

**IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS**

ANNE SCHLAFLY CORI, as a Director and the )  
Executive Director of Eagle Forum, et al., )

Plaintiffs, )

v. )

EDWARD R. MARTIN, JR., et al., )

Defendants, )

Cause No.: 2016MR000111

and )

EAGLE FORUM, an Illinois Not For Profit )  
Corporation, )

Nominal Defendant. )

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION**

Plaintiffs Anne Schlafly Cori, as a Director and the Executive Director of Eagle Forum; Eunie Smith, as a Director, the First Vice President and the acting President of Eagle Forum; Cathie Adams, as a Director and the Second Vice President of Eagle Forum; Carolyn McLarty, as a Director of Eagle Forum; Rosina Kovar, as a Director of Eagle Forum; and Shirley Curry, as a Director of Eagle Forum (collectively, the "Majority Directors") hereby submit the following Memorandum in Support of their Motion for a Temporary Restraining Order and/or a Preliminary Injunction (the "Majority Directors' Motion").

**INTRODUCTION**

The Majority Directors have filed their Verified Complaint seeking temporary, preliminary, and permanent injunctive relief, declaratory judgment, and damages. A true and accurate copy of the Verified Complaint is attached to the Majority Directors' Motion and

incorporated herein by reference. The Majority Directors seek a temporary restraining order and/or preliminary injunction, as discussed below, because irreparable harm will result if defendants Edward R. Martin, Jr. (“Martin”) and John F. Schlafly (“John Schlafly”) are not enjoined from perpetrating continued harm against nominal defendant Eagle Forum (the “Eagle Forum 501(c)(4)”) and the Majority Directors, by preventing the Eagle Board from exercising the powers of the Eagle Forum 501(c)(4) and otherwise fulfilling their fiduciary duties and obligations thereto; by precluding the Majority Directors from accessing the offices, property and assets of the Eagle Forum 501(c)(4) in performance of their duties and obligations; and by attempting to hold a rogue and improperly called election for a new At-Large Director of the Eagle Forum 501(c)(4), which directly conflicts with the Bylaws of the Eagle Forum (the “Bylaws”). As discussed herein, the Majority Directors have satisfied all of the prerequisites for, and should be granted, a temporary restraining order and/or preliminary injunction against Defendants immediately.

### **FACTUAL BACKGROUND**

#### **A. Eagle Forum History**

The Eagle Forum 501(c)(4) is a corporation formed under the Illinois General Not For Profit Corporation Act. The Eagle Forum 501(c)(4) is recognized as a tax-exempt nonprofit organization under 26 U.S.C. § 501(c)(4). Eagle Forum Education and Legal Defense Fund (the “Eagle Forum 501(c)(3)”) is a corporation formed under the Illinois General Not For Profit Corporation Act. The Eagle Forum 501(c)(3) is recognized as a tax-exempt nonprofit organization under 26 U.S.C. § 501(c)(3).

The Eagle Forum 501(c)(4) and Eagle Forum 501(c)(3) are part of a collaboration of entities (hereinafter, the “Eagle Forum Entities”) which enable conservative and pro-family men

and women to participate in the process of self-government and public policy so that America will continue to be a land of respect for family integrity, individual liberty, public and private virtue and private enterprise.

The Eagle Forum 501(c)(4), as a tax-exempt nonprofit organization under 26 U.S.C. § 501(c)(4), advances the causes shared amongst the Eagle Forum Entities on a national level through the funding of social welfare activities. The advocacy of the Eagle Forum 501(c)(4) is realized across the United States by the efforts of State Eagle Forums, which carry out activities in their respective states directed towards furthering the conservative purposes and principles of the Eagle Forum 501(c)(4). On the national level, the State Eagle Forums are aided by a national Board of Directors (the “Eagle Board”), which directs funds, other resources and citizen-volunteers to each of the State Eagle Forums’ efforts. Certain powers of the Eagle Board are necessarily invested in Officers—including a President—who are elected by, and serve at the discretion of, the Eagle Board.

The Eagle Forum 501(c)(4) is governed by its Bylaws. The Bylaws spell out the principles and purpose of the organization, and grant its Board of Directors with the authority to carry out its activities. The Bylaws state that “[a]ll powers of the organization shall be exercised by the Board of Directors, which may delegate to individual officers, to state presidents, or to committees, such powers as it deems fit, in addition to the powers specified in these Bylaws.” *See* Bylaws, Article Five, Section 1.

