

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

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| <b>CARYN ANN HARLOS,</b>      | :   |
| <b>Plaintiff,</b>             | :   |
|                               | :   |
| <b>v.</b>                     | : Civil Action No.: 2024-CAB-006230         |
|                               | : Judge Katherine E. Oler                   |
| <b>ANGELA MCARDLE, et al.</b> | : Next Event: Initial Scheduling Conference |
| <b>Defendants.</b>            | : Date: January 10, 2025 at 9:30 a.m.       |

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**OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

Plaintiff Caryn Ann Harlos (“Harlos”) opposes the Motion to Dismiss (“Motion”) by Angela McArdle (“McArdle”) and the Libertarian National Committee (“LNC”), the directors of the Libertarian Party. All of Harlos’ claims against McArdle and the LNC should remain operative, as the Defendants failed to meet their burden under Rules 12(b)(1) and 12(b)(6).

In this lawsuit, Harlos, an officer of the LNC, alleges that McArdle, Chair of the LNC, 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. Harlos has properly brought a derivative claim against McArdle as she is an officer of the LNC and, despite a clear demand, the LNC has failed to suspend and remove McArdle, nor has she resigned. Harlos also has suffered a “special injury” as McArdle’s breach of her fiduciary duties has led to retaliatory actions being taken against Harlos as directed by McArdle as well as Harlos’ exclusion in decision-making processes and meetings, thus violating her member rights, which supports the claim for breach of fiduciary duties. McArdle unfairly and without legitimate reason instigated and supported retaliatory internal proceedings to remove Harlos from her position as LNC secretary. Am.

Comp. at ¶¶2, 85. The notion that Harlos is only asserting a political position disagreement is not supported by the allegations here, which is the sole focus in the context of a motion to dismiss.

First, dismissal of Count I is not supported by the assertions of McArdle and the LNC. In Count I, Harlos sets forth a derivative claim against McArdle and the LNC seeking McArdle's removal. McArdle and the LNC seek dismissal and assert that Harlos does not have standing as she failed to wait ninety (90) days after serving a 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, but they fail to meet their burden to obtain dismissal. First, Harlos' counsel served a demand providing great detail of McArdle's misconduct, permitting the LNC to take suitable action. While Harlos did not wait the full ninety (90) day period after the delivery of the demand upon the LNC, the governing statute permits the earlier filing of a suit when "irreparable injury to the corporation would result by waiting for the expiration of the 90-day period." Harlos has pled irreparable injury to the LNC. Second, the LNC's reliance on the alleged independent committee does not satisfy its burden of proof as it explicitly failed to satisfy the required manner of creating the committee and the "reasonable inquiry" requirement in concluding a suit would not be in the LNC's best interest. Moreover, the LNC failed to show that the involved directors were independent. Lastly, the LNC's and McArdle's arguments rely on information outside of the scope of what should be considered in the context of a motion to dismiss.

In Count II, Harlos alleges that McArdle breached fiduciary duties that she personally owed to Harlos and that count should also not be dismissed. McArdle and the LNC argue that no fiduciary duty exists and that no breach occurred. However, District of Columbia law supports a factual finding that those fiduciary duties do exist, or the issue is one of fact, which does not

support dismissal. Further, Harlos adequately alleges special injury to her. Again, the LNC’s and McArdle’s arguments improperly rely on information outside of the Amended Complaint.

Importantly, in a related/companion case, *Vest v. McArdle, et. al*, 2024-CAB-002804, before the Honorable Judge Maurice A. Ross, the Plaintiff, Ms. Vest, makes very similar allegations to those as Harlos, and Defendants filed a substantially similar Motion to Dismiss as the case here, requesting dismissal for lack of standing and failure to state a claim. In that case, Judge Ross **denied** the Motion to Dismiss in its entirety. 2024-CAB-002804, Order, Dkt. 12/18/24.<sup>1</sup> For those reasons, the Court should respectfully deny the Motion. Additionally, it should be noted that Vest and Harlos have jointly moved to consolidate the two companion cases under that action. 2024-CAB-002804, Motion, Dkt. 12/26/24.

