20 Q Okay. But with regard to your salary and  
21 your insurance and the other monetary benefits that are  
22 set forth in the contract, you have received those;  
23 correct?

24 A Correct.

25 Q And I believe you testified that you have not

1     been accused -- or there's no alleged misconduct against  
2     you with regard to your performance as the president of  
3     the college?

4             A           That is correct.

5             Q           And at this time you talked extensively about  
6     areas that you have concerns about based upon the  
7     current functioning of the college.

8                     And just to clarify, none of those concerns  
9     at this time have been directed against you; is that  
10    correct?

11            A           Um, I would say, no, that's not correct.

12            Q           So you've been accused of, um, performing in  
13    a way that threatens the accreditation of the college?

14            A           That's not the question you asked.

15            Q           And I'm asking whether or not the issues that  
16    you talked about -- and there were multiple and I'm not  
17    going to repeat them all -- but it was concerns about  
18    finances basically in connection with your testimony by  
19    your evaluation. At this time none of those occurred --  
20    concerns have actually occurred; correct?

21            A           Again I'd say, no, that's not correct.

22            Q           Okay. With regard to the discussion of your  
23    evaluation, based on your testimony it does not appear  
24    there's been any statement made to you that an adverse  
25    evaluation is pending based upon the college's

1 condition; correct?

2 A There's been no discussion of my review since  
3 I've been placed on administrative leave.

4 Q Okay. And going to, um, Exhibit 1, that is  
5 your contract; correct?

6 A Give me a minute to get back to that.

7 Q Yes. Do you have that?

8 A Not yet. I have a filing cabinet worth of  
9 exhibits here that I need to...

10 Q And during your testimony you talked about  
11 the section set forth in the employment agreement to  
12 serve as the President of North Idaho College.

13 If you look at section 1, there's the  
14 purpose; section 2, responsibilities; section 3, term,  
15 et cetera. Isn't it true there's no section set forth  
16 in the agreement that prohibits the board from placing  
17 you on paid administrative leave?

18 A There is no mention other than what I  
19 discussed in my testimony earlier about paid  
20 administrative leave.

21 Q Right, and that's not my question.

22 Isn't it true there is no section that  
23 discusses placing you on -- or prohibits the board from  
24 placing you on paid administrative leave; correct?

25 A As I said earlier in my testimony, there's no

1 other discussion of that in my contract.

2 Q Okay. And my reference is specifically to  
3 paid administrative leave.

4 A There's no mention in my contract about  
5 administrative leave, other than what was earlier  
6 entered in my testimony.

7 Q Okay. Let's go to, um, paragraph 12.2. It  
8 is on page 4.

9 And that is under the section termination;  
10 correct?

11 A Correct.

12 Q And I'll read 12.2 for you and you tell me if  
13 I read it correctly.

14 It states: If during the -- its term this  
15 agreement is terminated by the President without cause,  
16 the termination shall be become effective 60 days after  
17 receipt of written notice of termination. The  
18 obligations of both parties under this agreement cease  
19 when the termination is effective, but the Board may in  
20 its discretion place the President on administrative  
21 leave during part or all of the 60-day notice period.

22 Did I read that correctly?

23 A Yes.

24 Q The administrative leave mentioned there does  
25 not say it is paid administrative leave, does it?

1 A It is not addressed, no.

2 Q It doesn't say paid administrative leave,  
3 does it?

4 A It does not.

5 Q The administrative leave may be without pay;  
6 correct?

7 A It is not specified.

8 Q Okay. If you go to Exhibit 2 please, that's  
9 the evaluation.

10 A (Witness complies.)

11 Q And are you there?

12 A Yes.

13 Q Thank you.

14 Looking at the very first page there at the  
15 top, it describes the scale.

16 It says, one: Does not meet expectations.

17 Two: Meets some expectations.

18 Three: Meets expectations.

19 Four: Exceeds expectations.

20 Five: Significantly exceed expectations.

21 And there are also two additional categories:  
22 Not yet or don't know.

23 Correct?

24 A Correct.

25 Q So these areas that you talked about on your

1 evaluation with regard to matters that occurred while  
2 you weren't there, isn't it fair to believe that the  
3 board would write "don't know"?

4 MS. MALEK: Objection. Calls for  
5 speculation.

6 THE COURT: Mr. Walther, address Ms. Malek's  
7 objection.

8 MR. WALTHER: Well, he has speculated a lot  
9 about what may occur that's bad with regard to this  
10 evaluation. So I believe it is appropriate to identify  
11 other possibilities that may occur, specifically that  
12 the board may actually evaluate him fairly and put down  
13 marks such as "don't know" where the information or the  
14 criteria there did not occur during his period as  
15 president.

16 THE COURT: Any response, Ms. Malek?

17 MS. MALEK: Yes, Your Honor.

18 When Dr. Swayne was previously asked  
19 questions in regards to his evaluation, he was  
20 specifically asked questions about his concern.

21 The question posed to Dr. Swayne by  
22 Mr. Walther was: Is it fair to believe. That calls for  
23 speculation.

24 THE COURT: And, Mr. Walther, I am going to  
25 sustain this objection and let me explain.

1           When you objected to Ms. Malek's questioning  
2 of Dr. Swayne based on calling for speculation, I  
3 overruled it because the questions were limited to what  
4 Dr. Swayne's concerns were.

5           And I also gave a fairly wordy ruling and  
6 indicated that this is providing some parameters that  
7 what is allowable is Dr. Swayne's concerns and not  
8 speculation about what might happen.

