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AJ WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

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

THERESE CANNON, Plaintiff, v. COALITION FOR THE COMMON GOOD, Defendant.	: : : : : : : : : :	CASE NO. 2026 CV 1048 Consolidated with Case No. 2026 CV 0911 JUDGE ADOLFO A. TORNICHIO MAGISTRATE STEPHANIE R. HAYDEN **MAGISTRATE'S DECISION GRANTING IN PART AND DENYING IN PART PRELIMINARY INJUNCTION AND INTERIM ORDER OF ADOPTION**

This matter came before the undersigned Magistrate on October 9, 2026 for a hearing on Plaintiff's application for a preliminary injunction. On September 29, 2026, Plaintiff Therese Cannon filed a complaint asserting ten separate causes of action. Of relevance to the application for preliminary injunction are Plaintiff Cannon'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 granted in part and denied in part.

FACTUAL BACKGROUND:

In June 2023, Antioch University, as it then existed, 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. After closing, the restructured entity 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 parties'[1] various ongoing obligations to each other. The Affiliation Agreement defines its "Related Agreements" as the Strategic Operating Agreement, Shared Services Agreement, any Program Transfer Agreement agreed to by the parties, the Amended and Restated Antioch Articles, the Amended and Restated Antioch By-Laws,[2] the Amended and Restated Otterbein Articles, and the Amended and Restated Otterbein By-Laws.

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 Restated By-laws.

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 by-laws delegate certain authority and actions to the Antioch Standing Committee. Section 6.4 of the CCG by-laws 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.

[1] The parties to the Strategic Operating Agreement are CCG and Otterbein.
[2] The Amended and Restated Antioch By-laws are the Amended and Restated CCG By-laws.

The by-laws then go on to list, in part, matters which the Antioch Standing Committee is required to approve, some of which the Antioch Standing Committee is authorized to act upon exclusively.

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 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[3], (2) approval of certain matters related to the overall operations of CCG, and (3) the nomination of representatives to the CCG Board.

On August 11, 2025, Lori Varlotta became the President of Antioch University. During the interview process, President Varlotta was informed she'd have dual reporting responsibility to both the CCG and the AU Advisory Board.[4] In October 2025, Steve Crandall,[5] Chair of the Finance Committee,[6] asked President Varlotta to perform a "deep analysis" of the CCG system to analyze governance, operations, and finances. President Varlotta produced a report outlining her findings and shared it with the AU Advisory Board and the CCG President in advance of the AU Advisory Board's March 2026 meeting. According to President Varlotta and now AU Advisory Board Chair Crandall, CCG Board President John Comerford was offended and angered by the report. Comerford red-lined the AU Advisory Board's March 2026 board book – a compilation of agenda items, resolutions, and supporting information relevant to the meeting's agenda. This was an action Comerford had never taken before.

The relationship between the AU Advisory Board and the CCG continued to deteriorate due to disputes related to the AU Advisory Board's role and authority. At one time, the AU Advisory Board Chair was routinely invited to attend CCG Board meetings. In 2026, the CCG

[3] The AU Advisory Board Charter purports to vest the authority to "[g]enerally oversee, in consultation, as appropriate, with Antioch Division and the Corporation's management and other personnel, the affairs of the Antioch Division." The CCG by-laws vest the authority to "oversee, in consultation with the [AU] Advisory Board, matters generally related to the Antioch Division" in the Antioch Standing Committee.

[4] Witnesses and documentary evidence repeatedly referred to the AU Advisory Board as the Antioch Board of Governors or Board of Governors. The interchangeability of these labels has undoubtedly confused the issues surrounding reporting requirements and the responsibilities of the various boards of the overall system. For purposes of this decision and for ease of understanding, the undersigned will only use the AU Advisory Board label.

[5] Crandall became the Chair of the AU Advisory Board in 2026.

[6] It is unclear if this Finance Committee was an AU Advisory Board committee or a CCG Board committee.

Board ceased that practice and began holding its meetings in executive session. A memorandum from CCG Board Chair Dan Gifford dated March 30, 2026 notes: "At present, it appears there is a growing discourse – between the AU [Advisory] Board and the AU President and the CCG President and CCG Board – that risks constraining our ability to operate as a cohesive CCG." (See Binder 1, Tab 22).

