CHARLES E. GETER, MARGARET H. NICOL, Plaintiffs, v. JANICE S. MIRONOV, MERCER COUNTY DEMOCRATIC COMMITTEE Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY Docket No.: MER-L-_____

PLAINTIFFS' BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS SEEKING PRELIMINARY INJUNCTIVE RELIEF

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Plaintiffs Charles E. Geter and Margaret H. Nicol ("Plaintiffs") respectfully submit this brief in support of its application for an order to show cause with temporary restraints pursuant to Rule 4:52-1.

PRELIMINARY STATEMENT

It is incumbent upon political party organizations to comply with their bylaws, especially when it comes to intra-party elections and procedures. The current leadership of the Mercer County Democratic Committee ("MCDC" or "Committee") has failed to do so or to amend the MCDC's Bylaws ("Bylaws") in this regard. As a result, MCDC must be enjoined from proceeding with a proposed Biennial Reorganization Meeting on July 28, 2020 at 6:00 p.m. ("Reorganization Meeting").

More specifically, defendant Janice Mironov ("Mironov"), as Chairperson of the MCDC, has adopted a course of *ultra vires* conduct on behalf of the MCDC, in dereliction of her duty to Plaintiffs as members of the MCDC to uphold and follow the Bylaws. In stark contrast to the express provisions of the Bylaws, as it relates to the timing and procedure for holding the Reorganization Meeting, Defendant Mironov has unilaterally determined that the MCDC shall have this meeting a full two weeks later than the date required by the Bylaws she is duty-bound to carry out.

Moreover, Mironov has taken the unprecedented and unratified action of declaring that the Reorganization Meeting shall be held as a "tele-town hall," while providing no assurances that secret balloting can and will be maintained by such a process. The fatal defects in both timing and procedure that attend these actions will have the effect of stifling the full participation of members in the MCDC's business. The totality of these actions illustrate a distressing lack of transparency on the part of Mironov, who as Chair is obligated pursuant to the Bylaws to

carry out the goals and directives of the MCDC. Such goals include furthering good government and encouraging grass roots participation in the Democratic Party, neither of which are served by Mironov's complete disregard for her duties to Plaintiffs, other members of the Committee, and registered Democratic Party voters.

While Defendant Mironov purports that she is bound by State regulation, rather than by the Bylaws, in setting the proposed date for the Reorganization Meeting, in actuality she relies on unconstitutional authority in support of the complete abrogation of her duty. The consequences that would result from allowing Mironov to persist in her *ultra vires* conduct would irreparably harm both Plaintiffs and the public interest in fostering vibrant and inclusive political parties.

The clear alternative to Defendants' unjustifiable, unilateral course of harmful conduct is found squarely in the MCDC Bylaws. To wit, Defendants must cancel the proposed Reorganization Meeting, as same cannot be held as currently scheduled, and must call a new meeting, through proper notice, to amend the Bylaws so as to provide for a reorganization meeting that may be held on a date other than the first Tuesday following the primary election.

As such, and for the reasons set forth below, this situation is the quintessential scenario in which the granting of temporary restraints to preserve the *status quo ante*, and to limit continued irreparable harm, is appropriate and necessary.

STATEMENT OF FACTS

The relevant facts are set forth in the Verified Complaint dated July 27, 2020, which is being submitted to the Court simultaneously herewith for filing (the "Complaint"), which are expressly incorporated herein. Plaintiffs note the following provisions of the Bylaws that are of particular relevance to the instant matter:

- Art. I, Section 2: the purpose of MCDC shall be "encouraging grass roots participation in the Democratic Party";
- Art. II, Section 3 (Membership): "Members shall take office on the first Saturday following their election, on which day the terms of all members therefore elected shall terminate. The biennial reorganization meeting of the county committee shall be held on the First Tuesday following the primary election in even numbered years in the manner provided in Title 19 of the Revised Statutes."
- Art. III, Section 1 (Election of Officers): "The Chair shall be responsible for carrying out the goals and directives" of the MCDC;
- Art. VII, Section 1 (Meetings): "The first meeting of the County Committee shall be the Biennial Organization Meeting to be held on the first Tuesday following the Primary Election in even numbered years in accordance with these bylaws and the Revised Statutes of the State of New Jersey."
- Art. VII, Section 4 (Meetings/Notice): requires all members to receive written notice three days prior to the MCDC Reorganization Meeting and ten days prior to the date of any regular or special Meeting;
- Art. VII, Section 5 (Meetings/Conduct): "Meetings shall be conducted according to Roberts Rules of parliamentary procedure."

Plaintiffs also note the following provision of the Rules of the Mercer County Democratic Convention:

- Art. VII (Voting Procedures): "All voting shall be conducted by secret paper ballot unless an alternate method is decided by a majority of the Convention."

LEGAL ARGUMENT

POINT I

THE BYLAWS AND CONVENTION RULES OF THE MERCER COUNTY DEMOCRATIC COMMITTEE MUST CONTROL THE CONDUCT OF THE COMMITTEE'S BUSINESS

Notwithstanding Defendant Mironov's reliance on N.J.S.A. 19:5-3 and EO-164 in proposing the July 28 Reorganization Meeting, the MCDC Bylaws and incorporated Rules of the Mercer County Democratic Convention must control the conduct of Defendants in calling for the reorganization meeting. The meeting notice found on the MCDC website ("Meeting Notice")[1] promulgated by Defendants, purports to call for such a meeting. However, the Meeting Notice is fatally defective in a number of respects when compared to the express provisions of the Bylaws and thus constitutes *ultra vires* action and is therefore void.[2]

Notably, the Meeting Notice purports to establish a "Tele-Town Hall" for all business of the MCDC during the July 28 Reorganization Meeting. The Bylaws do not provide for such a procedure, therefore this unilateral change by Defendant Mironov to the ordinary procedure of MCDC meetings is violative of N.J.S.A. 15A:5-1(a), which states that, "[d]uring a state of emergency declared by the Governor, a meeting of members may be held by means of remote communication *to the extent the board authorizes and adopts guidelines and procedures governing such a meeting*." (emphasis added). To Plaintiffs' knowledge, no such authorization

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[1] https://mercerdemocrats.files.wordpress.com/2020/07/screen-shot-2020-07-23-at-7.04.32-pm.png, retrieved Jul. 27, 2020.

[2] "Ultra vires" acts are those taken "'beyond the scope of the powers of a corporation . . . as defined by its charter' or 'acts which are in excess of powers granted and not prohibited.'" New Jersey Dep't of Children & Families' Institutional Abuse Investigation Unit v. S.P., 402 N.J. Super. 255, 274 (App. Div. 2008) (quoting Black's Law Dictionary (1979)).

has been made by the MCDC Executive Board, nor have the specific procedures governing this "tele-town hall" been prepared and disseminated by Defendants.

By holding the planned Reorganization Meeting in the manner described in the Meeting Notice, without any explanation or details as to how the meeting itself will be conducted apart from a cursory statement that same will be conducted entirely by telephone, Mironov has acted beyond the scope of her express powers as Chair and has violated her duty to Plaintiffs, the Committee membership and to registered voters of the Democratic Party.

A. The Procedure for the July 28, 2020 Reorganization Meeting as Set Forth in the Meeting Notice Violates the Committee's Bylaws and is Void

i. Defendant Mironov violated her duty to Committee members in establishing the procedure for the Reorganization Meeting

Art. I, Sec. 2 of the Bylaws states that the purpose of the MCDC shall be "encouraging grass roots participation in the Democratic Party." Further, it is the responsibility of the Committee Chair to carry out the goals and directives of the MCDC. (See Bylaws Art. III, Sec. 1). Indeed, Mironov, as Committee Chair, has a fiduciary duty to act for the benefit not only of the other Committee members but for all registered voters of the Democratic Party who reside in Mercer County. This duty derives from the plain text of the Bylaws and from judicial recognition that county committee members "are in a sense trustees of the party interests for the registered voters of the party in the county." Deamer v. Jones, 42 N.J. 516, 520 (1964).

