Code of the District of Columbia

§ 29–411.05. Dismissal.

(a) The Superior Court shall dismiss a derivative proceeding on motion by the nonprofit corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by a majority vote of:

(1) Independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing that:

(1) A majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) The requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the nonprofit corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

(e) The Superior Court may appoint a panel of one or more independent persons upon motion by the nonprofit corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

(f) A person is independent for purposes of this section if the person does not have:

(1) A material interest in the outcome of the proceeding; or

(2) A material relationship with a person that has such an interest.

(g) None of the following by itself causes a director to be considered not independent for purposes of this section:

(1) The nomination, election, or appointment of the director by persons that are defendants in the derivative proceeding or against whom action is demanded;

(2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

PUBLICATION INFORMATION

Current through
Sept. 25, 2025

Last codified Emergency Law:
Act 26-150 effective Sept. 25, 2025

Last codified D.C. Law:
Law 26-40 effective Sept. 10, 2025

Last codified Federal Law:
Public Law 115-334 approved Dec. 20, 2018

[https://github.com/dccouncil/law-html]

[https://github.com/dccouncil/law-xml]

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CAROLE ELIZABETH VEST	*	
Plaintiff	*	**Case No. 2024-CAB-2804**
v.	*	
	*	**Hon. Robert Okun**
ANGELA MCARDLE, ET AL.,	*	
Defendants	*	

ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION, AND GRANTING DEFENDANT LIBERTARIAN NATIONAL COMMITTEE INC.'S MOTION FOR SUBSTITUTION OF ATTORNEYS

This matter comes before the Court upon Defendants' Motion for Reconsideration ("Defendants' Motion"), filed January 9, 2025, seeking reconsideration of Judge Ross's December 18, 2024 Order Denying Defendants' Motion to Dismiss ("Order"). Plaintiff filed her Opposition to the Motion for Reconsideration on January 23, 2025, and Defendants filed their Reply on January 29, 2025. For the reasons set forth below, Defendants' Motion will be denied.

Also before the Court is Defendant Libertarian National Committee ("LNC") Inc.'s Motion for Substitution of Attorneys, filed March 7, 2025. Defendant LNC's Motion for Substitution will be granted.

RELEVANT PROCEDURAL HISTORY

Plaintiff filed her original complaint in this matter on May 3, 2024 and subsequently filed an Amended Complaint on August 13, 2024, claiming Defendants breached the by-laws of the Libertarian Party and the D.C. Nonprofit Corporation Act. Defendants' Motion to Dismiss was filed October 18, 2024. The Court denied Defendants' Motion to Dismiss on December 18, 2024 for the following reasons: "(1) Plaintiff's Amended Complaint states plausible claims to relief, including, for example, relief from alleged breach of fiduciary duty and relief under D.C. Code § 29-413.05; (2) the filing date of the original Complaint is attributable to the Amended Complaint

and, at that time, Plaintiff was a director with standing to bring forth derivative proceedings under D.C. Code § 29-411.02; and (3) Plaintiff has alleged particular injury-in-fact attributable to Defendant McArdle."

Defendants now argue that Judge Ross improperly denied Defendants' Motion to Dismiss due to errors of law and fact. More specifically, Defendants argue that Judge Ross erroneously failed to dismiss Count I because 1) he did not determine whether the Plaintiff made a demand to LNC to take suitable action and then waited 90 days between making the demand and filing the original Complaint under D.C. Code § 29-411.03(2); 2) the Plaintiff did not show that irreparable harm to LNC would occur if she waited the full 90 days after making her demand, as required by D.C. Code § 29-411.03(2)(B); and 3) the LNC determined after conducting a reasonable inquiry that the derivative proceeding was not in the best interests of the corporation, requiring dismissal of the action under D.C. Code § 29-411.05(a). Furthermore, Defendants argue that Judge Ross erred when he instead addressed whether Plaintiff had standing under D.C. Code § 29-411.02, which Defendants argue was not at issue. Regarding Count II, Defendants argue that Judge Ross erred in finding that Plaintiff sufficiently claimed breach of fiduciary duty, which was not at issue in their Motion to Dismiss, instead of addressing whether Plaintiff's requested relief for removal of Defendant McArdle as Chair of the LNC could be granted or if she was precluded from bringing a direct cause of action for such relief. Finally, Defendants argue that Judge Ross failed to apply the law correctly to the facts for Count III because a political party is not required to respond to anonymous demands for inspection of records and because the LNC never rejected Plaintiff's demand, stating it would provide records and comply with a properly submitted demand.

Plaintiff argues in her Opposition that Defendants have failed to show that Judge Ross made a manifest error of law or that it is clearly unjust to allow his Order to remain in effect

because the Defendants have not shown that Judge Ross did not consider the arguments in the Motion to Dismiss or that he clearly erred in rejecting those arguments. Plaintiff explains that the Order addressed issues raised by Defendants' Motion to Dismiss, such as whether Plaintiff had standing to bring a derivative suit or a claim of breach of fiduciary duty. Plaintiff further argues that Judge Ross was not obligated to provide a full finding of facts and conclusions of law in his Order and that Plaintiff's Opposition to Defendants' Motion to Dismiss was enough support for Judge Ross to deny the Motion to Dismiss. The Plaintiff also argues that Defendants did not raise their argument for redressability concerning Count II in their Motion to Dismiss and that they should not be allowed to belatedly raise that argument in a motion for reconsideration.

Defendants argue in their Reply that Judge Ross made an error of law with regard to Count III as Plaintiff cannot bring a claim under D.C. Code § 29-413.02 since LNC is a non-member corporation. Defendants claim that Plaintiff has conceded this position because Plaintiff's counsel, in a case similar to this one,[1] made the same argument.

