

Immediate Stay Requested by October 24, 2025, 4:30 p.m. (trial court ordered disclosure of confidential document by Oct. 24)

No. _____

In the Supreme Court of the State of California

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent and Petitioner,

vs.

ALAMEDA COUNTY SUPERIOR COURT,
Respondent;

UCLA FACULTY ASSOCIATION, and COUNCIL OF
UNIVERSITY OF CALIFORNIA FACULTY ASSOCIATIONS,
Petitioners and Real Parties in Interest.

PETITION FOR REVIEW OR GRANT AND TRANSFER ORDER
RE COURT OF APPEAL'S SUMMARY DENIAL OF PETITION
UNDER PUBLIC RECORDS ACT [GOV'T CODE SECTION
7923.500] AND REQUEST FOR IMMEDIATE STAY

After Ruling of the First Appellate District, Division Three,
No. A174586, Telephone: 415-865-7294

From Order, Judgment and Writ of Alameda County Superior Court,
No. 25cv143076, Judge Rebekah Evenson, Department 24, Telephone:
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I. PETITION

Respondent and Petitioner The Regents of the University of California (“the University”) petitions for review of an order of the Court of Appeal, First Appellate District, Division Three (Fujisaki, J. with Petrou, J. and Rodriguez, J. conc.) (“Order,” Ex. 1). The Order denies without issuing an opinion a petition for writ under the Public Records Act [Gov’t Code, § 7923.500].

II. REQUEST FOR IMMEDIATE STAY BY OCTOBER 24

As explained in the accompanying request for an immediate stay, the trial court has ordered the University to disclose an important, sensitive and confidential settlement communication by October 24, 2025. Because the public disclosure of the confidential document will cause immediate and irreparable harm, this Court should issue an immediate stay pending its decision on this petition to preserve jurisdiction to decide whether to grant review or grant and transfer.

III. ISSUES PRESENTED

1. Does the pending litigation exemption in the Public Records Act exempt from disclosure a settlement proposal made to a public agency by a party who is threatening to sue the agency?

IV. REASONS FOR REVIEW OR FOR GRANT AND TRANSFER

This Court orders review “[w]hen necessary to secure uniformity of decision or to settle an important question of law.” (Cal. R. Ct., Rule 8.500(b).) Both criteria are present here.

The Court of Appeal’s Order diverges from published precedent holding exempt from Public Records Act (“PRA”) disclosure settlement communications with a public entity sent during pending litigation. The Order instead upholds a ruling that concludes that when the settlement communication is made prior to filing of threatened litigation, a different, vague and uncertain case-by-case “dominant purpose” inquiry determines whether the settlement communication is exempt.

There is a compelling need to settle this important question presented and to provide predictability and certainty regarding the confidentiality of settlement communications with a public agency. This issue affects every public entity in California, and impacts whether the adversaries of every such agency will seek to resolve disputes before filing litigation. California has a compelling public policy interest in encouraging those who contemplate suing a public agency to be as forthcoming and candid as possible in seeking to resolve the dispute. Such candor and dialog can spare our state’s many taxpayer-financed entities from numerous costly and time-consuming disputes. But if parties contemplating a lawsuit against a California public entity

face uncertainty as to whether a settlement communication will remain confidential, such parties might either temper communications or not make them at all.

It is therefore crucial that an appellate court issue a written opinion that explains the applicable confidentiality rule with the certainty and predictability that this issue needs. The Order, however, is a one sentence denial that does not provide guidance. Review or a grant and transfer is essential.

A. The Interpretation In This Case Of How The PRA's Pending Litigation Exemption Applies To A Settlement Communication Conflicts With CSU's Interpretation Of That Same Question

The judicial rulings below on the particular disclosure issue in dispute in this case illustrates the urgent need for review or a grant and transfer. After launching multiple investigations against the University and threatening an imminent lawsuit, the federal Department of Justice ("DOJ") sent the University a confidential settlement proposal intended to launch confidential settlement discussions ("Confidential Settlement Proposal"). Pursuant to the PRA, several groups asked the University to disclose the Confidential Settlement Proposal. The University determined the Confidential Settlement Proposal was exempt from disclosure under the PRA's pending litigation exemption, as interpreted in *Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 897-900 (CSU) and other cases. The trial court disagreed and compelled disclosure

by October 24, 2025 in an order issued on October 14, 2025 (App. 190-213, copy also attached to accompanying stay request).¹