Defendant Mironov's violation of her fiduciary duty to provide full participation in the Committee's business is illustrated by multiple deficiencies in the Meeting Notice. One such deficiency is a statement that the municipal committee members appointed to fill vacancies shall be eligible to participate in the Meeting, which assumes that all candidates will have access to

communicate with these new members in advance of the July 28 Meeting. This is patently false, as vacancies on municipal committees will not be filled until the day prior, July 27th.[3] Thus, the full list of eligible voters will not be made available to MCDC members, other than the Chair, until the very day of the Meeting, which flies in the face of the idea that a full, free and fair election might be had.

Further, holding the Reorganization Meeting in the manner set forth in the Meeting Notice will dispose of the usual process whereby Committee members have customarily had the right, pursuant to the Bylaws, to make comments at meetings or have a speaking role, as is common practice during in-person reorganization meetings. Thus, the process established by Defendant Mironov for holding the planned Reorganization Meeting as described in the Notice deviates from her fiduciary duty to uphold to the long-standing principles of a transparent, united, and inclusive Democratic Party and must be enjoined.

ii. The proposed procedure for the telephonic Reorganization Meeting violates the customary MCDC practice of secret balloting

The Meeting Notice repeatedly refers to the meeting as a "telephone town hall" and refers to the use of "automated tele-town hall systems" via cell phone or home phones. Given Defendant Mironov's lack of transparency with respect to what this telephonic system entails (despite having been asked by Plaintiffs for clarification concerning how Committee members' information will be used in relation to the ballots they might cast at the meeting), one can only assume that in order to conduct any business, the full roll would have to be called prior to any vote and members would be forced to announce their vote on the conference call for the entire

[3] It is our understanding that vacancies in certain municipalities have still yet to be filled by the time of this filing on July 27, 2020.

membership to hear.

The Meeting Notice also indicates that "[a]ll voting will be via secret ballot, conducted by secure telephone system and independently verified by a neutral outside party." In spite of Plaintiffs' requests for clarification, Defendant Mironov has not provided any information as to this party's principals, how it is being paid for its services, whether candidates for the election have participated in discussions with them (thus calling into question neutrality) and the like.

With respect to the proper voting procedures to be had at the proposed Reorganization Meeting, the Bylaws standing alone are silent apart from Art. VII, Sec. 5. This section provides that "[m]eetings shall be conducted according to Roberts [sic.] Rules of parliamentary procedure." Robert's Rules of Order does not mandate a particular procedure for voting, but encourages the use of secret ballot in matters, such as elections, where "the question is of such a nature that some member might hesitate to vote publicly their true sentiments."

Moreover, the Bylaws should be read *in pari materia* with the Rules for the MCDC Convention ("Convention Rules"). This is uniquely true considering the MCDC website page containing the Bylaws also incorporates the Committee's constitution, bylaws, and convention rules.[4] Of particular importance is the provision in Art. VII of the Convention Rules that "[a]ll voting shall be conducted by secret paper ballot unless an alternate method is decided by a majority of the Convention." Indeed, the process and requirements found in the Convention Rules are those which have been adhered to for all reorganization meetings in recent memory. Further, past practice with respect to voting during these meetings has always been by secret ballot or voting machine.

[4] https://mercerdemocrats.files.wordpress.com/2019/10/mercercountydemcommconstit.pdf, accessed Jul. 27, 2020

B. The Reorganization Meeting Cannot Proceed as Planned, Therefore the Committee Must Amend its Bylaws to Proceed at This Time

The MCDC Bylaws are also clear with respect to the date whereby the reorganization meeting must be held. Art. II, Sec. 3 of the Bylaws states, "[t]he biennial reorganization meeting of the county committee shall be held on the First Tuesday following the primary election in even numbered years." Further, Art. VII, Sec. 1 states, "[t]he first meeting of the County Committee shall be the Biennial Organization Meeting to be held on the first Tuesday following the Primary Election in even numbered years in accordance with these bylaws and the Revised Statutes of the State of New Jersey."

