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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

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

BARRY J. FENCHAK, Plaintiff,	)	
v.	)	No. 2024-CV-1843-CI
THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN Defendants.	)	

Attorney for Plaintiff: *Terry L. Mutchler, Esq.*
Justin J. Boehret, Esq.
Madison Melinek, Esq.

Attorney for Defendants: *Andrew R. Stanton, Esq.*
Susan E. Kessler, Esq.
Nathaniel G. Ecker, Esq.
Christopher Conrad, Esq.

OPINION AND ORDER

Marshall, J.

Presently before the Court is the Motion to Dissolve Preliminary Injunction, filed by Defendants on February 27, 2025. Therein, Defendants ask this Court to dissolve the preliminary injunction that it entered in this matter on October 9, 2024. A hearing was held on this matter on May 12, 2025. Upon review of the filings of the parties, the applicable law, and the evidence and testimony presented at the May 12, 2025 hearing, the Court finds as follows:

BACKGROUND

Plaintiff is one of 36 voting members of the Board of Trustees of the Pennsylvania State University ("PSU"). Plaintiff is one of nine Trustees elected by alumni of PSU, and Plaintiff assumed his position as a Trustee on or about July 1, 2022. On October 9, 2024, this Court entered an Opinion and Order enjoining Defendants from removing Plaintiff from the Board of Trustees

"by vote," which injunction remains in effect until the earliest of (*i*) its dissolution by this Court, (*ii*) the conclusion of the underlying litigation in this matter, or (*iii*) the conclusion of all terms for which Plaintiff has been duly elected to the Board. *See Opinion and Order* (Oct. 9, 2024); *Amended Order* (Oct. 11, 2024). Defendants now seek to dissolve that injunction, on grounds that the original basis for the preliminary injunction has been mooted.

DISCUSSION

Pursuant to Pa.R.C.P. 1531(c), a party may move to dissolve an injunction at any time. An injunction may be modified or dissolved upon a showing of changed circumstances that have occurred since the issuance of the injunction. *See Nether Providence Twp. v. Coletta*, 133 A.3d 86, 91 (Pa. Commw. Ct. 2016).

This Court entered the preliminary injunction that Defendants now seek to dissolve on October 9, 2024. The Court entered the preliminary injunction on the basis that Plaintiff made a *prima facie* showing that Defendants were attempting to remove him from the Board of Trustees in retaliation for certain information requests made by Plaintiff. As stated by Plaintiff in his Emergency Motion for Preliminary Injunction:

> "The fact of the matter is that the Defendants have admitted that their decision to move for Plaintiff's removal from the Board is not based solely on the incident giving rise to their investigation, but instead is based on Plaintiff's 'well documented behavior.' In other words, the Defendants have openly admitted that their decision to permanently remove Plaintiff from the board is based, in large part, on his prior conduct (*i.e.,* his requests for information). Not just routine information, but information related to a $1 Billion contract that was not presented to the Board for vote; information related to the financial health of the endowment." *Pl. Emer. Mot. Preliminary Injunction*, ¶26-28 (emphasis added).

On the basis of these and other averments, this Court granted the preliminary injunction and enjoined Defendants from removing Plaintiff from the Board of Trustees by vote. Since

entering the injunction, this Court understands that Plaintiff has been given all of the information that he requested regarding the endowment and the Elevate Contract. Accordingly, Plaintiff can no longer maintain that he is subject to removal from the Board in retaliation to these specific requests. The Court agrees with Defendants that the basis for the preliminary injunction has been mooted by Plaintiff's receipt of the information that he originally requested, and therefore the injunction must be dissolved.

Finally, the Court expressly rejects Defendants' contention that was raised at the May 12, 2025 hearing that Plaintiff is "obsessed" with the Board of Trustees. To the contrary, throughout the course of this litigation, Mr. Fenchak has demonstrated himself to be a dedicated member of the PSU community, who at all times has held a good faith belief that his work on the Board of Trustees is for the greater good of the institution and the students that it serves.

ORDER

AND NOW, this 16th day of May, 2025, Defendants' Motion to Dissolve Preliminary Injunction is hereby GRANTED. The injunction created by this Court's October 9, 2024 Order, and amended by this Court's October 11, 2024 Order, is hereby VACATED.

BY THE COURT:

Brian K. Marshall, Judge