## **ARGUMENT**

### **I. Harlos Has Standing and the Matter Should Not be Dismissed**

#### **a. Harlos 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 Harlos not having standing but fail to meet their burden under Rule 12(b)(1). Harlos undisputably 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. First, despite McArdle and LNC alleging that Harlos “was” an officer, Harlos alleges correctly that at the time of the filing of the Amended Complaint as well as currently, that she “is” an officer/director of the LNC. Am. Compl. ¶ 2.

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<sup>1</sup> A copy of the Order is attached as Exhibit A. “Proceedings in related cases may be judicially noticed.” *Cannon v. District of Columbia*, 569 A.2d 595, 597 n.3 (D.C. 1990).

D.C. Code § 29-411.03 states that a person may file a derivative proceeding after filing a demand before the expiration of 90 days if “Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.” While Harlos filed the lawsuit prior to the expiration of ninety days from the September 22, 2024 demand letter, she alleged she did so due to the identified irreparable injury to the LNC that would occur.

Even if the LNC and McArdle dispute that the circumstances Harlos alleges constitute irreparable harm, the circumstances alleged by Harlos qualify as irreparable for purpose of the Amended Complaint. . 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.”). “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)); *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.”)

Harlos’s assertions satisfy the requirement that irreparable harm be properly pled, which does not require pleading with specificity or detailed particularity. See, e.g., *Sarete, Inc. v. 1344 U St. Ltd. P'ship*, 871 A.2d 480, 497 (D.C. 2005) (holding a complaint is sufficient “so long as it fairly puts the defendant on notice of the claim against him”); *District of Columbia v. Hofgard*,

2015 D.C. Super. LEXIS 15, 12 (D.C. 2015) (holding that even when fraudulent acts are alleged in support of statutory claims, a party does not need to satisfy Rule 9(b)'s particularity requirement, but only the bare bones Rule 8(a) requirement).

Rule 23.1, if applicable, which it is not, only requires pleading with particularity whether a demand was made to the LNC to suspend and remove McArdle and if the LNC did so, requirements Harlos satisfied. *See* Rule 23.1 (limited particularity requirement); *Behradrezaee v. Dashtara*, 910 A.2d 349, 357 (D.C. 2006) (addressing the pleading with particularity requirement only as to whether a demand was made and whether the defendant responded); *infra* at 7 (under the plain and unambiguous language of the rule, it is inapplicable). Certainly, Harlos alleged that she made a demand and no action occurred, as well as alleged the irreparable harm, which is not required to be alleged with particularity but was alleged with particulars. *See* Am. Compl. at ¶ 79 (“On September 22, 2024, Harlos . . . 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.”); ¶ 80 (“The LNC did not agree to take action, and McArdle refused to step down.”); *see also* ¶ 2 (alleging the irreparable harm that would occur absent immediately filing the lawsuit); *see generally* ¶¶ 2, 33, 86, 88, 92, 98 (same).<sup>2</sup>

The asserted circumstances alleged by Harlos here satisfy the understanding that the LNC would suffer irreparable harm at the time if Harlos had waited the full ninety days. Such irreparable harm included “the likelihood of McArdle doing what she in fact did end up doing,

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<sup>2</sup> The reference to McArdle’s Declaration regarding the production of records, Motion at 6, supports Harlos’ argument here that LNC and McArdle exceed the scope of what should be considered in the context of a motion to dismiss (and is contested) and supports denial of the Motion based on grounds outside of what is alleged, including reliance on the McArdle Declaration.