The date expressly contemplated by the Bylaws for holding the reorganization meeting should have been July 14, 2020, a date that has clearly passed. (See Bylaws Art. II, Sec. 3). Given this circumstance, the Bylaws must be amended to allow for a later date of the reorganization meeting before such meeting can be held legitimately. Because the Bylaws set a firm date for the meeting, notice is not normally required well in advance. Nonetheless, because of the unique circumstances here, advance notice of not only the meeting, but detailed procedures as to how the meeting shall be conducted were required and appropriate.

In this regard, Art. VII, Sec. 4 of the Bylaws requires all members to receive written notice three days prior to the MCDC reorganization meeting and ten days prior to the date of any regular or special Meeting. The limited three-day notice requirement for the reorganization meeting is due to the common knowledge and past practice of ordinarily holding the reorganization meeting on the Tuesday following the primary election. At this point, the 2020 Reorganization Meeting has been cancelled and rescheduled multiple times. In tandem with the extended notice requirement for regular and special meetings, to ensure full participation by the

membership, additional notice – such as would be appropriate for special meetings – should be given to hold a reorganization meeting outside of the ordinarily scheduled date.

There can be no doubt that the Meeting Notice has insufficiently set forth procedures for the "tele-town hall" meeting due to the lack of detail and because such procedures would ostensibly, as currently composed, require an amendment to the Bylaws. However, the Meeting Notice does not allow for an amendment to the Bylaws at the proposed Reorganization Meeting, which constitutes a fatal defect because a statement of a proposed amendment must be included in the meeting notice and sent to all members at least ten days prior to the meeting. (See Bylaws Art. VII, Sec. 1). Further, the July 28 meeting cannot include an amendment to the Bylaws at this time, as the requisite ten-day notice period for special meetings has since lapsed and should have been sent no later than July 18, 2020.

Should the Committee wish to proceed with the Reorganization Meeting as Defendant Mironov has attempted, via the "tele-town hall" medium, then the vote should be presented to the entire membership for same and the Bylaws should be amended not only to allow for the later date, but also for the allowance of holding the meeting in such manner as voted upon by a majority of the membership. A failure to do so would disenfranchise Committee members from participating in Reorganization Meeting and would violate the Bylaws.

Therefore, based on the foregoing, Plaintiffs are entitled to declaratory judgment that for the MCDC reorganization meeting to occur at this juncture, an amendment to the MCDC Bylaws must be made so that such meeting may be held on a date other than the first Tuesday following the primary election, as currently required.

POINT II

N.J.S.A. 19:5-3 AND EXECUTIVE ORDER NO. 164 (2020) VIOLATE THE COMMITTEE'S ASSOCIATIONAL RIGHTS AND ARE UNCONSTITUTIONAL AS APPLIED

"An as-applied attack does not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right." Lewis v. Guadagno, 837 F. Supp. 2d 404, 413 (D.N.J. 2011), aff'd, 445 Fed. Appx. 599 (3d Cir. 2011) (internal citation omitted). With respect to the instant matter, Defendant Mironov's reliance on certain provisions of Title 19 and Governor Murphy's Executive Order 164 is of no consequence. N.J.S.A. 19:5-3, as applied, unduly burdens Plaintiffs, as Committee members, from the exercise of their constitutional right of association insofar at the statute seeks to control the processes by which the county committees shall elect and seat their own officers. In relevant part, this section unconstitutionally imposes on county political committees specific requirements pertaining to the dates whereby county committee members shall take office (the first Saturday following their election at the primary for the general election) and when the county committee shall hold its annual meeting (the first Tuesday following the primary election, with certain exceptions not at issue in the instant matter).