LEGAL STANDARD

Requests for reconsideration of interlocutory orders are governed by D.C. Superior Court Civil Procedure Rule 54(b), which provides that "any order or other decision, however designated, that adjudicated fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." D.C. Super. Ct. Civ. Pro. R. 54(b). The standard for reconsideration of interlocutory orders under Rule 54(b) is whether reconsideration is consonant with justice. *See Marshall v. United States*, 145 A.3d 1014, 1019 (D.C. 2016). "The burden is on the moving party to show that reconsideration is

[1] *Caryn Ann Harlos v. Angela McArdle et al.,* 2024-CAB-006230. That case was consolidated with this matter on March 21, 2025. Plaintiff Harlos dismissed with prejudice her claims against Defendants on April 2, 2025.

appropriate and that harm or injustice would result if reconsideration were denied." *United States ex rel. Westrick v. Second Chance Body Armor*, *Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012). Reconsideration is warranted if, for example, moving parties "present newly discovered evidence, show that there has been an intervening change in the law, or demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *See Bernal v. United States*, 162 A.3d 128, 133 (D.C. 2017) (quotation and alterations omitted); *see also Johnson-Parks v. D.C. Chtd. Health Plan*, 806 F. Supp. 2d 267, 269 (D.D.C. 2011) ("'As justice requires' indicates concrete considerations of whether the court 'has patently misunderstood a party, has made a decision outside the adversarial issues presented to the [c]ourt by the parties, has made an error not of reasoning, but of apprehension, or where a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the court.") (citing *Estate of Botvin ex rel. Ellis v. Islamic Republic of Iran,* 772 F. Supp. 2d 218, 2011 WL 1097450, at *2 (D.D.C. 2011)) (alteration in original).

"Regardless of the Rule pursuant to which reconsideration is sought, it is well-established that 'motions for reconsideration,' whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier." *Ali v. Carnegie Institute of Washington*, 309 F.R.D. 77, 81 (D.D.C. 2015) (quotations and citations omitted). Nor can a motion for reconsideration "be employed simply to rescue a litigant from strategic choices that later turn out to be improvident." *Id*.

DISCUSSION

A. Count I – Breach of By-Laws and Fundamental Rules and Purpose of the LNC/ Derivative Action for Immediate Suspension of McArdle

As an initial matter, this Court agrees with Defendants that Judge Ross's Order, which stated that "Plaintiff was a director with standing to bring forth derivative proceedings under D.C. Code § 29-411.02" addressed a section of the statute that Defendants did not raise in their Motion to Dismiss with regards to Count I. However, this finding was relevant to the Court denying Defendants' Motion to Dismiss with regard to Count III, discussed below, and was therefore not a ruling on an issue outside the adversarial issues presented to the Court.

The Court does not find that Judge Ross made a clear error of law in denying Defendants' Motion to Dismiss Count I. The relevant statutory provision states "a person shall not commence a derivative proceeding until: (1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and (2) Ninety days have expired from the date the demand was effective unless: (A) The person has earlier been notified that the demand has been rejected by the corporation; or (B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period." D.C. Code § 29-411.03. While the Order did not make any findings whether Plaintiff had complied with the requirements of D.C. Code § 29-411.03, this Court finds that the Order properly denied Defendants' Motion to Dismiss. Viewing Plaintiff's Amended Complaint in the light most favorable to her and taking the facts alleged in the complaint as true, Plaintiff plausibly claimed she made a sufficient demand to the LNC and that the 90-day period was waived as she had been notified that the demand had been rejected by the corporation. *See Casco Marina Dev., L.L.C., v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003). Plaintiff additionally sufficiently alleged she feared irreparable harm, claiming

> McArdle was elected and currently serves as Chair of the LNC and her actions reveal that she will continue to abuse her power and committed breaches of her

> fiduciary duties that have caused and will cause irreparable harm to the LNC and the Libertarian Party as a whole, including but not limited to, depletion of donations and loss of members, many of all of which is likely permanent, which is antithetical to a political party with the fundamental principles of electing Libertarians to public office, to move public policy in a libertarian direction, and promoting the growth and activities of the Libertarian Party and its local affiliates.

Am. Compl. ¶ 72.[2]

Additionally, Defendants argue in their Motion that Judge Ross failed to address the argument raised that Plaintiff's derivative action must fail under D.C. Code § 29-411.05(a), which states that the "Superior Court shall dismiss a derivative proceeding on motion by the nonprofit corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation." Defendants argue that since the LNC designated an investigative committee to investigate whether the derivative proceedings were in the best interests of the organization, that dismissal of the derivative action is required. Defs.' Mot. to Dismiss at 5. However, Plaintiff plausibly claimed in her Opposition to Defendants' Motion to Dismiss that the investigation did not comply with D.C. Code § 29-411.05, disputing whether there had been a reasonable inquiry and arguing that that the directors in the investigative committee were not independent. Therefore, Judge Ross properly denied the Motion to Dismiss Count I of the Amended Complaint and the request to reconsider that portion of the Order is denied.

B. Count II – Breach of Fiduciary Duty (Against McArdle)

Defendants have failed to show there was a clear error of fact or law regarding Count II. First, Defendants claim that Judge Ross improperly made a determination on whether Plaintiff

[2] Defendants claim that Plaintiff cited to allegations of irreparable harm from her original Complaint in her Opposition to Defendants' Motion to Dismiss. While this may be true, Plaintiff did allege irreparable harm in her Amended Complaint, which the Court refers to here.

sufficiently pled her breach of fiduciary claim based on D.C. Code § 29-413, which was not an issue before the Court. However, Defendants misunderstand the Order. Judge Ross made a finding that Plaintiff sufficiently pled a claim for relief for breach of access to records under D.C. Code § 29-413.05 for Count III, unrelated to the claim of breach of fiduciary duty in Count II.