The Eagle Board currently consists of eleven (11) Directors: Plaintiffs Anne Schlafly Cori, Eunie Smith (“Smith”), Cathie Adams, Carolyn McLarty, Rosina Kovar (“Kovar”) and Shirley Curry (“Curry”), who constitute the Majority Directors; defendant John Schlafly; and non-parties Phyllis Schlafly, Andy Schlafly, LaNeil Wright Spivy and Kathleen Sullivan. The

Majority Directors include two founding members of the Eagle Forum 501(c)(4) with over forty (40) years of service to the mission of the Eagle Forum Entities, a member that has been involved with Eagle Forum Entities for over thirty (30) years, and other members who have served in leadership positions for the various State Eagle Forums for many years.

On January 31, 2015, the Eagle Board elected Edward R. Martin, Jr. (“Martin”) as President of the Eagle Forum 501(c)(4). At that same time, Martin was elected as President of the Eagle Forum 501(c)(3).

During Martin’s brief tenure, the Eagle Forum 501(c)(4) has experienced unprecedented chaos and division between its national presence, the State Eagle Forums and its membership base. Moreover, as President of the Eagle Forum 501(c)(4) and the Eagle Forum 501(c)(3), Martin has failed to delineate the scope of his authority and duties for each entity. His failure to set forth any structure or delineation has caused the respective powers, duties, assets and governing responsibilities of both entities to be blurred.

**B. Board Meeting of April 11, 2016**

In an effort to salvage the Eagle Forum 501(c)(4)’s mission and reputation, the Eagle Board properly convened on April 11, 2016 via telephone conference (the “Board Meeting”) and successfully passed seven motions (the “Seven Successful Motions”):

- (1) The removal of Ed Martin as the President of Eagle Forum 501(c)(4);
- (2) The authorization of Anne Schlafly Cori and Smith to transact business with respect to the Eagle Forum 501(c)(4)’s accounts with banks and other financial institutions, such as investment advisors and stock brokers, the revocation of all prior Eagle Forum 501(c)(4) authorizations with banks and other financial institutions, the signature authorization of Anne Schlafly Cori, Smith and non-

party Lois Linton (“Linton”) to withdraw funds from the Eagle Forum 501(c)(4)’s accounts with banks and other financial institutions, the authorization of Anne Schlafly Cori to notify each bank and other financial institution, with whom Eagle Forum 501(c)(4) has an account, that Anne Schlafly Cori, Smith and Linton are the only individuals with signatory authority on each such accounts;

- (3) The adoption of a conflict of interest policy whereby no employee of Eagle Forum 501(c)(4) may also serve as a Director;
- (4) The authorization of a complete and independent audit of Eagle Forum 501(c)(4);
- (5) The authorization of Anne Schlafly Cori to pursue a liability insurance contract covering Directors of Eagle Forum 501(c)(4);
- (6) The adoption of the resolution that (1) neither the Runnymede Law Group, nor any other law firm, has been engaged to represent Eagle Forum 501(c)(4), (2) Smith shall advise the Runnymede Law Group that it does not represent Eagle Forum 501(c)(4), and it shall not hold itself out to any third party as the Eagle Forum 501(c)(4)’s legal counsel, and (3) only the Eagle Board shall have the authority to engage legal counsel to represent Eagle Forum 501(c)(4); and
- (7) The resolution that Martin’s removal as President of Eagle Forum 501(c)(4) was effective immediately as of April 11, 2016.

On April 11, 2016, immediately following the Board Meeting, Smith sent letters: (1) to the Runnymede Law Group, advising them that they were not authorized to represent the Eagle Forum 501(c)(4); (2) to Martin, informing him of his removal as President; and (3) to the staff and employees of the Eagle Forum 501(c)(4), advising them of Martin’s removal as President.

**C. Aftermath of April 11, 2016 Board Meeting**

Despite the fact that Martin's removal as President of the Eagle Forum 501(c)(4) was immediate, Martin and John Schlafly have nonetheless proceeded in willful defiance of the power and authority of the Eagle Board, as set forth in the Bylaws, by, among other things, (1) disregarding the actions and resolutions of the Eagle Board on April 11, 2016; (2) refusing to acknowledge the termination of Martin, and (3) preventing the Eagle Board, and in particular Smith, in her capacity as acting President, and Anne Schlafly Cori, in her capacity as Executive Director, from fulfilling their fiduciary obligations to the Eagle Forum 501(c)(4), the State Eagle Forums and the mission shared amongst the Eagle Forum Entities.

