

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – LAW

SPOTLIGHT PA,

Plaintiff,

vs.

BOARD OF TRUSTEES OF THE  
PENNSYLVANIA STATE  
UNIVERSITY,

Defendant

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)  
)  
) Docket No. 2023-2998  
)  
)

) Type of Case: Civil Action - Equity  
)  
)

) Type of Pleading: Preliminary  
) Objections to Second Amended  
) Complaint  
)

) Filed on behalf of Defendant  
)  
)

) Counsel of Record for Defendant:  
)  
)

) **MARSHALL DENNEHEY, P.C.**  
)  
)

) Christopher J. Conrad, Esquire  
)

) PA ID No. 202348  
)

) Gary H. Dadamo, Esquire  
)

) PA ID No. 93292  
)

) 200 Corporate Center Dr. Ste 300  
)

) Camp Hill, PA 17011  
)

) Ph. 717-651-3531  
)

) Fax: 717-651-3707  
)

) cjconrad@mdwecg.com  
)

) ghdadamo@mdwecg.com  
)

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SPOTLIGHT PA,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY,
	:	PENNSYLVANIA
	:	
v.	:	
	:	CIVIL ACTION - LAW
BOARD OF TRUSTEES OF THE	:	
PENNSYLVANIA STATE	:	
UNIVERSITY,	:	NO. 2023-cv-2998-C1
Defendant.	:	

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
upon consideration of Defendant Board of Trustees of The Pennsylvania State  
University's Preliminary Objections to the Second Amended Complaint, and  
Plaintiff's response thereto, if any, it is hereby ORDERED and DECREED that said  
Objections are SUSTAINED and this action is dismissed with prejudice.

BY THE COURT:

\_\_\_\_\_  
J.

2024 JUL 11 PM0313

JEREMY S. BREON

PROTHONOTARY

CENTRE COUNTY, PA

**MARSHALL DENNEHEY, P.C.**

Christopher J. Conrad, Esquire

PA ID No. 202348

Gary H. Dadamo, Esquire

PA ID No. 93292

200 Corporate Center Drive, Suite 300

Camp Hill, PA 17011

Ph. 717-651-3531 /Fax: 717-651-3707

cjconrad@mdwcg.com

ghdadamo@mdwcg.com

*Attorneys for Defendant, Board of Trustees of the Pennsylvania State University*

SPOTLIGHT PA,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY,
	:	PENNSYLVANIA
v.	:	
	:	CIVIL ACTION - LAW
BOARD OF TRUSTEES OF THE	:	
PENNSYLVANIA STATE	:	
UNIVERSITY,	:	NO. 2023-cv-2998-C1
Defendant.	:	

**DEFENDANT BOARD OF TRUSTEES OF THE PENNSYLVANIA STATE**  
**UNIVERSITY'S PRELIMINARY OBJECTIONS TO**  
**PLAINTIFF'S SECOND AMENDED COMPLAINT**

AND NOW, comes Defendant, Board of Trustees (the "Board") of The Pennsylvania State University ("Penn State" or the "University"), by and through its attorneys, Marshall Dennehey, P.C., and hereby responds to the Second Amended Complaint filed against it by Plaintiff, Spotlight PA, with these Preliminary Objections, and in support thereof avers as follows:

## **INTRODUCTION**

The Board of The Pennsylvania State University stands firm in its commitment to openness and transparency as required by Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701 *et seq* (“the Act”). The basic tenet of the Act is clear – when an agency holds a meeting with a quorum of its members to deliberate or take official action on agency business, the meeting must be open to the public after public notice of the meeting, unless closed under a specific exception or pursuant to an executive session. 65 Pa.C.S. § 704. Pursuant to case law addressing the Act, there is a legal presumption that agency activities are conducted in compliance with the Act. Conjecture and speculation that they somehow were not conducted in compliance with the Act are not adequate to overcome this presumption.

As an “agency” under the Act, the Board recognizes that “the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process.” 65 Pa.C.S. § 702(a). The Act, however, “does not require agency members to inquire and learn about issues *only* at open meetings.” *Grove v. Penns Valley Area School Board*, Centre County Case No. 2018-cv-4124, Opinion and Verdict Jan. 28, 2021, at p. 4 (quoting *Sovich v. Shaughnessy*, 705 A.2d 942, 945-46 (Pa. Cmwlth. 1998)).<sup>1</sup> There are certain

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<sup>1</sup> See Exhibit A attached hereto.



exceptions to the Act's open meeting requirements where the Board is permitted to hold executive sessions, conferences, and work sessions, where the public is not present, to fulfill its statutory and fiduciary responsibilities. 65 Pa.C.S. § 707. Further, not all gatherings of the Board fall within the scope of the Act and may be appropriately closed to the public to allow Board members to fulfill their fiduciary responsibilities. *Smith v. Township of Richmond*, 82 A.3d 407, 415–16 (Pa. 2013). As set forth more fully below, the allegations of the Second Amended Complaint misapply the law, rely on conjecture and speculation, and do not accurately represent the Board's dedication to compliance under the Act.

### **BACKGROUND**

1. The Pennsylvania State University ("Penn State" or the "University") is a state related institution of higher education and instrumentality of the Commonwealth organized and existing under the nonprofit corporation laws of Pennsylvania.
2. The Board of Trustees of the University ("Board") is the corporate body established by the University's Charter with overall responsibility for the governance and welfare of the University and all the interests pertaining thereto.

3. Plaintiff is a Pennsylvania corporation that describes itself as a news source on Pennsylvania government and statewide matters. (Second Amended Complaint, ¶ 6).

### **PROCEDURAL HISTORY**

4. On December 6, 2023, Plaintiff Spotlight PA initiated this action by filing its Complaint (“Initial Complaint”) in this Court, asserting five counts relating to Board conferences, executive sessions, and working sessions on November 9 and 10, 2023:
  - a. Count I: Violation of the Sunshine Act: Improper Use of the “Conference” Exception;
  - b. Count II: Violation of the Sunshine Act: Improper Use of the “Executive Session” Exception;
  - c. Count III: Violation of the Sunshine Act: Failure to Adhere to Executive Session Procedure;
  - d. Count IV: Violation of the Sunshine Act: Deliberating at Non-Public Meetings; and
  - e. Count V: Violation of the Sunshine Act: Taking Official Action at Non-Public Meetings.
5. On March 6, 2024, Plaintiff filed its First Amended Complaint, asserting the same five causes of action set forth in its Initial Complaint, and including

purported violations of the Act from the Board's February 15 and 16, 2024 conferences, executive sessions and working sessions, as well.

6. On June 21, 2024, after obtaining leave of Court, Plaintiff filed its Second Amended Complaint, asserting the same five causes of action set forth in its Initial Complaint and Amended Complaint, and including purported violations of the Act on unspecified dates based upon statements made during the meetings of the full Board and the Board's Committee on Finance, Business and Capital Planning, on May 21, 2024 related to a pending proposal for renovations to Beaver Stadium.

**STATEMENT OF ALLEGED FACTS IN  
PLAINTIFF'S SECOND AMENDED COMPLAINT**

7. The Board is an agency under the Act. (Second Amended Complaint, ¶ 9).

**November 9, 2023 – Board Committee Sessions: Committee on Audit and Risk and Committee on Finance, Business, and Capital Planning**

8. On November 5, 2023, the Board advertised the November 9 and 10, 2023 Board meetings and sessions in the Centre Daily Times and with PennLive (See Exhibit "B," Legal Notices and Proofs of Publication for November 9 and 10, 2023 Board meetings and sessions).<sup>2</sup>

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<sup>2</sup> In reviewing Defendant's Preliminary Objections, this Court may "rely on documents forming in part the foundation of the suit even where a plaintiff does not attach such documents to its complaint." *Feldman v. Hoffman*, 107 A.3d 821, 836 (Pa. Cmwlth. 2014). "Documents, the contents of which are alleged in the Complaint and which no party questions, but which are not physically attached to the pleading, may be considered on a motion to dismiss for failure to state a claim." *Id.* In its Second Amended Complaint, Spotlight PA alleges purported violations of the Act at the November 2023, February 2024, and May 21, 2024 Board meetings, conferences and sessions. The public notices of these meetings, conferences and sessions that Spotlight PA has put at issue in its Second Amended Complaint that the Board submitted in compliance with its obligations under the Act can properly be considered by this Court.



9. A reporter of Plaintiff arrived for a meeting of the Board's Committee on Audit and Risk on November 9, 2023, and attempted to enter the executive session held prior to the public meeting. (Second Amended Complaint, ¶ 24).

10. Plaintiff was advised that the Committee on Audit and Risk was holding an executive session prior to, and after, the Committee's public meeting on November 9, 2023. (Second Amended Complaint, ¶ 25).

**November 10, 2023 – Board's Conference and/or Privileged Executive Session**

11. A reporter attempted to attend a conference/executive session on November 10, 2023, that was publicly advertised as such. (Second Amended Complaint, ¶ 31).

12. Plaintiff alleges that the reporter was not permitted to attend the conference/executive session and challenges the Board's description of the November 10, 2023 gathering. (Second Amended Complaint, ¶¶ 34, 37).

**February 15, 2024 – Board Subcommittee on Compensation and Board's Committee on Audit and Risk**

13. On February 5, 2024, the Board advertised the February 15 and 16, 2024 Board meetings and sessions in the Centre Daily Times and with PennLive (See Exhibit "C," Legal Notices and Proofs of Publication for February 15 and 16, 2024 Board meetings).<sup>3</sup>

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<sup>3</sup> See Footnote 2 *supra*.

14. Various subcommittees of the Board held meetings and sessions on February 15, 2024 at the Hintz Family Alumni Center at University Park. (Second Amended Complaint, ¶ 40).
15. The Board's Subcommittee on Compensation met in an executive session on February 15, 2024 at 12:45 p.m. in Robb Hall. (Second Amended Complaint, ¶ 43).
16. At approximately 1:30 p.m. on February 15, 2024, the Board's Subcommittee on Compensation opened its meeting and held a public session. (Second Amended Complaint, ¶¶ 45-46).
17. Spotlight alleges that, during the public meeting, a representative of the Subcommittee stated that the Subcommittee on Compensation "met in closed session prior to the public meeting to review compensation changes for Penn State President Bendapudi." (Second Amended Complaint, ¶ 47-48).
18. On February 15, 2024 at approximately 3:00 p.m., the Board's Committee on Audit and Risk convened a public meeting. (Second Amended Complaint ¶ 50).
19. At the conclusion of the public meeting, Committee Chair Randall Black stated that the next two sessions would be closed as working and executive sessions and explained that: "[d]uring the executive session the committee



will meet individually and privately with management, Plante Moran representatives, and the internal audit director. The committee will not take any official action following the working session or the executive session.” (Second Amended Complaint, ¶ 51).

