

OFFICE OF OPEN RECORDS,
COMMONWEALTH OF PENNSYLVANIA

RYAN BAGWELL,	:	Appeal Docket #AP 2013-1753
Requester,	:	
v.	:	
	:	Appeals Officer J. Chadwick Schnee
THE COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Respondant.	:	<i>Electronically Filed</i>

AFFIDAVIT OF FRANK T. GUADAGNINO

The undersigned, Frank T. Guadagnino, having been duly sworn according to law, hereby states that the following is true and correct to the best of his knowledge and information.

1. I am a practicing attorney and a partner in the law firm of Reed Smith, LLP, 225 Fifth Avenue, Pittsburgh, PA 15222.
2. Since November 7, 2011, I have been engaged by The Pennsylvania State University ("Penn State") to represent Penn State as legal counsel on a variety of matters, including among other things, corporate governance issues and issues arising out of the allegations against former assistant football coach Gerald Sandusky.
3. In that capacity, I have provided and continue to provide legal advice

to the University's Board of Trustees (the "Board"), officers and other senior administrators. In the course of my representation, I have become familiar with many of the University's historical governing documents.

4. Penn State was granted a corporate charter – the equivalent of modern day articles of incorporation – by "An Act to Incorporate the Farmers' High School of Pennsylvania" adopted by the General Assembly on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874, and The Pennsylvania State University in 1953. A copy of the Charter, as currently in effect, is attached hereto as Exhibit 1.

5. In 1874, the General Assembly enacted the first general Corporation Act, which applied to all categories of corporations, including non-profit educational corporations like Penn State. Currently and since that time, for governance purposes, the University has been and is governed by and subject to the Corporation Act, as it has been amended. The current governing statute is the Pennsylvania Nonprofit Corporation Law of 1988. 15 Pa. C.S.A. §§5101, et seq.

6. In May 2013, the Board adopted resolutions approving a number of amendments to the Charter, Bylaws and Standing Orders of the Board, including among other things an amendment that changed the Governor's and the President of the University's status from being an *ex officio* voting member to an *ex officio*

non-voting member. The amendments to the Charter were filed with the Secretary of State of the Commonwealth in accordance with the requirements set forth in 15 Pa. C.S.A. §5915. A copy of the Articles of Amendment, as filed with the Commonwealth on May 9, 2013, is attached as Exhibit 2.

7. As set forth in the Charter, as amended, the number of trustees on the Board is fixed at thirty-two. The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources of the Commonwealth are *ex officio* voting members of the Board and the President of Penn State and the Governor of the Commonwealth are *ex officio* non-voting members of the Board. In addition to the *ex officio* members, six members of the Board are appointed by the Governor, nine are directly elected by the alumni, six are elected by delegates of registered agricultural societies and six are elected by the Board to represent business and industry interests.

8. Pursuant to the Bylaws of the University, all members of the Board stand in a fiduciary relationship to the University. Specifically, Section 8.07 of the Bylaws provides that “Trustees bring to their roles varied backgrounds and expertise, and they are selected in different ways, but they must keep the welfare of the entire University, not just a particular constituency, at all times paramount.”

A copy of the Bylaws of the University is attached as Exhibit 3.

9. The statement of fiduciary duty set forth in the Bylaws is consistent with the standard

set forth in the Pennsylvania Nonprofit Corporation Law to which the University is subject. Section 5712(a) of the Pennsylvania Nonprofit Corporation Law provides that “a director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.” 15 Pa. C.S.A. §5712.

10. For the Board’s purposes, the designation “*ex officio*” refers only to the method by which a trustee becomes and remains a member of the Board. There is no distinction made, either in the University’s Charter, Bylaws or Standing Orders of the Board, or in Pennsylvania law, between *ex officio* trustees and trustees elected, appointed or selected in some other manner, with respect to their fiduciary duty to Penn State or with respect to their roles and responsibilities as trustees.

11. In furtherance of their fiduciary duties to the University, trustees are entitled to, and as a practical matter must, rely on others (e.g., officers, accountants, attorneys and other advisors). See 15 Pa. C.S.A. §5712(b).

12. In the course of my engagement for the University I have from time to

time communicated with members of the Board, including former Secretary Tomalis, either directly or through the University Office of the Board of Trustees. To the extent appropriate, such communications are intended to be attorney-client privileged and protected by the related “work product doctrine” as communications between an attorney and members of the Board, as the governing body of the University.

13. The attorney-client privilege belongs to the University, not to any individual member of the Board or to any officer, employee or other representative of the University’s interests. It would be a great cause for concern for any individual, including any member of the Board of Trustees, to disclose privileged information without proper authorization.

14. My communications were made directly to former Secretary Tomalis personally in his capacity as a member of the Board of Trustees.

15. During the time period at issue, legal counsel to the University included Cynthia A. Baldwin, Amy E. McCall, Stephen S. Dunham, Frank T. Guadagnino and Lanny J. Davis, as well as others from the University’s in-house legal department, Reed Smith LLP and Lanny Davis and Associates.

