

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

PANTHER VALLEY SCHOOL DISTRICT,	:	
	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 12-1862
	:	
R. "MICKEY" ANGST,	:	
	:	
	:	
Defendant	:	

Robert T. Yurchak, Esquire	Counsel for Plaintiff
Cynthia S. Yurchak, Esquire	Counsel for Plaintiff
R. "Mickey" Angst	Pro Se

MEMORANDUM OPINION

Matika, J. - March 8, 2013

Before the Court is a "Petition" filed by the Panther Valley School District (hereinafter "Panther Valley"), asking this Honorable Court to ban one of its elected board members, R. "Mickey" Angst (hereinafter "Angst"), from attending any executive sessions of the Panther Valley Board of Directors (hereinafter "Board of Directors"),¹ and to also preclude Angst from obtaining and receiving any and all confidential or privileged information or material issued by Panther Valley and its Board of Directors or any agent of Panther Valley. Additionally, Panther Valley seeks from this Court an order prohibiting Angst from disclosing any confidential or privileged

¹ The term executive sessions herein shall include those executive sessions held by the full Board of Directors and any of its committees.

information or material, regardless of how Angst obtains such, relating to the operation and administration of Panther Valley School District. For the reasons stated within this opinion, Panther Valley's petition is **GRANTED in part and DENIED in part.**

BACKGROUND

Petitioner, Panther Valley, is a public school system located in Summit Hill. It is governed by a Board of Directors composed of nine elected members, of which Angst is one. Such members are elected at large from the municipalities of Lansford, Coaldale, Summit Hill, and Nesquehoning.² The essential function of the Board of Directors is to administer the public school system of Panther Valley School District. *Walker v. School District of City of Scranton*, 12 A.2d 46, 48 (Pa. 1940).³

Panther Valley, pursuant to the Pennsylvania School Code, is empowered to, inter alia, establish the length of the school term, adopt an annual budget, hire employees, and enter into contracts that are necessary for the maintenance and operation of the Panther Valley School District. 24 P.S. § 5-508.

² The nine elected School Board Members are elected pursuant to Pennsylvania School Code, 24 P.S. § 3-301.

³ The School Code provides: "In order . . . to enable it to carry out any provisions of this act, the board of school directors in each school district in this Commonwealth . . . shall have, and be vested with, all necessary power and authority to comply with and carry out any or all the provisions of this act." 24 P.S. § 5-507.

Additionally, the board of directors is given the inherent authority to appoint board members to vacant seats and to various committees of the School Board. *Id.*⁴ In the course of administering and operating the School District, the Board of Directors and its committees have had to, from time to time, convene in executive sessions to discuss private matters. These matters include employment, terms and conditions of employment, evaluation of performance, and disciplining of a prospective, current, and former employee. In addition to specific personnel matters, the Board of Directors has and will continue to meet in executive sessions in connection with certain matters of labor relations and arbitration, to consult with its Board Solicitor and other professional advisors regarding information or strategy in connection with litigation or potential litigation, and to review and discuss agency business involving certain legally privileged, confidential, or quasi-judicial matters.

During Angst's tenure as a school board member, from 2006 to present, he has, by his own admission, failed to maintain the sanctity of executive sessions insofar as keeping certain matters confidential. For example, at the hearing held by this Court, Angst testified and acknowledged that in 2008, as a member of the School Board, he received an envelope marked "Our

⁴ While there was reference in the testimony as to Angst being a "committee member," it was unclear as to which committees he was a member of as of the date of the hearing.

Offer." Inside the envelope was a packet of information relating to contract negotiations that the Board of Directors, on behalf of Panther Valley, was engaged in with a particular union. Angst, without even looking inside the envelope to see if any material contained therein was confidential or privileged, gave this packet to a local radio station to use and disclose as the station pleased.

