

**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
CIVIL DIVISION**

**Make the Road States, d/b/a Make the Road
Pennsylvania; Julia Minotto; Tonya Wenger; Celine
Elizabeth Schrier; Jesse D. Royer; Dean Kendall;
Eric Gjertsen; and Alex Crawford,**

Plaintiffs,

v.

**Christian Leinbach, Kevin Barnhardt, and Michael
Rivera, in their official capacities; the Board of
Commissioners of Berks County; and Berks
County,**

Defendants.

No. _____

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lawyers' Referral Service of the Berks County Bar Association, 544 Court Street, Reading, Pennsylvania 19601, Telephone (610) 375-459, www.berksbar.com.

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda

y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya dirección se encuentra escrita abajo para averiguar dónde se puede conseguir asistencia legal.

Asociación de Licenciados del Condado de Berks Servicio de Referencia, 544 Court Street, Reading, Pennsylvania 19601, Teléfono (610) 375-459, www.berksbar.com.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This complaint challenges the deliberate effort by the Berks County Commissioners to hide their decision-making surrounding the Berks County Residential Center (“BCRC”) from the public. On February 25, 2021, the Commissioners voted in favor of a resolution to execute a letter in support of a U.S. Immigration and Customs Enforcement (“ICE”) proposal pertaining to the use of BCRC. Yet the Commissioners provided no information about the letter or proposal, prevented the public from having a reasonable opportunity to comment, and engaged in private deliberations. The Sunshine Act condemns precisely this kind of “secrecy” because it “undermines the faith of the public in government.” 65 Pa.C.S. § 702.

JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court pursuant to 42 Pa.C.S. § 931(a) and 65 Pa.C.S. § 715.
3. Venue in this Court is proper pursuant to Pa.R.C.P. 2103.

PARTIES

4. Plaintiff Make the Road States, d/b/a Make the Road Pennsylvania, is a member-led 501(c)(3) organization that builds power for justice in Latinx and immigrant communities and working-class communities of color. Members of MRPA reside in Berks County and regularly attend Berks County Commissioners' meetings.
5. Plaintiff Julia Minotto is a resident of Reading in Berks County. They have attended Berks County Commissioners' meetings.
6. Plaintiff Tonya Wenger is a resident of Wyomissing in Berks County. She has testified about BCRC at Berks County Commissioners' meetings.
7. Plaintiff Celine Elizabeth Schrier is a resident of Reading in Berks County. She has attended Berks County Commissioners' meetings.
8. Plaintiff Jesse D. Royer is a resident of Spring Township in Berks County. He is a regular participant in the public comment portion of Berks County Commissioners' meetings.
9. Plaintiff Dean Kendall is a resident of Leesport in Berks County.
10. Plaintiff Eric Gjertsen is a resident of Wyomissing in Berks County. He has attended Berks County Commissioners' meetings.
11. Plaintiff Alex Crawford is a resident of West Reading in Berks County. They have attended Berks County Commissioners' meetings.
12. Plaintiffs have an interest in the operation of BCRC.
13. Defendant Christian Leinbach is a Commissioner and Chair of the Berks County Board of Commissioners.

14. Defendant Kevin Barnhardt is a Commissioner and Vice Chair of the Berks County Board of Commissioners.
15. Defendant Michael Rivera is a Commissioner on the Berks County Board of Commissioners.
16. Defendant Board of Commissioners of Berks County is an “agency” as that term is defined by the Sunshine Act. 65 Pa.C.S. § 703. Defendants Leinbach, Barnhardt and Rivera (collectively referred to as “Defendant Commissioners”) comprise the Board of Commissioners of Berks County. 16 P.S. § 3503.
17. The Commissioners Office is located at Berks County Services Center, 633 Court Street, 13th Floor, Reading, PA 19601.
18. Defendant County of Berks is a Class 3 county and has a population of more than 400,000 people.

FACTUAL BACKGROUND

The Sunshine Act

19. The Sunshine Act requires that the decisions of public agencies such as the Berks County Board of Commissioners 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).

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.* § 704. In addition, the agency “shall provide a reasonable opportunity” for residents “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.* § 710.1(a) (emphasis added).

The Berks County Residential Center

21. BCRC detains immigrant families who are in ICE custody.

22. BCRC detains families with children who are seeking asylum within the United States.

23. Berks County operates BCRC pursuant to an Intergovernmental Service Agreement.

24. Pursuant to the agreement, Berks receives federal payments of millions of dollars per year to detain immigrant families for ICE. Dept. Homeland Security, ICE, Budget Overview 136 (Fiscal Year 2021),

https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.

25. Berks County has been operating the facility at 1040 Berks Rd., Leesport, PA 19533 since 2013.

Public Interest in Berks

26. In 2014, the federal government began to detain an unprecedented number of families at family detention centers, including at BCRC.