16. In November 2011, Freeh Sporkin & Sullivan LLP (“Freeh”) was engaged as counsel to the Board and the Special Investigative Task Force of the Board. A copy of the engagement letter creating the attorney client relationship

between the Board (acting on behalf of the University) and Freeh is attached as Exhibit 4 (redacted).

17. Section 6 of the Freeh engagement letter expressly provides that the work and advice which is provided to the Task Force under the engagement, and any third party working on behalf of Freeh to perform services in connection with the engagement, is subject to the confidentiality and privilege protection of the attorney client and attorney work product privileges, unless appropriately waived by the parties or as otherwise determined by law.

18. As set forth in the Freeh engagement letter, the Board asked Judge Freeh to “perform an independent, full and complete investigation of the recently publicized allegations of sexual abuse at the facilities and the alleged failure of The Pennsylvania State University (“PSU”) personnel to report such sexual abuse to appropriate police and governmental authorities”. The engagement letter further provided that the results of this investigation would be provided in a report that would contain Freeh’s findings concerning “(i) failures that occurred in the reporting process, (ii) the cause for those failures, (iii) who had knowledge of the allegations of sexual abuse and (iv) how the allegations were handled by the Trustees, PSU administrators, coaches and other staff”. In addition, the Board asked for recommendations to attempt to ensure that those and similar failures do not occur again.

19. As set forth in the Freeh report issued on July 12, 2012, the Freeh investigation took place over an approximate seven month period beginning in November 2011 and ending with the issuance of the report. The Freeh report indicates that the investigation included over 430 confidential interviews of current and former trustees and trustees emeriti; current and former administrators, faculty and staff, including coaches; former University student-athletes; law enforcement officials; and members of the State College community at the University Park campus and other Commonwealth campuses. The report indicates that it included an analysis of more than 3.5 million pieces of electronic data and documents. The Freeh report also indicates that in implementing their investigative plan, they reviewed applicable University policies, guidelines, practices and procedures and established a hotline and dedicated email address to receive information relevant to the investigation. The Freeh report states that all information was gathered under the attorney client privilege and attorney work product doctrine and with due regard for the privacy of the interviewees and documents reviewed.

20. Based on a review of the documents protected from disclosure in this matter, records in the possession of the Pennsylvania Department of Education include communications that were sent, directly or indirectly, to or from counsel to the University to or from one or more members of the Board in their capacity as

members of the Board and/or records that may fall within applicable exceptions to the document production requirements of the Right to Know Law.

21. Former Secretary Tomalis served as a member of the Penn State Board at all times relevant to this appeal. Kenneth Frazier and Karen Peetz were members of the Penn State Board at all times relevant to this appeal. Steve Garban served on the Penn State Board through July 19, 2012. At all times relevant to this appeal, Paula Ammerman served as Associate Secretary to the Penn State Board.

22. Members of the Board received and/or sent written communications (including email communications), memoranda, research and other documents regarding noncriminal investigations that were conducted or proposed during the period in question in addition to the Freeh investigation.

23. Members of the Board received and/or sent written communications (including email communications), memoranda, research and other documents regarding actual or potential criminal investigations during the period in question.

24. During the period in question, a third party consultant, Edelman, as well as administrative units within the University, such as the Office of Human Resources, communicated with the Board on matters that were intended to be confidential and proprietary.

25. From time to time during the period in question, members of the Penn State Board, including former Secretary Tomalis, received and/or sent

DATE 10/11/13


FRANK T. GUADAGNINO, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CENTRE } ss.

In witness whereof, I hereunto set my hand and official seal.

Elizabeth P. Saupp
Notary Public
[SEAL]

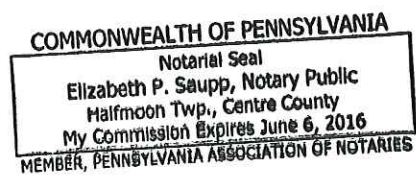


EXHIBIT 1

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CORPORATE CHARTER OF THE PENNSYLVANIA STATE UNIVERSITY*

The Charter of The Pennsylvania State University is not in the traditional form of charters of other corporations. This is because no particular form was followed when the institution was created as the Farmers' High School by special act of the legislature of Pennsylvania on February 22, 1855. The name of the institution has been changed successively to the Agricultural College of Pennsylvania in 1862, the Pennsylvania State College in 1874, and The Pennsylvania State University in 1953. The original charter has been amended once in the Court of Quarter Sessions of Centre County on May 1, 1862, and in the Court of Common Pleas of Centre County in the following proceedings: No. 235 November Term, 1875; No. 166 April Term, 1892; No. 162 May Term, 1915; No. 130 February Term, 1925; No. 218 February Term, 1951; No. 140 December Term, 1953; No. 211 February Term, 1958; No. 189 October Term, 1959; and No. 192 October Term, 1962. The Charter was further amended by action of the Board of Trustees on November 22, 2002 [and _____, 2013]. Various acts of assembly have been passed which deal with the status and rights of The Pennsylvania State University as the instrumentality of the Commonwealth to perform the essential governmental functions of education, but these do not alter the charter and powers of the institution.

