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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

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

BARRY J. FENCHAK	:	Docket No.
	:	**2024-CV-1843-CI**
Plaintiff	:	
v.	:	Type of Case:
	:	**Civil Action – Equity**
THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN	:	Type of Pleading:
	:	**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO QUASH SUBPOENAS TO PATRICK KRAFT, ANTHONY LUBRANO, AND JAY PATERNO**
	:	Filed on Behalf of:
	:	**PLAINTIFF**

By: */s/ Steven F. Marino*

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Dated: June 13, 2026

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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-CI

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH SUBPOENAS TO PATRICK KRAFT, ANTHONY LUBRANO, AND JAY PATERNO

The plaintiff, by and through counsel, provides the instant submission in support of the Plaintiff's Response in Opposition to Defendants' Motion to Quash Subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno.

I. MATTER BEFORE THE COURT

1. Defendants' Motion to Quash Subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno.

II. STATEMENT OF QUESTIONS INVOLVED

1. Whether the trial court would abuse its discretion denying defendants' motion to quash subpoenas directed to Dr. Patrick Kraft, Mr. Anthony Lubrano, and Mr. Jay Paterno upon a basis their testimony is irrelevant to issues in dispute before the Court?

Proposed Answer: No.

2. Whether the trial court would abuse its discretion denying defendants' motion to quash subpoenas directed to Dr. Patrick Kraft, Mr. Anthony Lubrano, and Mr. Jay Paterno upon a basis no good cause is, nor can be, shown demonstrating the subpoenas impose an unreasonable annoyance, embarrassment, oppression, burden or expense upon the witnesses?

Proposed Answer: No.

III. STATEMENT OF MATERIAL FACTS

On May 6, 2022, plaintiff Barry J. Fenchak was elected by the alumni of Pennsylvania State University to serve as a member of the Pennsylvania State University Board of Trustees. Mr. Fenchak's tenue as a volunteer member of the Pennsylvania State University Board of Trustees began July 1, 2022. At all times during Mr. Fenchak's tenure on the Board of Trustees Mr. Anthony Lubrano and

Mr. Jay Paterno served as elected voting members of Pennsylvania State University Board of Trustees in good standing and remain so. Mr. Anthony Lubrano was a co-plaintiff who initiated an action against the Pennsylvania State University Board of Trustees in the matter captioned In re: Application By Non-Profit Corporation Trustees To Compel Inspection of Information, Court of Common Pleas Centre County, docket no. 1593-2015, to compel inspection of information relating to Trustee duties as a result of his request for information having been summarily denied by peer Trustee members upon a basis the information requested was not reasonably related to his duties as a Trustee. Dr. Patrick Kraft is a college athletics administrator who at material times served as the Vice President for Intercollegiate Athletics at Pennsylvania State University. During Mr. Fenchak's tenure on the Board of Trustees, the Board of Trustees operated under Bylaws. The Bylaws characterize the University as a market place of competing ideas and opinions which governance mandates open communication and debate. The Bylaws instruct Trustees are to speak openly, freely, and candidly within the Board. The Bylaws impose "crucial fiduciary responsibilities" upon Trustees towards the University. The Bylaws instruct a Trustee must adhere to those duties. During his tenure as a Board of Trustee member, consistent with the Bylaws, Mr. Fenchak spoke openly, freely and candidly within the Board which often led to his dissent with defendant Chair Matthew Schuyler, Vice Chair David Kleppinger, other Board of Trustee peer

members, and civil hostility. During his tenure as a Board of Trustee member, consistent with his duties as Trustee, Mr. Fenchak requested to be furnished information reasonably relating to carrying out his fiduciary duties and obligations as a Board of Trustee member, inclusive of: (1) financial information concerning investment management strategies and administrative fees paid by the University to professionals retained to manage the University's endowment; and (2) information informing upon the terms and conditions of a long term contract the University was negotiating with Elevate Collegiate Ticketing, LLC, a sports ticketing company. The Elevate contract was forecasted to generate revenue in excess of $1 billion over the in revenue over the course of the ten (10) year period and promoted by the University as a vehicle to fund, in part, a $700 million proposed renovation of Beaver Stadium.

