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JEREMY S. BREON
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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: *Stephen Marino, Esq.*

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

OPINION AND ORDER

Marshall, J.

Presently before the Court is the Motion for Summary Judgment, filed by Defendants on November 4, 2025, asking this Court to dismiss the Amended Complaint filed by Barry Fenchak ("Plaintiff") on August 27, 2024. Plaintiff filed a responsive pleading in opposition to the Motion for Summary Judgment on November 21, 2025. A hearing on the Motion for Summary Judgment was held on December 19, 2025. Upon review of the filings and arguments of the parties, the Court enters the following Opinion and Order:

BACKGROUND

Plaintiff is a former member of the Pennsylvania State University Board of Trustees, having been removed by a 30-4 vote of the other members of the Board on June 16, 2025. This matter was commenced by Plaintiff's Complaint in July 2024, while Plaintiff was still a member of the Board.

Plaintiff filed an Amended Complaint on August 27, 2024 raising two claims for relief: Count I sought enforcement of the director information inspection provisions of 15 Pa.C.S.

§5512(b); Count II was a request for injunctive relief asking this Court to prevent Defendants from removing Plaintiff from the Board of Trustees. *See Amended Compl.*, ¶123-133, 134-169 (Aug. 27, 2025).

On October 9, 2024, while Plaintiff was still a member of the Board, this Court entered an Opinion and Order enjoining Defendants from removing Plaintiff from the Board of Trustees "by vote," which injunction remained 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). On May 16, 2025, this Court found that the basis for the preliminary injunction shielding Plaintiff's removal from the Board had been mooted by Plaintiff's receipt of the information that he had originally requested. *See Opinion and Order* (May 16, 2025) ("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..."). Accordingly, this Court vacated its prior preliminary injunction order. *Id.*

Thereafter, on June 16, 2025, a vote was held by the Board and Plaintiff was removed from the Board by a vote of 30-4. Because Plaintiff is no longer a Board Trustee, and because Plaintiff received the information he sought which formed the original basis for this suit, Defendants argue that there are no longer any issues of material fact such that summary judgment should be granted in Defendants' favor. For the reasons discussed herein, the Court agrees and will GRANT Defendants' Motion for Summary Judgment.

DISCUSSION

A party may move for summary judgment when there is "no genuine issue of material fact" (Pa.R.C.P. 1035.2) and "the moving party is entitled to judgment as a matter of law." *Johnston v. Lehman*, 676 A.3d 1287, 1289 (Pa. Commw. Ct. 1996). Where there are intervening changes in

the factual circumstances of a case which eliminate an actual controversy and make it impossible to grant the requested relief, the legal question is rendered moot and the case should be dismissed. *Id.*

Both claims for relief in Plaintiff's Amended Complaint are predicated on Plaintiff's being a member of the Board of Trustees: Count I sought enforcement of 15 Pa.C.S. §5512(b), which provides directors (and trustees) the right to inspect records and information of the corporation they serve; Count II asked this Court for an injunction preventing Defendants from removing Plaintiff from the Board of Trustees. The injunction requested by Count II was granted by this Court on October 9, 2024 and was subsequently vacated on May 16, 2025 after this Court was satisfied that "the basis for the preliminary injunction has been mooted by Plaintiff's receipt of the information that he originally requested." *See Opinion and Order* (Oct. 9, 2024); *Opinion and Order* (May 16, 2025). Additionally, as Plaintiff is no longer a member of the Board of Trustees, he is no longer entitled to the information rights of 15 Pa.C.S. §5512(b). As it is impossible for this Court to grant the requested relief, Count I of the Amended Complaint is rendered moot.

In opposition to the Motion for Summary Judgment, Plaintiff argues that there is an issue of material fact regarding whether Defendants' conduct in originally denying Plaintiff's information requests pursuant to 15 Pa.C.S. §5512 was "dilatory, obdurate, and vexatious" such that Plaintiff should be entitled to attorney's fees. *See Amended Compl.*, ¶132 ("[m]oreover, the Defendants pattern of delay and obfuscation with regard to Plaintiff's lawful requests for information is the very definition of dilatory, obdurate and vexatious conduct."). In support of this contention, Plaintiff states that "as a threshold matter, standing is conferred upon the plaintiff to compel the production of records, seek review of a contested corporate action, and recover an award of reasonable attorney's fees and costs incurred in doing so pursuant to Section 5512 and Section 5793 of the Nonprofit Corporation Law."

The Court notes that Section 5512 and Section 5793 of the Nonprofit Corporation Law do not contain a separate attorney's fee provision, and there is no entitlement to attorney's fees under either Section, as Plaintiff seems to suggest. Section 5512(e) includes a cross reference only to 42 Pa.C.S. §2503(7) (relating to right of participants to receive counsel fees); Section 5793 contains no reference to attorney's fees whatsoever. Accordingly, 42 Pa.C.S. §2503(7) is the only basis by which attorney's fees are available for violations of Section 5512, and those awards are reserved "as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter." 42 Pa.C.S. §2503(7) (emphasis added). Simply put, there appears to be no reasonable basis for either party to claim that the other acted so vexatiously during the pendency of this matter that this Court should award attorney's fees based on the current state of the record in this matter. This was contentious, high-stakes litigation over a matter of great importance to each party, but there appears to have been no conduct during the pendency of the matter rising to the level of sanctionable conduct.

The Court finds that there are no issues of material fact and that Defendants are entitled to judgment as a matter of law. Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 6th day of January, 2026, Defendants' Motion for Summary Judgment is hereby GRANTED. Plaintiff's Amended Complaint, filed on August 27, 2024, is hereby DISMISSED WITH PREJUDICE.

BY THE COURT:

Brian K. Marshall, Judge