Under the PRA, an appellate writ petition is the exclusive avenue for review of the final order in PRA litigation. (See Gov. Code, § 7923.500; *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.) The history of the provision that makes writ review “the only mode of appellate review in PRA cases, shows that it was intended not to impair judicial power but to make the appellate remedy *more* effective for litigants seeking disclosure of public records.” (*Powers v. City of Richmond* (1985) 10 Cal.4th 85, 110 (*Powers*), italics in original.) The “exclusive purpose” of this provision “is to speed appellate review, not to preclude review on the merits” and thus “was in no sense to disadvantage litigants seeking review of PRA decisions or to constrict the power of the Courts of Appeal to correct errors in those decisions.” (*Id.* at p. 111 [discussing legislative history of statutory amendment that directed review by writ petition].)

Accordingly, this Court has instructed the lower courts that a PRA appellate writ petitioner does not need to persuade the court of appeal *whether* to conduct review by, for example, showing factors typically considered when exercising discretion to review interlocutory orders. (See *Powers, supra*, 10 Cal.4th at pp. 111-114.) Rather, “when writ review is the exclusive means of

¹ “App.” citations are to the Appendix of Exhibits filed in the Court of Appeal in support of the petition for writ in that court.

appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.” (*Id.* at p. 114.)

Yet, the Court of Appeal issued an Order less than 48 hours after the University filed its appellate petition, denying the petition and stay request without a reasoned opinion. Thus, the Order provides no guidance on this issue of extraordinary statewide importance despite (a) the need to settle the law on this point for the benefit of all of California’s public agencies, and (b) this Court’s precedent requiring appellate review on the merits.

The importance of the issue, and the need to grant review is further apparent from the conflict between the applicable court of appeal precedent (*CSU*), and the trial court’s and the Court of Appeal’s conflicting conclusions below. In *CSU*, the court of appeal construed how the PRA’s exemption for documents pertaining to pending litigation [Gov. Code, § 7927.200] applies to a non-party’s request to a public entity for records relating to litigation involving that entity. The court explained the exemption applies to most requests by third parties to obtain correspondence between counsel in litigation that the counsel themselves did not intend would be disclosed to the public:

If third persons were able to obtain, through the

PRA, all correspondence between opposing attorneys and clients in pending litigation or tort claims, it would eviscerate the parties' ability to vigorously litigate and protect their clients' interests. Counsel in such a scenario would have to assume that every communication to the opposing party could be obtained under a PRA request. Attorneys do not expect such correspondence to be subject to disclosure to parties outside of the litigation. If parties outside of the litigation were able to obtain such documents through a PRA request, the ability to communicate openly and freely during litigation would be severely hampered.

(*CSU, supra*, 132 Cal.App.4th at p. 899.)

The *CSU* court then emphasized that a “prime example” of a document that is categorically exempt from disclosure is a settlement communication:

A prime example of the dilemma is settlement communications. Even if labeled as “confidential,” they are subject to disclosure under the PRA after the litigation has ended. (*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal. App. 3d 893, 908–909.)

However, the parties to the litigation have a strong interest in protecting such communications between counsel from disclosure to third parties while litigation is pending. In fact, to allow disclosure to the public of such documents would chill the parties' ability in many cases to settle the action before trial. Such a result runs contrary to the strong public policy of this state favoring settlement of actions. (*See Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court* (1996) 51 Cal.App.4th 233, 241.)

We also note that section 6254(b) only applies to litigation-related documents while litigation is pending. Documents exempt from disclosure while

litigation is pending are subject to disclosure under the PRA once the litigation has ended. Thus, the drafters of section 6254(b) were obviously concerned that production of documents during the course of litigation could hamper the parties' efforts to effectively represent their parties' interests.

(*CSU, supra*, 132 Cal.App.4th at pp. 899-900.)

The court thus stated a bright line rule: the settlement communication is exempt from compelled disclosure while the litigation is pending so long as the parties to the litigation did not intend it to be revealed outside the litigation:

With these considerations in mind, we conclude that the pending litigation exemption applies to litigation documents, when sought by persons or entities not party to the litigation, which the parties do not intend to be revealed outside the litigation. Thus, even though attorneys may exchange correspondence with each other (or the opposing party), if they desire to have such matters remain confidential as to nonparties pending resolution of the litigation, the correspondence is protected from disclosure to third parties by section 6245(b).