On April 24 2024, the Board of Trustees convened an executive session. Among other Trustee members, Mr. Fenchak, Mr. Anthony Lubrano, Mr. Jay Paterno, attended the executive session, along with Dr. Patrick Kraft. Dr. Patrick Kraft was summoned to the executive session to advise the Board of Trustees upon the status of the Elevate contract; the expected revenue the contract was to generate; and that the revenue, in part, was to be earmarked to fund the proposed renovation of Beaver Stadium. On April 24 2024, during the course of the executive session, so he could make an informed decision when called upon to cast a Trustee vote upon

a proposed renovation of Beaver Stadium, Mr. Fenchak asked Dr. Patrick Kraft to provide him with the Elevate contract. Dr. Patrick Kraft agreed to do so.

Mr. Fenchak's requests for information were summarily denied by peer Trustee members upon a basis the information requested was not reasonably related to Mr. Fenchak's duties as a Trustee. On July 16, 2024, pursuant to Section 5512(b) of the Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. § 5512, plaintiff initiated this action to compel production of information he requested. On February 28, 2025, without direction of the Court, seven (7) months after initiation of this action to compel the production of information, defendants provided Mr. Fenchak the information he had requested. Mr. Fenchak has incurred substantial and significant attorney's fees and cost prosecuting this action.

IV. STATEMENT OF RELEVANT PROCEDURAL HISTORY

On January 29, 2026, plaintiff filed a petition pursuant to 42 Pa.C.S.A. § 2503(7) requesting relief in the form of the imposition of an award of reasonable counsel fees in favor of the plaintiff and against the defendants as part of the taxable costs of this matter as the court may seem fit to award under the circumstance. Upon consideration of the plaintiff's petition, on February 10, 2026, the court entered an order scheduling an evidentiary hearing to convene June 30, 2026, upon issues framed by the plaintiff's petition and supporting papers. On May 22, 2026, plaintiff

properly served valid subpoenas upon material fact witnesses Mr. Anthony Lubrano and Mr. Jay Paterno to appear and testify at the evidentiary hearing set to convene June 30, 2026. On May 27, 2026, plaintiff properly served a valid subpoena upon material fact witness Dr. Patrick Kraft to appear and testify at the evidentiary hearing set to convene June 30, 2026. On June 10, 2026, plaintiff was emailed Defendants' Motion to Quash Subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno. Plaintiff's instant response follows.

V. ARGUMENT PRESENTED

A. STANDARD OF REVIEW

The disposition of a motion to quash a subpoena rests within the sound discretion of the trial court, which appellate courts will not disturb absent an abuse of discretion or error of law.[1] As a threshold matter, any competent witness may be compelled to testify in any civil matter so long as the witness has personal knowledge of a relevant matter.[2] Evidence is considered relevant if it logically tends to establish a material fact in the case, tends to make the fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence

1 Slusaw v. Hoffman, 2004 PA Super 354, 861 A.2d 269, 272-273; 2004 PA Super 354, 861 A.2d 269 (2004)
2 Pa.R.E. 601; Pa.R.E. 602

of a material fact.[3] If the testimony of a witness is relevant to the elements to be proven, then the testimonial evidence must be permitted, unless otherwise excluded.[4] If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.[5] The customary method of compelling the attendance of a witness is by means of a subpoena.[6] Pa.R.Civ.P. 234.1(a) empowers a party to request for the issuance of a subpoena, commanding a person to attend and testify at a particular time and place. Pursuant to Pa.R.Civ.P. 234.4, a court may quash a subpoena to compel the appearance of a witness to attend trial if, after hearing, the court determines an order is necessary to protect a party, witness or other person from unreasonable annoyance, embarrassment, oppression, burden or expense.[7] Requiring a hearing on the motion to quash, Rule 234.4 imposes a burden upon the moving party to make a showing of good cause.[8] The defendants move the Court to dismiss the valid subpoenas to testify plaintiff served upon Dr. Patrick Kraft, Mr. Anthony Lubrano, and Mr. Jay Paterno upon a basis: (1) the testimony of

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3 Pa.R.E. 401
4 Carpenter v. Pleasant, 759 A.2d 411, 414-415 (Pa. Cmwlth 2000); Pa.R.E. 402
5 Carpenter v. Pleasant, 759 A.2d 411, 415 (Pa. Cmwlth. 2000)
6 Pa.R.Civ.P. 234.1(a)
7 Pa.R.Civ.P. 234.4; Rogers v. Thomas, 2023 PA Super 31, 291 A.3d 865, 889 (Pa. Super. 2023)
8 Pa.R.Civ.P. 234.4

the witnesses is not relevant; (2) the subpoenas impose an unreasonable annoyance, embarrassment, oppression, burden or expense upon the witnesses. Plaintiff addresses each of the defendants' contentions in course.

