

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

BARRY J. FENCHAK,

Plaintiff,

vs.

THE PENNSYLVANIA STATE
UNIVERSITY BOARD OF
TRUSTEES AND MATTHEW
SCHUYLER IN HIS OFFICIAL
CAPACITY AS CHAIRMAN,

Defendants.

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) Docket No. 2024-CV-1843-CI
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) Type of Case: Civil Action - Equity
)
)

) Type of Pleading: Joint Motion for
) Protective Order
)
)

) Filed on behalf of Defendants
)
)

) Counsel of Record for Defendants:
)
)

) **MARSHALL DENNEHEY, P.C.**
)
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JEREMY S BREON

PROTHONOTARY

CENTRE COUNTY, PA

BARRY J. FENCHAK,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY, PENNSYLVANIA
	:	
v.	:	CIVIL ACTION
	:	
THE PENNSYLVANIA STATE	:	NO. 2024-cv-1843-CI
UNIVERSITY BOARD OF	:	
TRUSTEES, and MATTHEW	:	
SCHUYLER IN HIS OFFICIAL	:	
CAPACITY AS CHAIRMAN,	:	
Defendants.	:	

**JOINT MOTION FOR ENTRY OF
STIPULATED CONFIDENTIALITY AGREEMENT AND ORDER**

NOW COME Plaintiff, Barry J. Fenchak, and Defendants, The Pennsylvania State University Board of Trustees, and Matthew Schuyler, in his official capacity as former Chair of the Board, by and through their respective attorneys, and hereby move as follows:

1. Plaintiff initiated this action alleging, *inter alia*, violations of the Pennsylvania Nonprofit Corporation Law, asserting his entitlement to access certain confidential and proprietary information related to The Pennsylvania State University's ("University") financial and contractual matters.
2. The parties have reached an agreement regarding the handling of confidential information and have stipulated to the terms set forth in the attached Stipulated Confidentiality Agreement and Order, which is incorporated by reference and attached hereto as Exhibit "A."

3. The Stipulated Confidentiality Agreement establishes guidelines for the designation, handling, and disclosure of confidential information to ensure the fair and efficient exchange of discovery while safeguarding proprietary interests.
4. The parties agree that the entry of the attached Stipulated Confidentiality Agreement and Order is necessary and appropriate to facilitate discovery, protect confidential information, and ensure compliance with applicable privacy laws.

WHEREFORE, Plaintiff and Defendants jointly request that this Honorable Court enter the attached Stipulated Confidentiality Agreement and Order as an Order of the Court.


Respectfully submitted,

On Behalf of Barry Fenchak:

/s/ Justin J. Boehret

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*On Behalf of The Pennsylvania State
University Board of Trustees and
Matthew Schuyler:*



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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendant Board of Trustees
of the Pennsylvania State
University, and Matthew
Schuyler

Signature: /s/ Christopher J. Conrad
Name: Christopher J. Conrad, Esquire

Attorney No. (if applicable): 202348

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 14th day of February 2025, **via email and regular mail**, as follows:

Justin J. Boehret, Esq.
Erika L. Silverbreit, Esq.
Terry L Mutchler, Esq.
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MARSHALL DENNEHEY, P.C.

BY: /s/ Christopher J. Conrad
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*Attorneys for Defendants, Board of
Trustees of the Pennsylvania State
University and Matthew Schuyler*

DATE: February 14, 2025

EXHIBIT A

BARRY J. FENCHAK,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY, PENNSYLVANIA
	:	
v.	:	CIVIL ACTION – LAW
	:	
THE PENNSYLVANIA STATE	:	NO. 2024-cv-1843-CI
UNIVERSITY BOARD OF	:	
TRUSTEES, and MATTHEW	:	
SCHUYLER IN HIS OFFICIAL	:	
CAPACITY AS CHAIRMAN,	:	
Defendants.	:	