On April 12, 2016, Martin appeared on the Mark Reardon Show on KMOX and declared "I am still president." Moreover, since his removal as President of the Eagle Forum 501(c)(4), Martin has used the social media accounts of the Eagle Forum 501(c)(4), the State Eagle Forum for the State of Missouri and Phyllis Schlafly to engage in a campaign to maliciously attack and disseminate misinformation about the Majority Directors and the Board Meeting. As part of this campaign, Martin has personally authored content which he has nonetheless styled as information from Phyllis Schlafly, the State Eagle Forum for the State of Missouri and the Eagle Forum 501(c)(4).

By refusing to relinquish control of the social media accounts associated with the Eagle Forum 501(c)(4), Martin is preventing Smith, Anne Schlafly Cori and the Majority Directors from discharging their duties as the Eagle Board, including the duty "[t]o educate, inform, instruct, and train the public on current national and local subjects beneficial to the community."

Finally, by using social media accounts to attack and disparage the Majority Directors and disseminate disinformation regarding the Board Meeting, Martin has damaged the name and

reputation of “Eagle Forum” and injected scandal and further discord into the Eagle Forum 501(c)(4) and the other Eagle Forum Entities.

**D. John Schlafly has Denied Access to Eagle Forum Property**

Martin and John Schlafly, individually and jointly, have prevented Smith, Anne Schlafly Cori and the rest of the Majority Directors from accessing the offices of the Eagle Forum 501(c)(4) and/or the property of the Eagle Forum 501(c)(4), including corporate bookkeeping, mailing lists, social media accounts, e-mail addresses and the “eagleforum.org” domain name. Absent such access, Smith, Anne Schlafly Cori and the Majority Directors are unable to fulfill their fiduciary obligations to the donors, mission and members of the Eagle Forum 501(c)(4).

**E. Denial of Access to Eagle Forum 501(c)(4) Bank Accounts**

On April 12, 2016, Anne Schlafly Cori went to the Alton branch of U.S. Bank in order to obtain signatory authority for herself, Smith and Linton,<sup>1</sup> as authorized by the Second Successful Motion, Anne Schlafly Cori presented a representative of U.S. Bank with a copy of the Second Successful Motion, a certification of the Second Successful Motion provided by Kovar, and copies of her, Smith’s and Linton’s signatures.

After contacting U.S. Bank’s internal legal compliance department, the U.S. Bank representative informed Anne Schlafly Cori that, in order for her to obtain signatory authority for herself, Smith and Linton on the U.S. Bank Account, she would need to provide:

- a. a certified copy of minutes from the Board Meeting; and

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<sup>1</sup> Non-party Linton is not a member of the Majority Directors and not a member of the Eagle Board.

- b. a court order declaring (1) that all prior signature authority for the U.S. Bank Account is revoked and (2) that Anne Schlafly Cori, Smith and Linton are the only individuals with signatory authority on the U.S. Bank Account.<sup>2</sup>

**F. The Improper Nomination and Call for Election of At-Large Director**

On April 18, 2016, correspondence was sent to the Eagle Board which purported to be from non-party Phyllis Schlafly. The correspondence requested nominations for the election of a new At-Large Director, to be submitted by 6:00 p.m. on April 19, 2016.

Under the Bylaws, the Eagle Board “shall nominate three members of [the Eagle Forum 501(c)(4)] for election to the position of At-Large Director.” However, such nomination is only authorized “[a]t the annual meeting [of the Eagle Board] in the odd-numbered years.” Under the Bylaws, any At-Large Director candidates must be nominated by the Eagle Board, and the next annual meeting of the Eagle Board, at which an At-Large Director may be nominated, will not take place until 2017.

In blatant disregard for the Bylaws, on or about April 22, 2016, Martin and/or John Schlafly organized and coordinated the mailing of fourteen thousand (14,000) ballots to an unknown group of Eagle Forum “supporters,” with the goal of holding an election for the At-Large Director of the Eagle Board. It is unclear how the three (3) candidates on the ballot were “nominated,” but they appear to have been hand-selected by Martin, John Schlafly and/or others without any input from the Eagle Board.

