VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY

WAT LAO BUDDAVONG, INC.,
3043 Catlett Road
Catlett, VA 20119

Plaintiff,

vs.

SOUKSOMBOUN SAYASITHSENA,
7313 Wayne Drive,
Annadale, Virginia 22003

LAMKEO SYSAVA,
10302 Copland Drive
Manassas, Virginia 20109

MIXAY PANYASITH,
5732 Wood Creekland
Centreville, Virginia 20120

KHAMLA STEVENS,
3383 Nadia Loop
Woodbridge, Virginia 22193

WATT SENGKHYAVONG,
9155 Ogden Park Court
Bristow, Virginia 20136

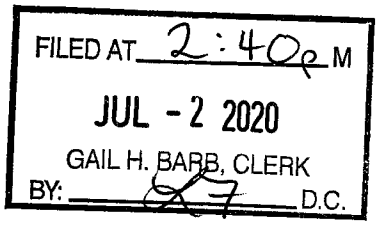
ONLA INTHICHAK,
7313 Wayne Drive
Annandale, Virginia

KIMBERLY RICHARDS,
7185 Kings Highway
King George, Virginia 22483

Defendants.

NO.

MEMORANDUM IN SUPPORT OF DEFENDANTS' DEMURRER



DEFENDANTS LAMKEO SYSAVA, MIXAY PANYASITH, KHAMLA STEVENS, WATT SENGKHYAVONG, ONLA INTHICHAK, and KIMBERLY RICHARDS' MEMORANDUM IN SUPPORT OF DEMURRER

COMES NOW, DEFENDANTS LAMKEO SYSAVA ("SYSAVA"), MIXAY PANYASITH ("PANYASITH"), KHAMLA STEVENS ("STEVENS"), WATT SENGKHYAVONG ("SENGKHYAVONG"), ONLA INTHICHAK (INTHICHAK"), and KIMBERLY RICHARDS ("RICHARDS") (collectively the "Defendants") and hereby files this Memorandum in Support of Demurrer to the Complaint filed by Wat Lao Buddhavong, Inc ("Wat Lao" or "Plaintiff'). Specifically, Defendants aver that each and every claim set forth in the Complaint fails to state a claim upon which relief may be grant against these Defendants and likely any other defendant.

A. Background

Defendants are all members of Wat Lao Buddhavong and have been active members for several decades. Since 2009, Defendant Watt Sengkhyavong and others have been petitioning and requesting the Wat Lao Board of Directors to share with the membership the financial records accounting for the donations and expenses of Wat Lao Buddhavong. Pursuant to the original Bylaws and the Virginia Nonstock Act, Section D § 13.1-932, members have the absolute right to request the financial records. Furthermore, as a non-profit, inspection/audit restrictions are further limited and access is very broad as it relates to financial records.

During the last quarter of 2019, Defendants discovered a loan for $570,000, that was obtained without any acknowledgement, justification, or accounting of proceeds to the general Wat membership. To date, no justification or accounting has been provided.

In an effort to obtain access to the records and to have greater representation on the board of directors, In early September 2019, Defendants, using the last publicly produced set of Bylaws[1], engaged in an election appointed by monks and the general assembly became board members. Unfortunately, Defendants, as board members, were unable to receive from the prior board members the key to the donation boxes and out fear the donated funds would not be properly deposited, Defendants opened the lock boxes and deposited the funds in an account in the name of "Wat Lao Buddhavong Inc." at United Bank and not in any personal account. The funds were deposited by treasurer Khamla Stevens on September 23, 2019 and totaled $1,523. These funds remained in this account, in the dominion, possession, and control of Wat Lao Buddhavong until November 8, 2019 when head abbot Bounmy Kittithammavanno withdrew the funds and closed the account and gave the money to associate monk Chandaphone Chakkavarro.

