

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

CLEARFIELD

County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:
TIMOTHY SMITH

Lead Defendant's Name:
JOHN SOBEL

Are money damages requested? Yes No Dollar Amount Requested: within arbitration limits
 (check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Thomas B. Schmidt, III (19196), Witold J. Walczak (62976)

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute:
 Discrimination _____
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other: Injunction _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

Timothy Smith; Yvonne Reedy; and Juntos

CIVIL DIVISION

Plaintiffs,

vs.

No. _____

**John Sobel, Antonio Scotto, and Dave
Glass, in their official capacities; the
Clearfield County Board of
Commissioners; and Clearfield County**

Defendants.

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, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filling 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 claims 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 BELOW. 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.

**COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, EXTENSION 5010**

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Plaintiffs,

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No. _____

**John Sobel, Antonio Scotto, and Dave
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Clearfield County Board of
Commissioners; and Clearfield County,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Pennsylvania residents' ability to attend government agency meetings that discuss public business and to comment on issues under consideration is vital to a functioning democracy. In order for Pennsylvanians to participate in such meetings, the agency must give notice not only of the meeting schedule, but also the topics planned for discussion. Those rights of participation and transparency are, in the words of the General Assembly, "vital to the enhancement and proper functioning of the democratic process," because "secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." 65 Pa. C.S. § 702.

2. The Sunshine Act expressly gives Pennsylvanians the right to advance notice of the topics for discussion at any official public meeting. 65 Pa. C.S. § 701 *et seq.* On June 30, 2021, Governor Wolf signed into law Act 65 of 2021, which amended the Sunshine Act to require public agencies to publish a meeting agenda detailing the issues expected to be

deliberated and voted on at public meetings. *See* 65 Pa. C.S. § 709(c.1)(1)(i). This agenda must be posted on an agency’s publicly accessible Internet website no later than 24 hours in advance of the start of the meeting. *Id.*

3. Despite this clear statutory obligation, the Clearfield County Commissioners failed to post the agenda in advance of their September 28, 2021, meeting. *Id.* This notification failure deprived many persons, including Plaintiffs, of an opportunity to participate in the deliberations about whether the County should approve contracts to open an 1800-bed Immigration and Customs Enforcement (“ICE”) detention center at the Moshannon Valley Correctional Facility (the “Moshannon Facility”). This would be the largest ICE detention facility in the Northeastern United States. The matter is one not only of vital local importance, but also one that carries profound regional and even national implications.

4. Plaintiffs bring this lawsuit against the County Board of Commissioners, and its members, to void approval of the Moshannon Facility contracts at the September 28 meeting based on a clear violation of the Sunshine Act’s agenda-notification requirement, and to enjoin further action on the underlying contracts until and unless Defendants cure the deficiency.

II. JURISDICTION AND VENUE

5. This Court has original jurisdiction over this Complaint pursuant to 42 Pa. C.S. § 931(a)(1) and 65 Pa. C.S. § 715.

6. All Defendants are all located in this County and the Court can exercise personal jurisdiction over them.

7. Venue exists in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2103 because this action arose in Clearfield County and this is a suit against one or

more political subdivisions located within Clearfield County. Venue also exists pursuant to 65 Pa. C.S. § 715.

III. PARTIES

8. Plaintiff Timothy Smith grew up in Clearfield County and lived there until he left to join the military service. He currently lives in nearby Altoona, Blair County, but continues to have an abiding concern regarding the proposed re-opening of the Moshannon Facility. For example, earlier this week Mr. Smith attended a Clearfield County Commissioners' meeting and provided public comment. He knew to attend only because the Commissioners posted an advance copy of the meeting agenda.

9. Plaintiff Yvonne Reedy is a long-time resident of Clearfield County. Ms. Reedy's interest in this matter is to ensure that important government decisions are made openly and transparently, and that affected individuals are given an opportunity for input into the Board's decision making.

10. Plaintiff Juntos is a community-led, Latinx immigrant organization based in South Philadelphia that fights for the human rights of immigrants. Juntos' work extends throughout the Commonwealth, and includes collaborative work with other organizations and local communities to end ICE detention in Pennsylvania. As a community-led organization with a base of immigrant members who are directly impacted by ICE detention, Juntos' interest in this matter is receiving full and transparent details on the Moshannon Facility's proposed reopening and operational plans.

11. Defendant John Sobel is a Commissioner of the Clearfield County Board of Commissioners. He lives in Clearfield County and is sued only in his official capacities.

12. Defendant Antonio Scotto is a Commissioner of the Clearfield County Board of Commissioners. He lives in Clearfield County and is sued only in his official capacities.