As a result of Angst's action, the Board of Directors, on August 21, 2008, passed a motion by a vote of six-to-one (Angst being the only vote opposing the motion), to ban Angst from further attendance at executive sessions. The Board of Director's justification for such a ban was that Angst's actions in disseminating what the Board of Directors perceived to be confidential or privileged information or material interfered with and prevented the Board of Directors from performing its full duty as a school board.⁵

Angst, after being banned from attending executive sessions, began publicizing his grievances against Panther Valley and more specifically against the Board of Directors on a radio talk show called "Air Your Opinion." In 2011 Angst created an internet blog titled "Mickey Angst Report," the

⁵ Angst was afforded an opportunity to appeal the Board of Directors' decision to ban him from executive sessions; however, Angst waived such right citing that he does not want to cost the School District, and more directly, the taxpayers of Panther Valley School District, any monies in connection with the ban.

purpose of which, he claimed, was to provide transparency to the general public on matters involving Panther Valley. It must be noted that the other eight Board Members have never approved nor publicly supported Angst in his blogging about discussions held at executive sessions.

Angst's blog has been a source of controversy with the Board of Directors since its inception. On April 16, 2011, Angst wrote on his blog about a legal memorandum that was prepared by Panther Valley's Solicitor, Robert T. Yurchak, Esquire, and provided by him to all School Board Members. The purpose of the legal memorandum was to provide advice to Panther Valley about a pending lawsuit. Angst stated on his blog: "[t]he info in the memo needs to be known by the public." R. "Mickey" Angst, *Mickey Angst Report N14*, MICKEY ANGST REPORT (Apr. 16, 2011, 1:49 AM), <http://mickeyangstreport.com/2011/04/>.

Angst has further commented on his blog about additional matters that Panther Valley considered confidential. On February 24, 2012, Angst wrote about the medical condition of the Elementary School Principal. See, R. "Mickey" Angst, *Mickey Angst Report N117*, MICKEY ANGST REPORT (Feb. 24, 2012, 6:32 PM), <http://mickeyangstreport.com/2012/02/>.⁶ On May 23, 2012, Angst

⁶ Angst does acknowledge in this blog that reporting the health status of the Elementary School Principal is inappropriate. R. "Mickey" Angst, *Mickey Angst Report N117*, MICKEY ANGST REPORT (Feb. 24, 2012, 6:32 PM), <http://mickeyangstreport.com/2012/02/> ("Another reason I have been somewhat

wrote about an executive session and the topics listed on the agenda for said executive session, which included salary negotiations and what the District planned to propose to all employees of Panther Valley as a two percent salary raise (information that should not have been prematurely disclosed).

R. "Mickey" Angst, *Mickey Angst Report N140*, MICKEY ANGST REPORT (May 23, 2012, 7:20 PM), <http://mickeyangstreport.com/2012/05/>. Angst himself has acknowledged that he does disclose confidential information and material which is evidenced by a June 27, 2012, post on his blog that states: "Yes, I did go public with some information that normally could be kept confidential" R. "Mickey" Angst, *Mickey Angst Report N154*, MICKEY ANGST REPORT (June 27, 2012, 6:26 PM), <http://mickeyangstreport.com/2012/06/>.⁷

In the beginning of June, 2012, Angst started to challenge the ban against him by appearing at executive sessions. When Panther Valley barred Angst from attending those sessions and instructing him to leave the building because of the ban in place, he refused to do so and informed Panther Valley that he will no longer acquiesce to the ban on his attendance at

silent is the health of the Elementary School Principal. I have been aware of his battle against [] but thought it inappropriate for me to report it." *Id.*) (omission ours).

⁷ Angst goes on to state that he had a legitimate reason to go public with such confidential information but never expresses what that legitimate reason was.

executive sessions. As a result, on June 14, 2012, the Board of Directors voted to authorize Panther Valley's Solicitor to seek a court order to preclude Angst from attending any further executive sessions.

Panther Valley, in its petition, has stated that the need for a permanent ban of Angst from executive sessions is due to the Board of Directors' belief that Angst has released and will continue to release confidential and privileged information and material obtained at or in anticipation of executive sessions, and that the release of such information or material has and will continue to compromise the ability of the remaining eight board members to effectively perform their elected duties in the administration of the Panther Valley School District. The basis of such contention on the part of Panther Valley, lies in the fact that the school board members fear that if Angst was to attend executive sessions and confidential or privileged information or material were to be discussed or distributed at the executive sessions and then prematurely disclosed by Angst, Panther Valley and the Board of Directors could face potential lawsuits because of his actions.

Angst's justification for his actions is his belief that what he is doing is nothing more than providing transparency to the general public on issues involving Panther Valley.

