



DEBRA C. IMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

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**IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW**

**MICHEL J. MCQUEARY**

Plaintiff

vs.

**THE PENNSYLVANIA STATE  
UNIVERSITY,**

Defendant

: Docket No. 2012-1804

:

: Type of Case: Whistleblower,  
: Defamation,  
: Misrepresentation

:

: Type of Pleading: Complaint  
: (Writ filed 5/8/12)

:

: Filed on Behalf of: Plaintiff

:

:

: Counsel of Record for this Party:  
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UNIVERSITY,**

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: IN THE COURT OF COMMON PLEAS

: CENTRE COUNTY, PENNSYLVANIA

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: CIVIL ACTION

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: JURY TRIAL DEMANDED

### **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, GO TO OR TELEPHONE THE OFFICE SET FORTH ON THE NEXT PAGE. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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DOCKET NO. 2012-1804

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JURY TRIAL DEMANDED

### COMPLAINT

1. The Plaintiff, Michael J. McQueary, is an adult individual and, at all times relevant to this Complaint, was a resident of State College, Centre County, Pennsylvania.

2. The Defendant, The Pennsylvania State University (hereafter PSU), was incorporated for educational purposes by the Act of February 22,

1855, PL 46, and has its principal administrative office located at 201 Old Main, University Park, Centre County, Pennsylvania 16802.

3. Defendant PSU, at all times relevant to this Complaint, received millions of dollars annually from the Commonwealth of Pennsylvania for use in funding its operations.

4. From February 2000 through February 2003, the Plaintiff was a Graduate Assistant Coach for the Defendant's intercollegiate football team.

5. In February 2001, Plaintiff's supervisor was Head Football Coach Joseph V. Paterno.

6. In February 2001, Head Football Coach Paterno's supervisor was the PSU Director of Intercollegiate Athletics, Tim Curley (hereafter Athletics Director Curley).

7. In February 2001, Athletics Director Curley's supervisor was PSU's Senior Vice President, Finance and Business, Gary Schultz (hereafter Senior Vice President Schultz).

8. In February 2001, the Defendant's University Police provided all law enforcement and security services to the Defendant's University Park Campus located in State College, Pennsylvania, with the same powers as police of municipalities, including the power and duty to prevent crime, investigate criminal acts, apprehend, arrest, and charge criminal offenders.

9. In February of 2001, the Director of the University Police, Thomas Harman, was supervised by, and reported to, the Defendant's Senior Vice President Schultz.

10. At approximately 9:00 p.m. on February 9, 2001, the Plaintiff witnessed an adult male, formerly employed by the Defendant as an Assistant Football Coach and Defensive Coordinator, engaging in highly inappropriate and illegal sexual conduct with a boy who appeared to be about ten to twelve years old in the Support Staff Locker Room showers in the Lasch Football Building located on the Defendant's University Park Campus.

11. At no time prior to February 9, 2001, had the Defendant University, or any of its employees or agents, provided the Plaintiff with any instruction, guidance or training as to the jurisdictions of the Defendant's University Police and/or the police of the Borough of State College, and/or the Pennsylvania State Police, with respect to criminal acts occurring on the University Park Campus, nor had the Defendant provided the Plaintiff with any instruction, guidance or training with respect to reporting sexual misconduct under the federal Clery Act.

12. At about 8:00 a.m. February 10, 2001, Plaintiff personally reported what he had witnessed the night before, as described in paragraph 10 above, to his supervisor, Head Football Coach Paterno. Coach Paterno told the Plaintiff that he had done the right thing in reporting this to him, that this was

very disturbing, that he would tell some people about what the Plaintiff had witnessed and that he would get back to the Plaintiff.

13. Based upon information and belief, Plaintiff avers that by February 11, 2001, Head Coach Paterno reported what the Plaintiff had witnessed to Athletics Director Curley.

14. A few days after February 10, 2001, Head Football Coach Paterno told the Plaintiff that he had reported what Plaintiff had witnessed on February 9, 2001, to Athletics Director Curley and at that time Head Football Coach Paterno reiterated that the Plaintiff had done the right thing in reporting what he had witnessed to him.

15. About 9 or 10 days after making his report to Head Coach Paterno, at the direction of Athletics Director Curley, the Plaintiff met with Athletics Director Curley and Senior Vice President Schultz in a conference room in the Bryce Jordan Center and told them about the aforementioned highly inappropriate sexual misconduct that he had witnessed the night of February 9, 2001.

16. Senior Vice President Schultz and Athletics Director Curley thanked the Plaintiff for providing them with this information, told the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action be taken.