Second, Defendants argue that Judge Ross's denial of their Motion to Dismiss was in error because he did not consider Defendants' argument regarding redressability. Defendants raised the issue of redressability in their Motion to Dismiss twice: once, at the beginning of the argument, stating that Plaintiff fails to meet all three requirements of 'constitutional standing,' and then at the end of the argument, stating that "because Ms. Vest did not allege a concrete and particularized injury related to Ms. McArdle's actions, these injuries are not redressable by suspension of Ms. McArdle as Chair of the LNC." Defs.' Mot. to Dismiss at 6-7. Defendants focused on whether Plaintiff had alleged particular injury-in fact traceable to Defendant McArdle, but did not assert the argument that they now make in their Motion for Reconsideration – namely, that under D.C. Code § 29-406.09, the Plaintiff may not seek removal of the Defendant by way of a derivative action. Because the Defendants did not raise the argument they now raise in their Motion to Dismiss, even though they easily could have raised this argument at that time, their belated argument is not the proper basis for a motion for reconsideration. *See Ali v. Carnegie Institute of Washington*, 309 F.R.D. at 81. Therefore, Defendants' Motion to reconsider Count II is denied.

C. Count III – Breach of Access to Records Under Required D.C. Code § 29-413.02

Finally, Defendants' Motion as to Count III is denied. Defendants argue that Judge Ross failed to address and consider relevant facts determinative of Plaintiff's claim under D.C. § 29-413.02 such as Plaintiff failing to make a proper request to view records and the LNC not rejecting Plaintiff's demand. Judge Ross found that Plaintiff was a director at the time the original Complaint

was filed, a finding that Defendants did not dispute in their Motion. Judge Ross did not clearly err in denying Defendants' Motion to Dismiss under D.C. Code § 29-413.02 because, as Judge Ross found, Plaintiff made a plausible claim that she requested the records pursuant to D.C. Code § 29-413.02 and, as Defendants conceded in their Motion to Dismiss, directors may request records under D.C. Code § 29-413.05. Defs.' Mot. to Dismiss at 9 n. 3. Therefore, Judge Ross did not commit clear error when he denied the Motion to Dismiss Count III, and the Defendants' request to reconsider that ruling likewise is denied.

Accordingly, it is this 22nd day of April 2025 hereby

ORDERED that Defendants' Opposed Motion for Reconsideration is **DENIED**; and it is further

ORDERED that Defendant Libertarian National Committee Inc.'s Motion for Substitution of Attorneys is **GRANTED**; and it is further

ORDERED that the appearances of Alina Chernin, Jung Hyoun Han, and Phillip T. Abbruscato on behalf of LNC in this matter are hereby withdrawn and that Daniel Miktus of Akerman is hereby granted leave to appear on behalf of LNC in this matter and file his entry of appearance.

SO ORDERED.

Judge Robert Okun
(Signed in Chambers)

Copies to:

Christopher LaFon
Counsel for Plaintiff

Alice Chernin
Counsel for Defendant Angela McArdle

Daniel Miktus
Counsel for Defendant Libertarian National Committee, Inc.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
(Civil Division)

CAROLE ELIZABETH VEST,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 2024-CAB-002804
	:	Judge Maurice A. Ross
ANGELA MCARDLE, et al.	:	Next Event: Fact Witness List
Defendants.	:	Date: 12/03/2024

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiff Carole Elizabeth Vest ("Vest") opposes the Motion to Dismiss by Angela McArdle ("McArdle") and the Libertarian National Committee ("LNC") a small committee of the directors of the Libertarian Party. All of Vest's derivative and individual claims against McArdle and the LNC should remain operative, as the Defendants failed to meet their burden of proof under Rule 12(b)(1) and Rule 12(b)(6).

In this lawsuit, Vest, a director in the LNC when she filed this action, alleges that McArdle, Chair of the LNC, has violated her fundamental fiduciary duties and duties of loyalty to the LNC and to the Libertarian Party through self-dealing, outright violations of core principles of the Party, diversion of Party assets to unrelated third-parties, misuse of Party assets, and the failure to disclose clear conflicts of interest existing in several other transactions commanded by her through her repeated unilateral actions without proper authority. Am. Comp. at ¶1. Vest brings claims as a derivative action against McArdle as she is a director of the LNC and, despite a clear demand, LNC has failed to suspend and remove McArdle. Vest also has suffered a "special injury" as McArdle's breach of her fiduciary has caused her constituents to question and ultimately remove Vest as an LNC director as McArdle has refused to include Vest in decision-making processes and meetings, thus violating her member rights on the committee and depriving her regional constituents of the representation to which they were entitled.

McArdle, supported by other LNC members, unfairly and without reason blamed her for LNC actions to which she played no part including the false accusation that Vest was "leaking" information from executive sessions. Am. Comp. at ¶3.

In Count I, Vest sets forth a derivative claim against McArdle and the LNC seeking McArdle's removal. McArdle and the LNC seek dismissal through their Motion and assert that Vest does not have standing as she failed to set forth a statutorily acceptable demand to the LNC before filing suit and because a purportedly independent committee of LNC directors undertook reasonable inquiry and determined that an action was not in the best interest of the LNC under D.C. Code § 29-411.05, but they fail to meet their burden to obtain dismissal. First, Vest's counsel filed a demand providing great detail of McArdle's misconduct, permitting the LNC to take suitable action. Although Vest's name did not appear on that demand, it satisfied all statutory requirements in D.C. Code § 29-411.03 for a demand letter and identified her as one of the few LNC directors. Second, LNC's alleged independent committee explicitly failed to satisfy the "reasonable inquiry" requirement in concluding a suit would not be in the LNC's best interest, with the committee explicitly reaching that conclusion upon "reflection" and "discussion" and without any detail as to any investigation, fact-finding, or analysis. Moreover, the LNC failed to show that the involved directors were independent and evidence reveals they were not. Dismissal of Count I under Rules 12(b)(1) and/or 12(b)(6) is not supported.