**February 16, 2024 – Board Conference Session**

20. An editor of Plaintiff entered Hintz Alumni Center at 8:30 a.m. where the Board’s Trustees were in a “conference” as defined by the Act. (Second Amended Complaint, ¶ 53-54).
21. The editor was told that the Board was holding a “conference” as they were gathering for informational purposes only in compliance with the Act. (Second Amended Complaint, ¶ 56).
22. Plaintiff admits that the Board announced later that day in a public meeting that it “also met this morning [February 16, 2024] in conference session and received informational updates on a variety of topics including Penn State’s health enterprise, strategic initiatives related to President Bendapudi’s university road map for the future, philanthropy, and Penn State’s upcoming campaign, and the governor’s budget.” (Second Amended Complaint, ¶ 60).

**May 21, 2024 - Board Committee on Finance, Business and Capital Planning  
and Special Meeting of the Board of Trustees**

23. On May 16, 2024, the Board gave legal notice of the meetings to be held by the Board and the Committee on Finance, Business and Capital Planning on May 21, 2024. (See Exhibit “D,” Legal Notices and Proofs of Publication for the May 24, 2024 Board and Committee on Finance, Business and Capital Planning meetings).<sup>4</sup>

24. On May 21, 2024, a reporter of Plaintiff virtually attended the Board Committee on Finance, Business and Capital Planning meeting and the meeting of the Board of Trustees held immediately thereafter. (Second Amended Complaint, ¶¶ 61-62).

25. Plaintiff admits that Chair of the Board of Trustees Matthew Schuyler (“Chair Schuyler”) announced in the public portion of the Committee meeting that an executive session was held to “discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” (Second Amended Complaint, ¶ 63).

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<sup>4</sup> See Footnote 2 *supra*.

26.Plaintiff alleges that the Board met many times for indeterminate lengths of time in order to deliberate and discuss Beaver Stadium renovations. (Second Amended Complaint, ¶ 77).

**I. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL PROCEDURE, AS TO ALL CLAIMS IN THE SECOND AMENDED COMPLAINT**

27.The Board hereby incorporates by reference the averments of Paragraphs 1 through 26 hereinabove as though fully set forth herein.

28.In ruling on preliminary objections in the nature of a demurrer, the trial court is required to accept as true all well-pleaded allegations of material fact and all reasonable inferences deducible from those facts and resolve all doubt in favor of the non-moving party. *Taylor v. Pennsylvania State Corr. Officers Ass'n*, 291 A.3d 1204, 1208 (Pa. Super. 2023).

29.The question presented is whether, on the facts averred, the law says with certainty that no recovery is possible. *Id.*

30.However, “a court need not accept as true conclusions of law, unwarranted inferences, or expressions of opinion.” *Bayada Nurses, Inc. v. Comm., Dept. of Labor and Industry*, 8 A.3d 866, 884 (Pa. 2010).

31.The Second Amended Complaint is replete with conclusions of law, unwarranted inferences, and expressions of opinion.

32.Plaintiff does not set forth any specific facts to support its claims.



33. Plaintiff attempts to support its claims on the basis that it is relying on conjecture to support its “information and belief” without specifying the information.
34. In Pennsylvania, there is a legal presumption that municipal officers have properly performed their duties and have taken the steps necessary to give validity to their official acts. *See Mamallis v. Melbourne Borough*, 164 A.2d 209 (Pa. 1960); *see also* Exhibit A at p. 4.
35. Thus, a plaintiff alleging a violation of the Sunshine Act bears the burden of proof “to overcome the presumption of regularity and legality that obtains in connection with proceedings of local agencies.” *Kennedy v. Upper Milford Zoning Hearing Board*, 834 A.2d 1104 (Pa. 2003).
36. Plaintiff attempts to overcome that presumption by employing a logical fallacy, repeatedly making claims that because there is no evidence to support that the Board adhered to the Act, it must have violated the Act.
37. Based upon this lack of information and its attempt to shift its pleading requirements and burden of proof to the Board, Plaintiff concludes that the Board violated the Act in each Count of the Second Amended Complaint.
38. These unsupported, vague allegations and bald conclusions of law in the Second Amended Complaint are wholly inadequate to support any claim that the Board violated the Act.

39. Simply put, the law says with certainty that no recovery is possible by Plaintiff, and the Second Amended Complaint should be dismissed with prejudice in its entirety.

**II. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO COUNT I OF THE SECOND AMENDED  
COMPLAINT**

40. The Board hereby incorporates by reference the averments of Paragraphs 1 through 39 hereinabove as though fully set forth herein.

41. In Count I of the Second Amended Complaint, Plaintiff asserts a conclusory allegation that the Board violated the Act because it improperly characterized a gathering as a “conference” on November 10, 2023 and February 16, 2024, based upon Plaintiff’s improper application of the Act’s definition of a “conference.”

42. Plaintiff does not identify the subject matter of the November 10, 2023 conference/executive session and/ or specifically allege how/why the information presented to the Board at the November 10, 2023 conference/executive session was a violation of the Act.

43. Plaintiff does not identify the subject matter of the February 16, 2024 morning conference and/or allege how/why the information presented to the Board during the February 16, 2024 morning conference was a violation of the Act.



44. Rather, Plaintiff admits that the Board announced in a public meeting later that day on February 16, 2024 that it had met in conference earlier that day and “received informational updates on a variety of topics including Penn State’s health enterprise, strategic initiatives related to President Bendapudi’s university road map for the future, philanthropy, and Penn State’s upcoming campaign, and the governor’s budget,” which meets the definition of a “conference” under the Act as construed by Pennsylvania Courts. (Second Amended Complaint, ¶ 60).

45. In addition to not providing any specific details to support its claims set forth in Count I, Plaintiff’s application of the Act’s definition of “conference” is wrong and misinterprets the plain language of the statute.

46. The Act defines “conference” as “[a]ny training program or seminar, **or** any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.” (*See* 65 Pa.C.S.A. § 703, emphasis supplied).

47. Plaintiff primarily argues that the only appropriate application of the recognized “conference” exception to open meetings is when a State or Federal agency presents a session. (*See* Second Amended Complaint, ¶¶ 81, 83).

48. When construing a statute, the court's primary goal is "to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S.[A.] § 1921(a).
49. "Every statute shall be construed, if possible, to give effect to all its provisions." *Id.*
50. "Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage." *Id.* § 1903(a); 2303 *Bainbridge, LLC v. Steel River Bldg. Sys., Inc.*, 239 A.3d 1107, 1114 (Pa.Super. 2020).
51. Plaintiff's argument misconstrues the plain language of the statute and is a misapplication of basic rules of grammar because the Act does not require the presence of an external State or Federal agency to invoke the conference exception properly under the Act. (*See* 65 Pa.C.S.A. § 703).
52. Moreover, it has been well established by Pennsylvania Courts that: (1) fact-finding need not take place in public, *see Sovich v. Shaughnessy*, 705 A.2d 942, 945–46 (Pa. Cmwlth. 1998) (stating the Sunshine Act does not require agency members to inquire and learn about issues only at open meetings); (2) public officials have an affirmative duty to be fully informed and, as such, may "study, investigate, discuss and argue problems and issues" outside the confines of public meetings, *see Belle Vernon Area Concerned Citizens v. Bd. of Comm'rs of Rostraver Twp.*, 487 A. 2d 490, 494 (Pa.

Cmwlth. 1985) (internal quotation marks omitted); and (3) agency members may informally discuss and debate proposals among themselves without violating the Act, *see Connors v. West Greene School. District*, 569 A. 2d 978, 983 (Pa. Cmwlth 1989).

53. The Pennsylvania Supreme Court has held:

Gatherings held solely for the purpose of collecting information or educating agency members about an issue do not fit this description [of deliberation], notwithstanding that the information may later assist the members in taking official action on the issue. To conclude that such information-gathering discussions are held for the purpose of making a decision would amount to a strained interpretation not reflective of legislative intent. In this regard, it bears noting that, although the Act is designed to enhance the proper functioning of the democratic process by curtailing secrecy in public affairs, *see* 65 Pa.C.S. § 702 (relating to legislative findings and declaration); *Babac v. Pa. Milk Mktg. Bd.*, 531 Pa. 391, 395, 613 A.2d 551, 553 (1992), the legislative body has expressly cabined the openness directive by reference to a specific discussional purpose (“making a decision”), thereby leaving room for closed-door discussions held for other purposes. *See generally* 1 Pa.C.S. § 1922(2) (reflecting a presumption that the General Assembly intends the entire statute to be effective and certain).

*Smith v. Twp. of Richmond*, 82 A.3d 407, 415–16 (Pa. 2013).

54. Plaintiff fails to allege how/why the conferences were not held solely for the purpose of collecting information or educating Board members.

55. Plaintiff therefore fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra*.



56. There are also no specific allegations of any deliberations of Board business during the conferences and/or that the conferences were held for the reason of taking official action.

57. Therefore, the allegations in Count I of the Second Amended Complaint do not provide a cause of action for which the law provides recovery, and the Court should dismiss Count I of Plaintiff's Second Amended Complaint with prejudice.

**III. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO COUNT II OF THE SECOND AMENDED  
COMPLAINT**

58. The Board hereby incorporates by reference the averments of Paragraphs 1 through 57 hereinabove as though fully set forth herein.

59. In Count II of the Second Amended Complaint, Plaintiff first asserts a conclusory allegation that the Board did not strictly adhere to one of the seven exceptions for an "executive session" during the November 9, 2023 Board's Committee on Audit and Risk executive session, or the February 15, 2024 executive sessions of the Committee on Compensation and the Committee on Audit and Risk.

60. Plaintiff makes similar allegations about the November 10, 2023 conference. Conspicuously, Plaintiff does not identify the subject matter of the November 10, 2023 conference/executive session and/or allege why the

information presented during the November 10, 2023 conference/executive session subjected it to the requirements for open meetings under the Act.

61.Regarding the conferences/executive sessions on November 9 and 10, 2023 and February 15, 2024, Plaintiff fails to identify specifically any subject matter at any of the executive sessions that would not qualify as one of topics permitted under the Act as an executive session and/or otherwise not fall with any exception to open meetings under the Act.

62.Instead of satisfying the pleading requirements to support its claim, Plaintiff repeatedly alleges that there is no evidence that the Board adhered to the seven topics permitted under the Act as an executive session, even if the same applied, in an attempt to shift its burden to the Board.

63.Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*

64.Plaintiff makes no allegation or asserts no plausible claim that the conduct of the Board's gatherings was irregular or improper.

65.To the contrary, Plaintiff admits that a reason was announced for the executive session held on February 15, 2024 from 12:45 – 1:30 p.m. by the Board Subcommittee on Compensation, *to wit*, to review compensation for



the University's President and that said reason was provided to the public.  
(Second Amended Complaint, ¶ 47).

66. This reason for executive session is permitted under Section 708(a)(1) of the Act since the matter involved employment.