The Eagle Board as a whole has been kept in the dark and excluded from the process to finalize the nominees and hold the improper election. The Eagle Board never authorized an

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<sup>2</sup> Additionally, on April 19, 2016, Anne Schlafly Cori received an unsolicited notice from Fidelity Investments, which holds accounts for the Eagle Forum 501(c)(3) and the Eagle Forum 501(c)(4), notifying her that it was restricting those accounts from trading and withdrawals until it received a court order outlining who should be authorized on the accounts.



election for the At-Large Director. Further, the Eagle Board did not vote to select the three so-called nominees or otherwise have any input regarding their selection, as is required by the Bylaws. The Majority Directors have objected to this improper nomination and election. Kovar is currently the At-Large Director serving on the Eagle Board. This attempt to nominate, call for an election of, and elect a new At-Large Director is improper, is undertaken in violation of the Bylaws and represents a thinly-veiled attempt to undermine the Majority Directors, and Defendants should be enjoined from proceeding in this regard.

In light of the foregoing tortious acts of Martin and John Schlafly, and the presently underway proceedings which purport to seek the nomination of, and elect, a new At-Large Director to serve on the Eagle Board, the Majority Directors have named the Eagle Forum 501(c)(4) as a nominal defendant. To ensure that the Eagle Forum 501(c)(4)'s interests are safeguarded during the pendency of this case, the Majority Directors seek this Court's authorization to retain Andrew K. Carruthers and the law firm of HeplerBroom LLC to serve as independent counsel to the Eagle Forum 501(c)(4), to be paid out of funds from the Eagle Forum 501(c)(4).

### **ARGUMENT**

The Majority Directors seek a temporary restraining order and/or preliminary injunction to: (1) enjoin and restrain Martin from conducting any business on behalf of the Eagle Forum 501(c)(4) or holding himself out as the President of the Eagle Forum 501(c)(4) to any third party; (2) enjoin and restrain Defendants from interfering with or frustrating activities to implement the actions and resolutions of the Eagle Board at the Board Meeting convened on April 11, 2016; (3) enjoin and restrain Defendants from preventing the Majority Directors from accessing the offices of the Eagle Forum 501(c)(4) and/or the property of the Eagle Forum 501(c)(4); (4) declare that

all prior signatories on the U.S. Bank Account, the Fidelity Investments Account, the U.S. Bancorp Investments Account, and any other accounts owned by the Eagle Forum 501(c)(4) have been revoked; (5) declare that Anne Schlafly Cori, Smith and Linton shall be authorized on the U.S. Bank Account, the Fidelity Investments Account and the U.S. Bancorp Investments Account owned by the Eagle Forum 501(c)(4); (6) enjoin and restrain Defendants from attempting to nominate, call for an election of, or elect any candidate for the position of the At-Large Director to serve on the Eagle Board in 2016; and (7) authorize the Majority Directors to retain Andrew K. Carruthers and the law firm of HeplerBroom LLC to serve as separate and independent legal counsel to the Eagle Forum 501(c)(4), to be paid by the Eagle Forum 501(c)(4), in connection with the present action.

Preliminary injunctive relief—whether in the form of a temporary restraining order or a preliminary injunction—“is within the discretion of the court, and, since a preliminary injunction is granted before a hearing is conducted on the merits of a case, the justification for the issuance of the injunction can be found principally in the sufficiency of the complaint.” *Fischer v. Brombolich*, 207 Ill. App. 3d 1053, 1064, 566 N.E.2d 785, 792 (5th Dist. 1991); *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill. App. 3d 353, 358, 453 N.E.2d 740, 743 (1st Dist. 1983) (finding the sworn allegation of plaintiff’s verified complaint “sufficient to warrant the issuance of a temporary restraining order”).

Parties seeking a temporary restraining order or preliminary injunction need to demonstrate the existence of four factors before injunctive relief will be granted: “(1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) an inadequate remedy at law, and (4) a likelihood of success on the merits.” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1113, 920 N.E.2d 651,

658 (5th Dist. 2009) (applying four factors to preliminary injunction); *see also Tierney v. Vill. of Schaumburg*, 182 Ill. App. 3d 1055, 1059, 538 N.E.2d 904, 907 (1st Dist. 1989) (applying four factors to a temporary restraining order). Parties seeking injunctive relief must also demonstrate that (5) the requested injunctive relief preserves the status quo, and (6) the requested injunctive relief balances the hardships in favor of the public interest, or that such a balancing is excused by the conduct sought to be enjoined. *Kalbfleisch*, 396 Ill. App. 3d at 1118, 920 N.E.2d at 663; *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill. App. 3d at 356, 453 N.E.2d at 742.