instigating a removal attempt [of Harlos] in order to remove standing.” Am. Compl. at ¶ 98. Harlos further alleged irreparable harm to the LNC as the national Presidential election approached and “McArdle was devoting the funds of the LNC to support Republican candidates and undertaking actions to remove the elected Libertarian nominee from ballots” and that such actions were leading to a decrease in membership and fundraising. *Id.* Harlos alleged in particular that if she did not timely bring this action, “as she did so on the eve of the November 5, 2024 national election for President and many other local elections in which McArdle refused to properly support Libertarian candidates, risking the Party’ status, reputation, and continued membership by thousands.” *Id.* at ¶ 2. In line with that type of irreparable harm in the context of permanent loss of membership, Harlos alleges “future rallies will be organized and held by McArdle with LNC resources to promote Donald Trump’s election win, which constitutes irreparable harm both as LNC resources will be used for an improper purpose and because further harm to the members of the Party will occur due to her support for non-Libertarian politicians.” *Id.* at ¶ 33. Harlos repeatedly sets forth allegations supporting the belief that “[d]ue 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 ¶ 81; *see also id.* at ¶¶ 86, 88, 92, 98 (specifically addressing why she filed her initial complaint and amended complaint prior to the conclusion of 90 days following her demand), ¶ 109-110. These assertions are not all tied to monetary damages and certainly go well beyond economic harm.

These allegations meet the standards by which irreparable harm is considered and qualify as such. 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; *see generally Life Time, Inc. v. Glory Gains Gym LLC*, 2018 U.S. Dist. LEXIS 93349, at \*9 (D. Minn. June 4, 2018) (stating loss of membership in a club constitutes irreparable harm); *Lineback v. Irving Ready-Mix, Inc.*, 653 F.3d 566, 570 (7th Cir. 2011) (stating a decline in union membership constitutes irreparable harm). Further, such harm was not theoretical and not likely to occur after a significant amount of time in the future, but soon if not already. *See id.* The irreparable harm to the Libertarian Party was real and present. Defendants argue that Harlos sending the demand in September 2024 instead of earlier shows that there was no irreparable injury. Mot. at 7-8. However, Harlos clearly alleges that irreparable harm would occur on and after Election Day in November 2024. Am. Compl. at ¶3, 33, 81, 98. In sum, the potential of irreparable harm to the LNC was directly present when Harlos filed her Complaint due to the proximity in time of the National Presidential Election, which supports that she satisfied D.C. Code § 29-411.03 and has standing to proceed.

Unlike in *Bronner v. Duggan*, 249 F. Supp. 3d 27, 44 n.4 (D.D.C. 2017), relied on by McArdle and the LNC, Harlos filed her Complaint very quickly after her demand and did so due to the alleged irreparable harm. She also included detailed descriptions of such harm that would occur, despite notice pleading being all that was required. *Compare id.* with Am. Compl. at ¶ 2, 33, 86, 88, 92, 98. Additionally, unlike in that case, she alleged harm outside of the economic context. *See id.* Importantly, McArdle and the LNC did not explain why the detailed descriptions by Harlos would not suffice, instead just labeling them as insufficient without analysis. They fail in their burden after Harlos undoubtedly satisfied hers.

Defendants additionally argue that dismissal is warranted as the Amended Complaint is not verified under Rule 23.1, although that is not explicitly applicable to nonprofits (and also