27. BCRC also began to detain families for long periods of time, in some cases for over a year and even up to two years. *See, e.g.*, Human Rights First, “Long-Term Detention of Mothers and Children in Pennsylvania” (Aug. 19, 2016),

<https://www.humanrightsfirst.org/resource/long-term-detention-mothers-and-children-pennsylvania>.

28. BCRC has been the focus of public interest locally, statewide, and nationally.
29. Various national groups, for example, have highlighted the detention conditions and their impact on children in the facility. *See, e.g.*, Human Rights First, Family Detention in Berks County, Pennsylvania (Aug. 19, 2015), <https://www.humanrightsfirst.org/resource/family-detention-berks-county-pennsylvania>; Julie M. Linton, et al., “Detention of Immigrant Children” (Pediatrics, May 2017), <https://pediatrics.aappublications.org/content/139/5/e20170483>.
30. Statewide groups, such as the Shut Down Berks Coalition, have engaged in numerous protests and called for the closure of BCRC.
31. Locally, residents of Berks County have publicly expressed their concerns about BCRC.
32. Such local residents have attended County Commissioner meetings to advocate for the termination of the county’s contract with ICE and the closure of BCRC.
33. Various lawsuits have been brought concerning BCRC. *See, e.g.*, *C.N. et al. v. Pa. Dep’t of Human Svcs.*, No. 46 MAP 2020 (Pa. 2020); *E.D. v. Sharkey*, 928 F.3d 299 (3d Cir. 2019); *J.S.C. et al. v. Pa. Dept. of Human Svcs. et al.*, No. 678 MD 2019 (Pa. Cmwlth. 2019); *D.G.A. et al. v. Dept. of Human Svcs.*, No. 1059 CD 2018 (Pa. Cmwlth. 2018); *Flores v. Barr*, No. 85-4544, 2020 WL 3488040, at *1-2 (C.D. Cal. June 26, 2020); *O.M.G. v. Wolf*, Civil Action No. 20-786 (JEB), 2 (D.D.C. Jul. 22, 2020); *Flores v. Sessions*, 394 F. Supp. 3d 1041 (C.D. Cal. 2017).
34. This public interest and litigation has resulted in ongoing media coverage of Berks County and its operation of BCRC since 2014. *See, e.g.*, Ed Pilkington, “Child immigrant

detainees: ‘There’s an overwhelming sadness among them’,” The Guardian (May 12, 2015), <https://www.theguardian.com/us-news/2015/may/12/immigration-detention-centers-child> ren; Tina Vasquez, “ICE Held Teen Girl in Majority-Male Detention Center for More Than a Month,” Rewire.News (Apr. 3, 2018), <https://rewirenewsgroup.com/article/2018/04/03/ice-held-teen-girl-majority-male-detention-center-month/>; Alexandra Villarreal, “The US detention center where sick children receive ‘the bare minimum’” (The Guardian, Jan. 17, 2019), <https://www.theguardian.com/us-news/2019/jan/17/pennsylvania-detention-center-sick-children>.

February 25, 2021 Commissioners’ Meeting

35. The Berks County Commissioners held a regularly scheduled meeting on Thursday, February 25, 2021, at 10:00 am, which was live-streamed to the public.
36. At the meeting, Defendant Commissioners voted 2-1 on 73.2021 (Agenda Item M), which stated: “Adopt a resolution ratifying, confirming, and approving execution of a letter of support to the U.S. Immigration and Customs Enforcement for white paper proposal for the Berks County Residential Center.”
37. Defendant Commissioners did not engage in public deliberation at the meeting about the Resolution.
38. Defendant Barnhardt opposed the Resolution, while Defendants Leinbach and Rivera voted to approve the Resolution.
39. Even with the split vote, Defendant Commissioners made no comments about the Resolution.

40. During the meeting, Defendant Commissioners did not provide a description of the contents of either the letter of support or white paper proposal concerning BCRC.
41. Nor did Defendant Commissioners provide copies of the letter of support or white paper proposal at the meeting.
42. While the public had the opportunity to comment at the meeting, without any information about the letter of support or white paper proposal, they had no basis for their comments.
43. The Commissioner Meeting Minutes from February 25, 2021 reflect the vote and the one phrase about the Resolution 73.2021 provided in paragraph 30. *See* Commissioners' Board Meeting Minutes (Feb. 25, 2021), https://www.co.berks.pa.us/Dept/Commissioners/MeetingMinutes/Commissioner_02_25_2021_Meeting_Minutes.pdf.
44. At the three prior regularly scheduled meetings by the Board of Commissioners (the February 18, 2021 meeting was apparently cancelled because of the weather), Defendant Commissioners did not engage in public deliberation concerning the Resolution.
45. The Sunshine Act contains a narrow exception that allows certain discussions to occur privately in an executive session.
46. The Defendant Commissioners did hold executive sessions on February 12, 2021 and February 17, 2021.
47. There is no indication from the stated reasons for these executive sessions that the Resolution was ever discussed at those sessions.
48. Yet given their vote without discussion on February 25, 2021, there necessarily had to be some previous communication among Defendant Commissioners about the letter of support, white paper proposal, and BCRC.