67. Plaintiff also admits that a reason was announced for the executive session held on February 15, 2024 from 3:45 – 4:00 p.m. by the Committee on Audit and Risk, *to wit*, that the Committee would meet individually and privately with management, Plante Moran representatives, and the internal audit director. (Second Amended Complaint, ¶ 51).

68. This reason for executive session is permitted under Section 708(a)(5) of the Act since the matter involved Board business involving confidential information.

69. Moreover, the Committee on Audit and Risk is permitted to meet in a closed session as provided for by Section 707(c) of the Act.

70. Specifically, Section 707(c) of the Act provides that “[b]oards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this chapter.”

71.As Plaintiff admits, “[a]t the conclusion of the Board Committee on Audit and Risk public meeting, Committee chair Randall Black . . . further stated that: ‘During the executive session the committee will meet individually and privately with management, the Plante Moran representatives, and the internal audit director. The committee will not take any official action following the working session or the executive session.’” (Second Amended Complaint, ¶ 51).

72.Moreover, there are no specific allegations of any deliberations of Board business or official action taken by the Committee on Audit and Risk to rebut the presumption that the Committee was acting in compliance with the Act.

73.Plaintiff next alleges in Count II that the Board violated the Act based upon deliberations which occurred in executive session to discuss renovations to Beaver Stadium. (Second Amended Complaint, ¶¶ 96-98).

74.Plaintiff incorrectly claims that any discussions regarding renovations to Beaver Stadium which occurred in executive session do not fall under any of the categories permitted under Section 708(a) of the Act.

75.Deliberation is permitted under Section 708(a)(5) of the Act “to review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law....”

76. Plaintiff admits that Chair of the Board of Trustees Matthew Schuyler (“Chair Schuyler”) announced in the public portion of the Committee meeting that an executive session was held to “discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” (Second Amended Complaint, ¶ 63).<sup>5</sup>

77. Plaintiff fails to specifically allege when a pending proposal for renovations to Beaver Stadium was discussed in non-public meetings, how any such discussions constitute deliberation, and how/why any deliberations in executive session do not fall within any of the categories provided for under Section 708(a) of the Act, including Section 708(a)(5).

78. The Board is permitted to meet in a closed session as provided for by Section 708(a)(5) of the Act.

79. Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*

80. Accordingly, Count II of the Second Amended Complaint fails to provide a viable cause of action for which the law provides recovery, and the Court

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<sup>5</sup> As evidenced by the attached Legal Notices and Proofs of Publication at Exhibit “E,” public notice was provided that the Committee on Finance, Business and Capital Planning would meet on April 18 and 24, 2024 and May 2, 2024 “to conduct a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” (*See* Footnote 2 *supra*). Plaintiff’s claim filed on June 21, 2024 that such discussions violated the Act is untimely pursuant to Section 713 of the Act.



should dismiss Count II of Plaintiff's Second Amended Complaint with prejudice.

**IV. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO COUNT III OF THE SECOND AMENDED  
COMPLAINT**

81. The Board hereby incorporates by reference the averments of Paragraphs 1 through 80 hereinabove as though fully set forth herein.

82. Count III of the Second Amended Complaint initially asserts a conclusory allegation that the Board violated the Act when it failed to announce the reason for the executive sessions held on November 9 and 10, 2023, and February 15, 2024.

83. To the extent the November 10, 2023 gathering was an "executive session," Plaintiff admits that the Board announced at a public session later that day that it had met "in executive session to discuss various privileged matters." (Second Amended Complaint, ¶ 38).

84. Additionally, Plaintiff admits that a reason was announced for the executive session held on February 15, 2024 from 12:45 – 1:30 p.m. by the Board Subcommittee on Compensation, *to wit*, to review compensation for the University's President and that said reason was provided to the public. (Second Amended Complaint, ¶ 47).

85.Plaintiff concedes that a reason was announced for the executive session held on February 15, 2024 from 3:45 – 4:00 p.m. by the Committee on Audit and Risk, *to wit*, that the Committee would meet individually and privately with management, Plante Moran representatives, and the internal audit director. (Second Amended Complaint, ¶ 51).

86.Specifically, Plaintiff recognizes that “[a]t the conclusion of the Board Committee on Audit and Risk public meeting, Committee chair Randall Black . . . further stated that: ‘During the executive session the committee will meet individually and privately with management, the Plante Moran representatives, and the internal audit director. The committee will not take any official action following the working session or the executive session.’” (*Id.*)

87.Further, Section 707(c) of the Act permits the Committee on Audit and Risk to hold “certain working sessions” involving “[b]oards of auditors” that are “not open to the public.”

88.Count III of the Second Amended Complaint also sets forth an additional legal conclusion that the Board allegedly violated the Act when it failed to “articulate proper and specific justifications” for holding executive sessions prior to the May 21, 2024 public meetings. (Second Amended Complaint, ¶ 106).



89. Plaintiff fails to specifically allege when a pending proposal for renovations to Beaver Stadium was discussed in executive sessions.

90. Instead of satisfying the pleading requirements to support its claim, Plaintiff merely claims that there were “many, many sessions to discuss [renovations to Beaver Stadium]” without identifying any specific facts as to when these alleged sessions took place, whether these sessions were executive sessions, and when any executive sessions occurred prior to May 21, 2024 where a pending proposal for renovations to Beaver Stadium was discussed.<sup>6</sup>

91. Plaintiff admits that Chair of the Board of Trustees Matthew Schuyler (“Chair Schuyler”) announced in the public portion of the Committee meeting that an executive session was held to “discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” (Second Amended Complaint, ¶ 63).<sup>7</sup>

92. Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*

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<sup>6</sup> As Plaintiff does not identify when the alleged sessions took place, it fails to establish that the legal challenge is timely under Section 713 of the Act.

<sup>7</sup> *See* Footnote 5 *supra*.

93. Plaintiff has therefore failed to set forth facts to support a cause of action for which the law provides recovery in Count III of the Second Amended Complaint, and the Court should dismiss Count III of Plaintiff's Second Amended Complaint with prejudice.

**V. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO COUNT IV OF THE SECOND AMENDED  
COMPLAINT**

94. The Board hereby incorporates by reference the averments of Paragraphs 1 through 93 hereinabove as though fully set forth herein.

95. Count IV of the Amended Complaint asserts a conclusory allegation that the Board deliberated official University business in violation of the Act during the executive session/conference held on November 10, 2023, the conference held on February 16, 2024, and non-public executive sessions prior to the May 21, 2024 meeting to discuss renovations to Beaver Stadium.

96. Plaintiff admits that it has no evidence to support its claims as to the November 10, 2023 and February 16, 2024 conferences and relies upon conjecture to support its "information and belief." (Second Amended Complaint, ¶¶ 113, 115).

97. Instead of satisfying the pleading requirements to support its claim, Plaintiff claims that there is no evidence to support the Board's characterization of the November 10, 2023 and February 16, 2024 conferences as such in an

attempt to shift its burden to plead specific facts to the Board. (Second Amended Complaint, ¶¶ 112, 114).

98. Plaintiff therefore fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act as to the claims arising from the November 10, 2023 and February 16, 2024 conferences. (*See, Mamallis and Kennedy, supra*).

99. There are also no specific allegations of any deliberations of Board business during the November 10, 2023 and February 16, 2024 conferences and/or that the conferences were held for the reason of taking official action.

100. There are likewise no specific allegations of any deliberations of Board business at any “non-public executive sessions” as alleged in the Second Amended Complaint. (Second Amended Complaint, ¶ 116).

101. The sole basis for this claim arises merely from a comment made by Chair Schuyler during the May 21, 2024 Board meeting related to financial proposals allegedly discussed in executive sessions as it relates to renovations to Beaver Stadium. (Second Amended Complaint, ¶ 121).

102. There are no specific allegations of which deliberations occurred to discuss a pending proposal of renovations to Beaver Stadium and at which non-public executive sessions.



103. Plaintiff incorrectly claims that only one of the specific matters provided for under Section 708(a) permits deliberations. (Second Amended Complaint, ¶ 119).
104. The Act clearly allows for certain deliberations to occur in executive sessions without limitation as alleged by Plaintiff. *See* Section 708(a).
105. Plaintiff admits that Chair of the Board of Trustees Matthew Schuyler (“Chair Schuyler”) announced in the public portion of the Committee meeting that an executive session was held to “discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” (Second Amended Complaint, ¶ 63).<sup>8</sup>
106. The Board was permitted to discuss a pending proposal for renovations to Beaver Stadium in non-public meetings pursuant to Section 708(a)(5) of the Act.
107. Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*
108. Plaintiff fails to specifically allege when a pending proposal for renovations to Beaver Stadium was discussed in non-public meetings, how

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<sup>8</sup> *See* Footnote 5 *supra*.

any such discussions constitute deliberation, and how/why any deliberations in executive session do not fall within any of the categories provided for under Section 708(a) of the Act, including Section 708(a)(5).

109. Without any specific factual allegations that deliberation of Board business or official action occurred at the conferences identified, and without any specific factual allegations that any deliberations related to a pending proposal for renovations to Beaver Stadium occurred in executive sessions outside of the categories provided for under the Act, Plaintiff fails to set forth a viable cause of action in Count IV of the Second Amended Complaint and the same should be dismissed with prejudice.

**VI. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO COUNT V OF THE SECOND AMENDED  
COMPLAINT**

110. The Board hereby incorporates by reference the averments of Paragraphs 1 through 109 hereinabove as though fully set forth herein.

111. Although not entirely clear, Count V of the Second Amended Complaint appears to claim that the Board took “official action” as defined by the Act during the executive sessions and conferences identified in the Second Amended Complaint.

112. Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*
113. Plaintiff makes no allegation or asserts no plausible claim that the conduct of the Board's gatherings was irregular or improper.
114. Plaintiff admits that it has no evidence to support its claims and relies upon conjecture to support its "information and belief." (Second Amended Complaint, ¶ 130).
115. Instead of satisfying the pleading requirements to support its claim, Plaintiff claims that there is no evidence to support the Board's identification of the executive sessions and conferences as such in an attempt to shift its burden to plead specific facts to the Board.
116. Plaintiff does not specifically identify any official action which was taken during the executive sessions and/or conferences which constitute a violation of the Act.
117. Without any factual allegations that any official action occurred at any non-public meeting or conference, Plaintiff fails to set forth a viable cause of action in Count V of the Second Amended Complaint, and the Court should dismiss Count V of Plaintiff's Second Amended Complaint with prejudice.



**VII. PRELIMINARY OBJECTION FOR INSUFFICIENCY OF A  
PLEADING PURSUANT TO RULE 1028(A)(3), PENNSYLVANIA RULES  
OF CIVIL PROCEDURE, AS TO ALL COUNTS OF THE SECOND  
AMENDED COMPLAINT**

118. The Board hereby incorporates by reference the averments of Paragraphs 1 through 117 hereinabove as though fully set forth herein.

