

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By **JOSH SHAPIRO,**
ATTORNEY GENERAL,

and

THE HONORABLE TOM WOLF,
GOVERNOR OF THE
COMMONWEALTH OF PENNSYLVANIA,

Petitioners,

No. _____ M.D. 2020

v.

THERESA R. BRASWELL, Individually, and as
Chair of the Board of Trustees
of Lincoln University; and
JOHN & JANE DOES 1 – 21, as Trustees of
Lincoln University, Board of Trustees,

Respondents.

NOTICE

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 OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.**

MidPenn Legal Services
213-A North Front Street
Harrisburg, PA 17101
(717) 232-0581

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213 North Front Street
Harrisburg, PA 17101
(717)232-7536

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COMMONWEALTH OF PENNSYLVANIA, :

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No. _____ M.D. 2020

v. :

THERESA R. BRASWELL, Individually, and as :
Chair of the Board of Trustees :
of Lincoln University, and :
JOHN & JANE DOES 1 – 21, as Trustees of :
Lincoln University, Board of Trustees, :

Respondents. :

**COMMONWEALTH’S COMPLAINT
IN THE FORM OF A PETITION FOR REVIEW**

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Petitioners, the Commonwealth of Pennsylvania acting as *parens patriae* through its Attorney General, Josh Shapiro, and Governor Tom Wolf, acting in his capacity as an *ex officio* member of the Lincoln University Board of Trustees, bring this action to redress and enjoin violations of the Lincoln University--Commonwealth Act, 24 P.S. §§ 2510-401 *et seq.*, the Sunshine Act, 65 Pa. C.S. §§ 701 *et seq.*, and the Nonprofit Corporation Law of 1988, 15 Pa. C.S. §§ 1501 *et*

seq., against Theresa R. Braswell, Individually, and as Chair of the Board of Trustees of Lincoln University, as well as John and Jane Does 1 – 21, as Trustees of the Board of Trustees of Lincoln University, and offers the following in support:

JURISDICTION

1. Jurisdiction lies with this Court pursuant to Section 761(a)(2) of the Judicial Code, 42 Pa. C.S. § 761(a)(2), and Section 715 of the Sunshine Act, 65 Pa. C.S. § 715.

PARTIES

2. Petitioner, the Commonwealth of Pennsylvania is acting as *parens patriae* through its Attorney General, Josh Shapiro, with offices located on the 14TH Floor of Strawberry Square, in Harrisburg, PA 17120, and at 1600 Arch Street, Suite 300, in Philadelphia, PA 19103.

3. Petitioner, the Honorable Tom Wolf, is the Governor of the Commonwealth of Pennsylvania and an *ex officio* member of the Lincoln University Board of Trustees, with an office located at 333 Market Street, 17th Floor, in Harrisburg, PA 17101.

4. Respondent, THERESA R. BRASWELL, is an adult individual currently serving as the Chair of the Lincoln University Board of Trustees located at 1570 Baltimore Pike, in Lincoln University, PA 19352.

5. Respondents, JOHN AND JANE DOES 1 – 21, are adult individuals currently serving as Trustees on the Board of Trustees of Lincoln University located at 1570 Baltimore Pike, in Lincoln University, PA 19352.

FACTS

6. Paragraphs 1 through 4 are incorporated herein by reference as if fully set forth.

7. Lincoln University is a state-related institution and integral part of the system of higher education in Pennsylvania by virtue of the “Lincoln University – Commonwealth Act,” at 24 P.S. §§ 2510-401 *et seq.*, 1972, July 7, P.L. 743, No. 176 (Lincoln Act).

8. Pursuant to Section 2510-404(b) of the Lincoln Act, 24 P.S. § 2510-404(b), the university’s Board of Trustees shall consist of thirty-nine (39) **voting** members, including the Governor, the Secretary of Education, and the President of the university as trustees, *ex officio*.

9. Among the remaining thirty-six (36) voting members of the Board of Trustees, twelve (12) shall be designated Commonwealth Trustees: four appointed by the Governor; four appointed by the President Pro Tempore of the Senate; and four appointed by the Speaker of the House of Representatives.¹

¹ The full text of the subsection reads as follows: Twelve of the trustees shall be designated Commonwealth trustees, four appointed by the Governor, with the

10. Utilizing his statutory authority, on January 21, 2020, Speaker Mike Turzai made three appointments to serve as Commonwealth Trustees on the university's Board of Trustees:

- a. Steven Kenric Lewis;
- b. Charmaine Spence Rochester; and
- c. Jose Sabastro.

11. Utilizing his statutory authority, on February 10, 2020, Governor Tom Wolf appointed Owen Cooks to serve as a Commonwealth Trustee on the university's Board of Trustees and the same was confirmed by the advice and consent of the Senate on May 13, 2020.

12. Utilizing his statutory authority, on June 25, 2020 Governor Tom Wolf appointed Jalilah Parker to serve as his *ex officio* delegate.