In June 2026, the CCG Board considered a resolution to abolish the AU Advisory Board and to amend the CCG by-laws 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, canceling the AU Advisory Board's charter, and making other operational changes more fully discussed below. The CCG Board did not obtain the prior approval of the Antioch Standing Committee for any of the actions taken at the August 28, 2026 meeting.

The same day, the AU Advisory Board filed its complaint and motion for temporary restraining order in Greene County case number 2026 CV 0911. The Court granted the AU Advisory Board's motion for temporary restraining order on September 1, 2026. The Court ultimately found that the AU Advisory Board lacked standing to bring its claims and denied its application for preliminary injunction on September 28, 2026. After the Court issued its ruling in the companion case, the disputed CCG resolutions and employment action took effect.

LAW AND ANALYSIS:

Civ.R. 23.1, Demand Futility, and Standing

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.

CCG argues Cannon does not have standing to bring the instant action because she did not meet the demand requirement in Civ.R. 23.1. According to the rule, "[t]he complaint shall…allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors…and the reasons for his failure to obtain the action or for not making the effort." This demand requirement essentially requires that intracorporate remedies be exhausted before going to court with a derivative suit. *Grand Council v. Owens*, 86 Ohio App.3d 215, 620 N.E.2d 234 (10th Dist. 1993).

That said, a shareholder may proceed with a derivative suit without making a demand when the shareholder can demonstrate that the demand would have been futile. *Drage v. Procter & Gamble*, 119 Ohio App.3d 19, 694 N.E.2d 479 (1st Dist. 1997). "[C]ourts have consistently rejected the idea that demand is always futile when the directors are targeted as the wrongdoers in the suit the shareholders wish the corporation to bring; that is, a bare allegation that the directors would not want to sue themselves or each other does not show that the demand would be futile." *Id*. In *Carlson v. Rabkin*, the First District Court of Appeals provided the following examples of when a demand would be excused as futile: "when all directors are named as wrongdoers and defendants in a suit, when there is self-dealing by directors such that the directors gain directly from the challenged transactions, or when there is domination of the nondefendant directors by the defendant directors." *Carlson v. Rabkin*, 152 Ohio App.3d 672, 2003 Ohio 2071 (1st Dist.). Indeed, "[f]utility means that the directors' minds are closed to argument and that they cannot properly exercise their business judgment in determining whether the suit should be filed. It is not enough to show that the directors simply disagree with a shareholder about filing a suit." *Drage, supra* at 25.

Cannon alleges she "objected to CCG's *ultra vires* votes to, inter alia, amend the Bylaws and unlawfully dissolve the [AAB] in an attempt to prevent the CCG from breaching its fiduciary duties. The majority of the CCG Board, however, ignored her objections." (Complaint ¶ 317). The evidence before the Court indicates that the CCG Board repeatedly and persistently ignored

Cannon's continual objections and concerns related to possible CCG Board by-law violations.[7] While certainly a close call, the undersigned finds the current state of the evidence establishes that any demand made by Cannon to the rest of the CCG Board would have been futile.

The Disputed CCG Board Actions:

Resolution 08.28.26:01 – Abolition of Antioch Advisory Board

In Resolution 08.28.26:01, the CCG Board took the following actions:[8] (1) abrogated Resolution 06.30.26.01, (2) abolished the AU Advisory Board, (3) canceled the AU Advisory Board's charter, (4) revoked any delegation of power or authority to it by the CCG Board, (5) revoked all authorities, advisory roles, and committees previously delegated to or housed within the AU Advisory Board and placed them with the CCG Board, (6) extended the term of two CCG Board directors by 60 days, and (7) directed the CCG Board Chair or the Chair's designees to propose the development of new committees and/or committee structures to replace the AU Advisory Board Committees revoked by the CCG Board "to ensure the ongoing oversight of Antioch University."

