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*Attorneys for Treasurer Robert McCord*

*Attorneys for Senator Jake Corman*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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JAKE CORMAN, in his official capacity as Senator from the 34 <sup>th</sup> Senatorial District of Pennsylvania and Chair of the Senate Committee on Appropriations; and ROBERT M. McCORD, in his official capacity as Treasurer of the Commonwealth of Pennsylvania,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
	:	
Defendant.	:	
	:	

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**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 attorney and filing 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 OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Central Pennsylvania Legal Services, Inc.  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-0581

or

Public Services and Lawyers Referral Committee, Dauphin County Bar Association  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

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Plaintiffs,	:	
	:	
v.	:	
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THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
	:	
Defendant.	:	
	:	

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**SECOND AMENDED COMPLAINT**

The National Collegiate Athletic Association (“NCAA”) has a simple plan, with noble ends, but with unlawful means. The NCAA plans, and has begun, to commandeer \$60 million in Commonwealth funds through the Pennsylvania State University (“Penn State”) to support unidentified child-abuse prevention programs throughout the United States. However, this plan runs directly contrary to the clear mandates of the Institution of Higher Education Monetary

Penalty Endowment Act (“the Endowment Act”), 24 P.S. §§ 7501-05, which unmistakably requires the NCAA to deposit the entirety of the \$60 million with the State Treasury. To date, the NCAA has refused to comply with the Endowment Act. As such, Plaintiffs Senator Jake Corman and Treasurer Robert McCord file this action to ensure that Pennsylvania funds are appropriately and lawfully allocated, managed and distributed in compliance with the law.

### **JURISDICTION**

1. This Court has jurisdiction pursuant to Section 761(a)(2) of the Judicial Code, 42 Pa.C.S. § 761(a)(2). See Richardson v. Peters, 19 A.3d 1047 (Pa. 2011) (per curiam); In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 7 (Pa. 2007).

### **PARTIES**

2. Plaintiff Jake Corman is Senator for the 34th Senatorial District of Pennsylvania in the General Assembly and Chair of the Senate Committee on Appropriations. He is a resident of the Commonwealth of Pennsylvania, residing in Centre County. The main campus of Penn State and its center of operations are located in Centre County. Senator Corman is a donor-alumnus of Penn State.

3. Plaintiff Robert McCord is Treasurer of the Commonwealth of Pennsylvania. The office of State Treasurer is a constitutionally established office, independently elected by the voters of the Commonwealth. See Pa.Const. art. IV, §§ 1, 18. The powers and responsibilities particular to the Treasurer are mostly statutorily derived. 71 P.S. §§ 66, 247. As it pertains to this matter, the Treasurer is statutorily designated as the sole custodian of all funds deposited into the “Institution of Higher Education Monetary Penalty Endowment Trust Fund” created by the Endowment Act.<sup>1</sup>

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<sup>1</sup> The role of custodian is not a mere perfunctory duty, but involves the responsibility of assuming immediate charge and control of ownership, implying the responsibility for the

4. In his capacity as custodian and fiduciary, Treasurer McCord also brings this action on behalf of the Institution of Higher Education Monetary Penalty Endowment Trust Fund. Relief on behalf of the Endowment Fund is necessary to prevent harm to the intended beneficiaries of the Fund: Pennsylvania organizations, non-profits, victims, and programs.

5. Defendant NCAA is an unincorporated association which, upon information and belief, is headquartered in Indianapolis, Indiana and has members across the United States, including members located and doing business in the Commonwealth of Pennsylvania.

### **RELEVANT FACTS**

#### **The Freeh Report**

6. On November 21, 2011, Penn State's Special Investigation Task Force retained former FBI director and former U.S. District Court Judge Louis J. Freeh to investigate claims that former Penn State assistant football coach Jerry Sandusky allegedly used university facilities as part of a pattern of sexually abusing Pennsylvania children.

7. These claims became the subject of widespread public discussion and debate after a Pennsylvania grand jury presentment charging Jerry Sandusky and other Penn State officials was released on November 5, 2011.

8. On July 12, 2012, Judge Freeh issued a report detailing his findings and conclusions as a result of his investigation (hereinafter, the "Freeh Report").

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protection and preservation of the funds and assets under the custodial control of the Treasurer. See Black's Law Dictionary, at 347 (5th ed. 1971); Bloomberg L.P. v. Bd. of Governors of the Fed. Reserve Sys., 649 F. Supp. 2d 262, 273 (S.D.N.Y. 2009) (custodian is one that "guards and protects or maintains."). In exercising his custodial function, the Treasurer is required to follow a standard of care that would otherwise be observed by a prudent person under like circumstances. 72 Pa.C.S. § 301.1.