argue its pleading with particularity requirement must be met here, which is also incorrect given the rule is inapplicable). Indeed, on its face, Rule 23.1 only applies to actions brought by “shareholders” or “members” and this action is brought against a nonprofit by a **director** in a non-membership, nonprofit corporation, meaning that under the plain language of the rule, it is inapplicable. *See, e.g., Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm’n*, 649 A.2d 1076, 1080 (D.C. 1994) (“This court on numerous occasions has concluded that if the statute’s language is clear and unambiguous, the statute will be given its plain meaning.”); *Cameron v. Wash. Metro. Area Transit Auth.*, 649 A.2d 291, 293 (D.C. 1994) (applying a rule based on its “plain and unambiguous” language); *see also Bronner v. Duggan*, 249 F. Supp. 3d 27, 32 (D.D.C. 2017) (cited by Defendants and addressing Rule 23.1, but concerning a “members” action). Furthermore, even if applicable, the purpose of the verification requirement is “not to be a general impediment to shareholder derivative actions.” *Lewis v. Curtis*, 671 F.2d 779, 787 (3d Cir. 1982). The Supreme Court of the United States, in *Surowitz v. Hilton Hotels Corp.*, 838 U.S.363, 373 (1966), determined that noncompliance with the formal verification requirement to bring a derivative action is not grounds for dismissal where allegations are “based on reasonable beliefs growing out of careful investigation.” Here, the allegations are clearly based on reasonable beliefs from careful investigation into McArdle’s actions as the Chair of the LNC as these allegations arise from Harlos’ experience serving with McArdle. Further, failure to verify the complaint “is a technical defect curable by amendment.” *Halsted Video, Inc. v. Guttillo*, 115 F.R.D. 177, 180 (N.D. Ill. 1987). Thus, dismissal for failure to verify the complaint is inappropriate, but in an abundance of caution, Harlos attaches as Exhibit C her verification of the complaint, and requests that she be granted leave to file such verification if found necessary.

## **II. The Purported “Inquiry” Does Not Satisfy the Minimum Requirements to Support Dismissal Under D.C. Code § 29-411.05**

Defendants argue that the Amended Complaint should be dismissed under D.C. Code § 29-411.05(a). Defendants argue that a purportedly independent committee determined that the derivative action should be dismissed, but that is not the case.

First, Defendants attempt to demonstrate the propriety of the Investigatory Committee through a Declaration by McArdle. Mot. Ex. B. Under Rule 12(d), the Court should not consider factual information outside of the Complaint to support dismissal when factual disputes are not ripe for determination, as is the case here. *District of Columbia v. Casa Ruby, Inc.*, 2023 D.C. Super. LEXIS 11, 4 n.1 (D.C. 2023).<sup>3</sup> “[A]ffidavits generally constitute matters outside the pleading.” *Bernay v. Sales*, 435 A.2d 398, 401 (D.C. 1981). The McArdle Declaration is not properly considered in the context of a motion to dismiss and summary judgment was not sought.

Additionally, dismissal under D.C. Code § 29-411.05 is not appropriate in these circumstances. First, the purported “inquiry” identified in full in Exhibit 1 of Exhibit B 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.”

Procedurally, McArdle and the LNC did not submit any evidence or even assert through McArdle’s Declaration that the three directors on the committee, Andrew Watkins, “Mr. Garcia,” and “Mr. Vinson,” were “independent” as required and that they were appointed by a “majority vote of independent directors present at a meeting of the board of directors.” D.C. Code § 29-

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<sup>3</sup> This does not include documents in other court proceedings and matters of public record, such as the denial of the LNC’s and McArdle’s motion to dismiss in the companion action. *See Smith v. Public Defender Serv.*, 686 A.2d 210, 212 (D.C. 1996).

411.05(a). Defendants have failed to demonstrate how the committee in this case was formed let alone the independence of the directors on the committee; McArdle’s Declaration only states that they were “designated” by the LNC, which does not meet the statutory minimum requirement. The authority Defendants chiefly relies on, Rule 23.1 and *Behradrezaee v. Dashtara*, 910 A.2d 349 (D.C. 2006) (overturning dismissal on the grounds sought by Defendants here), provide absolutely no deference through the business judgment rule or otherwise, to support this Court ignoring the absolute mandatory requirements for creation of an investigative committee, and, in fact, do not even address the creation-aspect of such a committee in the context of deference.

Substantively, to support dismissal under that Section, McArdle and LNC solely rely on a three-sentence email that does not identify any investigation or inquiry or factual support, but only “reflection” of communications with the entire LNC and counsel and “discussion” of unidentified documents: “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 1 of Exhibit B.<sup>4</sup> Further, this email is misleading as it leads one to believe that the Investigatory Committee was formed on or before October 7, 2024, the date cited for the referenced “reflection,” when it in fact was not formed until October 22, 2024. *See* LNC Forms Investigative Committee on Harlos Suit, *located at* <https://thirdpartywatch.com/2024/10/22/lnc-forms-investigative-committee-on-harlos-suit/>. This highlights support for the Motion’s denial.