119. The pertinent question under Rule 1028(a)(3) is “whether the complaint is sufficiently clear to enable the defendant to prepare his defense,” or “whether the plaintiff’s complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006).

120. The Second Amended Complaint fails to inform the Board with accuracy and completeness of the specific basis on which recovery is sought.

121. The Second Amended Complaint does not identify the subject matter of any conference identified.

122. The Second Amended Complaint does not specifically allege how or why the information presented to the Board during the conferences is a violation of the Act.

123. The Second Amended Complaint does not specifically allege how or why the executive sessions do not fall within the categories provided for under the Act.

124. The Second Amended Complaint does not identify any deliberation that occurred at any executive session that does not fall within a category permitted for such deliberation.
125. The Second Amended Complaint does not identify any official action that took place at any conference or executive session.
126. The Second Amended Complaint does not identify how or why the non-public executive sessions, conferences, or working sessions would be required to be held in public under the Act.
127. The Second Amended Complaint is littered with conjecture and mere speculation that does not satisfy the pleading requirements.
128. Plaintiff fails to rebut the presumption and allege any specific facts to overcome the presumption of regularity and legality that the Board complied with the Act. *See, Mamallis and Kennedy, supra.*
129. Plaintiff cannot shirk itself of such responsibility by claiming that the Board has not presented evidence when it is Plaintiff who has the burden to set forth specific facts to support its claims.
130. Since Plaintiff has failed to sufficiently plead any claims in the Second Amended Complaint, this action should be dismissed with prejudice because any further amendment would be futile.

**VIII. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO ANY CLAIMS ARISING FROM THE APRIL OR  
MAY 2023 BOARD EXECUTIVE SESSIONS, CONFERENCES AND/OR  
WORKING SESSIONS**

131. The Board hereby incorporates by reference the averments of Paragraphs 1 through 130 hereinabove as though fully set forth herein.

132. Plaintiff alleges that violations of the Act occurred during the Board's April and May 2023 executive sessions, conferences and/or working sessions and that it advised the Board of same in a letter sent to the University on October 26, 2023. (Second Amended Complaint, ¶¶ 13-15).

133. Section 713 of the Act states:

[a] legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting.

65 Pa.C.S.A. § 713(a).

134. Section 713 of the Act requires that any challenge under the Act must be raised within thirty days of the discovery of the action alleged to have violated the Act. *Day v. Civil Service Com 'n of Borough of Carlisle*, 931 A.2d 646, 650 (Pa. 2007).

135. In *Day*, the Supreme Court stated “[a]lthough this Court has yet to pass upon the time requirements of Section 713, the Commonwealth Court,



consistently with the plain language of the Act, has previously interpreted the provision to require a legal challenge under the Act to be filed within thirty days of the date that an individual becomes aware of a violation of the Act.” *Id.* at 458.

136. The initial Complaint was filed on December 6, 2023.

137. Plaintiff is time-barred under the Act from challenging the legality of Board sessions or conferences in April and/or May 2023 because the initial Complaint was not filed within thirty days of those gatherings.

138. Accordingly, to the extent that the Second Amended Complaint sets forth claims arising from the Board’s executive sessions, conferences or working sessions in April and/or May 2023, any such claims are time-barred under the Act and should be dismissed with prejudice.

**IX. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER  
PURSUANT TO RULE 1028(A)(4), PENNSYLVANIA RULES OF CIVIL  
PROCEDURE, AS TO ANY CLAIMS ARISING FROM THE JANUARY 29,  
2024 EXECUTIVE SESSION**

139. The Board hereby incorporates by reference the averments of Paragraphs 1 through 138 hereinabove as though fully set forth herein.

140. Plaintiff again includes in the Second Amended Complaint general allegations that an executive session occurred on January 29, 2024 under a section titled “Specific Violations.” (Second Amended Complaint, ¶¶ 58-59).

141. These allegations were set forth for the first time in the Amended Complaint. (Amended Complaint, ¶¶ 56-57).
142. The Amended Complaint was filed on March 6, 2024.
143. Plaintiff is time-barred under the Act from challenging the legality of Board executive session on January 24, 2024 because the Amended Complaint was not filed within thirty days of that session.
144. Accordingly, to the extent that the Second Amended Complaint sets forth claims arising from the Board's executive session on January 29, 2024, any such claims are time-barred under the Act and should be dismissed with prejudice.<sup>9</sup>

WHEREFORE, for the reasons set forth herein, and for those reasons set forth in its forthcoming Brief in Support, Defendant, Board of Trustees for The Pennsylvania State University, respectfully requests that the Court sustain its Objections and dismiss this action with prejudice as any amendment would be futile.

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<sup>9</sup> Moreover, though not entirely clear, to the extent plaintiff is alleging further purported violations of the Act based on meetings on April 18 and 24, 2024 and May 2, 2024 through its reference to “many, many” times in Paragraph 77 of the Second Amendment Complaint, then those claims are untimely pursuant to Section 713 of the Act. *See* Footnotes 5 and 6 *supra*.

Respectfully Submitted,

**MARSHALL DENNEHEY, P.C.**

BY: /s/ Christopher J. Conrad  
Christopher J. Conrad, Esquire  
PA ID No. 202348  
Gary H. Dadamo, Esquire  
PA ID No. 93292  
200 Corporate Center Drive, Ste 300  
Camp Hill, PA 17011  
Ph. 717-651-3531 /Fax: 717-651-3707  
cjconrad@mdwcg.com  
ghdadamo@mdwcg.com

Date: July 11, 2024

*Attorneys for Defendant, Board of  
Trustees of the Pennsylvania State  
University*



### **CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendant Board of Trustees of  
the Pennsylvania State  
University

Signature: /s/ Christopher J. Conrad  
Name: Christopher J. Conrad, Esquire

Attorney No. (if applicable): 202348

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 11th day of July, 2024, **via email** as follows:

Paula Knudsen Burke, Esquire  
pknudsen@rcfp.org

**MARSHALL DENNEHEY, P.C.**

BY: /s/ Christopher J. Conrad  
Christopher J. Conrad, Esquire  
PA I.D. No. 202348  
200 Corporate Center Drive, Suite  
300  
Camp Hill, PA 17011  
T: (717) 651-3531 / Fax (717) 651-  
3500  
cjconrad@mdwgcg.com  
*Attorneys for Defendant Board of  
Trustees of the Pennsylvania State  
University*

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

CASEY and MICHELLE GROVE )  
Plaintiffs, )  
v. )  
PENNS VALLEY AREA SCHOOL )  
BOARD and CHRIS HOUSER )  
Defendants. )

No. 2018-4124

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FILED FOR RECORD  
JEREMY S. BREON  
PROTHONOTARY  
CENTRE COUNTY, PA

*Attorney for Plaintiffs:*  
*Attorney for Defendants:*

*Pro Se*  
*Christopher J. Conrad, Esquire/*  
*Lara K. Bream, Esquire*

**OPINION AND VERDICT**

**Marshall, J.**

On October 15, 2018, Casey and Michelle Grove (hereinafter collectively referred to as "Plaintiffs") commenced this action by filing a Complaint against the Penns Valley Area School Board and Chris Houser (hereinafter collectively referred to as "Defendants"). In response to Plaintiffs' Complaint, Defendants filed Preliminary Objections on November 7, 2018. On December 20, 2018, Plaintiffs filed an Amended Complaint. In response to Plaintiffs' Amended Complaint, Defendants filed Preliminary Objections on January 9, 2019. Oral argument was heard on February 25, 2019. Following oral argument, this Court entered an Order dismissing Plaintiffs' Amended Complaint without prejudice, providing Plaintiffs with twenty (20) days to file a Second Amended Complaint. Plaintiffs filed a Second Amended Complaint on April 1, 2019. In response to Plaintiffs' Second Amended Complaint, Defendants filed Preliminary Objections on April 26, 2019. A Nonjury Trial was held on November 24, 2020, at the completion of which the Court ordered the parties to submit briefs and proposed findings of fact and conclusions of law within

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ten (10) days. Both parties submitted Proposed Findings of Fact and Conclusions of Law and Briefs in Support on December 4, 2020. After consideration of the evidence presented at trial and the arguments presented in the parties' briefs, the Court is prepared to render a verdict.

### **FINDINGS OF FACT**

In the instant matter, Plaintiff Casey Grove (hereinafter "Mr. Grove") and Plaintiff Michelle Grove (hereinafter "Mrs. Grove") allege Defendants violated the Pennsylvania Sunshine Act (hereinafter the "Sunshine Act" or the "Act"). Defendant, the Penns Valley Area School Board (hereinafter the "School Board" or the "Board"), is the School Board of the Penns Valley Area School District (hereinafter the "School District"). Defendant Chris Houser (hereinafter "Houser") has been a member of the School Board since December of 2005 and has served two (2) consecutive one-year terms as President beginning in December of 2017 and ending in December of 2019. Plaintiffs allege Defendants violated Section 706, Section 708, and Section 710.1 of the Act during School Board meetings held on: September 19, 2018; November 7, 2018; November 14, 2018; and March 6, 2019. On September 19, 2019, the School Board held a regular meeting which Plaintiffs attended. Pursuant to Board Policy 006, Houser made an announcement during the meeting consistent with the announcement listed in the meeting agenda, which stated:

[t]here was an executive session held during the August 15, 2018 regular meeting to discuss personnel matters. There was an executive session held following the meeting to discuss contract, legal, and personnel matters. There was an executive session held following the September 5, 2018 work session to discuss personnel and legal matters. There will be an executive session following tonight's meeting to discuss contract, legal, and personnel matters.

Plaintiffs assert Defendants violated Section 708 of the Act when announcing executive sessions for "legal matters", "personnel matters", and/or "contract matters", alleging such descriptions lack

the specificity needed for the public to ascertain whether they are being properly excluded from a given meeting.

On November 7, 2018, the School Board held a work session meeting, which Plaintiffs attended in part. Pursuant to Board Policy 006, no roll call or voting took place during this meeting and written minutes were not kept. Additionally, the public was not able to offer comment. Plaintiffs assert Defendants violated Section 710.1 of the Act by failing to allow public comment during work session meetings. On November 14, 2018, the School Board held a regular meeting that Plaintiffs attended. At this meeting, Houser made an announcement regarding prior and upcoming executive sessions, stating:

[t]here was an executive session held following the October 17, 2018 regular meeting to discuss legal matters which include: Docket #2018-4124 in the matter of Casey and Michelle Grove v. Penns Valley Area School Board, and an appeal for the Office of Open Records final determination in 2018-1343 Grove v. Penns Valley Area School District, and personnel matters. There was not an executive session held following the November 7, 2018 work session. There will be an executive session following tonight's meeting to discuss contract, legal and personnel matters.

During the meeting, written minutes were kept and there was a period for public comment in which Mrs. Grove participated. Plaintiffs also assert Defendants violated Section 708 of the Act by announcing an executive session to discuss "personnel matters" during the November 14, 2018 regular meeting.