17. The Plaintiff believed and relied upon Athletics Director Curley's and Senior Vice President Schultz's statements that they would see

that the incident was properly investigated and that appropriate action be taken.

18. Athletics Director Curley and Senior Vice President Schultz requested the aforementioned meeting and conducted the aforementioned meeting within the scope of their employment by Defendant.

19. Plaintiff believes and therefore avers, that neither Athletics Director Curley nor Senior Vice President Schultz reported what the Plaintiff had reported to them to the Defendant's University Police, or to the State College Police, or the Pennsylvania State Police or to the Centre County Children and Youth Services.

20. Beginning about March 1, 2004, the Plaintiff became a full-time Assistant Coach for the football team of Pennsylvania State University.

21. As an inducement to retain the Plaintiff as an Assistant Football Coach, on or about December 17, 2008, Athletics Director Curley provided the Plaintiff with a letter memorializing a severance commitment, a true and correct copy of which is attached hereto as Exhibit A hereto. Plaintiff believes and therefore avers that on or about December 17, 2008, the Defendant's other Assistant Football Coaches received similar severance commitments as an inducement to retain their services.

22. In November 2010, the Plaintiff provided information to investigators from the Pennsylvania Attorney General's Office and the Pennsylvania State Police about what he had witnessed as is described in ¶10

above and that he had, about 10 days thereafter, told Athletics Director Curley and Senior Vice President Schultz what he had witnessed.

23. On December 14, 2010, the Plaintiff testified in Harrisburg, Pennsylvania, before a Statewide Investigating Grand Jury about what he had witnessed in the Lasch Football Building Support Staff Shower Room as described in ¶10 above. Also, included in the Plaintiff's Grand Jury testimony was that he had reported the incident to Athletics Director Curley and Senior Vice President Schultz.

24. The Plaintiff's base salary for the 2011-2012 year was \$140,400, plus discretionary and/or bowl bonus, and fringe benefits, including paid family health insurance coverage, pension contribution, a motor vehicle and a cell phone.

25. As of November 4, 2011, the present value of the Plaintiff's reasonably anticipated future earnings over the course of the next 25 years in the profession of football coaching was at least \$4,000,000.

26. On or about November 4, 2011, the Statewide Investigating Grand Jury issued a Presentment finding, among other things, that Athletics Director Curley and Senior Vice President Schultz each made a materially false statement to the Grand Jury concerning the Plaintiff's report of sexual misconduct to them.



27. Pursuant to the Grand Jury Presentment, both Athletics Director Curley and Senior Vice President Schultz were charged with violations of the Pennsylvania Crimes Code.

28. On Saturday, November 5, 2011, Defendant's President Spanier, acting within the scope of his employment, issued a statement, published on Penn State Live, the Defendant University's official news service, a true and correct copy of which is attached hereto as Exhibit B.

29. On Monday, November 7, 2011, Defendant's President Spanier, acting within the scope of his employment, reiterated his unconditional support for Athletics Director Curley and Senior Vice President Schultz to a meeting of numerous staff of the Defendant's intercollegiate athletic department held at the Mount Nittany Lounge at Beaver Stadium, reiterating his affirmation of the honesty and integrity of Athletics Director Curley and Senior Vice President Schultz and stating that the charges against them were groundless.

30. Even though the Plaintiff was quite ready, willing and able to do so, on Thursday afternoon, November 10, 2011, Acting Head Coach Tom Bradley told the Plaintiff that the Defendant's Administration was prohibiting the Plaintiff from coaching in any capacity in the upcoming football game that Saturday.

31. On Thursday evening, November 10, 2011, Acting Athletics Director Sherburne told the Plaintiff that the Defendant's Administration was

directing that the Plaintiff leave the State College, Pennsylvania area for the weekend.

32. By telephone call from Acting Athletics Director Mark Sherburne on Friday, November 11, 2011, at approximately 1:30 p.m., Mr. Sherburne told the Plaintiff, who had left the state pursuant to the directive of the evening before, that he was going to be placed on paid administrative leave and that Plaintiff would be advised as to what that meant in a meeting to be scheduled for Sunday, November 13, 2011.

33. On November 13, 2011, shortly after 7:00 p.m., the Plaintiff attended a meeting in the Athletics Director's office in the Bryce Jordan Center with Acting Athletics Director Sherburne, Human Resources Manager Erika Runkle, and the University's General Counsel, Cynthia Baldwin. At that meeting, Acting Athletics Director Sherburne read to the Plaintiff the statement attached hereto as Exhibit C, and then handed Exhibit C to the Plaintiff.