13. On July 10, 2020, the respondents held a Special Meeting pursuant to Article III, Section 3 of the university's By-Laws.

advice and consent of two-thirds of all of the members of the Senate, four by the President Pro Tempore of the Senate, and four by the Speaker of the House of Representatives. One appointment shall be made by each of the appointing authorities for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year commencing with the date when the charter becomes effective, and annually thereafter one appointment shall be made by each of the three Commonwealth appointing authorities for a term of four years.

14. The By-Laws of Lincoln University call for ten (10) days' notice before a Special Meeting can be held and also provide that no action may be taken at such meeting that has not been included in the notice.²

15. The notice of the July 10, 2020 Special Meeting described the potential action to be taken merely as relating to "University Leadership—Next Steps" and did not include any reference to the President's contract.

16. The July 10th Special Meeting was conducted remotely through Zoom Video Communications software and consisted of both public meeting sessions and a closed, non-public, executive committee meeting.

17. Throughout the entire Special Meeting, however, five of the Commonwealth Trustees were denied the ability to participate, in that:

- a. all four Commonwealth Trustees and the Governor's *ex officio* designee had their microphones muted by the Zoom host which limited the participation of all five to only listening;

² The Section reads as follows: Special meetings of the Board of Trustees or of the members of the Corporation may be called at the discretion of the Chair of the Board and shall be called upon the written request of six members of the Board. Written notice of any special meeting, together with a statement of the business for which it is called, shall be sent to each Trustee or member by appropriate communication at least ten days in advance of the day set for such meeting. Except with the unanimous consent of the Trustees present at any such meeting, no business shall be transacted at any special meeting except as shall be indicated in the notice thereof.

- b. all five were excluded from the roll call at the opening of the public session;
- c. all five were denied participation in the closed executive session; and
- d. all five were all denied the ability to cast a vote on any of the actions taken by the Board of Trustees.

18. During the closed, non-public, executive session the board conducted a secret ballot on a motion to renew the contract of the university President, Dr. Brenda A. Allen, which was purportedly tied, 11 to 11, and therefore the motion was considered to have failed.

19. After the motion to renew the president's contract had failed, a motion was made to search for an interim replacement, since the President's contract expired June 30, 2020, without renewal.

20. The board was then advised by its legal counsel that exclusion of the five trustees and the secret balloting outside of the public's view were not authorized under the university's bylaws or the Sunshine Act.

21. The executive session was then adjourned and the motion to search for an interim president was then considered in the subsequent public session.

22. As previously alleged, however, the five trustees were likewise not permitted to participate in that motion which then passed by a vote of 14 to 7.

COUNT I
VIOLATION OF THE
LINCOLN UNIVERSITY–COMMONWEALTH ACT

23. Paragraphs 1 through 21 are incorporated herein by reference as if fully set forth.

24. The reason given by respondent Board Chair Braswell for the exclusion of the five Trustees was that they had not been “vetted” by the Board’s Committee on Trustees, Degrees and Nominations.

25. There is no provision contained in the Lincoln Act or in the By-Laws of the University requiring the “vetting” of any Commonwealth Trustee or *ex officio* trustee once they have been appointed in accordance with the Lincoln Act.

26. There is no provision contained in the Lincoln Act or in the By-Laws of the University requiring the “vetting” of any Commonwealth Trustee or *ex officio* trustee as a precondition of any Commonwealth Trustee or *ex officio* Trustee performing their fiduciary duties, including the trustee’s right to vote and otherwise fully participate in the governance of the University’s business and affairs.

WHEREFORE, the Petitioners respectfully request that this Honorable Court:

- a. Declare the July 10, 2020 Special Meeting to be invalid and any actions taken thereby null and void and of no legal force or effect.
- b. Require the respondents to ensure that all future activities of the University's Board of Trustees comply with the provisions of the Lincoln Act.
- c. Enter judgment against the respondents and in favor of the Petitioners to reimburse their reasonable costs of investigation and attorneys fees.
- d. Any other relief this Court deems appropriate.

COUNT II
VIOLATION OF THE SUNSHINE ACT

27. Paragraphs 1 through 25 are incorporated herein by reference as if fully set forth.

28. Lincoln University is a state-related university and defined as an "Agency" within the meaning of Section 703 of the Sunshine Act, 65 Pa. C.S. § 703.

29. Pursuant to Sections 704 and 705 of the Sunshine Act, 65 Pa. C.S. §§ 704, 705, votes of members must be publicly cast and recorded.

30. Section 708(a) of the Sunshine Act, 65 Pa. C.S. § 708(a), governs the reasons an agency may hold an executive session and Section 708(c) thereof

requires that, “[o]fficial action on discussions held pursuant to subsection (a) shall be taken at an open meeting.”

31. There is no provision in the Sunshine Act authorizing secret ballots or votes in executive sessions or precluding the right of any member of a board covered by the Sunshine Act to vote during a public meeting.

32. Article III, Section 7 of the Lincoln University By-Laws states that an act of the Board requires a majority vote of those voting Trustees who are present.³

33. The Trustees, as alleged in paragraphs 5 through 25, were present at the July 10, 2020, meeting of the Lincoln University Board of Trustees.