Additionally, Angst's view of such actions in disclosing confidential or privileged information and material is simple: the rules of confidentiality and privilege are superseded by the First Amendment of the United States Constitution. Angst's rationale for such a belief is that the actions by the Board of Directors violate the Open Meetings Laws, and more specifically, the Sunshine Act, 65 Pa.C.S.A. § 701 et seq., and thus Angst does not want to be associated with, nor attend what he believes to be executive sessions in violation of the Sunshine Act. Further, Angst plainly stated at the hearing before the Court, "[i]f the Board (Panther Valley) does not want me to disseminate, do not give [perceived confidential information or material] to me."⁸

Based upon Angst's actions and his desire to effectuate his cause for transparency, Panther Valley has filed this petition. The Court is being asked by Panther Valley and the Board of Directors to enforce the Board of Directors' efforts to ban Angst from attending executive sessions and approve of its decision of not providing Angst with any information or material classified as confidential or privileged that may be issued by Panther Valley, the Board of Directors, or agents thereof. In

⁸ Angst's overall philosophy about his "cause" for disclosure can be best described by a post on his blog from April 19, 2011: "[i]tems are to be listed so the public knows what is being discussed behind closed doors." R. "Mickey" Angst, *MickeyAngstReportN16*, MICKEY ANGST REPORT (Apr. 19, 2011, 4:47 PM), <http://mickeyangstreport.com/2011/04/>.

addition, Panther Valley prays to this Court that it enjoin Angst from disclosing any such confidential or privileged information or material that Angst may obtain pertaining to the operation or maintenance of Panther Valley School District, regardless of how such information or material is acquired by Angst.

DISCUSSION

Pennsylvania enacted the Sunshine Act (hereinafter "Act") 65 Pa.C.S.A. § 701 et seq., in 1998; the said purpose of the Act is to provide transparency at the highest levels of government and to open the decision-making process of state government to greater public scrutiny and accountability. *Consumers Education and Protective Association v. Nolan*, 368 A.2d 675, 682-83 (Pa. 1977). Under the Act, "[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public" unless an exception to the general rule applies. 65 Pa.C.S.A. § 704.

One of these exceptions to the general rule is when an agency may hold an executive session in private. *Id.* § 707. A school board or its committees may meet in executive or closed session for certain specified purposes such as employment matters, contractual negotiations, consultation with the school board's solicitor regarding litigation or potential litigation,

and to review and discuss agency business, which if conducted in public would violate a lawful privilege or potentially lead to further disclosure of lawfully protected confidential information. *Id.* § 708. An executive session may be held during an open meeting, at the conclusion of an opening meeting, or it may be announced for a future time. *Id.* § 708(b). The reason for holding an executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. *Id.*⁹ The purpose of giving reasons for the public's exclusion from executive sessions is so that the public learn why, or determine if, it is being properly excluded. The reasons stated by the public agency as to why it needs to hold an executive session must be specific and identify a real, discrete matter that is best addressed in private. *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 306 (Pa. Cmwlth. Ct. 1993).

I. BANNING OF ANGST FROM EXECUTIVE SESSIONS

In determining the enforceability and for that matter the legality of Panther Valley's banning of Angst from executive sessions, the Court is guided by certain principles. The First Amendment of the United States Constitution does not guarantee

⁹ If an executive session is not announced for a future specific time, members of the agency must be notified twenty-four hours in advance of the time the meeting is convened and specify the purpose of the executive session. 65 Pa.C.S.A. § 708(b).

an elected official's right to be included in each and every proceeding of an elected body. *Guy v. Woods*, 522 A.2d 193, 195 (Pa. Cmwlth. Ct. 1987). However, an elected official has a duty and a right to be informed concerning all aspects of his or her elected position, both public and non-public. An elected official is not restricted to information furnished at a public meeting, but has the right to study, investigate, discuss, and argue problems and issues prior to the public meeting at which the official may vote. *Palm v. Center Township*, 415 A.2d 990, 992 (Pa. Cmwlth. Ct. 1980); *Belle Vernon Area Concerned Citizens v. Board of Commissioners of Rostraver Township*, 487 A.2d 490, 494 (Pa. Cmwlth. Ct. 1985).

