



IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;  
AL CLEMENS, a member of the Board of  
Trustees of Pennsylvania State University; and  
WILLIAM KENNEY and JOSEPH V. ("JAY")  
PATERNO, former football coaches at  
Pennsylvania State University,  
Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION ("NCAA");  
MARK EMMERT, individually and as President  
of the NCAA; and  
EDWARD RAY, individually and as former  
Chairman of the Executive Committee of the  
NCAA,  
Defendants,  
and  
THE PENNSYLVANIA STATE UNIVERSITY,  
Defendant.

CIVIL DIVISION

Docket No. 2013-2082

**OPPOSITION TO  
PLAINTIFFS' MOTION  
TO MODIFY THE  
PROTECTIVE ORDER**

Filed on Behalf of:  
The Pennsylvania State  
University

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of the NCAA; and )  
EDWARD RAY, individually and as former )  
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NCAA, )  
Defendants, )  
and )  
THE PENNSYLVANIA STATE UNIVERSITY, )  
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CIVIL DIVISION  
Docket No. 2013-2082

DEBRA C. HART  
PROFESSOR  
CENTRE COUNTY, PA

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**OPPOSITION TO PLAINTIFFS’ MOTION TO MODIFY THE PROTECTIVE ORDER**

The Pennsylvania State University (hereinafter referred to as “Penn State” or “the University”), by and through its undersigned counsel, hereby opposes Plaintiffs’ Motion to Modify the Protective Order (“Plaintiffs’ Motion”).

Plaintiffs’ Motion requests that the Court modify the Stipulated Confidentiality Agreement and Protective Order (the “Protective Order”) entered by the Court in this case by striking paragraph 5(a). The Court previously ordered, over the Plaintiffs’ opposition, that the protections set forth in paragraph 5(a) were to be included in the Protective Order because: 1) “there is no right for the public to have access to pre-trial documents,” 2) “the risk to contaminate the jury pool is high,” and 3) “the dissemination of pre-trial documents would be an

abuse of the discovery process.” (See September 11, 2014 Opinion, p. 33.) The Court specifically held that, absent the protections in paragraph 5(a), Plaintiffs were likely to publicly disclose discovery materials in this case for “public relations purposes” and that doing so would be “an abuse of the discovery process.” (Id.)

Penn State will not here repeat the arguments that it previously advanced on this issue, and which the Court accepted. All of the above findings remain valid, and they support the denial of Plaintiffs’ Motion. There is no reason to reconsider them, or to modify the Protective Order.

Indeed, Plaintiffs do not argue that the Court’s prior ruling was erroneous in any way. Rather, Plaintiffs ask that the Court modify the Protective Order for the very reason that the Court previously held was improper. That is, Plaintiffs argue that, based on certain public disclosures made recently in connection with another case, which were disclosures made not by Penn State but by other parties, Plaintiffs should now be allowed to publicly disclose all discovery materials in this case so that they can attempt to sway public opinion in their favor. (See Plaintiffs’ Memorandum in Support of Motion to Modify the Protective Order, p. 7.)

The recent disclosures do not, however, support or justify Plaintiffs’ request. The University continues to have an interest in seeing that private emails, and other documents to, from and/or containing information about present and former University officials and employees that were authored or provided with an expectation of privacy, are not simply publicized wholesale as part of an attempt to influence public opinion.

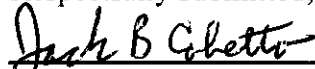
Penn State respectfully submits that any problems of potential jury taint that may have resulted by virtue of the limited disclosures to date in another case are best dealt with by trying to identify, and then limit, the possible effect on any jury that might ultimately be empaneled in this case. Allowing all pretrial discovery materials in this case to be made public as part of an

attempt to influence public opinion will do nothing to contain or remedy any potential jury taint related to any disclosures to date. It would only serve to exacerbate any potential problem. Moreover, there is no basis for Plaintiffs' request that they now be permitted to try to "sway the public" on all issues, even issues that are entirely unrelated to any disclosures that occurred.

For these reasons, Penn State respectfully requests that Plaintiffs' Motion to Modify the Protective Order be denied.

Dated: December 23, 2014

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 23<sup>rd</sup> day of December, 2014, a true and correct copy of the foregoing Opposition to Motion to Modify Protective Order was served upon the following counsel via United States mail, first class, postage prepaid:

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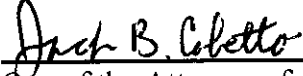
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