(*CSU, supra*, 132 Cal.App.4th at p. 900.)

CSU emphasizes courts should defer to objections to disclosure by the parties to the communications:

Here, the record reflects, based upon the University's, Barton's and Ohton's strenuous objections to disclosure of these materials, the parties intended that correspondence between them not be disclosed to individuals or entities not parties to the litigation.

(*CSU, supra*, 132 Cal.App.4th at p. 900.)

The court also suggested parties could leave no doubt they intended a document to be confidential by so marking it, noting “[c]ounsel in actions involving governmental entities could place a heading on such correspondence stating that it is confidential, and not to be disclosed to individuals or entities outside the litigation. . . .” (*CSU, supra*, 132 Cal.App.4th at p. 901.)

In *CSU*, the Court further explained “[t]he construction we give to ‘pending litigation,’ *which focuses on the purpose of the document*, serves to protect documents created . . . *in anticipation of litigation . . .*” (*CSU, supra*, 132 Cal. App. 4th at p. 897, second italics added.) Other PRA cases likewise indicate the pending litigation exemption also applies to documents prepared in anticipation of litigation. (See *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1422; *County of Los Angeles* (2011) 221 Cal.App.4th 57, 66 [“To the extent the County is arguing the documents at issue in *Fairley* were prepared before litigation commenced [and therefore fell outside the exemption], there is nothing in *Fairley* that suggests different rules apply to earlier-prepared documents.” (citing *Fairley*)].)

Under this consistent body of case law, the Confidential Settlement Proposal is exempt. In the DOJ’s July 29, 2025 Notice of Findings letter, the DOJ conveyed a clear intent to file an imminent lawsuit against the University absent progress towards a settlement. (App. 70.) At that time, the federal government had pending investigations that were broader in

subject matter than that referenced in the July 29 letter. (App. 158, 201, 203.) The DOJ then sent the Confidential Settlement Proposal to the University alone, without posting it on the DOJ website or otherwise making the document public. (App. 70.)

The transmitting email for the Confidential Settlement Proposal includes a subject line that reads “Rule 408 Proposed Voluntary Resolution Agreement” and the file name is “Confidential Rule 408 Communication – UCLA 08.08.25.” (App. 70.)² On every page, the document contains a bolded header that includes the words “FRE 408.” (*Ibid.*) The intent expressed by these words is that this document is a confidential settlement communication. Similarly, the University has kept the Confidential Settlement Proposal confidential, even within University leadership. (App. 71.) Thus, the record here demonstrates the two indicia that *CSU* identifies as dispositive in establishing the exemption—confidentiality marking by the sending party, and objection to disclosure by the receiving party.

Yet, the trial court’s analysis and Court of Appeal’s Order conflicts with *CSU*. The trial court stated opposing parties often engage in correspondence that they do not intend to be confidential, such as discovery-related letters. (App. 204.) But this contradicts *CSU*’s observation that, for most types of litigation correspondence, “[a]ttorneys do not expect such

² Federal Rule of Evidence (FRE) 408 protects compromise offers and negotiations.

correspondence to be subject to disclosure to parties outside of the litigation.” (*CSU, supra*, 132 Cal.App.4th at p. 899.) The trial court’s reasoning is also irreconcilable with *CSU*’s observation that settlement-related communications are a “prime example” of litigation-related correspondence that the corresponding parties expect to be confidential. (*Ibid.*) Thus, the Court of Appeal’s Order endorses an analysis that conflicts with *CSU*—warranting review or a grant and transfer to settle the conflict.

B. The Decision Below Conflicts With *CSU*’s Published Opinion On The Same Question In Other Ways

The Court of Appeal’s Order also approved a trial court ruling that found it significant that federal Rule 408 only precludes admission of a settlement communication to prove liability. (App. 210-211.) But the corresponding parties were not addressing whether the Confidential Settlement Proposal would be admitted into evidence. The DOJ’s marking of every page of the document with “Rule 408” and the naming of the file “Confidential Settlement Communication” was an obvious effort to convey an intent it remain confidential and not be shared with third parties. Indeed, this is the very type of marking *CSU* suggests establishes the exemption. This conflict between the rulings below and *CSU* further demonstrates the need for review.

