

IN THE FRANKLIN COUNTY, OHIO COURT OF COMMON PLEAS
CIVIL DIVISION

DR. CARLO M. CROCE,	:	
2140 Cambridge Boulevard	:	
Upper Arlington, Ohio 43221,	:	Case No. _____
	:	
Plaintiff,	:	
	:	
v.	:	Judge _____
	:	
THE BOARD OF TRUSTEES OF THE	:	
OHIO STATE UNIVERSITY	:	
190 North Oval Mall	:	
Columbus, Ohio 43210,	:	
	:	
Defendant.	:	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now comes Plaintiff Dr. Carlo M. Croce, by and through his undersigned counsel, and for his complaint against Defendant, The Board of Trustees of the Ohio State University, hereby states:

PARTIES

1. Plaintiff, Carlo M. Croce, MD, (“Plaintiff” or “Dr. Croce”) is an individual residing at 2140 Cambridge Boulevard, Upper Arlington, Ohio. At all times relevant he has been (and continues to be) Chair of the Department of Cancer Genetics and Biology of The Ohio State University College of Medicine.

2. Defendant, The Board of Trustees (the “Board”), is a state entity authorized and existing pursuant to R.C. §§ 3335.01 and 3335.02 with its principal place of business located at 190 North Oval Mall, Columbus, Ohio, 43210. The Board is authorized to sue and be sued on behalf of The Ohio State University (“OSU”) pursuant to R.C. § 3335.03.

FACTS COMMON TO ALL CLAIMS

3. Plaintiff, Dr. Croce, is one of the top cancer research scientists in the world. On June 25, 2004, OSU recruited him to join the University and offered Dr. Croce multiple positions within OSU, including:

- a. A faculty position as a tenured Professor;
- b. The Chair of the Department of Molecular Virology, Immunology and Medical Genetics in the OSU College of Medicine (n/k/a the Department of Cancer Genetics and Biology);
- c. An endowed Chair created for cancer research (later becoming “The John Wolfe Chair, Human Cancer Genetics”);
- d. The first Director of The Ohio State University Institute of Genetics; and
- e. The Director of the Human Cancer Genetics Program of the Ohio State University Comprehensive Cancer Center/James Cancer Hospital/Solove Research Institute.

4. According to OSU’s offer letter (attached as Exhibit 1), the appointment as Chair of the Department of Molecular Virology, Immunology and Medical Genetics was for a period of four years and would be renewable, “upon review by the Dean of the College of Medicine and Public Health **as established by university policies.**” (emphasis added).

5. In addition, OSU’s offer letter stated that the appointment to the endowed chair in cancer research was for a period of four years, “and will be renewable subject to review by the Dean **according to established university policies.**” (emphasis added).

6. There are multiple “established university policies” that deal with the appointment and removal of a department chair. Under Ohio Administrative Code § 3335-3-35(A) and OSU’s Rules of the University Faculty, entitled, “Chairs of departments, directors of schools,”

the Board of Trustees appoints a department chair for a term of four years.¹ Dr. Croce accepted OSU's offer and has been the Chair of his department continuously since he first came to OSU as a Distinguished Professor on or about October 1, 2004.

7. After being appointed to a department chair, a chair may be removed during a four-year term *only* as provided under section 3335-3-35(B) of the Ohio Administrative Code and the OSU Rules of the Faculty, which specifically state:

* * *

(B) The president or his or her designee may remove a chair or director during a four-year term after consultation with the voting faculty and dean of the unit involved. **The views of the faculty shall be given substantial weight in arriving at any decision to remove a chair or director from office.** (emphasis added)

8. Thus, according to the law of the State of Ohio as well as OSU's own rules, OSU's president (in this case, Dr. Michael V. Drake ("Drake")) or his designee may remove a chair, only after he or she first (1) consults the dean of the unit involved, (2) consults with the faculty within the chair's department, and (3) gives substantial weight to the views of the faculty within the chair's department.

9. On or about November 3, 2018, Dr. K. Craig Kent ("Kent"), Dean of the OSU College of Medicine, instructed Plaintiff to "step down" from his position as Chair of the Department of Cancer Biology and Genetics within the College of Medicine. No explanation or basis for the directive was given.

10. Plaintiff refused to step down as the Department Chair.

11. At the time Kent directed Plaintiff to "step down" from being department Chair, Plaintiff was in the midst of his fourth 4-year term as Department Chair. Plaintiff's first term as

¹ The Ohio Administrative code and the Rules of the Ohio State University Faculty use identical section numbers.

Department Chair ran from October 2004, through September 2008. Plaintiff's second term as Department Chair ran from October 2008, through September 2012. Plaintiff's third term as Department Chair ran from October 2012, through September 2016. Plaintiff's fourth term as Department Chair started in October 2016, and runs through September 2020. Accordingly, Plaintiff may only be removed as Chair in accordance with sections 3335-3-35(B) of the Ohio Administrative Code and OSU's Faculty Rules.