Wat Lao Buddhavong also solicited donations to build a 'sister Wat" in India. A non-profit identified as Wat Lao International to collect funds and pay for the construction of the Wat in India. The Defendants, and many others in the community were concerned that donations to Wat Lao Buddhavong were being used to support Wat Lao International. This fear was further exasperated when a second loan was discovered.

This second loan was in the amount of $660,000 was also discovered as well as a separate account in the name of one of the monks, all of which were not disclosed to the general membership. Both loans are secured by the property and improvements on that property owned

[1] Defendants do not accept the amended Bylaws as valid which, *inter alia,* stripped away vital financial protections and controls and 11 positions appointed by the monks and those elected from the general membership.

by the Plaintiff, located at 3403 Catlett Road in Fauquier County that was previously owned free and clear prior to these loans.

I. THE DEFENDANT'S SPEECH IS PROTECTED BY UNITED STATES AND VIRGINIA CONSTITUTIONS AND CANNOT BE THE BASIS FOR CIVIL LIABILITY.

a. The Ecclesiastical Abstention Doctrine Bars Consideration of a Theological Dispute Such as the One at Bar.

As discussed in further detail in the Plea in Bar attached hereto as **EXHIBIT A and incorporated herein by this reference**, the Free Exercise Clause of the First Amendment to the Constitution of the United States and Article I, Section 16 of the Constitution of Virginia do not permit a circuit court to substitute its secular judgment for a church's judgment on such issues as church's governance, internal organization, and doctrine, *Cha v. Korean First Presbyterian Church*, 262 Va. 604, 553 S.E.2d 511 (2002). Defendants' actions , as members of the Wat, were taken to bring transparency to the governance and financial affairs of the Wat and to have a voice in the governance of the Wat. This doctrine has sometimes been called the "Ecclesiastical Abstention Doctrine."

The Ecclesiastical Abstention Doctrine prevents secular courts from reviewing many types of disputes that would require an analysis of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required.." *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 733, 20 L.Ed. 666 (1872) The doctrine has been applied by courts in Virginia, most notably in the Supreme Court of Virginia's decision in *Cha v. Korean First Presbyterian Church, Id.* In that case, the Court considered whether the "First Amendment to the Constitution of the United States and Article I, Section 16 of the Constitution of Virginia, which contain free exercise clauses, prohibited the court from interfering in ecclesiastical disputes when questions of faith or doctrine are involved."

The Virginia Supreme Court, in *Cha,* held that a decision by a church board to fire an employee who was a minister was such a decision that should be left to the religious institution itself and not be subject to court oversite or interference.

The *Cha* court took guidance from *Rayburn v. General Conference of Seventh-Day Adventists,* 772 F.2d 1164 (1985), cert. denied. 478 U.S. 1020, 106 S.Ct. 3333 (1986), in determining that ecclesiastical decisions should be free from court interference or second-guessing. In *Rayburn,* the Fourth Circuit explained that the "right to choose ministers without government restriction underlies the well-being of religious community... for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large. Any attempt by government to restrict a church's free choice of its leaders thus constitutes a burden on the church's free exercise rights." *Id.* 772 F.2d at 1167-68.

In the case at bar, the Defendants have, since 2009, attempted to have more transparency in the financial dealings of Wat Lao Buddhavong and to have more representation on the board of directors. They have made frequent and repeated requests insisting, and at times demanding, access to financial records and an explanation of how the community's donations were being expended. They have attempted to get a position on the board of directors to be better able to influence how the funds were being spent. The Defendants, although there is a dispute of whether certain amendments to the Bylaws were effective, participated in elections and in good faith felt they were able to secure certain funds and participate in the governance of the Wat. The Defendants were met with significant resistance, even to the extent of some receiving trespass notices and one of which, a monk at the temple, was arrested and spent a night in jail. See **EXHIBIT B** Trespass Notices attached hereto and incorporated herein by this reference. The

Plaintiff's response to Defendants' demands for transparency was to threaten and intimidate and were told the monks and the board had unfettered authority in how the funds were spent and did not have to provide accountability. These actions by the Defendants are the very actions that the Ecclesiastical Abstention Doctrine was established to protect and prohibit court oversight.