9           And now you have asked a question that you  
10 would have objected to if Ms. Malek had asked it, but it  
11 does ask for what the board might do in the future, that  
12 does specifically call for speculation.

13           And so I do sustain the objection based on  
14 the wording of the question that you just posed.

15 BY MR. WALTHER:

16           Q       Do you have any reason to believe that for  
17 areas that were not observed, the board members would  
18 not select the "don't know" category?

19           A       I have no insights onto how the board members  
20 might or might not evaluate me.

21           Q       And you also talked about a lot of concerns  
22 and that if you returned, you'd be basically dealt a  
23 very difficult hand there at the college and that it  
24 would make your job much more difficult.

25                   Do you have any reason to believe that the



1 board might not take into account the difficulty of the  
2 circumstances and not rate you fairly based upon those  
3 circumstances?

4 A So you're asking me to speculate on how the  
5 board might consider the change in circumstance upon my  
6 return?

7 Q No, I'm asking: Do you have any reason to  
8 believe they won't take those properly into account when  
9 performing your evaluation?

10 A Yes.

11 Q You believe they won't fairly evaluate you,  
12 is that your testimony?

13 A So, um, I can't really speculate on their  
14 behavior in the future, but I can -- I can consider  
15 their performance in the past.

16 Q So based on what you know previously;  
17 correct?

18 A Correct.

19 Q And going to -- referring to paragraph 4 --  
20 or Exhibit 4.

21 A What is that exhibit? Oh, I got it.

22 Q That's --

23 A I got it.

24 Q -- Mr. Macomber's letter to you putting you  
25 on leave.

1           A           Correct.

2           Q           Do you have that?

3           A           I have it, yes.

4           Q           And that, just for clarification, is the  
5 letter dated December 9, 2022.

6                       And that letter indicates that there's no  
7 disciplinary proceedings pending; correct?

8           A           It doesn't say it quite like that.

9           Q           There's no disciplinary process?

10          A           Um, let me find that. Correct.

11          Q           If you look at the last sentence, the last  
12 paragraph.

13          A           It says, You are not being placed on leave  
14 due to any disciplinary process. That's correct.

15          Q           And that you're not being accused of any  
16 wrongdoing; correct?

17          A           That is correct. That is correct, yes.

18          Q           Thank you.

19                       Going to the next exhibit, Exhibit Number 6,  
20 which is the letter from NWCCU dated February 9, 2023 to  
21 Chairman McKenzie and Interim President South. Do you  
22 have that?

23          A           Yes.

24          Q           And this letter is not addressed to you, is  
25 it?

1           A           It is not.

2           Q           And this letter doesn't contain any blame  
3           attributing you of any of the concerns identified by  
4           NWCCU in its letter identified as Exhibit 6; correct?

5           A           So I'll say, yes, but that's not the whole  
6           story.

7           Q           I don't understand your answer.

8                       Where does it say that you are the cause of  
9           some of the concerns that might result in sanctions?

10          A           Well, so if you -- if you read the whole  
11          letter, the concern is that in fact I was placed on  
12          administrative leave and was not there as president and  
13          that there are now two presidents and so I am -- I'm not  
14          accused of doing it, but I'm certainly part and parcel  
15          of the concerns that they raise in the letter.

16          Q           Okay. I understand your answer.

17                       And just to clarify, the fact that the board  
18          placed you on leave on December 8th is one of the  
19          concerns identified by NWCCU; is that correct?

20          A           That's correct.

21          Q           And that the fact that you later filed a  
22          complaint on December 16, 2022 is also identified as  
23          potentially a concern; correct?

24          A           Correct.

25          Q           But they haven't identified any of your

1       conduct as president that is a cause of concern to  
2       NWCCU; correct?

3           A       Correct.

4           Q       Going to Exhibit 7.

5                    Forgive me while I scroll through my pages.

6                    And that's a letter dated December 24, 2022  
7       from Mr. Macomber to you. Do you have that?

8           A       I do.

9           Q       And I just want to read to you the last  
10       sentence.

11                   Mr. Macomber indicated that the purpose of  
12       the leave was because the Trustees are taking this  
13       action to protect Dr. Swayne, to protect you, and the  
14       college until his investigation is completed. Is that  
15       correct?

16          A       (Pause.)

17          Q       Is that what he said to you?

18          A       That's what the letter specifies.

19          Q       And then going to Exhibit 8, which is  
20       Mr. Macomber's letter dated January 26, 2022, wherein he  
21       clarifies that you're not to have any role as president  
22       while on leave; correct?

23          A       That's correct.

24          Q       And this clarifies the fact that any of the  
25       problems that would occur during that period of time

1 would not be your responsibility; correct?

2 A It is his assertion.

3 Q I'm sorry, I misunderstood you. I'm sorry.

4 A It is his assertion.

5 Q That's his assertion. Okay.

6 Looking at Exhibit 9, which is the policy  
7 with regard to administrative leave for tenured faculty  
8 members.

9 A Right.

10 Q You indicated in your opinion this policy  
11 does not apply to you. Which is, for the record, policy  
12 3.02.31.

13 A Correct.

14 Q And your testimony was that this policy  
15 wouldn't apply to you as the president; correct?

16 A Yes, and that's also specified in the letter  
17 from Mr. Macomber.

18 Q Right.

19 Is there -- are you aware of any, um, college  
20 policy that prohibits the board from placing the  
21 president on administrative leave with pay?

