

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

)	
)	
)	Docket No. 2023-cv-2998-C1
)	
)	TYPE OF PLEADING
SPOTLIGHT PA,)	Second Amended Complaint in Equity
Plaintiff;)	
)	FILED ON BEHALF OF
)	
BOARD OF TRUSTEES OF THE)	Spotlight PA
PENNSYLVANIA STATE)	
UNIVERSITY,)	COUNSEL OF RECORD
)	Paula Knudsen Burke
Defendant.)	
)	PA I.D. NUMBER
)	87607
)	
)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filling in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff.

You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to the telephone or the office set forth below to find where you can get legal help.

**Centre County Bar Association
192 Match Factory Pl
Bellefonte, PA 16823
(814) 548-0052**

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SECOND AMENDED COMPLAINT FOR DECLARATORY AND

INJUNCTIVE RELIEF

Plaintiff, by and through its undersigned counsel, hereby files this Second Amended Complaint against the Pennsylvania State University (“Penn State”) Board of Trustees (“the Board”).

INTRODUCTION

1. Pennsylvania citizens have a statutorily protected right to observe and comment upon the workings of their government. The Sunshine Act, 65 Pa.C.S. §§ 701 *et seq.* (the “Act”), the Commonwealth’s open meetings law, was enacted with the legislative purpose of allowing citizens to witness and participate in actions of their government officials to enhance democratic control over and involvement in local affairs. “[S]ecrecy in public affairs undermines the faith of the public in government,” the General Assembly reasoned; as such, all political subdivisions are required to conduct governmental proceedings publicly. *Id.* § 702(a). Specifically, the public has a right to be “present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies.” *Id.*

2. Plaintiff Spotlight PA relies on public meetings to ensure that its readership is properly informed about happenings within local government and institutions receiving public money. Without access to meetings held by public bodies, Spotlight PA cannot bring its diverse readership the crucial insight that bolsters “faith of the public in government,” nor facilitate the democratic self-

governance that the Act was enacted to promote. *See* 65 Pa.C.S. §§ 701 *et seq.*

3. Since opening its State College bureau in Centre County, Spotlight PA has reported on Penn State's operations, including how journalists' and the public's inability to attend Penn State Board meetings has hampered meaningful understanding of how Penn State operates and upholds its obligations to the community and beyond. *See, e.g.,* Wyatt Massey, *Regular Private Meetings Among Top Penn State Trustees May Be Violating Pa.'s Transparency Law*, Spotlight PA (Sept. 15, 2022), <https://perma.cc/VQ5T-7DFE>.

4. Indeed, despite the General Assembly's explicit mandate that government bodies hold open meetings, Penn State's Board of Trustees has repeatedly refused to do so. Given the university's import and influence in Centre County, as well as its annual multi-million-dollar public funding, community members and politicians have been dismayed by Penn State's lacking transparency and accountability practices.

5. The mandate of the Sunshine Act cannot be realized until the Board's closed meetings are opened. The allegations contained herein demonstrate the Board's failure to abide by its Sunshine Act obligations and its misuse of exceptions to the Act's open meetings requirement to avoid public scrutiny. Due to the Board's failure to uphold its obligations to the public, nonprofit news outlet Spotlight PA seeks this Court's intervention in the form of declaratory and injunctive relief. In support thereof, Plaintiff avers as follows:

PARTIES

6. Spotlight PA is a Pennsylvania nonprofit corporation with federal 501(c)(3) status dedicated to independent, nonpartisan journalism about the Pennsylvania state government and urgent statewide issues. Spotlight PA operates the largest statewide distribution network of its kind in the United States, providing free access to vital public service and investigative journalism to millions of Pennsylvanians via partnerships with more than 100 news outlets across the state. Spotlight PA also posts its work online at spotlightpa.org. Spotlight PA's journalism has regularly prompted meaningful reform and been recognized by its peers at the state and national level as among the best local investigative journalism in the country. In addition to its reporting, Spotlight PA's State College bureau journalists regularly engage with community members through listening sessions and local events. They also host workshops for the Penn State student outlet *The Daily Collegian*, and participate in other opportunities to mentor student journalists. Spotlight PA's general mailing address is P.O. Box 11728, Harrisburg, Pennsylvania 17108-1728 and its State College bureau mailing address is 210 W. Hamilton Ave #331, State College, Pennsylvania 16801.

7. Spotlight PA's State College bureau employs three reporters and an editor. These Centre County-based reporters rely on public access to local governmental body meetings to provide news coverage to the Penn State community in Centre County and beyond. Reporters working for Spotlight PA regularly attend

meetings held by various Penn State bodies and its Board of Trustees.

8. Defendant Pennsylvania State University Board of Trustees is comprised of thirty-eight individual Trustees and is the managing and governing body of Penn State. *See* Current Trustees, Penn State Office of the Board of Trustees, <https://trustees.psu.edu/trustees/> (last visited Dec. 5, 2023); Corporate Charter of The Pennsylvania State University, <https://trustees.psu.edu/files/2019/03/Charter-November-2017-1.pdf> (last visited Dec. 5, 2023). Trustees include Penn State alumni, community business and industry leaders, the governor, and secretaries of several Pennsylvania state agencies. The Board's office is in Centre County at 201 Old Main, University Park, Pennsylvania 16802.

9. The Board is a government agency under the Sunshine Act, 65 Pa.C.S. § 703. An “agency” under the Act is a governmental decision-making body “and all committees thereof authorized by the body to take official action or render advice on matters of agency business,” including such committees that exist as part of “the boards of trustees of all State-related universities,” including Penn State. *Id.*

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action involving the Board of a state-related university pursuant to 42 Pa.C.S. § 931(a) and 65 Pa.C.S. § 715.

11. All parties are located in this County and the Court can exercise personal jurisdiction over them.

12. This action arose in Centre County and is a lawsuit against a

government agency located within the county. Therefore, venue is appropriate pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2103, as well as 65 Pa.C.S. § 715.

STATEMENT OF FACTS

A. Background

13. On October 26, 2023, Spotlight PA sent the Board, President Neeli Bendapudi, and Penn State General Counsel Tabitha Oman a letter (“Letter”) demanding that Penn State abide by the open meetings requirements of the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701 *et seq.*, and requesting a reply in advance of its next meeting, which was to be held on November 9, 2023. A copy of the Letter is attached hereto as Exhibit A.

14. The Letter outlined the Board’s routine practice of excluding Spotlight PA reporters and the public from its meetings on the asserted basis that the meetings were “conferences” or “executive sessions,” and thus exempt from the Act’s openness requirement. *Id.*

15. For instance, the Letter relied on documents secured by Spotlight PA through Right-to-Know Law requests that revealed the Board held a closed meeting in April 2023 for the purpose of reviewing the Board’s Finance, Business, and Capital Planning materials, and requested that trustees ask questions “during the closed session” so that they could be “answered in the run up to”—as opposed to during—the Board’s public May 2023 meeting. *Id.*

16. Concluding the Letter, Spotlight PA and its counsel offered to meet directly with the Board for Sunshine Act compliance training and referred the Board to the Pennsylvania Office of Open Records for the same. *Id.*

17. The Board responded to the Letter on November 9, 2023, stating that Penn State's General Counsel was "confident that the Board has taken its official actions and conducted its deliberations in compliance with the Act." The Board's response is attached hereto as Exhibit B.

18. A complaint alleging multiple violations of the Act was filed December 6, 2023.

19. A first amended complaint was filed March 26, 2024.

20. The allegations contained within the December 6, 2023 complaint and the March 26, 2024 first amended complaint are incorporated herein.

B. Specific Violations

21. The Board held a series of meetings that took place on November 9 and 10, 2023 at the Eric J. Barron Innovation Hub at 123 South Burrowes Street, State College, Centre County.

22. The Board excluded the public from its November 2023 meetings even though it was on notice that its transparency practices were inconsistent with the Act. *See Ex. A.*

23. On both November 9 and 10, 2023, Spotlight PA reporter Wyatt Massey attempted to attend the Board's meetings.

24. At approximately 3:17 p.m. ET on November 9, 2023, Massey entered Room 603 of the Eric J. Barron Innovation Hub, which was the advertised location of two Board committee meetings—the Committee on Audit and Risk and the Committee on Finance, Business, and Capital Planning.

25. When Massey entered Room 603, he heard and saw trustees speaking around a table. Upon seeing Massey enter the room, Rachel Pell, vice president of the Penn State Office of Strategic Communications, signaled to the trustees to stop talking. Shannon Harvey, assistant vice president and secretary of the Board, approached Massey and told him that the Board was meeting in an executive session. Harvey then requested that Massey step out of the room until the public meeting began, which he did.

26. It was unclear to Massey whether this alleged executive session was being held by a Board committee or the entire Board.

27. Several minutes later, Harvey came outside Room 603 and informed Massey that the Audit and Risk Committee’s public meeting was beginning.

28. The Audit and Risk Committee’s public meeting lasted fewer than ten minutes before the committee went into what it called an executive session at approximately 3:30 p.m.

29. The Board did not explain why it was holding two executive sessions—not to Massey in his one-on-one conversation with Secretary Harvey, nor to the public during the ten-minute meeting that took place between the supposed

executive sessions.

30. During the full Board's public meeting on November 10, 2023, the Committee on Audit and Risk chair, Randy Black, summarized that committee's public meeting the previous day but did not provide a reason for the alleged executive sessions that occurred before and after the committee's November 9 public meeting.

31. At approximately 7:38 a.m. ET on November 10, 2023, Massey attempted to enter the Eric J. Barron Innovation Hub building, which was the advertised location of the Board's "Conference and/or Privileged Executive Session" from 8:00 a.m. ET to 12:30 p.m. that day.

32. Thomas J. Oziemblowsky, the Board's associate director, was standing outside of the building, seemingly there to open the door for arriving trustees.

33. When Massey approached, Oziemblowsky identified himself verbally as a Board and Penn State employee. Oziemblowsky was wearing a name tag containing similar information. Oziemblowsky then identified Massey verbally and Massey confirmed his name and position as a Spotlight PA reporter.

34. Massey asked Oziemblowsky whether the Board was meeting that morning and whether the meeting was open to the public. Oziemblowsky confirmed verbally that the trustees were gathering that morning but said that the event was not open to the public.

35. Massey asked Oziemblowsky to clarify whether the trustees were

gathering that morning in a “conference” or an “executive session” since the Board’s webpage noting the Board would be in a “Conference and/or Privileged Executive Session” was not clear. Oziemblowsky said the event was a “conference” and that there was a legal distinction between conferences and executive sessions.

36. Finally, Oziemblowsky told Massey that a public Board meeting would occur later that day in the afternoon.

37. Neither before nor after the asserted November 10 “conference” did the Board, or a representative of the Board, state that the closed session involved a training program, seminar, or session, called by a state or federal agency to provide Board members information on matters directly related to their official responsibilities.

38. During the Board’s public meeting on the afternoon of November 10, Board chair Matthew Schuyler did not indicate that the morning meeting was a conference and instead stated that the Board had met “in executive session to discuss various privileged matters.” No further information about the gathering was provided to the public at that time.

39. The Board website and Schuyler’s statement failed to properly identify which section of the Act permitted the Board to meet in a closed session.

40. The Board held another series of meetings on February 15 and 16, 2024 at the Hintz Family Alumni Center at University Park, PA 16802 in Centre County.

41. The Board excluded the public from its February 2024 meetings even

though it was on notice that its transparency practices were inconsistent with the Act. *See* Ex. A and December 6, 2023 Initial Complaint in the above-referenced matter.

42. On both February 15 and 16, 2024, Spotlight PA State College reporter Wyatt Massey and editor Sarah Rafacz attempted to attend various Board meetings.

43. The Board Subcommittee on Compensation met in closed session on February 15, 2024, at 12:45 p.m. in Robb Hall, a large meeting room surrounded by floor-to-ceiling glass windows.

44. Massey sat outside Robb Hall, while Oziemblowsky and several other individuals stood in front of the large windows that look onto Robb Hall for nearly the entirety of the 45-minute meeting.

45. At approximately 1:30 p.m. on February 15, 2024, the Board Subcommittee on Compensation opened their meeting to the public, at which point Massey entered Robb Hall.

46. Thereafter, the Board Subcommittee on Compensation held a public session beginning at 1:30 p.m.

47. At that meeting, a representative of the Subcommittee shared that it had met in closed session prior to the public meeting to review compensation changes for Penn State President Bendapudi.

48. The representative stated that the Subcommittee and the larger Board met together in executive session to discuss and reached an agreement on a recommendation to the full Board regarding compensation changes.

49. The public Board Subcommittee on Compensation meeting lasted fewer than two minutes.

50. At approximately 3:00 p.m. on February 15, 2024, the Board's Committee on Audit and Risk met publicly for several minutes to introduce the new director of internal audits to the larger Board.

51. At the conclusion of the Board Committee on Audit and Risk public meeting, Committee chair Randall Black stated that the next two meetings would be closed to the public as working and executive sessions. He further stated that: "During the executive session the committee will meet individually and privately with management, the Plante Moran representatives, and the internal audit director. The committee will not take any official action following the working session or the executive session. At this time, this concludes the public meeting"

52. From 3:45 to 4:00 p.m. on February 15, 2024, the Board's Committee on Audit and Risk held what it called an executive session meeting.

53. The Board met privately again beginning at 8:00 a.m., on February 16, 2024. This meeting was not noted on the Board's website.

54. At approximately 8:30 a.m. on February 16, Spotlight PA State College editor Sarah Rafacz entered the Hintz Alumni Center. She observed that trustees were again meeting in Robb Hall.

55. When Rafacz approached the doors to Robb Hall, two unidentified individuals emerged from the room. Rafacz asked if the Board was meeting, and

one of the individuals replied that they were meeting in executive session. Rafacz asked what the Board was meeting about, and the individual replied that Rafacz would have to ask the Board and that the individual would get someone who could speak to Rafacz further on the matter.

56. Pell then came out of the room across from Robb Hall and Rafacz asked her why the Board was in executive session. Pell replied that they were not in executive session, but instead meeting in conference. Rafacz asked which state or federal agency was relaying information to the trustees. Pell replied that Rafacz would have to speak with General Counsel Oman.

57. Oman then came over to Rafacz, and Rafacz identified herself. Rafacz asked if the Board was meeting in conference, and if so, which state or federal agency was relaying information to the trustees. Oman stated that the Board was meeting for informational purposes only and that they were confident the meeting was in compliance with the Sunshine Act.

58. On the afternoon of February 16, 2024, Rafacz and Massey attended the 1:00 p.m. Board meeting, held again in Robb Hall. During that meeting, Board chair Schuyler shared that the Board had met on January 29, 2024 in executive session to discuss Board initiatives.

59. Of the January 29 executive session, Chairman Schuyler stated that: “[t]he board did not take any action following that executive session.”

60. As to the February 16 morning meeting, Schuyler said: “The Board also

met this morning [February 16, 2024] in conference session and received informational updates on a variety of topics including Penn State’s health enterprise, strategic initiatives related to President Bendapudi's university road map for the future, philanthropy, and Penn State’s upcoming campaign, and the governor’s budget.”

61. On May 21, 2024, the Board’s Committee on Finance, Business, and Capital Planning, as well as the full Board, met publicly via Zoom. *See* Committee on Finance, Business and Capital Planning and Board of Trustees Meeting, Penn State (Published: May 21, 2024), https://psu.mediaspace.kaltura.com/media/Committee+on+Finance%2C+Business+and+Capital+Planning+and+Board+of+Trustees+Meeting/1_26npe460. The meetings were held back-to-back exclusively on the virtual platform. A certified court reporter has prepared a transcript of the May 21 Zoom meeting and it is attached hereto as Exhibit C.

62. Massey attended virtual May 21 Committee and full Board meetings.

63. At the beginning of the May 21 Committee meeting, Board Chair Schuyler stated, “Please note pursuant to Section 708(a)(5) of the Pennsylvania Sunshine law, the Board held an executive session prior to this meeting to review and discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” Ex. C at 3:8–15.

64. At the beginning of the full Board meeting, Schuyler announced that trustees were limited to one question per turn speaking, and that statements made would have to be fewer than two minutes long. *See id.* at 47:13–24.

65. Immediately following this announcement, alumni-elected trustee Alvin de Levie raised his virtual hand and stated: “[R]egarding the time constraints that Chair Schuyler has just stated, we have received statements in the public ... that we will have full opportunity to ask questions and to deliberate. This is the only time in accordance with Sunshine Law that we can deliberate. I would like to make some comments for deliberation, not necessarily ask questions.” *Id.* at 48:6–15.

66. Schuyler indicated that trustees already had “many, many sessions to discuss this. So parliamentarily we just want to limit it to the extent that we can.” *Id.* at 48:24–25. Upon information and belief, the previous sessions to which Schuyler referred were closed, non-public meetings. *Id.* at 56:19–21.

67. Schuyler refuted that any Board members felt rushed to vote on Beaver Stadium renovation proposals, stating that “We’ve had months and months of dialogue on this and years of discussion.” *Id.* at 50:16–18.

68. De Levie began to mention Penn State’s budget deficit, *id.* at 52:20–21, but was cut off by Schuyler asking, “[D]o you have a question?” *Id.* at 52:23–24. De Levie replied, “I’m making comments for purposes of deliberation.” *Id.* at 52:25–53:1. Schuyler stated that the “session” underway was “not meant to be point, counterpoint debating.” *Id.* at 53:2–3.

69. Trustee Anthony Lubrano criticized Schuyler's approach, stating that the Board has "little time to ever publicly discuss anything." *Id.* at 53:20–23.

70. De Levie also criticized Schuyler's limitation on debate, stating "I don't know yet how I'm voting because I want to deliberate. And quite frankly we're not being given the opportunity to do so." *Id.* at 56:15–18. Schuyler replied, "Well, Alvin, we've had multiple opportunities to deliberate in our executive sessions as you're aware." *Id.* at 56:19–21.

71. Trustee Brandon Short confirmed that the Board had debated during executive session, noting that he had "reviewed our model and our assumption" regarding the renovation and had "challenged them in executive session." *Id.* at 64:12–14.

72. Trustee Barry Fenchak further agreed that the Board required "time for us to actually have a robust discussion and deliberation as opposed to saying we've had a robust deliberation." *Id.* at 72:24–73:2.

73. Fenchak moved to formally postpone the vote, and de Levie seconded the motion. *Id.* at 73:2–8. Delaying, de Levie said, would "give[] trustees and the public an opportunity to have a truly robust opportunity to deliberate." *Id.* at 77:1–4.

74. Schuyler denied that the trustees had not been provided sufficient time to contemplate and deliberate about the renovation. *See id.* at 77:12–17. He did not mention whether the public had been given similar opportunities.

75. Soon after, trustee Lubrano stated: “Yeah, I just want to remind all of us under the Sunshine Law an executive session can’t be used as a method to defeat the quote/unquote open meeting requirements of the Act. So when the chair says that we’ve had plenty of time to deliberate, I would argue that, in fact, that’s not the case because deliberation would have been a clear violation of the Act.” *Id.* at 78:1–9.

76. General Counsel Oman replied, “That’s not a correct interpretation of the law, Anthony. We may—the Board may deliberate in executive session.” *Id.* at 78:10–13.