Thus, all of Plaintiff's claims should be dismissed because all of Defendants' actions were related to the governance and accountability of the Wat Lao Buddhavong.

b. Defendants' speech is protected under the first amendment provisions of the United States and Virginia Constitutions.

Additionally, all of the plaintiff's claims must fail as a matter of law because they are based on speech that is protected by the First Amendment to the United States Constitution and Article 1, Section 12 of the Virginia Constitution. "Pure expressions of opinion, not amounting to 'fighting words,' are protected by the First Amendment of the Constitution of the United States and Article 1, § 12 of the Constitution of Virginia." *Fuste v. Riverside Healthcare Ass'n, Inc.*, 265 Va. 127, 132, 575 S.E.2d 858, 861 (2003).

In *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), the Supreme Court held that the defendant's organization of a boycott supported by speeches and nonviolent picketing could not be the basis for an award of damages for malicious interference with the plaintiff's business. "While the State legitimately may impose damages for the consequences of violent conduct, it may not award compensation for the consequences of nonviolent, protected activity." 458 U.S. at 918. *See also Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) (reversing injunction against leaflets critical of real estate broker's alleged 'blockbusting' and 'panic peddling' activities); *Gaylord Entertainment Co. v. Thompson*, 958 P.2d 128 (Okla.1998) (Newspaper editorials were pure, constitutionally protected speech, and therefore could not be the

basis of tortious interference claim); *Eddy's Toyota of Wichita, Inc. v. Kmart Corp.*, 945 F.Supp. 220 (D. Kan. 1996) (Expressions of opinion cannot be the basis for tortious interference claim.)

Defendant speech and activities were in furtherance of their unified goals for fair elections, a voice on the board of directors, and transparency of all financial activities. Plaintiff has not alleged, as it cannot because there is no factual support to do so, that Defendants' speech was defamatory. If the speech did not even rise to the level where Plaintiff would raise a claim of defamation, it surely is protected speech under both the United States and Virginia constitutions.

Thus, all of Plaintiff's claims should be dismissed because Defendants' actions were protected speech under the United States' and Virginia's constitutions.

c. Defendants actions, if any, that are alleged to have caused Plaintiff harm or form the basis of any claim are protected by the *Noerr-Pennington* doctrine.

As discussed in further detail in the Plea in Bar attached hereto as **EXHIBIT A**, Defendants' actions were protected by the *Noerr-Pennington* doctrine. Many if not all of Plaintiff' claims are founded (if not perpetuated as an act of retaliation) because Defendants conducted elections and ultimately filed a lawsuit seeking access to records, and removal of certain board of directors last year. These are the very type of actions that are protected by the *Noerr-Pennington* Doctrine, which grants First Amendment immunity to those who engage in petitioning activity such as the filing of the Complaint upon which most of Plaintiff's claims are based.

As the Supreme Court of Virginia has explained:

> [t]he Noerr-Pennington doctrine was initially developed in the United States Supreme Court cases of *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961), and *United Mine Workers of America v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965). In those cases, the Supreme Court held that actions

> taken to influence legislative or executive action cannot be the basis for a violation of the Sherman Antitrust Act unless such activities were "a mere sham" designed to disguise actions directed towards interfering with the business relationships of a competitor. *Noerr*, 365 U.S. at 144, 81 S.Ct. 523. This doctrine is based on the federal constitutional rights to free speech and to petition the government. In subsequent cases, the doctrine has been expanded to apply to actions taken in adjudicatory proceedings before administrative agencies and courts. *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972).

Titan America, LLC v. Riverton Inv. Corp., 569 S.E.2d 57, 61-62, 264 Va. 292 (2002).

