

AGREEMENT AND GENERAL RELEASE

This Agreement and General Release is made and entered into by and between Spotlight PA, on the one hand, and the Board of Trustees of The Pennsylvania State University, on the other hand (collectively, the “Parties”), to resolve the matter of *Spotlight PA v. Board of Trustees of the Pennsylvania State University*, 2023-cv-2998-CI, a challenge brought pursuant to the Pennsylvania Sunshine Act, 65 Pa. C.S. §§ 701–716, currently pending in the Court of Common Pleas for Centre County, Pennsylvania (filed Dec. 6, 2023) (hereinafter, the “Sunshine Act Litigation”).

PARTIES

Plaintiff is Spotlight PA, a Pennsylvania nonprofit corporation with federal 501(c)(3) status dedicated to independent, nonpartisan journalism about the Pennsylvania state government and urgent statewide issues, with a State College bureau mailing address at 210 W. Hamilton Avenue #331, State College, Pennsylvania 16801.

Defendant is the Pennsylvania State University Board of Trustees (hereinafter, the “Board”), the managing and governing body of the Pennsylvania State University (hereinafter, “Penn State”), with an office located at 201 Old Main, University Park, Pennsylvania 16802.

DEFINITIONS

For the purposes of this Agreement, the following definitions apply to all terms herein:

- A. “Agency business” shall be defined by 65 Pa. C.S. § 703: “The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” For purposes of this Agreement, “agency business” may be referred to as “Board business.”

- B. “The Board” shall mean the entirety of the membership of The Pennsylvania State University Board of Trustees.
- C. “Committees” shall mean all of the Board's six standing committees¹.
- D. “Conference” shall be defined by 65 Pa. C.S. § 703: “Any 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.”
- E. “Deliberate” or “deliberation” shall mean “[t]he discussion of agency business held for the purpose of making a decision,” as defined by 65 Pa. C.S. § 703.
- F. “Executive session” shall be defined by 65 Pa. C.S. § 703: “A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.”
- G. “Meeting” shall be defined by 65 Pa. C.S. §703.
- H. An “open meeting” shall be defined by 65 Pa. C.S. §704.
- I. To take “official action” shall be defined by 65 Pa. C.S. § 703: (1) “Recommendations made by an agency pursuant to statute, ordinance or executive order”; (2) “The establishment of policy by an agency”; (3) “The decisions on agency business made by an agency”; (4) “The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.”
- J. “Penn State” or the “University” shall mean The Pennsylvania State University.

¹ The Amended Restated Bylaws of The Pennsylvania State University, last amended July 30, 2024, provide for the following Committees: Committee on Audit and Risk; Committee on Equity and Human Resources; Committee on Finance and Investment; Committee on Governance; Committee on Research and Technology; and Committee on Student Success.

- K. “Working Session” as set forth in 65 Pa. C.S. § 707(c) shall include meetings of boards of auditors “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.”
- L. The Board’s “website” shall mean the “Penn State Office of the Board of Trustees” website, found at <https://trustees.psu.edu/#>, specifically the “Meetings” section of said website, in accordance with the corresponding year of the relevant Meeting, as so organized from this section’s dropdown menu or similar navigation tool.
- M. “Public notice” shall be defined as stated in 65 Pa. C.S. §§ 703 and 709(b).

RECITALS

WHEREAS, the Board and those Committees authorized by the Board to take official action or render advice on matters of Board business are agencies for purposes of the Pennsylvania Sunshine Act.

WHEREAS, the Plaintiff has alleged that the Board and its Committees have not been in compliance with certain provisions of the Pennsylvania Sunshine Act;

WHEREAS, the Board and its Committees deny any lack of compliance with the Pennsylvania Sunshine Act, but acknowledge the importance of transparency and wish to ensure continued compliance with the Pennsylvania Sunshine Act;

WHEREAS, the Parties have jointly concluded that this Agreement is a fair, equitable, reasonable, and adequate resolution of the disputes raised in the Sunshine Act Litigation, not requiring further adjudication on the merits of the allegations raised by Plaintiff;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

TERMS:

1. **Executive Sessions and Public Disclosure.** The Board or its Committees may conduct and discuss certain matters in Executive Session for any reason stated in 65 Pa. C.S. §708(a).
 - a. The Executive Session shall not be open to the public.
 - b. The Board or its Committees will announce the reason for holding an Executive Session at the open meeting occurring immediately prior or subsequent to the Executive Session, as required by 65 Pa. C.S. §708(b).
 - c. If the Board or Committees holds an Executive Session to discuss an active litigation matter involving the University pursuant to 65 Pa. C.S. §708(a)(4), in its public announcement, the Board or its Committee shall identify the litigation matter by case and court name. *See Reading Eagle Co. v. Council of the City of Reading*, 627 A.2d 305 (Pa. Cmwlth. 1993); *Butler v. Indian Lake Borough*, 14 A.3d 185 (Pa. Cmwlth. 2011). By way of illustration only, if the Board were to convene in Executive Session to discuss this Litigation, in its public announcement, the Board shall state that it is “meeting to discuss *Spotlight PA v. Board of Trustees of The Pennsylvania State University*, pending in the Centre County Court of Common Pleas.” The Board will include the docket number in the meeting minutes.
 - d. If the Board or its Committee holds an Executive Session to discuss any matter under 65 Pa. C.S. § 708(a)(1), (2), (3), (5), (6), and/or (7), in its public

announcement, the Board or its Committee shall specifically state the reason for convening, with reference to the particular subsection of § 708(a). By way of illustration only, if the Board convenes in Executive Session to discuss a personnel matter, in its public announcement, the Board shall state that it met in Executive Session to discuss a personnel matter pursuant to Section 708(a)(1) of the Sunshine Act.

- e. The Board shall be permitted to deliberate in Executive Session for any reason articulated in 65 Pa. C.S. § 708(a).
- f. No official action shall be taken by the Board or its Committee in Executive Session.

2. Conferences and Public Disclosure. The Board or any of its Committees may hold and discuss certain matters in a Conference.

- a. The Board or any of its Committees may hold a Conference pursuant to 65 Pa. C.S. § 707(b) for any training or seminar, or any session arranged by a State or Federal agency, for the sole purpose of providing information to Board members on matters directly related to their official responsibilities to the University.
- b. The Conference may be open or closed to the public. 65 Pa. C.S. § 707(b).
- c. If the Board or any of its Committees holds a closed Conference, the Board or the relevant Committee will announce the reason for holding the closed Conference at the open meeting occurring immediately prior or subsequent to the closed Conference.

- d. In its announcement, the Board or the relevant Committee shall specifically identify (1) the person or entity that provided the training, seminar, or session and (2) the topic of the training, seminar, or session.
 - e. A State or Federal Government agency is not required to participate in the training, seminar, or session for the conference exception to open meetings to apply.
 - f. The Board or its Committees shall not be permitted to deliberate in a Conference.
 - g. No official action shall be taken by the Board or its Committees in a Conference.
3. **Working Sessions.** Any board of auditors, which includes the Committee on Audit and Risk and its Risk subcommittee, may conduct working sessions that are not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which the Board and any Committee thereof are responsible, as stated in 65 Pa. C.S. §707(c). No official action may be taken at a Working Session.
4. **Sunshine Act Training.** The Board shall arrange for training to be provided by an external trainer knowledgeable about the Sunshine Act. Preference will be given to utilizing the Pennsylvania Office of Open Records if they are available to provide in person training. The Board shall communicate directly with the Pennsylvania Office of Open Records or other trainer to arrange for and schedule the training, which shall be conducted no later than one-hundred-and-eighty (180) days from the last execution date of this Agreement. Training will also be offered to incoming trustees annually to begin in 2026, as to ensure

that each new Trustee has the opportunity to participate in such training. Each training session shall be recorded. If a Trustee is unable to attend a scheduled in person training, the Trustee shall be afforded the opportunity to review the recording of the training, and thereafter the Trustee shall certify that he or she reviewed the recorded training. At the next public meeting of the Board following each in person training, the Governance Committee shall provide a report identifying all Trustees who attended or certified that they viewed the training.

5. **Executive Committee.** The Board shall, with respect to the Board's Executive Committee:

- a. publicly notice on its website every meeting of the Executive Committee in advance of convening.
- b. publish a written meeting agenda for all public meetings of the Executive Committee, published on the Board's website, prior to every meeting of the Executive Committee in advance of such convening

6. **Designation of Sunshine Act training within the Governance Committee.** The Governance Committee shall be responsible to provide oversight and report to the Board on the Sunshine Act training required under paragraph 4 of this Agreement.

