

**IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION BY  
NONPROFIT CORPORATION  
TRUSTEES TO COMPEL  
INSPECTION OF CORPORATE  
INFORMATION**

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NO. 1593-2015

DEBRA C. IMMEL  
PROthonotary  
CENTRE COUNTY, PA

2015 APR 20 PM 4:21



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**PETITION PURSUANT TO 15 PA. C.S.A. § 5512 TO  
COMPEL INSPECTION OF CORPORATE INFORMATION**

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Petitioners Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope, Trustees of The Pennsylvania State University duly elected by its alumni, by and through their undersigned counsel, to discharge their independent fiduciary duties as Trustees, respectfully request an Order to compel inspection,

examination and copying of corporate records and documents of Respondent The Pennsylvania State University and, in support thereof, aver as follows:

1. Petitioner Edward B. Brown, III, is an adult individual and citizen of the Commonwealth of Pennsylvania with a mailing address of 2432 Bernel Road, State College, Pennsylvania.
2. Petitioner Barbara L. Doran is an adult individual and citizen of the State of New York with a mailing address of 26 E. 91<sup>st</sup> Street, New York, New York.
3. Petitioner Robert C. Jubelirer is an adult individual and citizen of the Commonwealth of Pennsylvania with a mailing address of 12 Sheraton Drive, Altoona, Pennsylvania.
4. Petitioner Anthony P. Lubrano is an adult individual and citizen of the Commonwealth of Pennsylvania with a mailing address of 1800 East Lancaster Avenue, Suite B, Paoli, Pennsylvania.
5. Petitioner Ryan J. McCombie is an adult individual and citizen of the Commonwealth of Pennsylvania with a mailing address of 1769 Cambridge

Drive, State College, Pennsylvania.

6. Petitioner William F. Oldsey is an adult individual and citizen of the State of New Jersey with a mailing address of 33 Ridge View Drive, Basking Ridge, New Jersey.

7. Petitioner Alice W. Pope is an adult individual and citizen of the State of New York with a mailing address of St. John's University, Department of Psychology, 8000 Utopia Parkway, Jamaica, New York.

8. Respondent The Pennsylvania State University ("The University") is a non-profit corporation existing under the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa. C.S.A. § 5101 et seq., with a registered office at 208 Old Main, University Park, Pennsylvania.

9. Messrs. Brown, Jubelirer, Lubrano, McCombie and Oldsey and Mmes. Doran and Pope (referred to collectively hereinafter as "Petitioner Trustees") are all Trustees of The University duly elected by its alumni and, as Trustees, are entrusted with managing the affairs of The University.

10. On April 15, 2015, Petitioner Trustees delivered a written

request to Keith E. Masser, Chairman of the Board of Trustees of The University, and Eric J. Barron, President of The University, to inspect and examine specified corporate records in accordance with the Pennsylvania Nonprofit Corporation Law, 15 Pa. C.S.A. § 5512. (A true and correct copy of the April 15, 2015 request is attached hereto as Exhibit "A.")

11. The Pennsylvania Nonprofit Corporation Law specifically authorizes trustees<sup>1</sup> to access corporate information that relates to the performance of their duties. 15 Pa. C.S.A. § 5512 states, in pertinent part, as follows:

To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a nonprofit corporation is entitled: (1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation . . . .

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<sup>1</sup> By statutory direction, The University, formerly known as The Farmers' High School of Pennsylvania, is managed and governed by a board of trustees. See 24 P.S. § 2531-41. For purposes of the Nonprofit Corporation Law, "board of directors" and "directors" are defined as the persons vested with the management and affairs of the corporation regardless of the name by which they are designated. See 15 Pa. C.S.A. § 5103 (defining "board of directors" and "directors"). Thus, the right conferred on directors in 15 Pa. C.S.A. § 5512 applies to the Trustees of The University.

15 Pa. C.S.A. § 5512(a)(1).

12. In accordance with this provision, Petitioner Trustees request access to all materials and documents generated, prepared, gathered, reviewed or relied upon by Freeh, Sporkin & Sullivan, LLP ("FSS") and Freeh Group International Solutions LLC ("FGIS") in investigating and preparing the July 12, 2012 Report of the Special Investigative Counsel Regarding the Actions of The University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky ("the Freeh Report"), including 470 unredacted interview memoranda and communications involving FSS, FGIS, the Pennsylvania Office of Attorney General, the National Collegiate Athletic Association and/or the Big Ten Conference. These records and the records requested by Petitioner Trustees in the April 15, 2015 demand (Exhibit A) are referred to hereinafter as "the Source Material."

13. The Board of Trustees of The University, through the Special Investigations Task Force ("SITF"), retained FSS and FGIS in late 2011 to investigate the circumstances surrounding the then-alleged sexual abuse of children by former University assistant football coach Gerald A. Sandusky and to make recommendations to better enable The University to avert and/or respond to

incidents of abuse in the future. FSS and FGIS conducted more than 470 witness interviews of University and non-University personnel, collected 3.5 million records from The University and other sources, collaborated with the National Collegiate Athletic Association and the Big Ten Conference concerning the investigation and preparation of the Freeh Report, and communicated with federal and state law enforcement agencies. The investigative activities are referenced and disclosed in the Freeh Report, "pursuant to the appropriate waiver of the attorney-client privilege by the Board." See Freeh Report at 10. Presumably based on the Board's waiver of the attorney-client privilege, Louis Freeh conducted a press conference, contemporaneous with the release of the Freeh Report, at which he summarized the Freeh Report, including the conclusions and recommendations in the Freeh Report and responded to questions concerning the investigation.