In reality, the charter of The Pennsylvania State University consists of the acts of assembly which properly relate to it as well as all of the decrees of the Court of Centre County above cited. The following are selected paragraphs from these various acts and decrees arranged under traditional headings.

NAME AND PURPOSE OF THE INSTITUTION

There is hereby erected and established, at the place which shall be designated by the authority, and as hereinafter provided, an institution for the education of youth in the various branches of science, learning and practical agriculture, as they are connected with each other, by the name, style, and title of The Pennsylvania State University. (Act of February 22, 1855, P.L. 46, sec. 1, 24 Purd. Comp. Stat. sec. 2531; Decree of the Court of Quarter Sessions of Centre County, May 1, 1862, No. 8, April Sessions, 1862; Decree of the Court of Common Pleas of Centre County, January 26, 1874, No. 238, November Term, 1873; Decree of the Court of Common Pleas of Centre County, Pennsylvania, November 13, 1953, No. 140, December Term, 1953)

MANAGEMENT OF THE INSTITUTION

The said institution shall be under the management and government of the Board of Trustees. (Act of February 22, 1855, P.L. 46, sec. 2, 24 Purd. Comp. Stat. sec. 2532)

INCORPORATION

Said trustees and their successors in office are hereby erected and declared to be a body politic and corporate in law, with perpetual succession, by the name, style, and title of The Pennsylvania State University, by which name and title the said trustees, and their successors, shall be able and capable in law to take by gift, grant, sale or conveyance, by bequest, devise, or otherwise, any estate in any lands, tenements, and hereditaments, goods, chattels, or effects, and at pleasure to

*For a copy of the original Charter of the University, see pages C-8 through C-11

alien or otherwise dispose of the same to and for the use and purpose of the said institution; and the said corporation shall, by the same name, have power to sue and be sued, and generally to do and transact all and every business touching or concerning the premises, or which shall be necessarily incidental thereto, and to hold, enjoy, and exercise all such powers, authorities, and jurisdiction as are customary within the colleges within this Commonwealth. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd. Comp. Stat. sec. 2533; [Resolution of the Board of Trustees, _____, 2013])

CORPORATE SEAL

The same trustees shall cause to be made a seal, with such device as they may think proper, and by and with which all the deeds, diplomas, certificates, and acts of the institution shall be authenticated, and they may at their pleasure alter the same. (Act of February 22, 1855, P.L. 46, sec. 4, 24 Purd. Comp. Stat. sec. 2534)

NUMBER OF TRUSTEES

The number of trustees of said institution shall be fixed at thirty-two. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd. Comp. Stat. sec. 2533; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951)

MEMBERSHIP OF THE BOARD

- (1) Ex Officio Members: The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources of the Commonwealth shall be ex officio voting members of the Board and the President of The Pennsylvania State University and the Governor of the Commonwealth shall be ex officio non-voting members of the Board. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd. Comp. Stat. sec. 2533; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Act of June 2, 1893, P.L. 272, sec. 1; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951; [Resolution of the Board of Trustees, _____, 2013])
- (2) Members Appointed by the Governor: Six trustees shall be appointed by the Governor of the Commonwealth. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925)
- (3) Members Elected by the Alumni: Nine trustees shall be elected by the General Alumni Association of the University. (Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common

Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925)

- (4) Members Elected by Organizations: Six trustees, who shall be members of and represent the following named societies and associations, to be elected by three delegates from each county in the Commonwealth representing organized agricultural societies or associations of the said county. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951))
- (5) Members Elected Representing Business and Industry: Six trustees representing business and industry endeavors shall be elected by the Board of Trustees. (Resolution of the Board of Trustees, November 22, 2002.)

QUALIFICATIONS OF ELECTORS

- (1) Alumni
- (a) All graduates who have received a first or bachelor's degree or an advanced degree from the University, and former students (limited to those persons who have satisfactorily passed one semester's or two terms' work, or more, in any of the University courses requiring two years, or more, for completion) shall be eligible to vote for alumni trustees, at the election next following the year of their graduation or the year following that in which they were no longer in attendance at the University, subject, however, to the procedure next stated. (Decree of the Court of Common Pleas of Centre County, April 25, 1892, No. 166, April Term, 1892; Decree of the Court of Common Pleas of Centre County, February 28, 1958, No. 211, February Term, 1958; Decree of the Court of Common Pleas of Centre County, No. 192, October Term, 1962))
- (b) Procedure in Conducting Nominations and Elections: Ballots for the nomination and election of alumni to the Board of Trustees of the University shall be sent only to:
- (i) Electors (qualified as above set forth) who have, within two years prior to March 1 of each year, been either active members of the Penn State Alumni Association or contributors to the University, or
- (ii) Electors who make individual request, in writing to the University, that such ballots be furnished to them. (Decree of the Court of Common Pleas of Centre County, February 28, 1958, No. 211, February Term, 1958; Resolution of the Board of Trustees, _____, 2013.])