Indeed, New Jersey courts have previously confronted as-applied challenges to N.J.S.A. 19:5-3 and declared that, in those circumstances, the challenged sections had imposed unconstitutional requirements on the internal affairs of county committees. See Hartman v. Covert, 303 N.J. Super. 326, 334-35 (L. Div. 1997) (holding requirement in N.J.S.A. 19:5-3 that positions of county committee chair and vice-chair be held by persons of opposite genders impermissibly and unjustifiably burdened the associational rights of the parties and their members without serving a compelling state interest).

Moreover, to the extent that Governor Murphy's Executive Order No. 164 (2020) ("EO-164") attempts to regulate and set a new date for the reorganization meetings for county party committees, those portions of EO-164 are unconstitutional.[5] The Governor does not have the authority to regulate the internal affairs of a political party. See Eu v. San Francisco Cty. Democratic Cent. Comm., 489 U.S. 214 (1989). While the State has broad power to set time, place and manner restrictions relating to elections for federal and state offices, that power is not absolute and is subject to the "'responsibility to observe the limits established by the First Amendment rights of the State's citizens,' including the freedom of political association." Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 451 (2008) (quoting Eu, 489 U.S. at 222). Moreover, "[e]lection regulations that impose a severe burden on associational rights are subject to strict scrutiny, and [will be upheld] only if they are narrowly tailored to serve a compelling state interest." Id.

The interference of N.J.S.A. 19:5-3 and EO-164 in the purely internal affairs of county party committees places a severe burden on Plaintiffs' associational rights. In particular, these regulations impose upon the Committee a timeframe for holding the Reorganization Meeting which starkly contradicts the express provisions of the Committee's Bylaws pertaining to such an event.[6] The Bylaws represent the mutually agreed upon terms of membership in the Committee, to which all members assent to be bound. Once ratified, the bylaws of a nonprofit

[5] In relevant part, EO-164 purports to relax the date for holding reorganization meetings, by suspending the prior timeframe as provided for in N.J.S.A. 19:5-3 (first Tuesday following the primary election), and instead allowing for the reorganization meeting to be held on the first Tuesday after the July primary results are certified. A week after signing EO-164, the Governor issued Executive Order No. 169 (EO-169), which serves to modify EO 164 insofar as the suspension of Section 19:5-3 is only applicable to municipal party committees and county party committees that held elections during the July primary elections.

[6] Explained in greater detail in Point II, infra.

corporation are insulated from alteration by non-members. N.J.S.A. 15A:2-10(a); Harris v. Twp. of Haddon, 382 N.J. Super. 195, 200-01 (L. Div. 2005) (holding that bylaws for nonprofit corporation, established by statute to manage special improvement district, precluded Township officials from altering express provisions through ordinance, where no authority for such government action appeared in bylaws or certification of incorporation.). Thus, an attempt to alter the express provisions of the MCDC Bylaws by state action such as an Executive Order is an intrusion upon the associational rights of Committee members, rising to the level of a severe burden that can only survive strict scrutiny by the showing of a compelling state interest.

Here, as in Eu, no compelling state interest exists in the State's attempts to regulate the purely internal affairs of the county party committees. The unconstitutional infringement of associational rights at issue in Eu involved California's regulation of the purely internal affairs of the governing bodies of political parties, such as rules restricting the selection and removal of committee members and specifications as to the time and place of committee meetings. 489 U.S. at 218. The Supreme Court found that the restrictions at issue in Eu did not serve a compelling state interest, rejecting California's contention that the state had a "compelling interest in the democratic management of the political party's internal affairs," while reiterating that "the State has no interest in protecting the integrity of the Party against the Party itself. Id. at 222.

Therefore, insofar as N.J.S.A. 19:5-3, in conjunction with EO-164, causes an alteration of the express provisions of the MCDC's Bylaws, in this instance concerning the particular date of the Committee's reorganization meeting, such regulations represent a severe and unjustified burden upon the associational rights of Plaintiffs and is unconstitutional as applied.