22 A I'm not aware of a policy that addresses  
23 administrative leave for the president.

24 Q Specifically no policy that would prohibit  
25 it?

1 A There's no policy that addresses it.

2 Q I'm sorry?

3 A There is no policy that addresses it.

4 Q Okay. Moving forward to Exhibit 12.

5 That's actually a letter dated December 17,  
6 2022, um, so that actually predates the earlier one from  
7 NWCCU to Chairman McKenzie and Dr. South; correct?

8 A No.

9 Q This was soon after you were placed on leave  
10 earlier that month; correct?

11 A Yes, but it was not addressed to Dr. South.

12 Q No, I'm talking about the December 17, 2022  
13 letter was delivered soon after you were placed on  
14 leave; correct?

15 A Correct, but you identified it as addressed  
16 to Dr. South and it was not addressed to Dr. South.

17 Q I'm sorry, I said this was before the later  
18 letter that was addressed to Dr. South.

19 A Correct.

20 Q Okay. And this letter, which is  
21 approximately a week after -- a little more than that  
22 week after you were placed on leave, this is already  
23 addressed to acting CEO Duman and Garcia; is that  
24 correct?

25 A That's correct.

1 Q And these changes based on this letter  
2 wouldn't be your responsibility, would it?

3 A No, not my responsibility per se.

4 Q Correct, they're asking these interim CEOs to  
5 look at these issues and make the appropriate changes.

6 A Um, they're identifying them and addressing  
7 them to the board, yes.

8 Q Now, during your testimony primarily in  
9 connection with your concerns about areas pertaining to  
10 your evaluation, you talked a lot about concerns that  
11 things basically will go wrong and there'll be a lot of  
12 issues to address in the future by the president,  
13 whoever it is, whether it is you or anybody else;  
14 correct?

15 A No, I didn't say that.

16 Q You didn't say that the actions that have  
17 occurred after you were put on leave would make the job  
18 of the president more difficult in the future?

19 A I said they would make my job more difficult.

20 Q Well, you're the president; correct?

21 A Right, but you're asking me to speculate  
22 about somebody else that might come in as president and  
23 I said my challenge is that I -- I came in and built  
24 relationships during my first five months in -- in  
25 office and made promises, um, put my integrity on the

1 line, and then that was stopped and all of those things  
2 were put on hold.

3 And now if they brought in another president,  
4 there's a grace period by which you build those  
5 relationships and so a new president would come in, also  
6 knowing the situation that they're coming into. They're  
7 contracting into that situation, knowing the situation  
8 that they're coming into.

9 I'm -- I'm contracted under one situation,  
10 that situation has changed, now I'm going back into a  
11 different situation that I didn't contract to.

12 And so it would be a different circumstance  
13 for a different president to come into that and have  
14 that grace period to start over that I would not  
15 anticipate having.

16 I wouldn't -- I would hold myself to a  
17 different standard if, um, coming back.

18 Q Okay. Well, with regard to the actions that  
19 have been taken; for example, the decision to hire  
20 additional coaches and change athletic conferences, that  
21 is within the purview of the board to make that  
22 decision; correct?

23 A Um, upon recommendation of the president.

24 Q Okay. And they can make that decision;  
25 correct?



1           A           Upon recommendation of the president.

2           Q           And listening to --

3           A           In other words, it is an operational  
4 decision.

5           Q           Yes --

6           A           Right, so upon recommendation of the  
7 president.

8           Q           -- recommended by the president.

9                       And at that time they're making that  
10 decision, you're not the president, there's a different  
11 president; correct?

12          A           No, that's not correct.

13          Q           There's not an interim president?

14          A           No, you said I'm not the president, I am the  
15 president.

16          Q           You're not performing the functions of the  
17 president --

18          A           That's a different statement.

19          Q           -- those functions; correct?

20          A           That is a different statement though. I am  
21 still the president. I'm the president on leave and  
22 there is an interim that is making decisions in the role  
23 of that -- of president.

24          Q           Thank you. Dually noted.

25                       The board can take these actions with the

1 recommendations of their interim president; is that  
2 correct?

3 A That's not what the policy says.

4 Q That's the only reason for your disagreement  
5 with that statement?

6 A No, you make the statement that he's the  
7 president and I take issue with that. I think I'm the  
8 president and he's the interim president and all of the  
9 policies address the president.

10 Even in the motion before the board on the  
11 21st of December 2022, the motion before the board that  
12 was approved was for the president to make a  
13 recommendation to change athletic conferences; however,  
14 those actions are now being taken by the interim  
15 president, not the president.

16 So there's a distinction that is much broader  
17 than you're trying to portray it.

18 Q Okay. I understand your answer.

19 Um, as far as the concerns that you have with  
20 regard to, um, relationships, funding, et cetera, is it  
21 your opinion that the board has violated Idaho law?

22 A I can't speculate on that.

23 MR. WALTHER: No further questions. Thank  
24 you.

25 THE COURT: Redirect, Ms. Malek?

1 MS. MALEK: Thank you, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MS. MALEK:

4 Q Dr. Swayne, you were asked about  
5 Mr. Macomber's letter, and that's Plaintiff's Exhibit  
6 Number 8. Could you get that in front of you again?

7 A Give me a minute, yes.

8 Q Okay. Is -- anywhere in this letter does  
9 Mr. Macomber say that you will not be subject to  
10 evaluations moving forward?

11 A No.

12 Q Okay. Has there been any sort of amended  
13 contract that you have signed that says you will not be  
14 subject to any performance evaluations?