- (c) Rules and Regulations: The said Board of Trustees is hereby authorized and empowered to make and alter, from time to time, such rules and regulations for the election of all alumni members thereof as it shall deem necessary and expedient for carrying out the purpose of this act.
- (2) Agricultural Societies: In case more than one agricultural society from a county shall elect delegates, then the delegates so elected from such county shall select three delegates from their number who shall represent the said societies. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925)
- (3) Societies and Associations to Be Organized Three Months: No society or association, as aforesaid, shall be entitled to send delegates unless regularly organized and in existence at least three months preceding the time of the election of trustees. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925)

TIME OF ELECTION

The election of trustees shall be held annually, by ballot, in manner as provided by the Board of Trustees, on such day and hour during Commencement week and on such day previous to the day for the final public exercises of Commencement as from time to time shall be determined by the Board of Trustees. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535; Decree of the Court of Common Pleas of Centre County, January 26, 1874, No. 238, November Term, 1873; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common Pleas of Centre County, April 25, 1892, No. 166, April Term, 1892; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925)

NOTICE OF ELECTION

Notice of such date for the election of trustees and of the meeting or meetings to be held for such purpose shall be provided by the Secretary of the Board of Trustees at least sixty days prior to the date of said election to (a) the qualified electors described in Section (1)(b) under "QUALIFICATIONS OF ELECTORS" above, and (b) the societies and associations hereinbefore named shall be sent by the Secretary of the Board of Trustees at least sixty days prior to the date of said election to such agricultural societies or associations as appeared eligible at the next preceding annual election. Such notice shall be also similarly given at least sixty days prior to the date of said election for the election of business and industry trustees. Notice shall also be posted on the University's website at least sixty days prior to the election. (Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; [Resolution of the Board of Trustees, _____, 2013])

PLACE OF ELECTION

All elections shall be held at the institution by so many of the electors and alumni above mentioned as shall be present at the regular time for holding elections, under the direction of the Board of Trustees and by ballot, as now provided by law. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875)

JUDGES OF ELECTION

It shall be the duty of said Board of Trustees to appoint two of their number as judges to hold such election, to receive and count the votes, and return the same to the Board of Trustees with their certificate of the number of votes cast, and for whom, whereupon the said Board shall determine who have received the highest number of votes and who are thereby elected. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535)

TERM OF TRUSTEES

The term of the trustees appointed and elected as aforesaid shall be three years; two of whom shall be appointed by the Governor annually; three of whom shall be elected by the alumni of the University annually; two of whom shall be elected annually by the delegates representing the agricultural societies and associations, and two of whom shall be elected annually representing business and industry (see pages 3 and 4); all of whose terms of office shall begin on the first day of July following their appointment or election, as the case may be. (Act of February 22, 1855, P.L. 46, sec. 5, 24 Purd. Comp. Stat. sec. 2535; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Decree of the Court of Common Pleas of Centre County, April 25, 1892, No. 166, April Term, 1892; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951)

MEETINGS OF THE BOARD

In addition to the annual meeting of the Board of Trustees at the institution, such other meetings are authorized as may be fixed by the Board by their adjournment from time to time, or be called by the authority of the President and Secretary, in which latter case notice shall be given to each and every member of the Board at least three days prior to the time of meeting, which said meetings shall take place and be in lieu of those provided by the sixth section of the Act of the twenty-second of February, A.D. 1855. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; [Resolution of the Board of Trustees, _____, 2013])

COMPENSATION OF TRUSTEES

Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Trustees may be reimbursed upon request for transportation and other direct expenses while engaged in the discharge of their official duties, in accordance with the University's travel

reimbursement policies in effect from time to time. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; [Resolution of the Board of Trustees, _____, 2013])

OFFICERS OF THE BOARD

The officers of the Board of Trustees shall be chosen annually by the Board to serve for a period of one year; and shall consist of a Chair, a Vice Chair, a Secretary and a Treasurer. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; [Resolution of the Board of Trustees, _____, 2013])

EXECUTIVE COMMITTEE

- (1) Membership: The executive committee shall have 13 members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair, the chairs of the standing committees, the chair of the Board of Directors of the Milton S. Hershey Medical Center, the immediate past chair of the Board of Trustees, and three at-large members nominated by the Governance and Long-Range Planning Committee and elected by the Board of Trustees. The Secretary of the Board shall be the Recording Secretary of the Executive Committee. In addition, the President of the University shall be an ex-officio nonvoting member of the Executive Committee. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 28, 1958, No. 211, February Term, 1958; Decree of the Court of Common Pleas of Centre County, September 23, 1959, No. 189, October Term, 1959; [Resolution of the Board of Trustees, _____, 2013])
- (2) Duties: The duty of the Executive Committee shall be, under the direction of and subject to the approval of the Board of Trustees, to transact such necessary business as may arise in the intervals between the regular meetings of the Board. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915)

TREASURER

The Treasurer (who shall receive and disburse the funds of the institution, and perform such other duties as shall be required of him) shall not be a member of the Board, and shall receive such compensation from time to time as the Board may direct. (Act of February 22, 1855, P.L. 46, sec. 8, 24 *Purd. Comp. Stat.* sec. 2539; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; [Resolution of the Board of Trustees, March 15, 2013])