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<sup>4</sup> The email from Watkins stated in full:

Good morning Folx [sic], Below you will find the report regarding the maintenance of Ms. Harlos' derivative lawsuit. The IC was comprised of Mr. Garcia, Mr. Vinson, and myself. Upon reflection of the matters discussed on 10/07/2025 [sic] and 10/08/2024 with the LNC and Counsel, and upon further discussion amongst the Investigatory Committee and review of the relevant materials, the Investigatory Committee has determined that we do not believe the maintenance of the derivative lawsuit is in the best interest of the corporation.

Under D.C. Code § 29-411.05, dismissal is only supported “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. Under applicable law, including as explained in *Behradrezaee v. Dashtara*, 910 A.2d 349, 361 (D.C. 2006) (relied upon by Defendants), Harlos has the right to show “that the board’s bias, lack of independence or failure to conduct a reasonable investigation creates a reasonable doubt that the demand was properly refused.” She does so through her particularized, detailed, allegations.

Next, no “reasonable inquiry” occurred. 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)). This Court should apply this common meaning to the term in the context of the Code. *See Lucas*, 305 A.3d at 777; *Wynn*, 80 A.3d at 218. The three directors state that they made their decision upon reflection and discussion and review of undisclosed “relevant materials,” which fails to satisfy the most basic request for information, much less a systematic investigation and did so over the course of 12 days. *See* LNC Forms Investigative Committee on Harlos Suit; and Motion at Ex. 1, at Ex. B. In short, no “reasonable inquiry” occurred, so a conclusion could not be based an “inquiry.” In contract, Harlos verifies that in a confidential investigation of her purported “misconduct,” the LNC adopted a 31-page report which identified that the five-director committee in charge conducted eight meetings over the span of 30 days, conducted 14 interviews over the span of over two weeks totalling

approximately 16 hours, reviewed over 1,200 pieces of evidence, and set forth 17 pages of findings of fact. *See* Harlos Declaration (Exhibit B). Clearly, even by the LNC’s internal procedures, the purported inquiry is not sufficient.

While the Court of Appeals has not analyzed D.C. Code § 29-411.05, Maryland courts have considered a substantially similar statute and found that there is no presumption that a purported committee followed reasonable procedures in creating a committee. *Boland v. Boland*, 31 A.3d 529, 556 (Md. 2011).<sup>5</sup> 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. *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.

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

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<sup>5</sup> “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)).

[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 that there were no factors suggesting committee members were not independent). McArdle and the LNC fail to provide that information and so the Motion fails on its face to support dismissal.

Defendants argue that *Behradrezaee v. Dashtara*, 910 A.2d 349 (D.C. 2006) applies when considering dismissal under D.C. Code § 29-411.05, but that case actually supports Harlos. That Court stated that the business judgment rule deference, applicable in certain circumstances in this context, is not applicable when the committee of directors “act in a manner that cannot be attributed to a rational business purpose or reach their decision by a grossly negligent process that includes the failure to consider all material facts reasonably.” *Id.* at 361. Notably, that court did not address allegations that the creation of a committee failed to meet the statutory minimum requirements, as is the case here. That court also did not address the fact that a grossly negligent process includes a defendant failing to follow the statutory minimum requirements for formation of a committee to make that decision and when the committee undertakes no reasonable inquiry. *See generally Andersen v. Mattel, Inc.*, 2017 Del. Ch. LEXIS 12, at \*10 (Del. Ch. Jan. 19, 2017) (explaining that the gross negligence inquiry generally focuses on whether the board properly informed itself of material information reasonably available to it before refusing the demand and

