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BARRY J. FENCHAK Plaintiff v THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN Defendants	:	IN THE COURT OF COMMON PLEASE – CENTRE COUNTY, PA CIVIL ACTION Docket No. 2024-CV-1843-Cl

AFFIDAVIT OF BARRY J. FENCHAK IN SUPPORT OF RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Barry J. Fenchak, of full age, being first duly sworn according to law upon his oath does say and depose:

1. I am the plaintiff in the above captioned matter.

2. I am an investment advisor by profession.

The Credentials of Barry J. Fenchak

3. I am credentialed with federal professional licenses, inclusive of: (1)

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Series 7 (General Securities Representative Exam); (2) Series 24 (Securities Principal Exam); (3) Series 63 (Uniform Securities Agent State Law Exam); (4) Series 65 (Uniform Investment Adviser Law Exam); (5) Financial Industry Regulatory Authority (FINRA) Central Registration Depository (CRD); and (6) NPN Registration # 2025569.

4. I am a registered investment representative qualified to provide investment advisory services in the state of Pennsylvania.

5. I am credentialed with professional securities licenses in Pennsylvania, California, Florida, Georgia, Massachusetts, North Carolina, New Jersey, New York, South Carolina, Virginia, Vermont, and Wisconsin.

6. I obtained a Masters of Business Administration (MBA), with a concentration in the discipline of finance, from The Pennsylvania State University.

7. I have knowledge, training and experience in the intricacies of finance and investment and related operations.

Barry J. Fenchak's Election To The Pennsylvania State University Board Of Trustees

8. On May 6, 2022, I was elected by the alumni of Penn State University to serve as member of the Board of Trustees of The Pennsylvania State University.

9. My tenure as a member of the Pennsylvania State University Board of Trustees began July 2022.

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Barry J. Fenchak's Fiduciary and Confidentiality Duties as A Trustee

10. The Board of Trustees of The Pennsylvania State University operate pursuant to Amended and Restated Bylaws.

11. Pursuant to the Amended and Restated Bylaws for Board of Trustees adopted applicable to my tenure, I was bound to owe a sacred fiduciary duty and a deep commitment of responsibility towards the University which required me to act in good faith with due regard to the interests of the University.

12. Pursuant to the Amended and Restated Bylaws for Board of Trustees adopted July 30, 2024, as a result of my position as a Trustee, I was bound to owe a sacred duty of confidentiality towards the University which required me to refrain from using any information not available to the public at large and obtained as a result of service to the University for personal gain or benefit or for the gain or benefit of others.

13. Pursuant to the Amended and Restated Bylaws for Board of Trustees adopted July 30, 2024, as a result of my position as a Trustee, I was bound to owe a duty to refrain from making from gratuitous demands upon the University for records and information that are not reasonably related to my responsibility as a Trustee or which posed an undue burden on the University and its staff.

Amendment of the Bylaws

14. Penn State Board of Trustees operates under a practice and protocol,

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from time to time, to amend the Bylaws under which it operates.

15. The Bylaws have been amended November 4, 2016, July 21, 2017, November 10, 2017, May 3, 2019, November 15, 2019, May 8, 2020, September 18, 2020, May 7, 2021, July 30, 2024, and November 7, 2025.

16. The Bylaws were amended November 10, 2017, in direct response to the March 13, 2017, order entered by the Commonwealth Court in the action initiated in the Court of Common Pleas of Centre County captioned In Re: Application by Nonprofit Corporation Trustees to Compel Inspection of Corporate Information, No. 1593 For 2015, by Board of Trustees members Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey, and Alice W. Pope in the Court of Common Pleas of Centre County to compel production of documents and information and the recovery of attorney's fees and cost incurred prosecuting the action.

17. The Bylaws were amended July 30, 2024, and November 7, 2025, in part, in direct response to my request for information and relief which is the subject matter of the instant action.

18. The July 30, 2024, and November 7, 2025, amendments to the Bylaws were undertaken, in part, with an objective to empower supervising members of the Board of Trustees with authority to further control requests for information made by members of the Board of Trustees.

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19. The July 30, 2024, and November 7, 2025, amendments to the Bylaws were undertaken, in part, with an objective to empower supervising members of the Board of Trustees with authority to foster the expulsion of non-supervising members of the Board of Trustees.