ORGANIZATION AND SITE

On the second Thursday of June after the passage of this act, the Board of Trustees, who are hereby appointed, shall meet at Harrisburg and proceed to the organization of an institution and selection of the most eligible site within the Commonwealth of Pennsylvania for its location, where they shall purchase or obtain by gift, grant, or otherwise, a tract of land containing at least

two hundred acres, upon which they shall procure such improvements and alterations to be made as will make it an institution properly adapted to the instruction of youth in the art of farming according to the meaning and design of this act. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; [Resolution of the Board of Trustees, _____, 2013])

PRINCIPAL AND FACULTY

[Deleted]. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; [Resolution of the Board of Trustees, _____, 2013])

BYLAWS, ORDINANCES, AND RULES

The Board shall have power to pass all such bylaws, ordinances, and rules as the good government of the institution shall require, and therein to prescribe what shall be taught to the pupils, and generally to do and perform all such administrative acts as are usually performed by and within the appropriate duty of a Board of Trustees, and shall, by a Secretary of their appointment, keep a minute of the proceedings and action of the Board. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; [Resolution of the Board of Trustees, _____, 2013])

SUBJECTS TO BE TAUGHT

It shall be the duty of the Board of Trustees as soon as and as often as the exigencies of the case may require, in addition to the principal, to employ such other professors, teachers, or tutors as shall be qualified to impart to pupils under their charge a knowledge of the English language, grammar, geography, history, mathematics, chemistry, and such other academic disciplines as may be deemed appropriate from time to time. (Act of February 22, 1855, P.L. 46, sec. 7, 24 Purd. Comp. Stat. sec. 2542; [Resolution of the Board of Trustees, _____, 2013])

AN ACT TO INCORPORATE THE FARMERS' HIGH SCHOOL OF PENNSYLVANIA[†]

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that there be and is hereby erected and established, at the place which shall be designated by the authority, and as hereinafter provided, an institution for the education of youth in the various branches of sciences, learning, and practical agriculture, as they are connected with each other, by the name, style, and title of the Farmers' High School of Pennsylvania.

Section 2. That the institution shall be under the management and government of a board of trustees, of whom there shall be thirteen, and seven of whom shall be a quorum, competent to perform the duties hereinafter authorized and required.

Section 3. That the Governor, Secretary of the Commonwealth, the president of the Pennsylvania State Agricultural Society, and the principal of the institution, shall each be ex-officio a member of the board of trustees, and they, with Dr. Alfred L. Elwyn and Algernon S. Roberts, of the city of Philadelphia; H. N. McAllister, of the county of Centre; R. C. Walker, of

[†] Act of February 22, 1855, P.L. 46, sec. 1, 24 Purd. Comp. Stat.

the county of Allegheny; James Miles, of the county of Erie; John Strohm, of the county of Lancaster; A. O. Hiester, of the county of Dauphin; William Jessup, of the county of Susquehanna, and Frederick Watts, of the county of Cumberland, shall constitute the first Board of Trustees; which said trustees and their successors in office, are hereby erected and declared to be a body politic and corporate in law, with perpetual succession, by the name, style, and title of the Farmers' High School of Pennsylvania, by which name and title the said trustees, and their successors, shall be able and capable in law to take by gift, grant, sale, or conveyance, by bequest, devise, or otherwise, any estate in any lands, tenements, and hereditaments, goods, chattels, or effects, and at pleasure to alien or otherwise dispose of the same to and for the use and purpose of the said institution: Provided, however, That the annual income of the said estate so held, shall at no time exceed twenty-five thousand dollars; and the said corporation shall, by the same name, have power to sue and be sued, and generally to do and transact all and every business touching or concerning the premises, or which shall be necessarily incidental thereto, and to hold, enjoy, and exercise all such powers, authorities, and jurisdiction as are customary within the colleges within this Commonwealth.

Section 4. That the same trustees shall cause to be made a seal, with such device as they may think proper, and by and with which all the deeds, diplomas, certificates and acts of the institution shall be authenticated, and they may at their pleasure alter the same.

Section 5. That at the first meeting of the board of trustees, the nine named, who are not ex-officio members, shall, by themselves and by lot, be divided into three classes of three each, numbered one, two, and three; the appointment hereby made of class number one, shall terminate on the first Monday of October, one thousand eight hundred and fifty-six; number two on the first Monday of October, one thousand eight hundred and fifty-seven, and number three on the first Monday of October, one thousand eight hundred and fifty-eight; and upon the termination of such office of such directors, to wit: On the first Monday of October in every year an election shall be held at the institution to supply their place, and such election shall be determined by the votes of the members of the executive committee of the Pennsylvania State Agricultural Society, and the votes of three representatives duly chosen by each county agricultural society in this Commonwealth which shall have been organized at least three months preceding the time of election, and it shall be the duty of said board of trustees to appoint two of their number as judges to hold such election, to receive and count the votes, and return the same to the board of trustees with their certificate of the number of votes cast, and for whom, whereupon the said board shall determine who have received the highest number of votes, and who are thereby elected.