9. The Freeh Report alleged that Penn State's former President, various members of the athletic staff, and other senior school officials had deliberately ignored multiple credible abuse accusations lodged against Jerry Sandusky (made beginning in the 1990s).

10. The Freeh Report also confirmed most of the substance of the abuse allegations levied against Jerry Sandusky.

11. Jerry Sandusky was later convicted in a Pennsylvania state court on 45 of 48 charges related to the sexual abuse of Commonwealth children, and is currently serving a lengthy sentence in state prison.

### **The "Consent Decree"**

12. After the publication of the Freeh Report, the NCAA descended on Penn State to punish the university for its alleged failure to protect Pennsylvania children from Jerry Sandusky.

13. Under threat of the so-called "death penalty"—being excluded from participation in athletic programs overseen by the NCAA at an annual cost of tens of millions of dollars in revenue to the university—Penn State agreed on July 23, 2012 to a "Consent Decree" with the NCAA. See Exhibit A (7/23/12 Consent Decree).

14. In relevant part, the Consent Decree requires Penn State to pay \$60 million in Commonwealth-funded monies "to an endowment" over the course of five years, with an installment payment of \$12 million due each year:

**\$60 million fine.** The NCAA imposes a \$60 million fine, equivalent to the approximate average of one year's gross revenue from the Penn State football program, to be paid over a five-year period beginning in 2012 into an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The minimum annual payment will be \$12 million until the \$60 million is paid. The proceeds of this fine may not be used to fund programs at the University. No current sponsored athletic team may be reduced or eliminated in order to fund this fine.

See Exhibit A at 5.

15. Upon information and belief, the first \$12 million installment has been set aside by Penn State, but not paid to the NCAA. But the NCAA has averred that it can direct Penn State at any time to pay over the funds to a fund of its choosing.

16. The fine money is, and will continue to be, unavoidably Commonwealth-sourced. The Commonwealth provides such a significant percentage of Penn State's discretionary budget that it would be impossible for the payments to be derived solely from non-Commonwealth funds.

17. Penn State is not a private university but a state-related university, which means, among other things, that it is subject to state control.

18. Without any legislative consultation, or, indeed, any legal authority whatsoever, the NCAA unilaterally decided *after* entering into the Consent Decree that an overwhelming portion of the \$60 million fine would be spent on projects outside of Pennsylvania's borders. Its post-agreement plan intends to use standards developed by the so-called Child Sexual Abuse Endowment Task Force, an *ad hoc* "task force" established by the NCAA (and implemented by a third-party administrator under the NCAA's control).

19. The Endowment Task Force will act as a super-legislature, answerable to no Pennsylvania authority, with the sole discretion as to how \$60 million in Pennsylvania monies will be spent.

20. The NCAA intends that the \$60 million fine imposed by the Consent Decree will be mostly diverted out of Pennsylvania to out-of-state organizations and programs, despite the host of underfunded and unfunded causes right here in the Commonwealth, and even though the events triggering the punitive fine occurred in Pennsylvania and involved its residents.

21. The NCAA's stated intent with the \$60 million is nowhere reflected in the Consent Decree itself.

### **NCAA's Refusal to Mediate**

22. Senator Corman, upon learning of the NCAA's plan to expatriate tens of millions of Commonwealth dollars to fund projects with no nexus to Pennsylvania, rightfully became concerned that the NCAA's plan was illegal and morally indefensible.

23. Consequently, on two separate occasions, Senator Corman contacted the NCAA by letter to exercise his oversight responsibilities as Appropriations chair and to ensure that the \$60 million fine would be directed to appropriate Pennsylvania organizations and programs. See Exhibits B (12/6/12 Letter) and C (12/17/12 Letter).

24. Nevertheless, Senator Corman was repeatedly rebuffed in his requests and was denied an in-person meeting with Dr. Mark A. Emmert, President of the NCAA.

25. Instead, Kathleen T. McNeely, the NCAA's Vice President of Administration and Chief Financial Officer, spoke briefly with Senator Corman by telephone, refusing his request for oversight and repudiating Defendants' obligation to keep the \$60 million fine within Pennsylvania for Pennsylvania organizations and programs. See Exhibit C (12/17/12 Letter).