B. THE TRIAL COURT WILL NOT ABUSE ITS DISCRETION DENYING DEFENDANTS' MOTION TO QUASH SUBPOENAS FOR EVIDENTIARY HEARING TESTIMONY DIRECTED TO PATRICK KRAFT, ANTHONY LUBRANO, AND JAY PATERNO UPON A BASIS THE TESTIMONY OF THE WITNESSES SUBPOENAED IS NOT RELEVANT

The defendants move the Court to dismiss the valid subpoenas to testify plaintiff served upon Dr. Patrick Kraft, Mr. Anthony Lubrano, and Mr. Jay Paterno upon a basis the testimony of the witnesses is not relevant.

1. Testimonial Evidence of Dr. Patrick Kraft Is Relevant to Factual Issues in Dispute Before the Court

Defendants contend the testimonial evidence of Dr. Patrick Kraft is irrelevant to the controversy before the Court upon a basis: (1) Dr. Patrick Kraft is not a party to the action; (2) the events Dr. Patrick Kraft would offer testimony about occurred prior to Mr. Fenchak's initiation of this action to compel information reasonably related to his Trustee duties which the defendants withheld from him. That fact that Dr. Patrick Kraft is not a party to the action is of no consequence to this Court's consideration of whether he is competent witness within the meaning of Pa.R.E. 601 and 602; and certainly, is not grounds upon which this Court is authorized to quash a subpoena pursuant to Pa.R.Civ.P. 234.4. The contention of

the defendants the testimonial evidence Dr. Kraft will offer is irrelevant to the controversy because he is not a party to the action is simply unsupported in fact, law, rule, or sheer common sense. The Court is not authorized to quash the subpoena issued to Dr. Patrick Kraft pursuant to Pa.R.Civ.P. 234.4 upon grounds Dr. Kraft is not a party to the action. Accordingly, the defendants' motion to quash the subpoena issued to Dr. Patrick Kraft upon grounds he is not a named party to the action and therefore his testimony is irrelevant to issues in dispute before the Court should properly be denied.

It cannot reasonably be disputed, at times relevant to this dispute, Dr. Patrick Kraft was a college administrator, serving as Vice President for Intercollegiate Athletics at Pennsylvania State University. It cannot reasonably be disputed on April 24 2024, the Board of Trustees convened an executive session and Dr. Kraft was summoned to the April 24 2024, executive session to advise the members of the Board of Trustees on issues relative to the Elevate contract, inclusive of: the general contractual duties the contract imposed upon the parties; the revenue the contract was expected to generate on behalf of the University; and that the revenue the contract was expected to generate, in part, was to be earmarked to fund a proposed renovation of Beaver Stadium. The fact that Dr. Patrick Kraft was summoned to the April 24 2024, Board of Trustees executive session to advise the Board of Trustees upon the Elevate contract is probative of the material fact the Board of Trustees, as

a collective body, operated with the understanding the Elevate contract was reasonably related to the duties of the Board of Trustees. Dr. Patrick Kraft's testimony will corroborate the events of April 24 2024, and have a tendency to make the fact, that the Board of Trustees, as a collective body, operated under a premise the terms and conditions of the Elevate contract was reasonably related to the duties of the Board of Trustees, more probable than it would be without his testimony. The Court cannot possibly accommodate any other conclusion. The suggestion of the defendants the testimony Dr. Patrick Kraft is not relevant to issues in dispute before the Court upon a basis that the material events to which he will offer testimony about occurred pre-litigation ignores Pa.R.E. 401, Pa.R.E. 402, Pa.R.E. 601, Pa.R.E. 602 and Pa.R.Civ.P. 234.4. Accordingly, the defendants' motion to quash the subpoena issued to Dr. Patrick Kraft upon grounds Dr. Kraft will offer testimony about events which occurred prior to Mr. Fenchak's initiation of this action to compel information and upon that basis his testimony is therefore irrelevant to issues in dispute before the Court should properly be denied.