77. In 2024, after being served with the Initial Complaint in this lawsuit, the Board met privately on at least five separate occasions in what it claims were either executive or conference sessions: January 29; February 15 from 12:45–1:30 p.m.; February 15 from 3:45–4:00 p.m.; February 16 beginning at 8:00 a.m. for an indeterminate amount of time; and “many, many” times for indeterminate lengths of time in order to deliberate and discuss Beaver Stadium renovations.

CAUSES OF ACTION

COUNT I

Violation of the Sunshine Act; Improper Use of the “Conference” Exception

78. Plaintiff hereby incorporates and adopts the allegations set forth in the foregoing paragraphs of the Complaint.

79. The Sunshine Act permits an agency to participate in a conference

which need not be open to the public. 65 Pa.C.S. § 707(b).

80. A “conference” is defined as “[a]ny training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.” *Id.* § 703.

81. There is no evidence that the Board held a conference, as described by the Act, on November 10, 2023. *See id.* No state or federal agencies were identified as being present, nor was any topic provided to the public about an alleged course of programming or training.

82. Accordingly, Defendant violated the Act by labeling its closed meeting on November 10, 2023, a “conference” and conducted its business in a closed session when the meeting was required to be open to the public.

83. There is furthermore no evidence that the Board held a conference, as described by the Act, on the morning of February 16, 2024. *See id.* No state or federal agencies were identified as being present, nor was any topic provided to the public about an alleged course of programming or training. Oman refused to provide any such affirmation, and Chairman Schuyler made no suggestion that a state or federal agency presented to the Board on the topics of Penn State’s health enterprise, strategic initiatives, philanthropy, university campaigns, or the governor’s budget, as is required for a “conference,” under the Act.

84. Accordingly, Defendant violated the Act by labeling its closed meeting

on February 16, 2024, a “conference” and conducted its business in a closed session when the meeting was required to be open to the public.

85. Absent injunctive relief, Plaintiff will be irreparably harmed because the Board improperly closed its meetings on important government matters, misused the “conference” exception to the Sunshine Act, and has not committed to altering its present course of action.

COUNT II

Violation of the Sunshine Act; Improper Use of the “Executive Session” Exception

86. Plaintiff hereby incorporates and adopts the allegations set forth in the foregoing paragraphs of the Complaint.

87. The Act’s “executive session” exception may be employed to exclude the public from meetings that would otherwise be open to the public. 65 Pa.C.S. § 708.

88. There are just seven narrow justifications for which an agency may claim it is holding an “executive session.” *Id.* § 708(a)(1)–(7).

89. There is no evidence that the Board adhered strictly to any one of the seven topics that justify holding an executive session during its November 9 closed meeting held until approximately 3:20 p.m.

90. There is no evidence that the Board’s Audit and Risk Committee adhered strictly to any one of the seven topics that justify holding an executive

session during its November 9 closed meeting at 3:30 p.m. for an unknown quantity of time.

91. There is no evidence that the Board adhered strictly to any one of the seven topics that justify holding an executive session during its November 10 four-and-a-half-hour closed meeting.

92. The Board's explanation that it met in a closed session to "discuss various privileged matters" is too vague and fails to identify with specificity which of the seven justifications applied.

93. Accordingly, the Board did not hold legitimate "executive sessions" on November 9 or 10, 2023, and conducted its business in a closed session when the meeting was required to be open to the public.

94. There is also no evidence that the Board adhered strictly to any one of the seven topics that justify holding an executive session during the Subcommittee on Compensation's 12:45–1:30 p.m. meeting on February 15, 2024. Though a representative of the Subcommittee announced at the public meeting thereafter that the Board had met to review and to discuss compensation changes to President Bendapudi's salary, the Subcommittee's closed-door meeting lasted approximately 45 minutes and it is unclear if the scope of the conversation exceeded the allowable parameters of the Act. *See* 65 Pa.C.S. § 708(a)(1).

95. There is no evidence that the Board adhered strictly to any one of the seven topics that justify holding an executive session during the Subcommittee on

Audit and Risk’s 3:45–4:00 p.m. meeting on February 15, 2024.

96. Finally, Plaintiff first learned on May 21, 2024, that the Board held what it called “executive sessions” multiple times leading up to the May 21 meeting to provide Trustees the opportunity to “deliberate” and discuss renovations to Beaver Stadium.

97. During the May 21 meeting, a trustee stated that the Board discussed financial models and projections for the stadium renovation in executive sessions, even though such discussions do not fall under any of the seven justifications for holding an executive session.

98. A trustee at the May 21 meeting also disputed that deliberations held in executive session regarding Beaver Stadium renovations were being held in compliance with the Act.

99. Without emergency injunctive relief, Plaintiff will be irreparably harmed since the Board historically and presently prevents the public and press from attending meetings that should be open by claiming it is holding “executive sessions.”

COUNT III

Violation of the Sunshine Act; Failure to Adhere to Executive Session Procedure

100. Plaintiff hereby incorporates and adopts the allegations set forth in the foregoing paragraphs of the Complaint.

101. The Act obligates Defendant to announce “[t]he reason for holding the executive session,” from among the list of seven justifications, “at the open meeting occurring immediately prior or subsequent to the executive session.” 65 Pa.C.S. § 708(b).

102. Defendant violated the Act when it failed to provide the public an explanation for why the Board and/or its committees entered executive sessions on November 9, 2023.

103. Defendant violated the Act when it refused to articulate a specific justification for holding an executive session on the morning of November 10, 2023.

104. Defendant violated the Act when it refused to articulate a proper and specific justification for holding an executive session on February 15, 2024 from 12:45–1:30 p.m.

105. Defendant violated the Act when it refused to articulate a proper and specific justification for holding an executive session on February 15, 2024 from 3:45–4:00 p.m.

106. Defendant violated the Act when it refused to articulate proper and specific justifications for holding executive sessions regarding the stadium renovation prior to the Board’s public meetings on May 21, 2024.

107. Plaintiff stands to suffer continued harm if Defendant carries on obscuring its reasons for holding “executive sessions,” and fails to communicate timely and intelligibly its reasons with the public.

COUNT IV

Violation of the Sunshine Act; Deliberating at Non-Public Meetings

108. Plaintiff hereby incorporates and adopts the allegations set forth in the foregoing paragraphs of the Complaint.

109. Pursuant to the Sunshine Act, when a quorum of an agency body engages in deliberation, it must publicly advertise and hold that meeting, as well as keep minutes. 65 Pa.C.S. §§ 704, 706.

110. Notably, an agency may not use a conference to deliberate on any “agency business,” whether or not the conference exception is otherwise properly invoked. *Id.* § 707(b).

111. “Deliberation” is any “discussion of agency business”—including “[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability . . . or the adjudication of rights, duties and responsibilities”—for the purpose of “making a decision.” *Id.* § 703.

112. There is no evidence that the Board held a conference, as described by the Act, on November 10, 2023. *See id.* No state or federal agencies were identified as being present, nor was any topic provided to the public about an alleged course of programming or training.

113. Therefore, on information and belief, the Board used the “conference” exception to close the morning portion of its November 10, 2023, meeting and deliberate agency business in violation of the Act. If any deliberation of agency

business occurs at a “conference,” those portions must be public. *Id.* § 707(b).

114. There is also no evidence that the Board held a conference, as described by the Act, on February 16, 2024. *See id.* No state or federal agencies were identified as being present, nor was any topic provided to the public about an alleged course of programming or training provided by such an agency. Oman’s personal communication to Rafacz that the meeting was “informational ... only” is not sufficient. Neither does Chairman Schuyler’s public announcement that the Board met in conference to discuss a bevy of topics, without any description of the format or invocation of any state or federal agency, meet the requirements of the Act.

115. Therefore, on information and belief, the Board used the “conference” exception to close the morning portion of its February 16, 2024 meeting and deliberate agency business in violation of the Act. If any deliberation of agency business occurs at a “conference,” those portions must be public. *Id.* § 707(b).

116. On May 21, 2024, the Board admitted publicly that it deliberated at non-public executive sessions.

117. While deliberation *may* occur during an executive session, a meeting may not be closed simply *because* deliberations are to take place—quite the opposite is true. *See* 65 Pa.C.S. § 704 (“Official actions and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public, unless closed” pursuant to the Act’s exceptions) (emphasis added); *Smith v. Twp. of Richmond*, 623 Pa. 209, 221 (2013) (“A ‘meeting’ occurs, and thus must be open to the public, if the

agency convenes it to deliberate agency business.”) (the Act “proscribe[s] ... private ‘deliberations.’”).

118. While certain meetings held “for informational purposes” may, in limited circumstances, constitute an executive session, deliberation requires openness in all meetings that are not proper executive sessions. *See Smith*, 623 Pa. at 224 (“closed-door gatherings did not violate the Act because they were held for informational purposes only and did not involve deliberations”).

119. Notably, of the seven justifications for holding an executive session under 708(a)(1)–(7), only one justification permits “deliberation”—but that pertains only to “quasi-judicial deliberations.” 65 Pa.C.S. § 708(a)(5).

120. At the May 21 meeting, trustees repeatedly expressed concerns that the public was being closed out of deliberations or not allowed the opportunity to deliberate on issues that ought to have been discussed in public.

121. In particular, a trustee at the May 21 meeting noted that Beaver Stadium renovation financial proposals were discussed behind closed doors, which violates the Act’s prohibition on deliberating since the Board is not permitted to hold an executive session for discussion on a subject matter of this type.

122. Where the Board held improper executive sessions regarding renovations to Beaver Stadium or where the scope of its deliberations went beyond the limited justifications to deliberate in private pursuant to the Act, the Board’s deliberations at these “many, many” meetings were in violation of the Act.

123. Plaintiff faces irreparable harm if the Board continues deliberating in secret without affording the public or the press the chance to observe and contribute to discussion of significant community issues.

COUNT V

Violation of the Sunshine Act; Taking Official Action at Non-Public Meetings

124. Plaintiff hereby incorporates and adopts the allegations set forth in the foregoing paragraphs of the Complaint.

125. The Sunshine Act requires that whenever an agency takes an “[o]fficial action” it must do so “at an open meeting.” 65 Pa.C.S. § 708(c). The executive session exception cannot “be used as a subterfuge to defeat the purposes of” the Act by allowing officials to shield their official actions from public view. *Id.*

126. There is no evidence that the Board adhered strictly to any one of the seven topics that justify holding an executive session during its November 10 four-and-a-half-hour closed meeting.

127. The Board’s explanation that it met in a closed session to “discuss various privileged matters” is too vague and fails to identify with specificity which of the seven justifications applied.

128. Defendant’s claim that it met in executive session on February 15, 2024 from 12:45–1:30 p.m. to discuss and recommend compensation does not identify with sufficient particularity which of the seven justifications justified closing that meeting to the public.

129. There is also insufficient evidence that the Board met in executive session on February 15, 2024 from 3:45–4:00 p.m. without taking official action. Without more information about the nature of the meeting, and without identifying specifically which of the seven justifications justified closing that meeting, there is not enough public information to know that official action was avoided at the meeting.

130. Therefore, on information and belief, and in conformity with the Board’s previous conduct, *see* Ex. A, the Board held “executive sessions” on November 9 and 10, 2023, and on February 15, 2024, in name only. Specifically, Defendant used the “executive session” exception “as a subterfuge to defeat the purposes of” the Act and dispensed with its obligation to refrain from taking official action during an executive session. 65 Pa.C.S. § 708(c).

131. Absent emergency injunctive relief, Plaintiff will be irreparably harmed because by hiding behind the “executive session” exception and taking official action on important government matters in secret, the Board deprives Plaintiff and the public of their statutory right to participate in the decision making of government, undermining the very purposes of the Act.

PRAYER FOR RELIEF

The Pennsylvania Sunshine Act provides Plaintiff the only avenue for relief from Defendant’s violations of the Act. 65 Pa.C.S. § 713. Defendant’s unlawful actions and policies have harmed Plaintiff and Plaintiff will continue to suffer harm

if the Court does not grant relief as stated below. WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in its favor and against Defendant and:

- a. Declare that the Pennsylvania State University Board of Trustees violated the Sunshine Act;
- b. Enjoin the Pennsylvania State University Board of Trustees from unlawfully invoking the executive or conference session exception to overcome the open meetings requirements of the Sunshine Act;
- c. Mandate Defendant to receive Sunshine Act training from the Pennsylvania Office of Open Records; and
- d. Award Plaintiff's attorneys fees pursuant to 65 Pa.C.S. § 714.1.

Dated: June 21, 2024

Respectfully submitted,

/s/ Paula Knudsen Burke

Paula Knudsen Burke

PA I.D. No. 87607

REPORTERS COMMITTEE FOR

FREEDOM OF THE

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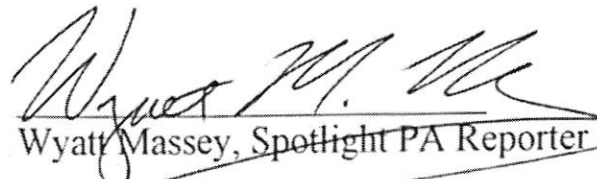
CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

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

Submitted by: Paula Knudsen Burke
Signature: /s/ Paula Knudsen Burke
Attorney No.: 87607

**PLAINTIFF VERIFICATION OF COMPLAINT BASED ON ADDITIONAL
FACTS IN AMENDED COMPLAINT WITHIN PLAINTIFF'S PERSONAL
KNOWLEDGE**

On this 21st day of June 2024, I hereby certify that the factual averments attributed to my own observations that are contained within this complaint are true and correct to my own personal knowledge. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.


Wyatt Massey, Spotlight PA Reporter

3. The Pennsylvania State University Board of Trustees is to receive Sunshine Act training from the Pennsylvania Office of Open Records, to be completed within thirty days of the issuance of this Order; and
4. Plaintiff is entitled to attorneys fees pursuant to 65 Pa.C.S. § 714.1.

EXHIBIT A

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Jigsaw Productions

SUSAN GOLDBERG
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JAMES GRIMALDI
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identification.



October 26, 2023

VIA EMAIL

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Re: Maintaining Open Meetings as Required by the Sunshine Act

Dear President Bendapudi, Chair Schuyler and Ms. Oman:

I write on behalf of my client, Spotlight PA. As you know, Spotlight PA has provided high-quality investigative journalism to the citizens of Pennsylvania since 2019, and it continues to do so today. Part of Spotlight PA's coverage includes reporting from its State College bureau where journalists are dedicated to bringing first-rate local news to the citizens of north-central Pennsylvania, including information about The Pennsylvania State University ("PSU").

As part of its newsgathering practices, Spotlight PA relies on public records and meetings to ensure that its readership is properly informed about happenings within local government and institutions receiving public money, including PSU. Unfortunately, past and continuing practices of the PSU Board of Trustees ("the Board") have been less than transparent and raise significant Sunshine Act compliance concerns. We respectfully request that you immediately review the concerns outlined below and address them ahead of the next Board of Trustees meeting scheduled for November 9 and 10, 2023.

A. Penn State Trustee meetings are subject to the Sunshine Act.

The Sunshine Act ("the Act") was enacted in 1974 with the purpose of providing Pennsylvania citizens comprehensive access to government

meetings¹. It enshrined in statute the long-held right of citizens to observe and participate in government decisionmaking. The Act requires political subdivisions to conduct governmental proceedings that are transparent and open to the public. 65 Pa.C.S. § 702(a). Specifically, the public has a right to be “present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies.” *Id.*

In 2004, following PSU’s controversial acquisition of an independent law school and related litigation,² the legislature amended the Act to explicitly include bodies such as the Penn State Board of Trustees within its scope. 65 Pa.C.S. §703. Speaking in support of making Penn State subject to the Sunshine Act, Senator Harold F. Mowery, Jr. said “[t]his amendment is drawn to make it clear that the Board of Governors, charged with making recommendations that affect degree programs, is covered by the Sunshine Law.” S. 188-41, Sess. 2004, at 1852 (Pa. 2004). He explained that it was important to bring “sunshine” to a process that involved millions of public dollars and that by improving transparency, the Act would allow citizens to “visibly not only see, but also hear what is going into this decisionmaking process.” *Id.*

It is beyond question that both the Board and the various committees conducting the Board’s business are “agencies” within the meaning of the Act. *See* 65 Pa.C.S. §703. Yet, the Board and its thirteen-member Executive Committee often hold closed meetings, with the latter group not having held a public meeting in nearly twelve years.³

B. The Sunshine Act forbids public bodies from deliberating or taking official action outside public meetings and exceptions to the Act are narrow.

A quorum of an agency body that convenes and takes official action or engages in deliberation is subject to the Sunshine Act and must therefore publicly advertise and hold such a meeting, as well as keep minutes of all public meetings. 65 Pa.C.S. §701 *et seq.* There are only three exceptions to this provision, and they are exceptionally narrow. Two pertinent exceptions are discussed in turn.

1. The Executive Session Exception

It is important to note at the outset that the Sunshine Act is not a confidentiality statute. It is a public access law that establishes the floor for public access, not the ceiling. Its exceptions are not mandatory. The “executive session” exception may be employed to exclude the public from meetings that would otherwise be open. *Id.* at §708. An agency may only hold an executive session for specifically enumerated reasons. *Id.*; *Reading Eagle, Co. v. Council of Reading*, 627 A.2d 305, 307 (Pa. Commw. 1993). These reasons

¹ *See* Craig J. Staudenmaier, *The Commonwealth Court: Guardian of Access to Public Records and Meetings*, 21 Widener L.J. 137 (2011).

² *See Lee Publications v. Dickinson School of Law*, 848 A.2d 178 (Pa. Commw. 2004).

³ Wyatt Massey, *Regular Private Meetings Among Top Penn State Trustees May Be Violating Pa.’s Transparency Laws*, Spotlight PA (Sept. 15, 2022), <https://perma.cc/ZAM3-G8JG> (hereinafter “Massey, *Regular Private Meetings*”) (noting that the last time the Executive Committee met publicly was on December 2, 2011 to approve “a previous board decision to accept Graham Spanier’s resignation as university president and to end Joe Paterno’s tenure as head football coach.”).

must “be genuine and meaningful, and one the citizen can understand,” so as not to frustrate the “purpose of the Act” and to help the public “determine from the reason given whether they are being properly excluded from the session.” *Reading Eagle, Co.*, 627 A.2d at 307. There are “only six narrow reasons for which an agency is permitted to conduct an executive session.” *Trib Total Media, Inc. v. Highlands Sch. Dist.*, 3 A.3d 695, 700 (Pa. Commw. 2010); *see also* 65 Pa.C.S. §708(a)(1)–(6).

One of the most-frequently invoked reasons for holding an executive session is the litigation exception. *See* 65 Pa.C.S. §708(a)(4). This exception is strictly circumscribed and is meant for agencies to consult with an attorney regarding current or anticipated litigation. The presence of an attorney at an agency meeting, even when that attorney is sharing information, is not sufficient on its own to invoke the executive session exception. *See id.* at §708. Moreover, “consultation” is a limited activity, “confined to private consultations between the agency and its counsel or advisors regarding litigation strategy and information—subjects that must be kept confidential to protect an agency’s ability to settle or defend those matters.” *Trib Total Media, Inc.*, 3 A.3d at 700. To properly call an executive session, an agency “must spell out in connection with existing litigation the names of the parties, the docket number of the case and the court in which it is filed” or if litigation is only threatened, “announce the nature of these matters.” *Reading Eagle Co.*, 627 A.2d at 306.