20. The November 10, 2017, July 30, 2024 and November 7, 2025, amendments to the Bylaws were undertaken to empower supervising members of the Board of Trustees with authority to assert control over non-supervising members of the Board of Trustees.

Pennsylvania State University Operates with
A Multi-Billion Dollar Endowment

21. I have knowledge and information formed after reasonable investigation that Pennsylvania State University operates with a multi-billion endowment.

22. I have knowledge and information formed after reasonable investigation that, in the calendar year 2023, the University's endowment was valued at $4.57 billion.

23. I have knowledge and information formed after reasonable investigation that Pennsylvania State University hires private external investment managers and pays administrative fees to invest and manage the endowment funds.

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Pennsylvania State University's Renovation of Beaver Stadium

24. I have knowledge and information formed after reasonable investigation that Beaver Stadium is the home field for the Penn State football team, a role it has fulfilled since 1960.

25. I have knowledge and information formed after reasonable investigation that, in May of 2024, Penn State's Board of Trustees was scheduled to vote upon the approval or rejection of an undertaking to renovate Beaver Stadium at cost estimated to equal Seven Hundred Million Dollars ($700,000,000.00).

26. I have knowledge and information formed after reasonable investigation that, to raise funding for the Beaver Stadium renovation project, the University awarded a comprehensive multi-year ticketing contract to Elevate Sports Ventures projected to generate potential revenue in excess of One Billion Dollars ($1,000,000,000.00).

Barry J. Fenchak's Request for And Denial of Information Reasonably Related to The Discharge of His Duties as A Member of The Board of Trustees

27. Beginning on or about June 2022, and on multiple occasions continuing thereafter, I requested fellow controlling members of the Penn State's Board of Trustees to provide me with information relating to specific data and items which totaled the aggregated figures, listed on the IRS Form 990s administrative fees, reported to have been paid Penn State to professionals to manage the University's

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multi-billion dollar endowment, and the investment performance of all such accounts.

28. I formed the opinion, after reasonable deliberation and consideration, my review of information regarding the administrative fees reported to have been paid by Penn State to professionals to manage the University's multi-billion dollar endowment and the investment performance of those funds was necessary for the discharge of the fiduciary duty I owed the University, as a steward to the endowment.

29. My request for information regarding the administrative fees reported to have been paid by Penn State to professionals to manage the University's multi-billion dollar endowment and the investment performance of those funds was summarily denied by controlling members of the Penn State's Board of Trustees.

30. In the month of April 2024, Penn State's Athletic Director, Mr. Pat Kraft, presented at a Penn State's Board of Trustees meeting.

31. During the course of his April 2024, presentation to the Board of Trustees, Mr. Pat Kraft revealed the University proposed to award a multi-year ticketing contract to Elevate Sports Ventures, relating to the ticketing sales for Penn State football games, and other university sports a multi-year contract to Elevate Sports Ventures.

32. Mr. Pat Kraft's presentation at the Penn State's Board of Trustees' meeting was the first opportunity the Penn State's Board of Trustees had learned the

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University proposed to award a multi-year ticketing contract to Elevate Sports Ventures.

33. During the course of his presentation to the Board of Trustees, Mr. Pat Kraft impressed upon the Board the impact the proposed Elevate Sports Ventures contact had upon the financial viability of the Beaver Stadium renovation project.

34. After his presentation to the Board of Trustees, Mr. Pat Kraft communicated to me he would forward to my attention information, terms and conditions of the proposed contract the University proposed to award to Elevate Sports Ventures.

35. I formed the opinion, after reasonable deliberation and consideration, my review of information, terms and conditions of the contract the University proposed to award to Elevate Sports Ventures was necessary for the discharge of the fiduciary duty I owed the University, to properly educate myself in preparation for the exercise of my vote as a Board of Trustee member on whether to approve or disapprove of the University's undertaking of the Beaver Stadium renovation project.

36. Beginning on or about April 24, 2024, and on multiple occasions continuing thereafter, I requested fellow controlling members of the Penn State's Board of Trustees to provide me with information relating to University's award of the contract to Elevate Sports Ventures.

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37. My request for the information, terms and conditions of contract the University awarded to Elevate Sports Ventures was brought to the attention of Penn State's Athletic Director, Pat Kraft.