2. Testimonial Evidence Of Mr. Anthony Lubano Is Relevant To The Issues In Dispute Before The Court

Defendants contend the testimonial evidence of Mr. Anthony Lubano is irrelevant to the controversy before the Court upon a basis: (1) Mr. Anthony Lubano is not mentioned in the plaintiffs Initial and Amended Complaint; (2) Mr.

Anthony Lubano is not a party to the action; (3) subject matter Mr. Anthony Lubano would offer testimony about occurred prior to Mr. Fenchak's initiation of this action to compel information reasonably related to his Trustee duties which the defendants withheld from him.

The fact that Mr. Anthony Lubano is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action is of no consequence to this Court's consideration of whether he is competent witness within the meaning of Pa.R.E. 601 and 602; and certainly, is not grounds upon which this Court is authorized to quash a subpoena pursuant to Pa.R.Civ.P. 234.4. The contention of the defendants the testimonial evidence Anthony Lubano will offer is irrelevant to the controversy because he is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action is simply unsupported in fact, law, rule, or sheer common sense. The Court is not authorized to quash the subpoena issued to Mr. Anthony Lubano pursuant to Pa.R.Civ.P. 234.4 upon grounds Mr. Anthony Lubano is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action. Accordingly, the defendants' motion to quash the subpoena served upon Mr. Anthony Lubano upon grounds he is not a named party to the action and his testimony is therefore irrelevant to issues in dispute before the Court should properly be denied.

It cannot reasonably be disputed Mr. Anthony Lubano was an elected voting member of the Pennsylvania State University Board of Trustees in good standing, so remains, and as a result has knowledge, experience, and an understanding of the duties associated with a member of the Board of Trustees during Mr. Fenchak's tenure as a Board member. Equally, it cannot reasonably be disputed, in the past, Mr. Anthony Lubano has had experience with the Board of Trustees denying his request to be provided information reasonably related to his duties as a Trustee and was compelled to file suit to secure the information requested.[9] It is anticipated Mr. Anthony Lubano will offer testimony based upon his knowledge, information, and experience that defendant Chair Matthew Schuyler, Vice Chair David Kleppinger, and other Board of Trustee peer members, at times relevant, operated under a custom, practice, and culture, in violation of a Section 5512(a) of Pennsylvania's Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. § 5512(a), to deny requests made of Trustees to be furnished with and provided opportunity to inspect information reasonably related to the duties of a Trustee, knowing the information requested was reasonably related to the duties of a Trustee, and with an intent to furnish the information only after an action to compel production or a threat to file action to compel production under 15 Pa.C.S.A. § 5512(b) was initiated by the requesting

9 In re: Application by Non-Profit Corporation Trustees to Compel Inspection of Information, Court of Common Pleas Centre County, docket no. 1593-2015

Trustee. It is anticipated Mr. Anthony Lubano will offer testimony based upon his knowledge, information, and experience: (1) the information requested by Mr. Fenchak was reasonably related to the duties of each member of the Board of Trustees, inclusive of Mr. Fenchak; (2) the defendants denied Mr. Fenchak's request for information knowing it was reasonably related to his duties as a Board of Trustee member; (3) Mr. Fenchak's request for information was denied by the defendants, in part, upon personal animus; (4) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to force Mr. Fenchak to participate in a prolonged attritional legal battle focused on exhausting Mr. Fenchak's financial resources, emotional endurance, and time rather than defending the action on legal merits with an intent to deter him from making such information requests in the future; (5) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to signal to other similar situated Trustees a request for information would result in a prolonged legal battle requiring the Trustee to pay out-of-pocket substantial attorney's fees, which would equal more than recovery of the information would reasonably be worth, with an intent to deter similar Trustee requests for information in the future. It is anticipated Mr. Anthony Lubano will offer testimony he attended the April 24 2024, the Board of Trustees executive session. It is anticipated Mr. Anthony Lubano will offer testimony based upon his knowledge, information, and experience the