Section 6. That on the second Thursday of June after the passage of this act, the board of trustees, who are hereby appointed, shall meet at Harrisburg, and proceed to the organization of an institution and selection of the most eligible site within the Commonwealth of Pennsylvania for its location, where they shall purchase or obtain by gift, grant, or otherwise, a tract of land containing at least two hundred acres, and not exceeding two thousand acres, upon which they shall procure such improvements and alterations to be made, as will make it an institution properly adapted to the instruction of youth in the art of farming according to the meaning and design of this act. They shall select and choose a principal for said institution, who, with such scientific attainments and capacity to teach as the board shall deem necessary, shall be a good practical farmer; he, with such other persons as shall, from time to time, be employed as

teachers, shall comprise the faculty, under whose control the immediate management of the institution, and the instruction of all the youth committed to its care shall be, subject, however, to the revision and all the orders of the board of trustees; there shall be a quarterly meeting of the board of trustees at the institution, and as much oftener as shall be necessary, and they shall determine; the board shall have power to pass all such bylaws, ordinances, and rules as the good government of the institution shall require, and therein to prescribe what shall be taught to and what labor performed by the pupils, and generally to do and perform all such administrative acts as are usually performed by and within the appropriate duty of a board of trustees, and shall, by a secretary of their appointment, keep a minute of the proceedings and action of the board.

Section 7. That it shall be the duty of the board of trustees as soon and as often as the exigencies of the case may require, in addition to the principal, to employ such other professors, teachers, or tutors as shall be qualified to impart to pupils under their charge a knowledge of the English language, grammar, geography, history, mathematics, chemistry, and such other branches of natural and exact science as will conduce to the proper education of a farmer; the pupils shall, themselves, at such proper times and seasons as shall be prescribed by the board of trustees, perform all the labor necessary in the cultivation of the farm, and shall thus be instructed and taught all things necessary to be known by a farmer.

Section 8. That the board of trustees shall annually elect a treasurer, who shall receive and disburse the funds of the institution, and perform such other duties as shall be required of him, and from whom they shall take such security for the faithful performance of his duty as necessity shall require; and it shall be the duty of said board of trustees, annually, on or before the first of December, to make out a full and detailed account of the operations of the institution for the preceding year, and an account of all its receipts and disbursements, and report the same to the Pennsylvania State Agricultural Society, who shall embody said report in the annual report which, by existing laws, the said society is bound to make and transmit to the Legislature on or before the first Monday of January each and every year.

Section 9. That it shall be lawful for the Pennsylvania State Agricultural Society to appropriate, out of their funds to the object of this act, a sum not exceeding ten thousand dollars, whenever the same shall be required, and to make such further appropriations, annually, out of their funds, as will aid in the prosecution of this object, and it shall be the duty and privilege of said society, at such time as they shall deem expedient by their committee, officers, or otherwise, to visit the said institution and examine into the details of its management.

Section 10. That the act to incorporate the "Farmers' High School of Pennsylvania," approved the thirteenth day of April, Anno Domini, one thousand eight hundred and fifty-four, be and the same is hereby repealed.

APPROVED -- The twenty-second day of February, A.D., 1855.

James Pollock

AMENDMENTS TO THE CHARTER

This original charter has been amended a number of times. The major amendments are listed below.

05/01/1862	Name changed to The Agricultural College of Pennsylvania
01/26/1874	Name changed to The Pennsylvania State College
11/22/1875	Number of trustees increased to 23, providing for first trustees elected by alumni, and providing for participation of the mining and manufacturing associations in the Commonwealth in the election of trustees
04/25/1892	Changed date of annual election and beginning of term of office of elected trustees; specified right of alumni to vote would begin three years after graduation
03/24/1905	Number of trustees increased to 32 providing for 6 trustees to be appointed by the Governor and increasing to 9 the number elected by the alumni. Term of elected trustees to begin July 1; officers to be elected annually and an executive committee of not less than 3 nor more than 7 members to act during intervals between Board meetings
06/15/1915	Number of trustees decreased to 31 (the President of the State Agricultural Society and the Secretary of the State Board of Agriculture were replaced by the Secretary of Agriculture). Specified method of election of trustees by delegates from county agricultural and industrial interests
02/23/1925	Election of trustees to be held on such day and hour during commencement week as the Board may from time to time determine
06/24/1939	Increased number of trustees to 32 by adding the Secretary of Mines
07/19/1951	Separated the 12 trustees elected by delegates into two groups -- 6 to be elected by delegates from county agricultural societies and 6 to be elected by delegates from county industrial societies
11/13/1953	Name changed to The Pennsylvania State University
02/28/1958	Specified qualifications of electors of alumni trustees and procedures in conducting alumni elections; provided for an executive committee of nine members
09/23/1959	Provided for an executive committee of not less than 7 nor more than 11 members
09/28/1962	Amended procedure for alumni elections as a result of the term system
11/22/2002	Discontinued provision for election of trustees from county industrial interests; specified election of trustees representing business and industry endeavors

EXHIBIT 2

PENNSYLVANIA DEPARTMENT OF STATE
CORPORATION BUREAU

Articles of Amendment – Domestic Corporation
(15 Pa.C.S.)