38. Penn State's Athletic Director, Mr. Pat Kraft's, intention to provide me with information, terms and conditions of contract the University awarded to Elevate Sports Ventures was vetoed by controlling members of the Board of Trustees.

39. My request for information regarding the information, terms and conditions of contract the University awarded to Elevate Sports Ventures was summarily denied May 7 2024, by controlling members of the Penn State's Board of Trustees.

Barry J. Fenchak's Initiation of The Instant Action in Equity

40. On July 16, 2024, serving in the capacity of an elected member of the Board of Trustees of The Pennsylvania State University, I initiated the instant action in equity pro se by filing a Complaint in the Court of Common Pleas Centre County against defendants Pennsylvania State University Board of Trustees and Matthew Schuyler, to compel the production of information I had requested in good faith and in accordance with my duty to act in the best interest of the University.

41. On August 12, 2024, I retained the law firm Obermayer Rebmann Maxwell & Hippel, LLP to prosecute the instant action against the defendants as a result of the defendants' failure to provide me with information I had requested.

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42. Terry L. Mutchler, Esquire, Justin J. Boehret, Esquire, and Erika L. Silverbreit, Esquire of the law firm Obermayer Rebmann Maxwell & Hippel, LLP were assigned to manage the prosecution of the action.

43. On August 27, 2024, on my behalf, my counsel filed an Amended Complaint which initiated statutory and common law claims against the defendants framed in two (2) counts summarized as follows:

> Count I
> Statutory Claim
> Enforcement of Inspection Pursuant To 15 Pa. C.S. § 5512(b)
> (Barry J. Fenchak v Pennsylvania State University Board of Trustees and Matthew Schuyler, in his official capacity as Chairman)
>
> Count II
> Request For Preliminary and Permanent Injunctive Relief
> (Barry J. Fenchak v Pennsylvania State University Board of Trustees and Matthew Schuyler, in his official capacity as Chairman)

44. On September 16, 2024, the defendants filed Preliminary Objections to the Amended Complaint.

45. Defendants Preliminary Objections present a defense to the action maintaining, essentially, the defendants owed no duty to provide me with the information I requested.

46. On October 9, 2024, the Court entered an order, holding I was likely to succeed on the merits of the action to compel the production of records and information I had requested in Count I of the Amended Complaint.

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47. Notwithstanding my existing fiduciary and confidentiality obligations imposed upon me by virtue of my duties as Trustee, on January 6, 2025, the defendants filed a Motion for Protective Order in the instant action.

48. On January 29, 2025, the Court entered an order denying Defendant's Motion for a Protective Order.

49. On January 29, 2025, the Court entered an order declining to rule on Defendant's Preliminary Objections, understanding the Defendants intended to withdraw the preliminary objections.

50. Without order of the Court, defendants made available the information requested by me, inclusive of 510 pages of information relating to the Endowment from July 1, 2017 - June 30, 2023, and a complete, unredacted copy of the contract the University awarded to Elevate Sports Ventures.

51. On February 21, 2025, the defendants withdrew the Preliminary Objections to the Amended Complaint in the instant action.

52. On May 16, 2025, the Court entered an order dissolving the October 9, 2024, injunction it had awarded in this matter to permanently enjoin the defendants from committing further retaliatory acts against me including my removal from the Board of Trustees.

53. On June 16, 2025, the Penn State Board of Trustees voted to expel me from the Board of Trustees of The Pennsylvania State University.

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54. On November 7, 2025, I retained the law firm Marino Associates to prosecute the instant action against the defendants.

Adverse Actions Taken Against Barry J. Fenchak By The Pennsylvania State University Board Of Trustees

55. Penn State Board of Trustees operated under a protocol which assigned certain members of the Board of Trustees to serve on Committees that handle specific aspects of the Board's responsibilities.

56. Penn State Board of Trustees operated under a protocol which banned Trustees not a member of a particular Committee from attending meetings of the particular Committee and prohibited a non-member Trustees of the particular Committee: (1) privy to information relevant to the Committee's subject matter of responsibility; (2) engage in dialogue germane to the Committee's subject matter of responsibility; (3) deliberate on subject matter germane to the Committee's responsibility.