Finally, official action “on discussions held” pursuant to the executive session exception must “be taken at an open meeting.” 65 Pa.C.S. §708(c). Even if an agency properly notices and holds an executive session, it may not abuse the exception by establishing policy, making decisions on agency business, or taking votes that “commit the agency to a particular course of conduct” in secret. *Id.* at §708(c); *Preston v. Saucon Valley School Dist.*, 666 A.2d 1120, 1122 (Pa. Commw. 1995).

2. The Conference Exception

In addition to the executive session exemption, the Act also permits an agency to participate in a conference which need not be open to the public. A “conference” is defined as “[a]ny training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.” *Id.* at §703.

Notably, an agency may not use a conference to deliberate on “any agency business,” whether or not the conference exception is otherwise properly invoked. *Id.* at §707(b). The Pennsylvania Senate considered the meaning of the “conference” exception carefully, up until the final unanimous vote authorizing its addition to the Act. *See* S. 170-15, Sess. 1986, at 1751 (Pa. 1986). On the floor, Centre County Senator Doyle Corman advocated that the conference exception’s strict confines be respected, stating that “the exact reasoning for” putting tight boundaries around the definition of “conference” was to ensure that agencies would still be required to deliberate publicly “in [their] home communit[ies].” S. 169-46, Sess. 1985, at 782–83 (Pa. 1985).

Though “*learning* about the salient issues so as to reach an informed resolution at some later time does not in itself constitute deliberation,” *Smith v. Twp. of Richmond*, 82 A.3d 407, 416 (2013) (emphasis added), when a majority of agency committee members gather to *discuss* a matter, and those discussions merely go “toward the purpose of ultimately making a decision at *some time*,” the agency is considered to have deliberated agency business. *Ackerman v. Upper Mt. Bethel Twp.*, 567 A.2d 1116, 1119 (Pa. Commw. 1989) (emphasis added). The court in *Smith* held that gatherings whose “sole[] ... purpose” was “collecting information or educating agency members about an issue” was not deliberation but that, conversely, “discussion consist[ing] of debate or discourse directed toward the exercise of” “judgment to determine which of multiple options is preferred” is, indeed, deliberation that must be undertaken publicly. 82 A.3d, at 415. Echoing *Ackerman*, the *Smith* court clarified that when an agency body “weighs the ‘pros and cons’ of the various options involved” or compares “different choices available to them as an aid in reaching a decision on the topic,” “even if the decision is ultimately reached at a later point,” it is deliberating. *Id.*

Additionally, in *Times Leader v. Dallas School District*, a news outlet sought access to school board meetings that were closed to the public after the district invoked the conference exception. 49 Pa. D. & C.3d 329, 330 (Pa. Com. Pl. 1988). A Luzerne County Court of Common Pleas judge held that the definition of “conference” in the Act is narrowly defined and rejected the board’s attempt to shield its internal discussions by casting the meeting as an “informational conference.” *Id.* at 331–32.

C. The Penn State Board of Trustees improperly deliberates, takes official action, and uses the executive session and conference exceptions in violation of the Sunshine Act.

Reporting by Spotlight PA reveals that the Penn State University Board of Trustees has taken official action and conducted deliberations outside of public meetings in contravention of the Sunshine Act, all while improperly claiming it is exempt from conducting public meetings via the “conference” and “executive session” exceptions. *See generally* Massey, *Regular Private Meetings*.

Reporting shows that the Board uses the Sunshine Act’s limited conference and executive session exceptions interchangeably, indiscriminately, and in error. *See* Appendix A ¶¶1–4 (listing numerous instances where the Board and its committees declared non-public meetings “conferences,” “executive sessions,” or both). Internal communications between various Board administrators and members demonstrate that the Board opts to hold “conferences” to avoid violating the Act’s bar on secret deliberation. *See, e.g.*, Email from Associate Director of the Board of Trustees Staff Thomas J. Penkala (Aug. 10, 2020) (“This call will be conducted as a conference, not a meeting. There will be no deliberation permitted in order to comply with the Sunshine Law [sic].”); Email from Board Secretary and Assistant Vice President Shannon S. Harvey to Finance Committee (July 18, 2022) (“This call will be conducted as a conference, not a meeting, to go through the new tuition, fee, GSI and state budget update. There will be no deliberation permitted in order to comply with the Sunshine Law.”).

These emails reveal a misapplication of the conference exception and a fundamental misreading of the law’s requirement of public deliberation. The terminology used to describe a meeting is irrelevant. If a quorum is discussing agency business, the discussion must happen in a public meeting unless a valid exception applies. Simply referring to a meeting as a “conference” does not permit the board to discuss public business in secret, nor does it excuse the board from potential liability under the Act.

In May, Spotlight PA reported that in spring 2022, a select set of Board leaders held a non-public meeting with university leadership to discuss budgeting issues to be brought forward at the Board’s public July 2022 meeting. Wyatt Massey, *Penn State’s Budget Proposal Shifted After Private Meeting of Trustees, University Leadership*, Spotlight PA (May 19, 2023), <https://perma.cc/KDY4-YS5W> (hereinafter “Massey, *Budget Proposal*”). After presenting a budget, the Board members in attendance allegedly “suggested that [a \$245 million] deficit would likely not” receive the full Board’s support. *Id.*

In response to Spotlight PA’s questions on the meeting—for which there is no public record—Secretary Harvey contended that the Sunshine Act does not “restrict discussions between board leadership, board committee leadership and the university administration.” Emails between Wyatt Massey and Shannon Harvey (May 2023), <https://tinyurl.com/ysr2byvw>. Harvey further wrote that “the Sunshine Law [sic] permits conference sessions in which information may be provided to trustees for the purpose of fulfilling their fiduciary duties at which trustees are permitted to ask questions.” *Id.*

Secretary Harvey is wrong. Conference sessions are expressly not “informational” meetings for trustees to “ask questions” or to simply learn about their duties. *See Times Leader*, 49 Pa. D. & C.3d at 331 (“informational” meetings are not “conferences”). This is especially true for a meeting that does not satisfy the statute’s other conference requirements—that the meeting is a “training,” “seminar,” or other type of program arranged by a state or federal agency (not by the Board or University leadership itself). 65 Pa.C.S. §703. It is blatantly clear, based on the University’s own description of the meeting, that this budget meeting was not a conference.

Even if, as the Board asserts, a “conference” took place, it nonetheless ran afoul of the Act. The Board appears to ignore what it clearly already understands: an agency may not deliberate during a conference. 65 Pa.C.S. §707(b). If at this meeting, the Board merely suggested that deficit approval was unlikely, the Board nevertheless “deliberated” in violation of the Act because it discussed financial policy “for the purpose of making a final decision.” *See* 65 Pa.C.S. §703; *see also Ackerman*, 567 A.2d at 1119 (finding “deliberation” where discussion went “toward the purpose of ultimately making a decision at some time”); *Smith*, 82 A.3d at 415–16 (noting that weighing and debating options is not permitted during a closed meeting). This fact alone demands that the claimed “conference” be open to the public, even if the exception may have otherwise applied. *See* 65 Pa.C.S. §707(b).

The Board has also taken the position that its thirteen-member Executive Committee has lawfully held non-public “conferences” for nearly twelve years. *See Massey, Regular Public Meetings*. Secretary Harvey told Spotlight PA that the Executive Committee meets

in private only to discuss agendas and plan. *See* Massey, *Regular Private Meetings*; *see also* Appendix A ¶1 (detailing the Board’s Committee on Governance and Long-Range Planning’s improper use of the conference exception for “planning”). State and federal agencies are not party to the Executive Committee’s meetings and, moreover, agenda planning is far from a “training program or seminar.” *See* 65 Pa.C.S. §703. Instead, the Executive Committee’s agenda-setting meetings are “deliberative” in nature and must be publicly noticed, open, and documented, whether the Committee labels them a “conference” or not. 65 Pa.C.S. §707(b); *see also* Appendix A ¶¶1–4 (citing numerous instances where the Board labeled meetings “conferences” to overcome the Act). That is, even if the Executive Committee used “conferences” solely to plan, discuss, and set agendas for open meetings, these activities still qualify as deliberation of agency business (picking and choosing which policies and items to discuss at later open meetings). *See Smith*, 82 A.3d at 415; *Ackerman*, 567 A.2d at 1119; *see also Patterson v. DeCarbo*, 46 Pa. D. & C.4th 148, 155 (Com. Pl. 2000) (finding that a secret meeting held to “amend the agenda of the public meeting” and “to add items” to the agenda “should have been discussed and acted upon during the open meeting” and failure to do so violated the Act). Determining which issues will be discussed and acted on by the full board is also “official action” because it is a “decision on agency business,” e.g., the decision about which issues merit further action and which do not. Both the decision itself and the discussion leading up to it are required to happen at a public meeting. 65 Pa.C.S. §704. The Executive Committee cannot maintain exclusive and private control over which issues and policies are to be discussed and how policy is framed.

Relying errantly on the conference exception, the full Board also routinely closes the morning portion of its regular meetings. In a 2022 email sent to Board members regarding an upcoming meeting, Board Chair Matthew Schuyler and Vice Chair David Kleppinger wrote: “During our executive conference session we’ll spend some time talking about Trustee requests for information and revised approaches to Board communications to improve clarity and information flow to all Trustees” and “[w]e will then spend the remainder of our time engaged in discussion ... on Big Ten expansion, a possible contract extension,” among other items. Email from Matthew Schuyler and David Kleppinger to trustees (July 11, 2022). This meeting was obviously not a “conference,” as defined by the Act. Additionally, not only did the Committee plan to discuss agency business (its policies around trustee transparency, Big Ten expansion, and contract matters), but it also appears to have planned to reach a final decision as to some or all of those policies during the closed meeting. This violates the Act’s prohibition on deliberating during a conference session and the Act’s requirement that all decisions on agency business occur at a public meeting. *See* 65 Pa.C.S. §§ 704, 707(b); *Ackerman*, 567 A.2d at 1119.

In April 2023, Chair Schuyler and Vice Chair Kleppinger sent an email to all members in advance of the full Board’s May 5 meeting, noting that the Board would conduct a closed “trustee conference and executive session,” as it had “for the past few cycles.” Email from Matthew Schuyler and David Kleppinger to Board (Apr. 24, 2023). The Board chairs additionally requested that trustees ask questions regarding the Board’s Finance, Business and Capital Planning materials “during the conference session” so that they could be “answered in the run up to”—as opposed to during—“the [open] meeting.” *Id.* At the

open afternoon meeting, one trustee brought his concerns about the Board's financial plans to light in public, upsetting Schuyler who chided the trustee for not "mentioning these [issues] in [the] previous three sessions discussing these matters." Massey, *Budget Proposal*.

While the Board currently operates behind closed doors, it cannot continue to do so in any future "cycles." It is enough that the Board's financial business meetings are not "conferences"—as they do not involve training and have not been initiated or held by state or federal agencies—to require that the meetings be open. See 65 Pa.C.S. §703. Courts have also held that it is inimical to the purposes of the Act to allow public agencies to collect votes and opinions during secret gatherings, giving them the opportunity to "conduct all of [their] business secretly, and then to simply announce their decisions at [a] public meeting." *Public Opinion v. Chambersburg Area School District*, 654 A.2d 284, 287 (Pa. Commw. 1995); see also *Ackerman*, 567 A.2d at 1119 (a "vote" occurs whenever a "quorum of agency members reach a consensus or decision on an action, policy or recommendation."). The Board leadership's guidance to restrict discussion of certain matters to the Board's private meetings—and its displeasure when that guidance was not strictly heeded—suggests that it has attempted to work out "consensus" on its policies in private. At the very least, it appears that the Board engaged in a widely condemned Sunshine Act avoidance practice known as "walking the halls," whereby agency members privately discuss issues ahead of public meetings so that they can ensure that they are on the same page. See Grand Jury Report, *In re: Lancaster Cnty. Investigating Grand Jury II, 2005*, Pa. Ct. Common Pleas (Dec. 14, 2006) at 32–33 (available at: <https://perma.cc/B4SC-AYJY>) (Grand Jury report resulting in recommendation of criminal Sunshine Act charges in Lancaster County, where county commissioners would round up votes to avoid "that issue having to be discussed, deliberated, or voted on at a public meeting."). All agency rules and regulations governing the conduct of public meetings must be consistent with the intent of the Act, and so must the agency's practices. 65 Pa.C.S. §710.

Critically, whereas public notice is not required for legitimate conference sessions, when a quorum of agency members is to deliberate or undertake official action the Board must provide—with very few exceptions—public notice, alongside an agenda listing agency business to be discussed. 65 Pa.C.S. §709 (public notice and agendas for meetings); *id.* at §712.1 (listing notice exceptions). The Board has neither issued notice nor affirmed it kept minutes for any of the foregoing closed meetings, further failing to uphold its obligations under the Act.

Much like the conference exception, the executive session exception applies in precious few situations. See 65 Pa.C.S. §708(a) (listing only six executive session justifications).

At this year's September Board meeting, Spotlight PA State College editor Sarah Rafacz arrived at the morning meeting on September 8, 2023, and was told that it was closed to the public and press. In the afternoon, prior to the public meeting, she asked PSU's vice president for Strategic Communications, Rachel Pell, why the meeting was closed; Pell replied that the meeting is "always" closed and refused to offer an explanation as to why.

During the open afternoon session, Board Chair Matt Schuyler referenced the morning meeting, which he said was convened to discuss “privileged matters,” and later reiterated that to Rafacz.

PSU’s bare assertion of “privilege” is not sufficient to meet its Sunshine Act burden. If the Board meant to claim that the morning session was an “executive session” where members would be discussing agency business that would “violate a lawful privilege,” it was required to provide the public and press a “specific” explanation of a “discrete” reason for entering the executive session, so as to ensure that the public can evaluate “whether they are being properly excluded from the session.” *See Reading Eagle, Co.*, 627 A.2d at 307. And, if instead Schuyler and Pell meant to communicate that the Board’s executive session pertained to “privileged matters” more generally, insofar as it was consulting with an attorney or legal advisor, it was additionally required to “spell out in connection with existing litigation the names of the parties, the docket number of the case and the court in which it is filed” or in the case of threatened litigation, “the nature of the[] matter.” *Id.* at 306. A meeting in this category is restricted to “private consultations” with legal advisors on the sole topic of the litigation and with the express purpose of keeping the information confidential to “protect [the Board’s] ability to settle or defend in those matters.” *Trib Total Media, Inc.*, 3 A.3d at 700. Accordingly, the Board was required to avoid taking any official action, whatsoever, during the meeting. *See* 65 Pa.C.S. §708(c). If during the September meeting the Board ventured to establish policy, made decisions on agency business, or took votes that “commit[ed] the agency to a particular course of conduct,” at any time during the many hours it kept the public shut out, those portions of the meeting ought to have been open. *See id.* at §703; *Preston*, 666 A.2d at 1122.

PSU’s lack of transparency harms the public it is designed to serve and educate. The PSU Board of Trustees’ misuse of conferences and executive sessions violates the letter and intent of the Sunshine Act and, consequently, erodes the public’s faith.

For these reasons, on behalf of our client and the public, we ask that the PSU Board of Trustees immediately cease holding improper executive sessions and conferences, advertise and record meeting minutes for all public meetings, and halt the practice of deliberating in secret. 65 Pa.C.S. §§701–710. In the event that the University is interested in further information about the Act, the state Office of Open Records is a potential resource. Although the OOR does not have enforcement authority for open meetings violations, it does provide training on the Act. We would also be happy to meet with you and provide additional training resources.

Thank you for your time and attention to this matter. I look forward to your response before the next Board meeting on November 9, 2023.

Sincerely,

/s/Paula Knudsen Burke

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Affiliations appear only for purposes of identification.

Appendix A: Additional Uses of Sunshine Act Exceptions

1. The Board's Committee on Governance and Long-Range Planning ("GLRP") has engaged in improperly private meetings. In an internal email from GLRP Chair Julie Anna Potts, Potts wrote to GLRP Committee members thanking them for their contributions to two non-public August 2020 gatherings. *See* Email from Julie Anna Potts to GLRP Committee (Aug. 27, 2020). She further noted that the August 11 meeting was a "planning call" and that the August 27 meeting was a "committee conference." *Id.* She wrote that the "result of those conversations" was attached to the email and would "serve as [the Committee's] initial outlook for th[e] year." She finally announced that the Committee would be "implementing the important changes resulting from the year-long deep dive into governance lead by th[e] committee." *Id.* If the GLRP Committee or the Board at large opted to "implement" changes finalized during two—or, as the email seems to imply, several more—secret meetings, this Committee flouted the Act's open meetings mandate, as there is no hint that the meetings were "conferences" under the Act's limited definition.
2. The Committees on Equity and Human Resources ("EQHR"), Finance, Business and Capital Planning ("FBCP"), Audit and Risk, and other unenumerated committees all hold "off-cycle" non-public meetings, claiming that they are "conferences." *See* Email from Board Secretary and Assistant Vice President Shannon S. Harvey to EQHR (Dec. 17, 2021) (noting that the committee would hold a "planning session" and that "off-cycle meetings are conference sessions"); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (Mar. 17, 2022) (regarding "off-cycle board/committee meetings"); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (Apr. 21, 2022) (regarding "off-cycle board/committee meetings"); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (June 16, 2022) (regarding "off-cycle board/committee meetings"); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (July 6, 2022) (noting "conference" meetings for the Audit and Risk and FBCP Committees); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (July 11, 2022) (noting a "conference" meeting for the FBCP Committee); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (Aug. 18, 2022) (regarding "off-cycle board/committee meetings"). Without more information, it is unclear whether any of these meetings rightly qualified as "conferences," especially since none of them were publicly noted on the Board's website or otherwise. *See* Penn State Office of the Board of Trustees, *2021-2022 Meeting Dates, Agendas, and Minutes* (last visited: Oct. 11, 2023), <https://trustees.psu.edu/board-and-committee-meetings-2022-23/>. Importantly, "off-cycle meetings" are not synonymous with "conferences"; there is no statutory language or other legal justification for holding "off-cycle" meetings in private just because they are "off-cycle." The public is left to speculate whether it has been "properly excluded" from the Board's "off-cycle" meetings, though the Board's history of wrongly invoking the Act's extremely narrow exception for state or federally organized "conferences" suggests it has not. *See* 65 Pa.C.S. §702(a); *see also Reading Eagle, Co.*, 627 A.2d at 307.
3. Since 2018, the Board has deemed numerous of its meetings "conferences" and "executive sessions." *See* Audit and Risk Committee Minutes (Oct. 23, 2018) (noting in meeting minutes that the Audit and Risk Committee went into both "conference"

and “executive session”); Email from Board member Mark H. Dambly to the Board (July 18, 2019) (writing in an email to all trustees “[o]n Thursday morning, we will begin with a legal briefing over breakfast, followed by the FBCP committee meeting and our privileged conference/executive session”); Audit and Risk Committee Minutes (Oct. 25, 2019) (noting in minutes that the Audit and Risk Committee went into both “conference” and “executive session”); Audit and Risk Committee Minutes (Sept. 17, 2020) (noting in minutes that the Audit and Risk Committee went into both “conference” and “executive session”); Audit and Risk Committee Minutes (Nov. 4, 2020) (noting in minutes that the Audit and Risk Committee went into both “conference” and “executive session”); Audit and Risk Committee Minutes (Feb. 18, 2021) (noting in minutes that the Audit and Risk Committee went into both “conference” and “executive session”); Equity and Human Resources Committee Minutes (Feb. 18, 2021) (noting in minutes that the Equity and Human Resources Committee went into both “conference” and “executive session”); Equity and Human Resources Committee Minutes (Sept. 16, 2021) (noting in minutes that the Equity and Human Resources Committee went into both “conference” and “executive session”); Email from Board Secretary and Assistant Vice President Shannon S. Harvey (Apr. 27, 2022) (noting an FBCP “conference” call); Email from Board Chair Matthew W. Schuyler and Vice Chair David M. Kleppinger (Oct. 20, 2022) (“[t]he October committee meetings will be livestreamed and conducted as public meetings, except for the Legal and Compliance Committee which will be conducted as a Conference/Executive session.”); Email from Board Chair Matthew W. Schuyler (Nov. 10, 2022) (regarding the Audit Committee’s meeting “in conference”); UPUA President’s Report (Feb. 1, 2023) (noting that the Board of Trustees Finance and Business Committee met “in conference”). These alleged “conferences” and “executive sessions” represent just a fraction of the publicly unaccounted-for meetings that the PSU Board of Trustees has held in just the past few years.