POINT III

PLAINTIFFS ARE ENTITLED TO PRELIMINARY RESTRAINTS PENDING THE RESOLUTION OF THIS MATTER.

New Jersey has long recognized the power of its courts to grant preliminary injunctive relief to prevent a threatening or irreparable harm, and to preserve the *status quo*, until opportunity is afforded for a full and deliberate investigation of the case. Princeton Ins. Co. v. 349 Associates, LLC, 147 N.J. 337, 340 (1997); Crowe v. DeGioia, 90 N.J. 126, 132-136 (1982). Moreover, if the public's interest is impacted by the grant or denial of an application for such relief, then the Court should give that interest substantial weight. Waste Management of New Jersey, Inc. v. Union County Util. Auth., 399 N.J. Super. 508, 536 (App. Div. 2008) (holding that "[i]n the matter at hand, the public interest is significantly impacted, and, once defined, should play a significant role in the judge's determination.").

Under New Jersey law, temporary, preliminary or summary relief should issue when a moving party demonstrates the following: (1) a reasonable probability of success on the merits of the underlying legal claims; (2) that such relief is necessary to prevent immediate and irreparable harm; (3) the legal rights underlying the moving party's claims are settled; and (4) the balance of harms, favors the granting of preliminary relief. Crowe, 90 N.J. at 132-136.[7] In addition, where the public interest is at issue, the Court should also consider the effect that granting or denying injunctive relief will have on the public interest. See Garden State Equality v. Dow, 216 N.J.

[7] The third factor under Crowe – that the legal right underlying a claim be settled – does not apply in cases such as the instant one, where Plaintiff seeks to simply preserve the *status quo ante*. As such, this factor is not addressed in this brief. In the event the Court believes this factor should be considered, Plaintiffs, as members of the Mercer County Democratic Committee have the settled right to enforce the provisions of the Committee's Bylaws. See, e.g., Hartman v. Covert, 303 N.J. Super. 326 (L. Div. 1997).

314, 321 (2013). Notably though, where, as here, the movant is "acting only to preserve the *status quo ante*, the court may 'place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.'" Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (quoting Waste Mgmt. v. Union County Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

As demonstrated in the argument that follows, Plaintiffs meet each of these requirements and, thus, are entitled to the entry of the Order to Show Cause with Preliminary Restraints against Defendants as submitted to this Court.

A. Plaintiff Will Suffer Irreparable Harm and the Public Interest Will Be Harmed Absent the Temporary Restraints Plaintiff Seeks

The first step in obtaining injunctive relief is to demonstrate that the applicant will suffer irreparable injury if the relief is denied. See Crowe, 90 N.J. at 132. Injury is traditionally considered irreparable if monetary damages are inadequate and/or unavailable as a remedy. Id. In establishing the requisite element of "irreparable injury," a plaintiff need only show a "likelihood" of such harm. Thompson v. City of Paterson, 9 N.J. Eq. 624 (E. & A. 1854); see also Wyrough & Loser, Inc. v. Pelmer Laboratories, Inc., 376 F.2d 543 (3d Cir. 1967); Industrial Electronics Corp. v. Cline, 330 F.2d 480, 483 (3d Cir. 1964) (injunction should be granted if irreparable injury "would possibly result" if relief were denied).

Here, Plaintiffs will undoubtedly suffer irreparable harm if relief is not granted and there can be little doubt that monetary damages are inadequate and/or unavailable as a remedy in this litigation. A proper adjudication of Plaintiffs' claims, however, cannot be made without an award of the injunctive relief sought herein. Through her actions, Defendant Mironov has impermissibly and egregiously flaunted her fiduciary duty to the MCDC, to Plaintiffs and to registered Democratic Party voters. Should she be permitted to continue her course of *ultra vires* conduct on behalf of

the MCDC, Plaintiffs' substantial interest in a vital, grass-roots Democratic Party, that ensures full participation of all members and registered voters, will be irreparably harmed as a result of the stifling effect of Defendant Mironov's undemocratic behavior. Such behavior also undeniably harms the public interest in vibrant and inclusive political parties. Therefore, Plaintiffs request that the Court merely enforce the *status quo* and require Defendants act in conformance with the express provisions of the MCDC Bylaws.

