

Proposed Resolution (as amended)

Re: the July 12, 2012 "Report of the Special Investigative Counsel" issued by Freeh, Sporkin & Sullivan, LLP ("Freeh Report")

October 28, 2014 (originally submitted July 11, 2014)

Whereas, Freeh, Sporkin & Sullivan LLP and later Pepper Hamilton ("Freeh") were engaged by the Board of Trustees following allegations of sexual abuse at Penn State facilities and the alleged failure of Penn State personnel to report such sexual abuse to police and governmental authorities, and provide a report concerning (i) failures that occurred in the reporting process; (ii) the cause of those failures; (iii) who, if anyone, had knowledge of allegations of sexual abuse; and (iv) how such allegations were handled by the Trustees, Penn State administrators, coaches and other staff; and

Whereas, Freeh was also asked and did provide specific governance recommendations to ensure governance failures, if any, do not recur; and

Whereas, Penn State reviewed and accepted the Freeh governance recommendations and implemented them; and

Whereas, Freeh, upon delivering his report to the public, agreed to answer, in person, any Trustee questions as well as those of faculty, staff, students and the public regarding his report; and

Whereas, certain conclusions of the Freeh Report have damaged the reputations of Penn State, certain of its former officials, and its Board of Trustees; and

Whereas, the Freeh Report is acknowledged by the NCAA to have formed much of the basis for the Consent Decree it imposed on Penn State; and

Whereas, the NCAA Consent Decree has caused financial and reputational damage to Penn State, certain of its former officials and its Board of Trustees; and

Whereas, the Board of Trustees accepted the governance recommendations of the Freeh Report in 2012; yet as of October 28, 2014, it still has not, for the record, accepted or rejected any other conclusions set forth in the Freeh Report; and

Whereas, in fear of the "death penalty" the Board of Trustees, and as advised by counsel, has not rejected the NCAA investigative findings or the "Consent Decree as Imposed by the NCAA on Penn State"; and

Whereas, several credible criticisms of the Freeh Report have emerged; and

Whereas, the Board of Trustees has come to question the accuracy and completeness of the Freeh Report; and

Whereas, credible criticisms concerning the very *validity* of the NCAA Consent Decree have emerged, including those of the Commonwealth of Pennsylvania Appeals Court; and

Whereas, no less than 30 former Chairmen of the Faculty Senate declared that the assertions about Penn State culture made by the Freeh report are not only "unproven but false" and further noted ... "that on a foundation of scant evidence, the report adds layers of conjecture and supposition to create a portrait of fault, complicity and malfeasance that could well be at odds with the truth ... the NCAA - (which) drew its conclusions from the Freeh Report -- has significantly eroded Penn State's institutional autonomy"; and

Whereas, the Board of Trustees has come to believe that the decision to release only selective communications between Penn State trustees and Freeh's investigative team, and the decision to invoke legal privileges to prevent disclosure of other communications between and among Freeh's investigative team and third parties (including the NCAA, certain Trustees and the Pennsylvania Attorney General's office), have undermined the stated goals of transparency and independence for the Freeh Report; and

Whereas, the Board of Trustees believes the University counsel's continued insistence on selective disclosure and invocation of legal privileges regarding Freeh is at odds with its repeatedly stated goal of transparency; and

Whereas, members of the Board of Trustees seek answers to the many questions that have arisen since July 20, 2012 about the Freeh Report;

Therefore be it Resolved that the Board of Trustees shall immediately appoint a four person Ad Hoc Committee ("Freeh Committee") to include Albert L. Lord, Anthony P. Lubrano and two members designated by the Chair to examine the Freeh Report, meet with Freeh and his Investigative team, review the full set of undisclosed communications and report its findings to the full Board. After appropriate deliberation, the Board will issue its own report to its several constituencies.