stating that a grossly negligent investigation exists when the board pursued only an inadequate investigation). Additionally, that court determined that allegations in a complaint that the board that made the decision not to bring suit because of “alleged board control or domination by the majority shareholder” supported denial of a motion to dismiss, allegations that Harlos made regarding McArdle’s control and domination. *Behradrezaee*, 910 A.2d 349 at 363. *See Am. Compt.* at 2 (alleging that McArdle’s actions have consistently broken the LNC’s own Bylaws and Rules, that she has wrongfully concealed many transactions by selectively conferring with only certain members of the LNC, many of whom also had and have divided loyalties to an outside political action committee (the Mises PAC aka the “Mises Caucus”) and Donald Trump); 43 (alleging McArdle violated the LNC Bylaws, claiming herself as the ultimate authority who shall not be undermined); 62 (“McArdle had appointed herself as the Executive Director of the organization, filling a position vacated previously by an individual with the power to place checks on some of the Chair’s power, and ability to interfere with staff and other operations.”); 85 (“McArdle . . . often through incomplete or deceptive disclosures and unfair tactics, failed to take action after Harlos’s sincere demand for McArdle to be removed as Chair . . . to counsel for the LNC, which was simply turned over to McArdle who then began retaliation efforts against Harlos.”); 95 (“McArdle led a secret session that violated LNC’s Rules and rules of procedure whereby she attacked Harlos and argued in favor of her dismissal without Harlos able to defend her actions, . . . specifically stated that a major reason, if not the real reason, Harlos needed to be removed was for her [ability] to file this derivative lawsuit.”).

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. *See* “Mises Caucus” located at [https://en.wikipedia.org/wiki/Mises\\_Caucus](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 “Potential 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>. Watkin’s conflict is listed as “Mises Caucus Organizer.” Vinson later disclosed his status as Mises Caucus State Organizer. *See* <https://docs.google.com/document/d/1cCDvVZk5oaSP1UCCqpwrH2yVIwHUbMDD/edit> (distributed to the LNC for verification at their August 24-25, 2024 meeting); <https://mobile.x.com/rvinsoncomedy>. Obviously then, membership in the Mises Caucus is determined even by its members as a potential conflict. 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). Harlos alleged that she was a member of the Mises Caucus but withdrew due to her realization that the faction was injurious to LNC. Am. Compl. ¶ 102. In fact, Harlos alleged that McArdle has used her influence with the Mises Caucus to breach her fiduciary duty to the LNC. *Id.* at ¶ 112. As such, the presence of other Mises Caucus members is a clear indication of the lack of independence and disinterestedness of the directors supporting denial of the Motion, as the business judgment rule should not be used to blindly to permit unquestioned deference, as sought by Defendants, in these circumstances. 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.

### III. McArdle Owed Fiduciary Duties to Harlos in Support of Count II

McArdle owes fiduciary duties to Harlos, 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 Harlos 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.

Harlos 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 (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).

Harlos 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. Harlos alleges that she is one of only seventeen directors and an officer of the LNC, a small group charged with leading the Libertarian Party. Under the LNC’s Bylaws, referenced by Harlos 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). Harlos alleges McArdle’s power and control over her. *See Am. Comp.* at ¶11.

Harlos alleges that as Chair, McArdle led and directed retaliatory actions against Harlos for making a whistleblower complaint to the LNC’s counsel, including improper attempts to oust Harlos from her position as an officer of the LNC. *Am. Compl.* ¶¶ 87-97. Harlos further adequately alleges that she has suffered personal injuries due to McArdle’s actions. McArdle has directly harmed Harlos through public defamatory, false, and libelous statements about Harlos leading to Harlos being forced to defend herself against these false accusations in both the public arena and within the LNC. *Id.* Further, McArdle’s directive to remove Harlos from her position in the LNC for pretextual reasons is a clear, particular harm to Harlos who was elected to her position (for a fourth term) and fulfilled it faithfully. Harlos, in contrast to Defendants’

assertions, alleges how her injuries are particularized to herself and are traceable to McArdle. Further, at this stage in litigation, Harlos is not required to show proof of her allegations, rather she must allege a claim that is facially plausible. *See Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 544 (D.C. 2011).