The Court of Appeal’s Order also approved a trial court ruling that observed the federal government is aware of this proceeding, yet did not appear in it. (App. 196.) The significance

of the government's non-appearance is that it leaves *unrebutted* the indicia of confidential intent that is the only evidence on this point in the record. That evidence consists of the DOJ's markings that convey an intent to keep the document confidential, combined with the University's actions treating it as confidential and objecting to its disclosure. Those are the same two indicia *CSU* identifies as establishing the exemption. Under *CSU*, no further indicia are required to establish the exemption.

In fact, to require the counterparty to appear would further undermine the compelling public policy in fostering settlement dialog. A rule providing confidentiality protection only if the counterparty appears in a third party's PRA lawsuit would expose the party making a settlement overture to a risk of getting dragged into PRA litigation—which any member of the public can file to pursue any public agency record. That rule, therefore, would further deter parties from making settlement overtures to public agencies. Review or a grant and transfer is warranted to prevent this chilling effect and settle the law to make clear that the party proposing a settlement need not appear in a third party's PRA lawsuit to establish that a confidential settlement communication is exempt from disclosure.

If anything, *CSU* understated the compelling public interest reasons why the law exempts public entities' settlement-related communications. The privileges pertaining to settlement and mediation documents protect such communications from

compelled disclosure to facilitate candid discussions that enable resolution of disputes outside the courts. (See, e.g., *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 793-794 [emphasizing “the role that confidentiality plays in facilitating settlement agreements” (quoting *Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court* (1996) 51 Cal. App. 4th 233, 241 (*Hinshaw*))].)

Yet, the risk of a court compelling production to third parties of a public entity record that is labeled “Rule 408” or has a label otherwise associated with settlement, could result in a party contemplating whether to propose a settlement to a public agency to be less forthcoming or candid. This would undermine the reason why our law ensures confidentiality—to encourage maximum settlement-related dialog and candor.

As a large public institution that at any given time is subject to hundreds of lawsuits, investigations, pre-litigation demands, and claims, the University and the public have a compelling interest in encouraging maximum settlement dialog and candor across the numerous disputes—so that all resolution opportunities can be explored. Encouraging settlement dialog and candor also protects the public fisc by providing agencies more opportunities to resolve disputes efficiently, yielding an aggregate cost of disputes that is likely to be lower than the aggregate cost if less settlement dialog and candor occurred.

Even when confidentiality is assured, litigants are often not as forthcoming with their adversaries as they could be. The risk of compelled public disclosure of a communication labeled “Rule 408” would chill the making of such offers to public agencies, undermining the clear public interest in promoting settlement.

Moreover, the party receiving a draft settlement agreement needs the opportunity to deliberate in private regarding how to respond. (App. 72.) Settlement evaluation is a difficult task in which the deliberating team needs to be able to brainstorm, share candid opinions and engage with one another. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1340-1341 [emphasizing the need for confidentiality to facilitate deliberations on important decisions].) It would be difficult if not impossible to do this in a fishbowl. (*Ibid.*) But compelled public disclosure of an initial settlement proposal would create a fishbowl that is not hospitable to the type of sober deliberation that parties need to evaluate offers and engage in meaningful settlement dialog.

This concern is most pressing where, as here, the settlement communication is a preliminary proposal. The intense public reaction to disclosure at an early stage of a proposal could end any opportunity for continued discussion and hamper the ability to fully and fairly evaluate a response. (See App. 73 [describing adverse impact of disclosure].)

The scope of the PRA’s pending litigation exemption determines the protections for pre-litigation negotiations by all public entities with other parties—not just any communications between the University and DOJ. The rulings below leave all California public entities and all their adversaries with unnecessary uncertainty as to whether future settlement communications could be subject to public disclosure. That uncertainty puts California’s public entities at a disadvantage compared to their private counterparts. To address the uncertainty that disadvantages California’s public agencies in this fashion, review or a grant and transfer is warranted.

This Court should issue an immediate stay of the imminent October 24, 2025 disclosure deadline, and should thereafter grant review or grant review and transfer the matter to the Court of Appeal with directions to issue a written reasoned opinion.