49. Further, Defendants' operation of BCRC is not only a contentious issue nationally but also with local residents of Berks County.
50. On information and belief, Defendant Commissioners privately deliberated about the Resolution prior to their vote.
51. On the basis of the 2-1 vote on the Resolution, Defendant Commissioners committed Berks County to executing a letter of support to ICE concerning a proposal for BCRC.
52. One day after the meeting, on February 26, 2021, ICE released all the families who were detained at BCRC.
53. Soon thereafter, the federal government made public representations that it is working with Berks County to convert BCRC into a facility that detains adult immigrants. Interim Report of Juvenile Coordinator Deane Dougherty submitted by ICE at 4, *Flores v. Wilkinson*, No. 85-cv-04544-DMG-AGR (C.D. Cal. Mar. 5, 2021), ECF No. 1084-1.

Secret Information

54. Since the meeting on February 25, 2021, several individuals and members of the media have attempted to obtain additional information about the letter of support and white paper proposal from Defendants.
55. Defendants have maintained that they are either not in possession of the documents or not permitted to release them.
56. Anthony Orozco, a reporter with WITF, requested a copy of the letter of support and white paper through a request under the Pennsylvania Right to Know Law.
57. On March 4, 2021, Defendant County of Berks responded by stating that his request was "in the possession of" and "maintained by" the federal government and that he would have to submit a Freedom of Information Act request.

58. Karen Shuey, a reporter with the Reading Eagle, requested a copy of the letter of support and white paper from Stephine Weaver, the Public Relations Officer of Berks County, prior to the February 25, 2021 meeting. The request was denied and she was told to file a Right to Know request. Karen Shuey, “Berks Officials Provide No Details on Proposal for Berks County Residential Center,” (Feb. 25, 2021), Reading Eagle, https://www.readingeagle.com/news/local/berks-officials-provide-no-details-on-proposal-for-berks-county-residential-center/article_b2ba8c88-779b-11eb-a8c9-6fb3f6324b31.htm
59. Ms. Shuey also attempted to speak to Defendant Barnhardt about his no vote on Resolution 73.2021 following the February 25, 2021 meeting. Defendant Barnhardt “did not immediately return a request seeking comment.” *Id.*
60. Berks County has denied subsequent Right-to-Know requests for the letter of support or white paper by claiming that the classification and release of these documents are “governed by federal law and procedure.”
61. On March 4, 2021, residents of Berks County attended the regularly scheduled meeting with the Defendant Commissioners to ask for information about the letter of support, the white paper proposal, and the future of BCRC.
62. Berks County Solicitor Christine Sadler responded to public comments by explaining that white paper proposal was “completed and submitted by ICE officials” and that it is not in the County’s possession “as submitted.” *See Commissioners’ Meeting Minutes (March 4, 2021) at 4,* https://www.co.berks.pa.us/Dept/Commissioners/MeetingMinutes/Commissioners_03_04

_2021_Meeting_Minutes.pdf; Video of County of Berks Commissioners' Board Meeting (March 4, 2021), <https://www.youtube.com/watch?v=p7vUFiqLZAA>.

63. Ms. Sadler also stated that the County received directions from ICE on March 3, 2021 that the County is “not permitted to release the letter of support.” *Id.*

64. Defendant Leinbach added that the policy is to *not provide a response to questions about BCRC*. *Id.* (“We are not to provide public response - not public response, media response - that all of those media inquiries have always been turned over to ICE and the feds.”).

65. To date, there is no public information about the contents of the letter of support or white paper proposal that are the subject matter of the Resolution adopted on February 25, 2021.

66. Defendants normally post the agenda and meeting of the minutes online on their website.

67. Inexplicably, the minutes from the February 25, 2021, were removed for a period of several days after they were initially posted on the Berks County website.

CLAIMS

COUNT I

Violation of the Sunshine Act by Privately Deliberating on an Official Action

68. Plaintiffs hereby incorporate and adopt the allegations set forth in the foregoing paragraphs of the Complaint.

69. The Sunshine Act requires that “official action and deliberations” must take place “at a meeting open to the public.” 65 Pa.C.S. § 704.

70. An “official action” under the Sunshine Act includes “the vote taken by any agency on any motion, proposal, [or] resolution . . .” 65 Pa.C.S. § 703.