On March 6, 2019, the School Board held a work session meeting that Plaintiffs attended. Pursuant to Board Policy 006, no roll call or voting took place during the meeting and minutes were not kept. Additionally, the public was not able to comment. After the meeting had adjourned, Mrs. Grove asked the Board why public comment wasn't allowed. A member of the Board stated that the public was not able to comment during work session meetings but could do so at the next

regular meeting. Mrs. Grove did not make a public comment at the subsequent meeting of the Board where voting occurred.

### **CONCLUSIONS OF LAW**

In Pennsylvania, there is a legal presumption that municipal officers have properly performed their duties and have taken the steps necessary to give validity to their official acts. *Mamallis v. Millbourne Borough*, 401 Pa. 375, 164 A.2d 209 (1960). Thus, a plaintiff alleging a violation of the Sunshine Act bears the burden of proof “to overcome the presumption of regularity and legality that obtains in connection with proceedings of local agencies.” *Kennedy v. Upper Milford Zoning Hearing Board*, 575 Pa. 105, 834 A.2d 1104 (2003).

The Sunshine Act recognizes “the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision-making of agencies” finding it to be “vital to the enhancement and proper functioning of the democratic process” as it “curtails secrecy in public affairs.” 65 Pa. C.S. §702; *Smith v. Twp. Of Richmond*, 623 Pa. 209, 82 A.3d 407 (2013); *Babac v. Pa Milk Mktg. Bd.*, 531 Pa. 391, 395, 613 A.2d 551, 553 (1992). An “agency”, for purposes of the Act, is defined as the “body and all committees thereof that are authorized to render advise or take official action” on behalf of the governing body. 65 Pa. C.S. §702. Any time an agency holds a meeting where deliberation or official action by a quorum of its members occurs, the Act requires the meeting to be open and public after notice of the meeting has been given publicly. 65 Pa. C.S. §703.

The Act “does not require agency members to inquire and learn about issues *only* at open meetings.” *Sovich v. Shaughnessy*, 705 A.2d 942, 945-46 (Pa. Commw. Ct. 1998)(emphasis added). “Public officials have an affirmative duty to be fully informed and, as such, may ‘study, investigate, discuss, and argue problems and issues’ outside the confines of public meetings.” *Belle*



*Vernon Area Concerned Citizens v. Bd. Of Comm'rs of Rostraver Twp.*, 87 Pa. Commw. 474, 481, 487 A.2d 490, 494 (1985). However, “[t]here is a substantial difference between discussion and deliberation” which must not be overlooked. *Connors v. West Green School Distr.*, 131 Pa. Commw. 95, 569 A.2d 978 (1989).

Discussions do not give rise to deliberations, and thus do not trigger the open-meeting requirement, when agency members “informally discuss and debate proposals amongst themselves.” *Id.* If, however, “specific proposals or petitions are discussed” the conversation may give rise to deliberations that require the presence of the public. *Smith*, 82 A.3d at 411. “Deliberation” for purposes of the Act is defined as the discussion of agency business. *Id.* “Agency business” includes the framing, preparation, or enactment of laws, policies or regulations, or the creation of liability by contract or otherwise where the discussion is held for the purpose of making a decision. *Id.*

An “official action” for purposes of the Act is defined as any: (1) recommendations made by an agency pursuant to statute, ordinance, or executive order; (2) establishment of policy by an agency; (3) decisions regarding agency business made by an agency; and (4) voting made by an agency on motions, proposals, resolutions, rules, regulations, ordinances, reports, or orders. 65 Pa. C.S. §703. To be a vote constituting official action as defined in the Act, the vote must be on a matter that commits the agency to a specific course of conduct. *Morning Call, Inc. v. Bd. Of Sch. Dir. Of Southern Lehigh Sch. Dist.*, 642 A.2d 619, 623 (Pa. Commw. Ct. 1994).

When an agency deliberates or takes official action, an agency must also take written minutes. 65 Pa. C.S. §706. The minutes shall include: (1) the date, time and place of the meeting; (2) the names of the members present; (3) the substance of all official actions and a record by individual members of the roll call votes taken; and (4) the names of all citizens who appeared

officially and the subject of their testimony. *Id.* Additionally, an agency may be obligated to accept comments from the public. Under Section 710.1 of the Act, an agency:

shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council **prior to taking official action.**

65 Pa. C.S. §710.1 (emphasis added). The Act permits an agency to limit public comment to matters which may or will be presented to the agency for official action during a particular meeting or for a particular duration. *Duff v. City of Phila.*, 2015 WL 4644138 (E.D. Pa. Aug. 4, 2015).

Exceptions to the Act's openness requirement exist for: (1) executive sessions; (2) conferences that do not involve deliberations of agency business; and (3) working sessions of board of auditors concluded for the purposes of examining and analyzing accounts and records. 65 Pa. C.S. §707. The Act defines an "executive session" as "[a] meeting from which the public is excluded...." 65 Pa. C.S. §703. Executive sessions can be held:

- (1) to discuss matters of employment (such as prospective employment, appointment, terms and conditions of employment, promotions, and discipline of public officers and employees);
- (2) to hold strategy, information or negotiation sessions relating to collective bargaining agreements or labor relations and arbitrations;
- (3) to consider the purchase or lease of real property;
- (4) to consult with an attorney in connection with potential or current litigation;

- (5) to discuss or review agency business which, if conducted in public, would violate a lawful privilege or information and confidentiality recognized by the law;
- (6) for duly constituted committees of State-owned, State-aided, and State-related colleges and universities or the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standing; and
- (7) to discuss, plan, or review matters and records that are deemed necessary for emergency preparedness, protection of public safety, and security of all property in a manner that, if disclosed, would be reasonably likely to jeopardize or threaten public safety, preparedness, or public protection.

65 Pa. C.S. §708(a)(1)-(7). Executive sessions “may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time.” *Id.* Although executive sessions may be held without public participation and attendance, the public retains the right to know the general topics of discussion for each session. 65 Pa. C.S. §708(b); *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 307 (Pa. Commw. Ct. 1993). When an agency is convening in an executive session to discuss existing litigation the agency must provide the public with the names of the parties, the docket number, and the name of the court. *Id.* When an agency is convening in an executive session to discuss an identifiable complaint, the agency must provide the public with the nature of the complaint, but not the identity of the complainant.

An agency may not deliberate or take official action during an executive session. 65 Pa. C.S. §708(c). However, even where a closed-door gathering, such as an executive session, involves deliberations or an official action in violation of the Act, an agency may “cure” its violation by taking the official action again at a later, open meeting. *ACORN v. SEPTA*, 789 A.2d 811, 813 (Pa. Commw. Ct. 2002); *League of Women Voters of Pennsylvania v. Commonwealth*, 683 A.2d 685, 690 (Pa. Commw. Ct. 1996)(citing *Moore v. Township of Raccoon*, 155 Pa. Commw. 529, 625



A.2d 737 (1993); *Ackerman v. Upper Mount Bethel Tw.*, 130 Pa. Commw. 254, 567 A.2d 1116 (1989).

### **Discussion**

Plaintiffs have raised challenges to the conduct of four (4) specific School Board meetings held on: September 19, 2018; November 7, 2018; November 14, 2018; and March 6, 2019. Plaintiffs ask this Court to grant a preliminary injunction directing the Defendants to: (1) properly identify the specific reasons for all executive sessions; (2) allow for public comments at all public meetings, including work session meetings; (3) keep minutes at all public meetings, including work session meetings; and (4) provide reimbursement of legal expenses. The Court finds as follows.

#### **I. The Reasons Provided by Defendants for Holding Closed-Door Executive Sessions Were Sufficiently Specific Under the Sunshine Act.**

Plaintiffs first contend that Defendants violated Section 708 of the Sunshine Act by failing to provide the public with a sufficiently specific reason for holding executive sessions. Plaintiffs assert that Defendants' practice of providing the public with a broad range of potential topics of discussion is inadequate and frustrates the purpose of the Act. Further, Plaintiffs assert Defendants' announcements are contrary to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.* and *Butler*.

On September 19, 2018, Houser announced various executive sessions for the purpose of discussing "legal matters", "personnel matters," and/or "contract matters". On November 14, 2018, Houser announced the Board had met in an executive session following the October 17, 2018 regular meeting to discuss a "personnel matter" and two (2) pending litigation matters: *Grove v. Penns Valley Area School Board, et al.*, Docket No. 2018-4124 and *Grove v. Penns Valley*

School District, Docket No. 2018-1343. Defendants made no announcements pertaining to prior or future executive sessions during the November 7, 2018 and March 6, 2019 work sessions.

The Commonwealth Court has held that an announcement of an executive session “must be specific, indicating a real, discrete matter that is best addressed in private”. *Reading Eagle Co.* 627 A.2d 305 at 307. Pursuant to Section 708 of the Act, agencies may hold executive sessions to consult with their attorney regarding information or strategy in connection with litigation or issues on which identifiable complaints are expected to be filed. 65 Pa. C.S. §708. In both *Reading Eagle Co.* and *Butler*, the Commonwealth Court held that the level of specificity required in an agency’s announcement of an executive session for the purpose of discussing “legal matters” is dependent on the nature of the matter and the need for confidentiality.

When an executive session involves the discussion of threatened litigation or an identifiable complaints, the Commonwealth Court held an agency is required to provide the nature of the complaint, but not the identity of the complainant, during a public meeting. *Butler v. Indian Lake Borough*, 14 A.3d 185, 189 (Pa. Commw. Ct. 2011). When an executive session involves the discussion of an existing litigation matter, the Commonwealth Court held an agency is required to provide the names of the parties, the docket number, and the name of the court during a public meeting. *Reading Eagle Co.* 627 A.2d 305 at 307. An agency is required to provide greater specificity when announcing existing litigation because such information is already of public record and therefore poses no risk of violating an individual’s right to privacy.

Neither *Reading Eagle Co.* nor *Butler* state the level of specificity required by an agency, when announcing an executive session pertaining to a “contract matter” or “personnel matter”. As to “contract matters”, the Commonwealth Court has held that an agency must balance the public’s right to know with the importance of maintaining confidentiality during ongoing contract

negotiations. *St. Clair Area Sch. Dist. v. St. Clair Area Educ. Ass'n*, 525 Pa. 236 (1990). As to “personnel matters”, the Commonwealth Court has held that the public’s right to know “must be balanced, under certain situations, with an individual’s right to seek confidentiality concerning a disciplinary matter.” *Mirror Printing Co., Inc. v. Altoona Area Sch. Dist.*, 148 Pa. Commw. 168, 609 A.2d 917, 920 (1992). Section 708(a)(1) of the Act states an individual “whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting.” 65 Pa. C.S. §708(a)(1). Therefore, unless an affected employee requests their name and matter be made public, an agency is not in required to disclose such information in its announcement.