26. It is apparently the NCAA's belief that it is not accountable to the elected authorities of this Commonwealth who are responsible for ensuring the appropriate and lawful expenditure of public-generated dollars.

27. Senator Corman's numerous requests to be granted any degree of serious engagement by either the NCAA or its *ad hoc* Endowment Task Force have been steadfastly refused.

28. The NCAA has refused to repudiate its plan to use Commonwealth-sourced funds in any manner, and at any place, that the NCAA, in its sole discretion, sees fit.

### **The Endowment Act**

29. In order to ensure that universities receiving substantial Commonwealth support spend their budget appropriations consistent with Commonwealth public policy, the General Assembly recently passed, and Governor Corbett signed into law, Act 1 of 2013: the Endowment Act. See Exhibit D (Act 1 of 2013, 24 P.S. §§ 7501-05). The Endowment Act was effective upon enactment. See Act 1 of 2013, § 6.

30. Senator Corman, in his role as Chair of the Senate Appropriations Committee, was the principal sponsor of the Endowment Act.

31. In primary part, the Endowment Act mandates that “[i]f an institution of higher education pays a monetary penalty pursuant to an agreement entered into with a governing body and: (1) the monetary penalty is at least \$10,000,000 in installments over a period in excess of one year; and (2) the agreement provides that the monetary penalty will be used for a specific purpose, then the monetary penalty shall be deposited into an endowment that complies with the provisions of subsection (b).” 24 P.S. § 7503(a).

32. An “institution of higher education” is defined under the Endowment Act as a “postsecondary educational institution in this Commonwealth that receives an annual appropriation from an act of the General Assembly.” 24 P.S. § 7502.

33. Penn State is an institution of higher education under the Endowment Act.

34. A “governing body” is defined under the Endowment Act as an “organization or legal entity with which an institution of higher education is associated and which body may impose a monetary penalty against the institution of higher education.” 24 P.S. § 7502.

35. The NCAA is a governing body under the Endowment Act.

36. The monetary fine described in the Consent Decree between the NCAA and Penn State is subject to the terms of the Endowment Act.

37. The Endowment Act designates Treasurer McCord as the sole custodian of the Endowment Fund and he is charged with the prudent management and investment of the Fund assets. 24 P.S. § 7503(b)(1). In his capacity as custodian of the Endowment Fund, Treasurer McCord possesses a fiduciary duty to safeguard and protect the assets of the Endowment Fund and to ensure all disbursements from the Endowment Fund are made in accordance with the Endowment Act. Id.

38. The NCAA is required under the Endowment Act to deposit the \$12 million already set aside, and any additional sums paid under the Consent Decree, with the State Treasury for appropriate custodial care by the Treasurer. See 24 P.S. § 7503(a)-(b)(1).

39. The NCAA has not deposited any moneys with the State Treasury.

#### **The Morrill Act and Act 10A of 2012**

40. Penn State was established by the General Assembly pursuant to and under the authority of the Morrill Act of 1862, 7 U.S.C. §§ 301, *et seq.*

41. The Morrill Act made “grants . . . to the state and not to any institutions within the state. In order to obtain the benefit of the statute, it was necessary for a state by appropriate legislation to accept the grant. A state accepting such a grant bound itself to carry out the purposes for which the grant was extended.” 73B C.J.S. Public Lands § 107.

42. The purpose for the land grants remains codified in Federal law: “to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical

education of the industrial classes in the several pursuits and professions in life[.]” 7 U.S.C. § 304.

43. Per its commitment in accordance with United States law and its police power, Pennsylvania continues to fund and regulate Penn State.

44. Act 10A of 2012 passed by the Pennsylvania General Assembly and signed into law by the Governor in July 2012, appropriates \$214,110,000 to Penn State for general support for fiscal year July 1, 2012 to June 30, 2013. See Exhibit E (Act 10A of 2012).

45. The annual appropriation to Penn State is only one example of the financial support to the university. Penn State also receives capital budget appropriations, PHEAA grants, tax benefits as a state non-profit, and direct support contained within the Agriculture Department budget.

46. Senator Corman, in his role as Chair of the Senate Appropriations Committee, was the sponsor of Act 10A of 2012 and ensured that it was passed by shepherding it through the Appropriations Committee, the full Senate and the House of Representatives, ultimately to the Governor for signature.

47. Act 10A of 2012 is one way the Commonwealth regulates its land grant institution, Penn State, in order to administer and effectuate the purposes of the Morrill Act.