☐ Business Corporation (§ 1915)
☒ Nonprofit Corporation (§ 5915)

N PENNCORP SERVICEGROUP, INC.
A 600 NORTH SECOND STREET
C PO BOX 1210
HARRISBURG, PA 17108-1210

Commonwealth of Pennsylvania
ARTICLES OF AMENDMENT-NONPROFIT 7 Page(s)



In compliance with the requirements of the applicable provisions (relating to articles of amendment), the undersigned, desiring to amend its articles, hereby states that:

1. The name of the corporation is: The Pennsylvania State University
2. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) Number and Street	City	State	Zip	County
<u>208 Old Main</u>	<u>University Park</u>	<u>PA</u>	<u>16802</u>	<u>Centre</u>

(b) Name of Commercial Registered Office Provider _____ County _____
c/o _____

3. The statute by or under which it was incorporated: Act of February 22, 1855, P.L. 46, Section 1,
Purd. Comp. Stat. Sect. 2431.
4. The date of its incorporation: February 22, 1855
5. (Check, and if appropriate complete, one of the following):

☒ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

☐ The amendment shall be effective on _____ at _____

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PA DEPT OF STATE

6. Check one of the following:

☐ The amendment was adopted by the members pursuant to 15 Pa.C.S. § 5914(a).

☒ The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 5914(b).

7. (Check, and if appropriate complete, one of the following):

☐ The amendment adopted by the corporation, set forth in full, is as follows:

☒ The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

IN TESTIMONY WHEREOF, the undersigned corporation
has caused these Articles of Amendment to be signed by a
duly authorized officer thereof this 9th day of May, 2013.

THE PENNSYLVANIA STATE UNIVERSITY

By Paula R. Ammerman
Paula R. Ammerman, Associate Secretary

EXHIBIT A TO
ARTICLES OF AMENDMENT
OF
THE PENNSYLVANIA STATE UNIVERSITY

The Section entitled **INCORPORATION** shall be replaced in its entirety with the following language:

Said trustees and their successors in office are hereby erected and declared to be a body politic and corporate in law, with perpetual succession, by the name, style, and title of The Pennsylvania State University, by which name and title the said trustees, and their successors, shall be able and capable in law to take by gift, grant, sale or conveyance, by bequest, devise, or otherwise, any estate in any lands, tenements, and hereditaments, goods, chattels, or effects, and at pleasure to alien or otherwise dispose of the same to and for the use and purpose of the said institution; and the said corporation shall, by the same name, have power to sue and be sued, and generally to do and transact all and every business touching or concerning the premises, or which shall be necessarily incidental thereto, and to hold, enjoy, and exercise all such powers, authorities, and jurisdiction as are customary within the colleges within this Commonwealth. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd. Comp. Stat. sec. 2533; Resolution of the Board of Trustees, May 3, 2013)

Paragraph (1) of the Section entitled **MEMBERSHIP OF THE BOARD** shall be replaced in its entirety with the following language:

(1) Ex Officio Members: The Secretary of Education, the Secretary of Agriculture and the Secretary of Conservation and Natural Resources of the Commonwealth shall be ex officio voting members of the Board and the President of The Pennsylvania State University and the Governor of the Commonwealth shall be ex officio non-voting members of the Board. (Act of February 22, 1855, P.L. 46, sec. 3, 24 Purd. Comp. Stat. sec. 2533; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Act of June 2, 1893, P.L. 272, sec. 1; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Decree of the Court of Common Pleas of Centre County, July 19, 1951, No. 218, February Term, 1951; Resolution of the Board of Trustees, May 3, 2013)

Paragraph (1)(b) of the Section entitled **QUALIFICATIONS OF ELECTORS** shall be replaced in its entirety with the following language:

- (b) Procedure in Conducting Nominations and Elections: Ballots for the nomination and election of alumni to the Board of Trustees of the University shall be sent only to:
- Electors (qualified as above set forth) who have, within two years prior to March 1 of each year, been either active members of the Penn State Alumni Association or contributors to the University, or

- Electors who make individual request, in writing to the University, that such ballots be furnished to them. (Decree of the Court of Common Pleas of Centre County, February 28, 1958, No. 211, February Term, 1958; Resolution of the Board of Trustees, May 3, 2013.)