There are no provisions in any relevant governing document that provide a process or procedure to dissolve the AU Advisory Board. Governance of the CCG is outlined in Article 2 of the CCG by-laws. Under Section 2.1, the CCG – including the Antioch Division – is governed by the CCG Board. Section 2.4 pertains to CCG policies and permits the CCG Board to delegate certain authority to the AU Advisory Board, among others. Section 3.1 states the CCG Board "shall have broad and sole authority" over the affairs of the CCG, except to the extent authority is delegated pursuant to the by-laws to the Antioch Standing Committee, the Otterbein Standing Committee, or another authorized committee of the CCG Board. Section 3.3 outlines the process by which individuals are nominated to the Antioch Standing Committee. Under that section, the AU Advisory Board and the Antioch Standing Committee submit nominations to the CCG Board for consideration. Section 3.4.2 states that an Antioch Director may only be removed by the Antioch Standing Committee upon recommendation of the AU Advisory Board unless being

[7] See Cannon Affidavit Exhibit 1 – email dated June 1, 2026, Exhibit 2 – email dated June 18, 2026, Exhibit 4 – email dated June 29, 2026, Exhibit 5 – email dated June 26, 2026, Exhibit 9 – email dated August 28, 2026, and Exhibit 11 – email dated August 31, 2026.

[8] The CCG's action of amending its by-laws is discussed more fully below. The cancellation of mediation and purported termination of counsel for the AU Advisory Board will not be discussed herein.

removed for cause by a supermajority vote of the CCG Board. Finally, Section 6.4 states the Antioch Standing Committee "shall oversee, in consultation with the [AU] Advisory Board, matters generally related to the Antioch Division."

Plaintiff argues that abolishing the AU Advisory Board changed the existing process for institutional shared governance, which is a matter requiring the approval of the Antioch Standing Committee pursuant to Section 6.4(S) of the CCG by-laws. In the higher education context, "[s]hared governance refers to the joint responsibility of faculty, administrations, and governing boards to govern colleges and universities." American Association of University Professors, *FAQs on Shared Governance*, https://www.aaup.org/issues-higher-education/shared-governance/faqs-shared-governance (accessed October 20, 2026). The word "institutional" limits the term "shared governance" to the governance of a particular institution or, in the case of Section 6.4, Antioch University. Under Section 6.4 of the CCG by-laws, the Antioch Standing Committee is vested with the responsibility to oversee matters related to the governance of Antioch University and must do so in consultation with the AU Advisory Board. Thus, abolishing the AU Advisory Board implicates the "processes for institutional shared governance" in contravention of Section 6.4(S) of the CCG by-laws. Accordingly, the undersigned finds the CCG Board lacked the authority to abolish the AU Advisory Board without the approval of the Antioch Standing Committee.

As to the remaining actions outlined above, the undersigned finds the following:

- The CCG Board acted within its authority to abrogate Resolution 06.30.26.01.
- Because the CCG Board is not a party to the AU Advisory Board Charter, the CCG Board lacked the authority to cancel it.
- The CCG Board acted within its authority to revoke authority, power, or responsibility previously delegated *in its discretion* to the AU Advisory Board.[9]
- The CCG lacked the authority to revoke authority, power, or responsibility "housed within" the AU Advisory Board that was not delegated at the discretion of the CCG Board.[10]
- The CCG Board acted within its authority to direct the CCG Board Chair or Chair's designee to propose the development of new committees and/or committee

[9] See CCG by-laws sections 2.4 and 3.1.
[10] See CCG by-laws sections 3.3.1(A), 3.4.2, and 6.4.

structures, but only to the extent it can delegate discretionary authority to those new committees and/or committee structures.

Resolution 08.28.26:01 – Amendment of the By-Laws to Remove References to the AAB:

Section 6.4 of the CCG by-laws plainly states the Antioch Standing Committee is required to approve amendments to the CCG by-laws or articles of incorporation. Once approved by the Antioch Standing Committee, amendments to the CCG by-laws or articles of incorporation are "*also* subject to a Majority Vote or Supermajority Vote of the Corporation's Board under Article IV…" Section 4.6 delineates which matters require a majority vote and which matters require the vote of a supermajority. Under Section 4.6.2(E), a supermajority vote is required to amend the CCG by-laws.