STIPULATED CONFIDENTIALITY AGREEMENT AND ORDER

Plaintiff Barry Fenchak (“Plaintiff” or “Trustee Fenchak”), and Defendants The Pennsylvania State University Board of Trustees (the “Board”) and Matthew Schuyler (together, “Defendants”), by the stipulation of their respective undersigned counsel in the above-captioned action (“Action”), hereby agree to the terms and conditions described within this Stipulated Confidentiality Agreement (“Agreement”) to facilitate the sharing of documents, information, and other materials produced, as described below, which will fulfill Trustee Fenchak’s requests related to the contract with Elevate Collegiate Ticketing, LLC (the “Elevate Contract”) and endowment information. According to his Amended Complaint, Trustee Fenchak has requested certain information to “familiarize himself with important affairs of the University; intelligently render the decisions necessary to

manage the University; and otherwise faithfully discharge his duty as trustee to protect the interests of the University.” (Am. Comp. at Para. 35). The production of information requested by Plaintiff pursuant to the above-captioned lawsuit shall not limit Trustee Fenchak’s ability in his capacity as Trustee to request information available to him by law and reasonably related to the performance of his fiduciary duties and oversight responsibilities as Trustee. Each of the parties is referred to herein individually as a “Party” and collectively as the “Parties.”

I. DEFINITIONS

For purposes of this Agreement, the term “Confidential Information” shall mean:

- a. information contained in any document, discovery response, testimony, or other material produced or provided by any Party or third party that is marked or designated as “Confidential” and is reasonably and in good faith considered to include sensitive personal, proprietary and/or financial information;
- b. information protected from disclosure by statute;
- c. trade secrets or other confidential commercial or financial information, as defined by Pennsylvania law;
- d. personnel information related to Party and non-party employees;

- e. information the disclosure of which would breach a legal or contractual obligation;
- f. any and all non-public, confidential, or proprietary information disclosed at any time by or on behalf of Elevate Collegiate Ticketing, LLC (“Elevate”) to Plaintiff, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” as agreed to and further defined in the confidentiality agreement between Plaintiff and Elevate (“Elevate Confidentiality Agreement”), the terms of which are incorporated herein by reference as though set forth in full;
- g. all non-public information about internal Board of Trustees discussions;
- h. all information related to the The Pennsylvania State University’s (the “University’s”) Long Term Investment Pool – Investment Management Fees by Fund, including, but not limited to, the University’s Endowment, for Fiscal Years 2016-2024;
- i. all information related to the Draft Presentation to the Board of The University’s Long Term Investment Pool – Investment Structure and Expense Analysis for Fiscal Year ended June 30, 2024;
- j. all information related to the University’s Long Term Investment Pool

Investment Performance & Allocation Update presented to the Board on September 2024; and

- k. all non-public information related to the The Pennsylvania State University's Long-Term Investment Pool for Fiscal Years 2016-2024.

II. DESIGNATIONS

- a. Any Party or third party with whom Penn State has a contract may identify documents or pages of documents containing Confidential Information by marking such pages with the label "CONFIDENTIAL" in a manner that will not interfere with the legibility of the document.
- b. Deposition testimony or portions of deposition testimony by a Party, a Party's present and former officers, directors, employees, agents, experts, or representatives, or a third party may be marked as "CONFIDENTIAL" by any Party or third party either at the deposition or within fifteen (15) business days after receipt of the transcript provided the testimony so designated concerns Confidential Information or describes documents which have been designated as "CONFIDENTIAL."
- c. Any Party may object to any other Party's designation of information, documents, or testimony as "CONFIDENTIAL" within fifteen (15) business days after receiving notice of such designation by notifying

the designating Party or third party in writing of its objection. Upon receiving a written objection, counsel for all Parties shall meet and confer in an effort to reach agreement on the propriety or scope of the designation in question. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. In the event that an agreement cannot be reached, the objecting Party shall move for an appropriate order covering the designated material within fifteen (15) business days of the designating party's refusal to change the disputed designation. Documents or materials that are the subject of a dispute over whether they contain Confidential Information shall be treated as protected from disclosure by this Agreement until one of the following occurs: (a) the designating Party withdraws its designation in writing; or (b) the Court rules that the document does not contain Confidential Information and is not subject to this Agreement.

III. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

- a. No Confidential Information shall be used by a receiving Party other than: (i) for the prosecution or defense of this action and any appellate

proceedings relating thereto; or (ii) for use necessary for the performance of Trustee Fenchak's fiduciary duties and oversight responsibilities.

b. Confidential Information shall not be disclosed by any receiving Party to any person other than:

- i. Any current trustee, administrator, employee, or other authorized representative of the University consistent with Plaintiff's role and obligations as a Trustee;
- ii. The Parties and counsel of record in this Action, including in-house and outside counsel involved in this case and their legal staffs;
- iii. The officers and employees of a Party who are necessary to assist in the prosecution or defense of this Action;
- iv. Any actual or proposed deponent or witness, to the extent such information is necessary to prepare that witness to testify, or to question the witness, at deposition or trial;
- v. The Court and its staff;
- vi. The jury at trial;
- vii. Any third party that is engaged for the purpose of copying, organizing, converting, storing, or retrieving documents

potentially subject to this Agreement (i.e., a copy service or e-discovery provider);

- viii. Any videographers and court reporters;
- ix. Any third party retained or appointed as mediator; and
- x. Other persons only by written consent of the producing Party or upon order of the Court in this Action and on such conditions as may be agreed upon or so ordered.

c. Plaintiff expressly agrees not to use, disclose, post, recreate, or otherwise publish the endowment materials, the Elevate Contract, or any information contained therein on any websites or social media platforms, including, but not limited to, the following:

- i. BarryFenchak.com;
- ii. Substack, including BarryFenchak.Substack.com;
- iii. Facebook, including Facebook.com/BarryFenchakPSUTrustee;
- iv. X (f/k/a Twitter), including @Fenchak4Trustee; and
- v. Blue White Illustrated, including posts under “PSUFTG” or “PSUFTG2” on on3.com.

d. No Party, person, or entity bound by this Agreement shall disclose or discuss any Confidential Information with anyone other than those

individuals and entities listed in Section III(b) of this Agreement unless required to do so by law or compulsory legal process.

IV. FILING OF CONFIDENTIAL INFORMATION

- a. Any Party wishing to file a document or testimony designated as “CONFIDENTIAL” by another Party, or wishing to file a pleading, motion, or brief that quotes from or reveals the substance of Confidential Information contained within such “CONFIDENTIAL” document or testimony (a “Confidential Filing”), shall: (i) file the Confidential Filing in accordance with the procedures set forth in the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania along with the Confidential Information Form required by that policy; and (ii) at the same time, serve an un-redacted version of the Confidential Filing upon the Parties to this Action bound by this Agreement. Provided, however, that any document or testimony designated as “CONFIDENTIAL” that contains Confidential Information that is unrelated to a Party’s proposed use of the document or testimony, or unnecessary to the Court’s consideration of the document or testimony, shall not be filed if the portions of such document or testimony containing Confidential Information can be redacted in a feasible manner.

- b. The producing Party that designated the document or testimony as “CONFIDENTIAL” shall cooperate in good faith to respond to timely and reasonable requests by another Party seeking to file redacted versions of documents or testimony, including assisting the filing Party to identify those portions of a document or testimony that the producing Party deems to contain Confidential Information.

V. OTHER OBLIGATIONS

- a. The terms of this Agreement shall not terminate at the conclusion of the Action. Rather, the confidentiality and nondisclosure obligations of this Agreement shall remain in full force and effect following any dismissal or entry of final judgment in this Action which is not subject to further appeal.
- b. Nothing herein shall be construed as a waiver of the right of Plaintiff to obtain information available to him by law in his capacity as a Trustee, the right to object to the request for any information sought by way of discovery, or object to the admissibility of any testimony or evidence where such objections are based on grounds other than the fact that the testimony or evidence involves Confidential Information.
- c. Prior to the time this Order is entered by the Court, Confidential Information shall be subject to the terms of this Order to the same extent as though the Order has been entered by the Court.

- d. Nothing contained herein shall affect the rights of any Party or third party with respect to his or its own documents or information.
- e. During the course of this Action, any Party is free to propose additional, heightened measures that it believes to be appropriate, such as “Attorney Eyes Only” measures, and the Parties agree to meet and confer regarding any such request in an attempt to reach agreement. Absent agreement, the Party proposing additional measures may seek protection from the Court.

[Signatures on next page]

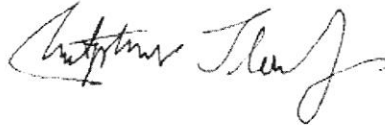
AGREED AS TO FORM AND SUBSTANCE:

On Behalf of Barry Fenchak:



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*On Behalf of The Pennsylvania State
University Board of Trustees and
Matthew Schuyler:*



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So Ordered this ___ day of _____, 2025

Marshall, J.