The *Titan America* Court further explained that the "Noerr-Pennington doctrine arises from rights afforded by the First Amendment to the United States Constitution and does not limit protection of those rights to causes of action involving antitrust matters." Id. at 62 (citations omitted). In that case, the Court confirmed that the Commonwealth of Virginia extended the same *Noerr-Pennington* protections to litigants in response to state court claims as did the federal court and that "the protection of First Amendment rights provided by application of the *Noerr- Pennington* doctrine should be available to a defendant in causes of action for tortious interference with business expectancy and conspiracy... " Id.

The only exception to the doctrine is if the lawsuit in question was a "mere sham." Id. The Courts have adopted a two-prong test for determining a "sham litigation." In doing so, the court must determine:

1) Whether the case is "objectively baseless," i.e. "if the proponent of the litigation lacked probable cause to institute the unsuccessful lawsuit," and

2) If so, the court engages in a "subjective inquiry to determine whether the litigation was filed with an anti-competitive purpose."

Titan American, 569 S.E.2d at 62 (citing PRE, 508 U.S. at 60). As the Court explained, "[p]robable cause in this context means a 'reasonable belief that there is a chance that [a] claim may be held valid upon adjudication.'" *Titan American*, 569 S.E.2d at 62 (citations omitted).

The party opposing the application of the doctrine to the facts bear se burden of proving that the opponent's conduct was a sham. *IGEN Int'l, Inc. v. Roche Diagnostics GmbH*, 335 F.3d 303, 312 (4th Cir. 2003).

The Defendants' purposes in filing the lawsuit was to gain access to the financial records being withheld from the general membership since at least 2009, transparency financial accounting, and representation on the board of directors. These purposes clearly satisfy the first prong of the analysis as being an reasonable and meritorious claims which were supported by the Bylaws and was not "objectively baseless." Furthermore, the lawsuit was not filed and did not have a subjective and anti-competitive purpose. Instead, the lawsuit was an attempt to gain access to certain financial records to secure and maintain sacred temple funds and assets.

Therefore, Plaintiff's claims of Conspiracy, Intentional Interference with Business Expectancy, Motion for Injunctive Relief, motion for Declaratory Judgement, and Malicious Prosecution are without merit and in contradiction to the well-established precedent of the *Noerr-Pennington* doctrine and all should be dismissed

II. THE COMPLAINT FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE AND SHOULD BE DISMISSED.

The elements of a claim for tortious interference with a business relationship are "(1) the existence of a business relationship or expectancy, with a probability of future economic benefit to Plaintiff; (2) defendant's knowledge of the relationship or expectancy; (3) a reasonable certainty that absent defendant's intentional misconduct, plaintiff would have continued in the relationship or realized the expectancy; and (4) damage to plaintiff." *Williams v. Dominion Technology Partners, L.L.C.*, 265 Va. 280, 289, 576 S.E.2d 752, 757 (Va. 2003). The Complaint fails to allege

the first and second of these elements. Plaintiff remarkably does not claim to have lost any contracts, rather Plaintiff alleges that due to Defendants' actions ***donations*** have decreased.

Significantly, Plaintiff does not specify any particular contract or business expectancy with which the defendants interfered. Failing to specify the particular contract of business expectancy is fatal to Plaintiff's claims. For example, one court has held that "Failure to allege any specific, existing economic interest is fatal to the claim." *Masco Contractor Services East, Inc. v. Beals*, 279 F.Supp.2d 699, 709 (E.D. Va. 2003). A similar conclusion was also held in *Eurotech*, when the court held that because plaintiffs did not identify the specific business relationships with which defendant "had interfered, plaintiffs' tortious interference claim fails. *Eurotech, Inc. v. Cosmos European Travels Aktiengesellschaft*, 189 F.Supp.2d 385, 391 (E.D. Va.2002)). Nor does the Complaint allege that the defendants had any knowledge of any such contract or business expectancy.