14. The University paid in excess of \$8.3 Million to FSS and FGIS in connection with the eight-month investigation and preparation of the Freeh Report.

15. The Source Material which is the subject of this Petition is the property of The University and remains under the control of The University.

16. By memorandum dated April 17, 2015, "the President and Board leadership" refused to allow Petitioner Trustees to inspect and examine all of the Source Material. (A true and correct copy of the April 17, 2015 Memorandum is attached hereto as Exhibit "B.")

17. Petitioner Trustees hereby request an order pursuant to 15 Pa. C.S.A. § 5512(b) compelling the requested inspection. That section states in pertinent part:

If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) . . . , the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. . . .

15 Pa. C.S.A. § 5512(b).

18. The Source Material is reasonably related to the performance of the duties of The University Trustees.

19. The Freeh Report has been the subject of extensive public and media attention and widespread criticism since its issuance in 2012. It served as the basis for the imposition of staggering sanctions against The University by the National Collegiate Athletic Association (some of which have since been rescinded) and by the Big Ten Conference. The Freeh Report is also the subject of pending litigation against The University brought by its former President<sup>2</sup> and the Source Material underlying the Freeh Report has been Ordered to be produced in at least two other litigation matters involving The University.<sup>3</sup> Further, the current President of The University recently criticized the conclusions in the Freeh Report and has announced that he will conduct his own official review of the materials underlying the Freeh Report.

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<sup>2</sup> Graham B. Spanier v. Louis J. Freeh, Freeh Sporkin & Sullivan LLP, Freeh Group International Solutions, LLC and The Pennsylvania State University, No. 2013-2707 (Court of Common Pleas of Centre County filed March 18, 2015).

<sup>3</sup> John Doe D v. The Pennsylvania State University, et al., No. 2013-2298 (Court of Common Pleas of Philadelphia County Order entered on Jan. 9, 2015); George Scott Paterno, et al. v. National Collegiate Athletic Association, Mark Emmert, Edward Ray and The Pennsylvania State University, No. 2013-2082 (Court of Common Pleas of Centre County Opinion and Order entered on September 11, 2014).



20. The Freeh Report and the Source Material profoundly impact the finances, operations, educational opportunities, personnel, policies, administration, reputation and very culture of The University. The Petitioner Trustees' fiduciary oversight responsibilities plainly encompass each of these subjects.

21. Petitioner Trustees seek to inspect and examine the Source Material underlying the Freeh Report to inform and effectively discharge their oversight duties as Trustees, including:

(a) to establish and oversee the implementation of a credible strategic plan to restore The University's world-class reputation;

(b) to objectively review and assess whether the Source Material supports the subjective, hyperbolic and sweeping conclusions made in the Freeh Report;

(c) to ensure that University funds are properly allocated and spent, including funds that have been appropriated or may be appropriated to settle one or more lawsuits filed against The University by victims of Gerald A. Sandusky and/or others;

(d) to understand and oversee the fulfillment of The University's legal responsibilities, including, but not limited to, liabilities associated with civil actions filed against The University as a result of the Freeh Report or on the basis of matters described in the Freeh Report;

(e) to independently and objectively evaluate the conclusions and recommendations in the Freeh Report for the purpose of ensuring that The University is better able to prevent and more effectively respond to incidents of abuse in the future;

(f) to determine whether any person or entity exerted undue influence in connection with preparation of the Freeh Report;

(g) to explore whether The University's policies, rules and regulations are suitable and sufficient to prevent the type of the harm outlined in the Freeh Report;

(h) to evaluate whether past and proposed expenditures of University funds relating to pending civil lawsuits and other matters are in the best interest of The University;

(i) to evaluate and oversee personnel actions premised on the Freeh Report and the Source Material;

(j) to assess the propriety of instituting legal action on behalf of The University relating to matters addressed in the Freeh Report or circumstances surrounding issuance of the Freeh Report;

(k) to objectively determine whether the conclusions in the Freeh Report mischaracterized and misrepresented an alleged institutional failure by The University and its administration and, if so, whether the SITF, the Chairman or any other Trustee knew or should have known that the Freeh Report was inaccurate;

(l) to permit all Trustees to openly and fully study and evaluate The University and recommend needed changes, including changes to The University's corporate governance; and

(m) for other proper purposes related to the Petitioner Trustees' discharge of their independent fiduciary duties to The University.

22. Petitioner Trustees have complied with all requirements in 15 Pa. C.S.A. § 5512 with respect to the form and manner of demanding inspection

and examination of the Source Material and the inspection sought by Petitioner Trustees is for a proper purpose.