12. Following Kent's unlawful demand that Dr. Croce step down as Chair, on November 20, 2018, Kent conducted a faculty meeting of Dr. Croce's Department, informing them that Dr. Croce had decided to step down as Chair and that Dr. Croce would cease serving as Chair beginning January 2019. This November 20, 2018 faculty meeting was the first time that the faculty of Dr. Croce's Department was ever informed that Dr. Croce was no longer going to be the Department's Chair, because Kent never consulted with the faculty prior to his unilateral decision to remove Dr. Croce as Chair. During the faculty meeting, Kent flatly refused to answer any of the faculty's questions regarding why Dr. Croce would no longer be the Department's Chair.

13. On November 22, 2018, and after Kent had continued to refuse to answer any questions from the very faculty with whom he was required to consult before stripping Dr. Croce of his Chair, the Department's faculty wrote a letter to Kent, informing him that they knew Dr. Croce did not voluntarily step down as the Department's Chair, and that Kent's representation to them on November 20, 2018 was "an outright lie." *See Exhibit 2.*

14. After receiving no substantive responses from Kent about why Dr. Croce was being stripped of his Chair, all of the Department's tenured faculty wrote to Dr. Bruce A. McPheron ("McPheron"), the Provost of OSU, informing him that the Department's faculty was

never consulted about removing Dr. Croce from his position as Chair, and if they had been, “we would have expressed a strong and unanimous recommendation *against the apparently arbitrary dismissal* of Dr. Croce as Chair of our Department” (emphasis in original, attached as Exhibit 3).

15. Kent and Drake, acting at all times within their course and scope of employment with OSU, utterly failed to act in accordance with State law and OSU’s Faculty Rules. In addition, Kent and Drake deprived Plaintiff of his vested property interest without due process to remain as Chair for his current 4-year term because neither Kent nor Drake: (1) consulted with *any* faculty member of the Department of Cancer Biology and Genetics within the College of Medicine before attempting to unilaterally remove Plaintiff from his Chair position, and (2) failed to give the faculty’s opinions substantial weight in determining whether to remove Plaintiff as the Department’s Chair.

16. On December 12, 2018, Plaintiff, through counsel, submitted a complaint with McPheron pursuant to OAC and Faculty Rule 3335-5-04 demanding that Dr. Croce be permitted to continue to serve as the Department’s Chair for the remainder of his current term. McPheron has refused to consider the complaint in classic form over substance style, claiming that, because OAC and Faculty Rule 3335-5-4(B)(1) say that, “a complaint may be filed by any student or university employee,” a complaint filed by a university employee’s lawyer -- on behalf of a university employee -- will not be considered.

17. Plaintiff is entitled to injunctive relief, ordering OSU to not remove Dr. Croce as the Department’s Chair unless and until they comply with OAC and Faculty Rule 3335-5-04.

COUNT ONE – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

18. Plaintiff incorporates by reference paragraphs 1 through 17 as if fully restated herein.

19. Plaintiff claims that the defendant must follow OAC and Faculty Rule 3335-5-04 in order to remove him as Chair of the Department of Cancer Genetics and Biology.

20. Upon information and belief, the defendant claims either that (1) it has complied with OAC and Faculty Rule 3335-5-04, or (2) compliance is not required.

21. Under Ohio. R. Civ. P. 57 and R.C. §2721.02 *et. seq.*, there is an actual and justiciable controversy, capable of judicial resolution, in that Plaintiff seeks a declaration of rights that Defendant may only remove Dr. Croce as the Department Chair by fully complying with OAC and Faculty Rule 3335-5-04; and, OSU denies that it must comply with the Ohio Administrative Code and its own Faculty Rules.

22. Plaintiff is entitled to preliminary and permanent injunctive relief ordering OSU to not remove Dr. Croce as the Department’s Chair unless and until they comply with OAC and Faculty Rule 3335-5-04.

23. Absent a preliminary and permanent injunction, Plaintiff will be irreparably harmed in that he will be removed from his position as Chair without recourse or without any adequate remedy at law.

WHEREFORE, Plaintiff Dr. Carlo Croce, demands the following:

1. A declaration that the defendants have failed to comply with OAC and Faculty Rule 3335-5-04, and unless and until they have complied with these provisions, Dr. Croce cannot be removed as Chair of the Department of Cancer Genetics and Biology; and

2. An order (preliminary and permanent) enjoining The Ohio State University from removing Dr. Croce as Chair of the Department of Cancer

Genetics and Biology until such time, if at all, that it complies with OAC and Faculty Rule 3335-5-04;

3. For all and any other equitable relief this Court deems just and proper.

Respectfully submitted,

/s/ James E. Arnold

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