4. The Board’s Legal and Compliance Committee, which is responsible for liaising with the PSU Ethics Office, has held over “twenty public meetings since 2018,” but “only once ... has the [ethics] office presented data on trends and outcomes of misconduct reports.” Massey & Moyer, *Missed Conduct*. The Ethics Office also reports to the Audit and Risk Committee, which allegedly receives the Office’s “annual report on its [misconduct] hotline.” *Id.* Among the Audit and Risk Committee’s twenty-five open meetings in the last five years, there is “not a single mention of such a report.” *Id.* PSU officials claimed that the “reports are presented to trustees during executive or conference sessions.” *Id.* Given the Board’s own explanation of how the Ethics Office and the Board’s Committees interact—wherein the Office presents the Board with updates and reports—there is a vanishingly small chance that their meetings are “conferences” organized by state or federal agencies. *See* 65 Pa.C.S. §703. If, in the alternative, the Board committees’ meetings with the Ethics Office are properly categorized as “executive sessions,” the Board must have provided the public with an explanation of why such meetings were closed “either just before or immediately after” the sessions. *See id.* at § 708(b). This the Board has not done. Finally, even if the Board attempts to portray the meetings as “informational” rather than deliberative, the Board may not go beyond merely “learning about the salient issues” and cannot

“weigh[] the ‘pros and cons’” of various approaches to misconduct problems without violating the Act. *Smith*, 82 A.3d at 415–16.

EXHIBIT B



PennState

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November 9, 2023

Paula Knudsen Burke
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Dear Ms. Burke:

I am writing in response to your letter of October 26 regarding The Pennsylvania State University Board of Trustees and its compliance with the Pennsylvania Sunshine Act (the "Act"). We remain confident that the Board has taken its official actions and conducted its deliberations in compliance with the Act.

We continuously review the Board's and the University's planning and communications, remain mindful of our obligations under the Act and will continue to operate in compliance with such obligations.

Sincerely,

Tabitha R. Oman
Vice President and General Counsel

EXHIBIT C

1 TRANSCRIPT OF THE PENN STATE FINANCE,
2 BUSINESS AND CAPITAL PLANNING COMMITTEE AND
3 PENN STATE BOARD OF TRUSTEES MEETING

4 Held remotely via Zoom
5 Tuesday, May 21, 2024 at 10:30 a.m.

6 - - -

7 TRUSTEES IN ATTENDANCE:

8 Matthew Schuyler, Chair	Neeli Bendapudi
9 Cynthia A. Dunn	Russell C. Redding
10 Joshua D. Shapiro	Abraham Amoros
11 David M. Davis	Daniel J. Delligatti
12 David M. Kleppinger	Daniel A. Onorato
13 Edward B. Brown, III	Alvin F. de Levie
14 Barry J. Fenchak	Ali Krieger
15 Anthony P. Lubrano	Joseph V. Paterno, Jr.
16 Brandon D. Short	Steven B. Wagman
17 Donald W. Cairns	Valerie L. Detwiler
18 Lynn A. Dietrich	M. Abraham Harpster
19 Chris R. Hoffman	Robert F. Beard
20 Robert E. Fenza	Naren K. Gursahaney
21 Karen H. Quintos	Mary Lee Schneider
22 Richard S. Sokolov	Tracy A. Riegal
23 Julie Anna Potts	Kevin B. Schuyler
24 Nicholas J. Rowland	Kelley M. Lynch
25 Evan A. Myers	

15 TRUSTEES ABSENT:

16 Christa Hasenkopf
17 Randall "Randy" E. Black
18 Khalid N. Mumin
19 Terrence M. Pegula

20 ALSO PRESENT:

21 Attorney Tabitha Oman
22 Patrick Kraft
23 Sara F. Thorndike
24 Shannon Harvey

25 - - -

26 NETWORK DEPOSITION SERVICES
27 SUITE 1101, GULF TOWER
28 707 GRANT STREET
29 PITTSBURGH, PENNSYLVANIA 15219
30 (412) 281-7908

1 P-R-O-C-E-E-D-I-N-G-S

2

3 TRUSTEE SCHUYLER: Good morning,
4 everyone.

5 I'm Matt Schuyler, chair of the board
6 of trustees.

7 For sake of audio clarity, all those
8 who are connected to today's meeting via
9 audio or video, should mute their connection
10 when they're not speaking.

11 Before I begin, I want to acknowledge
12 and thank the administration for the
13 tremendous amount of work that has gone into
14 preparing for our discussion on the Beaver
15 Stadium renovation project.

16 Also I want to thank my trustees
17 colleagues for the amount of time each of you
18 have put into reviewing the information, most
19 recently touring the stadium to understand
20 its current condition, and the robust
21 discussion and engagement and dialogue that
22 has occurred over the past really three years
23 between the board and management regarding
24 this project proposal. Thank you, everyone.

25 The sole purpose of this morning's

1 meeting is for the committee on finance,
2 business and capital planning and then the
3 full board to consider and act on a
4 resolution for project approval for Beaver
5 Stadium renovations at University Park. No
6 other topics will come before the board
7 today.

8 Please note pursuant to Section
9 708(a)(5) of the Pennsylvania Sunshine Law,
10 the board held an executive session prior to
11 this meeting to review and discuss elements
12 of the Beaver Stadium renovation that, if
13 conducted in public, would lead to the
14 disclosure of information or confidentiality
15 protected by law.

16 Shannon, I'll turn to you now. Can
17 you please report on today's attendance?

18 MS. HARVEY: Yes, thank you. We do
19 have a quorum. All trustees are in
20 attendance except for Trustee Black,
21 Trustee Hasenkopf, Trustee Mumin and
22 Trustee Pegula.

23 TRUSTEE SCHUYLER: Thank you, Shannon.

24 A copy of the resolution has been
25 provided to trustees in advance. For the

1 public listening to the livestream the
2 resolution and supporting information is
3 available at www.trustees.psu.edu under the
4 "Meetings" tab.

5 Before we temporarily adjourn the full
6 board meeting to turn to the FBPC committee,
7 I want to just take a moment and say a few
8 words regarding the leaders who you'll be
9 hearing from today as part of this session.

10 Neeli Bendapudi was elected as the
11 Big Ten sole representative to the 12-member
12 College Football Playoff Board of Managers.
13 It's the highest governance body of the
14 college football playoff.

15 Unanimously she was elected vice chair
16 of the ACC for the 2021 to 2023 term, served
17 on five president selection committees that
18 hired the ACC commissioner as well.

19 Dr. Pat Kraft has served as a member
20 of the NCAA Division I Football Oversight
21 Committee as well as the Football Competition
22 Committee and served as a member of the NCAA
23 Division 1 Strategic Planning Committee.
24 Currently he is one of three Big Ten ADs on
25 the SEC Big Ten Joint Advisory Group which is

1 focused on tackling the significant legal and
2 governance issues currently facing college
3 athletics.

4 And, finally, Sara Thorndike serves on
5 the National Board of -- the National
6 Association of College and University
7 Business Officers. It's the leading
8 professional organization for university CFOs
9 and business officers.

10 She serves as a board member also for
11 the Pennsylvania Chamber of Business and
12 Industry.

13 You know, this combined level of
14 expertise and experience is unique in college
15 athletics and we're proud of their leadership
16 at Penn State and beyond.

17 For context, I want to make sure that
18 the board was aware of those experiences and
19 of course we're all very proud of their
20 contributions.

21 We will now adjourn the meeting of the
22 full board and call the meeting of the
23 committee on finance, business and capital
24 planning into session. Chair Fenza will
25 preside.

1 Rob, I'll turn it over to you now.

2 I'm not hearing Rob. Is anyone else?

3 ATTORNEY OMAN: I believe Rob is
4 muted.

5 TRUSTEE FENZA: Yeah, I'm muted, I'm
6 sorry.

7 TRUSTEE SCHUYLER: Okay. There you
8 go, Rob, over to you.

9 TRUSTEE FENZA: Okay. Let's get
10 started. Thank you, Matt.

11 Good morning. I note that a quorum of
12 the committee is present on the call. The
13 only agenda item for consideration by the
14 FBPC committee is the resolution recommending
15 the proposed project approval for Beaver
16 Stadium renovations at University Park.

17 I will ask President Bendapudi to
18 begin our discussion regarding the proposed
19 project approval for the Beaver Stadium
20 renovations here at University Park.

21 Neeli?

22 TRUSTEE BENDAPUDI: Thank you, Trustee
23 Fenza.

24 And, Shannon, you will be joining
25 I take it. That's wonderful.

1 Good morning, everybody. Thank you so
2 very, very much for your time today.

3 As you know, for well over a year
4 we've been working actively. The team, you
5 heard Pat and Sara and Michael and me and so
6 many, many others have been working with
7 consultants, developers, partners, and of
8 course most importantly passionate Penn
9 Staters like each and every one of you that
10 care so deeply about your university, about
11 our students, our teams, our football program
12 to determine the approach that will best
13 serve us as we look to the future of Beaver
14 Stadium.

15 I want you to know why this project
16 means so much to me. It is vital. I've come
17 to understand that it's vital to substantially
18 transform the fan experience and the
19 community experience. We are part of this
20 community that relies on us. It will drive
21 economic development throughout the region.

22 If you think about the rural T that we
23 talk about, so many lives are dependent upon
24 the success of Penn State and, frankly, this
25 will set us up for a successful future,

1 especially revenues for athletics.

2 We've spent a lot of time and effort
3 on this proposal. We've taken it extremely
4 seriously and we are absolutely thrilled
5 to share with you our analysis and
6 recommendations regarding Beaver Stadium.

7 I want you to know something that is
8 unbelievably important to the entire team and
9 to me and I know that it is for each and
10 every one of you. Please let me note no
11 tuition dollars, not one dollar of tuition,
12 no educational budget funding, none of the
13 funding that comes to our educational budget
14 will be used towards this plan. I think
15 that's appropriate.

16 We are proposing today a renovation
17 that's only possible because Penn State
18 University has one of the small handful of
19 self-sustaining ICA departments in the entire
20 county, so we're very grateful for that.

21 If we could go to the next slide,
22 Shannon.

23 One of the things that I wanted to
24 emphasize is that Beaver Stadium is critical
25 for a thriving Penn State athletics program,

1 and Penn state athletics is an important part
2 of a much larger higher education enterprise.

3 As with our peers across the country
4 we all know that a successful athletics
5 program, this is a cliché, but it's true,
6 it's really very -- many times it's the front
7 door to the entire university. Competitive
8 athletics programs raise a school's profile,
9 generate excitement with recruits and
10 prospective students, and they build a sense
11 of community and belonging among our
12 students, our faculty and staff, our alumni,
13 our donors and our fans.

14 Importantly, Penn State football holds
15 immense significance for the university and
16 for the community. We know that Beaver
17 Stadium has been recognized as one of the
18 best stadiums in college football because
19 it's an iconic landmark that brings together
20 some of the very best fans across all
21 programs in college sports, and we must
22 remain committed to preserving the atmosphere
23 of this iconic stadium.

24 I have told you many times it feels
25 like a religious experience to be at Beaver

1 Stadium and watch everybody participate.

2 It's imperative that we must invest
3 wisely so that we can continue to compete at
4 the very highest levels.

5 Penn State athletics has for decades
6 been an economic powerhouse for the region
7 and revenue from the football program is the
8 main source of support, the main source of
9 support for all of our 31 programs. It's
10 this revenue that allows us to support over
11 800 student athletes to compete, gain
12 leadership skills and advance their
13 education.

14 Another important point for us to keep
15 in mind, in a world of streaming services,
16 interest in college sports as live action is
17 on the rise. Competition is extremely fierce
18 and the expectations of fans, recruits and
19 institutional partners continues to increase.

20 To be able to compete for Big Ten fans
21 and for national titles, we must have a
22 stadium that allows for that potential
23 success. With the expansion of the CFP and
24 the ability for teams to host home playoff
25 games, we need to upgrade our facility. We

1 need to do that now so that we can go from
2 great to greater and continue to compete with
3 our peers.

4 With alignment across our campus we
5 have a detailed financial model. We have
6 rising expenses for the Department of ICA on
7 the horizon and so we truly believe the time
8 is now, the time is now to move forward.

9 Please know that this is much more
10 than just football to me and to our entire
11 team. Having a premier venue will have broad
12 impact, and as we look at the future of
13 sports and entertainment, I want you to
14 remember that over 80,000 people descended
15 upon Happy Valley at the Luke Combs concert
16 just a few weeks ago. That kind of event and
17 so many more would have significant positive
18 impacts for our community and will help to
19 drive economic growth in our region.

20 With that, I'd like to call on Pat and
21 Sara to continue the presentation.

22 Thank you, Trustee Schuyler.

23 DR. KRAFT: Thank you, Neeli.

24 As Neeli indicated, it's no secret
25 that at Penn State we're immensely proud of

1 the rich tradition of athletics. Growing and
2 sustaining our successful varsity programs is
3 largely fueled by the revenue from football
4 which is why investing in Beaver Stadium is
5 so critical.

6 Beaver Stadium, which has been the
7 home of the Nittany Lions since 1960, has
8 seen seven renovations through the years,
9 most of which has been focus on increasing
10 the size of the stadium to support our
11 passionate and growing fan base.

12 When the stadium first opened in 1960,
13 we had a capacity of 46,284 seats. The most
14 significant expansion occurred 23 years ago
15 which brought capacity to 106,000 making
16 Beaver Stadium the second largest stadium in
17 the country, the third in the world. We now
18 host the largest football season ticket base
19 in the country and have a waiting list for
20 our suites.

21 There have been no major improvements
22 to Beaver Stadium since 2001; whereas many of
23 our peers in the Big Ten conference and
24 around the country have made significant
25 financial investments to enhance their home

1 stadium. We are behind both in fixing the
2 necessary structure needs within the stadium
3 and what we provide our fans. It is time for
4 Penn State to catch up to its peers.

5 Beaver Stadium should be more than
6 just average, more than just comparable to
7 others, to be a model to the college and the
8 NFL world with innovation, experiences that
9 are different and exciting, and technology.

10 If we fail to act, we will face
11 significant infrastructure issues in the
12 years ahead and the cost of repair will only
13 increase. To put it simply, renovations to
14 Beaver Stadium are long overdue. It is time
15 to act and that time the now.

16 Next slide, please.

17 Considering the current state of
18 Beaver Stadium, the aging infrastructure must
19 be addressed. Doing nothing is not an
20 option. In addition to the repairs necessary
21 to make the stadium operational to realize
22 the stadium's full potential as a sports
23 facility, entertainment venue and a community
24 asset, it is necessary that we invest to
25 create longterm growth and financial

1 sustainability.

2 We need to replace our aging and
3 deteriorating press box as investments to it
4 have been very minimal since it moved in
5 1960.

6 Due to limited commercial kitchen
7 space we're limited in our F&B production and
8 our fan experience capabilities.

9 The stadium is lacking in circulation
10 and studies have shown this is far too
11 inadequate, and improvements are critical to
12 alleviate congestion in high traffic areas.

13 The video board is nearing the end of
14 its usable life and its enhancement greatly
15 improves the fan experience.

16 Our chief concerns include a limited
17 electrical amp capacity and aging concrete
18 and steel structures.

19 These phased enhancements to Beaver
20 Stadium allow Penn State to bring elite
21 events to State College such as international
22 soccer matches, iconic musicians as well as
23 serve as the home for institutional
24 celebrations including weddings and other
25 special events for our passionate alums and

1 fans.

2 It will bring together the broader
3 State College community and, importantly, it
4 will enhance the revenue opportunities for
5 Penn State which will help create longterm
6 financial sustainability that makes Beaver
7 Stadium a yearlong hub of campus and
8 community activities.

9 Next slide.

10 Neeli?

11 TRUSTEE BENDAPUDI: Apologies. Can
12 you hear me okay?

13 DR. KRAFT: Yeah.

14 TRUSTEE BENDAPUDI: Thank you, Pat.

15 I hope that gave you all a sense of
16 what we see as the promise and potential of
17 Beaver Stadium well into the future.

18 With that background I would like my
19 team to take you through some of the details
20 associated with the proposed renovations of
21 Beaver Stadium.

22 Sara Thorndike will start by reviewing
23 the financial analyses of the three options
24 that we have done so far.

25 Sara?

1 MS. THORNDIKE: Thank you, Neeli.

2 We identified and analyzed three
3 options for the stadium: Repair, renovate
4 and replace.

5 The repair option addresses essential
6 repairs that are needed now. While this
7 option initially costs the least amount, the
8 major maintenance needs over time are
9 extensive and this option does not respond to
10 evolving industry standards. The largest
11 costs included in estimate are structural
12 painting and coating, video boards, controls
13 and panels, plumbing, roofs, sealing and
14 coating, fencing, WiFi and elevator repairs.

15 The biggest challenge is this option
16 generates no new ticketed inventory or
17 incremental revenues to pay for these repairs
18 and future substantial major maintenance
19 needs.

20 The next option we evaluated is
21 replacing the stadium with a smaller one
22 which would require a much greater
23 investment. A new stadium would generate
24 higher revenues; however, those revenues
25 aren't big enough to pay the significantly

1 higher debt expense that would be necessary.
2 This option results in a \$1.3 billion deficit
3 in the athletics fund balance over 30 years.

4 Renovating Beaver Stadium is the only
5 financially viable option. A renovation that
6 costs \$700 million and is financed with debt
7 over 30 years results in a \$44 million
8 surplus to the athletics fund balance over
9 that same period. New ticket and premium
10 seating revenues and \$134 million in
11 philanthropy and naming opportunities will
12 help pay back the debt and construction
13 costs.

14 Let's look closer at the different
15 options.

16 After an indepth analysis, we
17 determined that the repair option is a
18 short-term solution that will only further
19 delay problems we must solve. Only repairing
20 what is absolutely necessary now does not
21 bring Beaver Stadium up to evolving industry
22 standards and we won't generate additional
23 revenues that athletics needs to continue to
24 be self-sustaining in the years to come.