For example, should a board member not be a member of a particular committee, he or she may certainly inquire about any issue or subject that is brought before the Board as a whole where it is necessary to discuss or vote on that issue. However, at the same time, a board member such as Angst, has the right to be present at any type of meeting at which all board members may be present in order to carry out the duties and responsibilities associated with this office. Thus the Board of Director's decision and vote to ban Angst from executive sessions of the entire School Board or its committees has in essence removed Angst from office by limiting and minimizing his

ability as an elected official. The Board of Directors, through its conduct has consequentially denied the citizens of the Panther Valley School District the effective representation of Angst as one of their elected officials. The unintended but resulting consequence of the Board's banning of Angst from executive sessions is disenfranchising the voters of the Panther Valley School District by preventing one of their duly elected school board members from fulfilling his responsibilities as a school board member. Further, in its basic form, the Board of Director's banning of Angst has improperly circumvented the electoral process of school board members and violates the Pennsylvania School Code. See, 24 P.S. §§ 2-202, 3-303.¹⁰ Panther Valley and more directly the Board of Directors in limiting Angst's involvement in school matters have effectively removed Angst from his school board position and created a school board with only eight members, thus violating the Pennsylvania School Code.

Panther Valley argues to this Court that its ban on Angst is in conformity with section 4-407 of the Pennsylvania School Code that permits school directors to adopt reasonable rules and regulations for its government and control. *Id.* § 4-407

¹⁰ Panther Valley School District, having a population of five thousand, or more, but of less than thirty thousand, is classified as a school district of the third class under the Pennsylvania School Code. A school district of the third class shall have nine school directors.

(emphasis ours). Panther Valley's argument is flawed by the simple fact that banning one of its board members from performing his elected duties is not reasonable and in violation of the Pennsylvania School Code. There are more appropriate and less restrictive methods Panther Valley can employ to achieve its goal. For these stated reasons, Panther Valley's banning of Angst from executive sessions is illegal and unenforceable.¹¹

II. PRECLUSION OF ANGST FROM RECEIPT OF CONFIDENTIAL AND PRIVILEGED MATERIAL

In determining the legality of Panther Valley's decision¹² not to provide Angst with any confidential or privileged information or material, the Court must examine the rationale for such decision in relation to the means to achieve that end.

One of the rationales claimed by Panther Valley for such a decision in precluding Angst from receiving confidential and privileged information or material from Panther Valley is the fear of potential lawsuits against the Board of Directors and Panther Valley itself should Angst continue to disclose

¹¹ It must be noted that Panther Valley, and more specifically, the Board of Directors does not have a procedure in place to remove a school board member from his or her elected position if said school board member is alleged to have violated any provision of the Pennsylvania School Code or the Panther Valley School Board Policy. If Panther Valley had such a procedure, it could have instituted it instead of asking this Court to approve their illegitimate ban of Angst.

¹² The Court uses the term "decision" because there was no formal vote by the Board of Directors of Panther Valley to approve the action of precluding Angst from receiving such information.

information or disseminate material that is protected by law. However, the means to achieve such end infringes upon Angst's rights and duties as a school board member. As stated by the United States District Court of Western Pennsylvania, in a case with similar circumstances and issues as those before this Court:

[i]f there were legitimate concerns relating to the alleged improper disclosure of certain confidential information [by Angst], there were much less restrictive methods to control confidential information and potential disclosure thereof, and specific statutory "protective" procedures were not invoked by [Panther Valley]. What occurred here, by the action of [Panther Valley], was to effectively impeach [Angst] from office without due process of law.

Smith v. Township of Aleppo, 2005 WL 4984380 (W.D. Pa. July 13, 2005).

Similar to our logic in not allowing Panther Valley to ban Angst from executive session, this Court finds that Panther Valley's decision in denying Angst his statutory right to receive confidential or privileged information or material has prevented Angst from performing his sworn duty as a school board member. Each school board member has a duty and obligation to govern the School District of Panther Valley, and by precluding Angst from the receipt of confidential and privileged information or material, Panther Valley has effectively assured that Angst cannot fully, knowingly, and intelligently perform

his duty as a school board member insofar as him becoming knowledgeable of certain matters and being able to decide critical issues that would otherwise allow for a well-informed vote to be cast in the best interests of Panther Valley School District. As such, Panther Valley's decision to preclude Angst from receiving confidential and privileged information or material at or in anticipation of an executive session is illegal and unenforceable.