Furthermore, the complaint's basis for the tortious interference is not based upon a specific contract but rather an 'expectation' of future donations based upon past experiences. Such and 'expectation' is not sufficient for supporting a claim of tortious interference. For example, the *Levine* court held that the expectancy of remaining in business from gym membership renewals was too general to support a tortious interference claim. *Levine v. McLesky*, 881 F. Supp. 1030, 1057 (E.D. Va. 1995).

Even more significantly, the court in *Commercial Bus. Sys., Inc.* held that mere proof of a plaintiff's belief and hope that a business relationship will continue is inadequate to sustain a claim of tortious interference. *Commercial Bus. Sys., Inc. v. Halifax Corp.*, 253 Va. 292, 301, 484 S.E.2d 892, 897 (1997).

Plaintiff has also filed a 1023 IRS supplemental form which attests that the funds it receives are voluntarily made. Part VIII, 4.a Description of Fundraising (page 6) unequivocally states that

"The only source of income for Wat Lao Buddhavong is voluntary donations from members and visitors. It further attests that "The fundraising activites for Wat Lao Buddhavong consist of receiving voluntary donations (offerings) from visitors to the Temple Grounds." See **EXHIBIT C 1023 IRS supplemental form** attached hereto and incorporated by this reference. **Thus, because the donations are voluntary, Plaintiff cannot be heard to say that it has a business expectancy and there is no contractual relationship for which Defendants could interfere with.**

Moreover, "Virginia caselaw applying the tort of intentional interference with a business expectancy contains a fifth, unstated element to the prima facie case: a competitive relationship between the party interfered with and the interferor." *17th Street Associates, LLP v. Markel Intern. Ins. Co. Ltd.*, 373 F.Supp.2d 584, 699 (E.D. Va. 2005).

In the present case, Plaintiff's do not allege a "competitive relationship" with the Defendants. Plaintiff does not because it cannot. The Defendants are not engaged in a competing business where knowledge of contracts may be direct or even inferred. The Defendants are simply citizens (members of the Wat) who comment on matters of public concern and have requested transparency of the Wat's financial activities. Similarly, there is no "allegation that the defendant had some contact with the source of the Plaintiff's alleged business expectancy." *Id.* Furthermore, Plaintiff's basis for tortious interference is the allegation that because of Defendants' actions the "**expected**" ***voluntary*** donations have decreased. Under the precedent established in *Levine* and the *Commercial Bus. Sys.* decisions cited above., such speculative expectations, which are voluntarily made, does not establish a basis to support a claim for tortious interference.

Additionally, Plaintiff's claims that donations have decreased do not acknowledge that the decrease may be a result of its own actions of: (1) not being transparent in its financial dealings; (2) issuing trespass notices prohibiting certain members from attending the Wat; (3) having a

popular monk arrested for violation of the trespass order; and (4) filing a lawsuit using the name of the Wat as Plaintiff against members of the local Laotian community.

Therefore, Plaintiff's claim for tortious interference should be dismissed.

III. THE COMPLAINT FAILS TO STATE A CLAIM FOR BUSINESS CONSPIRACY UNDER VIRGINIA CODE §§ 18.2-499 AND 500.

For similar reasons, the Complaint does not state a claim under Virginia Code §§ 18.2-499 and 500, which provide a cause of action against persons who conspire for the purpose of "willfully and maliciously injuring another in his reputation, trade, business or profession." With regard to this claim, the Complaint merely states in a conclusory fashion that the defendants publicly criticized the defendant. But "business conspiracy, like fraud, must be pleaded with particularity, and with more than 'mere conclusory language.'" *GEICO v. Google, Inc.*, 330 F.Supp.2d 700, 706 (E.D. Va. 2004) (citing *Bay Tobacco, LLC v. Bell Quality Tobacco Products, LLC,* 261 F.Supp.2d 483, 499 (E.D.Va.2003)).