34. Article V, Section 11 of the Lincoln University By-Laws, regarding the Committee on Trustees, Degrees and Nominations, contains no authority authorizing limits on Commonwealth Trustees’ voting rights or those of *ex officio* trustees.

35. By excluding the five Trustees as alleged in paragraphs 5 through 25 from voting, Respondent Braswell precluded the existence of a proper majority to support the Board’s votes.

³ The Section reads as follows: Except as may be otherwise required by statute or in cases which the By-Laws specify a larger number as a quorum, twelve voting Trustees present in person shall constitute a quorum for the transaction of business at all meetings of the Board of Trustees, and the act of a majority of the voting Trustees who are present at any such meeting at which a quorum is present shall be the act of the Corporation or Board as the case may be. A fewer number than a quorum may adjourn to a fixed date.

36. Without the votes of the five mentioned Trustees, no action taken by Respondent Board is valid.

37. Respondent Braswell's violations as alleged were taken in willful defiance and wanton disregard of the advice of the University's legal counsel as well as the University's governing law and By-Laws.

38. Section 714 of the Sunshine Act, 65 Pa. C.S. § 714, provides for fines and costs against any member of an agency who participates in a meeting with the intent and purpose violating the act as committing a summary offense and shall, upon conviction, be sentenced to pay:

- a. For a first offense, the costs of prosecution plus a fine of not less than \$100 nor more than \$1,000; and
- b. For a second or subsequent offense, the costs of prosecution plus a fine of not less than \$500 nor more than \$2,000.

39. Section 714.1 of the Sunshine Act, 65 Pa. C.S. § 714.1, provides that if a court determines that an agency willfully or with wanton disregard violated a provision of this act the prevailing party shall be awarded reasonable attorneys fees and costs of litigation.

WHEREFORE, the Petitioners respectfully request that this Honorable Court:

- a. Declare the July 10, 2020 Special Meeting to be invalid and any actions taken thereby to be null and void and of no legal force or effect.
- b. Require the respondents to ensure that all future activities of the University's Board of Trustees comply with the provisions of the Sunshine Act.
- c. Enter judgment against the respondents in favor of the Petitioners for the costs of their reasonable attorneys fees and costs of this litigation.
- d. Any other relief this Court deems appropriate.

COUNT III
VIOLATION OF THE NONPROFIT CORPORATION LAW

40. Paragraphs 1 through 38 are incorporated herein by reference as if fully set forth.

41. Pursuant to the Nonprofit Corporations Law, 15 Pa. C.S. §§ 1501-6162, and the Pennsylvania Uniform Trust Act, 20 Pa. C.S. §§7701 – 7799.3, the Petitioners have supervisory and regulatory responsibilities with respect to nonprofit corporations and their officers and directors.

42. More specifically, the Petitioners have standing to pursue unlawful actions by nonprofit corporation directors which violate the corporation's organizing documents or bylaws. This Court has recognized Petitioner's standing

in numerous cases. “The Commonwealth has parens patriae standing whenever it asserts quasi-sovereign interests, which are interests that the Commonwealth has in the well-being of its populace.” Commonwealth ex rel. Corbett v. Citizens Alliance for Better Neighborhoods, Inc., 983 A.2d 1274 (Pa. Cmwlth. 2009) (citing Commonwealth v. TAP Pharmaceutical Products, Inc., 885 A.2d 1127 (Pa. Cmwlth. 2005)).

43. Pursuant to 15 Pa. C.S. §5547(a) corporate officers and directors stand in a fiduciary relationship to the corporation and, pursuant to 20 Pa. C.S. §7781(b), misconduct comprising breach of trust can result in removal from office.

44. Respondent Braswell’s actions, as alleged – performed in defiance of the advice of the University’s legal counsel as well as the University’s governing law and By-Laws – constitute the gross abuse of her authority as Chair of the Board of Trustees and the breach of the fiduciary duties of loyalty and care she owes to the University .

45. As such, the actions of respondent Braswell constitute a serious breach of trust warranting her removal.

WHEREFORE, the Petitioners respectfully request that this Honorable Court:

- a. Declare the July 10, 2020 Special Meeting to be invalid and any actions taken thereby to be null and void and of no legal force or effect.
- b. Remove respondent Braswell from the University's Board of Trustees.
- c. Enter judgment against the respondents and in favor of the Petitioners for the costs of their reasonable attorneys fees and costs of this litigation.
- d. Any other relief this Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
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July 17, 2020

THE HONORABLE TOM WOLF,
GOVERNOR OF THE
COMMONWEALTH OF
PENNSYLVANIA

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July 17, 2020

VERIFICATION

I, ROBERT L. ARCHIE, JR., hereby certify and state that the averments contained in the foregoing petition are true to the best of my knowledge, information, and belief. I understand that these statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July 17th, 2020



ROBERT L. ARCHIE, JR.

CERTIFICATION OF COMPLIANCE

The undersigned certifies that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than [sic] non-confidential information and documents.

/s/ David Dembe

David Dembe

Senior Deputy Attorney General

PA Attorney ID No. 202404

Charitable Trusts and

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July 17, 2020