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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 ELIZABETH WEISS,

Plaintiff,

15 vs.

16 STEPHEN PEREZ, in his official capacity as
President of San Jose State University; *et al.*,

17 Defendants.

Case No. 5:22-cv-00641-BLF

**DECLARATION OF WALT JACOBS IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. Beth Labson Freeman
Date: June 2, 2022
Time: 9:00 a.m.

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DECLARATION OF WALT JACOBS

I, Walt Jacobs, declare as follows:

1. I am the Dean of the College of Social Sciences (“the College”) at San José State University (“the University” or “SJSU”), and a Defendant in the above-entitled action. I have personal knowledge of the facts set forth herein and could testify competently thereto if called as a witness.

2. As Dean of the College, I have authority over faculty-personnel matters within the Departments situated in the College, including the Department of Anthropology. Among other things, I manage any disciplinary issues that may arise, and I participate in the “post-tenure-review” process for tenured faculty, which takes place at least every 5 years for all tenured faculty members as provided in the Collective Bargaining Agreement.

3. Professor Weiss has been employed by the University in the Department of Anthropology since 2004. During that time, she has on numerous occasions requested that I share on the College’s social-media accounts her publications, articles, and appearances, including materials promoting her views on repatriation. I have almost always obliged, as I try to do for all faculty who request the same.

4. Attached hereto as **Exhibit A** is a true and correct copy of a July 1, 2020, Facebook post I made from the College’s social-media account in which I promoted Professor Weiss’s September 2020 book, *Repatriation and Erasing the Past*, about which there was significant controversy. The attached screenshot of the post was retrieved from <https://www.facebook.com/SJSUCoSS/> on February 21, 2022.

5. Attached hereto as **Exhibit B** is a true and correct copy of a September 10, 2021, Facebook post I made from the College’s social-media account about Professor Weiss’s August, 2021, op-ed criticizing CalNAGPRA. The attached screenshot of the post was retrieved from <https://www.facebook.com/SJSUCoSS/> on February 21, 2022.

6. Over the years, Professor Weiss has shared her articles and publications with me and asked for my feedback. I read them and share comments, with which she has seemed

1 satisfied. Attached hereto as **Exhibit C** is a true and correct copy of a December 21, 2020, email
2 exchange in which she stated, in response to my supportive email, that “it is great to be at a
3 university that respects academic freedom.” Attached hereto as **Exhibit D** is a true and correct
4 copy of an email exchange from January 25-26, 2021, in which I commented on an article she
5 sent me about the controversy surrounding her book, and she said that I “always give such
6 thoughtful feedback.”

7 7. On June 3, 2021, I co-hosted a virtual workshop entitled, “What To Do When
8 Your Colleague Is Branded A Racist,” to address how our faculty and staff had handled the
9 controversy arising from Professor Weiss’s book, and to have a productive discussion with others
10 who might have encountered similar situations. The invitees were Deans and Department Chairs
11 from the national Council of Colleges of Arts and Sciences (CCAS), a professional development
12 organization for university Deans; 30-40 people attended. There was no registration for the event;
13 the webinar link was distributed via a CCAS listserv email, so anyone receiving the email could
14 attend. I believe that Professor Gonzalez and I were the only attendees from SJSU. At the event, I
15 advised what I as Dean of the College at SJSU did when the situation arose for us: I met with the
16 professor; consulted with human resources and the diversity, equity and inclusion team; and
17 continued to treat the professor like anyone else.

18 8. Although we did not record the workshop, Professor Weiss obtained a recording of
19 it and requested to speak with me about it. In a discussion I had with her on July 8, 2021, I
20 apologized for any frustration she felt with what was said at the workshop and assured her that I
21 do not believe that she is a racist. Professor Weiss requested a letter affirmatively assuring her
22 that the University would not retaliate against her, and I told her I would look into that possibility.
23 Attached hereto as **Exhibit E** is a true and correct copy of a July 12-17, 2021, email exchange
24 following a meeting in which we discussed that possibility. Provost Del Casino and I agreed,
25 however, that to issue such a letter would be highly irregular and might create a false impression,
26 because we never retaliate against our faculty for their viewpoints, speech, publication, or
27 teaching. We therefore concluded that such a letter was neither necessary nor appropriate and
28 declined to issue it.