48. Act 10A of 2012 grants the General Assembly generally and Senator Corman specifically, in his role as Chair of the Senate Appropriations Committee, the right to “full, complete and accurate” information concerning expenditures by Penn State and its agents. See Act 10A of 2012, § 5.

49. Nothing in Act 10A of 2012 grants any person or organization the right to divert the funds for national causes. Indeed, Senator Corman and the Pennsylvania General Assembly

never intended that the near quarter-billion-dollar appropriation to Penn State would be commandeered by a multi-state organization for use in pursuing its own causes.

**COUNT I**  
**(VIOLATIONS OF THE ENDOWMENT ACT)**

50. The foregoing Paragraphs are incorporated by reference as if set forth in full herein.

51. Senator Corman has a direct interest in enforcement and administration of the Endowment Act in his capacity as “Chairman of the Appropriations Committee of the Senate.” See 24 P.S. § 7504(b)(1)-(2).

52. As custodian of the Endowment Fund and fiduciary, Treasurer McCord has a direct interest in enforcement and administration of the Endowment Act in his capacity as Treasurer of the Commonwealth of Pennsylvania, making him responsible for receipt and appropriate custody of the fine. See 24 P.S. § 7503(b)(1).

53. The Treasurer is the appropriate public official with extensive experience and resources to prudently manage, safeguard, invest and distribute assets of the Endowment Fund, as evidenced by the nearly \$90 billion dollars in Commonwealth assets and funds for which he presently serves as custodian.

54. The NCAA is not in compliance with the requirements of the Endowment Act, and has shown an unwillingness to comply with the Act in the future.

55. The Endowment Act applies to “all monetary penalties paid or payable under agreements between institutions of higher education and governing bodies regardless of the payment date.” 24 P.S. § 7505. The Endowment Act thus applies to the monetary penalty described in the Consent Decree.

56. Penn State is an “institution of higher education.” 24 P.S. § 7502.

57. The NCAA is a “governing body.” 24 P.S. § 7502.

58. The Consent Decree is “an agreement entered into” by “an institution of higher education” with a “governing body” that contains a “monetary penalty.” 24 P.S. § 7503(a).

59. The monetary penalty is “at least \$10,000,000 in installments over a time period in excess of one year,” 24 P.S. § 7503(a)(1), specifically requiring that Penn State pay \$60 million over 5 years.

60. The Consent Decree “provides that the agreement will be used for a specific purpose,” 24 P.S. § 7503(a)(2), specifically requiring that the penalty will be for “an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse.”

61. Penn State has already paid the first fine installment into a separate account and the NCAA has the power to command Penn State to spend those funds as directed at any time, thus Penn State has paid a fine under the Consent Decree. See 24 P.S. § 7503(a).

62. The burden to pay money to the Treasury as required by the Endowment Act can be satisfied either by a payment by Penn State or a payment by the NCAA: both share a joint and several duty to pay. 24 P.S. § 7503(a). Since the NCAA has not paid the \$12 million or directed Penn State to pay the \$12 million, as the NCAA claims to have the authority to do, the NCAA stands in violation of the Endowment Act. See 24 P.S. § 7503(a)-(b)(1).

WHEREFORE, Plaintiffs request that this Court grant the following relief:

- a. A declaration that the Endowment Act is a valid and constitutional law;
- b. A declaration that the NCAA has violated the Endowment Act;
- c. A declaration that the entirety of the monetary penalty in the Consent Decree be paid to the State Treasury;

- d. An order compelling the NCAA to immediately pay or direct payment of the first \$12 million installment to the State Treasury;
- e. An injunction compelling compliance by the NCAA with the Endowment Act;
- f. Attorneys' fees and costs; and
- g. Such other relief as this Court deems just and proper.

**COUNT II**  
**(VIOLATIONS OF THE PENNSYLVANIA CONSTITUTION)**

63. The foregoing Paragraphs are incorporated by reference as if set forth in full herein.

64. Article II, Section 1 of the Pennsylvania Constitution places the “legislative power of this Commonwealth . . . in a General Assembly, which shall consist of a Senate and House of Representatives.”

65. Article I, Section 12 of the Pennsylvania Constitution instructs that “[n]o power of suspending laws shall be exercised unless by the legislature or by its authority.”

66. Article III, Section 24 of the Pennsylvania Constitution provides, in relevant part, “[n]o money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers.”

67. Funds of the Commonwealth may only be appropriated pursuant to the direction of the General Assembly through legislation.