In the instant matter, the Court finds Defendants have not acted in violation of the Sunshine Act or acted contrary to the Commonwealth Court’s interpretation of the Act in *Reading Eagle Co.* or *Butler*. The “legal matters” referenced in Defendants September 19, 2018 announcement pertain to executive sessions held on August 15, 2018 and September 5, 2018. Plaintiffs have failed to provide any evidence to suggest that the “legal matters” discussed during these executive sessions were related to any pending, potential, or threatened litigation. Therefore, by announcing its intent to discuss “legal matters”, Defendants sufficiently notified the public that the Board would discussing a “real, discrete matter best addressed in private”. *Reading Eagle Co.* 627 A.2d 305 at 307. Additionally, the Court finds Defendants’ November 14, 2018 announcement was sufficiently specific. Defendants announced two (2) existing litigation matters: *Grove v. Penns Valley School Board*, Docket No. 2018-4124 and *Grove v. Penns Valley Area School District, et al.*, Docket No. 2018-1343. Both matters mentioned were pending in the Centre County Court of Common Pleas at the time the announcement was made. Therefore, the School Board’s



announcement disclosing of name and docket number of the matters adhered to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.*.

The "contract matters" referenced in Defendants' September 19, 2018 announcement pertain to executive sessions held on August 15, 2018 and September 19, 2018. Plaintiffs have failed to provide sufficient evidence to overcome the presumption of regularity and legality pertaining to the "contract matters" discussed during the August 15, 2018. In regards to the September 19, 2018 executive session, no "contract matters" were ultimately discussed. As mentioned, it is the long-standing practice of Defendants to provide a range of possible topics which may or may not be discussed during a given executive session. Defendants ensure the meeting minutes, which are approved at the next regular meeting, reflect only those topics actually discussed. Here, although Defendants announced "contract matters" would be discussed during the September 19, 2018 executive session, the minutes approved at the next regular meeting were revised to state only "personnel matters" were discussed. Therefore, by announcing its intent to discuss "contract matters", Defendants sufficiently notified the public that the Board would discussing a "real, discrete matter best addressed in private". *Reading Eagle Co.* 627 A.2d 305 at 307.

The "personnel matters" referenced by Defendants' September 19, 2018 announcement pertain to executive sessions held on August 15, 2018, September 5, 2018, and September 19, 2018. Absent evidence by the Plaintiffs showing Defendants denied an affected employee's request for their matter to be publicly announced and discussed, Defendants have not violated the Act. Therefore, by announcing its intent to discuss "personnel matters", Defendants sufficiently notified the public that the Board would be discussing a "real, discrete matter best addressed in private." *Reading Eagle Co.* 627 A.2d 305 at 307.

Accordingly, the Court finds Defendants provided sufficient specificity in announcing executive sessions and did not violate Section 708 of the Sunshine Act or act contrary to the Commonwealth Court's interpretation of the Act in *Reading Eagle Co.* or *Butler*.

## **II. The Sunshine Act Doesn't Require Defendants to Allow Public Comment at Work Session Meetings.**

Plaintiffs next contend that Defendants violated Section 710.1 of the Sunshine Act by failing to provide a public comment period during each work session meeting. Plaintiffs assert that Defendants' work session meetings are regular meetings for purposes of the Act thus require a period for public comment. In particular, Plaintiffs assert Defendants violated the Act by engaging in deliberation and taking official action during the work session meetings held on November 7, 2018 and March 6, 2019.

On November 7, 2018, the School Board held a work session meeting which Plaintiffs attended. After the meeting had adjourned, Plaintiffs inquired as to whether they could make a public comment. Plaintiffs were informed that per Board Policy 006, no public comments would be accepted at work session meetings. On March 6, 2019, the School Board held a work session meeting which Plaintiffs attended. During the work session, the School Board reviewed the planned public presentation for the Crater Farm purchase; however, did not take any roll call vote concerning the presentation. Plaintiffs allege that during this work session, Defendants participated in deliberation and official action without keeping minutes or allowing for public comment in violation of Section 710.1(a) of the Sunshine Act.

Under Section 703, any time an agency holds a meeting where deliberation or official action by a quorum of its members occurs, the Act requires the meeting be open and public after public

notice of the meeting has been given. 65 Pa. C.S. §703. “Deliberations” occur where an agency discusses agency business for the purpose of making a decision. *Id.* “Official action” occurs where an agency makes a decision, votes, or establishes policy. *Id.* Prior to taking official action, an agency must provide the public with an opportunity to comment. 65 Pa. C.S. §710.1. An agency may “limit public comment to matters which may be or will be presented to the [agency] for official action...during a particular meeting. *Duff*, 2015 WL 4644138 at \*4. Additionally, where there exists no deliberation or official action by an agency, Section 710.1 of the Act authorizes an agency to defer the public comment period to the next regular meeting. 65 Pa. C.S. §710.1. In the event a closed-door gathering, such as an executive session, involves deliberations or an official action in violation of the Act, an agency may “cure” its violation by taking the official action again at a later, open meeting. *ACORN v. SEPTA*, 789 A.2d 811, 813 (Pa. Commw. Ct. 2002)

In the instant matter, the Court finds Defendants did not engage in deliberation or take official action as defined by the Act during their work session meetings. In their testimony, Defendants stated that the work session meetings are informal, conversational, and primarily for fact gathering purposes. Additionally, Defendants testified that while work session meetings involve discussing matters that may require a formal vote or decision, such action is taken at a subsequent regular meeting. Here, although Plaintiffs were not able to comment during work session meetings, they were still able to at the next regular meeting prior to any official action being taken. Regarding the work session meeting on March 6, 2019, the Court finds it unnecessary to analyze the semantics of Houser’s use of the term deliberate. As discussed, even where a violation of the Act occurs, such a violation may be “cured”. Here, subsequent to the March 6, 2019 work session meeting, there was an opportunity for the public to comment prior to official action being taken,

thus the Court finds that even if Defendants had violated the Act such violation was ultimately cured.

The Court acknowledges that Defendants have allowed the public to comment at their work session meetings since June of 2019. While such practices aid in governmental transparency, such practices are not required in the Act. Accordingly, the Court finds Defendants did not violate Section 710.1 of the Sunshine Act by not allowing public comment during their work session meetings and even if they had, such violation would have been cured.

### **III. The Sunshine Act Doesn't Require Defendants to Record Minutes at Work Session Meetings.**

Lastly, Plaintiffs contend that Defendants violated Section 706 of the Sunshine Act by failing to keep written minutes of their work session meetings. Plaintiffs assert that because Defendants' work session meetings are open to the public, written minutes must be kept.

Pursuant to Section 706 of the Act, when an agency deliberates or takes official action they must also take minutes. 65 Pa. C.S. §706. These minutes should include, among other items, the substance of all official actions and a record by individual members of the roll call votes taken. 65 Pa. C.S. §706; *George Clay Steam and Fire Engine Co., v. Pa. Human Relations Comm'n*, 639 A.2d 839, 903 (Pa. Commw. Ct. 1994). In the instant matter, the Court finds Defendants are not required to keep written minutes of their work session meetings. Although Defendants' work session meetings are open to the public, no deliberation or official action occurs.

The Court acknowledges that Defendants have taken written comments at work session meetings since June of 2019. While such practices aid in governmental transparency, such

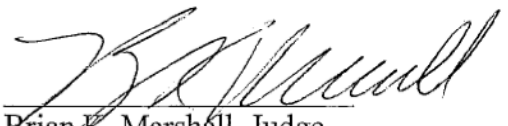


practices are not required by the Act. Accordingly, the Court finds Defendants did not violate Section 706 of the Sunshine Act by not taking written minutes during their work session meetings.

**ORDER**

AND NOW, this 28<sup>th</sup> day of January, 2021, following a non-jury trial held in the above captioned case, upon consideration of the evidence submitted at that trial, the relief requested in Plaintiffs Casey and Michelle Grove's Complaint is **DENIED**. Verdict is entered in favor of Defendants Chris Houser and the Penns Valley Area School Board.

BY THE COURT:

  
\_\_\_\_\_  
Brian K. Marshall, Judge

NOTICE OF ENTRY OF  
ORDER OR DECREE,  
PURSUANT TO PA. R.C.P.  
236 NOTIFICATION. THIS  
DOCUMENT HAS BEEN  
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PROTHONOTARY, CENTRE  
COUNTY, PA.

DATE: 01/29/2021



The Beaufort Gazette  
The Belleville News-Democrat  
Bellingham Herald  
Centre Daily Times  
Sun Herald  
Idaho Statesman  
Bradenton Herald  
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The State  
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Durham | The Herald-Sun  
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Lexington Herald-Leader  
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San Luis Obispo Tribune  
Tacoma | The News Tribune  
Tri-City Herald  
The Wichita Eagle  
The Olympian

## AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
15765	480787	Print Legal Ad-IPL01444660 - IPL0144466		\$187.88	1	48 L

**Attention:** Mr. Thomas Oziemblowsky  
PENN STATE UNIVERSITY BOARD OF TRUSTEES  
LEGAL ACCOUNT  
205 OLD MAIN BUILDING  
STATE COLLEGE, PA 16802

### LEGAL NOTICE OF SCHEDULED MEETINGS

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of meetings to be held on November 9th and November 10th 2023 in State College.

The Committee on Audit and Risk will meet at 3:00 p.m. and the Committee on Finance, Business, and Capital Planning will meet at 4:15 p.m. in Eric J. Barron Innovation Hub, Room 603. The meetings are open to the public and available via live stream at <https://trustees.psu.edu/november-9-10-2023-thursday-and-friday/>. Notice is also given that the Committee on Audit and Risk will meet in executive session before the public meeting.

The Board of Trustees will meet in-person in the Eric J. Barron Innovation Hub, Room 603 on November 10th at the times listed below.

A Trustee Conference and/or Privileged Executive Session will occur at 8:00 am.

The Board of Trustees will meet beginning at 1:30 pm. The meeting is open to the public and available via live stream at <https://trustees.psu.edu/november-9-10-2023-thursday-and-friday/>.

The Board will receive expressions of public views in accordance with the guidelines on the Board's website at <https://trustees.psu.edu/public-expression-guidelines/>. Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.  
IPL0144466  
Nov 5 2023

### THE STATE OF TEXAS COUNTY OF DALLAS

Crystal Trunick, being duly sworn, according to law says that he/she is an agent of the Centre Daily Times, a daily newspaper of general circulation, having its place of business in State College, Centre County, Pennsylvania, and having been established in the year 1898; that the advertisement appeared in said newspaper, that the affiant is not interested in the subject matter of the notice or advertisement; that all of the allegations contained herein relative to the time, place and character of the publication are true.