15 A No.

16 Q And in fact, does your contract say that you  
17 shall have an annual evaluation every year?

18 A It does.

19 Q Okay. Turning to Exhibit Number 7. You were  
20 asked by counsel a couple of questions on that letter  
21 dated December 24th, 2022 from Mr. Macomber.

22 And counsel asked you, you know, that  
23 Mr. Macomber had represented in this letter that you're  
24 being placed on administrative leave and that was for  
25 your own protection so long as this investigation

1 continued, until its conclusion.

2 Have you been informed about what this  
3 investigation is?

4 A No.

5 Q Have you received any updates regarding this  
6 investigation?

7 A None.

8 Q All right. Do you feel like you need  
9 protection?

10 A No.

11 Q You've had interactions with the Board of  
12 Trustees in the past as part of your job as President of  
13 North Idaho College; correct?

14 A Yes.

15 Q Has any trustee made a statement to you that  
16 caused you concern about perhaps their intention or your  
17 longevity as president?

18 A Yes.

19 Q Who?

20 A Mr. Banducci.

21 Q And what exactly did Mr. Banducci say?

22 A He sent me an e-mail -- and I don't have it  
23 in front of me -- that said basically just wait, you  
24 only have 52 days left.

25 Q And when did he send that e-mail to you?

1           A           Um, end of September, early October.

2           Q           Of what year?

3           A           Of 2022.

4           Q           Okay. And did that statement cause you  
5 concern?

6           A           Oh absolutely.

7                   MR. WALTHER: Objection, Your Honor. This is  
8 outside the scope of cross and it is bringing in new  
9 evidence that was not previously discussed.

10                   THE COURT: Ms. Malek, your response.

11                   MS. MALEK: Your Honor, I think it is within  
12 the scope of cross.

13                   Mr. Walther had asked a question about  
14 Dr. Swayne having any reason to believe he would be  
15 evaluated a certain way or that some adverse actions  
16 would be taken against him.

17                   I think this evidence contradicts that stance  
18 and position and I think it is directly relevant to bias  
19 and motive.

20                   THE COURT: I will give some leeway on that  
21 line of questioning and overrule the objection.

22                   MS. MALEK: Thank you.

23 BY MS. MALEK:

24           Q           Dr. Swayne, my question to you was: Did that  
25 statement cause you concern?

1 A Absolutely.

2 Q And why?

3 A Um, because it appeared to me to be  
4 communicating a threat that my, um -- that, um -- expect  
5 us to do something, um, and the date that he was  
6 referring to was the election and so as soon as -- as  
7 soon as the election happens, you know, you may be gone.

8 Q All right. And based on that history, are  
9 you concerned about how you're going to be evaluated if  
10 NIC continues to make organizational and operational  
11 changes that are within your purview?

12 A Absolutely. Absolutely.

13 Q I'd like to turn your attention to  
14 Plaintiff's Exhibit Number 9 again. That's the policy  
15 3.02.31.

16 A Okay.

17 Q And the question I think by counsel in  
18 regards to some of the letters that you received was  
19 that you had never been accused of any sort of  
20 wrongdoing by NIC; is that correct?

21 A That's correct.

22 Q Okay. But this policy deals specifically  
23 with wrongdoing, does it not?

24 A It does.

25 MS. MALEK: Your Honor, I have no further

1 questions.

2 THE COURT: Thank you.

3 And recross, Mr. Walther?

4 MR. WALTHER: No recross, Your Honor.

5 THE COURT: Thank you.

6 You may step down, Dr. Swayne. Thank you  
7 very much.

8 Next witness, Ms. Malek.

9 MS. MALEK: Your Honor, I have no further  
10 witnesses.

11 THE COURT: Thank you.

12 Mr. Walther, do you have any witnesses?

13 MR. WALTHER: No, Your Honor, we have no  
14 witnesses.

15 THE COURT: Thank you.

16 If there are no further witnesses, then I  
17 will hear argument.

18 Ms. Malek.

19 MS. MALEK: Thank you, Your Honor.

20 Your Honor, we briefed pretty extensively the  
21 standard of review and the rule that applies for  
22 preliminary injunction hearing, that's I.R.C.P. 65(e),  
23 and specifically we're moving forward on subsections  
24 (e)(1), (e)(2), and (e)(3) in this situation.

25 65(e)(1) provides that when it appears by the

1 complaint that the plaintiff is entitled to the relief  
2 demanded, and that relief, or any part of it, consists  
3 of restraining the commission or continuance of the acts  
4 complained of, either for a limited period or  
5 perpetually an injunction would be appropriate.

6 (e) (2) provides when it appears by the  
7 complaint or affidavit that the commission or  
8 continuance of some act during the litigation would  
9 produce waste or great or irreparable injury to the  
10 plaintiff.

11 And subsection (3) provides when it appears  
12 during the litigation that the defendant is doing,  
13 threatening, procuring or allowing to be done, or is  
14 about to do, some act in violation of the plaintiff's  
15 rights, respecting the subject of the action, and the  
16 action may make the requested judgment ineffectual.

17 Your Honor, in this case we have a couple of  
18 things at issue. First of all, a preliminary injunction  
19 may only be granted when the right is clear and that no  
20 complex issues of fact or law are present.

21 Here, the complaint, as the court has seen,  
22 is a one count claim for declaratory relief. It is  
23 straightforward. The complaint alleges that Dr. Swayne  
24 has been placed on paid administrative leave, that his  
25 contract with NIC does not provide a provision for him



1 to be placed on such a leave, and asking for a  
2 declaratory judgment from the court.