Board of Trustees, as a collective body, operated under a premise the Elevate contract was reasonably related to the duties of the Board of Trustees. Mr. Anthony Lubano's testimony will have a tendency to make the fact more probable than it would be without his testimony evidence that defendant Chair Matthew Schuyler, Vice Chair David Kleppinger, and other Board of Trustee peer members, with a reckless indifference to 15 Pa.C.S.A. § 5512(a), knowing the information requested by Mr. Fenchak was reasonably related to Mr. Fenchak's duties of the Board of Trustees, deliberately denied his request with an intent to provide the information only after being compelled to do so. The suggestion of the defendants the testimony of Mr. Anthony Lubano is not relevant to issues in dispute before the Court upon a basis the material events to which he will offer testimony about occurred pre-litigation ignores Pa.R.E. 401, Pa.R.E. 402, Pa.R.E. 601, Pa.R.E. 602 and Pa.R.Civ.P. 234.4. Accordingly, the defendants' motion to quash the subpoena issued to Mr. Anthony Lubano upon grounds he will offer testimony about events which occurred prior to Mr. Fenchak's initiation of this action to compel information and upon that basis his testimony is therefore irrelevant to issues in dispute before the Court should properly be denied.

3. Testimonial Evidence Of Mr. Jay Paterno Is Relevant To The Issues In Dispute Before The Court

Defendants contend the testimonial evidence of Mr. Jay Paterno is irrelevant to the controversy before the Court upon a basis: (1) Mr. Jay Paterno is not mentioned in the plaintiffs Initial and Amended Complaint; (2) Mr. Jay Paterno is not a party to the action; (3) subject matter Mr. Jay Paterno would offer testimony about occurred prior to Mr. Fenchak's initiation of this action to compel information reasonably related to his Trustee duties which the defendants withheld from him.

The fact that Mr. Jay Paterno is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action is of no consequence to this Court's consideration of whether he is competent witness within the meaning of Pa.R.E. 601 and 602; and certainly, is not grounds upon which this Court is authorized to quash a subpoena pursuant to Pa.R.Civ.P. 234.4. The contention of the defendants the testimonial evidence Mr. Jay Paterno will offer is irrelevant to the controversy because he is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action is simply unsupported in fact, law, rule, or sheer common sense. The Court is not authorized to quash the subpoena issued to Mr. Jay Paterno pursuant to Pa.R.Civ.P. 234.4 upon grounds Mr. Jay Paterno is not mentioned in plaintiff's Initial and Amended Complaint or not named as a party to the action. Accordingly, the defendants' motion to quash the subpoena served upon Mr. Jay Paterno upon grounds he is not a named party to the action and

his testimony is therefore irrelevant to issues in dispute before the Court should properly be denied.

It cannot reasonably be disputed Mr. Jay Paterno was an elected voting member of the Pennsylvania State University Board of Trustees in good standing, so remains, and as a result has knowledge, experience, and an understanding of the duties associated with a member of the Board of Trustees during Mr. Fenchak's tenure as a Board member. It is anticipated Mr. Jay Paterno will offer testimony based upon his knowledge, information, and experience that defendant Chair Matthew Schuyler, Vice Chair David Kleppinger, and other Board of Trustee peer members, at times relevant, operated under a custom, practice, and culture, in violation of a Section 5512(a) of Pennsylvania's Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. § 5512(a), to deny requests made of Trustees to be furnished with and provided opportunity to inspect information reasonably related to the duties of a Trustee, knowing the information requested was reasonably related to the duties of a Trustee, and with an intent to furnish the information only after an action to compel production or a threat to file action to compel production under 15 Pa.C.S.A. § 5512(b) was initiated by the requesting Trustee. It is anticipated Mr. Jay Paterno will offer testimony based upon his knowledge, information, and experience: (1) the information requested by Mr. Fenchak was reasonably related to the duties of each member of the Board of Trustees, inclusive of Mr. Fenchak; (2) the defendants

denied Mr. Fenchak's request for information knowing it was reasonably related to his duties as a Board of Trustee member; (3) Mr. Fenchak's request for information was denied by the defendants, in part, upon personal animus; (4) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to force Mr. Fenchak to participate in a prolonged attritional legal battle focused on exhausting Mr. Fenchak's financial resources, emotional endurance, and time rather than defending the action on legal merits with the intent to deter him from making such information requests in the future; (5) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to signal to other similar situated Trustees a request for information will result in a prolonged legal battle requiring the Trustee to pay out-of-pocket substantial attorney's fees, which equal more than recovery of the information would reasonably be worth, with the intent to deter similar Trustee requests for information in the future. It is anticipated Mr. Jay Paterno will offer testimony he attended the April 24 2024, the Board of Trustees executive session. It is anticipated Mr. Jay Paterno will offer testimony based upon his knowledge, information, and experience the Board of Trustees, as a collective body, operated under a premise the Elevate contract was reasonably related to the duties of the Board of Trustees. Mr. Jay Paterno's testimony will have a tendency to make the fact more probable than it would be without his testimony defendant Chair Matthew