**I. The Majority Directors Have A Clearly Ascertained Right In Need Of Protection.**

“For injunctive relief to be proper, the petitioner must establish a clearly identifiable right which needs protection.” *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 405, 581 N.E.2d 1219, 1224 (4th Dist. 1991). The Eagle Forum Bylaws state that “[a]ll powers of the organization shall be exercised by the Board of Directors, which may delegate to individual officers, to state presidents, or to committees, such powers as it deems fit, in addition to the powers specified in these Bylaws.” *See* Bylaws, Article Five, Section 1. As Directors serving on the Eagle Board, the Majority Directors are fiduciaries of the Eagle Forum 501(c)(4). *H. Vincent Allen & Associates, Inc. v. Weis*, 63 Ill. App. 3d 285, 291, 379 N.E.2d 765, 769 (1st Dist. 1978) (“An imposing body of legal authority has recognized that officers or directors of a corporation owe a fiduciary duty toward it.”). Not only do the Majority Directors have a right to protect the Eagle Forum 501(c)(4), they have an obligation to do so and interference with this obligation exposes the Majority Directors to liability for failing to discharge their duties.

The Verified Complaint alleges that (1) the Majority Directors have been denied access to Eagle Forum Property, including the bank accounts that allow the Eagle Forum 501(c)(4) to operate and the mailing lists that allow Eagle Forum 501(c)(4) to communicate with its

membership. Furthermore, Martin, the former President of the Eagle Forum 501(c)(4), currently holds himself out as the *current* President, still draws a salary as if he were the *current* President, and has tarnished the name and reputation of the Eagle Forum 501(c)(4). Finally, Defendants are attempting to conduct proceedings to nominate and elect a new At-Large Director of the Eagle Board, all in direct contravention of the Bylaws and to the detriment of the mission, assets and donations of the Eagle Forum 501(c)(4).

The Majority Directors' clearly identifiable interest in the Eagle Forum 501(c)(4) is in need of protection because the Eagle Forum 501(c)(4), which the Majority Directors are charged to protect, is itself in need of protection. *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 405, 581 N.E.2d 1219, 1224 (4th Dist. 1991) (“[A] threatened business interest is an identifiable right which may be protected by injunctive relief.”); *Eagle Books, Inc. v. Jones*, 130 Ill. App. 3d 407, 411, 474 N.E.2d 444, 447 (4th Dist. 1985). In light of the foregoing, the Majority Directors have done more than “raise[] a ‘fair question’ about the existence of [their] right” and, accordingly, have established this factor for their request for injunctive relief.

## **II. Absent Immediate Injunctive Relief, The Eagle Forum 501(c)(4) And The Majority Directors Will Suffer Irreparable Harm.**

“An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard.” *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286, 422 N.E.2d 953, 957 (1st Dist. 1981); *see Fischer v. Brombolich*, 207 Ill. App. 3d 1053, 1065, 566 N.E.2d 785, 793 (5th Dist. 1991) (“[I]rreparable harm occurs only where monetary damages cannot adequately compensate the injury or where the injury cannot be measured by pecuniary standards.”). Exposing the Majority Directors to liability by obstructing their fiduciary obligations towards the Eagle Forum 501(c)(4), as well as its mission, officers and employees,

cannot be adequately compensated by monetary damages, nor could any such injury “be adequately measured by pecuniary standards.” *Best Coin-Op, Inc. v. Old Willow Falls Condo. Ass’n*, 120 Ill. App. 3d 830, 834, 458 N.E.2d 998, 1001 (1st Dist. 1983). Absent their action for accounting, the Majority Directors cannot determine the extent to which the assets and property of the Eagle Forum 501(c)(4), including donations and membership dues, have been damaged. *See Eagle Books*, 130 Ill. App. 3d at 411, 474 N.E.2d at 447 (finding “the loss of customers and sales and the threat of the continuation of such losses” constituted irreparable injury). This is to say nothing of the damage to the Eagle Forum 501(c)(4)’s name and reputation in the eyes of its membership and the public at large. *See Best Coin-Op, Inc. v. Old Willow Falls Condo. Ass’n*, 120 Ill. App. 3d 830, 835, 458 N.E.2d 998, 1001 (1st Dist. 1983) (noting that irreparable harm “is found where the injury in question is to the reputation or good will of a business”); *see also* Bylaws, Article 1, Section 1 (“The Board of Directors shall protect the name ‘Eagle Forum...’”). There is no way to quantify or determine to the appropriateness of a remedy at law in this case. In light of the foregoing, the Majority Directors have clearly established irreparable harm or injury.