As with the tortious interference claim, the Complaint fails to specify any specific business or reputational interests that were harmed. Nor does the Complaint plead any facts to support the conclusory allegation that the defendants had the malicious intent to harm the plaintiff's business. Failure to not allege with more specificity is fatal to the claim. In *GEICO,* the court dismissed a conspiracy claim under Va. Code § 18.2-499 because allegations were "not sufficiently specific to support the conclusory language that the parties entered into an agreement with the purpose of injuring GEICO in its business." *GEICO*, 330 F.Supp.2d at 706.

Defendants' actions since 2009 have been to gain greater transparency in the financial dealings of Wat Lao Buddhavong and to have more representations on the board of directors. These actions were not 'conspiratorial' as being alleged by the Plaintiff. Defendants have made frequent and

repeated requests insisting, and at times demanding, access to, and an explanation of how the community's donations were being expended.

Therefore, Plaintiff's claim for conspiracy should be dismissed.

IV. PLAINTIFF'S CONVERSION CLAIM SHOULD BE DISMISSED BECAUSE DEFENDANTS, IN GOOD FAITH, DEPOSITED FUNDS IN AN ACCOUNT UNDER THE NAME OF WAT LAO BUDDHAVONG, INC.

Conversion is the wrongful assumption or exercise of the right of ownership over goods or chattels belonging to another in denial of or inconsistent with the owner's rights." *Maine v. Adams,* 672 S.E.2d 862, 869 (Va. Sup. Ct. 2009). To assert a claim for conversion, a plaintiff must prove by a preponderance of the evidence (1) the ownership or right to possession of the property at the time of the conversion and (2) the wrongful exercise of dominion or control by the defendant over the plaintiff's property, thus depriving the plaintiff of possession. *Fax Connection, Inc. v. Chevy Chase Bank, F.S.B.*, 73 Va. Cir. 263, (2007).

The Plaintiff in this instant case is Wat Lao Buddhavong, Inc. The funds removed from the donation boxes, $1,523, were deposited into an account at the United Bank in the name of Wat Lao Buddhavong, Inc. on or about September 23, 2019 See **EXHIBIT D DECLARTION OF KHAMLA STEVENS** attached hereto and incorporated herein by this reference. The $1,523 remained in that account until abbot Bounmy Kittithammavanno closed the account on November 8, 2019 . It is believed that money was given to the associate abbot Chandaphone Chakkavarro based upon a video he posted online. At all times the $1,523 remained in the United Bank Account under the name of Wat Lao Buddhavong and was under its dominion, possession, and control. The board of directors pursuant to the operating Bylaws could have withdrawn and expended the funds in any manner they desired which is evidence by the fact that abbot Bounmy Kittithammavanno was able to withdraw the funds and close the account. Thus, the ownership of the funds is not in

question. Additionally, Wat Lao Buddhavong was not deprived of ownership or control. Furthermore, the removal and deposit of these funds was based upon the Defendants' actions as newly elected board of directors and, thus, was not an unlawful exercise of dominion or control.

In one case, falsely opening an account in the name of a different entity and directing condominium owners to send payment was not sufficient to sustain a claim of conversion. In *Condominium Services, Inc.* after a management contract had ended, the management firm opened a bank account by falsely representing authorization from the other party to do so and then directed the unit owners of this condominium to send money owed to the Owners' Association to the condominium service company. Because the management agreement had ended, the alleged act referenced above did constitute an independent willful tort of conversion. *Condominium Services, Inc. v. First Owners' Ass'n.*, 281 Va. 561, 709 S.E.2d 163 (2011). Unlike, the defendant above, the Defendants in the instant case did not falsely open an account in a deceptive manner and request donations be made to them. Rather, the Defendants, based upon authority granted as being newly elected board members, deposited donations into a bank account under the name of Wat Lao Buddhavong, Inc and therefore, the claim of conversion should be dismissed.