Section 10.1 specifically pertains to amendments to the CCG by-laws and provides:

> 10.1 Amendments. Except as otherwise provided in Section 9.1.5 of these By-Laws, these By-Laws may be amended only by a Supermajority Vote of the Board. Such action requires that the members of the Board are acting at a Board meeting at which a sufficient quorum is present, and that notice for such meeting is provided to all Board members and includes the purpose of such meeting is described in such notice, along with a summary of the substance of and reasons for the proposed amendment(s). Such notice shall be mailed or otherwise delivered to each Board member at least thirty (30) days before the meeting.

CCG urges this Court to read Section 10.1 to allow the CCG Board to amend its by-laws without prior approval of the Antioch Standing Committee and argues Section 6.4's prior approval requirement applies only to amendments that may be proposed to the CCG by the Antioch Standing Committee. Adopting that interpretation would require the undersigned to add language to 6.4 that does not appear in the provision. The undersigned finds Section 10.1 reaffirms Section 4.6.2(E)'s supermajority vote requirement for CCG by-laws changes and outlines the specific meeting and notice requirements for such an action.

Resolution 08.28.26:01 also directs that any provision of the Affiliation Agreement, Strategic Operating Agreement, or Shared Services Agreement that states that any action may be taken or decision made by the AAB should be construed as if it had referred to the Antioch

Standing Committee instead. The undersigned finds such an action requires the applicable parties to follow the amendment processes outlined in those agreements.[11]

Accordingly, the undersigned finds the CCG Board lacked the authority to amend its by-laws to remove references to the AAB without first obtaining the approval of the Antioch Standing Committee as required by Section 6.4(D) of the CCG by-laws. The undersigned further finds the CCG Board lacked the authority to amend the Affiliation Agreement and Strategic Operating Agreement by resolution alone and lacked the authority to amend the Strategic Operating Agreement without the prior approval of the Antioch Standing Committee as required by Section 6.4(E) of the CCG by-laws.

Resolution 08.28.26:02 – Clarification of Fiscal Policies; Engagement of Outside Advisors

This resolution does three things: (1) allows the CCG Board Chair and Vice-Chair to authorize the CCG President or CCG Legal Officer to enter into a professional services contract in emergency situations, (2) directs the CCG Treasurer to develop an accounts payable policy that conforms with the existing, but undocumented, process that was in place at the time, provided it contained appropriate internal controls, and (3) adopts the "Banking, Expenditure and Signatory Authority Policy 2.403" with the reflected red-line changes.

As to the first objective, the resolution purports to apply "with respect to expenditure and signature authority to enter into legally binding agreements on behalf of the Coalition for the Common Good *or any of its operating divisions, including Antioch University*…" (emphasis added). The emphasized language is in contravention of Section 6.4(O) of the CCG by-laws, which delegates the authority to enter into contracts of $1 million or less solely to the Antioch Standing Committee.

As to the second objective, Section 2.4 states: "The [CCG Board] is ultimately responsible for the Corporation's policies and those of the Antioch Division, including but not limited to…business and financial management policies. Certain authority may be delegated by the Board to the President, other administrative and management personnel and, with respect to the Antioch

[11]See Affiliation Agreement Section 10.11 ("…no changes in, amendments of, or additions to this Agreement or the Related Agreements shall be recognized unless and until made in writing and signed by all parties to the applicable agreement."); Strategic Operating Agreement Section 10(e) ("This Agreement shall not be altered or amended except pursuant to an instrument in writing signed by each of the Parties hereto. The Parties must approve any amendments hereto in accordance with their respective internal processes.")

Division, to the Antioch Advisory Board (defined below)." Under the plain language of this section, the CCG Board has the authority (and responsibility) pertaining to both CCG and the Antioch Division's financial policies. It is axiomatic that a corporation board can reclaim authority it previously delegated. Therefore, the undersigned finds the CCG Board did not violate its by-laws in directing the CCG Treasurer to develop an accounts payable policy.