25 If we were only to repair Beaver

1 Stadium, we would, among other things, not
2 increase the number of bathrooms, make no
3 enhancements to circulation, not address the
4 ingress and egress problems, continue to have
5 limited concessions, and be unable to fix the
6 deficiencies of the press box.

7 If we only move forward with necessary
8 repairs, we will continue to be restricted in
9 the types of large scale events that we can
10 host because of the stadium's limited premium
11 inventory, points of sales and bathrooms, and
12 in its current state we will not be able to
13 capitalize on additional revenue from
14 football games because of a lack of
15 additional premium seating options.

16 Football generates 90 to 95 percent of
17 our entire athletics revenues with almost
18 94,000 season ticket holders. By adding
19 premium seating on west side, we will be able
20 to offer more options to our fans that will
21 drive additional revenues. There are a lot
22 of missed opportunities if we only focus on
23 making necessary repairs.

24 A replacement of the stadium is not
25 financially feasible. Although a modern

1 state of the art venue would certainly have
2 some benefits like lower longterm maintenance
3 and numerous revenue generating
4 opportunities, the benefits do not outweigh
5 the costs. Demolishing and rebuilding Beaver
6 Stadium would require at least \$2 billion of
7 debt for a smaller stadium. Importantly, it
8 would not preserve our iconic stadium.

9 We evaluated different financing
10 options with PFM and Goldman Sachs and
11 pressure tested the renovate option with a
12 most likely, best case and worst case
13 scenario.

14 It's important to emphasize that the
15 renovation will be financed and paid for
16 entirely by athletics using no tuition
17 dollars or educational budget. The renovate
18 option most likely scenario generates \$10.4
19 billion in total revenues an \$10.4 billion in
20 total expenses over 30 years resulting in a
21 \$44 million surplus for athletics.

22 Comparatively, the repair option
23 generates \$1.4 billion less in total
24 revenues because we generate much less
25 from concessions, facility fees, donations,

1 philanthropy, naming rights and ticket
2 sales. We would also have lower expenses
3 of \$685 million with lower debt costs
4 and stadium operating experiences, but
5 higher major maintenance, resulting in a
6 \$698 million lower athletics fund balance
7 than the renovate most likely scenario.

8 The last scenario is the replace
9 option which generates \$735 million more in
10 revenue, but also \$2.1 billion more in
11 expenses resulting in \$1.4 billion lower
12 athletics fund balance than the renovate most
13 likely scenario.

14 This scenario includes more
15 concessions, facility fees and ticket
16 revenues, but much higher debt service and
17 the stadium operating expenses and lower
18 major maintenance costs.

19 DR. KRAFT: We've been working
20 closely with a number of key partners in the
21 development of this proposal to advise on
22 revenue, ticketing and fan experience
23 strategy.

24 Elevate, a national -- some of these
25 partners are Elevate, a national leading

1 ticket, a national leading ticket and premium
2 inventory management provider. Current
3 collegiate clients include Alabama, LSU,
4 Texas, USC. Professional clients include FCC
5 Barcelona, FIFA World Cup, NASCAR, PGA, San
6 Francisco 49ers and the WWE.

7 We work with Populous, an industry
8 leading architect firm with over 150
9 collegiate clients, 1,000 plus collegiate
10 projects to date, including Texas A&M, Texas,
11 Purdue, Colorado and Utah. They serve as
12 the lead architect firm for a number of
13 world-renowned new professional construction
14 projects including Highmark Stadium,
15 Tottenham Hotspur Stadium, New Inter Milan
16 Stadium and Allianz Field.

17 Nations Group, the leading owner's rep
18 firm in collegiate athletics, stadium
19 renovation projects include Doak Campbell
20 Stadium at Florida State; William Brice
21 Stadium, South Carolina; Reser Stadium,
22 Oregon State; Memorial Stadium, Kansas;
23 Spartan Stadium, Michigan State; Ross-Ade
24 Stadium, Purdue; and Vaught Hemingway Stadium
25 at Ole Miss.

1 And OVG, a global leader in venue
2 management, premium hospitality services and
3 event food and beverage sales. Client lists
4 include a collection of world-class venues,
5 arenas and convention centers. University
6 partners include Texas, Arizona State, Texas
7 Tech, Clemson and Illinois.

8 And finally in construction management
9 we a tri-venture of leading national
10 construction firms including Barton Malow,
11 AECOM Hunt and Alexander Building
12 Construction Co. This group has worked
13 together previously on many sports complexes
14 completing \$2.3 billion in joint ventures and
15 \$43 billion all together in sports facilities
16 work.

17 The opportunity for our charitable
18 giving is through founder suites, \$80 million
19 in donations; one time donations of
20 \$4.3 million; philanthropy/naming
21 opportunities of \$50 million; and a total
22 raised projection of \$134.3 million in FY 25
23 and 30.

24 Fundraising goals for Beaver Stadium
25 is consistent with football projects and

1 athletics initiatives, and if anything we
2 believe these numbers are conservative
3 relative to other projects. Kansas for
4 example 250 million; Texas, \$220 million;
5 University of Cincinnati, \$110 million; and
6 Oregon State, \$91.6 million in philanthropic
7 giving.

8 MS. THORNDIKE: We conducted an
9 indepth review of key renovation project risk
10 factors including ones in which we have more
11 control, less control and where there's
12 upside potential if everything goes
13 perfectly.

14 We have more control over donations
15 and how much we raise, inventory and how much
16 we sell, and the types of inventory we offer
17 with opportunities to make changes during the
18 construction phase, and how much we spend on
19 maintenance and stadium operations.

20 We have less control over other
21 factors like player revenue sharing,
22 construction costs and interest rates;
23 however, we were conservative in our modeling
24 and could actually experience an upside
25 related to construction costs and interest

1 rates.

2 The time to act is now. With every
3 delay major maintenance expenses for Beaver
4 Stadium continue to rise. There is no
5 denying that immediate maintenance is needed
6 and every day that we wait the cost gets
7 higher. At present we estimate the cost of
8 waiting is approximately \$40 million a year
9 because the cost of instruction including
10 materials and labor are increasing 5 to 7
11 percent annually.

12 Every delay means athletics must
13 devote annual operating dollars to smaller
14 incremental maintenance efforts reducing
15 dollars that should be devoted to improving
16 our student athlete experience.

17 We're also missing out on
18 opportunities to partner with third party
19 vendors to enhance revenues.

20 With the current renovation design
21 inventory will meaningfully increase compared
22 to our current state. For example, we'll
23 significantly increase the number of
24 restrooms and concession points of sale,
25 improve circulation including 24 new

1 elevators, 12 escalators and at least four
2 stair towers, add premium seating including
3 more suites and new loge boxes, and greater
4 press box capacity and the addition of a
5 broadcast level.

6 TRUSTEE BENDAPUDI: As we have
7 alluded throughout, the positive impact of a
8 renovated stadium on athletics, on our
9 university and on the surrounding communities
10 will be profound. I'd like to take a moment
11 to delve into why.

12 Most Penn Staters think of Beaver
13 Stadium as the home of our football program
14 and we are very, very excited about the
15 potential for these changes to take the game
16 day experience to a new level, but frankly
17 our objectives go much farther than that.

18 Investing in Beaver Stadium will, as
19 we already mentioned, continue to fuel all of
20 our sports. It will create a front door
21 experience for the community, a front door
22 that welcomes everybody, including all
23 prospective students and families, the
24 community as well as of course visiting
25 athletic recruits.

1 It will transform the fan and
2 community experience leveraging our already
3 extremely strong brand for everyone who visit
4 our campus.

5 It will prioritize environmental
6 stewardship, and it will provide an
7 opportunity to generate new revenue streams.

8 DR. KRAFT: We cannot overstate the
9 ripple effect of football on our entire
10 athletics program across all 31 sports as
11 referenced here by a subset of thoughts from
12 of our coaches.

13 At the end of the day football helps
14 us attract top talent outside and inside
15 athletics, and helps us continue to be an
16 important contributor to our Penn State
17 brand.

18 The environment generated at Penn
19 State football games is second to none
20 especially when we are recruiting. For
21 example, this past season we had 51
22 non-football prospects at the West Virginia
23 game. We had five games with more than 40 or
24 more prospects in attendance. We had more
25 than 300 official visits at the White Out

1 alone, which brought 2,000 people here when
2 you count the families.

3 The president's office hosts 370
4 guests per game and government affairs hosts
5 175 guests per game, and many individual
6 units on campus use football as an engagement
7 point.

8 The spaces and facilities that guests
9 and prospective student athletes see when
10 they visit makes a significant impact on
11 their interest and perception of our
12 institution.

13 TRUSTEE BENDAPUDI: Can we go to the
14 next slide?

15 I'd like to walk through the power of
16 Beaver Stadium as the front door to the
17 university.

18 Through renovation, we would be able
19 to create a new welcome center at Beaver
20 Stadium for all Penn Staters. The welcome
21 center would continue to the "We Are"
22 experience, which is a point of pride, a
23 point of distinction, something that uniquely
24 positions Penn State among all its peers. It
25 would also be a key connection point for all

1 Penn Staters.

2 We hope to have a 21,000 square foot
3 facility where our community could gather had
4 hold events. The welcome center would also
5 serve as a home for the thousands of
6 prospective students who visit our campus
7 every year.

8 Currently we have such severe space
9 limitations that we cannot accommodate all
10 the visit requests that we receive, and it is
11 a known fact that the campus visit experience
12 is the most important driver for decision
13 making for all prospective students.

14 With a new welcome center we hope to
15 augment our enrollment efforts by providing a
16 better choreographed visit experience for
17 prospective students, and of course a modern
18 state-of-the-art welcome center would also
19 serve as a tool to welcome and recruit
20 prospective student athletes from all sports
21 by positioning Penn State as a leader in
22 collegiate athletics.

23 DR. KRAFT: In addition to a new
24 welcome center, the proposed renovations will
25 transform the fan experience in Beaver

1 Stadium through upgraded concession
2 offerings, new premium seating, a significant
3 larger concourse space on the east and west
4 side going from roughly 14 feet in change to
5 50 to 55 feet, improve fan circulation and
6 reduce congestion and add other amenities
7 that become industry standard.

8 The renovation would also make
9 significant and much needed upgrades to the
10 technology within the stadium.

11 It is clear through the latest round
12 of media negotiations including the Big
13 Ten -- in negotiations including the Big Ten
14 that football is key which drives the ratings
15 which drives the value. A powerful football
16 brand ensures the school will always have a
17 seat at the table. To continue to compete as
18 a premiere athletic department, football must
19 remain at the forefront.

20 In alignment with Penn State's
21 commitment to global sustainability, the
22 Beaver Stadium renovations would be performed
23 with sensitivity to environmental
24 stewardship. We're comitted to achieving
25 lead certification for the west side

1 replacement joining a growing movement among
2 some of most innovative stadiums in the
3 country, including Lincoln Financial field in
4 Philadelphia, Oriole Parke in Baltimore and
5 National's Park in Washington, D.C.

6 We would embark on a reuse/recycling
7 strategy that would divert non-hazardous
8 construction waste away from landfills.

9 Finally, we would establish high
10 standards for energy efficiency in design,
11 construction and eventual operation of the
12 renovated stadium.

13 By making these renovations, Beaver
14 Stadium would be one of the only multi-use
15 entertain facilities at this scale between
16 Philadelphia and Pittsburgh. The
17 enhancements to Beaver Stadium will create
18 significant new revenue and increase
19 philanthropy opportunities that would allow
20 us to reinvest funds into all of our student
21 athletes and allow athletics to continue to
22 be self-supporting.

23 Equally as important, by equipping the
24 stadium for these events, we'll be able to
25 increase the number of visitors to the region

1 which will help bolster the local economy.
2 In fact it is estimated that the direct
3 spillover impacts from Penn State athletics
4 produces 267 million of annual economic
5 impact in Centre County supporting 2,660 jobs
6 and 87 million in employee earnings. The
7 opportunity to host non-football activities
8 and large scale events at Beaver Stadium will
9 bring additional economic growth year round.

10 Now let's spend a few minutes
11 discussing the high level plans of the
12 proposed renovation including a proposed
13 timeline.

14 With the board's approval, the project
15 would be divided into three phases that would
16 span three seasons. Although the plans are
17 far from finalized, at this point we
18 anticipate the following.

19 You will notice work starting to be
20 done and the renovation phase 1 is underway
21 which will include winterization, extending
22 the northeast/southeast platforms to aid in
23 circulation, adding bathrooms and concession
24 stands, installing escalators on the east
25 side, installing new ribbon boards and a new

1 scoreboard, enhancing Gate F and enhancing
2 the main level concourse on the east side.

3 Phase 2 would begin in 2025 and would
4 include removing the press box and the top
5 half of the west side and building a
6 superstructure in its place, including suites
7 and club seating with temporary bleachers
8 installed for the estimated two seasons
9 during which the structure will be built.

10 In 2026 work on phase 3 would begin
11 which would include removing all lower bowl
12 seating and replacing it with club seating.

13 The goal would be to complete all
14 phases by 2027 and conduct each phase in a
15 manner that creates a minimum amount of
16 impact on our fans.

17 TRUSTEE BENDAPUDI: I want to say
18 thank you to each and every one of you on the
19 board. I know how much you care about Penn
20 State and I want you to know our entire
21 leadership team, I'm not going to name
22 individual names because there's so many more
23 than the ones who are making the presentation
24 today, please know that we've all spent the
25 time to review you the details and give you

1 our very best recommendation, and I thank you
2 for giving us this time to review the details
3 and for your consideration of this important
4 and truly groundbreaking project.

5 The project costs estimate for
6 renovation is more disciplined and more
7 conservative than was discussed before I took
8 this role two years ago. We quickly decided
9 that the ten-figure renovation, you know,
10 completely a replacement was not what we were
11 going to do. We would go after a much more
12 disciplined renovation cap.

13 As we mentioned before, I am fully
14 convinced this project will have immense
15 positive impact on our athletics department.
16 It will be a driver for future economic
17 growth for our entire community. It will be
18 a symbol of pride and belonging for all of
19 our students, our faculty, staff, alumni and
20 fans.

21 With that, I thank you for your time
22 and we are ready to answer any questions you
23 may have. Thank you for giving us this
24 opportunity.

25 TRUSTEE FENZA: And thank you, Neeli,

1 thank you Pat, and thank you Sara. Very
2 excellent presentation.

3 Given that the FBPC committee will
4 first need to vote to recommend this
5 resolution to the full board, I will ask that
6 the questions at this time be limited to
7 members of the finance, business and capital
8 planning committee.

9 Are there any questions or discussion
10 from members of the committee?

11 First would be Mary Lee.

12 MS. SCHNEIDER: Thanks, Rob.

13 A clarification and then a question.

14 So I want to make sure I heard this
15 right, Neeli. I think you said there is no
16 state funding, no state money in our plan
17 here and no tuition dollars are being used;
18 is that correct?

19 TRUSTEE BENDAPUDI: That's correct.
20 Educational budget dollars --

21 TRUSTEE SCHNEIDER: Okay.

22 TRUSTEE BENDAPUDI: -- are used just
23 for education.

24 TRUSTEE SCHNEIDER: Thank you.

25 MS. THORNDIKE: Mary Lee, I can

1 confirm, there's no state funding in our
2 financial pro forma, although this project
3 has tremendous positive impact to the state.
4 We generate more than \$16 million in economic
5 benefit for every football game, and so if we
6 were to receive funding and support from the
7 state, it would reduce the amount of debt
8 that we would take out on the project, but it
9 is not included in our pro forma.

10 TRUSTEE SCHNEIDER: Okay. Okay,
11 great.

12 And the my other question was, Sara,
13 before we have every meeting, you update the
14 capital plan and the, you know, spending
15 report, et cetera, and, you know, ICA has
16 gotten some grief around: Are you meeting
17 your philanthropic and fundraising goals?
18 And so forth and so forth.

19 What's the status on our ability to
20 meet the goals we set for ourselves for other
21 ICA projects?

22 MS. THORNDIKE: Yeah, so every board
23 meeting we provide a capital borrowing report
24 that lays out exactly how much each project
25 that the board has approved and where we're

1 at from a philanthropy fundraising
2 prospective based on goals, and all of the
3 projects that the board has approved for ICA
4 we have reached those goals and we have
5 either cash or pledges in hand.

6 TRUSTEE SCHNEIDER: So we've met the
7 objectives?

8 MS. THORNDIKE: Yeah.

9 TRUSTEE SCHNEIDER: Okay. Thank you.

10 TRUSTEE FENZA: All right.

11 Next committee member would be
12 Lynn Dietrich.

13 TRUSTEE DIETRICH: Thank you, Rob.

14 I recently had the opportunity to tour
15 the stadium and honestly felt embarrassed at
16 its overall condition. Its current state is
17 not what we would wish to represent the PSU
18 image and we want to portray an improved
19 stadium. She looks weathered and worn and is
20 in need of our help and attention now.

21 Thank you, Rob.

22 TRUSTEE FENZA: Thank you, Lynn.

23 Karen, committee member, please.

24 TRUSTEE QUINTOS: Yeah, thanks, Rob.

25 By the way, I couldn't agree more with

1 Lynn. The tour that we recently did of
2 Beaver Stadium was eye opening.

3 I have a comment and then just a
4 clarifying question.

5 Look, I applaud the work that the team
6 has done. No pun intended, but I love the
7 fact that the university is playing offense
8 here when it comes to upgrading and
9 renovating the stadium to really capitalize
10 on the kind of iconic magical experience that
11 we have at Beaver Stadium, and recognizing
12 that this is where collegiate sports is
13 going.

14 Secondly, I would say that, you know,
15 we spent a lot of time in pressure testing
16 the assumptions and while the assumptions in
17 my opinion are pretty conservative from a
18 revenue generating perspective. I also think
19 what the team and -- Sara and team are
20 putting in place in terms of KPIs and
21 milestones will put the discipline in to
22 ensuring that this project is delivered on
23 time, at cost, and all the board is going to
24 be important.

25 And then third piece is just really

1 more about maybe a clarifying question.

2 I also think it's really important that while
3 the total sum of the dollars here is clearly
4 significant, over a third of the cost is
5 repairs and code upgrades and things like
6 that that we have not done, and then you add
7 a third of it is, you know, upgrading the
8 customer experience and then a third of it
9 is the revenue opportunities that, you know,
10 Pat articulated. That's roughly kind of how
11 I'm thinking about the three pieces of the
12 700 million.

13 Sara, is that directionally correct in
14 terms of how we should be thinking about the
15 totality of the 700 million?

16 MS. THORNDIKE: It is. Thanks, Karen,
17 for that question.

18 So we actually have a budget of
19 664 million and not to exceed 700 million,
20 and you're exactly right. A portion of that,
21 almost a third is incremental revenue
22 generating investments. We need that money
23 to the pay back for the expenses associated
24 with the renovation.

25 About a third of it is related to

1 maintenance and, frankly, we couldn't just
2 afford to repair the stadium. We need those
3 new revenue generated features in order to
4 pay back for those repair items, you're
5 absolutely right.