Furthermore, Plaintiff does allege with specificity the amount of money it believes was converted. This lack of specificity is fatal to its claim. Finally, cash and monetary amounts may only be part of a conversion claim in very limited and specific situations. In order for monetary claim for conversion to be sustained, the money must be part of a segregated or identifiable fund. Here because the funds were not part of a separate or segregated fund but were rather cash from a donation box, a claim of conversion cannot be sustained.

Therefore, the claim of conversion must be dismissed.

V. PLAINTIFF'S CLAIMS FOR INJUNCTIVE RELIEF SHOULD BE DISMISSED.

"[T]he granting of an injunction is an extraordinary remedy and rests on the sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case." *Preferred Systems Solutions, Inc. V. GP Consulting, LLC GP*, 284 Va. 382, 732 S.E.2d 676 (2012). While the Virginia Supreme Court has not determined which factors a court must consider when evaluating a motion for a temporary or preliminary injunction, circuit courts throughout Virginia have consistently applied the four factors laid out by the Supreme Court in *Winter v. Nat'l Res. Def. Council, Inc.*, 129 S. Ct. 365 (2008). See *Fame v. Allergy & Immunology, P.L.C.*, 91 Va. Cir. 66 (2015) (noting lack of Virginia precedent and applying Winter factors). In accordance with that test, Virginia courts considering motions for temporary or preliminary injunctions consider whether the plaintiff has established: (1) a likelihood of success on the merits, (2)likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of the equities tips in favor of relief, and (4) that an injunction is in the public interest. Winter 555 U.S. at 20. *See also* Va. Code § 8.01-628 ("No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity.").

Although it is unclear, Plaintiff is possibly seeking injunctive relief to stop the Defendants' continued demands for transparency and fair elections. Plaintiff cannot establish it is likely to prevail on the merits because Defendants' actions are constitutionally protected free speech and are protected by the Ecclesiastical Abstention Doctrine. Plaintiff can also not establish irreparable harm because its own actions are likely contributing to a decrease in donations, if any, and thus the second prong of the analysis cannot be satisfied. The third and fourth elements are also not sustainable as Defendants' actions are an attempt for financial transparency and fair elections and the balance of equities weighs in favor of the Defendants and the public interest in transparency.

Thus, Plaintiff's demand for injunctive relief should be dismissed.

VI. PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED FOR ITS DECLARATORY JUDGMENT CLAIM.

The declaratory judgment statute, Code § 8.01–184, provides:

> In cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, and other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

Therefore, a circuit court cannot acquire jurisdiction over a declaratory judgment action unless the proceeding involves an actual adjudication of rights. *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle Cnty. Bd. of Supervisors* ("Charlottesville Fitness "),285 Va. 87, 98, 737 S.E.2d 1, (2013) ("The prerequisites for jurisdiction . may be collectively referred to as the requirement of a 'justiciable controversy.' "). A justiciable controversy, for purposes of declaratory judgment, must involve "specific adverse claims, based upon present rather than future or speculative facts." *City of Fairfax v. Shanklin*, 205 Va. 227, 229, 135 S.E.2d 773, 775 (1964).

Plaintiff has not adequately alleged sufficient facts allow the court to establish a 'justiciable controversy' and therefore should be dismissed.

VII. PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED FOR ITS MALICIOUS PROSECUTION CLAIM.

The lawsuit file by Defendants was ultimately non-suited. Under Va. Code§ 8.01-271.1, a non-suited case cannot be the basis for a malicious prosecution claim, especially because the non-suit was without prejudice.

B. CONCLUSION

For the reasons stated above, Defendants are respectfully requesting the Court dismiss all claims in the underlying Complaint.

Dated this 2nd day of July, 2020.

Respectfully submitted,

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NOTICE OF SERVICE

Please take notice that a copy of the foregoing was mailed on the 2 day of July 2020 to:

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EXHIBIT A