V. FACTUAL AND PROCEDURAL BACKGROUND

Based on federal government conditions attached to its extensive funding of the activities of colleges and universities and through federal statutes, the federal government has broad powers to investigate the activities of colleges and universities and to bring litigation or other adversarial administrative proceedings against them. (App. 158.)

On July 29, 2025, the United States Department of Justice (“DOJ”) sent the University a Notice of Findings letter that

stated the DOJ had completed an investigation and had found that the response of the University of California, Los Angeles (“UCLA”) to students’ complaints of antisemitism violated UCLA’s obligations under federal law. (App. 70, 115-123, 191.) The DOJ stated in its letter that it seeks to enter into a voluntary resolution, and the University should reach out to DOJ if the University is interested in doing so. (App. 123.) The letter added, however, that unless there was reasonable certainty of a resolution, the United States “is prepared to file a complaint in federal district court by September 2, 2025.” (*Ibid.*)

At this time, the federal government was also undertaking investigations of UCLA and the nine other University campuses on subjects that are broader than the issues at UCLA referenced in the DOJ’s July 29, 2025 letter. (App. 158.)

On August 1, 2025, the United States National Science Foundation (“NSF”) sent a letter stating NSF is suspending federal grant awards to UCLA because UCLA supposedly engaged in acts of non-compliance. (App. 42-44, 191.) NSF stated it was willing to work with UCLA to identify corrective action.

On August 8, 2025, the DOJ sent the document at issue to the University (the “Confidential Settlement Proposal”). It is marked “RULE 408 PROPOSED VOLUNTARY RESOLUTION

AGREEMENT” and contains a header on every page referencing Federal Rule of Evidence 408. (App. 70, 210-211.)

After the DOJ sent the Confidential Settlement Proposal, that document’s existence was leaked to the press and rumors of began circulating in the University community and among the broader public. To both quell growing concern in its community and update its community on the gravity of the situation, the University issued press releases on August 8, 2025 and August 11, 2025. The August 8 press release, entitled “Statement from UC President James B. Milliken in response to the Department of Justice's proposed \$1 billion settlement from UCLA,” indicated that the University had just received a document from the DOJ and was reviewing it. (App. 69-70; see also <https://www.universityofcalifornia.edu/press-room/statement-uc-president-james-b-milliken-response-department-justices-proposed-1-billion>.) The August 11 press release stated that the University’s Board of Regents had convened an emergency meeting to discuss its path forward after the federal government suspended its research funding and demanded a devastating \$1 billion settlement payment—information that was already publicly known. (App. 46.) These statements did not disclose any other details of the Confidential Settlement Proposal.

On August 12, the University issued a press release that urged the public to stand up for the University and that contained links to a website with materials relevant to the Stand

Up campaign. (App. 13-14.) This statement and the website materials likewise referred to only the already published amount of the confidential settlement demand and did not disclose any other details or terms that are in the confidential document.

On August 15, 2025, two groups sent PRA requests (the “PRA Requestors”) to UCLA and to the University of California, Office of the President (“UCOP”) seeking disclosure of the Confidential Settlement Proposal. (App. 8.) On August 19, 2025, UCOP denied the request on the grounds that record is exempt under: (1) Gov. Code § 7927.200 (pending litigation); (2) Gov. Code § 7929.705 (settlement communications); (3) Gov. Code § 7927.500 (draft settlement demand); and (4) Gov. Code § 7922.000 (catch all). (App. 37) On September 2, 2025, UCLA denied the request for similar reasons. (App. 39-40.)

On September 15, 2025, the Los Angeles Times (“LA Times”) published a story stating that it had obtained a copy of the Confidential Settlement Proposal, and included statements that the LA Times represented were direct quotes from the Confidential Settlement Proposal. The LA Times did not publish the document itself. (App. 97-108.)

After the LA Times story published, the University issued a press release on September 15 where President Milliken mentioned the “demand that the university pay the federal government over \$1 billion,” and stated “[t]oday, the LA Times

published a story summarizing some of the administration's demands." (App. 94-95, 110-112; see also App. 71.)