In Count II, Vest alleges that McArdle breached fiduciary duties that she personally owed to Vest. McArdle and the LNC argue that no fiduciary duty exists and that no breach occurred. However, the law of the District of Columbia supports a factual finding that those fiduciary duties do exist, or the issue is one of consideration of facts, which does not support dismissal. Further, Vest adequately alleges special injury to her in particular as a former LNC director, and

Defendants' arguments that her claims relate to harm suffered by the Libertarian Party as a whole are inconsistent with Vest's clear allegations.

Vest's claim to inspect the files of the LNC when she was a director under Count III should also remain as she was never provided access.

For those reasons, the Court should respectfully deny McArdle and the LNC's Motion.

ARGUMENT

I. Vest Has Standing and the Matter Should Not be Dismissed

a. Vest Satisfied the Condition Precedent by Demanding Action and Filing this Action Due to Irreparable Harm to the LNC Resulting with Additional Time

The LNC and McArdle seek dismissal of Count I due to Vest not having standing but fail to meet their burden under Rule 12(b)(1). Vest satisfied the prerequisite that a demand be delivered to the LNC prior to filing this derivative action and the timing of the suit is consistent with the statutory requirements. The referenced March 28, 2024 letter, even if considered the operative demand under D.C. Code § 29-411.03, satisfies the statutory minimum requirements for a demand and the fact Vest is not specifically identified does not support dismissal.[1] The statute states:

> A person shall not commence a derivative proceeding until:
> (1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and

[1] First, Vest alleges multiple times: "On **February 28, 2024**, Vest, through undersigned counsel, sent a demand to the LNC demanding that the LNC immediately suspend McArdle as Chair of the LNC, which would result in her removal as Chair, or otherwise take decisive action to address her extremely significant and repeated breaches of her fiduciary duties." Amended Complaint, ¶54, 68 (emphasis added). McArdle and LNC seek dismissal based upon a March 28, 2024 letter from undersigned counsel that is not referenced in the Amended Complaint. *See* Motion at p. 2, at Factual Allegation 6 and Ex. B. There is no March 28, 2024 letter referenced in the Amended Complaint. "In ruling on a Rule 12 (b)(6) motion to dismiss, the court may consider only documents incorporated into the complaint." *Wetzel v. Capital City Real Estate, LLC*, 73 A.3d 1000, 1006 n.5 (D.C. 2013). The Court should disregard arguments in support of dismissal on grounds based on the letter attached as Exhibit B to the Motion.

(2) Ninety days have expired from the date the demand was effective unless:
(A) The person has earlier been notified that the demand has been rejected by the corporation; or
(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

The statute does not require a demand to identify the person making the demand, only that the demand state that suitable action needs to be taken. As no such identification requirement is set forth in the statute, none should be considered in this context. Interpreting this very Code section, the local District Court stated, "The Court's interpretation of this provision 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *Bronner v. Duggan*, 249 F. Supp. 3d 27, 44 (D.D.C. 2017) (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004)). That court did not find the section ambiguous. Thus, under that Section, a demand did not have to include the identification of Vest. Defendants do not otherwise assert that the March 28, 2024 letter did not provide ample facts and assertions for the LNC to take suitable action, *i.e*., remove McArdle. In fact, the letter satisfied the statutory requirements.

Vest's March 28, 2024 demand letter satisfied its purpose. The general purpose of a demand letter is to provide explanation of the claims: "Each claim must be articulated specifically enough to give directors a fair opportunity to initiate the action requested by appellants." *Bender v. Schwartz*, 917 A.2d 142, 154 (Md. 2007). The official comment to the Model Nonprofit Corporation Act similarly explains that "the demand allows the directors to investigate the claim and to act on behalf of the corporation if they find that action is warranted." Revised Model Nonprofit Corp. Act § 6.30 cmt. (1988) (cited in *Longanecker v. Diamondhead Country Club*, 760 So. 2d 764, 769-70 (Miss. 2000)). The letter did so here. Additionally, the letter is not truly "anonymous" as the letter identifies to whom the LNC could address any response, and to whom the LNC did address in response. *See* Motion at Exhibit C (not objecting

to the demand to file suit on behalf of a purportedly anonymous client but objecting to the separate demand for a production of records). Furthermore, this is not a situation when a corporate board receives an anonymous letter from an unrepresented individual asserting she is one of hundreds of shareholders. Here, the demand letter declared it was from one of only twenty-five members of the LNC. *See* https://www.lp.org/libertarian-national-committee/ (revealing 25 members) (last visited November 12, 2024). Further, the letter went through several paragraphs of specific facts that provide ample support for the LNC to undertake suitable action. *See* Motion at Ex. B.

While Vest obviously filed the lawsuit prior to the expiration of ninety days from the March 28, 2024 letter attached to the Motion and the prior February 28, 2024 demand alleged in her initial and her Amended Complaint, she did so – and alleged she did so – due to the irreparable injury to the LNC that would occur. The statute does not define what constitutes "irreparable injury to the corporation" and the law provides that when the statute does not define the term in question, "it is appropriate for us to look to dictionary definitions to determine [its] ordinary meaning." *Lucas v. United States*, 305 A.3d 774, 777 (D.C. 2023). *See Wynn v. United States*, 80 A.3d 211, 218 (D.C. 2013) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979))). "Irreparable harm" has been defined as harm "that *cannot be adequately measured or compensated by money* and is therefore often considered remediable by injunction." *Irreparable Injury*, Black's Law Dictionary (10th ed. 2014) (cited in *Anyadike v. Vernon Coll.*, 2016 U.S. Dist. LEXIS 3161, at *32 (N.D. Tex. Jan. 11, 2016)). Courts have developed several principles to guide them in the determination of whether this requirement has been met, including that the injury must be certain

and it must be actual and not theoretical, beyond mere economic harm. *See generally Wis. Gas Co. v. Fed. Energy Regulatory Com.*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Bronner v. Duggan*, 249 F. Supp. 3d 27, 44 n.4 (D.D.C. 2017); *Gitlitz v. Bellock*, 171 P.3d 1274, 1278-79 (Colo. App. 2007) ("Irreparable harm is a pliant term adaptable to the unique circumstances that an individual case might present.").