34. In response to Acting Athletics Director Sherburne's reading of the statement to him, the Plaintiff replied that he was ready, willing, able and desirous of coaching at Penn State and that he did not feel he was "negligent in any way with my job responsibilities." University General Counsel Baldwin replied that "No one is accusing you of being negligent at all."

### **COUNT 1 – (Whistleblower)**

35. Paragraphs 1-34 above incorporated by reference herein as if fully set forth.

36. As the result of being placed on paid administrative leave, from November 13, 2011, the Plaintiff was barred from performing any football coaching duties, including coaching in preparation for, and in, the Ticket City Bowl, and deprived of receiving the bonus paid to Assistant Coaches therefore.

37. As the result of being placed on paid administrative leave on November 13, 2011, Plaintiff was required to immediately turn in, and ceased to have the benefit of, his University provided motor vehicle, a benefit fairly valued at \$425 per month.

38. It is believed and therefore averred that the Plaintiff was the only Assistant Football Coach employed by the Defendant at the time of Joseph V. Paterno's departure as Head Football Coach who was not invited to be interviewed for employment as an Assistant Coaching position by Defendant University's incoming new Head Football Coach, Bill O'Brien.

39. The Plaintiff, based upon knowledge and belief, was the only Penn State employee to whom the University has not offered to reimburse counsel fees incurred as a result of legal process related to the Pennsylvania Attorney General's criminal investigations and/or testifying before of the Statewide Investigating Grand Jury. Based upon information and belief, the Plaintiff avers that the Defendant is paying the legal fees incurred by Athletics

Director Curley and Senior Vice President Schultz in defending the criminal charges against them. The Plaintiff has incurred substantial and ongoing counsel fees incurred as a result of legal process relative to the Pennsylvania Attorney General's criminal investigations and testifying before the Statewide Investigating Grand Jury.

40. Plaintiff believes, and therefore avers, that all the other Assistant Football Coaches whose employment has been terminated by the University as a consequence of the decision of the new Head Football Coach not to continue their employment began receiving their severance payments by July 31, 2012. The Defendant University refused to honor its commitment to pay severance to the Plaintiff as set forth in Exhibit A hereto until September 17, 2012.

41. As a result of the Defendant's refusal to honor its commitment to pay severance to the Plaintiff until September 17, 2012, the Plaintiff was financially constrained in August 2012 to take an early withdrawal of his TIAA-CREF Retirement Account, at a substantial, but as of yet undeterminable, tax cost and penalty.

42. Based upon information and belief, all of the other Assistant Football Coaches who were not retained by new Head Football Coach O'Brien, received notices on or before July 31, 2012 of their COBRA rights to continue health insurance to be paid for by the University. Despite repeated demands

therefore, Plaintiff, however, did not receive any notice of his COBRA rights until September 15, 2012.

43. It is believed and therefore averred, that every other Assistant Football Coach who was employed by the Defendant in 2011 and who was not retained by new Head Football Coach O'Brien was notified that he would not be retained by the University no later than January 31, 2012.

44. The Plaintiff received no notice that his employment was terminated until he heard during a televised news conference on July 5, 2012, then Defendant's President Ericson stating that the Plaintiff was no longer employed by the University.

45. By barring the Plaintiff from all facilities associated with Penn State football program as part of being placed on administrative leave, the Plaintiff was ostracized and isolated from a community of individuals, colleagues and friends and a program which had been an integral part of his life for approximately 20 years

46. Plaintiff avers that he was treated in a discriminatory fashion as set forth above, and that his employment was terminated by the Defendant because of his aforementioned cooperation with investigators for the Pennsylvania Attorney General, his provision of truthful testimony to the Statewide Investigating Grand Jury, his truthful testimony at the criminal preliminary hearings for Athletics Director Curley and Senior Vice President Schultz and further because Plaintiff is expected to be a key prosecution

witness at the criminal trials of the Athletics Director Curley and Senior Vice President Schultz.

47. The Plaintiff's aforementioned reports to Head Football Coach Paterno, Athletics Director Curley, Senior Vice President Schultz, the investigators from the Pennsylvania State Police and Attorney General's Office, the Plaintiff's testimony to the Statewide Investigating Grand Jury, and at the Preliminary Hearing on the criminal charges against Athletics Director Curley and Senior Vice President Schultz on December 16, 2011, were truthful, and made without malice or consideration of personal benefit.