III. ENJOINING ANGST FROM DISCLOSING ANY CONFIDENTIAL OR PRIVILEGED MATERIAL RELATING TO OPERATION OF PANTHER VALLEY SCHOOL DISTRICT

Lastly, Panther Valley prays to the Court to enjoin Angst from disclosing any confidential or privileged information or material relating to the administration of Panther Valley, regardless of how Angst learns of or obtains such information or material. Angst, arguing in opposition of such, asserts that the First Amendment to the United States Constitution relating to freedom of speech trumps the laws of privilege and confidentiality. At the outset, it is necessary to state that the First Amendment right of free speech is not absolute. See, *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988); *Morse v. Frederick*, 551 U.S. 393 (2007); *Bala v. Commonwealth, Unemployment Compensation Board of Review*, 400

A.2d 1359 (Pa. Cmwlth. Ct. 1979). The law and the courts have recognized certain circumstances where one's right to free speech is abridged by the laws of privilege and confidentiality. See, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984); *State of N.Y. v. U.S. Metals Refining Co.*, 771 F.2d 796 (3d Cir. 1985); *Cipollone v. Liggett Group Inc.*, 106 F.R.D. 573 (D.N.J. 1985) *rev'd on other grounds*, 785 F.2d 1108 (3d Cir. 1986)

Public employees, like all citizens, have a first amendment right to express themselves. *Pickering v. Board of Education of Township High School District 205, Will County, Illinois*, 391 U.S. 563, 574 (1968). Public employees have an "interest in addressing matters of public concern and enabling the electorate to make informed decisions." *Curinga v. City of Clariton*, 357 F.3d 305, 310 (3d Cir. 2004). Because public employees work for public bodies, "the government has an interest in regulating the speech of its employees to promote 'efficiency and integrity in the discharge of official duties, and in maintain proper discipline in the public service.'" *Id.* at 309 (quoting *Connick v. Myers*, 461 U.S. 138, 150-51 (1983)).

As an elected member of the School Board, Angst is entitled to the same or greater protection under the First Amendment as a public employee or official. *Bond v. Floyd*, 385 U.S. 116 (1966); *Miller v. Town of Hull, Massachusetts*, 878 F.2d 523 (1st Cir.

1989). However, these protections, not unlike other constitutional rights, are not absolute and must be weighed against the interests of the institution Angst was elected to represent.

In determining if speech by a public employee warrants constitutional protection, a court is required to employ a two-step analysis known as the *Pickering* balance test. The first step is for the court to determine whether, in light of the content, form, and context of the entire record, the speech touches on a matter of public concern. See, *Connick v. Myers*, 461 U.S. 138, 146 (1983); *Swineford v. Snyder County Pa.*, 15 F.3d 1258, 1270 (3d Cir. 1994). An employee's speech touches on a matter of public concern when it can be "fairly considered as relating to any matter of political, social, or other concern to the community. *Feldman v. Philadelphia Housing Authority*, 43 F.3d 823, 829 (3d Cir. 1994) (quoting *Connick*, 461 U.S. at 146). If an employee's speech does not relate to such matters, "government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." *Connick*, 461 U.S. at 146.

In the case before the Court, Angst's right to free speech involving school board and school district matters and the manner in which he disseminates such information or material,

that being his blog or other means, is of a matter of public concern." See, *Feldman*, 43 F.3d at 829 (stating "disclosing corruption, fraud, and illegality in a government agency is a matter of significant public concern." *Id.*). However, the focus of this Court's analysis of whether Angst's First Amendment right supplants that of Panther Valley's interest in regulating the manner and timing of when Angst can disclose such pertinent information or material, hinges upon the second step of the *Pickering* balance test. Thus, we will examine this second step first.

The Court must examine whether Panther Valley's interest in the effective and efficient management of the School District outweighs Angst's interest in commenting on matters of public concern at an inappropriate time. See, *Pickering*, 391 U.S. at 568.