The undersigned has additionally reviewed the Banking, Expenditure and Signatory Authority Policy 2.403 with red-line changes adopted by Resolution 08.28.26:02.[12] Consistent with the CCG Board's authority to adopt business and financial policies, the undersigned finds the CCG Board did not violate its by-laws by adopting a policy outlining who it wished to be named as signatories and to have access to its asset accounts.

Resolution 08.28.26:03 – Accreditation Matters

This resolution authorizes the CCG Chairperson, the CCG President, or their respective designees to "request that the Higher Learning Commission release to CCG any and all records, information, data, correspondence, reports, and materials relating to Antioch University." This provision does not violate the CCG by-laws, as a request for information and/or data does not constitute a "change" to institutional or program-level accreditation nor does a request for information by itself implicate the process for shared governance.[13] The resolution goes on to authorize those individuals "*to take any and all actions necessary or appropriate on behalf of Antioch University*, with respect to higher education regulatory matters, *including, without limitation, institutional and programmatic accreditation*…"

The above emphasized language would permit the CCG Chairperson, the CCG President, or their respective designees to take "any and all action" with respect to institutional and programmatic accreditation without limitation. This would necessarily include the authority to make changes to Antioch University's accreditation, which, as expressly stated in Sections 6.4(K) and (L) of the CCG by-laws, requires the approval of the Antioch Standing Committee. Therefore, the undersigned finds that CCG Resolution 08.28.26:03 violates the CCG by-laws to the extent that it would authorize the CCG Chairperson and CCG President to make changes to institutional

[12] Interestingly, the policy contemplates AU Advisory Board approval for multiple items despite the CCG Board having abolished the AU Advisory Board just prior to the adoption of the policy.
[13] The undersigned may reach a different conclusion if the action had changed the HLC's designated contact personnel.

and programmatic accreditation without first obtaining the approval of the Antioch Standing Committee.

The Disputed Employment Action – Placing President Varlotta on Paid Administrative Leave

On August 28, 2026, President Varlotta received a letter signed by the CCG President advising she was being terminated from her position. Two days later, President Varlotta was advised she was being placed on paid administrative leave. On September 1, 2026 and as a result of the temporary restraining order issued by this Court in the companion case, President Varlotta was reinstated to her position. On September 28, 2026, the temporary restraining order expired and President Varlotta was returned to paid administrative leave.

Under the terms of the CCG by-laws, the Antioch University President serves as the Executive Vice-President of the CCG and, subject to the direction of the President/Chief Executive Officer and the CCG Board, is responsible for the general management of Antioch's campuses and programs. (See Section 7.3 of the CCG by-laws). The by-laws further require the approval of the Antioch Standing Committee to appoint and/or terminate the Antioch University President.

There is no dispute that the CCG Board did not get the approval of the Antioch Standing Committee prior to purportedly terminating President Varlotta on August 28, 2026, placing her on paid administrative leave on September 1, 2026, or returning her to paid administrative leave on September 28, 2026. The CCG Board plainly lacked the authority to terminate President Varlotta without the prior approval of the Antioch Standing Committee. That said, the CCG by-laws do not prohibit the CCG Board from placing President Varlotta on paid administrative leave. While this may feel like a distinction without a difference, under Ohio law, placing an employee on administrative leave is not the same as terminating them. *Maddox v. Bd. of Dirs. Children Servs. Bd.*, 2d Dist. Greene No. 2013 CA 38, 2014 Ohio 2312 at ¶ 31 (an employee was not terminated on the date she was placed on paid administrative leave).

Accordingly, the undersigned finds the CCG Board did not violate its by-laws when it placed President Varlotta on paid administrative leave.

CONCLUSION:

Based on the foregoing, the undersigned finds Plaintiff Therese Cannon has a substantial likelihood of success on the merits of her contract claims against CCG. Therefore, the undersigned

RECOMMENDS Plaintiff Therese Cannon's application for preliminary injunction be GRANTED IN PART AND DENIED IN PART.

IT IS SO RECOMMENDED.

MAGISTRATE STEPHANIE R. HAYDEN

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

Upon the Magistrate's recommendation, 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 Plaintiff Therese Cannon's Motion for Preliminary Injunction be GRANTED IN PART AND DENIED IN PART.

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