The circumstances here satisfy the general understanding that the LNC would suffer irreparable harm at the time if Vest had waited the full ninety days. Vest filed her initial Complaint on May 3, 2024, three weeks before the Libertarian National Convention. *See* 2024 Libertarian National Convention, located at https://en.wikipedia.org/wiki/2024_Libertarian_National (explaining, "The 2024 Libertarian National Convention was a political event to select the Libertarian Party nominees for president and vice president in the 2024 election. It was held from May 24 to the early morning of May 27, 2024, at the Washington Hilton in Washington, D.C."); https://lnc2024.com/schedule/ (official website). As Vest alleged in her initial Complaint the timing of the Convention was incredibly important:

> With the Party's Convention mere weeks away, McArdle's explicit, ruthless, and continual fiduciary duty violations must be stopped through her immediate suspension and removal so that the LNC and Libertarian Party can proceed with the Convention in a manner consistent with the core values of the. Indeed, as Chair, McArdle, without immediate ouster, will preside over the Convention, with full authority to direct any and all related procedures and affairs and control LNC's use of funds for purposes of the Convention. McArdle's actions have already violated the fundamental purpose of a political party and caused many members to flee as well as caused the Party to suffer drastically low fundraising. Her abuse of power and breaches of her fiduciary duties will cause irreparable harm to the Libertarian Party, the nation's third largest political party, if she is not removed. Indeed, as Chair, she replaced the former Executive Director, one who would normally serve as a check on the power of the Chair, with herself, giving herself even more authoritarian control.

Complaint, at ¶1.

> Due to McArdle remaining in the role of LNC Chair, irreparable harm is and will occur and this action is necessary to stop such harm from continuing, harm that could ultimately result in a self-implosion and extinction of the Libertarian Party.

Id. at ¶49.

> McArdle was elected and currently serves as Chair of the LNC and her actions reveal that she will continue to abuse her power and committed breaches of her fiduciary duties that have caused and will cause irreparable harm to the LNC and the Libertarian Party as a whole, including but not limited to, depletion of donations and loss of members, many of all of which is likely permanent, which is antithetical to a political party with the fundamental principles of electing Libertarians to public office, to move public policy in a libertarian direction, and promoting the growth and activities of the Libertarian Party and its local affiliates.

Id. at ¶59.

These allegations meet the standards by which irreparable harm is considered and qualify as irreparable harm. Certainly, the permanent loss of members of the Libertarian Party coupled with actions undertaken against the values and goals of the Libertarian Party that could permanently affect it could not be adequately addressed by an award of money damages. *See Wis. Gas Co.*, 758 F.2d at 674. Further, such harm was not theoretical and not likely to occur after a significant amount of time in the future. *See id*. The irreparable harm to the Libertarian Party was real and present.

Obviously, hindsight is not a perfect manner by which to identify the real and present nature of the irreparable harm existing three weeks prior, but here, McArdle's actions at the convention confirm the existence of irreparable harm. For example, Vest alleges, "The Bylaws of the LP clearly states that the purpose of the LP includes "electing Libertarians to public office to move public policy in a libertarian direction" and to "nominat[e] candidates for President and Vice-President of the United States and supporting Party and affiliate party candidates for political office." Am. Comp. at ¶39. McArdle, despite such obligation under the Bylaws, invited Republican Party candidate for President, Donald Trump, to speak at the Convention. *See*

https://en.wikipedia.org/wiki/2024_Libertarian_National_Convention ("Inviting Trump to speak was highly controversial within the party, and a motion was introduced on the Libertarian National Committee to rescind the invitation issued by party chair McArdle."). A longtime Libertarian political operative regarding the invitation to Trump opined, "The Libertarian Party will effectively be over at that point in the minds of the public." *See* "'I think it's ridiculous': Donald Trump to headline Libertarian Party national convention", *located at* https://www.deseret.com/utah/2024/05/01/donald-trump-speaking-at-libertarian-party-national-convention/. In sum, the potential of irreparable harm to the LNC was directly present when Vest filed her Complaint due to the proximity in time of the Convention, which supports that she satisfied D.C. Code § 29-411.03 and has standing to proceed.

b. The Purported "Inquiry" Does Not Satisfy the Minimum Requirements to Support Dismissal

The LNC and McArdle seek dismissal under D.C. Code § 29-411.05 but fail to meet the statutory minimum requirements to do so. The purported "inquiry" identified in full in Exhibit D to the Motion does not support dismissal because the allegedly "independent" LNC directors failed to conduct "a reasonable inquiry," negating any ability to conclude in good faith after such an inquiry that the derivative action was not in the best interest of the LNC. First, the "inquiry" fails as it provides no analysis, report, or other findings to support its purported conclusion. Second, the majority, if not all, the directors constituting the committee were not "independent" as required under D.C. Code § 29-411.05.

To support dismissal under that Section, McArdle and LNC solely rely on the following: a one sentence email in an apparently edited email chain from a committee of LNC directors created five days prior to sending the email that stated, in a different sized font from the remainder of the email that does not identify any investigation or inquiry or factual support, but

only "reflection" and "discussion": "the Investigatory Committee has determined that we do not believe that the maintenance of the derivative lawsuit is in the best interest of the corporation." Motion at Exhibit D. This email is from Andrew Watkins and states it was sent at 6:35 AM on May 16, 2024, and the email *above* it, denoting an email sent later in time, is from the "LP Secretary" sent at 6:00 AM on the same day and is addressed to "Angela" without any notation of "from" or "sent," which is *below* an email sent at 1:01 PM on that same day, revealing the middle message could not have been sent at 6:00 AM or PM on May 16, 2024 and evidencing substantive editing of the only evidence submitted supporting dismissal. *Id*.