13. Defendant Dave Glass is a Commissioner of the Clearfield County Board of Commissioners. He lives in Clearfield County and is sued only in his official capacities.

14. Defendant Clearfield County Board of Commissioners is composed of the three sitting Clearfield County Commissioners. 16 Pa. C.S. § 3503(a). The Board of Commissioners is an “agency” as that term is defined by the Sunshine Act. 65 Pa. C.S. § 703. A board of county commissioners is empowered by the County Code to issue “resolutions and ordinances prescribing the manner in which powers of the county shall be carried out and generally regulating the affairs of the county,” 16 Pa. C.S. § 509(a), and serves as “the responsible managers and administrators of the fiscal affairs of their respective counties in accordance with the provisions of [the County Code] and other applicable law.” 16 Pa. C.S. § 1701.

15. Defendant Clearfield County is a sixth-class county located in the Commonwealth of Pennsylvania.

IV. FACTUAL BACKGROUND

The Sunshine Act

16. The Sunshine Act requires that the deliberations of public agencies, such as the Clearfield County Board of Commissioners, must be made in public and subject to public comment. As the General Assembly explained in its findings supporting passage of the Sunshine Act, the “right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision-making of agencies is vital to the enhancement and proper functioning of the democratic process and ... secrecy in public affairs undermines the

faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." 65 Pa. C.S. § 702(a).

17. Accordingly, the General Assembly has declared that it is the "public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter." *Id.* at § 702(b).

18. Key to such a right of participation is advance notice of the business the agency will discuss at the next meetings. The meeting agenda must be advertised in advance. Indeed, as the Pennsylvania Supreme Court recognized in Consumers Educ. and Protective Ass'n v. Nolan, 368 A.2d 675, 681 n. 4 (Pa. 1977), "[A]dequate notice to the public at large is an integral part of the public-meeting concept."

19. Notably, a recent amendment to the Sunshine Act requires public agencies to publish a meeting agenda detailing the issues expected to be deliberated and voted on at public meetings on a publicly accessible Internet website no later than 24 hours in advance of the time of the convening of the meeting. *See* 65 Pa. C.S. § 709(c.1)(1)(i).

20. Whenever an agency takes any "official action" as defined by the Act, it must do so "at a meeting open to the public." *Id.* at § 704. In addition, the agency "shall provide a reasonable opportunity" for individuals "to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action." *Id.* at § 710.1(a). Without advance notice, the public is effectively deprived of the opportunity to meaningfully participate in the government's decision-making process.

The Moshannon Facility

21. The Moshannon Facility is located in Decatur Township at 555 Geo Drive, Philipsburg, Pennsylvania.

22. The Moshannon Facility is operated as a private prison by The Geo Group, Inc., a corporation headquartered in Boca Raton, Florida.

23. The Moshannon Facility has an 1,876 bed capacity and previously held federal prisoners pursuant to a contract with the Federal Bureau of Prisons (“BOP”).

24. In January of 2021, the BOP announced it had declined an option to renew the contract with GEO and the Moshannon Facility closed on March 31, 2021. Shortly after announcement of this decision, President Biden issued Executive Order 14006, which prohibits the Department of Justice from renewing BOP contracts with privately operated criminal detention facilities such as the Moshannon Facility.

25. On information and belief, discussions between the GEO Group, ICE, and Clearfield County leaders began shortly after York County decided to end its contract with ICE in August 2021.

26. Immigration advocates, including Plaintiffs Smith and Juntos, have had a keen interest in whether the Moshannon Facility becomes an ICE detention facility. Juntos was part of a collaborative effort to terminate the ICE contract with York County Prison, which also occurred earlier this year.

27. In an effort to learn more about the suspected discussions, Juntos and Smith submitted document requests to the County Commissioners under the Pennsylvania Right to Know Act, including requests for meeting minutes, which the County had not posted on the

website since April 2021.¹ Apart from obtaining copies of the signed agreements, neither Mr. Smith nor Juntos have received responses to their public records requests.

The September 28, 2021, Commissioners' Meeting

28. The Clearfield County Commissioners held a regularly scheduled meeting on September 28, 2021.

29. The County failed to post an agenda on the Internet at least 24 hours in advance of the September 28 meeting.²

30. Notwithstanding this failure, the County took official action at the September 28 meeting. The three Commissioners unanimously approved an Intergovernmental Service Agreement with ICE and a Services Contract between the County and Geo. These agreements would result in the re-opening of the Moshannon Facility as a federal immigration detention center.

31. Without the requisite advance-public notice that the Board would be discussing and deciding on the Moshannon-related contracts, Plaintiffs did not know the discussion would occur and, thus, did not attend or participate. If they had had notice of the discussion, they would have attended and sought to voice their perspectives.