B. Preliminary Injunctive Relief is Appropriate in this Case Because Plaintiffs Can Establish a Reasonable Probability of Success on the Merits of Their Underlying Claim

The next factors the Court must weigh when considering the propriety of granting the preliminary injunctive relief sought in Plaintiffs' application is whether the applicant has made a preliminary showing of a reasonable probability of ultimate success on the merits, and whether the claim is based on a settled legal right. See Crowe, 90 N.J. at 132-34. These requirements are "tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the *status quo*." Id. Here, there can be little doubt that preliminary injunctive relief is appropriate in this case because under applicable law, Plaintiffs will succeed on the merits of their claims against Defendants, and the legal rights underlying Plaintiffs' claims are well-settled.

Courts will set aside customary reluctance to interfere in intraparty controversies when a violation of a controlling statute or the infringement of a clear legal right in present. Rogers v. State Comm. of Republican Party, 96 N.J. Super. 265, 271 (Law. Div. 1967) (citing Deamer v. Jones, 42 N.J. 516, 520 (1964).). Separate and apart from Plaintiffs' clear legal right to seek enforcement of the provisions of the MCDC Bylaws, Plaintiffs, as members or trustees of a non-profit corporation, have the settled right to challenge an *ultra vires* act of the corporation.

N.J.S.A. 15A:3-2.

Here, there is certainly a justiciable controversy and no doubt that Plaintiffs have an interest in this suit generally and in the advancement of this claim specifically. As a threshold matter, neither Plaintiffs nor Defendants will dispute that the express provisions of the MCDC Bylaws bind the conduct of all business of the Committee, including the conduct of meetings and the procedures for voting. Thus, a substantial change to the Bylaw provisions, such as the one threatened by Defendants, upends the longstanding practice of the Committee, particularly with respect to reorganization meetings, and perpetrates an *ultra vires* change to such practice that may only be legitimately effectuated by an amendment to the Bylaws.

C. Injunctive Relief is Appropriate in because the Balance of Harms Favors the Granting of Preliminary Relief to Preserve the Status Quo.

Finally, prior to granting preliminary injunctive relief, the Court must weigh the relative hardships to the parties in granting or denying relief. See Crowe, 90 N.J. at 133-34. In order to obtain preliminary injunctive relief, these equities, on balance, must support the grant of injunctive relief to maintain the *status quo* pending the outcome of a final hearing. See id. at 134. In assessing the propriety of injunctive relief, courts generally weigh the injury that the defendants would suffer, assuming the defendants are enjoined and then prevail at a final hearing, against the injury plaintiff would suffer if no injunction issues and plaintiff prevails. Id.

In this case, the equities weigh heavily in favor of maintaining the *status quo* by granting the preliminary relief Plaintiffs seek. Plaintiffs' rights are clear and certain. It is obvious Defendants have attempted to violate the express provisions of the MCDC Bylaws by calling for a Reorganization Meeting in the manner proposed in the Meeting Notice. Any hardship that Defendants might suffer as a result of a preliminary restraining order that maintains the *status quo* is far outweighed by the hardship to Plaintiff if the preliminary relief is not granted. By

contrast, failure to grant the injunction and allowing Defendants to continue its *ultra vires* pattern of conduct signals a frightening prospect for the maintenance of institutional norms and corporate responsibility.

As such, there can be no question that the balance of hardships weighs heavily in favor of Plaintiffs, and the granting of a preliminary injunction in this matter.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the preliminary injunctive relief sought in Plaintiffs' Order to Show Cause.

Respectfully submitted,

GENOVA BURNS LLC

By: *s/Angelo J. Genova*
ANGELO J. GENOVA

Dated: July 27, 2020

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