In assessing what weight to give Panther Valley's interest the Court must determine to what extent Angst's claim of free speech, lending such speech to discussing matters involving confidential or privileged information and material, disrupts the effective and efficient workings of the Panther Valley School District. Certain factors the Court must consider is whether such speech "impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working

relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise." *Rankin v. McPherson*, 483 U.S. 378, 388 (1987) (citing *Pickering*, 391 U.S. at 570-73).¹³ Panther Valley, frustrated by the free-flowing nature of confidential or privileged information and material coming from Angst, suggests that Angst's claim of free speech in disclosing this information violates his ethical and legal obligation as a school board member, and unnecessarily interferes with the operating and maintenance of the School District. For example, and more specifically, Panther Valley asserts that Angst should not have provided the radio station with contract negotiation material, nor should he have disclosed the memorandum prepared by the School Board's solicitor in relation to the then pending lawsuit, and that such conduct on the part of Angst breached the laws of confidentiality and attorney-client privilege. Thus, Panther Valley argues, Angst's speech should not be protected under the First Amendment as the laws of confidentiality and privileged supersede such speech.

¹³ In *Connick*, the Supreme Court stated, "[w]hen close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer's judgment is appropriate." *Connick*, 461 U.S. at 151-52. The Court did warn that employers will have to make a stronger showing that the office has been disrupted when an "employee's speech more substantially involves matters of public concern." *Id.*

The Eleventh Circuit in *Goffer v. Marbury*, 956 F.2d 1045, (11th Cir. 1992), ruled that a violation of the attorney-client privilege must be a factor the court considers in the *Pickering* balancing test; however, the Court declined to accept the argument that a violation of the attorney-client privilege is an absolute to override the First Amendment. *Id.* at 1051. The Court reasoned that employers' "found to be within the ambit of attorney-client relations have a strong (though not overriding) interest in their confidences being protected," however, "[t]he existence or not of attorney-client relations also bears on whether there was present the 'close working relationshi[p]' referred to in *Connick* that gives rise to a 'wide degree of deference' to the employer's judgment." *Id.* (quoting *Connick*, 461 U.S. at 151-52). Angst's role as a school board member in the School District, his duty to the electorate and Panther Valley School District, and the atmosphere and harmony within the School Board are all relevant factors the Court must consider.

When comparing these two interests, that being Panther Valley's desire to keep private such confidential or privileged information and material discussed or distributed at or received in anticipation of an executive sessions against Angst's interest in promoting his policy of transparency, Panther

Valley's interests substantially outweighs those of Angst.

At the hearing before this Court, members of the Board of Directors, including the Board's President, testified that the School Board cannot conduct executive sessions so long as Angst attends such sessions for fear that he will disclose information or material that the Board of Directors have a legal and ethical obligation to keep confidential. Members of the Board of Directors testified that Angst has routinely released information, via his blog or otherwise, that the Board of Directors considers confidential and at a time when the "aura of confidentiality" is still attached to that information.¹⁴ Further, members of the Board of Directors testified that Angst's lack of maintaining confidentiality has negatively affected the Board and has inhibited such members from performing their elected duty. It is also inhibiting these same members from freely discussing matters in executive session without fear of repercussion that what they do or say will not

¹⁴ Angst proclaimed at the hearing that he has never released such information that was deemed confidential. The issue that the School Board, and more importantly the Court is faced with is the fact that Panther Valley has no procedure to determine what information is confidential. Instead the Board's solicitor, when asked, would determine if such information is confidential or can be released to the general public. Conversely, when Angst feels that certain information is not confidential or protected by certain privileges, he believes he is able to blog about it or release such information because there is no procedure in place to establish whether or when such information or material can or cannot be released. If there was such a procedure in effect that established what was of a confidential or privileged nature, both Angst and the Board of Directors would not be in the quandary they currently are in insofar as whether Angst has prematurely released confidential information or material without the Board's approval.

be used against them individually or against the Board as a whole. Such disclosure affects litigations, contract negotiations, personnel matter, and the like before the circumstances are ripe for public disclosure.

The result of such information and material being released, as testified to by various members of the Board of Directors, was that, at least on one occasion a lawsuit was filed against Panther Valley. Consequently, the Board of Directors have a concrete concern that if Angst continues to release such information and material that he is otherwise not privileged to release, more lawsuits and grievances will be filed against Panther Valley. Additionally, the Board of Directors fear that any discussion about personnel matters within the School District, whether they be about teachers or students, will be prematurely disclosed or blogged about by Angst and potentially result in a lawsuit or lawsuits against Panther Valley.

