

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
GENERAL DIVISION

ANTIOCH UNIVERSITY ADVISORY	:	CASE NO. 2026 CV 0911
BOARD OF GOVERNORS,	:	
	:	
Plaintiff,	:	JUDGE ADOLFO A. TORNICHIO
	:	MAGISTRATE STEPHANIE R. HAYDEN
v.	:	
	:	<u>MAGISTRATE’S DECISION</u>
COALITION FOR THE COMMON	:	<u>DENYING PRELIMINARY</u>
GOOD,	:	<u>INJUNCTION AND INTERIM ORDER</u>
	:	<u>OF ADOPTION</u>
Defendant.	:	

This matter came before the undersigned Magistrate on September 14, 2026 for a hearing on Plaintiff’s application for a preliminary injunction. On August 28, 2026, Plaintiff Antioch University Advisory Board (“AU Advisory Board”) filed a complaint asserting nine separate causes of action. Of relevance to the application for preliminary injunction are Plaintiff AU Advisory Board’s breach of contract, unjust enrichment, and promissory estoppel claims.

The undersigned has considered the evidence submitted and the arguments of counsel and, after careful consideration, recommends the Plaintiff’s application for preliminary injunction be denied.

FACTUAL BACKGROUND:

In June 2023, the then-Antioch University entered into a joint venture with Otterbein University to form a collaboration named the Coalition for Common Good (CCG). The two universities entered into an Affiliation Agreement, effective June 30, 2023, which created a shared governance model. Under the terms of the Affiliation Agreement, the Antioch University board was restructured to include equal representation from Antioch and Otterbein Universities and, after closing, would become CCG. Per the agreement, the educational operations of Antioch University continue under the “Antioch University” name but have become an operating division of CCG. In addition,

CCG became the sole member of Otterbein. The Affiliation Agreement also required the parties to it to execute a Strategic Operating Agreement, which sets forth the parties¹ various ongoing obligations to each other.

On June 11, 2023, the then-Antioch University Board of Governors passed a resolution approving its Amended and Restated Articles of Incorporation, wherein Antioch University changed its corporate name to the Coalition for the Common Good. The Amended Articles state the authority of the CCG will be exercised “by or under the direction of” its Board of Directors. The then-Antioch University Board of Governors also approved Amended and Re-States Bylaws.

The June 11, 2023 resolution also formed the Antioch University Advisory Board and approved the Antioch University Advisory Board Charter. As of the effective date of the Affiliation Agreement, the then-members of the Antioch University Board of Governors resigned their board positions and were replaced by the new CCG Board of Directors. The former members of the Antioch University Board of Governors became the members of the newly created Antioch University Advisory Board.

The CCG Board of Directors consists of nine members (called “Directors”) – four Antioch Division Directors, four Otterbein Division Directors, and one jointly nominated and appointed independent Director. The four Antioch Division Directors make up the “Antioch Standing Committee” and the four Otterbein Division Directors make up the “Otterbein Standing Committee.” The four Antioch Division Directors are elected by a supermajority of the CCG Board from nominations submitted jointly by the AU Advisory Board and the Antioch Standing Committee.

The CCG bylaws delegate certain authority and actions to the Antioch Standing Committee. Section 6.4 of the CCG bylaws provides, in part:

Antioch Standing Committee: The Antioch Standing Committee shall consist, *ex-officio*, of all of the Antioch Directors, who shall oversee, in consultation with the Antioch Advisory Board, matters generally related to the Antioch Division.

The bylaws then go on to list, in part, matters upon which the Antioch Standing Committee is exclusively authorized to act.

According to its charter, the AU Advisory Board is a non-fiduciary advisory board of the CCG Board of Directors and the CCG Board’s Antioch Standing Committee. The stated purpose of the AU Advisory Board (subject to limitations imposed by law, accreditation standards, and approval rights of

¹ The parties to the Strategic Operating Agreement are CCG and Otterbein.

the CCG Board's Antioch Standing Committee and CCG Board of Directors) falls into three categories: (1) general oversight of the operations of the Antioch Division, (2) approval of certain matters related to the overall operations of CCG, and (3) the nomination of representatives to the CCG Board.

Over the last several months, a dispute has arisen between the AU Advisory Board and the CCG related to the AU Advisory Board's role and authority. In June 2026, the CCG Board considered a resolution to abolish the AU Advisory Board but ultimately did not do so. Instead, the CCG Board passed a resolution directing the CCG Board and the AU Advisory Board to attempt to mediate the dispute. In mid-August 2026, a disagreement arose between the parties regarding the payment of certain CCG expenses. On August 28, 2026, the CCG Board held an emergency meeting. At the meeting, six of the eight CCG Board Directors present voted in favor of a resolution abolishing the AU Advisory Board, cancelling the AU Advisory Board's charter, and making other operational changes.