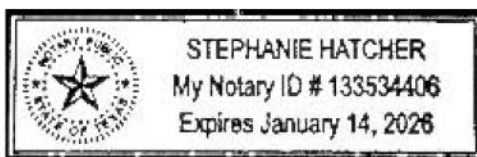
1 insertion(s) published on:  
11/05/23

Witness Signature

Sworn to and subscribed before me this 6th day of November in the year of 2023

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.  
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## Order Confirmation

Ad Order Number 0010770398

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Order Taker Marjorie Dill

Order Source

Special Pricing

Tear Sheets 1	TearsheetsCost	\$0.00	Net Amount	\$331.30
Proofs 0			Tax Amount	\$0.00
Affidavits 1	AffidavitsCost	\$5.00	Total Amount	\$331.30
Blind Box			Payment Method	Invoice
Promo Type			Payment Amount	\$0.00
Materials			Amount Due	\$331.30
Invoice Text	Nov meeting notice			

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11/05/2023			

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Pick Up #		Ad Attributes	
External Ad #		Color	<NONE>
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Run Dates	Sort Text	LEGAL2500NOTICEOFSCHEDULEDMEETINGSTHEBOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITY	
11/05/2023			

Ad Content Proof

## **LEGAL NOTICE OF SCHEDULED MEETINGS**

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The Committee on Audit and Risk will meet at 3:00 p.m. and the Committee on Finance, Business, and Capital Planning will meet at 4:15 p.m. in Eric J. Barron Innovation Hub, Room 603. The meetings are open to the public and available via live stream at

<https://trustees.psu.edu/november-9-10-2023-thursday-and-friday/>.

Notice is also given that the Committee on Audit and Risk will meet in executive session before its public meeting.

The Board of Trustees will meet in-person in the Eric J. Barron Innovation Hub, Room 603 on November 10th at the times listed below.

A Trustee Conference and/or Privileged Executive Session will occur at 8:00 am.

The Board of Trustees will meet beginning at 1:30 pm. The meeting is open to the public and available via live stream at <https://trustees.psu.edu/november-9-10-2023-thursday-and-friday/>.

The Board will receive expressions of public views in accordance with the guidelines on the Board's website at

<https://trustees.psu.edu/public-expression-guidelines/>

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The Beaufort Gazette  
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El Nuevo Herald

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Raleigh News & Observer  
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Tacoma | The News Tribune  
Tri-City Herald  
The Wichita Eagle  
The Olympian

## AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
15765	517721	Print Legal Ad-IPL01584670 - IPL0158467		\$176.99	1	45 L

**Attention:** Mr. Thomas Oziemblowsky  
PENN STATE UNIVERSITY BOARD OF TRUSTEES  
LEGAL ACCOUNT  
205 OLD MAIN BUILDING  
STATE COLLEGE, PA 16802  
tjo5277@psu.edu

### LEGAL NOTICE OF SCHEDULED MEETINGS

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of meetings to be held on February 15th and February 16th 2024 at the Hintz Family Alumni Center in Robb Hall, University Park, PA.

The Subcommittee on Compensation will meet at 1:15 p.m. The Committee on Finance, Business, and Capital Planning will meet at 1:45 p.m. The Committee on Audit and Risk will meet at 3:00 p.m. The meetings are open to the public and available via livestream at <https://trustees.psu.edu/february-15-16-2024-thursday-and-friday/>. Notice is also given that the Subcommittee on Compensation will meet in executive session at 12:45 p.m. before their public meeting and the Committee on Audit and Risk will meet in working and executive sessions after their public meeting.

The Board of Trustees will meet beginning at 1:00 p.m. The meeting is open to the public and available via live stream at <https://trustees.psu.edu/february-15-16-2024-thursday-and-friday/>.

The Board will receive expressions of public views in accordance with the guidelines on the Board's website at <https://trustees.psu.edu/public-expression-guidelines/>. Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.  
IPL0158467  
Feb 11 2024

### THE STATE OF TEXAS COUNTY OF DALLAS

Crystal Trunick, being duly sworn, according to law says that he/she is an agent of the Centre Daily Times, a daily newspaper of general circulation, having its place of business in State College, Centre County, Pennsylvania, and having been established in the year 1898; that the advertisement appeared in said newspaper, that the affiant is not interested in the subject matter of the notice or advertisement; that all of the allegations contained herein relative to the time, place and character of the publication are true.

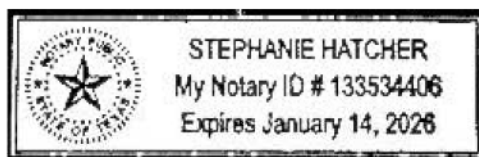
1 insertion(s) published on:  
02/11/24

Witness Signature

Sworn to and subscribed before me this 14th day of February in the year of 2024

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.  
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## Order Confirmation

Ad Order Number 0010825642

### Customer

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Order Taker Marjorie Dill

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Special Pricing

Tear Sheets	0	TearsheetsCost	\$0.00	Net Amount	\$237.02
Proofs	0			Tax Amount	\$0.00
Affidavits	0	AffidavitsCost	\$0.00	Total Amount	\$237.02
Blind Box				Payment Method	Invoice
Promo Type				Payment Amount	\$0.00
Materials				Amount Due	\$237.02
Invoice Text					

## Ad Schedule

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02/11/2024			

Product	Inventory	Placement/Class	Main Legals
# Inserts	1	POS/Sub-Class	Meeting Notices
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Run Dates	Sort Text	LEGAL2500NOTICEOFSCHEDULEDMEETINGSTHEBOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITY	
02/11/2024			

Ad Content Proof

LEGAL NOTICE OF  
SCHEDULED MEETINGS

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of meetings to be held on February 15th and February 16th 2024 at the Hintz Family Alumni Center in Robb Hall, University Park, PA. The Subcommittee on Compensation will meet at 1:15 p.m. The Committee on Finance, Business, and Capital Planning will meet at 1:45 p.m. The Committee on Audit and Risk will meet at 3:00 p.m. The meetings are open to the public and available via livestream at <https://trustees.psu.edu/february-15-16-2024-thursday-and-friday/>. Notice is also given that the Subcommittee on Compensation will meet at 12:45 p.m. in executive session before their public meeting and the Committee on Audit and Risk will meet in executive session after their public meeting.

The Board of Trustees will meet beginning at 1:00 p.m. The meeting is open to the public and available via live stream at <https://trustees.psu.edu/february-15-16-2024-thursday-and-friday/>. The Board will receive expressions of public views in accordance with the guidelines on the Board's website at <https://trustees.psu.edu/public-expression-guidelines/>. Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865 2521 in advance of your participation.

# EXHIBIT D



PA Media Group  
1900 Patriot Dr  
Mechanicsburg, PA 17050



## Patriot News

PENN STATE UNIVERSITY  
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UNIVERSITY PARK, PA 16802

AD#: 0010867911

Sales Rep: Marjorie Dill  
Account Number:14240  
AD#: 0010867911

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Dept 77571  
P.O. Box 77000  
Detroit, MI 48277-0571

Page 1 of 2

Date	Position	Description	P.O. Number	Ad Size	Costs
05/16/2024	Meeting Notices PA	LEGAL NOTICE OF SCHEDULED MEETING The Board of Trustees of		2 x 18 L	
Affidavit Notary Fee - 05/16/2024					\$5.00
Basic Ad Charge - 05/16/2024					\$171.02
Total					\$176.02

FOR QUESTIONS CONCERNING THIS AFFIDAVIT, PLEASE CALL 717-255-8119



AD#: 0010867911

Commonwealth of Pennsylvania,) ss  
County of Cumberland)

Tashell Harris being duly sworn, deposes that he/she is principal clerk of PA Media Group; that Patriot News is a public newspaper published in the city of Mechanicsburg, with general circulation in Cumberland and Dauphin and surrounding counties, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following date(s):

Patriot News 05/16/2024

  
Principal Clerk of the Publisher

Sworn to and subscribed before me this 20th day of May 2024

  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Crystal B. Rosensteel, Notary Public  
Dauphin County  
My commission expires June 27, 2024  
Commission number 1299212  
Member, Pennsylvania Association of Notaries

**LEGAL NOTICE OF SCHEDULED MEETING**

The Board of Trustees of The Pennsylvania State University and the Committee on Finance, Business and Capital Planning hereby give legal notice of a special meeting to be held on Tuesday, May 21 at 10:30 a.m. (Eastern) to consider the Proposed Project Approval, Beaver Stadium Renovations, University Park. This meeting is open to the public and available via Microsoft Livestream at <https://trustees.psu.edu/tuesday-may-21-2024-bot-exec-bot-fbcp-meeting/>.

Notice is also given that pursuant to Section 708 (a)(5) of the Pennsylvania Sunshine Act the Board of Trustees will hold an Executive Session at 10:00 a.m. (Eastern) on Tuesday, May 21, 2024 to conduct a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.

Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.



## Order Confirmation

Ad Order Number 0010867911

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brh12@psu.edu; bot-admin@psu.edu

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Sales Rep. Marjorie Dill

Order Taker Marjorie Dill

Order Source

Special Pricing

Tear Sheets	1	TearsheetsCost	\$0.00	Net Amount	\$176.02
Proofs	0			Tax Amount	\$0.00
Affidavits	1	AffidavitsCost	\$5.00	Total Amount	\$176.02
Blind Box				Payment Method	Invoice
Promo Type				Payment Amount	\$0.00
Materials				Amount Due	\$176.02
Invoice Text	May 21 meeting notice				

## Ad Schedule

Product	Patriot News	Placement/Class	Main Legals
# Inserts	1	POS/Sub-Class	Meeting Notices
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External Ad #		Color	<NONE>
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Run Dates	Sort Text	LEGAL00NOTICEOFSCHEDULEDMEETINGTHEBOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITYAND	
05/16/2024			

Product	Inventory	Placement/Class	Main Legals
# Inserts	1	POS/Sub-Class	Meeting Notices
Cost	\$2.50	AdNumber	0010867911-01
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Pick Up #		Ad Attributes	
External Ad #		Color	<NONE>
Production Method	AdBooker	Production Notes	
Run Dates	Sort Text	LEGAL00NOTICEOFSCHEDULEDMEETINGTHEBOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITYAND	
05/16/2024			

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Notice is also given that pursuant to Section 708 (a)(5) of the Pennsylvania Sunshine Act the Board of Trustees will hold an Executive Session at 10:00 a.m. (Eastern) on Tuesday, May 21, 2024 to conduct a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.

Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.



# EXHIBIT E

**ORDER DETAILS****PREVIEW FOR AD NUMBER IPL0044713****Order Number:****Order Status:**

Saved

**Classification:**

Legals &amp; Public Notices

**Package:**

STC - Legal Ads

**Final Cost:**

\$220.55

**Payment Type:****User ID:**

IPL0018962

**SCHEDULE FOR AD NUMBER IPL0044713**

April 14, 2024

Centre Daily Times (State College) Print

**LEGAL NOTICE**

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of Committee meetings to be held on April 18, 2024 and April 24, 2024.

The following Committees will meet via Zoom at the times listed below. All committee meetings are open to the public, unless otherwise noted, and are available via Microsoft Livestream at <https://sites.psu.edu/trustees/thursday-april-18-2024-lc-fbcp-aarsl-odcr-committee-meetings/>. The complete listing of times is available at <https://trustees.psu.edu>.