57. In an effort to restrict my exposure to information and suppress my opinions on important matters of University and alumni concern, controlling members of the Penn State Board of Trustees limited my Committee assignments to only one Committee, the Student Affairs Committee.

58. On February 14, 2024, in an effort to restrict my exposure to information and suppress my opinions on important matters of University and

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alumni concern, controlling members of the Penn State Board of Trustees removed my Committee assignment upon a basis of pretextual reasons in retaliation for my advocacy and demands to be provided information reasonably related to the performance of my duties as a member of the Board of Trustees

59. On February 14, 2024, in an effort to restrict my exposure to information and suppress my opinions on important matters of University and alumni concern, controlling members of the Penn State Board of Trustees revoked my Penn State Board of Trustee social privileges upon a basis of pretextual reasons in retaliation for my advocacy and demands to be provided information reasonably related to the performance of my duties as a member of the Board of Trustees.

60. On August 23, 2024, upon a basis of pretextual reasons in retaliation for my advocacy and demands to be provided information reasonably related to the performance of my duties as a member of the Board of Trustees, controlling members of the Penn State Board of Trustees banned me from attending any Board of Trustees meeting in person.

61. On September 9, 2024, upon a basis of pretextual reasons in retaliation for my advocacy and demands to be provided information reasonably related to the performance of my duties as a member of the Board of Trustees, the Board of Trustees' Governance Committee recommended I be expelled from the Board of Trustees.

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62. The Board of Trustees set a special Board of Trustees meeting scheduled to convene October 10, 2024, to place before the Board a vote for my expulsion from the Board of Trustees.

63. On October 9, 2024, this Court entered an order award granting me injunctive relief in the form of prohibiting the Board of Trustees from expelling me from my tenure as an elected member of the Board of Trustees.

64. On May 15, 2025, this Court entered an order dissolving the October 9, 2024, inunction prohibiting the Board of Trustees from expelling me from my tenure as an elected member of the Board of Trustees.

65. On June 16, 2025, the Penn State Board of Trustees convened a special Board of Trustees meeting and voted to expel me from the Board of Trustees of The Pennsylvania State University upon a basis of pretextual reasons in retaliation for my advocacy and demands to be provided information reasonably related to the performance of my duties as a member of the Board of Trustees.

The Cost of Professional Services Incurred by Barry Fenchak
Prosecuting the Instant Matter

66. I have knowledge and information formed after reasonable investigation Terry L. Mutchler, Esquire, Justin J. Boehret, Esquire, and Erika L. Silverbreit, Esquire of the law firm Obermayer Rebmann Maxwell & Hippel, LLP

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are accomplished trial attorneys with considerable experience, skill, and ability to effectively represent clients, in matters such as the instant action.

67. The professional services provided by the law firm Obermayer Rebmann Maxwell & Hippel, LLP to prosecute this action against the defendants were billed by Obermayer Rebmann Maxwell & Hippel, LLP at an hourly rate equal to $475.00 per hour.

68. A record and accounting of the time and effort dedicated by the law firm Obermayer Rebmann Maxwell & Hippel, LLP in this matter was maintained contemporaneously with the work effort.

69. I have knowledge and information formed after reasonable investigation Steven F. Marino, Esquire and Joseph Auddino, Esquire of the law firm Marino Associates are accomplished trial attorneys with considerable experience, skill, and ability to effectively represent clients, in matters such as the instant action.

70. The professional services provided by the law firm Marino Associates to prosecute this action against the defendants are billed by Marino Associates at an hourly rate equal to $425.00 per hour.

71. A record and accounting of the time and effort dedicated by the law firm Marino Associates in this matter is maintained contemporaneously with the work effort.

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72. I have knowledge and information formed after reasonable investigation that the hourly rate equal to $475.00 charged by the law firm Obermayer Rebmann Maxwell & Hippel, LLP and the hourly rate equal to $425.00 charged by the law firm Marino Associates for professional services rendered are comparable to those of other similarly situated attorneys in the Philadelphia legal marketplace and are reasonable.

73. I have been caused to retain counsel and incur to attorney's fees and costs as a result of prosecuting the instant matter.

74. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

Signed on the 20 day of November, 2025
in Centre, County, PA.

By: Barry Fenchak
Barry J. Fenchak