68. The General Assembly determines the amounts to be appropriated, and the purposes of its appropriations.

69. The NCAA may not, by “Consent Decree” with an officer of Penn State or by other means, circumvent the purposes or rewrite the terms of appropriations bills duly passed by

the General Assembly. Any attempt to do so is contrary to Article II, Section 1, Article I, Section 12, and Article III, Section 24 of the Pennsylvania Constitution.

70. Nor may the NCAA constitutionally attempt to administer its “Consent Decree” in a manner inconsistent with the Endowment Act.

71. Act 10A of 2012 created a process for oversight of the funds it appropriated.

72. The bill’s oversight process provides for “full, complete and accurate information as may be required by the . . . chairman of the Appropriations Committee” so that he may review expenditures of the funds and determine whether they have been spent appropriately.

73. Senator Corman has attempted on multiple occasions to exercise his rights of oversight under Act 10A of 2012, but has been rebuffed by Defendants.

74. The NCAA’s attempt to usurp the General Assembly’s authority to suspend Act 10A of 2012 is *ultra vires*.

75. No money may be spent without the authorization of the General Assembly.

76. In addition, the Pennsylvania Constitution and Fiscal Code directs the Treasurer shall not issue a warrant for the payment of any requisition for the disbursement of public funds within the custodial control of the Treasurer until after the Treasurer has determined that the requisition is “lawful and correct” in accordance with generally accepted auditing standards. Pa.Const., art. III, § 24; 72 P.S. §§ 307, 1502.

77. No law provides for the payment of funds out of the State Treasury for the purpose of funding the NCAA’s “Consent Decree” requirements except to the extent that such payments are consistent with the Endowment Act.

78. Furthermore, the NCAA's unilateral decision to put forward such expenditures interferes with Senator Corman's legislative authority in that it encroaches on his ongoing official rights, duties and obligations to oversee the appropriations process.

79. To the extent the NCAA is administering its "Consent Decree" in a manner inconsistent with Act 10A of 2012 as clarified by the Endowment Act, it is interfering with Senator Corman's rights and powers under the Pennsylvania Constitution.

80. Furthermore, to the extent that the NCAA is administering its "Consent Decree" in a manner inconsistent with Act 10A of 2012 as clarified by the Endowment Act, it is interfering with Treasurer McCord's duties and authority under the Pennsylvania Fiscal Code and the Pennsylvania Constitution. Pa. Const. act. III, § 24; 72 P.S. §§ 306 and 1501.

81. Without equitable relief, Senator Corman's authority Article II, Section 1; Article I, Section 12; and Article III, Section 24 of the Pennsylvania Constitution will be usurped and diminished, and as a consequence, he will suffer immediate and irreparable harm.

82. Without equitable relief, Treasurer McCord's authority under the Pennsylvania Fiscal Code, the Endowment Act and Article III, Section 24 of the Pennsylvania Constitution will be usurped and diminished, and as a consequence, he will suffer immediate and irreparable harm.

83. Absent equitable relief, no remedy at law can restore this legislative power and undo the substantial and immediate harm to Senator Corman's and Treasurer McCord's official interests.

84. Moreover, greater injury will result to Senator Corman and Treasurer McCord if this Court refuses to order equitable relief than will result to Defendants should this Court grant it.

WHEREFORE, Senator Corman requests that this Court grant the following relief:

- a. A declaration that the NCAA has violated Pennsylvania law;
- b. A declaration that the entirety of the monetary penalty in the Consent Decree be paid to the State Treasury;
- c. An order compelling the NCAA to immediately pay or direct payment of the first \$12 million installment to the State Treasury;
- d. An injunction compelling compliance by the NCAA with Pennsylvania law;
- e. Attorneys' fees and costs; and
- f. Such other relief as this Court deems just and proper.

Respectfully submitted,

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*Attorneys for Treasurer Robert McCord*

*Attorneys for Senator Jake Corman*

Dated: March 27, 2013

**CERTIFICATE OF SERVICE**

I, Matthew H. Haverstick, hereby certify that I served the foregoing Second Amended

Complaint on the following persons by first class mail and electronic mail:

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Dated: March 27, 2013

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*Attorneys for Treasurer Robert McCord*

**VERIFICATION**

I, Jake Corman, Senator for the 34th Senatorial District of Pennsylvania in the General Assembly and Chair of the Senate Committee on Appropriations, verify that the statements in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information and belief. I make this verification subject to 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Jake Corman

**VERIFICATION**

I, Rob McCord, Treasurer of the Commonwealth of Pennsylvania, verify that the statements in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information and belief. I make this verification subject to 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Robert M. McCord