The **Committee on Legal and Compliance** will meet at 8:00 a.m. on April 18, 2024. Notice is also given that pursuant to Section 708 of the Sunshine Act the Committee will meet in Executive Session to discuss privileged litigation and other matters following the public meeting.

The **Committee on Finance, Business and Capital Planning** will meet in Executive Session at 9:30 a.m. on April 18, 2024 and at 1:00 p.m. on April 24, 2024 for the following purpose: The Board of Trustees will be conducting a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law and will discuss unrelated real property matters.

The **Committee on Academic Affairs, Research & Student Life** will meet at 11:30 a.m. on April 18, 2024.

The **Committee on Outreach, Development and Community Relations** will meet at 1:00 p.m. on April 18, 2024.

Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.

W00000000

Publication Dates



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Order Taker Marjorie Dill

Order Source

Special Pricing

Tear Sheets	0	TearsheetsCost	\$0.00	Net Amount	\$316.64
Proofs	0			Tax Amount	\$0.00
Affidavits	1	AffidavitsCost	\$5.00	Total Amount	\$316.64
Blind Box				Payment Method	Invoice
Promo Type				Payment Amount	\$0.00
Materials				Amount Due	\$316.64
Invoice Text					

## Ad Schedule

Product	Patriot News	Placement/Class	Main Legals
# Inserts	1	POS/Sub-Class	Meeting Notices
Cost	\$309.14	AdNumber	0010850715-01
Ad Type	PA CLS Legal Liner	Ad Size	2 X 29 li
Pick Up #		Ad Attributes	
External Ad #		Color	<NONE>
Production Method	AdBooker	Production Notes	
Run Dates	Sort Text	THE482BOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITYHEREBYGIVESLEGALNOTICEOFCOMMITTE	
04/14/2024			

Product	Inventory	Placement/Class	Main Legals
# Inserts	1	POS/Sub-Class	Meeting Notices
Cost	\$2.50	AdNumber	0010850715-01
Ad Type	PA CLS Legal Liner	Ad Size	2 X 29 li
Pick Up #		Ad Attributes	
External Ad #		Color	<NONE>
Production Method	AdBooker	Production Notes	
Run Dates	Sort Text	THE482BOARDOFTRUSTEESOFTHPENNSYLVANIASTATEUNIVERSITYHEREBYGIVESLEGALNOTICEOFCOMMITTE	
04/14/2024			

**Ad Content Proof**

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of Committee meetings to be held on April 18, 2024 and April 24, 2024.

The following Committees will meet via Zoom at the times listed below. All committee meetings are open to the public, unless otherwise noted, and are available via Microsoft Livestream at <https://sites.psu.edu/trustees/thursday-april-18-2024-lc-fbcp-aarsl-odcr-committee-meetings/>. The complete listing of times is available at <https://trustees.psu.edu>.

The Committee on Legal and Compliance will meet at 8:00 a.m. on April 18, 2024. Notice is also given that pursuant to Section 708 of the Sunshine Act the Committee will meet in Executive Session to discuss privileged litigation and other matters following the public meeting.

The Committee on Finance, Business and Capital Planning will meet in Executive Session at 9:30 a.m. on April 18, 2024 and at 1:00 p.m. on April 24, 2024 for the following purpose: The Board of Trustees will be conducting a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law and will discuss unrelated real property matters.

The Committee on Academic Affairs, Research & Student Life will meet at 11:30 a.m. on April 18, 2024.

The Committee on Outreach, Development and Community Relations will meet at 1:00 p.m. on April 18, 2024.

Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865-2521 in advance of your participation.



PA Media Group  
1900 Patriot Dr  
Mechanicsburg, PA 17050



Patriot News

PENN STATE UNIVERSITY  
201 OLD MAIN  
UNIVERSITY PARK, PA 16802

AD#: 0010859732

Sales Rep: Marjorie Dill  
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Detroit, MI 48277-0571

Date	Position	Description	P.O. Number	Ad Size	Costs
04/28/2024	Meeting Notices PA	LEGAL NOTICE OF SCHEDULED MEETINGS The Board of Trustees of		2 x 39 L	
Affidavit Notary Fee - 04/28/2024					\$5.00
Basic Ad Charge - 04/28/2024					\$422.24
Total					\$427.24

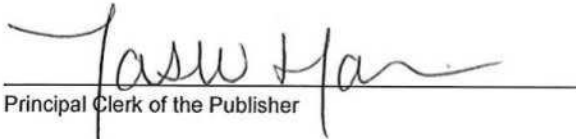


AD#: 0010859732

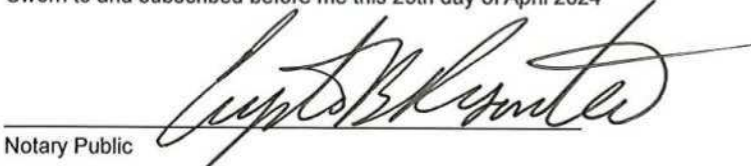
Commonwealth of Pennsylvania,) ss  
County of Cumberland)

Tashell Harris being duly sworn, deposes that he/she is principal clerk of PA Media Group; that Patriot News is a public newspaper published in the city of Mechanicsburg, with general circulation in Cumberland and Dauphin and surrounding counties, and this notice is an accurate and true copy of this notice as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following date(s):

Patriot News 04/28/2024

  
Principal Clerk of the Publisher

Sworn to and subscribed before me this 29th day of April 2024

  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Crystal B. Rosensteel, Notary Public  
Dauphin County  
My commission expires June 27, 2024  
Commission number 1299212  
Member, Pennsylvania Association of Notaries

#### LEGAL NOTICE OF SCHEDULED MEETINGS

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of meetings to be held on May 2-3, 2024.

Meetings for the Committees on Finance, Business and Capital Planning and Audit and Risk will be held at the Penn State Hotel and Conference Center on Thursday, May 2, 2024.

The Committee on Finance, Business and Capital Planning will meet from 1:00 to 2:00 pm. Notice is also given that pursuant to Section 708 (a)(5) of the Pennsylvania Sunshine Act the Committee will hold an Executive Session following the public meeting to conduct a review and discussion of renovation of Beaver Stadium that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.

The Committee on Audit and Risk will meet from 2:15 to 3:15 pm. Notice is also given that pursuant to Sections 708 (a) of the Pennsylvania Sunshine Act the Committee will hold an Executive Session following the public meeting.

All public committee meetings are open to the public and are available via Microsoft Livestream at <https://trustees.psu.edu/may-2-3-2024-thursday-and-friday/>. The complete listing of times is also available at the above weblink.

The Board will receive expressions of public views in accordance with the guidelines on the Board's website at <https://trustees.psu.edu/public-expression-guidelines/>.

On Friday, May 3, 2024, pursuant 708(a)(1) and (5) of the Pennsylvania Sunshine Act, an Executive Session will be held at the Eric J. Barron Innovation Hub from 10:15 a.m. to 11:30 a.m.

Beginning at 1:00 p.m., the Board will meet at the Eric J. Barron Innovation Hub. The meeting is open to the public and available via live stream at <https://trustees.psu.edu/may-2-3-2024-thursday-and-friday/>

Penn State encourages persons with disabilities to participate in its programs and activities. Please contact (814) 865 2521 in advance of your participation.

**From:** The Legals Adportal <orders@mcclatchy.com>  
**Sent:** Thursday, April 25, 2024 4:13 PM  
**To:** Harlow, Bernadeen R  
**Cc:** Uhlman, Dory  
**Subject:** Thank you for placing your order with us IPL0170827  
**Attachments:** IPL01708270.jpeg

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### Job Details

Order Number:  
**IPL0170827**  
Classification:  
[Legals & Public Notices](#)  
Package:  
[STC - Legal Ads](#)  
Order Cost:  
**\$267.74**  
Payment Type:  
[Visa](#)

### Account Details

Bernadeen Harlow  
201 Old Main  
University Park, PA ♦ 16802  
814-867-1246  
[brh12@psu.edu](mailto:brh12@psu.edu)  
PENN STATE UNIVERSITY BOARD OF TRUSTEES  
Credit Card - Visa \*\*\*\*\*9648

### Schedule for ad number IPL01708270

**Sun Apr 28, 2024**  
**Centre Daily Times (State College)**  
*All Zones*

## **LEGAL NOTICE OF SCHEDULED MEETINGS**

The Board of Trustees of The Pennsylvania State University hereby gives legal notice of meetings to be held on May 2-3, 2024.

Meetings for the Committees on Finance, Business and Capital Planning and Audit and Risk will be held at the Penn Stater Hotel and Conference Center on Thursday, May 2, 2024.

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The Beaufort Gazette  
The Belleville News-Democrat  
Bellingham Herald  
Centre Daily Times  
Sun Herald  
Idaho Statesman  
Bradenton Herald  
The Charlotte Observer  
The State  
Ledger-Enquirer

Durham | The Herald-Sun  
Fort Worth Star-Telegram  
The Fresno Bee  
The Island Packet  
The Kansas City Star  
Lexington Herald-Leader  
The Telegraph - Macon  
Merced Sun-Star  
Miami Herald  
El Nuevo Herald

The Modesto Bee  
The Sun News - Myrtle Beach  
Raleigh News & Observer  
Rock Hill | The Herald  
The Sacramento Bee  
San Luis Obispo Tribune  
Tacoma | The News Tribune  
Tri-City Herald  
The Wichita Eagle  
The Olympian

## AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
15765	546744	Print Legal Ad-IPL01708270 - IPL0170827		\$267.74	1	70 L

### Attention: PENN STATE

PENN STATE UNIVERSITY BOARD OF TRUSTEES  
LEGAL ACCOUNT  
205 OLD MAIN BUILDING  
STATE COLLEGE, PA 16802  
dku5025@psu.edu

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IPL0170827  
Apr 28 2024

### THE STATE OF TEXAS COUNTY OF DALLAS

Crystal Trunick, being duly sworn, according to law says that he/she is an agent of the Centre Daily Times, a daily newspaper of general circulation, having its place of business in State College, Centre County, Pennsylvania, and having been established in the year 1898; that the advertisement appeared in said newspaper, that the affiant is not interested in the subject matter of the notice or advertisement; that all of the allegations contained herein relative to the time, place and character of the publication are true.

1 insertion(s) published on:

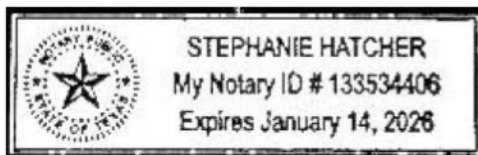
04/28/24

Witness Signature

Sworn to and subscribed before me this 11th day of July  
in the year of 2024

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in  
Dallas County



Extra charge for lost or duplicate affidavits.  
Legal document please do not destroy!