Harlos' 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). Like 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 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). 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.

#### **IV. McArdle May Be Liable for Breach of Her Fiduciary Duties**

Quite simply, McArdle and the LNC ignored key allegations by Harlos 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, the Motion should be denied with respect to Count II.

Harlos alleges, she “has suffered a ‘special injury’ as she has a personal stake in McArdle’s misuse of LNC’s assets, to which Harlos has contributed, including monetary contributions and the devoted assets of her experience, time and work as an Officer of LNC and the reputational damage she is suffering by the LNC’s public attempts to remove her against the Party’s purpose at the direct encouragement and inappropriate interference of McArdle. ... McArdle’s subsequent denunciation and accusations, including her wrongful retaliatory actions, have caused her [Harlos] constituents/Party members and professional acquaintances to question Harlos’s integrity.” Am. Compl. ¶2. Harlos alleges that as Chair, McArdle has sought the removal of Harlos from her position in the LNC. *Id.* at ¶¶ 95-96.

The citation by McArdle and the LNC regarding Harlos’ allegations of McArdle’s misuse of LNC funds and resources do not support dismissal, as Harlos 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 Harlos alleges in allegations that must be accepted as true, McArdle sought, in contravention of the LNC Rules, Harlos' ouster as an officer of the LNC. As Harlos alleges that McArdle had fiduciary duties to Harlos and breached them in ways that brought specific harm onto Harlos, Harlos satisfies the pleading requirement necessary and Count II should not be dismissed.

### CONCLUSION

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

Respectfully submitted,

THE VERITAS LAW FIRM

/s/ Christopher LaFon

Scott H. Rome, Esq. [476677]

Christopher L. LaFon, Esq. [483740]

Lindsey Dennis, Esq. [1764782]

1225 19<sup>th</sup> St., NW, Suite 320

Washington, DC 20036

(202) 686-7600 (Phone)

(202) 293-3130 (Fax)

[srome@theveritaslawfirm.com](mailto:srome@theveritaslawfirm.com)

[clafon@theveritaslawfirm.com](mailto:clafon@theveritaslawfirm.com)

[ldennis@theveritaslawfirm.com](mailto:ldennis@theveritaslawfirm.com)

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I, Christopher LaFon, counsel of record for Plaintiff, today, January 3, 2025, 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

# EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

|                        |   |                          |
|------------------------|---|--------------------------|
| CAROLE ELIZABETH VEST, | ) |                          |
| <i>Plaintiff,</i>      | ) | Case No. 2024-CAB-002804 |
|                        | ) |                          |
| v.                     | ) | Judge Maurice A. Ross    |
|                        | ) |                          |
| ANGELA MCARDLE et al., | ) |                          |
| <i>Defendants.</i>     | ) |                          |
|                        | ) |                          |

## ORDER DENYING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Defendants' *Motion to Dismiss*, filed on October 18, 2024. Plaintiff filed their *Opposition to Defendants' Motion* on November 15, 2024. Defendants filed a *Reply to Plaintiff's Opposition* on November 22, 2024.

This Motion to Dismiss has been brought for failure to state a claim upon which relief can be granted and for lack of subject-matter jurisdiction due to lack of standing to bring forth a claim. A "claim upon which relief can be granted" is considered by the Court to refer to a legal cause of action where, if the facts alleged are proven, would entitle the Plaintiff to relief. "Standing" is considered by the Court to refer to the legal right to bring a lawsuit. Upon consideration of Defendants' Motion and the entire record herein, it is this **18th** day of December 2024 hereby

**ORDERED** that Defendants' *Motion to Dismiss* is **DENIED**, 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.

**IT IS SO ORDERED.**

*Maurice A. Ross*

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Judge Maurice A. Ross

Copies to (via e-service):

Christopher Lafon  
Lindsey Dennis  
Theodore B. Godfrey  
Scott H. Rome  
*Counsel for Plaintiff*

Alina Chernin  
Philip T. Abbruscato  
Jung Hyoun Han  
*Counsel for Defendants*



information from me, or to my knowledge, anyone else, to assist in their purported good faith determinations.