¹ Plaintiffs note that on or about October 25, 2021, the County updated the Commissioners' meeting webpage, linking meeting minutes through September 28, 2021. Prior to that, the last meeting minutes available online were from April 13, 2021.

² The Board of Commissioners did post an agenda for their September 14, 2021, meeting. That agenda listed for discussion the two agreements related to operating an ICE detention facility, but the meeting minutes indicate consideration of the matter was tabled for "possible action at the next meeting." As noted, the Board failed to post any agenda prior to the September 28 meeting.

32. The failure of notice further deprived Plaintiffs of the opportunity to inform and enlist other County residents of the impending action, to further publicize the matter, and to take other steps to voice comments, questions, and concerns about the matter.

COUNT I

Violation of the Sunshine Act for Failure to Post an Agenda in Advance of the September 28, 2021, Board of Commissioners Meeting (against Defendants Clearfield County, Sobel, Scotto, Glass, and the Clearfield County Board of Commissioners)

33. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

34. The Sunshine Act requires that whenever an agency takes an “official action,” it must do so “at a meeting open to the public” and that it must post an agenda, which includes a listing of each matter of agency business that will or may be “the subject of deliberation or official action at the meeting” on its Internet website no later than 24 hours in advance of the time of the convening of the meeting. 65 Pa. C.S. §§ 704, 709(c.1).

35. The Sunshine Act further requires that agencies “*shall* provide a reasonable opportunity” for “comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” 65 Pa. C.S. § 710.1(a) (emphasis added).

36. Defendants violated the Sunshine Act by taking official action to deliberate on and approve agreements with ICE and the Geo Group to repurpose the Moshannon Facility as a federal immigration detention center without properly noticing these actions. Accordingly, those actions are presumptively void pursuant to 65 Pa. C. S. § 713.

37. Defendants were aware of their obligation under the Sunshine Act to take official action only at a meeting open to the public which was properly noticed.

38. Defendants violated the Sunshine Act by taking this unlawful action.

PRAYER FOR RELIEF

Plaintiffs have one remedy for the violations of their right to transparency and to have a voice in their local government: a legal challenge to void Defendants' illegal acts. *See* 65 Pa. C.S. § 713. Plaintiffs have suffered and will continue to suffer harm as a result of the unlawful acts, omissions, policies, and practices of Defendants, as alleged herein, unless this Court grants the relief requested.

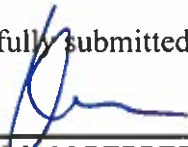
WHEREFORE, Plaintiffs request that this Honorable Court enter judgment in their favor and against Defendants and:

- a. Declare that the failure to post an agenda of the September 28, 2021, meeting on the County website violated the Sunshine Act;
- b. Declare that the official action to approve the Intergovernmental Service Agreement with ICE and a Services Contract with Geo are void;
- c. Issue a preliminary injunction enjoining Defendants from implementing said agreements;
- d. Issue an injunction directing the Defendants to invalidate said agreements;
- e. Issue a permanent injunction to enjoin the Clearfield County Board of Commissioners from taking action on these agreements until and unless they

comply with all Sunshine Act requirements, including the requirement to provide advance notice of the agenda;

- f. Award Plaintiffs attorneys' fees pursuant to 65 Pa. C.S. § 714.1; and
- g. Award Plaintiffs costs and such other and further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,



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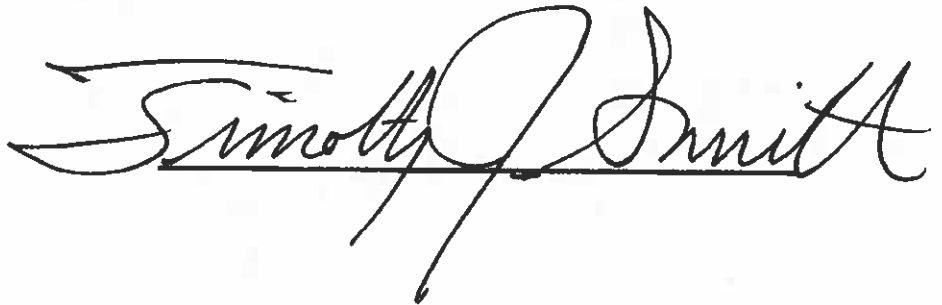
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Counsel for Plaintiffs

VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

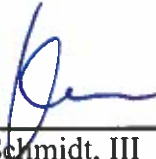
Dated: October 27, 2021

A handwritten signature in black ink, reading "Timothy J. Smith". The signature is written in a cursive style with a horizontal line underneath the name.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 28, 2021



Thomas B. Schmidt, III

Counsel for Plaintiffs