3 Your Honor, I would represent to the court  
4 that we believe Dr. Swayne has substantial likelihood of  
5 success on the merits of his claim.

6 Quite frankly, Dr. Swayne made a contract  
7 with NIC on particular terms and for a particular  
8 purpose. The agreement very clearly provides that these  
9 are going to be the terms of his employment with NIC.

10 There's only one term which addresses  
11 administrative leave. And that term is in the  
12 termination clause. The triggering condition for being  
13 placed on administrative leave is for Dr. Swayne to  
14 provide notice to the Board of Trustees, 60-day notice,  
15 that he is going to be terminating the contract. There  
16 is no other provision in that agreement that addresses  
17 administrative leave.

18 Moreover, there's no policy that NIC has that  
19 would allow them to place Dr. Swayne on administrative  
20 leave.

21 So NIC's actions here are without any  
22 authority at all and are in violation of the contract  
23 that it has made with Dr. Swayne.

24 We also believe here, Your Honor, that NIC  
25 has taken numerous actions or is threatening to take

1 numerous actions in the interim while Dr. Swayne is on  
2 this administrative leave that will cause waste, will  
3 cause the judgment to be ineffectual, or will cause  
4 irreparable harm to Dr. Swayne personally.

5 First of all, NIC has appointed an interim  
6 president and that interim president isn't just allowing  
7 the operations of NIC to go forward, but the board and  
8 this president are now making substantial changes or at  
9 least discussing making substantial changes to the  
10 operations and to the organization of NIC; hiring  
11 another provost without the impute of Dr. Swayne,  
12 talking and discussing changing the athletic conferences  
13 which would result in a 1 to \$2 million increase in the  
14 budget of NIC.

15 None of these are decisions that have to be  
16 made. These are additional and different decisions.  
17 This is not just paying the bills that NIC is receiving;  
18 they go over and above and beyond that.

19 And NIC is capitalizing on the fact that  
20 Dr. Swayne is on administrative leave and making these  
21 decisions in his absence that are not necessary for the  
22 college's normal operations.

23 Further, Your Honor, we are greatly concerned  
24 that these decisions, these changes to the organization  
25 and to the operations of NIC that haven't been

1 historically made but are being made now, are decisions  
2 that Dr. Swayne is going to have to own moving forward.

3           So, you know, and I understand NIC's position  
4 that, you know, Dr. Swayne may not be evaluated on these  
5 things, they'll give him a pass. But the reality is  
6 that we can't look at these decisions in a vacuum. It  
7 is not a one time decision that's being made or that's  
8 threatening to be made here. These decisions that are  
9 being made now have collateral consequences. Dr. Swayne  
10 is going to have to own that moving forward.

11           So if a decision is, for instance, to  
12 increase the expenses of NIC outside of what normally  
13 NIC would be spending, Dr. Swayne is going to have to  
14 come back into his role as president and figure out how  
15 to fix that. That has a long term consequence down the  
16 road, especially if there's a budget deficit.

17           If revenue is falling and expenses are  
18 increasing, at what one point in time does NIC go, well,  
19 we just won't evaluate you on that at all moving  
20 forward. I don't think that's reasonable or rational.  
21 I don't think that this hard line that NIC is advancing  
22 makes sense quite frankly in practice.

23           Dr. Swayne went through each one of the  
24 different categories that he's going to be evaluated on  
25 and each one of those categories making substantial

1 changes to the college in his absence while he's on an  
2 administrative leave, that he shouldn't even be on to  
3 begin with, is going to require him to come in and  
4 either undo if it doesn't align with the strategic  
5 vision that he'd been working on for this college or to  
6 potentially terminate agreements and contracts.

7 We've provided in our briefing to the court  
8 that in certain instances someone who has a job in the  
9 public sector also has a property right in that job. So  
10 it is not as easy as coming in and just firing someone.  
11 We're not aware of what contracts are being signed by  
12 NIC in Dr. Swayne's absence. We think that there is a  
13 direct irreparable harm to Dr. Swayne for that reason as  
14 well.

15 And finally, Dr. Swayne didn't come in to  
16 become president of a college that's unaccredited. And  
17 that certainly looks like where this is headed with the  
18 letters from the NWCCU. That has the potential of  
19 affecting him not just as far as his evaluation, it is a  
20 criteria in his evaluation, but also his own personal  
21 reputation. Anyone who is going to take over a college  
22 and subsequently that college loses its accreditation,  
23 that is a stain on the leadership of that college, that  
24 will be a stain on Dr. Swayne as well.

25 So for all of those reasons, Your Honor, we

1 do believe that there is the potential here of great or  
2 irreparable harm. We'd ask the court to grant our  
3 preliminary injunction in this case.

4 Thank you.

5 THE COURT: Thank you, Ms. Malek.

6 Mr. Walther.

7 MR. WALTHER: Your Honor, can I indulge the  
8 court in a very brief recess?

9 THE COURT: Certainly.

10 MR. WALTHER: Thank you, Your Honor.

11 THE COURT: Shall we take about ten minutes?  
12 About the same as before?

13 MR. WALTHER: That would be great. Thank  
14 you.

15 THE COURT: Okay. Folks, let's come back in  
16 at noon. It is 11:50, so 12 o'clock we'll come back in.  
17 We'll be in recess until then.

18 (Recess taken.)