The same day, the AU Advisory Board filed its complaint and motion for temporary restraining order. The motion for temporary restraining order was granted on September 1, 2026.

LAW AND ANALYSIS:

The authority of a non-profit corporation is exercised by its directors, except as otherwise provided by law, its articles of incorporation, or its code of regulations (if so adopted). R.C. 1702.01(K); R.C. 1702.10; R.C. 1702.12(F). R.C. 1702.10 and 1702.11 permit a non-profit corporation to adopt regulations governing the conduct of its meetings, management, and affairs. The regulations may define, limit, or regulate the exercise of the authority of the corporation, its directors, officers, members, or any class of members. R.C. 1702.11(A)(10). The provisions of R.C. 1702.11(A) apply whether the nonprofit calls its regulations by that name or something else.

The Supreme Court of Ohio has held that the rules and regulations of an Ohio corporation, not in contravention of any statutory provision, have the force of "contracts" as between the corporation and its members and as between the members themselves. *Westbrook v. Swiatek*, 5th Dist. Delaware No. 11-CAE-09-0080, 2012 Ohio 2451 citing *Knight v. Shultz*, 141 Ohio St. 267, 47 N.E.2d 886. In a breach of contract action, "[i]t is generally recognized that a contract is binding only upon the parties to that contract." *TRINOVA Corp. v. Pilkington Bros., P.L.C.*, 70 Ohio St.3d 271. 1994 Ohio 524. Consequently, only a party to the contract or an intended third-party beneficiary has standing to pursue a breach of contract claim. *Id.*

The AU Advisory Board's claims are premised on the assertion that CCG did not comply with its by-laws and/or the AU Advisory Board Charter and that CCG's actions constituted an ultra vires attempt to amend the AU Advisory Board's Charter. "Ultra vires" is defined as "Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." *Siltstone Servs., LLC v. Guernsey Cty. Cmty. Dev. Corp.*, 5th Dist. Guernsey No. 19CA000049, 2020 Ohio 3878 quoting Black's Law Dictionary (7 Ed.1999) pg. 1525; *In re Sims*, 7th Dist. Jefferson No. 02-JE-2, 2002 Ohio 3458. "[T]he notion of ultra vires acts by a corporation does not encompass a corporation's violation of its own regulations or bylaws." *Id.* quoting *Carr v. Acacia Country Club Co.*, 8th Dist. Cuyahoga No. 96731, 2012 Ohio 1940.

R.C. 1702.12(I)(1) limits the class of litigants that may bring an ultra vires action against a corporation to the State of Ohio, the corporation itself, or a member of the corporation. The AU Advisory Board is clearly not the State of Ohio, nor is it CCG. The uncontroverted evidence establishes that the AU Advisory Board is not a member of CCG. Therefore, the AU Advisory Board lacks standing to assert its ultra vires claims against CCG.

The undersigned additionally finds the AU Advisory Board lacks standing to assert claims against CCG for alleged violations of CCG's bylaws and the AU Advisory Board charter. As an initial matter, the AU Advisory Board is not a "party" to the CCG bylaws and the CCG is not a "party" to the AU Advisory Board Charter. Moreover, as the Court observed in *Acacia Country Club, supra*, because a corporation's code of regulations (or, as CCG opted to call them, bylaws) "...have the force of contracts between the corporation and its shareholders,...only an aggrieved shareholder – either derivatively or individually, depending on the injury – may base a cause of action on a violation of a code of regulations." *Acacia Country Club* at ¶ 34. Accordingly, CCG's failure to abide by its bylaws does not create a cause of action in favor of the AU Advisory Board.

Based on the foregoing, the undersigned finds the AU Advisory Board lacks standing to bring its breach of contract and its quasi-contractual claims against CCG. As a result, the undersigned further finds the AU Advisory Board does not have a substantial likelihood of success on the merits of its contract and quasi-contractual claims against CCG. Therefore, the undersigned RECOMMENDS the AU Advisory Board's application for preliminary injunction be DENIED.

IT IS SO RECOMMENDED.



MAGISTRATE STEPHANIE R. HAYDEN

**JUDGMENT ENTRY APPROVING AND INTERIM ORDER OF ADOPTION OF
MAGISTRATE'S DECISION**

Upon the Magistrate's recommendations, the Court approves, confirms, and adopts the above Magistrate's Decision as an Order of this Court. The Court finds the Magistrate complied with Civil Rule 53, and hereby ORDERS that the Plaintiff AU Advisory Board's Motion for Preliminary Injunction be DENIED.



JUDGE ADOLFO A. TORNICHIO

CERTIFICATE OF SERVICE: A copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed via U.S. mail, facsimile, or email by the Greene County Clerk of Court to those parties to whom electronic notice has not been sent.

AARON M. HERZIG, ESQ. via electronic notification system
T. PATRICK MARTIN, ESQ., via electronic notification