Angst, as stated above, has a right and a duty as an elected official to be at executive sessions and receive confidential and privileged information and material; nevertheless, Angst, as a school board member, has a legal and ethical obligation to Panther Valley, fellow members of the School Board, and the electorate to keep certain information and material confidential until the appropriate time as determined

by the Board of Directors as a whole. See, 42 U.S.C.A. § 1320d-6 (penalties for the wrongful disclosure of medical information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")). For instance, the HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other personal health information. Although Angst feels he has a duty to release information and material to the public in order to effectuate his policy of transparency, in actuality and more importantly legally, Angst has a duty to keep such information and material regarding medical condition of personnel of Panther Valley confidential. For Angst to claim that the First Amendment is absolute and supersedes such confidentiality laws is incorrect and utterly absurd. See, *Association of American Physicians & Surgeons, Inc. v. U.S. Department of Health & Human Services*, 224 F. Supp. 2d 1115, 1125 (S.D. Tex. 2002) *aff'd sub nom. Association of American Physicians & Surgeons Inc. v. U.S. Department of Health & Human Services*, 67 F. App'x 253 (5th Cir. 2003).

In addition, besides having a duty not to prematurely publish or blog about confidential personnel issues involving Panther Valley until discussed by the Board of Directors as a whole at a general meeting, or after the Board's solicitor approves such publication, Angst, pursuant to the mandates of

the attorney-client privilege, has an obligation and a duty not to disclose contractual and legal information or material learned at executive sessions, or such information or material prepared by the Board's solicitor and provided to the school board members with the intent that such information or material be privileged for only those school board members. Angst's journalistic approach, that if he learns of information or obtains materials outside of an executive session and independently confirms such information, as accurate, that he now has carte blanche to publish such information or material is misguided. Under either the dictates of confidentiality or the attorney-client privilege, if such communication is made in confidence with the intent to be kept in confidence, the mere fact that another member might have violated the privilege in and of itself does not give Angst the right to blog or publish such information or material that is intended to be kept confidential. *See, Trib Total Media, Inc. v. Highlands School District*, 3 A.3d 695, 701 (Pa Cmwlth. Ct. 2010).¹⁵

Angst, in his cause for transparency, claims Panther Valley in holding certain meetings, violates the Sunshine Act and that information he receives at those "illegal" meetings cannot

¹⁵ At the hearing, Angst stated that after his ban from executive sessions he obtained such information that was discussed at executive sessions from another school board member. Angst, knowing full well that such information was intended to be kept confidential, cannot disclose or distribute such information or material.

therefore be labeled confidential.

Angst claims regarding transparency under any circumstances involving confidential or privilege information or material fails. First, notwithstanding whether or not a meeting violates the Sunshine Act, Angst has an obligation to adhere to the strict rules regarding confidentiality and privilege laws.

Secondly, even considering the stated purpose of the Sunshine Act in promoting transparency from government agencies to the public, the legislature recognized the need for agencies to discuss matters in private and out of the public's eyes and ears and that transparency, in certain circumstances and involving certain information, is not appropriate. While the Court fully understands Angst's desire to keep the voting public, and in particular the taxpayers of Panther Valley School District informed, his methodology is skewed. Angst in his quest to achieve complete transparency disregards a simple yet fundamental principle: not everything a school board member learns in his or her capacity as a school board member lends itself to immediate or premature disclosure. As it is said, "there is a time and a place" for such disclosure; nonetheless, neither the time nor the place is up to Angst, and Angst alone, to determine. Disclosure is subject to the prohibitions involving confidentiality and privilege. Until the appropriate

time, place, and manner is determined, it is imperative for all school board members, not just Angst, to maintain and retain any confidential or privilege information and material within his or her being and amongst board members authorized personnel only. This is an obligation of public officials such as Angst, one he cannot dispense of without permission, for the failure to do so can result in significant consequences to all involved.