19 THE COURT: We're back on the record in  
20 Swayne versus NIC.

21 Mr. Walther, your argument please.

22 MR. WALTHER: Thank you, Your Honor.

23 May it please the court and counsel,  
24 plaintiff has brought a motion for preliminary  
25 injunction pursuant to Rule 65(e) of the Idaho Rules of

1 Civil Procedure.

2           The Supreme Court has explained when courts  
3 apply this rule that the individual seeking the  
4 injunction has the burden of proving a right to the  
5 injunction.

6           One of the elements necessary is a  
7 demonstration of a substantial likelihood of success  
8 upon the merits. This is necessary and is not  
9 available, does not exist as the court says, when  
10 complex issues of law or fact exist which are not free  
11 from doubt.

12           In this case there are many issues of law and  
13 fact that are very doubtful.

14           Beginning with the very first point on the  
15 substantial likelihood of success, plaintiff has  
16 characterized the issue raised by the complaint is that  
17 the action cannot be taken because it is not allowed.

18           In other words, plaintiff claims the  
19 dispositive issue is whether or not the employment  
20 contract allows the college to place plaintiff on  
21 administrative pay with leave -- leave with pay.

22           The issue, however, is the exact opposite.  
23 The issue here in this case is whether the employment  
24 contract prohibits the college from placing its  
25 president on administrative leave with pay under this

1 contract.

2 Now why is that? The reason is that the  
3 contract cannot be read in a vacuum. It must be read in  
4 the context of applicable Idaho law.

5 It is well known that Idaho is an at-will  
6 state. This means that an employment relationship can  
7 be terminated by the employer at any time for any reason  
8 with two caveats: It cannot violate law -- and there's  
9 no allegation of that here -- or it is prohibited by a  
10 contractual term.

11 In this case there is no term of the contract  
12 that prohibits the board from taking the step of placing  
13 the president -- its president -- on an administrative  
14 leave with pay period.

15 Based upon this fact alone, the plaintiff  
16 cannot demonstrate a clear likelihood of success on the  
17 merits of the underlying complaint and motion should be  
18 denied.

19 In addition, with regard to one issue --  
20 complex issue of fact or law that's been raised by  
21 plaintiff, the only contractual provision that  
22 identifies administrative leave in any way is under  
23 paragraph 12.2.

24 Specifically under section 12, termination.  
25 Paragraph 12.2 allows the president to resign or

1 terminate the contract with 60 days notice and allows  
2 the board in its discretion to place him on admin leave.

3 This does not say admin leave with pay, it  
4 says administrative leave. The presumption is that it  
5 would be without pay. And again why would that  
6 presumption exist?

7 Well, typically in an employer-employee  
8 relationship, the employee does not get paid unless they  
9 are doing work. If they are on leave and not performing  
10 any work, they don't get paid unless there is some  
11 provision that would require pay or they have some type  
12 of benefit that gives them pay during their leave.

13 In this case the provision to place plaintiff  
14 on -- let me restate that.

15 If the issue was whether the college had  
16 improperly placed the president on unpaid leave, 12.2  
17 would apply. Because the only circumstances where  
18 unpaid leave is available is where the superintendent or  
19 the president has chosen to resign or terminate the  
20 contract and the only time he can be placed on unpaid  
21 leave is during that 60-day notice period provided under  
22 12.2.

23 In noway does paragraph 12.2 restrict the  
24 board's right to place its president on paid  
25 administrative leave.



1           Plaintiff has implied or asserted that he  
2 under the contract has a right to perform the work as  
3 president. That is simply not correct. Whether or not  
4 he performs his role as president is up to the board,  
5 his supervisors and his employer.

6           Plaintiff has a right to be paid for three  
7 years and he may have a right to argue that I can't  
8 perform any duties other than those specified for the  
9 president, but he does not have a right to be installed  
10 as president and to serve as president against the  
11 board's will when they want to place him on paid  
12 administrative leave.

13           Which comes to the next part of the argument  
14 raised by Plaintiff is that, well, if there's  
15 termination for cause, you just go to paragraph 12.2 and  
16 12.4 and you have a hearing and you terminate the  
17 president.

18           Well, as a necessary prerequisite to  
19 termination for cause under 12.3 and 12.4 that there  
20 must be an investigation. And I'm not saying that has  
21 occurred here, I'm talking about the situation generally  
22 contrary to the allegation that the president can never  
23 be placed on administrative leave with pay, I propose or  
24 submit that he must be placed on administrative leave  
25 with pay when he's being investigated for circumstances

1 that might result in termination under 12.3 or 12.4.

2 Just moving to termination without any  
3 investigation would not be in faith and so that's a  
4 necessary prerequisite.

5 However, Plaintiff's broad reading of this  
6 contract apparently prohibits that paid administrative  
7 leave. It does not have any exceptions. There is no  
8 exception in policy or the contract to allow paid  
9 administrative leave or to limit paid administrative  
10 leave to only circumstances where termination is being  
11 investigated.

12 In short, as with all employers, the decision  
13 to place an employee, including the president here, on  
14 paid administrative leave is solely up to the employer,  
15 in this case the board, and there's absolutely nothing  
16 in law, in policy, or in this contract that prohibits  
17 the board from taking this appropriate  
18 employer-employment action.

19 The next step is the question as to whether  
20 or not there's irreparable injury. And the Supreme  
21 Court has said that a preliminary mandatory injunction  
22 is granted only in extreme cases where the right is very  
23 clear and appears that irreparable injury will flow from  
24 its refusal.