Under D.C. Code § 29-411.05, dismissal is only supported if "if one of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a **reasonable inquiry** upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation." (emphasis added). That did not occur.

As explained by one member of the local Circuit Court of Appeals, quoting a dictionary definition, the common meaning of the term "inquiry" is "a request for information" or "a systematic official investigation often of a matter of public interest especially by a body . . . with power to compel testimony." *NLRB v. Cooper Tire & Rubber Co.*, 438 F.3d 1198, 1205 (D.C. Cir. 2006) (dissent) (quoting *Merriam-Webster's Dictionary of Law* (1996)) (citing the Supreme Court and stating, "Where 'the statute's language is plain, the sole function of the court[]-at least where the disposition required by the text is not absurd-is to enforce it according to its terms.'"). This Court should apply this common meaning to term in the context of the Code. *See Lucas*, 305 A.3d at 777; *Wynn*, 80 A.3d at 218. The four directors state that they made their decision solely upon reflection and discussion, which fails to satisfy the basic request for information,

much less a systematic investigation. In short, no "reasonable inquiry" occurred, so its conclusions could not be based upon anything resembling an "inquiry."

While the Court of Appeals has not analyzed this section of the Code, Maryland courts have considered a substantially similar statute and found that there is no presumption that a purported committee followed reasonable procedures. *Boland v. Boland,* 31 A.3d 529, 556 (Md. 2011).[2] Indeed, Maryland's highest court held that a trial court should not grant a dispositive motion seeking dismissal on grounds of a committee's decision if the entity did not submit evidence that the panel followed reasonable procedures, and, even if there is evidence that a panel did follow reasonable procedures, which is not the case here, the entity would eventually need to show that the panel "made a reasonable investigation and principled, factually supported conclusions." *Id*. *See Sarnacki v. Golden*, 778 F.3d 217, 224 (1st Cir. 2015) (considering a committee's investigatory thoroughness, such as what documents were reviewed and which witnesses interviewed); *see also Jacksonville Police & Fire Pension Fund v. Brokaw*, 401 P.3d 1081, 1085 (Nev. 2017) (discussing an inquiry that included a report of conclusions of over 100 pages). Clearly here, the LNC and McArdle fail in all aspects to support dismissal as they submit no evidence of the facts relied upon or investigated, no scope of the inquiry, no identification of what the purported inquiry involved, no findings, and no support for the bald conclusion.

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[2] "Although Maryland statutes and case law do not constitute the law of the District of Columbia, courts customarily look to Maryland law as 'especially persuasive authority' in determining how the District of Columbia courts would rule on a question of law." *Potomac Plaza Terraces v. QSC Prods.*, 868 F. Supp. 346, 352 n.9 (1994) (quoting *Napoleon v. Heard,* 455 A.2d 901, 903 (D.C. 1983)). *See also Conesco Indus., Ltd. v. Conforti & Eisele, Inc.,* 627 F.2d 312, 315-16 (D.C. Cir. 1980) ("Since there is no District law on point, we should look to Maryland law first . . . because the District of Columbia derives its common law from that state and because District of Columbia courts have in the past looked to Maryland law for guidance.").

Furthermore, McArdle and the LNC fail to submit any evidence that the four directors were independent as required under D.C. Code § 29-411.05 (requiring a committee of two or more "independent" directors form the conclusion under the required standards to support dismissal). The Minutes state that the LNC Secretary moved for an investigative committee be formed of directors Dave Benner, Adam Haman, Andrew Watkins and Kathy Yeniscavich without any evidence or support that they are "independent." Motion at Ex. D (Minutes at p. 5). In *Boland*, Maryland's highest court held that a court should not grant a dispositive motion on the basis of a panel's decision "unless the directors have stated how they chose the [committee's] members and come forward with some evidence that the [committee] followed reasonable procedures and that no substantial business or personal relationships impugned the [committee's] independence and good faith." *Boland,* 31 A.3d at 556 (holding that the court's review can be "rigorous" on the questions of good faith, independence, and procedure). *See also In re United Health Group Inc. S'holder Derivative Litig*., 754 N.W.2d 544, 554 (Minn. 2008) ("At a minimum, the board must establish that the committee acted in good faith and was sufficiently independent from the board of directors to dispassionately review the derivative lawsuit."); *see generally Benfield v. Wells*, 324 Ga. App. 85, 89, 749 S.E.2d 384, 388 (2013) (involving defendants supporting their motion to dismiss with a detailed and documented report, including an investigation of the members' backgrounds and qualifications, and a determination by the Board's counsel that there were no factors suggesting that any of the committee members were not independent).

McArdle and LNC failed to submit any evidence regarding the choice of the committee members and that they constitute "independent" directors. For that reason alone, dismissal is inappropriate. Additionally, evidence supports that the majority of the committee were not