6 TRUSTEE QUINTOS: Thank you.

7 TRUSTEE FENZA: Thank you.

8 Anthony, committee member, please.

9 TRUSTEE LUBRANO: Hey, Rob, can you
10 hear me?

11 TRUSTEE FENZA: Yes.

12 TRUSTEE LUBRANO: I'm sorry. Can you
13 hear me?

14 TRUSTEE FENZA: Yes.

15 TRUSTEE LUBRANO: Thank you. I took
16 you off my speaker.

17 I -- the other day I was reading that
18 Nebraska just announced last week, which is
19 they were going to curtail their renovation
20 due to many uncertainties, the college
21 landscape. I want to read something because
22 I think we could replace some of the words
23 here with our own in terms of identifying
24 Nebraska versus Penn State.

25 Their athletics director, I'm sure Pat

1 knows, recently hired Troy Dannon. He put
2 out a statement. He said we're all aligned
3 on the need to modernize our aging stadium.
4 Those of you have been out to Lincoln know
5 that their stadium is like our stadium. It's
6 iconic. It needs work just like ours need
7 work.

8 But he went on and he said, any work
9 we do needs to follow our guiding principles.

10 First, it needs us to help us win.

11 Second, it needs to advance our goals
12 for acquisition and retention of talent.

13 And, third, and equally important, it
14 must preserve our financial stability, one of
15 the greatest assets of Husker athletics.
16 There we could replace it with Penn State
17 athletics.

18 And I raise this only because my
19 trepidation really centers on what's going on
20 in the college landscape today. There's no
21 question Beaver Stadium needs a facelift.
22 The only question is what that facelift looks
23 look and how much we want to spend.

24 As I said in the executive session
25 earlier today, I'm really disappointed that

1 we did not explore what most of us I think
2 during the retreat in August of '22
3 I believe, when Neeli first joined us, we had
4 the option to stand by one of four easels.
5 Most of us stood by the renovation
6 public/private partnership.

7 Nowhere in any of the work we've seen
8 thus far is any analysis of consequence
9 with respect to why we haven't pursued a
10 public/private partnership. So on that front
11 I am disappointed.

12 And then lastly, this is the question.
13 If we're wrong about our revenue assumptions,
14 if we're wrong about our revenue assumptions,
15 how -- what impact might that have on our G&E
16 budget if we're unable to service the debt
17 that we're about to accrue? Thank you.

18 MS. THORNDIKE: Rob, I can respond to
19 that if you would like.

20 TRUSTEE FENZA: Please.

21 MS. THORNDIKE: So first let me share,
22 we have shared with the trustees that the
23 university worked with Goldman Sachs and with
24 PFM to evaluate multiple financing options.
25 They each had their own pluses and minuses.

1 The traditional bond financing path was
2 determined to be the best option compared to
3 any other public/private partnership.

4 It is my understanding that there was
5 a high level marketing pitch for a
6 public/private partnership without financial
7 considerations. That was brought forward by
8 a trustee, and this idea was determined both
9 by Nations Group and athletics to not be a
10 financial viable approach as it's not solely
11 focused on the stadium, but also on other
12 ancillary development like condos, so we did
13 not pursue that.

14 As it relates to the other question
15 about: What would we do if the revenues
16 don't transpire? We are determined that this
17 will be an athletic self-sustaining project.
18 Our pro formas are very conservative. We
19 believe that there's more upside on the
20 revenues, and if we need to, we can reduce
21 expenses. We do not intend, even though the
22 pro forma has us borrowing debt for the
23 entire 30 years for the entire project, we do
24 not actually intend to borrow debt for that
25 long and for that amount of money, so there's

1 also expense savings in our pro forma there
2 as well.

3 TRUSTEE FENZA: All right. Thank you.

4 And we are running a little bit behind
5 so I'm going to take Brandon's question and,
6 Jay, I'm not sure if you left your hand up.
7 Okay.

8 I'll take Brandon's question and then
9 the others that have their hands up, we're
10 going to move that to the next session.

11 So, Brandon, please.

12 TRUSTEE SHORT: Thanks, Rob.

13 And I want to thank Sara, Pat and your
14 whole team for all of the work they put in
15 here. This is a tremendous amount of work,
16 and given the -- and I'll wait to say some
17 more comments here for the public session.

18 But in the interest of transparency
19 regarding the public/private partnership, you
20 mentioned that there were trustees or a
21 trustee that was involved with bringing the
22 proposal that was mentioned forward to the
23 university.

24 Can you address who that trustee was
25 and what trustees were involved with bringing

1 that proposal forward to the university?

2 MS. THORNDIKE: Rob, do you want to
3 answer that question or do you want me to?

4 TRUSTEE FENZA: Yeah, no, I can.

5 I saw a marketing piece from Jay and
6 he presented to a number of people, Brandon,
7 Jay Paterno.

8 TRUSTEE SHORT: Thank you.

9 TRUSTEE FENZA: Okay.

10 TRUSTEE SHORT: Thank you.

11 TRUSTEE FENZA: I want to now move to
12 the next item on the agenda, and for those of
13 you that have your hands raised, we will have
14 time in the next session for your questions,
15 please.

16 I'd like to call a motion. Please
17 identify yourself when you recommend -- let's
18 see. Let me go back and get this.

19 Hearing no further discussion, may
20 I have a motion from a member of the finance,
21 business and capital planning committee to
22 recommend the resolution to the full board
23 for consideration and action? Please
24 identify yourself when making the motion.

25 TRUSTEE SCHNEIDER: So moved,

1 Schneider.

2 TRUSTEE FENZA: We have a motion.

3 TRUSTEE SHORT: Short, second.

4 TRUSTEE FENZA: Can I have a second,
5 please?

6 Short, second.

7 TRUSTEE SHORT: Short, second.

8 TRUSTEE FENZA: Thank you. Okay.
9 Is there any further discussion?
10 Okay.

11 All those in favor, please indicate by
12 saying aye.

13 (Thereupon, there was a chorus of
14 ayes.)

15 TRUSTEE FENZA: All those opposed?

16 TRUSTEE LUBRANO: No.

17 TRUSTEE FENZA: Shannon, may I have a
18 roll --

19 TRUSTEE LUBRANO: Thank you, Rob.

20 TRUSTEE FENZA: -- call, please?
21 You're welcome.

22 MS. HARVEY: Yes.
23 Trustee Fenza?

24 TRUSTEE FENZA: Aye.

25 MS. HARVEY: Trustee Schneider?

1 TRUSTEE SCHNEIDER: Aye.
2 MS. HARVEY: Trustee Beard?
3 TRUSTEE BEARD: Aye.
4 MS. HARVEY: Trustee Black?
5 Trustee Black is not on.
6 Trustee Detwiler?
7 TRUSTEE DETWILER: Aye.
8 MS. HARVEY: Trustee Harpster?
9 TRUSTEE HARPSTER: Aye.
10 MS. HARVEY: Trustee Lubrano?
11 TRUSTEE LUBRANO: No.
12 MS. HARVEY: Trustee Quintos?
13 TRUSTEE QUINTOS: Aye.
14 MS. HARVEY: Trustee Short?
15 TRUSTEE SHORT: Aye.
16 MS. HARVEY: Trustee Sokolov?
17 TRUSTEE SOKOLOV: Aye.
18 MS. HARVEY: Trustee Schuyler?
19 TRUSTEE SCHUYLER: Aye.
20 MS. HARVEY: There's one no vote and
21 that is Trustee Lubrano.
22 TRUSTEE FENZA: Thank you, Shannon.
23 We will now recommend this motion to
24 the full board for consideration. That
25 concludes our agenda for the finance,

1 business and capital planning committee. The
2 meeting of the committee of the finance,
3 business and capital planning is now
4 adjourned.

5 Thank you, Chair Schuyler.

6 TRUSTEE SCHUYLER: Thank you, Rob.

7 And to the committee, thank you.

8 The meeting of the full board is now
9 back in session.

10 The FBPC committee recommends to the
11 full board the proposed project approval,
12 Beaver Stadium renovations, University Park.

13 Given the high level of interest in
14 this project, I would ask that trustees now
15 limit their questions in this session to one
16 question at a time. After everyone who
17 wishes to ask a question has had the
18 opportunity to do so, we will then allow
19 second and third questions if necessary.

20 I also want to say, that in the
21 interest of time and to ensure we allow for
22 all questions and hear from as many people as
23 possible, we ask that any statements be
24 limited to two minutes or less.

25 Are there any questions or discussion

1 from members of the board?

2 Okay. I see quite a few hands. I'll
3 moderate through our questions.

4 Alvin, I'll turn to you first.

5 TRUSTEE DE LEVIE: Thank you.

6 At first, regarding the time
7 constraints that Chair Schuyler has just
8 stated, we have received statements in the
9 public from Wyatt DuBois, from you and David
10 that we will have full opportunity to ask
11 questions and to deliberate.

12 This is the only time in accordance
13 with Sunshine Law that we can deliberate. I
14 would like to make some comments for
15 deliberation, not necessarily ask questions.

16 TRUSTEE SCHUYLER: Yep, we would love
17 to hear your comments, Alvin. If you could
18 keep those to two minutes or less, that would
19 be respectful of all your colleagues on the
20 board who have questions and want to make
21 statements as well. We have limited time.

22 TRUSTEE DE LEVIE: No, we don't have
23 limited time.

24 TRUSTEE SCHUYLER: And we've had many,
25 many sessions to discuss this. So

1 parliamentarily we want to just limit it to
2 the extent we can. So please make your
3 comment and then we'll move on to questions.

4 TRUSTEE DE LEVIE: Point of order.

5 I think you're putting a time
6 constraint on any trustee on a \$700 million
7 opportunity, a resolution, and we have heard
8 so much today and so much other time, we've
9 never deliberated.

10 TRUSTEE SCHUYLER: Yes. Do you have a
11 question, Alvin, or do you want to make a
12 statement?

13 TRUSTEE DE LEVIE: I'm making a
14 statement that I think this is an
15 inappropriate way to handle this in violation
16 of what you had told us.

17 TRUSTEE SCHUYLER: Right now there are
18 nine other hands up, Alvin, so please proceed
19 so THAT we can get to everyone else and have
20 an equal opportunity to make a statement.

21 TRUSTEE DE LEVIE: Okay. let's get
22 right to it.

23 TRUSTEE SCHUYLER: Yep.

24 TRUSTEE DE LEVIE: The administration
25 and the board leadership has said -- asked a

1 question: Why are we rushing this decision?
2 We need not make a decision until July 10th.
3 Let's wait until July 10th.

4 You have stated that other trustees
5 have asked for more time to consider this
6 very important item. We should wait. It's
7 been admitted that we are rushing the
8 decision and the public should know that a
9 \$700 million item is being rushed for no good
10 reason.

11 TRUSTEE SCHUYLER: And, Alvin, I just
12 want to say no one feels that this is being
13 rushed maybe other than the statement you
14 just made.

15 TRUSTEE FENCHAK: I do.

16 TRUSTEE SCHUYLER: We've had months
17 and months of dialogue on this and years of
18 discussion. So please proceed.

19 TRUSTEE DE LEVIE: I am only referring
20 to page No. 53 in the documents provided that
21 asks the question: Why are we rushing this
22 decision? To meet the current project
23 schedule we need approval by July 10th.
24 That was not a question I asked. That was
25 a question board leadership and the

1 administration asked. So I respectfully
2 disagree. We are rushing it.

3 Number two, the resolution that's
4 proposed, if you look at the fourth
5 paragraph, it gives total power to one person
6 to make all decisions regarding everything
7 else regarding this resolution. We don't
8 know if that person is even hired yet by
9 Penn State, is employed by Penn State or has
10 anything to do with Penn State.

11 The fourth paragraph of the resolution
12 gives up all oversight to the board of
13 trustees to someone we do not know. It says,
14 further be it resolved that the officers be
15 and each of them with the full authority to
16 act without others are hereby authorized and
17 directed to, and it goes on.

18 We as a board have a fiduciary
19 responsibility to protect the university in
20 what we do. That paragraph alone must be
21 stricken and that gives up all oversight to
22 the board.

23 Next, the executive summary says, and
24 it's bold on the top and underlined, and
25 we've heard much today, The renovation will

1 be financed and paid for entirely by
2 intercollegiate athletics using no tuition
3 dollars or educational budget. We have heard
4 that numerous times today.

5 All you have to do is look at the
6 University of California at Berkeley that --
7 and by the way, that statement there is
8 inappropriate. I don't believe it's true.

9 If the debt, which is signed for by
10 Penn State, if the assumptions are wrong and
11 we don't get the revenue or the costs go up,
12 the university's educational -- general
13 education fund and tuition dollars will have
14 to be used.

15 At the University of Berkeley their
16 general education fund pays 54 percent of the
17 athletic debt.

18 Next, another document presented by
19 Penn State says, Penn State's healthy balance
20 sheet supports project risk factors. We have
21 a deficit. If this --

22 TRUSTEE SCHUYLER: Alvin, do you --
23 Alvin, pardon my interruption, do you have a
24 question?

25 TRUSTEE DE LEVIE: I'm making comments

1 for purposes of deliberation.

2 TRUSTEE SCHUYLER: This session is not
3 meant to be point, counterpoint debating.

4 TRUSTEE DE LEVIE: I'm not debating.

5 TRUSTEE SCHUYLER: And you've made
6 several points and out of respect I asked
7 that --

8 TRUSTEE LUBRANO: Point of order,
9 Matt.

10 TRUSTEE SCHUYLER: Yes.

11 TRUSTEE LUBRANO: Yeah, point of
12 order, Matt.

13 TRUSTEE SCHUYLER: Yeah, thank you for
14 interrupting me. I will cede the floor to
15 you.

16 TRUSTEE LUBRANO: I will, point or
17 order, because you interrupted Alvin.

18 TRUSTEE SCHUYLER: Well, I indicated
19 that --

20 TRUSTEE LUBRANO: We have little time
21 to ever publicly discuss anything and now you
22 want to interrupt a colleague.

23 TRUSTEE SCHUYLER: Yeah, thank you,
24 Anthony. The reason I interrupted Alvin is
25 because we want to leave to one comment per

1 trustees or one question per trustee.

2 TRUSTEE LUBRANO: Well, then we make
3 this a longer meeting, Matt; right?

4 TRUSTEE SCHUYLER: We will next turn
5 to --

6 TRUSTEE LUBRANO: Point of order.
7 Parliamentary inquiry, Matt. Why not let
8 Him --

9 TRUSTEE SCHUYLER: Alvin, do you have
10 any final point before I turn to the next
11 hands up?

12 TRUSTEE DE LEVIE: I have two brief
13 comments and then I'll cede my floor, but I
14 should be allowed to at least this and then I
15 will reserve the right to make further
16 comment.

17 Is that all right with you, Matt?

18 TRUSTEE SCHUYLER: Yes, thank you.
19 Yes, proceed.

20 TRUSTEE DE LEVIE: The other document,
21 page 15 of 34 says, Penn State's healthy
22 balance sheet supports risk factors.

23 Under those there are three
24 categories: More control, less control.
25 The risk factors on our revenue are the

1 biggest problems we may face and we have
2 least control over those.

3 The player compensation revenue
4 sharing, that is changing daily. Look at the
5 litigation, look at the agreements, look at
6 the lawsuits.

7 Potential construction costs, we have
8 no control over those.

9 Interest rates, we have no control
10 over those.

11 We have no control over the House
12 versus NCAA case.

13 We have no control over ticket sales.

14 We have potential --

15 TRUSTEE SCHUYLER: Alvin, you said one
16 point and you've made multiple.

17 Do you have another point?

18 TRUSTEE DE LEVIE: I do cede the
19 floor. I said two points, Matt, and the
20 record will --

21 TRUSTEE SCHUYLER: Let's get on with
22 them out of respect for everyone else. We've
23 got lots of other questions.

24 TRUSTEE DE LEVIE: Okay.

25 TRUSTEE SCHUYLER: Okay.

1 TRUSTEE DE LEVIE: Lastly, regarding
2 academics, one of the documents on page 20 --
3 I think 22 of 34 says, constructing this for
4 the stadium will augment enrollment efforts
5 with prospective students. That to me is
6 offensive.

7 First of all, it ignores our
8 commonwealth campuses and supposedly going to
9 a football field and getting a tour of the
10 field is going to help students decide to
11 come to Penn State. We spent \$609 million in
12 the last two years on educational matters,
13 we're now spending \$700 million, we've lost
14 our way.

15 And by way, I don't know yet how I'm
16 voting because I want to deliberate. And
17 quite frankly we're not being given the
18 opportunity to do so. Thank you very much.

19 TRUSTEE SCHUYLER: Well, Alvin, we've
20 had multiple opportunities to deliberate in
21 our executive sessions as you're aware. This
22 is the fourth --

23 TRUSTEE LUBRANO: No, Matt, you --

24 TRUSTEE SCHUYLER: -- session.

25 Next we'll move on to Trustee Krieger.

1 Your hand has been up for awhile,

2 Ali, I'll turn to you next.

3 TRUSTEE KRIEGER: Thank you.

4 Firstly I just want to say thank you
5 to Sara, Neeli and Pat for the presentation.
6 I appreciate it.

7 I think it's also really important, I
8 know I touched on this in the May meetings
9 privately, but it's important to kind of get
10 an athlete's perspective on this, and a
11 former athlete, former student athlete's
12 prospective on this because athletes make
13 decisions not only on academics, but on
14 their resources, their accommodations and
15 facilities provided in order to perform their
16 best, which we've heard in the presentation
17 which a lot of recruits come to each and
18 every game to make decisions, and it's one of
19 the main reasons I decided to come to Penn
20 State because that's what was promised was
21 the best field in the nation and they
22 delivered, and they promised an environment
23 to help me be successful and they delivered.

24 I can say not only was it because of
25 our blue color mentality, obviously somewhat

1 of my personal skill set, but more
2 importantly I had the soccer resources and
3 the accommodations along with the teaching,
4 but at the school to get me to the next level
5 and to be in the position that I am now and
6 it's because of those accommodations and
7 those resources.

8 I think this stadium, the new
9 renovations obviously bring so many people
10 together. It's, you know, one of the best
11 teams in the country and ultimately football
12 teams in the world I should say, along with
13 the best school in the world in my opinion
14 deserves the best stadium in the country,
15 and if we invest in athletes, then it's
16 inevitable that the product will also thrive.
17 So we all benefit ultimately of our
18 incredibly talented and competitive football
19 program. We know that without a doubt and
20 it's only fitting to have the accommodations
21 and environment that reflects that.

22 It could lead to also other sports,
23 like we heard, in the future. For example,
24 the 2031 Woman's World Cup we could possibly
25 get in the United States and by then

1 obviously from what we hear in the
2 presentation that the stadium will be
3 finished. There's also summer series with
4 the English Premier League and many teams
5 that want to come and perform. Obviously
6 entertainment like we saw a Luke Combs
7 concert. It could be an amazing venue and
8 I think that, you know, this really needs to
9 reflect that.

10 And ultimately it's just a huge
11 opportunity to separate Penn State from the
12 rest of the world and provide a consistent
13 environment for a lot of people to be
14 successful. And that's all I wanted to touch
15 on.

16 TRUSTEE SCHUYLER: Thank you, Ali.

17 Next I see Trustee Lynch. I'll turn
18 to you, Kelley.

19 TRUSTEE LYNCH: Thanks, Chairman.

20 Thank you and I appreciate this
21 opportunity.

22 So I appreciate all the work done by
23 Sara and Pat and all their team because as a
24 finance person, I like digging into a lot of
25 these details and trying to understand.

1 So I dug into all the forecasts and
2 income statements for the next couple of
3 decades along with the debt services, and I
4 know you've commented that the revenue
5 forecasting has been conservative, and even
6 with that conservative, there does show a net
7 income positive.

