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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

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

BARRY J. FENCHAK, Plaintiff,	)	
v.	)	No. 2024-CV-1843-CI
THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN Defendants.	)	

Attorney for Plaintiff: *Stephen Marino, Esq.*

Attorney for Defendants: *Andrew R. Stanton, Esq.*
Susan E. Kessler, Esq.
Christopher Conrad, Esq.

OPINION AND ORDER

Marshall, J.

Presently before the Court is the Motion to Quash Subpoenas, filed by the Pennsylvania State University Board of Trustees (the "Board") and Matthew Schuyler in his capacity as Chairman thereof (the Board, together with Mr. Schuyler, the "Defendants") and by non-party Patrick Kraft on June 19, 2026.

In deciding the Motion to Quash Subpoenas, the Court considered (*a*) the Motion itself; (*b*) the Memorandum in Support of Opposition to Motion to Quash, filed by Plaintiff on June 16, 2026; and (*c*) the Answer in Opposition to Motion to Quash, filed by Plaintiff on June 16, 2026. A hearing on the motion was held on June 17, 2026. Upon review of the filings and arguments of the parties, the Court enters the following Opinion and Order:

BACKGROUND

Plaintiff is a former member of the Pennsylvania State University Board of Trustees. Plaintiff initiated this matter on July 16, 2024 by filing a Complaint. On August 27, 2024, Plaintiff filed an Amended Complaint raising two claims for relief: Count I sought enforcement of the

director information inspection provisions of 15 Pa.C.S. §5512(b); Count II was a request for injunctive relief asking this Court to prevent Defendants from removing Plaintiff from the Board of Trustees. *See Amended Compl.*, ¶123-133, 134-169 (Aug. 27, 2025). As it relates to Count I, Plaintiff sought two categories of information from the Board: "access to the specific data and items that totaled to the aggregated figures listed on the IRS Form 990s administrative fees paid reported by Penn State, and other related information concerning the net return" (*see Amended Compl.*, ¶57) and "information outlining the proposed terms of the Elevate agreement" (*see Amended Compl.*, ¶92).

Plaintiff was removed from the Board of Trustees by a 30-4 vote of the Trustees on June 16, 2025.[1] On November 4, 2025, Defendants filed a Motion for Summary Judgment, arguing that this matter should be dismissed with prejudice on the basis that both Count I and Count II had been mooted. On January 6, 2026, this Court granted Defendants' Motion for Summary Judgment and dismissed this matter with prejudice. *See Opinion and Order* (Jan. 6, 2026) ("Because Plaintiff is no longer a Board Trustee, and because Plaintiff received the information he sought which formed the original basis for this suit, Defendants argue that there are no longer any issues of material fact such that summary judgment should be granted in Defendants' favor. For the reasons discussed herein, the Court agrees and will GRANT Defendants' Motion for Summary Judgment."). In so doing, the Court found that Count I of the Amended Complaint had been mooted by Plaintiff's receipt of the Elevate contract and endowment information which had formed the basis of this suit. *Id.* The Court also found that Count II of the Amended Complaint had been mooted by Plaintiff's removal from the Board by a vote on or about June 16, 2025.

[1] This Court granted Plaintiff's request for a preliminary injunction barring his removal from the Board in October 2024. That injunction was lifted in May 2025, and Plaintiff was removed from the Board shortly thereafter. *See Opinion and Order* (Oct. 9, 2024); *see also Opinion and Order* (May 16, 2025).

On January 29, 2026, Plaintiff filed a Petition to Sanction Defendants. Therein, Plaintiff requests an award of counsel fees pursuant to 42 Pa.C.S. §2503(7) which authorizes an award of such fees against any participant "for dilatory, obdurate or vexatious conduct during the pendency of a matter." Plaintiff purports to provide several examples of conduct by Defendants that Plaintiff argues is dilatory, obdurate or vexatious. *See Petition* (Jan. 29, 2026), *e.g.*, ¶36 and ¶49. A hearing on the Petition is scheduled for June 30, 2026.

In support of its Petition to Sanction Defendants, on March 11, 2026, Plaintiff requested the issuance of two subpoenas to appear and testify and two subpoenas to produce documents. On March 25, 2026, Defendants filed an Emergency Motion for Protective Order and Stay of Discovery, which was granted by this Court on April 9, 2026. That April 9, 2026 protective order plainly provided that "the discovery sought by Plaintiff, and all other discovery in this matter, is hereby PROHIBITED." *See Opinion and Order* (Apr. 9, 2026). Nevertheless, the Court understands that Plaintiff issued three subpoenas upon the University's Vice President for Intercollegiate Athletics and two sitting Trustees to compel testimony at the June 30, 2026 hearing on the Petition. Plaintiff has not provided an offer of proof to this Court describing what specific, relevant testimony related to the pending Petition to Sanction Defendants, if any, Plaintiff expects these three individuals to provide.

DISCUSSION

The Court finds that the requested subpoenas only serve to unreasonably annoy, embarrass, oppress, and burden Defendants and to cause Defendants unreasonable expense. *See* 231 Pa. 234.4(b) ("...After hearing, the Court may make an order to protect a party, witness or other person from unreasonable annoyance, embarrassment, oppression, burden or expense.") The three persons subpoenaed by Plaintiff, although they are two Trustees and an Administrator, have not been closely involved in this litigation and will likely not be able to testify to any relevant conduct that

may form the basis for sanctions, which conduct must occur "during the pendency of a matter" pursuant to 42 Pa.C.S. §2503(7).

As such, the Court finds that the testimony of the three subpoenaed witnesses is unlikely to be relevant to this Court's determination on the Petition for Sanctions, and any limited relevance of their testimony is outweighed by the unreasonable annoyance, embarrassment, oppression, burden or expense of being required to testify. The Court finds this to be particularly true where, as here, the Court already dismissed the matter with prejudice upon a finding that the basis for this suit has been mooted. Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 25th day of June, 2026, Defendants' Motion to Quash Subpoenas is hereby GRANTED. Those subpoenas issued upon Dr. Patrick Kraft, Anthony Lubrano and Jay Paterno are hereby QUASHED. The Court reaffirms its April 9, 2026 Opinion and Order providing that the discovery sought by Plaintiff, and all other discovery in this matter, is PROHIBITED.

BY THE COURT:

Brian K. Marshall, Judge