independent under the LNC's own consideration of a conflict, which is their allegiance to the "Mises Caucus," a fringe group spearheaded in part by McArdle and to McArdle herself. *See* "Mises Caucus" located at https://en.wikipedia.org/wiki/Mises_Caucus (stating that the Mises Caucus holds the position of Chair in the LNC, which is McArdle). In several of the LNC's Meeting Notes, an appendix is attached that identifies "Conflicts of Interest." *See* April 7, 2024 Special Meeting Minutes at 161, *located at* https://www.lp.org/wp-content/uploads/2024/05/LNC-Minutes-2024-04-07-FINAL.pdf; *see also* December 2-3, 2023 Meeting Minutes, at p 20-23 located at https://www.lp.org/wp-content/uploads/2024/02/LNC-Meeting_2023-12-02-03_FINAL.V2.pdf. Haman's conflict is stated as "Member: Mises Caucus", Watkin's conflict is listed as "Mises Caucus Organizer", and Benner's conflict is listed as "Contributor, Mises Institute." *See* April 7, 2024 Special Meeting Minutes at 161-164. McArdle is a chosen leader by the Mises Caucus and is a member. *See* Meet the Team, located at https://web.archive.org/web/20220425134853/https://lpmisescaucus.com/meet-the-team/ (stating that McArdle was a board member and organizer of the Mises Caucus in April 2022); Angela McArdle, at https://independentpoliticalreport.com/2021/11/angela-mcardle-ama-tonight-or-tomorrow-campaign-for-lnc-chair-update/ (referencing an invitation to speak with McArdle by the Mises Caucus, stating "As the Mises Caucus-endorsed candidate for chair of the Libertarian National Committee, she has been flying to state LP conventions for months now, and will continue to do so right up until the 2022 Libertarian National"). Further, Yeniscavich's conflict is importantly listed as "Patron, Angela McArdle." *See* April 7, 2024 Special Meeting Minutes at 164. Her conflict is apparent by the reference itself.

In conclusion, McArdle and the LNC fail to provide the necessary evidence to support even basic compliance with D.C. Code § 29-411.05 and dismissal thereunder of Count I would be inappropriate.

II. McArdle Owed Fiduciary Duties to Vest in Support of Count II

McArdle owes fiduciary duties to Vest, or at least the issue is a question of fact that is not ripe for a decision in the context of a Motion to Dismiss. *See Vicki Bagley Realty, Inc. v. Laufer*, 482 A.2d 359, 363 (D.C. 1984) ("[T]he accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."). As Vest satisfies her pleading requirements in alleging that McArdle breached her fiduciary duty, which is further discussed in the next section of this Opposition, Count II should not be dismissed.

Vest properly alleges the existence of McArdle's fiduciary duties to her. "[A] fiduciary relationship is founded upon trust or confidence reposed by one person in the integrity and fidelity of another." *Bolton v. Crowley, Hoge & Fein, P.C.*, 110 A.3d 575, 584 (D.C. 2015). District of Columbia courts have "deliberately left the definition of a 'fiduciary relationship' open-ended, allowing the concept to fit a wide array of factual circumstances." *Council on Am.-Islamic Rels. Action Network, Inc. v. Gaubatz*, 793 F. Supp. 2d 311, 341 (D.D.C. 2011); *see also Millennium Square Residential Ass'n v. 2200 M St. LLC*, 952 F. Supp. 2d 234, 248 (D.D.C. 2013) ("District of Columbia law has deliberately left the definition of 'fiduciary relationship' flexible, so that the relationship may change to fit new circumstances in which a special relationship of trust may properly be implied.").

To decide whether a fiduciary relationship exists, a court must conduct "a searching inquiry into the nature of the relationship, the promises made, the types of services given and the legitimate expectations of the parties." *Council on Am.-Islamic Rels.*, 793 F. Supp. 2d at 341

(quoting *Firestone v. Firestone*, 76 F.3d 1205, 1211, 316 U.S. App. D.C. 152 (D.C. Cir. 1996)). "Whether a fiduciary relationship exists is a **fact-intensive question**, so a claim for breach of fiduciary duty is generally not amenable to dismissal for failure to state a claim when the claimed ground for dismissal is absence of a fiduciary relationship." *Id.* at 341 (internal citation omitted)(emphasis added); *Heidi Aviation, LLC v. Jetcraft Corp.*, 573 F. Supp. 3d 182, 206 (D.D.C. 2021).

Vest alleges that her fiduciary relationship with McArdle was founded upon trust and confidence held by her in the integrity and fidelity of McArdle as Chair of the LNC. *See Bolton*, 110 A.3d at 584. Vest alleges that she was one of only twenty-five directors of the LNC, a small group charged with leading the Libertarian Party. Under the LNC's Bylaws, referenced by Vest in her Complaint, McArdle, as the Chair, holds a powerful position: "The Chair shall preside at all conventions and all meetings of the National Committee. Under the applicable Bylaws, the Chair is the chief executive officer of the Party with full authority to direct its business and affairs." *See* Libertarian Party Bylaws and Convention Rules, *located at* https://www.lp.org/wp-content/uploads/2022/10/2022-Indexed-LP-Bylaws-and-Convention-Rules-w-2022-JC-Rules.pdf (last visited Nov. 13, 2024). Vest alleges McArdle's power over her and confidence. *See* Am. Comp. at ¶11 ("Per the LP Bylaws,'[t]he Chair is the chief executive officer of the Party with full authority to direct its business and affairs.' The Chair is a member of the LNC which was established to control and manage the affairs, properties, and funds of the LP consistently with the purposes of the Party and has power and control through actions requiring the vote of the LNC as well as through powers that can be exerted, rightfully or wrongfully, through closed, executive sessions.").

Vest alleges that as Chair, McArdle controlled Vest's ability to participate in sessions and have an opportunity to vote as an elected member of the LNC. Am. Comp. ¶85 (alleging that despite the LNC's Bylaws required that Vest as Director be permitted to participate in and vote on the actions of the LNC through open meetings with all LNC directors present and accounted for, McArdle did not permit her to participate in key and vastly important meetings to which she had a right to attend in participate that have resulted in harmful policies, misuse of assets, and actions antithetical to the LNC and the Libertarian Party), at 84 (alleging McArdle repeatedly refused to include Vest in decision-making processes).

Vest's allegations satisfy the personal injury requirement to support her personal claim against McArdle, which is separate and unique from any purported harm from the Libertarian Party or public at large. *See, e.g.*, *Jackson v. George*, 146 A.3d 405, 415 (D.C. 2016) (upholding a trial court's determination that the plaintiffs satisfied the notion of a direct injury in claims against a church in allegedly barring them (but not all others) from church property and facilities and from attending church services and from appellants' allegedly unauthorized use of the plaintiffs' tithes and offerings); *Daley v. Alpha Kappa Alpha Sorority, Inc.,* 26 A.3d 723, 730 (D.C. 2011) (holding that the claims brought by plaintiff suspended sorority members, for 'relief from improper discipline" by the non-profit sorority, was a direct rather than derivative claim; reasoning that "the individual rights of the plaintiffs were affected by the alleged failure to follow the dictates of the constitution and Bylaws and they thus had a direct, personal interest in the cause of action, even if the corporation's rights are also implicated") (internal quotation marks omitted)).