25 From what I gathered from Dr. Swayne's

1 testimony is that the primary injury he believes he will  
2 receive in the future, as far as being irreparable harm,  
3 is that his job will be more difficult due to  
4 circumstances that are occurring in his absence, um, and  
5 that he will possibly receive negative evaluations and  
6 that these actions will potentially stain his reputation  
7 as a president, as an administrator.

8           And these are really quite speculative. From  
9 the beginning it assumes so many facts that aren't in  
10 evidence. It is so speculative.

11           To begin, it assumes that if he was serving  
12 as the role of president, the board would have taken  
13 none of these actions. That's an assumption. That's  
14 assuming the board, which he does not agree with, would  
15 have listened to him and not taken the actions that he's  
16 currently complaining of right now.

17           More importantly, and as a general matter,  
18 where an individual is placed on paid administrative  
19 leave, there's simply no injury. He is receiving the  
20 benefit of his bargain and he is not working. There can  
21 be no injury under those circumstances.

22           And again, as deemed earlier, although he has  
23 a protected right, property right, in his contract and  
24 the benefits flowing from the contract, there is no  
25 protected property right to perform the functions of his

1 job. That is just not under Idaho law. He does not get  
2 to come in and say you can't put me on leave, I have a  
3 right under law to perform these functions.

4 The briefing also talks about the statutory  
5 language where the college is authorized to hire a  
6 president, which has been interpreted to mean only one,  
7 and that's just not a reasonable interpretation. It  
8 just means you need to hire at least one president.  
9 There is nothing in the statute or in policy that would  
10 prohibit a board from dividing the roles of the  
11 president between two people. That is certainly  
12 allowed.

13 So reading that "a" means one and only one is  
14 simply an unsupported interpretation of the law and  
15 again shows the complex issues of law and fact that  
16 remain in this case that make this injunction, um,  
17 improper.

18 And again, you know, Dr. Swayne personally  
19 believes he would not get a fair evaluation; however,  
20 that is speculative.

21 In the briefing Plaintiff mentions the  
22 implied covenant of good faith and fair dealing. Well,  
23 that will would apply to evaluations of the president,  
24 which must be fairly based upon his performance in light  
25 of the circumstances.

1           Clearly he cannot be blamed for negative  
2 consequences to the college that occurred while he was  
3 absent; that would not be fair, that would be in bad  
4 faith, and at worst it would be not observed.

5           Similarly, if he comes back and his job is  
6 difficult and there's an uphill battle and he basically  
7 has to come in, and for lack of a better term, be a  
8 hero, there is no indication that he won't receive, um,  
9 satisfactory or above marks for navigating the college  
10 through difficult times.

11           But again, that's just speculation that, you  
12 know, he's going to get blamed for everything that  
13 happened and it will be bad for his career.

14           In addition, it is pretty common knowledge in  
15 the community, it's actually been presented in evidence  
16 here, that Dr. Swayne is not being blamed for anything  
17 that's going on. I think the university agreed that  
18 everything that's happening to the college is being  
19 blamed on the board; whether right or wrong, that's the  
20 case. Dr. Swayne is not the alleged cause of any  
21 problems at the college at this time.

22           So that injury or concern is at best  
23 speculative. It's certainly not clear. Is it possible?  
24 Yes, it is possible. But that doesn't meet the standard  
25 of Rule 65; it must be clear and it must be extreme.

1                   And just an aside, typically these  
2 preliminary injunctions apply to property issues, you  
3 know, some neighbor is flooding another property and  
4 that has to be stopped immediately or they're going to  
5 have irreparable flooding damage. Or someone has  
6 possession of a property that the party seeking the  
7 injunction seeks to sell and their concern is it is  
8 going to be sold out from under them. These are the  
9 typical circumstances of irreparable harm that need to  
10 be prevented, not a president getting fully paid and --  
11 while he's being placed on leave.

12                   As I said, the only real allegation here of  
13 his harm is that if he comes back, his job is going to  
14 be harder; it is not going to be the same one he signed  
15 up for.

16                   Well, I mean, he certainly has the  
17 opportunity to mitigate his damages there, because he  
18 has the right to resign and move on. It is in his  
19 contract. He doesn't have to take those circumstances.

20                   Or alternatively, he can continue with the  
21 contract and fill out his term and do the hard work  
22 that's needed to make to improve the college, which is  
23 part of his job as president and part of the job he took  
24 on.

25                   You know, when you take on a job, there's no

1 guarantees it is going to go well at all times. And  
2 that's basically what his current situation is, he's  
3 taking on a job that may not go well at all times and  
4 that is common to all such leading roles such as  
5 president of a college.

6 Finally, for these reasons, given the  
7 circumstances, there is no chance that the court if it  
8 renders a judgment in the future whether it is two  
9 months or six months that he will have suffered some  
10 kind of irreparable harm as a result of a delay and that  
11 the decision at that time will not be adequate to  
12 resolve the situation, basically being his desire to be  
13 reinstated. He can be reinstated in six months and  
14 we'll be in the same position he would have been if he  
15 were reinstated today.

16 So for these reasons, we believe there are at  
17 the very least significant issues of fact and law that  
18 prohibit the granting of a preliminary injunction at  
19 this time and that there is no showing of significant  
20 irreparable harm due to the fact that he's on paid leave  
21 at this time.

22 Thank you, Your Honor. I have nothing  
23 further.

24 THE COURT: Thank you, Mr. Walther.

25 And this is the Plaintiff's motion,

1 Ms. Malek, you have last word.

2 MS. MALEK: Thank you, Your Honor.

3 Your Honor, counsel said part of his job is  
4 to do the hard work and that is exactly the issue here.

5 That completely undermines the argument that  
6 Dr. Swayne won't be evaluated negatively going forward,  
7 because part of his job is to do the hard work.