7. **Release.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Spotlight PA, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, on behalf of itself, its subsidiaries, affiliates, successors, assigns, directors, officers, employees, agents, and representatives (collectively, the "Releasing Party"), hereby fully, finally, and forever releases, acquits, and discharges The Pennsylvania State University, its Board of Trustees, each individual

trustee, officers, employees, agents, representatives, affiliates, successors, and assigns (collectively, the “Released Parties”) from any and all actions, causes of action, claims, demands, damages, costs, expenses, compensation, rights, suits, debts, liens, obligations, liabilities, and charges which the Releasing Party has, had, or may have against the Released Parties up to the date of this Agreement, relating to the Sunshine Act. This release regarding the Sunshine Act covers claims known to the Releasing Party at the time of executing this Agreement. This Release is to be construed as broadly as possible to encompass all claims that the Releasing Party has or may have against the Released Parties regarding the Sunshine Act. The Releasing Party agrees that this Release shall be in full and final settlement of any and all claims of the Sunshine Act it has or may have against the Released Parties, up to the date of this Agreement. For the avoidance of doubt, this Release does not include any claims that do not arise under the Sunshine Act.


8. **Dismissal of Lawsuit.** Plaintiff shall, within seven (7) days of a fully executed Agreement, file with the Court a praecipe to mark the case settled, discontinued and ended with prejudice, with each party to bear its own fees and costs.
9. **Warranty of Authority.** The Parties each represent and warrant that they are fully authorized to enter into this Agreement. Each individual executing this Agreement represents that they have taken all necessary corporate and internal actions to duly approve the making and performance of this Agreement on behalf of the party the individual represents, that they have the authority to enter into this Agreement on behalf of such party, and to bind such party, and that no further corporate or other internal approval is necessary.
10. **Warranty of Understanding.** The Parties each represent and warrant that they have had an opportunity to consult with counsel of their choice prior to entering into this Agreement;

that they have read and familiarized themselves with the entire Agreement with the advice and assistance of counsel; and that they authorize the signing of this Agreement of their own free will intending to be permanently bound by its terms and provisions. The Parties each further declare that no promise or representation has been made to them or to anyone acting for them except as expressly stated herein; that in entering into this Agreement, they have relied upon their judgment and the advice of their counsel; and that they fully understand that this Agreement evidences and acknowledges full, final, and complete resolution of the claims brought in this Litigation.

11. **No Admissions.** This Agreement is not and shall not be an admission or concession by any party, except as expressly provided herein. Nor shall this Agreement operate as a waiver of any rights or defenses that any party may have, except as expressly provided herein. This Agreement is made as a compromise of a dispute to avoid further expense and to resolve the subject controversy.
12. **Not Evidentiary.** No part of the Parties' settlement discussions or of this Agreement may be used in any proceeding as evidence of the respective rights, duties, or obligations of any of the Parties, provided, however, that this Agreement shall be admissible in any proceeding in connection with or related to the interpretation, validity, enforcement, or breach of this Agreement.
13. **Construction.** The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any party hereto. This Agreement shall be deemed to have been drafted by all Parties to this Agreement, and neither a party nor its respective attorneys shall urge otherwise.

14. **Amendments.** No amendments or variations of the terms of this Agreement shall be valid unless made in writing and signed by all Parties.
15. **Length of Term.** The term of this Agreement shall be five (5) years from date of execution.
16. **Governing Law.** This Agreement and all matters relating or pertaining hereto shall be governed and construed by and under the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of law.
17. **Counterparts.** This Agreement may be executed in counterparts and, if so executed, the various counterparts should be and constitute one and the same instrument.
18. **Effectiveness of this Settlement Agreement.** This Settlement Agreement shall become effective only upon its execution by the parties.
19. **Entire Agreement.** This Settlement Agreement is the entire agreement of the Parties and supersedes all other communications, written or oral, with respect to the subject matter hereof.

IN WITNESS WHEREOF, THIS SETTLEMENT AGREEMENT HAS BEEN READ AND SIGNED IN DUPLICATE ORIGINALS BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES:

By:  _____

Date: 6/4/2025

Position: CEO & President

For Spotlight PA

By:  _____

Date: 6/5/2025

Position: Chair of the Board of Trustees

For the Board of Trustees of The Pennsylvania State University