8 Now, the reality is those years -- the
9 net income is tight, I mean, it's not large.
10 Obviously it's covering and it's showing that
11 we're covering the additional \$700 million of
12 debt services, but it does not -- but the
13 revenue -- the net income is tight, so it's
14 not going to leave a lot of flexibility for
15 athletics and they really need to be watching
16 their expenses. Obviously we talked about
17 the revenue, but there are some unknown
18 expenses.

19 So, I mean, I guess my question for
20 Sara and for Pat really is: How confident
21 are you with these forecasts and the ability
22 to control the costs? And ultimately can we
23 really truly afford this \$700 million
24 additional debt services?

25 MS. THORNDIKE: Yeah, thanks for your

1 question, Kelley.

2 So, again, we do feel like we have
3 built a conservative pro forma. We're
4 assuming a lot more debt service than I think
5 that we will actually incur. We have
6 significant increases that we feel very
7 confident in in our ticket sales, in our
8 conference revenues. We have MMR revenues to
9 support. We'll have more events in the
10 stadium which have been very conservatively
11 budgeted.

12 So I feel very confident, even though
13 you're right, our pro forma is just a little
14 over a break-even over that 30 year period.
15 It's because of how conservative we're being
16 and we can make other adjustments if we need
17 to.

18 But we've also tried to predict the
19 future over that 30 years. For example, we
20 have player revenue share built in because we
21 know there's a lot of conversation about that
22 right now, and so we wanted to be responsible
23 and anticipate those expenses over that
24 30-year period as well.

25 So with everything we know now and all

1 the things that are not known that we did our
2 very best to estimate, I feel very good about
3 the pro forma that we've created and our
4 ability to pay back the debt of which we will
5 minimize and pay back as quickly as possible.

6 TRUSTEE SCHUYLER: Thank you, Kelley.
7 Thank you, Sara.

8 Trustee Brown, I see your hand up
9 next. I'll turn to you, Ted.

10 TRUSTEE BROWN: Yes, two quick things.

11 One is both Pat Kraft and Coach
12 Franklin have made it very clear that the
13 size of Beaver Stadium is an advantage and
14 I want to arm Coach Franklin with the ability
15 to recruit players to play in the largest
16 stadium in the country, not reduce it by 900.
17 So that's my first comment.

18 I'm also concerned that loyal season
19 tickets holders are going to lose their seats
20 as part of the deconstruction.

21 My last comment is, there's a lot of
22 fan experience words on the charts and that's
23 great, but let me tell you, the future of
24 athletics is going to be not escalators, but
25 artificial intelligence. We should be

1 looking at what IBM has done with Wimbledon
2 for over 30 years in terms of the electronic
3 fan experience, and that was not mentioned
4 once on any chart. So please research how we
5 use AI to enhance the fan experience. Thank
6 you.

7 TRUSTEE SCHUYLER: Thank you, Ted.

8 Trustee Short, I see you next and then
9 we got six or seven others behind you.

10 So go ahead, Brandon.

11 TRUSTEE SHORT: Yeah, thanks, Matt.

12 First I want to just get -- say that
13 I fully, fully support the renovation of the
14 stadium. It's necessary.

15 You know, as Joe Paterno used to say,
16 you get better, you get worse, you don't stay
17 the same.

18 You know, what we've done over time is
19 we've under invested in our stadium to the
20 tune of a \$200 million maintenance backlog
21 which we currently have no way to fund.

22 Now, even if we did get \$200 million
23 and invested it and funded that backlog,
24 there would be no addition to our student
25 experience, our fan experience or to the

1 surrounding community.

2 What this plan does, it allows us to
3 meet that backlog, that unfunded liability
4 and provide a tremendous gain and growth to
5 the entire university.

6 Goldman Sachs advised on this project
7 and, you know, many years ago I actually was
8 a member of the Goldman real estate team that
9 is advising us that advised us today, and I
10 can assure you that those guys are the best
11 in the business.

12 I've reviewed our model and our
13 assumption and I've challenged them in
14 executive session, and I think that they
15 are reasonable and conservative, but more
16 importantly I have faith in Pat Kraft,
17 Sara Thorndike, Bill Sitzabee and their team
18 to execute, and in the event that they don't,
19 they are just assumptions to be clear. No
20 one can predict the future. Every model is
21 wrong, but a 2 to 4 percent variation, we
22 have the financial flexibility to pull
23 revenue and pull expenses to make adjustments
24 to fill that financial gap and still meet all
25 of our goals.

1 The board is aware of a \$200 million
2 deficit at the stadium that's unfunded that
3 can grow over time. It can be 250 in three
4 years. Every year that we wait it costs us
5 an additional \$40 million. In my view, you
6 know, we would not be doing -- we would be
7 doing the university a disservice if we fail
8 to act. How can we in good conscience know
9 that there's this deficit and be presented
10 with a tangible plan to enhance the
11 university, our local businesses and position
12 ourselves for the future while watching an
13 unfunded deficit grow? You have my full
14 support on this. Let's make the best
15 experience in college football even better,
16 and I implore all of my colleagues to vote
17 and to support this initiative.

18 TRUSTEE SCHUYLER: Thank you, Brandon.

19 Next we'll turn to Barry, I see your
20 hand up next.

21 TRUSTEE FENCHAK: Okay. Thank you.

22 The comment I have to make, I need to
23 make first three -- get three clarifications,
24 some short items I haven't been able to get
25 clarified to date. This should be really

1 quick.

2 There are 21 contracts currently on
3 the OPP website for Beaver Stadium that
4 appear to indicate that bids have been done
5 and contracts have been signed for work at
6 Beaver Stadium.

7 Is that true? Are those signed deals?

8 MS. THORNDIKE: Yeah, so, Barry,
9 I want to be really clear. The only
10 contracts that have been accepted are those
11 related to \$70 million the board has already
12 approved. We have not accepted any other
13 contracts or bids that go beyond 70 million.

14 TRUSTEE FENCHAK: Okay. Thanks, and
15 we'll get to more on that.

16 The Elevate contract has been used to
17 support -- as a reference to support the
18 revenue projections to support the project.

19 Several weeks ago I asked this.
20 I know we haven't signed that contract, but
21 if we're using to it support these revenue
22 projections, we obviously have to have some
23 type of a draft of what that looks like.
24 When I asked for that a few weeks ago, I was
25 told sure, but a week or so later I got a

1 letter that said, no, you don't need it and
2 you're not getting it, and then I saw that,
3 well, we would get it an appropriate time.
4 So are we going to get? And what would be
5 the appropriate time since it looks like, you
6 know, today is the day scheduled for a vote?

7 MS. THORNDIKE: So, Barry, we have a
8 signed letter of intent with Elevate. We do
9 not have a contract yet.

10 TRUSTEE FENCHAK: Okay. Is there some
11 reason why I haven't been able to see that or
12 no trustees to my knowledge have been able to
13 see that?

14 TRUSTEE SCHUYLER: Yeah, Barry, look,
15 I think the general parameters of what you
16 seek have been shared with you and the rest
17 of the board. Beyond that, the details as
18 Sara just mentioned are subject to
19 management's discussion with the vendor.

20 Beyond that general parameter, it's
21 unreasonable that trustees would need to see
22 the grizzly details of the contract.
23 Objectively you have what you need in order
24 to discharge your duties as a trustee as we
25 indicated in the communication to you, and

1 let's move on after your third question.

2 TRUSTEE PENCHAK: Okay. Well,
3 I disagree, but we'll move on.

4 There was a slide, it was slide 49 for
5 reference, I think Sara you had put it
6 together, that said we won't raise any
7 significant money, and I think that meant
8 philanthropy until the project is approved by
9 the board.

10 Does that ring a bell?

11 MS. THORNDIKE: Yes, that's correct.

12 TRUSTEE FENCHAK: And what you meant
13 there was we won't go out and raise
14 philanthropy for the project until it's
15 approved by the board; is that correct?

16 MS. THORNDIKE: Correct.

17 TRUSTEE PENCHAK: Okay. Thank you.
18 That's all.

19 TRUSTEE SCHUYLER: Thank you.

20 TRUSTEE PENCHAK: No, now the comment
21 that I have is, you know, we've heard terms
22 like sensitivity analysis and being --
23 pressure testing the assumptions, and of
24 course I asked for some information on that
25 which of course was also denied.

1 So one -- because when I hear the term
2 sensitivity analysis, I know how important
3 that is. I think any engineer, any finance
4 person, and I've been both, understands why
5 we do that and how important that is, and
6 when I look at these projections, and these
7 projections of course are done and are put
8 forward to say that they -- that this
9 renovation works, that we don't have negative
10 balances, right, that we basically break even
11 over 30 years. That's what the projections
12 say, but the sensitivity analysis is quite
13 different.

14 One of the things with regard to the
15 expenses, if we go in to look at that data
16 that was used in those projections, it
17 assumes that our operating costs increase at
18 a certain rate, existing operating costs,
19 things that aren't affected by this project,
20 and those are things like, and I think we all
21 know things like tuition, staff salaries,
22 administrative salaries, coaching staff, what
23 we spend on travel, others sports, all those
24 types of things that wouldn't be affected by
25 this project.

1 The one operating cost that would be
2 according to the projection is the
3 maintenance cost which would be significantly
4 reduced.

5 If we look at that -- those
6 projections, and see that the assumption
7 there is that those operating costs increase
8 by 2 and a half percent.

9 If we look at our history over the
10 last ten years, our ICA operating costs
11 increase by 6 and a half percent. That's our
12 history, that's our reality, that's where
13 we've been, and I think when we look at
14 things like tuition, the costs for
15 scholarships which is going to rise with
16 tuition, we know that that's likely going to
17 head up, travel costs, salaries, all those
18 things.

19 So if we use our ten-year history and
20 put those into the projections, we don't
21 break even, okay. At 6 and a half percent
22 increase in operating expenses, within ten
23 years we're over \$400 million in the hole
24 with ICA, which means we would have to take
25 drastic actions.

1 If our operating costs, which have
2 averaged 6 and a half percent a year over the
3 last ten years, and our projection was that
4 they would increase by 2 and a half percent,
5 if they only increased by 3 and a half
6 percent, if we drastically reduced those
7 rates of increases in operating costs, we're
8 half a billion dollars in hole in year 20 and
9 significantly in the hole within ten years.

10 TRUSTEE SCHUYLER: Okay. Barry,
11 let's --

12 TRUSTEE FENCHAK: That's not
13 sustainable.

14 TRUSTEE SCHUYLER: Let's let Sara
15 respond to that because we need to keep
16 moving here.

17 Sara?

18 MS. THORNDIKE: Yeah, Barry, I can't
19 respond specifically to a model you've
20 created. I've not seen it. What I can --

21 TRUSTEE FENCHAK: These are your
22 numbers.

23 MS. THORNDIKE: The percentages that
24 you're talking about are not our numbers.

25 TRUSTEE FENCHAK: Okay.

1 MS. THORNDIKE: And we have shared a
2 30 year pro forma with assumptions. The
3 board has received all of that data. You
4 just referenced some of the assumptions
5 that we included in our model. I can't
6 speak to the assumptions that you are
7 referring to in yours, but what I can say
8 is that we feel very confident in the
9 assumptions that we've made in that pro forma
10 based on renovating the stadium and spending
11 up to the \$700 million.

12 TRUSTEE SCHUYLER: Thank you, Sara.

13 TRUSTEE FENCHAK: Okay. So let me
14 clarify.

15 TRUSTEE SCHUYLER: Barry, we need to
16 move on. Thank you.

17 TRUSTEE FENCHAK: No, I have no
18 clarify this issue with Sara, please.

19 TRUSTEE SCHUYLER: No, Barry, no,
20 we're going to move on to the next --

21 TRUSTEE FENCHAK: According to
22 Robert's Rules, I'll make a motion please to
23 postpone this meeting until July the 8th
24 which will provide time for us to actually
25 have a robust discussion and deliberation as

1 opposed to saying we've had a robust
2 deliberation. So a motion please to postpone
3 this meeting to July 8th. We know from the
4 information we've been shared with before
5 that the deadline to make a decision is
6 July 10th. So I put that motion forward.

7 TRUSTEE DE LEVIE: Motion seconded,
8 De Levie.

9 TRUSTEE SCHUYLER: Matt. Thank you.
10 There is a motion on the floor to
11 amend the resolution. Since the main motion
12 before us is to act on the proposed capital
13 project, your proposed amendment is not
14 germane to that motion; therefore, in my
15 ruling that -- it is my ruling that this
16 amendment is not in order.

17 Let us return to the consideration of
18 the resolution --

19 TRUSTEE LUBRANO: Parliamentary
20 inquiry, Mr. Chair.

21 TRUSTEE SCHUYLER: -- to renovate --

22 TRUSTEE LUBRANO: Parliamentary
23 inquiry.

24 TRUSTEE SCHUYLER: You are not
25 acknowledged so I'm moving on to --

1 TRUSTEE LUBRANO: I'd like a ruling
2 from general counsel.

3 TRUSTEE SCHUYLER: Thank you. I'm
4 happy to have --

5 TRUSTEE LUBRANO: I disagree with your
6 assessment, Mr. Chair.

7 TRUSTEE SCHUYLER: I'm happy to have
8 general counsel --

9 TRUSTEE LUBRANO: I disagree with your
10 assessment, Mr. Chair.

11 TRUSTEE SCHUYLER: Thank you.

12 Tabitha, over to you and then we'll
13 move on to other trustee questions.

14 ATTORNEY OMAN: Someone may move to
15 have an appeal of the chair's ruling and we
16 can take a vote on that.

17 TRUSTEE LUBRANO: I move to make a
18 motion --

19 ATTORNEY OMAN: Barry, can you clarify
20 what your motion was? Your motion is what?

21 TRUSTEE FENCHAK: My motion is that --
22 is to propose that we -- that we delay the
23 meeting -- let me see. I'm just looking at
24 Robert's Rules, so I apologize. That we
25 motion to postpone --

1 ATTORNEY OMAN: What rule are you
2 looking at, Barry?

3 TRUSTEE FENCHAK: Well, you know, it's
4 kind of small on my screen. So let me just
5 say that I make a motion to postpone the
6 meeting, the purpose of this meeting to
7 July the 8th, which would still be before the
8 deadline date to not push things back from
9 this project standpoint, and to schedule --
10 to schedule -- when I say motion, so that we
11 could schedule sufficient time to adequately
12 address what are clearly a lot of outstanding
13 issues that many trustees feel we should
14 deliberate.

15 TRUSTEE DE LEVIE: Yes, and if I may
16 add, this is not a motion to amend the
17 resolution. It's a motion to postpone to a
18 specific time within the timeframe that
19 management said it need not be done until
20 July 10th. Robert's Rules requires after a
21 motion to postpone for a specific time is
22 made, it does require a second, which I gave,
23 discussion and then a vote.

24 TRUSTEE FENCHAK: Thank you, Alvin.

25 TRUSTEE SCHUYLER: Thank you. We have

1 motion and a second.

2 Is there any discussion?

3 TRUSTEE DE LEVIE: Yes.

4 TRUSTEE SCHUYLER: You made the
5 second. I don't think we need to hear any
6 further discussion points, Alvin.

7 Are there any other discussion?

8 TRUSTEE LUBRANO: Point of order,
9 Mr. Chairman. Please, please be respectful
10 of the members.

11 TRUSTEE SCHUYLER: Yeah, I'm being
12 respectful of the members. I'd like to --

13 TRUSTEE LUBRANO: Then let him speak.

14 TRUSTEE SCHUYLER: Thank you. I did
15 not call upon you, Anthony.

16 Alvin has spoken in the form of a
17 second.

18 Is there any discussion beyond the
19 motion from Barry and the second from Alvin?

20 TRUSTEE DE LEVIE: I would like to
21 refer to the board's own exhibits that asks
22 the question, why we are rushing? There are
23 enough questions left. We have time to
24 July 8th. The evidence was if we delay a
25 year, it's going to cost us a lot of money.

1 A delay to July 8th costs us no money, gives
2 trustees and the public an opportunity to
3 have a truly robust opportunity to
4 deliberate. There's nothing to be lost that
5 will allow all trustees -- and I believe,
6 Mr. Chairman, at one point you indicated that
7 other trustees have stated they would like
8 more time to vote, and that is the basis for
9 my motion and that is my discussion. Thank
10 you.

11 TRUSTEE SCHUYLER: Thank you.

12 To clarify my point that you've just
13 raised, that was based on our July meeting
14 and we've given -- I'm sorry -- our May
15 meeting, and we've given further time since
16 that May meeting thus the need for this ad
17 hoc meeting.

18 Are there any further discussion
19 points with respect to this motion?

20 TRUSTEE LUBRANO: Yes, Mr. Chair, my
21 hand is raised.

22 TRUSTEE SCHUYLER: Oh, sorry. I can't
23 tell whose hands are raised from the previous
24 requests for discussion or this one.

25 So, Anthony, I'll turn to you.

1 TRUSTEE LUBRANO: Yeah, I just want to
2 remind all of us under the Sunshine Law an
3 executive session can't be used as a method
4 to defeat the quote/unquote open meeting
5 requirements of the act. So when the chair
6 says that we've had plenty of time to
7 deliberate, I would argue that, in fact,
8 that's not the case because deliberation
9 would have been in clear violation of act.

10 ATTORNEY OMAN: That's not a correct
11 interpretation of the law, Anthony. We
12 may -- the board may deliberate in executive
13 session.

14 TRUSTEE LUBRANO: Well, I guess we
15 have a difference of opinion reading this
16 act, but nevertheless, we're -- I don't see
17 why we can't have a little bit more time now
18 so that you may get unanimous support of this
19 resolution.

20 From me personally looking at what has
21 been provided financially, I have some
22 questions.

23 First, the fact that the pro forma we
24 received was a PDF made it difficult to
25 replicate and then do some what-if

1 calculations. I, too, are a numbers person,
2 many of you don't know I am a CPA by
3 education and training, and I know a little
4 bit about numbers. I want to support this
5 project, but I want to feel comfortable that
6 we have the wherewithal financially to make
7 this happen without any ramifications and
8 implications to our G&E budget.

9 Thanks, Matt.

10 TRUSTEE SCHUYLER: Thank you.

11 Any further discussion with respect to
12 this motion?

13 TRUSTEE KLEPPINGER: Yes, Matt.

14 TRUSTEE SCHUYLER: Yep, David.

15 TRUSTEE KLEPPINGER: Thank you, Matt.

16 I'm adamantly opposed to this motion.
17 I think we're forgetting Sara's comments that
18 we need to go to the financial markets
19 earlier than July 10th. If we wait until
20 then, we miss a financing opportunity, so the
21 delay is going to impact the project.

22 I think we have had an excellent
23 presentation throughout the day now by our
24 president, by our CFO, by our athletic
25 director, and by Vice President Bill Sitzabee

1 of OPP. They have worked intensely to get us
2 to this point and a delay in my mind is
3 suggesting to them that their work has not
4 been adequate, and I think that's offensive
5 to the quality of the people that have made
6 their presentations today. Thank you.

7 TRUSTEE SCHUYLER: Thank you, David.
8 I'm going to call the vote on this
9 motion.

10 So, Shannon, will you please walk us
11 through A roll call vote on motion to delay
12 the decision until July 8th.

13 MS. HARVEY: Yes.

14 All those in favor say aye.

15 (Thereupon, there were a chorus of
16 ayes.)