Schuyler, Vice Chair David Kleppinger, and other Board of Trustee peer members, with a reckless indifference to 15 Pa.C.S.A. § 5512(a), knowing the information requested by Mr. Fenchak was reasonably related to Mr. Fenchak's duties of the Board of Trustees, deliberately denied Mr. Fenchak's request with an intent to provide the information only after being compelled to do so. The suggestion of the defendants the testimony Mr. Jay Paterno is not relevant to issues in dispute before the Court upon a basis that the material events to which he will offer testimony about occurred pre-litigation ignores Pa.R.E. 401, Pa.R.E. 402, Pa.R.E. 601, Pa.R.E. 602 and Pa.R.Civ.P. 234.4. Accordingly, the defendants' motion to quash the subpoena issued to Mr. Jay Paterno upon grounds he will offer testimony about events which occurred prior to Mr. Fenchak's initiation of this action to compel information and upon that basis his testimony is therefore irrelevant to issues in dispute before the Court should properly be denied.

C. NO GOOD CAUSE IS SHOWN, NOR CAN BE SHOWN, DEMONSTRATING THE SUBPOENAS IMPOSE AN UNREASONABLE ANNOYANCE, EMBARRASSMENT, OPPRESSION, BURDEN OR EXPENSE UPON THE WITNESSES

The defendants move the Court to dismiss the subpoenas to testify served upon Dr. Patrick Kraft, Mr. Anthony Lubrano, and Mr. Jay Paterno upon a basis the subpoenas impose an unreasonable annoyance, embarrassment, oppression, burden,

or expense upon the witnesses. Mr. Fenchak addresses each of the defendants' contentions in turn.

1. No Good Cause Is Shown Demonstrating The Subpoena Imposes An Unreasonable Annoyance, Embarrassment, Oppression, Burden Or Expense Upon Dr. Patrick Kraft

The defendants move the Court to dismiss the valid subpoena served upon Dr. Patrick Kraft upon a basis: (1) the subpoena imposes unreasonable annoyance upon the witness because his testimony is irrelevant; and (2) the subpoena imposes an unreasonable burden upon the witness because he has a planned vacation which conflicts with his command to appear and testify. As discussed in greater detail above, the testimony of Dr. Patrick Kraft is probative of the material fact the Board of Trustees, as a collective body, operated with the understanding the Elevate contract was reasonably related to the duties of the Board of Trustees. Dr. Patrick Kraft's testimony will corroborate the events of April 24 2024, and have a tendency to make the fact that the Board of Trustees, as a collective body, operated under a premise the terms and conditions of the Elevate contract was reasonably related to the duties of the Board of Trustees, more probable than it would be without his testimony. Defendants' contention the testimony of Dr. Patrick Kraft is not relevant is without foundation and should properly be dismissed.

Defendant's contention a showing of good cause exists sufficient to quash the subpoena served upon Dr. Patrick Kraft on grounds the subpoena imposes an

unreasonable burden or expense upon Dr. Kraft as a result of a planned vacation is equally without merit. Defendants provide no Affidavit of Dr. Patrick Kraft, nor a detail of fact demonstrating the dates, times, location of the vacation, or the date when the vacation was planned. Defendants offer no facts or evidence from which the Court can begin to balance the interest justice requires to decide upon quashing a valid legal subpoena issued to a material witness by the party bearing the burden of proof. Accordingly, the defendants' motion to quash the subpoena issued to Dr. Patrick Kraft should properly be denied upon a basis no good cause is shown, nor can be shown, demonstrating the subpoena imposes unreasonable annoyance, burden, or expense upon Dr. Patrick Kraft sufficient to warrant it be quashed.