Similar to majority stockholders in a closely held corporation having fiduciary duties to those holding a minority share, McArdle, as Chair of the closely held LNC, had fiduciary duties

to other members of the LNC. "[T]he holders of closely held stock in a corporation . . . bear a fiduciary duty to deal fairly, honestly, and openly with their fellow stockholders." *Silberberg v. Becker*, 191 A.3d 324, 337 (D.C. 2018). "Especially in closely held corporations, the majority shareholder owes a fiduciary duty to the minority shareholder (or shareholders) not to exercise [their] control to the disadvantage of minority stockholders." *Id.* Similar to the LNC, "a distinguishing characteristic of such a corporation is the absence of a division between the stockholder-owners and the director-managers, for the former either personally manage and direct the business or so dominate the directors as to render the latter agents." *Helms v. Duckworth*, 249 F.2d 482, 486-87 (D.C. Cir. 1957). Likewise, the courts interpreting the law of the District of Columbia have also found that members of a limited liability company owe each other fiduciary duties as their relationship involves obligations of loyalty and care. *See, e.g., Xereas v. Heiss*, 987 F.3d 1124, 1131-33 (D.C. Cir. 2021).

Defendants' authority is not persuasive and is factually incredibly distinct from the circumstances present here. In that case, a private accountant sued the American Institute of Certified Professional Accountants and alleged a breach of fiduciary duty generally because the Institute's Ethics Committee investigated the private accountant for ethical violations and the accountant asserted the investigation violated the Institute's bylaws. *Magee v. AICPA*, 245 F. Supp. 3d 106, 116 (D.D.C. 2017). Unlike the circumstances there, this is not a member of a professional organization bring a claim for breach of fiduciary duty against the organization based on an internal investigation.

In these circumstances, fiduciary duties exist or the issue of whether one exists is an issue of fact that should not be decided at this stage.

III. McArdle May Be Liable for Breach of Her Fiduciary Duties

Quite simply, McArdle and the LNC ignored key allegations by Vest in her Amended Complaint that support her personal injury from McArdle's breaches of her fiduciary duties. As those allegations must be accepted as true in the context of a Motion to Dismiss, the Motion should be denied with respect to Count II.

Vest alleges, she "has [ ] suffered a "special injury" as McArdle's breach of her fiduciary duties has caused her constituents to question Vest as their LNC representative as McArdle has repeatedly upheld other LNC members in their request not to include Vest in decision-making processes and meetings, thus violating her member rights on the committee and depriving her regional constituents of the representation to which they were entitled. McArdle, supported by other LNC members, unfairly and without reason blamed her for LNC actions to which she played no part including the false accusation that Vest was 'leaking' information from executive sessions." Am. Comp. at ¶1. Vest alleges that as Chair, McArdle controlled Vest's ability to participate in sessions and have an opportunity to vote as an elected member of the LNC. *Id.* at ¶85 (alleging that despite the LNC's Bylaws required that Vest as Director be permitted to participate in and vote on the actions of the LNC through open meetings with all LNC directors present and accounted for, McArdle did not permit her to participate in key and vastly important meetings to which she had a right to attend and participate that have resulted in harmful policies, misuse of assets, and actions antithetical to the LNC and the Libertarian Party), at ¶84 (alleging McArdle repeatedly refused to include Vest in decision-making processes).

Eventually, Vest lost the vote to maintain her position as a director at the 2024 Convention, held approximately three weeks after the filing of her original Complaint. *See* Convention Minutes of Libertarian National Convention, *located at* https://www.lp.org/wp-

content/uploads/2024/08/CONVENTION-MINUTES_2024-V2.pdf (last visited Nov. 13, 2024). *See generally Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991) (taking judicial notice of the existence of newspaper articles that publicized certain events).

The citation by McArdle and the LNC regarding Vest's allegations regarding McArdle's misuse of LNC funds and resources do not support dismissal, as Vest alleges she personally suffered harm, separate and apart from other members of the Libertarian Party. Similarly, reliance by McArdle and the LNC on law concerning the right of voters to complain about a political result is inapposite. *See Gottlieb v. FEC*, 143 F.3d 618 (D.C. Cir. 1998) (involving individual voters' alleging harm on the basis of a political process) *Sweigert v. Perez*, 334 F. Supp. 3d 36, 43 (D.D.C. 2018) (only involving donations to an organization). As Vest alleges in allegations that must be accepted as true, McArdle excluded her from participation in discussions and votes on matters that were properly before the LNC as a whole, and not in executive session. As Vest alleges that McArdle had fiduciary duties to Vest and breached them in ways that brought specific harm onto Vest, Vest satisfies the pleading requirement necessary and Count II should not be dismissed.

IV. LNC's Lack of Records Access Supports Claim Remaining

Defendants admit that Vest had a right to inspect records when she was a director under the D.C. Code and that they did not provide a specific time and date for her to do so. Whether or not the LNC is a membership organization is outside the scope of the Complaint and should not be considered for purpose of a Motion to Dismiss. For that reason, Count III should not be dismissed.

CONCLUSION

McArdle and the LNC's Motion should be denied and they should be forced to substantively respond and address Vest's derivative and individual claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher LaFon, counsel of record for Plaintiff, today, November 15, 2024, filed the attached Opposition through this Court's e-filing system, providing notice to counsel of record for all Defendants. I also emailed a copy to counsel as well.

/s/ Christopher LaFon_____