71. Defendant Commissioners voted and approved the Resolution 73.2021 on February 25, 2021, which constitutes an official action.
72. Defendant Commissioners did not deliberate on the vote at that public meeting.
73. Defendants violated the Sunshine Act by having private, rather than public, deliberations about the official action.
74. The Sunshine Act provides no exception for engaging in private deliberation because the federal government has requested that such information remain secret.
75. Defendants were aware of their obligations under the Sunshine Act to deliberate official actions at a meeting open to the public.
76. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT II

Violation of the Sunshine Act by Failing to Provide a Reasonable Opportunity for Public Comment

77. Plaintiffs hereby incorporate and adopt the allegations set forth in the foregoing paragraphs of the Complaint.
78. The Sunshine Act requires that agencies “*shall provide a reasonable opportunity*” for residents “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.” 65 Pa.C.S. § 710.1(a) (emphasis added).
79. An “official action” under the Sunshine Act includes “the vote taken by any agency on any motion, proposal, [or] resolution . . .” 65 Pa.C.S. § 703.
80. Defendant Commissioners voted and approved the Resolution 73.2021 on February 25th, 2021, which constitutes an official action.

81. While Defendants provided the technical opportunity to comment, this opportunity was not “reasonable” given their failure to provide any information whatsoever about the letter of support or white paper proposal concerning BCRC. 65 Pa.C.S. § 710.1(a).
82. As a result, Defendants prevented residents from having a “reasonable opportunity” to “comment . . . prior to taking official action.” *Id.*
83. The Sunshine Act provides no exception to the requirement of providing a reasonable opportunity to residents to comment because the federal government has requested that such information remain secret.
84. Defendants were aware of their obligation under the Sunshine Act to permit public comment prior to taking an official action.
85. Defendants willfully violated the Sunshine Act by taking this unlawful action

COUNT III

Violation of the Sunshine Act by Failing to Keep Written Minutes of the Substance of an Official Action

86. Plaintiffs hereby incorporate and adopt the allegations set forth in the foregoing paragraphs of the Complaint.
87. The Sunshine Act requires that agencies keep written minutes of “[t]he substance of all official actions.” 65 Pa.C.S. § 706.3.
88. An “official action” under the Sunshine Act includes “the vote taken by any agency on any motion, proposal, [or] resolution . . .” 65 Pa.C.S. § 703.
89. Defendant Commissioners voted and approved Resolution 73.2021 on February 25th, 2021, which constitutes an official action.

90. The February 25, 2021 minutes refer to the Resolution as “ratifying, confirming, and approving execution of a letter of support to the U.S. Immigration and Customs Enforcement for [sic] white paper proposal for the Berks County Residential Center.”
91. Any person reading the minutes would have no idea what the resolution was ratifying, confirming or approving, given the lack of information or open deliberation about the letter of support or white paper proposal.
92. This description fails to meet the requirement that minutes record the “substance” of official actions.
93. The Sunshine Act provides no exception to the requirement of recording the substance of all actions within the minutes because the federal government has requested that such information remain secret.
94. Defendants were aware of their obligation under the Sunshine Act to provide such information in their minutes.
95. Defendants willfully violated the Sunshine Act by taking this unlawful action.

REQUEST FOR RELIEF

Plaintiffs have a remedy under the Sunshine Act for the violations of their right to transparency and to participate in their local government. 65 Pa.C.S. § 713.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment:

- a. Declaring that the Defendant Commissioners violated the Sunshine Act by failing to engage in public deliberation about Resolution 73.2021;
- b. Declare that the vote on Resolution 73.2021 is void;
- c. Issue a permanent injunction to enjoin Defendant Commissioners from taking any action on Resolution 73.2021, including on the letter of support or white paper

proposal concerning BCRC, without having public deliberation during a Board of Commissioners meeting, and providing the public with a reasonable opportunity to comment;

- d. Award Plaintiffs attorneys' fees; and
- e. Award Plaintiffs costs and such other and further relief that this Honorable Court deems just and appropriate.

Dated: March 26, 2021

Respectfully submitted,

/s/Karen Hoffmann

Karen Hoffmann

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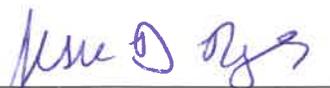
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Attorneys for Plaintiffs

VERIFICATION

I, Jesse D. Royer, hereby certify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: March 26, 2021



Jesse D. Royer

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
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**Make the Road States, d/b/a Make the Road
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Defendants.

No. _____

CERTIFICATE OF SERVICE

I, Karen Hoffmann, hereby certify that on March 26, 2021, I caused to be served a true and correct copy of the foregoing Complaint for Declaratory and Injunctive Relief to the following via USPS Priority Mail:

Christian Leinbach
Kevin Barnhardt
Michael Rivera
Berks County Board of Commissioners
Berks County Services Center
633 Court Street, 13th Floor
Reading, PA 19601



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