2. No Good Cause Is Shown, Nor Can Be Shown, Demonstrating The Subpoena Imposes An Unreasonable Annoyance, Embarrassment, Oppression, Burden Or Expense Upon Mr. Anthony Lubrano

The defendants move the Court to dismiss the valid subpoena served upon Mr. Athony Lubrano upon a basis: (1) Mr. Lubrano was not involved in the litigation; (2) Mr. Lubrano has not spoken to the defendants' counsel; (3) Mr. Lubrano should not be forced to incur the time and expense of attending when his testimony is irrelevant; and (4) the University should not be forced to incur the time and expense associated with Mr. Lubrano's attendance when his testimony is irrelevant. The defendants' submission is troubling and appears in violation of

Pa.R.Civ.P. 1023.1(c). The defendants have had no contact with Mr. Lubrano and cannot possibly reliably submit to the Court his position as to whether the subpoena imposes an unreasonable annoyance, embarrassment, oppression, burden or expense upon him. The defendants' submission improperly leads the Court to believe Mr. Athony Lubrano aligns himself with the defendants' motion, which is an untruth. Mr. Lubrano is represented by Daniel T. Brier, Esquire, counsel separate than the defendants, and makes no filing with the Court representing the subpoena imposes an unreasonable annoyance, embarrassment, oppression, burden or expense upon him.

As discussed in greater detail above, the testimony of Mr. Anthony Lubrano is probative of the material facts: (1) the information requested by Mr. Fenchak was reasonably related to the duties of the Board of Trustees; (2) the defendants denied Mr. Fenchak's request for information knowing it was reasonably related to his duties as a Board of Trustee member; (3) Mr. Fenchak's request for information, was denied by the defendants, in part, upon personal animus; (4) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to force Mr. Fenchak to participate in a prolonged attritional legal battle focused on exhausting Mr. Fenchak's financial resources, emotional endurance, and time rather than defending the action on legal merits to deter him from making such information requests in the future; (5) the defendants denied Mr.

Fenchak's request for information operating under a deliberate and premeditated scheme to signal to other similar situated Trustees a request for information will result in a prolonged legal battle requiring the Trustee to pay out-of-pocket substantial attorney's fees, which equal more than recovery of the information would reasonably be worth, to deter similar Trustee requests for information in the future. The testimony of Mr. Anthony Lubrano will have a have a tendency to demonstrate the defendants defended this matter and caused Mr. Fenchak to endure unnecessary prolonged litigation for reasons other than defending the action on legal merits more probable than it would be without his testimony. Defendants' contention the testimony Mr. Anthony Lubrano is not relevant is without foundation and should properly be dismissed.

More troubling, defendants offer no detail of fact which begin to suggest they will present evidence at hearing to support a claim justice would require quashing a lawful issued subpoena to Mr. Anthony Lubrano to protect him from unreasonable annoyance, embarrassment, oppression, burden, or expense. Defendants provide no Affidavit of Mr. Athony Lubrano. Defendants provide no detail of suggestion, let alone of evidence, demonstrating how, or the manner in which the subpoena will cause Mr. Athony Lubrano to suffer unreasonable annoyance, embarrassment, oppression, burden or expense. Defendants offer no facts or evidence from which the Court can begin to balance the interest justice requires to decide upon quashing

a validly legal subpoena issued to a material witness by the party bearing the burden of proof. To the contrary the defendants speak only of some undetailed burden the subpoena issued to Mr. Athony Lubrano will impact upon them, despite presumably the defendants will already be appearing at the hearing, which is not a proper consideration of a Rule 234.4 evaluation. The defendants' contention the subpoena issued to Mr. Athony Lubrano should be quashed upon a basis good cause shown exists demonstrating Mr. Anthony Lubrano is in need to be protected from unreasonable annoyance, embarrassment, oppression, burden, or expense borders on the absurd, is untenable, and simply flawed. Accordingly, the defendants' motion to quash the subpoena issued to Mr. Athony Lubrano should properly be denied upon a basis no good cause is shown, nor can be shown, demonstrating the subpoena imposes annoyance, embarrassment, oppression, burden, or expense upon Mr. Athony Lubrano sufficient to warrant it be quashed.

3. No Good Cause Is Shown Demonstrating the Subpoena Imposes an Unreasonable Annoyance, Embarrassment, Oppression, Burden or Expense Upon Mr. Jay Paterno

The defendants move the Court to dismiss the valid subpoena plaintiff served upon Mr. Jay Paterno upon a basis: (1) Mr. Paterno was not involved in the litigation; (2) Mr. Paterno should not be forced to incur the time and expense of attending when his testimony is irrelevant; and (3) the University should not be

forced to incur the time and expense associated with his attendance when his testimony is irrelevant. The defendants' submission improperly leads the Court to believe Mr. Jay Paterno aligns himself with the defendants' motion, which is an untruth. Mr. Paterno is represented by Scott Paterno, Esquire, counsel separate than the defendants, and makes no filing with the Court representing the subpoena imposes an unreasonable annoyance, embarrassment, oppression, burden or expense upon him.