8 What NIC is doing is creating a situation  
9 that it makes Dr. Swayne's job much more difficult to  
10 do. And there is no guarantee that he isn't going to be  
11 evaluated poorly.

12 And in fact, given the communication by  
13 Trustee Banducci to Dr. Swayne early on when Dr. Swayne  
14 -- near the time he first took office -- that we'll see  
15 how long you last. It is perfectly reasonable for  
16 Dr. Swayne to be concerned that there will be  
17 irreparable harm and that he will be evaluated and have  
18 to own any poor decision that is made that is not  
19 necessary right now while he's on administrative leave  
20 by NIC.

21 As far as the argument that preliminary  
22 injunction in this situation is not appropriate, that it  
23 just applies to property rights cases, I would just  
24 submit to the court that that has not been my  
25 experience. Motions for preliminary injunction and



1 preliminary injunctions are granted in a host of  
2 different situations and categories and certainly in  
3 situations dealing with things from, you know, trade  
4 secret issues to employment issues. So I don't think --  
5 and I certainly didn't see any citations or hear any  
6 citations to a law that says an injunction may not be  
7 used in this type of situation.

8 Mr. Walther mentioned that Dr. Swayne has the  
9 right to resign. He also has the right to perform his  
10 contract as NIC promised. NIC promised in that contract  
11 promised he would be president of the college and he  
12 would have direct control over the operations of the  
13 college.

14 So to make the statement that he has the  
15 right to just leave that all behind and resign and he  
16 doesn't have the right to work, is not the contract and  
17 it is not the bargain that NIC made with Dr. Swayne when  
18 they had him move out here to Idaho and when he took  
19 this position.

20 It was also argued that nothing in the  
21 statute prohibits dividing the roles of president to two  
22 different people, the duties of president. That's not  
23 what's occurring here.

24 What's occurring here is NIC has completely  
25 removed Dr. Swayne as president from its website, from

1 the president's page entirely. NIC is effectively  
2 removing him as president and doing so in a very  
3 surreptitious way and trying to force him to resign.

4 They're not dividing duties between two  
5 individuals or two or more individuals. What they're  
6 doing is trying to terminate him and violate his  
7 contract.

8 Mr. Walther talked about the presumption of  
9 unpaid leave and administrative leave. That simply  
10 isn't in the agreement. There is no purpose to having  
11 an employment agreement if you're going to add rights  
12 and duties that just simply don't exist in there.  
13 There's no point in signing an agreement if it is  
14 subject to everyone's whims and presumptions here or  
15 there when they feel like it.

16 This is a fully integrative contract. There  
17 are clear provisions in each one of it. The contract  
18 itself states that it sets out the terms of the  
19 president's employment with NIC and there is no  
20 provision which would allow NIC to place Dr. Swayne on  
21 leave.

22 The administrative leave that's mentioned in  
23 Section 12 does not say paid or unpaid. It does not  
24 differentiate. It says administrative leave. The only  
25 mention of that authority to place Dr. Swayne on

1 administrative leave is in Section 12 and is conditioned  
2 upon Dr. Swayne providing notice to the Board of  
3 Trustees that he would like to resign, which he's not  
4 done.

5           For all of those reasons, Your Honor, we do  
6 think that the right here is very clear. NIC has argued  
7 that the harm is speculative, that it is too speculative  
8 for this court to intervene and grant a preliminary  
9 injunction; however, we are looking to -- in a  
10 preliminary injunction looking to future harm. There is  
11 going to be some amount of speculation there that has to  
12 be engaged in. But the basis has been laid before this  
13 court both in the declaration of Dr. Swayne and his  
14 testimony here today, if NIC is allowed to make changes  
15 that are not within the normal operations of this  
16 college, he will suffer irreparable harm and we'd ask  
17 this court to enter a preliminary injunction -- excuse  
18 me -- preliminary injunction in this case.

19           Thank you.

20           THE COURT: Thank you.

21           Well, thank you both very much for your  
22 argument and presentation here today.

23           I am going to take this under advisement.  
24 This is a decision that needs to be in writing. And  
25 there is more work that I need to do in terms of

1 thinking about the evidence that was presented and doing  
2 some more work on legal issues.

3 So I will issue a written decision as quickly  
4 as I can.

5 I do anticipate that it will be sooner rather  
6 than later.

7 I understand the urgency when one seeks a  
8 preliminary injunction, they do rightfully expect a  
9 pretty quick decision to come back and so I will keep  
10 that very much in mind.

11 If there's nothing further, we will be in  
12 recess.

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14 (Proceedings concluded.)

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**CERTIFICATE**

STATE OF IDAHO            )  
                                  )            ss.  
COUNTY OF KOOTENAI )

I, Megan Dotson, a duly qualified and Certified  
Shorthand Reporter for the First Judicial District of  
the State of Idaho, DO HEREBY CERTIFY:

That the above-within and foregoing transcript  
contained in pages numbed 1 through 143 is a complete,  
true and accurate transcription to the best of my  
ability.

Dated this 3rd day of March, 2023



MEGAN DOTSON, CSR, RPR  
Official Court Reporter  
First Judicial District  
State of Idaho

CERTIFICATE OF SERVICE

On March 17 2023, I caused the foregoing document to be filed via the Court's iCourt CM/ECF system which will send same to all counsel of record in this matter.

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