1 9. On October 6, 2021, an Interim Presidential Directive was adopted, restricting
2 access to those parts of SJSU’s collection that are subject to NAGPRA and CalNAGPRA. I did
3 not participate in the planning leading up to the adoption of the Directive, but my understanding
4 is that it was adopted to ensure the University’s compliance with AB 275, which accelerated the
5 timeline for repatriation of remains and cultural items covered by CalNAGPRA, and as of
6 January 1, 2021, requires consultation with and deference to the recommendations of Tribes as to
7 the handling and treatment of remains. The Directive was not issued to retaliate against or
8 penalize Professor Weiss for her viewpoint, speech, publications, or teaching.

9 10. I have worked with Department of Anthropology Chair Roberto Gonzalez to
10 implement the Directive’s provisions. My understanding is that CalNAGPRA requires the
11 University to consult with the Tribes and follow their lead as to how human remains and cultural
12 artifacts that are to be repatriated should be handled. In accordance with the Tribes’ requests, until
13 the inventory of those remains is finished, no one is permitted access to the remains aside from
14 the NAGPRA Coordinator Charlotte Sunseri and Tribal Liaison Alisha Marie Ragland, and strict
15 protocols around handling and treatment must be followed.

16 11. I have never restricted or threatened to restrict Professor Weiss’s research or
17 teaching on the basis of her views on repatriation or anything else, and I do not plan to do so. I
18 have no knowledge of anyone at the University restricting or threatening to restrict Professor
19 Weiss’s research or teaching on the basis of her views. Professor Weiss retains her ability to teach
20 the same classes she always has on the topics of her choice. The part of SJSU’s collection that is
21 not subject to CalNAGPRA—principally the Carthage Collection—has been moved to the
22 Integrative Anthropology Laboratory where Professor Weiss may continue her research and her
23 curational duties as the Department’s Collections Coordinator.

24 12. I have never taken any disciplinary action against Professor Weiss on the basis of
25 her viewpoint, speech, publications, or teaching, and I do not plan to do so in the future.
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of February, 2022, at San José, California.



Walt Jacobs

EXHIBIT A



SJSU College of Social Sciences

July 1, 2020 · 🌐

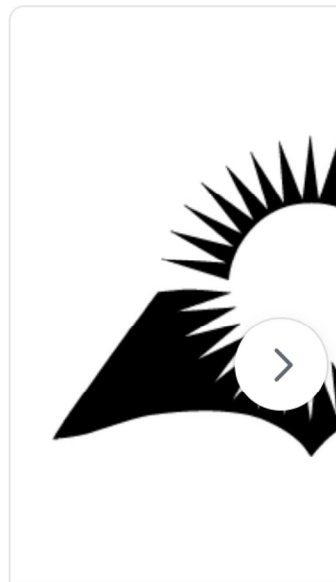


Dr. Elizabeth Weiss (Professor of Anthropology) has published a new book, "Repatriation and Erasing the Past," which examines laws that mandate the return of human remains from museums and laboratories to ancestral burial grounds. Professor Weiss and attorney James Springer offer scientific and legal perspectives on the way repatriation laws impact research. For more information, visit <https://upf.com/book.asp?id=9781683401575>



Repatriation and Erasing the Past

Learn more about this book at UPF.com



Repatriation and Erasing

Learn more about this book



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EXHIBIT B



SJSU College of Social Sciences

September 10, 2021 · 🌐



Anthropology Professor Elizabeth Weiss published an op-ed about California's Native American cultural preservation laws in the Mercury News

Read More Here : <https://www.mercurynews.com/.../8314049-native-american.../>

East Bay Times : <https://www.eastbaytimes.com/.../8314049-native-american.../>



EASTBAYTIMES.COM

Opinion: California law on Native Americans' remains favors religion over science



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EXHIBIT C



Walt Jacobs <walt.jacobs@sjsu.edu>

Repatriation and Erasing the Past

Walt Jacobs <walt.jacobs@sjsu.edu>
To: Elizabeth Weiss <elizabeth.weiss@sjsu.edu>
Cc: Roberto Gonzalez <roberto.gonzalez@sjsu.edu>

Mon, Dec 21, 2020 at 3:10 PM

Got it. Thanks!

-Walt

On Mon, Dec 21, 2020 at 3:09 PM Elizabeth Weiss <elizabeth.weiss@sjsu.edu> wrote:

Dear Walt,

Here you go.

Cheers,
Elizabeth
Elizabeth Weiss, PhD
Professor of Anthropology

For my views on recent events, see the essays at the link below:
<https://libertyunbound.com/author/elizabethweiss/>

On Mon, Dec 21, 2020 at 4:05 PM Walt Jacobs <walt.jacobs@sjsu.edu> wrote:

Good to hear that the press is standing firm, Elizabeth. Please send your response to Roberto and me so that we have it too.