As discussed in greater detail above, the testimony of Mr. Jay Paterno is probative of the material facts: (1) the information requested by Mr. Fenchak was reasonably related to the duties of the Board of Trustees; (2) the defendants denied Mr. Fenchak's request for information knowing it was reasonably related to his duties as a Board of Trustee member; (3) Mr. Fenchak's request for information was denied by the defendants, in part, upon personal animus; (4) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to force Mr. Fenchak to participate in a prolonged attritional legal battle focused on exhausting Mr. Fenchak's financial resources, emotional endurance, and time rather than defending the action on legal merits to deter him from making such information requests in the future; (5) the defendants denied Mr. Fenchak's request for information operating under a deliberate and premeditated scheme to signal to other similar situated Trustees a request for information will

result in a prolonged legal battle requiring the Trustee to pay out-of-pocket substantial attorney's fees, which equal more than recovery of the information would reasonably be worth, to deter similar Trustee requests for information in the future. The testimony of Mr. Jay Paterno will have a have a tendency to demonstrate the defendants defended this matter and caused Mr. Fenchak to endure prolonged litigation for reasons other than defending the action on legal merits more probable than it would be without his testimony. Defendants' contention the testimony Mr. Jay Paterno is not relevant is without foundation and should properly be dismissed.

Defendants offer no detail of fact which begin to suggest they will present evidence at hearing to support a claim justice would require quashing a lawful issued subpoena to Mr. Jay Paterno to protect him from unreasonable annoyance, embarrassment, oppression, burden, or expense. Defendants provide no Affidavit of Mr. Jay Paterno. Defendants provide no detail of suggestion, let alone of evidence, demonstrating how, or the manner in which the subpoena will cause Mr. Jay Paterno to suffer unreasonable annoyance, embarrassment, oppression, burden or expense. Defendants offer no facts or evidence from which the Court can begin to balance the interest justice requires to decide upon quashing a validly legal subpoena issued to a material witness by the party bearing the burden of proof. To the contrary the defendants speak only of some undetailed burden the subpoena issued to Mr. Jay Paterno will impact upon them, despite presumably the defendants

will already be appearing at the hearing, which is not a proper consideration of a Rule 234.4 evaluation. The defendants' contention the subpoena issued to Mr. Jay Paterno should be quashed upon a basis good cause shown exists demonstrating Mr. Jay Paterno is in need to be protected from unreasonable annoyance, embarrassment, oppression, burden, or expense borders on the absurd, is untenable, and simply flawed. Accordingly, the defendants' motion to quash the subpoena issued to Mr. Jay Paterno should properly be denied upon a basis no good cause is shown, nor can be shown, demonstrating the subpoena imposes annoyance, embarrassment, oppression, burden, or expense upon Mr. Jay Paterno sufficient to warrant it be quashed.

VI. CONCLUSION

For the foregoing reasons and any others, which may arise pending a hearing on this matter, plaintiff respectfully requests this Honorable Court deny Defendants' Motion to Quash Subpoenas to Dr. Patrick Kraft, Anthony Lubrano, and Jay Paterno and set this matter before the Court for trial upon the issue of whether plaintiff is entitled to an award of reasonable attorney's fees as part of the taxable costs of the matter.

Respectfully submitted,

By: */s/ Steven F. Marino*

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Dated: June 15, 2026

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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 PLEAS – CENTRE COUNTY, PA CIVIL ACTION Docket No. 2024-CV-l 843-Cl

CERTIFICATE OF SERVICE

I certify that on the below listed date a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Opposition To Defendants' Motion To Quash Subpoenas To Patrick Kraft, Anthony Lubrano, And Jay Paterno and supporting papers was electronically filed with the Court using the Prothonotary/Clerk of Court's Electronic Filing System (prothonotary/clerkofcourts-orders@centrecountypa.gov), and served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.Civ.P. Nos. 205.4(g) and 440 and Centre County Local Civil Rule 205.4.

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