23. The University has not shown and cannot show that the information sought by the Petitioner Trustees is not reasonably related to the performance of their duties as Trustees or that the Petitioner Trustees are likely to use the information in a way that would violate a duty owed to The University.<sup>4</sup>

24. The Chairman of the Board of Trustees and unidentified “Board leadership” refuse to allow Petitioner Trustees to inspect or copy the Source Material. This refusal discourages discussion and dissent, interferes with independent Trustee oversight duties, prevents inquiry and promotes the unchecked exercise of authority by the Chairman and unidentified “Board leadership” over vitally important University matters. These are the very purported “governance” failures that the Freeh Report identified as the root cause of the underlying scandal. This secretive “us v. them” approach by the Board

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<sup>4</sup> Petitioner Trustees will respect and maintain legal privilege claimed by The University with respect to identified and logged Source Material unless and until a Court finds that the asserted privilege is not applicable. Given the circumstances surrounding the engagement of FSS and FGIS including the waiver of privilege referenced in the Freeh Report, the many publications of the material underlying the Freeh Report and the court orders compelling disclosure of the same material to parties adverse to The University, it is anticipated that privilege will not be widely invoked or recognized.

Chairman cannot be squared with the full and equal right of access to corporate information conferred by the Nonprofit Corporation Law.

25. The Chairman's continuing refusal to authorize Petitioner Trustees to inspect the Source Material violates the Pennsylvania Nonprofit Corporation Law because it creates separate classes of Trustees, some with superior rights of access to corporate information, Board leadership, and others with inferior rights, including the Petitioner Trustees.

26. In response to the Petitioner Trustees' statutory demand to inspect and copy the Source Material, counsel for The University publicly proffered a purported "compromise" that includes production of some, but not all, of the Source Material pursuant to an appropriate confidentiality agreement. Petitioner Trustees already agreed to accept the Source Material pursuant to an appropriate confidentiality agreement. This, however, does not moot the demand to inspect because the Chairman and unidentified "Board leadership" continue to refuse to provide all of the Source Material pursuant to an appropriate confidentiality agreement. The purported public compromise is a transparent tactic intended to undermine the lawful demand to inspect the Source Material while continuing to conceal information from the Petitioner Trustees and other Trustees.

27. For these reasons, University Trustees, including Petitioner Trustees, have a right to inspect and copy the Source Material pursuant to 15 Pa. C.S.A. § 5512.

WHEREFORE, Petitioner Trustees respectfully request that the Court enter an Order compelling the inspection, examination and copying of the Source Material forthwith and awarding counsel fees to Petitioner Trustees.

Respectfully submitted,



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Attorneys for Petitioners,  
Trustees of The Pennsylvania State  
University Duly Elected by Its Alumni

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Scranton, PA 18503  
Phone: (570) 342-6100  
Fax: (570) 342-6147

Date: April 20, 2015

**VERIFICATION**

I, Edward B. Brown, III, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



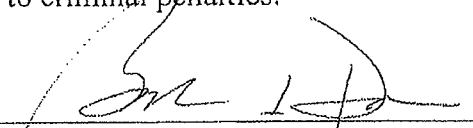
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Edward B. Brown, III

Date: 4.20.15

VERIFICATION

I, Barbara L. Doran, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

  
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Barbara L. Doran

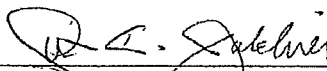
Date: 4/20/15



VERIFICATION

I, Robert C. Jubelirer, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

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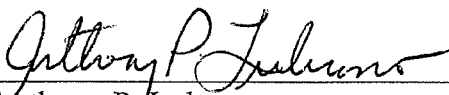
  
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Robert C. Jubelirer

Date: 4/20/15

**VERIFICATION**

I, Anthony P. Lubrano, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

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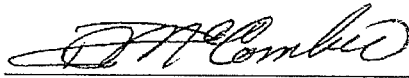
  
\_\_\_\_\_  
Anthony P. Lubrano

Date: 4.20.15

**VERIFICATION**

I, Ryan J. McCombie, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

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Ryan J. McCombie

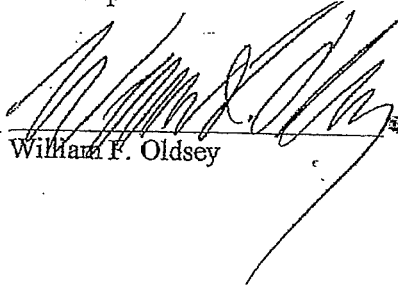
Date: \_\_\_\_\_

4/20/15

VERIFICATION

I, William F. Oldsey, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

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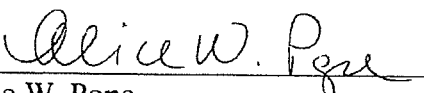
  
\_\_\_\_\_  
William F. Oldsey

Date: 4/20/15

VERIFICATION

I, Alice W. Pope, Trustee of The Pennsylvania State University, hereby certify that I have read the foregoing document which has been drafted by my counsel. Factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel and, to the extent the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

  
\_\_\_\_\_  
Alice W. Pope

Date: 4-20-15