Also on September 15, PRA Requestors filed a petition for writ of mandate in the trial court. That court set an expedited briefing schedule and hearing. On October 14, 2025, the trial court ordered disclosure of the Confidential Settlement Proposal by October 24, 2025. (App. 190-213.)

The University filed an appellate writ petition on the afternoon of October 20, 2025. On the morning of October 22, 2025, the Court of Appeal issued its Order, denying the petition and stay request in a one sentence ruling.

Given the imminent October 24, 2025 disclosure deadline, the University filed this petition for review and request for an immediate stay the following morning, October 23, 2025

VI. THE COURT OF APPEAL AND TRIAL COURT INCORRECTLY DECIDED THE IMPORTANT AND RECURRING QUESTION PRESENTED

In addition to the need to settle the important question presented, and to secure uniformity of decision on it, review is also warranted by the fact that the rulings below decide the question incorrectly in a matter of tremendous importance to California. In addition to the reasons discussed above that demonstrate why the Confidential Settlement Proposal falls within the PRA's litigation exemption, additional points

demonstrate that the Order, and the trial court ruling that it upholds, are incorrect.

A. The Lower Court Rulings Erroneously Render The PRA's Pending Litigation Exemption Vague, In Conflict With CSU's Superior Bright Line Rule

The rulings below subjected the pre-litigation settlement proposal at issue here to a vague case-by-case exemption analysis that is less clear or protective than the test that *CSU* applies. But it is just as important, if not more important, to protect settlement communications before litigation is filed. Prior to the filing of a public complaint, candid dialog between the adversaries can often cool tensions and lead to effective solutions before the parties become entrenched in adversity. The filing of a lawsuit is often an escalation of a dispute, not the beginning of one. Considering the range of situations in which public agencies may receive a pre-lawsuit settlement proposal, the better rule would give our public agencies more room to explore settlement before escalation to litigation. If the standard for disclosure hinges on whether a lawsuit is filed, it will inject uncertainty into the ability to maintain confidentiality of settlement discussions.

Here, it is essential to exempt the Confidential Settlement Proposal so that the University is not restricted in assessing how to respond to this unprecedented federal government situation. In dealing with that situation, California law should give the University's leaders the best chance to obtain the best solution.

Confidentiality of an opening salvo better promotes that objective than does compelled disclosure of the record to the entire public.

Similar public policy concerns are why this Court in *Times Mirror Co.* held exempt the deliberations of senior public officials prior to making important decisions. There, the Court explained:

“frank discussion of *legal* or policy matters” might be inhibited if “subjected to public scrutiny,” and that “efficiency of Government would be greatly hampered” if, with respect to such matters, government agencies were “forced ‘to operate in a fishbowl.’” [Citations] As the high court has observed in an analogous context: “Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decision making process.” [Citation]

(*Times Mirror, supra*, 53 Cal.3d at pp. 1340-1341, italics added.)

Here, disclosure of the Confidential Settlement Proposal likewise would thrust those that need to deliberate on an important decision into a fishbowl. The public reaction to disclosure of the Confidential Settlement Proposal would impede the University’s ability to deliberate regarding how best to respond, or lead to potential uncertainty when sending or receiving settlement communications in this and other cases.

It bears emphasis that *CSU* notes two limitations on its bright line rule that amply balance the public’s interest in disclosure. First, it notes the public entity retains discretion to

disclose the record at any time it believes public disclosure will help. (*CSU, supra*, 132 Cal. App. 4th at p. 901.) This rule gives a public entity the flexibility to decide how best to navigate a dispute without facing compelled public disclosure that private litigants do not face. Second, *CSU* notes the pending litigation exemption no longer applies after the litigation has concluded. (*Id.* at pp. 899-900.) This further limits the exemption’s scope.

The compelling need for review also follows because the trial court erroneously applied the “dominant purpose” test that some courts have applied to other types of pre-litigation documents—such as a law firm billing records. (See *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 64-65.) The case law has not applied this test to a pre-litigation settlement proposal. As the rulings below show, the dominant purpose test is ill-suited to a settlement proposal.