Be well,
Walt

On Mon, Dec 21, 2020 at 2:38 PM Elizabeth Weiss <elizabeth.weiss@sjsu.edu> wrote:

Dear Walt,

Thank you for your email; it is great to be at a university that respects academic freedom. The press has decided not to de-publish the book. James and I have a robust response formulated that we hope will go out to the same email list that they used when they sent out their letter. We are also reaching out to others who support our efforts and academic freedom in general.

Cheers,
Elizabeth

P.S. I am also sending this email to Roberto.

Elizabeth Weiss, PhD
Professor of Anthropology

For my views on recent events, see the essays at the link below:

<https://libertyunbound.com/author/elizabethweiss/>

--

Walter R. Jacobs

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Special Assistant to the Provost on Racial Justice Initiatives
San José State University
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--

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EXHIBIT D



Walt Jacobs <walt.jacobs@sjsu.edu>

New Article on Book Controversy

Elizabeth Weiss <elizabeth.weiss@sjsu.edu>

Tue, Jan 26, 2021 at 10:20 AM

To: Walt Jacobs <walt.jacobs@sjsu.edu>

Dear Walt,

Thank you! You always give such thoughtful feedback. I have already ordered the book you recommended!

Cheers,
Elizabeth
Elizabeth Weiss, PhD
Professor of Anthropology

For my views on recent events, see the essays at the link below:

<https://libertyunbound.com/author/elizabethweiss/>

On Mon, Jan 25, 2021 at 1:22 PM Walt Jacobs <walt.jacobs@sjsu.edu> wrote:

Thanks for keeping me up to date on the controversy, Elizabeth. I just read the linked essay, and was struck by this sentence: "We endorse the philosophy of Karl Popper: the philosophy of objective knowledge, which involves the free exchange of information, views, assertions, arguments, and opinions, in which **the only authority or superiority is the scholar's ability to convince others**" [emphasis added]. This reminded me of the "Science Boundary Work" project of my graduate school mentor, Tom Gieryn. Just as I was finishing my PhD back in 1999 he published a book that may be useful for your ongoing discussion with your critics. If you don't know if, check out [Cultural Boundaries of Science](#).

-Walt

On Mon, Jan 25, 2021 at 10:33 AM Elizabeth Weiss <elizabeth.weiss@sjsu.edu> wrote:

Dear Walt,

I hope that you had a good Winter Break and are looking forward to the new semester. I have been very busy writing; here ([Scholarship Versus Racial Identity in Anthropology - Minding The Campus](#)) is one of about half a dozen of my pieces. I suspect that two more will come out shortly. And, I have a radio interview tonight as well as a meeting with an instructor at University of Wyoming who wants me to talk to their classes via Zoom.

Cheers,
Elizabeth
Elizabeth Weiss, PhD
Professor of Anthropology

For my views on recent events, see the essays at the link below:

<https://libertyunbound.com/author/elizabethweiss/>

--

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EXHIBIT E



Walt Jacobs <walt.jacobs@sjsu.edu>

Re: Regarding Our July 8th Meeting

Walt Jacobs <walt.jacobs@sjsu.edu>
To: Elizabeth Weiss <elizabeth.weiss@sjsu.edu>

Sat, Jul 17, 2021 at 2:12 PM

Hi Elizabeth. There are probably no concrete pros and cons either way. I thought that having the letter in the PAF might provide a subjective boost of security for you since that's where employment-related correspondence goes. Now that I think more about it, though, the PAF might have restrictions on what goes in it. I have a meeting with Faculty Affairs Senior Director James Lee next Monday (July 26), so I'll check in with him about that.

Have a good weekend!

-Walt

On Fri, Jul 16, 2021 at 9:46 AM Elizabeth Weiss <elizabeth.weiss@sjsu.edu> wrote:

Dear Walt,

Could you please tell me the advantages or disadvantages of having the letter in my personnel action file (and vice versa)?

Cheers,
Elizabeth
Elizabeth Weiss, PhD
Professor of Anthropology
<https://elizabethweiss74.wordpress.com/>



[Repatriation and Erasing the Past \(2020\)](#)
(Use SAA21 discount code for 50% off).

On Tue, Jul 13, 2021 at 9:49 AM Walt Jacobs <walt.jacobs@sjsu.edu> wrote:

Message received, Elizabeth. I'll work with Faculty Affairs on the letter. One question now: would you like it to go into your Personnel Action File (PAF)?