17 MS. HARVEY: Opposed?

18 (Thereupon, there were a chorus of
19 nos.)

20 MS. HARVEY: Okay. I will call the
21 roll call.

22 TRUSTEE SCHUYLER: Let's get to a roll
23 call. Thank you.

24 MS. HARVEY: Amoros?

25 TRUSTEE AMOROS: No.

1 MS. HARVEY: Beard?
2 TRUSTEE BEARD: No.
3 MS. HARVEY: Brown?
4 TRUSTEE BROWN: Aye.
5 MS. HARVEY: Cairns?
6 TRUSTEE CAIRNS: No.
7 MS. HARVEY: Davis?
8 TRUSTEE DAVIS: No.
9 MS. HARVEY: De Levie? De Levie?
10 TRUSTEE UNKNOWN: Al, you're on mute.
11 MS. HARVEY: De Levie?
12 TRUSTEE DE LEVIE: Aye in favor.
13 MS. HARVEY: Delligatti?
14 TRUSTEE DELLIGATTI: No.
15 MS. HARVEY: Detwiler?
16 TRUSTEE DETWILER: No.
17 MS. HARVEY: Dietrich?
18 TRUSTEE DIETRICH: No.
19 MS. HARVEY: Dunn?
20 TRUSTEE DUNN: No.
21 MS. HARVEY: Fenchak?
22 TRUSTEE FANCHEK: No, and I would --
23 or, excuse me. Yes to the delay.
24 And I would add that I would express
25 concern that even though trustees are granted

1 a large amount of immunity to its decisions,
2 that making decisions that are grossly
3 negligent might expose the trustees to
4 down-the-road concerns.

5 MS. HARVEY: Fenza?

6 TRUSTEE FENZA: No.

7 MS. HARVEY: Gursahaney?

8 TRUSTEE GURSAHANEY: No.

9 MS. HARVEY: Harpster?

10 TRUSTEE HARPSTER: No.

11 MS. HARVEY: Hoffman?

12 TRUSTEE HOFFMAN: No.

13 MS. HARVEY: Kleppinger?

14 TRUSTER KLEPPINGER: No.

15 MS. HARVEY: Krieger?

16 TRUSTEE KRIEGER: No.

17 MS. HARVEY: Lubrano?

18 TRUSTEE LUBRANO: Yes.

19 MS. HARVEY: Lynch?

20 TRUSTEE LYNCH: No.

21 MS. HARVEY: Onorato?

22 TRUSTEE ONORATO: No.

23 MS. HARVEY: Paterno? Paterno?

24 TRUSTEE FENCHAK: Jay, you're on mute.

25 MS. HARVEY: Potts?

1 Quintos?
2 TRUSTEE QUINTOS: No.
3 MS. HARVEY: Redding?
4 TRUSTEE REDDING: No.
5 MS. HARVEY: Riegal?
6 TRUSTEE RIEGAL: No.
7 MS. HARVEY: Rowland?
8 TRUSTEE ROWLAND: No.
9 MS. HARVEY: Schneider?
10 TRUSTEE SCHNEIDER: No.
11 MS. HARVEY: Kevin Schuyler?
12 TRUSTEE SCHUYLER: No.
13 MS. HARVEY: Matt Schuyler?
14 TRUSTEE SCHUYLER: No.
15 MS. HARVEY: Short?
16 TRUSTEE SHORT: No.
17 MS. HARVEY: Sokolov?
18 TRUSTEE SOKOLOV: No.
19 MS. HARVEY: Wagman?
20 TRUSTEE WAGMAN: No.
21 MS. HARVEY: Give me one minute as we
22 tally.
23 Okay. We have 26 nos and 4 yeses.
24 TRUSTEE SCHUYLER: Okay. Thank you.
25 The motion is defeated so we're now back to

1 our original resolution.

2 And any further questions with respect
3 to the original resolution?

4 Tracy, your hand has been up and we
5 haven't called on you yet, so I'll turn to
6 you next.

7 TRUSTEE RIEGAL: Great. Thanks, Matt.

8 Sara, I guess this question is for you
9 and Pat.

10 In regard to the debt issuance for the
11 \$700 million, are we going to issue the debt
12 for \$700 million, and if we are or aren't, is
13 there another option?

14 MS. THORNDIKE: Yeah, thanks, Tracy.

15 So, as you know, we already issued
16 debt for 70 million last summer. We only
17 issue debt for projects as we actually need
18 it from a cash flow perspective. So right
19 now in our pro forma it assumes that we will
20 issue debt over the next three years as
21 needed. That gives us three years to
22 generate the philanthropy, the naming rights
23 and other ticket revenues. We will use that
24 money first towards construction.

25 So although the pro forma is very

1 conservative and assumes \$700 million of debt
2 over 30 years, we don't expect to take out
3 debt for the full 700 million and we're still
4 trying to actually have a smaller project
5 cost than that, and if we have pledge
6 payments, we can take debt out for shorter
7 periods of time. In other words, we want to
8 minimize the amount of debt interest expense
9 that we're paying.

10 TRUSTEE RIEGAL: Thank you.

11 TRUSTEE SCHUYLER: Thank you, Tracy.

12 Jay, you're back on now and your hand
13 has been up for a little while so let me call
14 on you and then I'm a little worried that
15 we're reaching the top of the hour. We've
16 been at this for two hours and we'll need to
17 get on to our decisioning.

18 So, Jay, over to you for the last
19 comment.

20 TRUSTEE PATERNO: Thanks. I stepped
21 away, what did I miss?

22 Okay, forget it. Silence.

23 TRUSTEE SCHUYLER: Nice try.

24 TRUSTEE SHORT: You missed a very
25 important vote. You missed a very important

1 vote.

2 TRUSTEE PATERNO: A couple things.

3 No one is doubting that we need to
4 renovate the stadium. That is not even a
5 subject of debate for anybody so I think
6 we're all in agreement on that one.

7 Questions on Title 9 considerations,
8 I know when Pegula Ice Arena was built, there
9 were several sessions addressing an outlay of
10 that size and how it would impact Title 9.
11 Where are we with that?

12 I'll just go through the questions and
13 I'll shut up.

14 TRUSTEE SCHUYLER: Okay.

15 TRUSTEE PATERNO: No. 2, why 30 years?
16 Every other renovation of the stadium has
17 been financed in 13 years or less because we
18 did not want to be paying -- because based on
19 the nature of timelines, you're renovating
20 generally every 13 to 15 years and the
21 philosophy was that we did not want to be
22 paying for one renovation while starting
23 another one.

24 And the last point I want to make
25 is I will be abstaining on the vote today

1 because as Rob Fenza kind of broke some
2 confidentiality on, I was involved in a
3 public/private partnership that was
4 going to bring in a neighborhood of 150 to
5 \$200 million to this project. So to avoid
6 any, any, any appearance of a conflict, I
7 will recuse, abstain from the vote, so I just
8 want that -- you know, if we do a roll call,
9 understand that because I just think it's
10 important that there is no appearance, and
11 I hope that, you know, as we go forward with
12 other projects that will come before this
13 board, that people understand that that
14 conflict of interest is an important
15 consideration.

16 TRUSTEE SCHUYLER: Thank you.

17 TRUSTEE PATERNO: So with that I'm
18 done.

19 TRUSTEE SCHUYLER: Thank you for those
20 comments.

21 Nicholas, your hand is now up --

22 MS. THORNDIKE: Matt?

23 TRUSTEE SCHUYLER: -- and you've not
24 had a chance the comment.

25 Oh, sorry.

1 MS. THORNDIKE: Matt, do you want
2 us --

3 TRUSTEE SCHUYLER: Do you want to
4 address --

5 MS. THORNDIKE: -- to answer those
6 questions?

7 TRUSTEE SCHUYLER: I'm sorry.

8 MS. THORNDIKE: Jay, you may have
9 stepped away when I just answered the debt
10 question, which is, just to be conservative
11 in our pro forma we have 30 years.

12 TRUSTEE PATERNO: It is our intent to
13 borrow at least a portion of it for less and
14 not borrow for the full amount of the project
15 as the revenues are coming in and we will
16 pace the debt to match what our cash needs
17 are. So we basically have another three
18 years to make that decision on how much total
19 debt we borrow.

20 And, Pat, can you help with the
21 Title 9 question?

22 DR. KRAFT: Yeah, not specifically to
23 Title 9, but what it does is it allows us to
24 continue to invest as we have in the past
25 two years on our women's sports. They're

1 chartering now, we're feeding them, we're
2 building a soccer complex for them. So the
3 added revenue keeps us -- like I said,
4 I've said this in the presentation. It's
5 supporting all 31 sports and so it's helping
6 us generate the money to make sure we
7 continue to provide what we need for all
8 833 athletes.

9 TRUSTEE PATERNO: Does the investment
10 of 700 million in a men's facility trigger
11 anything that we have to be concerned with
12 with Title 9? Because the ultimate solution
13 on the Pegula was that we added women's ice
14 hockey. So that was borne by both sports.
15 That was kind of what I was getting at.

16 DR. KRAFT: Yeah, Jay, I've not heard
17 that at all. I mean, everybody has renovated
18 and built new stadiums. You know, what
19 excites me is it's going to give us the
20 opportunity to continue to grow our women's
21 sports and continue to win championships, but
22 I don't believe that's the case.

23 TRUSTEE SCHUYLER: Okay. Nicholas,
24 last comment and then we're going to move to
25 seek a motion.

1 TRUSTEE ROWLAND: Sounds very good.

2 TRUSTEE SCHUYLER: Thank you.

3 TRUSTEE ROWLAND: Thank you for the
4 time and thank you, everyone, for this
5 outstandingly robust discussion that we have
6 all had together.

7 As a closing comment, I just wanted to
8 acknowledge something that I think that an
9 academic trustee should, and it's really
10 alive and well in the broader Penn State
11 community, and that is trying to square --
12 this is kind of where the question will come
13 from, trying to square in our minds the
14 immense budgetary issues that Penn State has,
15 and especially the budgetary cuts that are
16 going to my colleagues in the commonwealth
17 campuses and how to square those budgetary
18 challenges that we're facing with taking on
19 such an immense debt.

20 And I don't know who should answer
21 that question, but if you should help me and
22 other members of Penn State community
23 understand how we can be so in debt that my
24 peers are worried about their jobs and
25 somehow \$700 million is sensible. So any

1 response to that I think is good for me and
2 good for everyone else in thinking about how
3 to vote.

4 TRUSTEE SCHUYLER: Thank you, Nicolas.

5 MS. THORNDIKE: Nicholas, I can
6 respond.

7 TRUSTEE SCHUYLER: Sara, yeah.

8 MS. THORNDIKE: Yeah, thanks, Matt.

9 Nicholas, I can respond to this.

10 We know that there is at least
11 \$200 million of work that needs to be done on
12 the stadium. We don't have the money within
13 athletics to do that work without generating
14 new revenues.

15 So in addition to the work we're doing
16 on the general funded budgets, we also need
17 to respond to the ongoing maintenance needs
18 of the stadium. This renovation plan
19 responds to those needs by generating more
20 revenues that will pay for the maintenance
21 that is needed on the stadium.

22 TRUSTEE SCHUYLER: Thank you. Okay.

23 Thank you for all that discussion,
24 appreciate that.

25 Do I have a motion to approve this

1 resolution?

2 TRUSTEE SCHNEIDER: So move,
3 Schneider.

4 TRUSTEE GURSAHANEY: Second,
5 Gursahaney.

6 TRUSTEE SCHUYLER: Thank you, Naren.
7 Any further discussion regarding the
8 resolution?

9 TRUSTEE SCHNEIDER: I think we're
10 ready for a vote.

11 TRUSTEE SCHUYLER: Okay. Thank you.
12 I see two hands up. You've already
13 had a chance to comment, but let's see.
14 First hand up looks to be Anthony, turn to
15 you.

16 TRUSTEE LUBRANO: No, I'll defer, I'll
17 follow. Thank you.

18 TRUSTEE SCHUYLER: Okay, great.

19 Barry? Okay. Barry dropped off on my
20 screen.

21 Anthony, back to you.

22 TRUSTEE SOKOLOV: I think he's muted.

23 TRUSTEE FENCHAK: Oh, I'm sorry.

24 In response to Jay's questions,
25 I think we all agree, a couple things we all

1 agree on is the stadium needs work and we
2 want to be supportive of athletics, but
3 I just want to say if we take actions that
4 are unwise actions that lead to debt load
5 draining the life blood of athletics, the
6 revenue, to service that as opposed to being
7 able to feed the growth of all of our sports,
8 that's not supportive of athletics. That's
9 hindering athletics. So we need to be wise
10 in those decisions. Just spending money
11 isn't supportive especially when it's debt.

12 TRUSTEE SCHUYLER: Thank you, Barry.
13 Anthony? Anthony, are you there?

14 ATTORNEY OMAN: Anthony lowered his
15 hand, Matt.

16 TRUSTEE SCHUYLER: Oh, okay. Great.

17 So then hearing a motion and a second,
18 all those in favor, please indicate by saying
19 aye.

20 (Thereupon, there was a chorus of
21 ayes.)

22 TRUSTEE SCHUYLER: Are there any
23 opposed?

24 (Thereupon, there was a chorus of
25 nos.)

1 TRUSTEE PATERNO: I want to abstain.
2 TRUSTEE SCHUYLER: Okay. Hearing some
3 individuals nos and abstentions, let's call
4 for a roll call vote, Shannon?
5 MS. HARVEY: Amoros?
6 TRUSTEE AMOROS: Aye.
7 MS. HARVEY: Beard?
8 TRUSTEE BEARD: Aye.
9 MS. HARVEY: Brown?
10 TRUSTEE BROWN: Abstain.
11 MS. HARVEY: Cairns?
12 TRUSTEE CAIRNS: Aye.
13 MS. HARVEY: Davis?
14 TRUSTEE DAVIS: Aye.
15 MS. HARVEY: De Levie?
16 TRUSTEE DE LEVIE: Abstain.
17 MS. HARVEY: Delligatti?
18 TRUSTEE DELLIGATTI: Aye.
19 MS. HARVEY: Detwiler?
20 TRUSTEE DETWILER: Aye.
21 MS. HARVEY: Dietrich?
22 TRUSTEE DIETRICH: Aye.
23 MS. HARVEY: Dunn?
24 TRUSTEE DUNN: Aye.
25 MS. HARVEY: Fenchak?

1 TRUSTEE FANCHEK: No.
2 MS. HARVEY: Fenza?
3 TRUSTEE FENZA: Aye.
4 MS. HARVEY: Gursahaney?
5 TRUSTEE GURSAHANEY: Aye.
6 MS. HARVEY: Harpster?
7 Hoffman?
8 TRUSTEE HOFFMAN: Aye.
9 MS. HARVEY: Kleppinger?
10 TRUSTER KLEPPINGER: Aye.
11 MS. HARVEY: Krieger?
12 TRUSTEE KRIEGER: Aye.
13 MS. HARVEY: Lubrano?
14 TRUSTEE LUBRANO: No.
15 MS. HARVEY: Lynch?
16 TRUSTEE LYNCH: Aye.
17 MS. HARVEY: Onorato?
18 TRUSTEE ONORATO: Aye.
19 MS. HARVEY: Paterno?
20 TRUSTEE PATERNO: Recuse, whatever I
21 have to do there, just because of a conflict.
22 MS. HARVEY: Thank you.
23 Potts?
24 TRUSTEE POTTS: Aye.
25 MS. HARVEY: Quintos?

1 TRUSTEE QUINTOS: Aye.
2 MS. HARVEY: Redding?
3 Riegal?
4 TRUSTEE RIEGAL: Aye.
5 MS. HARVEY: Rowland?
6 TRUSTEE ROWLAND: Aye.
7 MS. HARVEY: Schneider?
8 TRUSTEE SCHNEIDER: Aye.
9 MS. HARVEY: Kevin Schuyler?
10 TRUSTEE SCHUYLER: Aye.
11 MS. HARVEY: Matt Schuyler?
12 TRUSTEE SCHUYLER: Aye.
13 MS. HARVEY: Short?
14 TRUSTEE SHORT: Aye.
15 MS. HARVEY: Sokolov?
16 TRUSTEE SOKOLOV: Aye.
17 MS. HARVEY: Wagman?
18 TRUSTEE WAGMAN: Aye.
19 TRUSTEE SCHUYLER: Shannon, while
20 you're tabulating, I'll just add that Trustee
21 Hasenkopf who due to an unavoidable prior
22 commitment could not be on --
23 (Discussion off the record.)
24 TRUSTEE SCHUYLER: Can you put us mute
25 whoever is --

1 TRUSTEE SCHNEIDER: I think Russell
2 just rejoined.

3 TRUSTEE SCHUYLER: Did we capture
4 Russell's vote, Shannon?

5 MS. HARVEY: Secretary Redding, we
6 just took a vote on the resolution that's
7 before you. Would you like to cast your
8 vote?

9 TRUSTEE REDDING: I thought I did,
10 aye.

11 MS. HARVEY: Oh, thank you. I'm sorry
12 I missed it.

13 TRUSTEE SCHUYLER: Thank you, Russell.
14 So as I mentioned, Trustee Hasenkopf
15 who had an unavoidable prior commitment,
16 therefore could not be on today's call asked
17 that the record reflect that she's fully
18 supportive of the resolution.

19 Trustees Black and Pegula likewise
20 could not be with us today and have
21 separately voiced their support.

22 ATTORNEY OMAN: Matt, I believe
23 Trustee Harpster is back on the line.

24 TRUSTEE SCHUYLER: Okay, great. I'll
25 turn to that in just a moment, but as

1 everyone knows, we do not permit proxy voting
2 for these meetings, but I thought it was
3 important that the sentiments of those three
4 trustees regarding this matter be included in
5 the record of the meeting.

6 Now back to Trustee Harpster, Shannon,
7 do you want to call for --

8 MS. HARVEY: Trustee Harpster, the
9 resolution before you, would you like to vote
10 yes or no?

11 TRUSTEE KLEPPINGER: You're muted,
12 Abe.

13 MS. HARVEY: I will give you -- so the
14 yes votes, 26 yes votes; 2 no votes, Trustee
15 Lubrano, Trustee Penchak; 3 abstentions,
16 Trustee Brown, Trustee De Levie and Trustee
17 Paterno. The motion carries.

18 TRUSTEE SCHUYLER: Thank you, Shannon.

19 I want to express on behalf of the
20 board our gratitude to the administration and
21 the staff for your collective effort in
22 preparing for today's meetings.

23 Trustees, thank you for your dedicated
24 time to the sessions that led up to today's
25 meeting and your hours of time today for

1 this discussion topic, and with our agenda
2 concluded, we'll adjourn the meeting.

3 Thank you all and have a good
4 remainder of the day and week.

5 - - -

6 (Thereupon, at 12:04 p.m., the meeting
7 was adjourned.)

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REPORTER'S CERTIFICATE

I, Jacquelyn P. Sherwood, hereby certify that the above audio/video-recorded only proceedings are contained fully and accurately in the stenographic notes taken by me of the above petition and that it is a correct transcript of the same.

Jacquelyn P. Sherwood

Jacquelyn P. Sherwood
Professional Court Reporter