6. Rob Vinson and Andrew Watkins are both ardent Mises Caucus members and considered leaders in that group and hold the titles of caucus organizers in their respective states.

7. After a confidential investigation of my purported “misconduct”, the LNC adopted a 31-page report that identified that the five-director committee in charge conducted eight meetings over the span of 30 days, conducted 14 interviews over the span of over two weeks totalling approximately 16 hours, reviewed over 1,200 pieces of evidence, and set forth 17 pages of findings of fact.

[remainder of page left blank]

I certify under the penalty of perjury that the information contained above is true and accurate to the best of my knowledge and information.

Executed this 1st day of January 2025.

  
Caryn Ann Harlos (Jan 1, 2025 12:03 MST)

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Caryn Ann Harlos






# Declaration of Caryn Ann Harlos

Final Audit Report

2025-01-01

|                 |  |
|-----------------|--|
| Created:        | 2025-01-01                                   |
| By:             | Caryn Ann Harlos (idrankthekoolaid@mac.com)  |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAakiFrPnRYubwP5q9jNO2eHedls4i4STr9 |

## "Declaration of Caryn Ann Harlos" History

-  Document created by Caryn Ann Harlos (idrankthekoolaid@mac.com)  
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-  Document emailed to Caryn Ann Harlos (carynannharlos@gmail.com) for signature  
2025-01-01 - 7:00:13 PM GMT
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2025-01-01 - 7:02:10 PM GMT- IP address: 64.233.172.32
-  Document e-signed by Caryn Ann Harlos (carynannharlos@gmail.com)  
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# EXHIBIT C

## VERIFICATION

I, Caryn Ann Harlos declare and verify:

1. I personally reviewed and now verify the factual statements and allegations in the Amended Complaint and believe them to be true and correct to the best of my knowledge, information, and belief.

2. I also personally reviewed the factual statements and allegations in the Amended Complaint at or around the time it was filed and believed those factual statements and allegations were true and correct to the best of my knowledge, information, and belief.

3. I certify under the penalty of perjury that the information contained above is true and accurate to the best of my knowledge and information.

Date: January 1, 2025

  
Caryn Ann Harlos (Jan 1, 2025 12:04 MST)

---

Caryn Ann Harlos






# Harlos Complaint Verification

Final Audit Report

2025-01-01

|                 |  |
|-----------------|--|
| Created:        | 2025-01-01                                   |
| By:             | Caryn Ann Harlos (idrankthekoolaid@mac.com)  |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAA4zJgQITdkEx0uCm7yGHy64VDkoMDNI8C |

## "Harlos Complaint Verification" History

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Signature Date: 2025-01-01 - 7:04:13 PM GMT - Time Source: server- IP address: 73.14.251.148
-  Agreement completed.  
2025-01-01 - 7:04:13 PM GMT

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

|                               |                                     |
|-------------------------------|-------------------------------------|
| <b>CARYN ANN HARLOS,</b>      | :                                   |
| <b>Plaintiff,</b>             | :                                   |
|                               | :                                   |
| <b>v.</b>                     | : Civil Action No.: 2024-CAB-006230 |
|                               | : Judge Katherine E. Oler           |
| <b>ANGELA MCARDLE, et al.</b> | :                                   |
| <b>Defendants.</b>            | :                                   |

---

**[proposed] ORDER DENYING DEFENDANTS’ MOTION TO DISMISS**

Having reviewed the Motion to Dismiss (“Motion”) by Angela McArdle (“McArdle”) and the Libertarian National Committee (“LNC”), the Opposition by Plaintiff Caryn Ann Harlos (“Harlos”), and any Reply, and for good cause shown, it is hereby ORDERED that the Motion is DENIED.

Date:

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Honorable Judge Katherine E. Oler