-Walt

On Mon, Jul 12, 2021 at 1:43 PM Elizabeth Weiss <elizabeth.weiss@sjsu.edu> wrote:

Dear Walt,

Thank you for the apology regarding the June 3rd event and for stating that you do not think that I am a racist. I appreciated the conversation, including the tips on how to keep costs down for students -- as I indicated, I always strive to provide no cost or low cost options, such as free e-texts through the library or using course

reserves. Currently, all of my own books are available through the university library at no cost to students.

I appreciate your suggestion of having an official internal university letter supporting my academic freedom. Here are some important points that I would like the official letter to address:

- 1) My freedom to assign whatever books, articles, or other materials in my classes, provided that they are on-topic.
- 2) My freedom to hold controversial debates, talks, and lectures both inside and outside of class, thus, exposing students to a diverse range of views. As I mentioned in the conversation, I have never penalized students who hold views counter to my opinion and I never will.
- 3) My freedom to speak publicly in the media about my views on repatriation (such as in op-eds, interviews or articles) without threats or punitive actions even if I present views that run counter to the university, college, or department positions.
- 4) My right to fair and equitable treatment with regard to scheduling, class assignments, service assignments, access to resources, platforming of materials, departmental support, and any other conditions of my job.
- 5) My right to have continued access to and use of skeletal collections for research and teaching, subject to any federal or state laws, which I will comply with -- as I always have.
- 6) A commitment to refrain from false accusations against my character or performance and to respect the University's Guiding Principles of Shared Governance including the principles of collegiality and civility.
- 7) Finally, I believe that this letter should be shared publicly with those who participated in the June 3rd CCAS event or at the very least that I should be able to share this letter freely without any constraints and requirements of confidentiality.

I look forward to your response and the official university letter, which I hope that I can whole-heartedly accept.

Cheers,
Elizabeth
Elizabeth Weiss, PhD
Professor of Anthropology
<https://elizabethweiss74.wordpress.com/>



[Repatriation and Erasing the Past \(2020\)](#)
(Use SAA21 discount code for 50% off).

--
Walter R. Jacobs

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Other Supporting Documents

[5:22-cv-00641-BLF Weiss v. Perez et al](#)

ADRMOP

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Phillips, Bradley on 2/24/2022 at 3:47 PM PST and filed on 2/24/2022

Case Name: Weiss v. Perez et al

Case Number: [5:22-cv-00641-BLF](#)

Filer: Vincent J Del Casino
Roberto Gonzales
Walt Jacobs
Stephen Perez
Alisha Marie Ragland
Charlotte Sunseri

Document Number: [34](#)

Docket Text:

Declaration of WALT JACOBS in Support of [32] Opposition/Response to Motion For Preliminary Injunction filed by Vincent J Del Casino, Roberto Gonzales, Walt Jacobs, Stephen Perez, Alisha Marie Ragland, Charlotte Sunseri. (Attachments: # (1) Exhibit A to Jacobs Decl., # (2) Exhibit B to Jacobs Decl., # (3) Exhibit C to Jacobs Decl., # (4) Exhibit D to Jacobs Decl., # (5) Exhibit E to Jacobs Decl.)(Related document(s)[32]) (Phillips, Bradley) (Filed on 2/24/2022)

5:22-cv-00641-BLF Notice has been electronically mailed to:

Bradley S. Phillips brad.phillips@mto.com, DKT-Filings@mto.com, mary.pantoja@mto.com, Melissa.Lee-Segovia@mto.com

Daniel Moshe Ortner DOrtner@pacificlegal.org, bsiebert@pacificlegal.org, IncomingLit@pacificlegal.org

Ethan Blevins ewb@pacificlegal.org

5:22-cv-00641-BLF Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\1-Jacobs Declaration ISO Opposition to PI Motion_signed.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=2/24/2022] [FileNumber=18972130-0]

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Document description:Exhibit A to Jacobs Decl.

Original filename:C:\fakepath\Ex. A - 2022-02-21 screenshot of 2020-07-01 post.pdf

Electronic document Stamp:

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Document description:Exhibit B to Jacobs Decl.

Original filename:C:\fakepath\Ex. B - 2022-02-21 screenshot of 2021-09-10 post.pdf

Electronic document Stamp:< /STRONG>

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Document description:Exhibit C to Jacobs Decl.

Original filename:C:\fakepath\Ex. C - Repatriation and Erasing the Past support.pdf

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Document description:Exhibit D to Jacobs Decl.

Original filename:C:\fakepath\Ex. D - Book Controversy Feedback.pdf

Electronic document Stamp:

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Document description:Exhibit E to Jacobs Decl.

Original filename:C:\fakepath\Ex. E - _ July 8 meeting email follow up.pdf

Electronic document Stamp:

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