A settlement proposal is, by definition, an offer to resolve a dispute outside of court and to eliminate the need for litigation. It is therefore inherently litigation-related, unlike a billing record or a memorandum—which may have a different dominant purpose. To extend the dominant purpose inquiry to settlement communications would make the protection against disclosure for such communications qualified and uncertain—creating the very chilling effect that so concerned the *CSU* court of appeal and that undermines the strong public policy in encouraging settlement. The court in *CSU* established only a single criteria—whether the

parties intended the communication to be disclosed to third parties. And *CSU* made dispositive the indicia from the parties themselves, such as DOJ's marking of the document "Rule 408," and The University's objections to its forced disclosure.

The same public policies apply with even greater force in the pre-litigation stage, so there is even less reason to dilute *CSU*'s bright line in favor of the uncertain case-by-case test that the Court of Appeal and trial court applied. Because any lack of bright line certainty in protection of settlement communications inhibits the adversaries of our public agencies from being forthcoming and candid, *CSU*'s clear and bright line test applies to pre-litigation settlement proposals as well.

The trial court's erroneous analysis illustrates this problem. Notwithstanding the undisputed record evidence that the Confidential Settlement Proposal was marked "Rule 408" and stemmed from the July 29 Notice of Findings,³ the court substituted its own view of the document for the parties', ignoring the evidence about the areas of investigation underway across the University and characterizing the resolution of the multiple pending disputes that the Confidential Settlement Proposal addressed as "political" or "economic" or "policy" disputes between

³ Indeed, the trial court noted "the University could reasonably anticipate litigation in good faith over the antisemitism complaints raised in the DOJ's July 29, 2025, letter," thereby establishing the litigation exemption should apply. (App. 203.)

“the executive branch of the United States and the State of California,” rather than litigation-related. (App. 203.)

CSU’s rule is straightforward and provides the bright line certainty that is essential: the parties’ intent controls. The Court of Appeal’s and trial court’s analyses below, by contrast, suggests a court should—after the settlement communication is sent—substitute its own view of the communication. That rule would inhibit settlement dialog. Because no party will know how a court might subjectively and retrospectively interpret a settlement document, parties will be more likely to simply make no overture at all. That is the exact opposite of what public policy favors. Parties need to know whether their communication will remain confidential *before* they elect to communicate. The rulings below chill settlement communications, undermining the public policy of encouraging adversaries of public entities to be forthcoming and to engage in maximum dialog. This Court’s review or a grant and transfer order are urgently needed.

Equally problematic is the trial court’s statement that the University has not filed or threatened litigation to challenge the federal government’s suspension of grant funding. This ignores that the trial court did not and could not know whether the University is considering litigation to challenge the grant funding suspension. If the University were required to disclose whether it is contemplating or anticipating litigation relating to the grant funding in order to establish that the Confidential Settlement

Proposal is exempt, such a rule would force the University into the Hobson's choice of giving up one confidentiality protection to preserve another. The fact that litigation is a possibility and one party makes a settlement proposal as an opening salvo establishes that the proposal is a settlement communication, is related to potential litigation and is thus exempt. The Court should grant review or grant and transfer to so hold.

B. The University President's Limited Statement Did Not Waive Confidentiality

The trial court also erroneously suggested that the University's public statements that disclosed the existence of the Confidential Settlement Proposal, but that did not disclose the record itself, waived the PRA's pending litigation exemption. To be clear, the University's public statements did not share a copy of the Confidential Settlement Proposal, quote portions of it, or indicate any intention to do so. (App. 71.) Rather, the University's public statements were narrower in scope than other statements made by other members of the public. (*Ibid.*)

Under the plain language of the statutes and case law, the University's limited public statements do not waive protection of the entire record. Section 7921.505's waiver provision applies to disclosure of "a public record." The University's statements that the record exists does not constitute disclosure of "a public record." It is unsurprising, then, that the relevant PRA waiver law focuses on disclosure of *the actual record* and not an

acknowledgment regarding the existence of the record or addressing a portion of the record leaked without authorization to the press. (*See Ardon v. Superior Court* (2016) 62 Cal.4th 1176, 1183 [holding that inadvertent disclosure of record is not a waiver logically extends to mere acknowledgment of a record's existence]; Gov. Code § 7921.505 [requiring “disclos[ure] ... of a public record,” not mere mention of its existence].)