48. The aforementioned discriminatory treatment by the University since November 5, 2011 has caused the Plaintiff much distress, anxiety and embarrassment.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Pennsylvania State University liquidated damages consisting of the sum of: (1) the bowl bonus Plaintiff would have received had he not been placed on administrative leave; plus (2) \$4,250 representing the fair rental value of his employer provider vehicle for the period November 13, 2011 through September 30, 2012; plus (3) reimbursement of legal fees he incurred and/or paid for legal counsel in connection with the legal process of the criminal investigations and prosecutions; plus (4) back pay and benefits through the date of trial; and plus (5) the amount of tax and penalty Plaintiff will have to pay on account of the early withdrawal of his TIAA-CREF

Retirement Account; prejudgment interest on the foregoing; plus an order for reinstatement, or in lieu thereof front pay, plus general damages as compensation for Plaintiff's distress, anxiety and embarrassment, plus costs of litigation, including reasonable counsel fees.

## **COUNT II – (Defamation)**

49. Paragraphs 1-48 above are incorporated by reference herein as if fully set forth.

50. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff was lying in his reports and testimonies that he had reported the sexual misconduct he had witnessed on February 9, 2001 to Athletics Director Curley and Senior Vice President Schultz.

51. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff had lied to law enforcement officials and committed perjury to the Statewide Investigating Grand Jury when he stated and testified that he had

reported the sexual misconduct he had witnessed on February 9, 2011 to Athletics Director Curley and Senior Vice President Schultz.

52. Exhibit C to this Complaint was widely reported in the mainstream print, television and radio media, and was viewed by innumerable people on the internet.

53. Exhibit C was published by President Spanier with actual malice and/or with reckless disregard for the truth in an outrageous effort to provide full and public support of the University to two criminal defendants in an effort to assist in their exoneration (regardless of their guilt or innocence) in the belief that their exoneration would help to preserve the reputation of the Defendant, to isolate the Plaintiff and to make the Plaintiff the scapegoat in this matter.

54. To this date, the Defendant University has not retracted, withdrawn or apologized for President Spanier's statement as set forth in Exhibit C. On the contrary, the Defendant's continued financial support for Athletics Director Curley and Senior Vice President Schultz and its maltreatment toward the Plaintiff reinforces the perception that the Plaintiff had lied and committed perjury.

55. President Spanier's statements have irreparably harmed the Plaintiff's reputation for honesty and integrity, and have irreparably harmed the Plaintiff's ability to earn a living, especially in his chosen profession of coaching football.



56. The publication and innumerable republications of President Spanier's statement as set forth in Exhibit C, have subjected the Plaintiff to public scorn and vilification.

57. The President's statements to the members of the Athletic Department staff on November 7, 2011, as aforementioned, have caused certain members of the Athletic Department staff to distance themselves from the Plaintiff and/or cease to communicate or socially interact with him.

58. President Spanier's written and verbal statements as aforementioned have caused the Plaintiff distress, anguish, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for \$4,000,000, or such greater amount as may be proven at trial, for lost future earnings, plus general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

### **COUNT III (Misrepresentation)**

59. Paragraphs 1-58 above are incorporated by reference herein as if fully set forth.

60. Plaintiff believes, and therefore avers, that during the meeting in February 2011 Athletics Director Curley and Senior Vice President

Schultz intentionally misrepresented to the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action would be taken. On the contrary, Athletics Director Curley and Senior Vice President Schultz, unbeknownst to the Plaintiff, had decided to pursue a course of action that would avoid an investigation by any law enforcement investigator or other trained investigator and try to keep Plaintiff's report, and the underlying incident, a secret in an effort to preserve the reputation of the Defendant University.

61. Plaintiff believes, and therefore avers, that Athletics Director Curley and Senior Vice President Schultz intended that their misrepresentation induce the Plaintiff not to report the matter to any other law enforcement authority.

62. The Plaintiff relied upon Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and did not report the incident to any other law enforcement authority until he was approached in November of 2010 by investigators from the Pennsylvania Attorney General and Pennsylvania State Police.

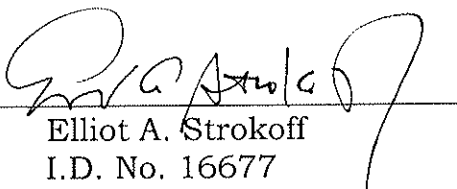
63. As a proximate cause of his reliance on the aforementioned misrepresentation of Athletics Director Curley and Senior Vice President Schultz, the Plaintiff has been labeled and branded as being part of a cover-up, which has caused irreparable harm to his ability to earn a living, especially in his chosen profession of coaching football.

64. As a proximate cause of Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and Plaintiff's reliance thereon, Plaintiff has suffered distress, anxiety, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for \$4,000,000, or such greater amount as may be proven at trial for lost future earnings, general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

Respectfully submitted,

STROKOFF & COWDEN, P.C.

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Date: October 1, 2012