The Section entitled **NOTICE OF ELECTION** shall be replaced in its entirety with the following language:

Notice of such date for the election of trustees and of the meeting or meetings to be held for such purpose shall be provided by the Secretary of the Board of Trustees at least sixty days prior to the date of said election to (a) the qualified electors described in Section (1)(b) under "QUALIFICATIONS OF ELECTORS" above, and (b) the societies and associations hereinbefore named shall be sent by the Secretary of the Board of Trustees at least sixty days prior to the date of said election to such agricultural societies or associations as appeared eligible at the next preceding annual election. Such notice shall be also similarly given at least sixty days prior to the date of said election for the election of business and industry trustees. Notice shall also be posted on the University's website at least sixty days prior to the election. (Decree of the Court of Common Pleas of Centre County, February 23, 1925, No. 130, February Term, 1925; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **MEETINGS OF THE BOARD** shall be replaced in its entirety with the following language:

In addition to the annual meeting of the Board of Trustees at the institution, such other meetings are authorized as may be fixed by the Board by their adjournment from time to time, or be called by the authority of the President and Secretary, in which latter case notice shall be given to each and every member of the Board at least three days prior to the time of meeting, which said meetings shall take place and be in lieu of those provided by the sixth section of the Act of the twenty-second of February, A.D. 1855. (Act of February 22, 1855, P.L. 46, sec. 6, 24 *Purd. Comp. Stat.* sec. 2541; Decree of the Court of Common Pleas of Centre County, November 22, 1875, No. 235, November Term, 1875; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **COMPENSATION OF TRUSTEES** shall be replaced in its entirety with the following language:

Members of the Board of Trustees serve as volunteers and shall not be compensated for their services. Trustees may be reimbursed upon request for transportation and other direct expenses while engaged in the discharge of their official duties, in accordance with the University's travel reimbursement policies in effect from time to time. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **OFFICERS OF THE BOARD** shall be replaced in its entirety with the following language:

The officers of the Board of Trustees shall be chosen annually by the Board to serve for a period of one year; and shall consist of a Chair, a Vice Chair, a Secretary and a Treasurer. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **EXECUTIVE COMMITTEE** shall be replaced in its entirety with the following language:

(1) **Membership:** The executive committee shall have 13 members, all of whom shall be voting members. The executive committee shall be composed of the Chair of the Board of Trustees (who shall also be the chair of the executive committee), the Vice Chair, the chairs of the standing committees, the chair of the Board of Directors of the Milton S. Hershey Medical Center (or, if such chair is not a voting member of the Board of Trustees, a member of the Board of Directors of The Milton S. Hershey Medical Center who is also a voting member of the Board of Trustees), the immediate past chair of the Board of Trustees, and three at-large members nominated by the Governance and Long-Range Planning Committee and elected by the Board of Trustees. The Secretary of the Board shall be the Recording Secretary of the Executive Committee. In addition, the President of the University shall be an ex-officio nonvoting member of the Executive Committee. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Decree of the Court of Common Pleas of Centre County, February 28, 1958, No. 211, February Term, 1958; Decree of the Court of Common Pleas of Centre County, September 23, 1959, No. 189, October Term, 1959; Resolution of the Board of Trustees, May 3, 2013)

(2) **Duties:** The duty of the Executive Committee shall be, under the direction of and subject to the approval of the Board of Trustees, to transact such necessary business as may arise in the intervals between the regular meetings of the Board, it being understood that action by the Executive Committee would not be expected to be taken except in extraordinary circumstances. (Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **TREASURER** shall be replaced in its entirety with the following language:

The Treasurer (who shall receive and disburse the funds of the institution, and perform such other duties as shall be required of him) shall not be a member of the Board, and shall receive such compensation from time to time as the Board may direct. (Act of February 22, 1855, P.L. 46, sec. 8, 24 Purd. Comp. Stat. sec. 2539; Decree of the Court of Common Pleas of Centre County, June 15, 1915, No. 162, May Term, 1915; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **ORGANIZATION AND SITE** shall be replaced in its entirety with the following language:

On the second Thursday of June after the passage of this act, the Board of Trustees, who are hereby appointed, shall meet at Harrisburg and proceed to the organization of an institution and selection of the most eligible site within the Commonwealth of Pennsylvania for its location, where they shall purchase or obtain by gift, grant, or otherwise, a tract of land containing at least two hundred acres, upon which they shall procure such improvements and alterations to be made as will make it an institution properly adapted to the instruction of youth in the art of farming according to the meaning and design of this act. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **PRINCIPAL AND FACULTY** shall be deleted in its entirety.

The Section entitled **BYLAWS, ORDINANCES, AND RULES** shall be replaced in its entirety with the following language:

The Board shall have power to pass all such bylaws, ordinances, and rules as the good government of the institution shall require, and therein to prescribe what shall be taught to the pupils, and generally to do and perform all such administrative acts as are usually performed by and within the appropriate duty of a Board of Trustees, and shall, by a Secretary of their appointment, keep a minute of the proceedings and action of the Board. (Act of February 22, 1855, P.L. 46, sec. 6, 24 Purd. Comp. Stat. sec. 2541; Resolution of the Board of Trustees, May 3, 2013)

The Section entitled **SUBJECTS TO BE TAUGHT** shall be replaced in its entirety with the following language:

It shall be the duty of the Board of Trustees as soon as and as often as the exigencies of the case may require, in addition to the principal, to employ such other professors, teachers, or tutors as shall be qualified to impart to pupils under their charge a knowledge of the English language, grammar, geography, history, mathematics, chemistry, and such other academic disciplines as may be deemed appropriate from time to time. (Act of February 22, 1855, P.L. 46, sec. 7, 24 Purd. Comp. Stat. sec. 2542; Resolution of the Board of Trustees, May 3, 2013)