The University’s statements referring to a demand that the University pay the DOJ over \$1 billion—a fact already circulating among the public—similarly does not waive the protections. *Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal.App.4th 268 is instructive. There, certain parties sought a copy of an independent consultant’s report on a police shooting, arguing the officers waived their right of confidentiality by releasing excerpts from their deposition transcripts in connection with a summary judgment motion in a federal lawsuit. (*Id.* at pp. 274-275.) While the Court ordered the report disclosed, it rejected the waiver argument, noting, “[t]he fact that information in an officer’s personnel records may also be found in an unprotected source does not impact the confidentiality of the personnel records themselves.” (*Id.* at p. 294.) The Court also disagreed with the contention that by filing a reply brief “containing verbatim excerpts” from the report, the association and officers had waived any privilege. (*Id.* at p. 295.) Because the police department’s actions in that case go much farther than any action by the University here, there was no waiver here.

Section 7921.505 is concerned with an agency disclosing a record to some members of the public and not others. This is the “selective disclosure” the statute is designed to prevent. (See *Newark Unified School Dist.*, 245 Cal.App.4th at 901-902 [discussing legislative history].) This PRA provision does not stand for the proposition that an alleged “selective disclosure” of parts of a record waives the exemption of the entire record.

At bottom, the limited public statements of the University do not constitute any waiver.

VII. CONCLUSION

The important question presented warrants more than a one-sentence denial Order. After issuing an immediate stay, this Court should grant review or grant review and transfer the cause to the Court of Appeal with directions to issue a written opinion on the merits.

DATED: October 23, 2025

UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL
COUNSEL

REED SMITH LLP

By /s/ Raymond A. Cardozo
Raymond A. Cardozo

Attorneys for Respondent and
Petitioner The Regents of the
University of California

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(d)(1), the foregoing brief, including footnotes, is produced using 13 point Roman type and contains 5,821 words, which is less than the total words permitted by the Rules of Court. In preparing this certificate, I relied on the word count generated by Microsoft Word for Microsoft 365 MSO. Executed on October 23, 2025, at San Francisco, California.

/s/ Raymond A. Cardozo

Raymond A. Cardozo

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA,

Petitioner,

v.

THE SUPERIOR COURT OF
ALAMEDA COUNTY,

Respondent;

UCLA FACULTY ASSOCIATION et
al.,

Real Parties in Interest.

A174586

(Alameda County
Super. Ct. No. 25CV143076)

BY THE COURT:*

The petition for writ of mandate or other appropriate writ and request
for immediate stay are denied.

Dated: 10/22/2025

Fujisaki, Acting P.J.
Presiding Justice

* Fujisaki, Acting P.J., Petrou, J., and Rodríguez, J.

PROOF OF SERVICE

The Regents of the University of California v. Alameda County Superior Court; UCLA Faculty Association, et al.,
California Supreme Court No. S_____,
First Appellate District, Division Three, No. A174756,
Alameda County Superior Court No. 25CV143076

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659; ekroll@reedsmith.com. On October 23, 2025, I served the following document(s) by the method indicated below:

PETITION FOR REVIEW OR GRANT AND TRANSFER ORDER RE COURT OF APPEAL'S SUMMARY DENIAL OF PETITION UNDER PUBLIC RECORDS ACT [GOV'T CODE SECTION 7923.500] AND REQUEST FOR IMMEDIATE STAY; and

APPLICATION FOR IMMEDIATE TEMPORARY STAY PENDING DECISION ON PETITION FOR REVIEW

☒	by causing e-service through TrueFiling to the parties listed below:	
☒	by transmitting via email to the parties at the email addresses listed below:	
Abenicio Cisneros (SBN 302765) LAW OFFICE OF ABENICIO CISNEROS 2443 Fillmore Street, #380-7379 San Francisco, CA 94115 Telephone: 707 653 0438 acisneros@capublicrecordslaw.com Thomas B. Harvey (SBN 287198) LAW OFFICES OF THOMAS B. HARVEY 365 E. Avenida De Los Arboles #226 Thousand Oaks, CA 91360-4649 Telephone: 805 768 4440 tbhlegal@proton.me		Attorneys for Petitioners UCLA Faculty Association and Council of University of California Faculty Associations

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☒	by causing the document(s) listed above to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612	Trial Court Served with Petition for Writ only

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 23, 2025, at San Francisco, California.

Eileen Kroll

Eileen Kroll

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