Lastly, the law that Angst proclaims the Board of Directors are violating, namely the Sunshine Act, recognizes the necessary and appropriateness for government agencies to conduct executive sessions, and as such provides limited circumstances for such occasions. See, 65 Pa.C.S.A. § 708. Section 708 of the Sunshine Act allows a government agency to convene executive sessions for the purpose of: discussing employment matters of prospective, current, and former employees; hold informational and strategic sessions regarding contractual negotiations and labor relations; consulting with its attorney in regards to legal issues; and "to review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law." *Id.* Angst, in his answer to Panther Valley's petition and at the hearing has never articulated how Panther Valley and the Board of Directors have violated the Sunshine Act or

specifically section 708 of the Act.¹⁶ Angst, in his belief that violations of the Sunshine Act have occurred has decided that the only available remedy for such is to disclose everything that is said or distributed at executive sessions without regard to the effects such premature disclosure will have on Panther Valley, the Board of Directors, and most importantly the electorate of Panther Valley School District.

Accordingly, as stated above, Angst, as an elected member of Panther Valley's School Board, has a right and a duty to be present and participate in executive sessions of the full Board of Directors or any of its committees that Angst is a member thereof. At the same time, Angst has a member of the Board of Directors of Panther Valley School District owes a duty and has a responsibility to Panther Valley, fellow members of the Board of Directors, and the electorate of Panther Valley School District to keep confidential any and all such confidential and privileged information and material received and learned about at or in anticipation of an executive session. The Court understands Angst's philosophy that he does not want to associate with what he deems, incorrectly however, to be

¹⁶ Even if Angst believes such a violation of the Act has occurred, although this Court has heard of no evidence to support such a claim, Angst would then have a duty to inform the public of a violation of the Sunshine Act, but still maintain his duty to Panther Valley, the Board of Directors, and the electorate not to prematurely disclose any confidential or privileged information and material until such time is appropriate.

meetings that violate the Sunshine Act, and although the Court does not pass judgment on his stance, Angst, as a school board member either must accept such information or material and keep it confidential, or not accept such information or material at all. Accepting confidential and privileged information or material and then giving such information or material to whoever Angst pleases, that being a local radio station, TV station, posting it on his blog, or even a friend, is unacceptable and a breach of his fiduciary duty to Panther Valley, the Board of Directors, and the citizens of Panther Valley School District if done so prematurely.

Accordingly this Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

PANTHER VALLEY SCHOOL DISTRICT,	:	
	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 12-1862
	:	
R. "MICKEY" ANGST,	:	
	:	
	:	
Defendant	:	

Robert T. Yurchak, Esquire
Cynthia S. Ray, Esquire
R. "Mickey" Angst

Counsel for Plaintiff
Counsel for Plaintiff
Pro Se

ORDER OF COURT

AND NOW, this 8th day of March, 2013, upon consideration of the "Petition" filed by the Panther Valley School District in which it has requested that this Honorable Court approve its ban of a fellow school board member, namely R. "Mickey" Angst, from attending any executive sessions of the Panther Valley Board of Directors or its committee meetings, and to preclude Angst from obtaining and receiving any and all confidential or privileged information or material issued by Panther Valley and its Board of Directors or any agents of Panther Valley in furtherance of conducting the business of the Panther Valley School District as well as an Order of Court prohibiting R. "Mickey" Angst from

otherwise disclosing or disseminating any confidential or privilege material, the answer of R. "Mickey" Angst, after a hearing held on the Petition thereon, and a review of legal memorandums lodged by both parties thereafter, it is hereby,

ORDERED and DECREED that the Petition is **DENIED** insofar as such ban on Angst from attending executive sessions of the full Board of Directors and its committees is illegal and unenforceable, and Angst, as an elected official has a duty to attend such executive sessions of the Board as a whole or committee meetings, and to receive at or in anticipation of an executive session any and all confidential or privileged information or material in furtherance of his duties and responsibilities as a member of the Board of Directors of the Panther Valley School District.

It is FURTHER ORDERED and DECREED that the Petition is **GRANTED** insofar as the Petitioner's request regarding the disclosure and dissemination of confidential and privileged information or material by R. "Mickey" Angst. As such, Angst is prohibited from disclosing or disseminating any confidential or privileged information or material, regardless of how Angst may obtain such information or material, relating to the operation and administration of Panther Valley School District until such time as the Board of Directors of the Panther Valley School

District authorizes such disclosure when such disclosure is necessary for the conducting of School District business.

BY THE COURT:

Joseph J. Matika, Judge