### **III. The Majority Directors Have No Adequate Remedy At Law.**

“To be an adequate remedy at law which will deprive equity of its power to grant injunctive relief, the remedy must be concise, complete, and provide the same practical and efficient resolution as the equitable remedy would provide.” *Id.* Even where ultimate recovery may be a money judgment, “a preliminary injunction may be granted when damages are difficult to quantify *at the time of the hearing.*” *Eagle Books*, 130 Ill. App. 3d at 411, 474 N.E.2d at 448 (emphasis added).

As an initial matter, the Verified Complaint asserts claims for damages *and* equitable remedies (accounting and declaratory judgment) against Defendants. Even if the Majority Directors' claims were limited solely to damages, such damages are presently incapable of being quantified. Indeed, much of the harm caused by Martin and John Schlafly to the Eagle Forum 501(c)(4) is immeasurable. In addition, a remedy at law would not provide the same practical and efficient resolution as would a preliminary injunction. The Majority Directors are seeking to enjoin Defendants from further breaching their fiduciary obligations under the Eagle Forum 501(c)(4)'s Bylaws and preventing the Majority Directors from fulfilling their fiduciary obligations to the Eagle Forum 501(c)(4), until a hearing on the merits can be held. As a categorical matter, a money judgment cannot provide full and adequate relief for the harm set forth in the Verified Complaint. Only temporary, preliminary and permanent injunctive relief will stop the damage inflicted by the Defendants. In light of the foregoing, the Majority Directors have established this factor to support their claim for injunctive relief.

#### **IV. The Majority Directors Are Likely To Succeed On The Merits Of Their Underlying Claims.**

“To demonstrate a likelihood of success on the merits, a party need not make out a case that would necessarily require relief at the final hearing.” *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 174, 773 N.E.2d 1155, 1164 (1st Dist. 2002). A party need only raise “a *fair question* as to the existence of the right or interest claimed and, *probably*, that it will be entitled to injunctive relief if its allegations are proved.” *Agrimerica, Inc. v. Mathes*, 170 Ill. App. 3d 1025, 1035, 524 N.E.2d 947, 954 (1st Dist. 1988) (emphases added).

Here, from the allegations set forth in the Verified Complaint, the Majority Directors have pled *prima facie* cases for: (1) a breach of fiduciary duty claim against Martin; (2) a breach of fiduciary duty claim against John Schlafly; and (3) an inducement of breach of fiduciary duty

claim against Martin. *Neade v. Portes*, 193 Ill. 2d 433, 444, 739 N.E.2d 496, 502 (2000) (“[T]o state a claim for breach of fiduciary duty, it must be alleged that a fiduciary duty exists, that the fiduciary duty was breached, and that such breach proximately caused the injury of which the plaintiff complains.”); *Alpha Sch. Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 738, 910 N.E.2d 1134, 1151 (1st Dist. 2009) (“Illinois recognizes a cause of action for a third party's inducement of a breach of fiduciary duty, in which a third party who colludes, induces, or participates with a fiduciary in committing a breach of duty, and obtains the benefits from that breach, is directly liable to the aggrieved party.”). Moreover, the verified allegations demonstrate (1) the Majority Directors’ need for an accounting; (2) that under the Articles and Bylaws, the Board Meeting was lawfully called and conducted, and (3) the Seven Successful Motions passed in the Board Meeting were substantively and procedurally proper exercises of the Eagle Board’s power and authority.

The allegations set forth in the Verified Complaint demonstrate a *fair question*, with every allegation taken as true, that the Majority Directors will much-more-than-probably be entitled to the injunctive relief sought. *See Agrimerica*, 170 Ill. App. 3d at 1035, 524 N.E.2d at 954 (1st Dist. 1988). In light of the foregoing, the Majority Directors have established this factor for their request for injunctive relief.

#### **V. The Requested Injunctive Relief Preserves The Status Quo.**

“A TRO's purpose is to preserve the status quo until the court conducts a hearing to determine whether it should grant a preliminary injunction.” *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (5th Dist. 2010); *Kalbfleisch*, 396 Ill. App. 3d at 1117, 920 N.E.2d at 662 (“Under Illinois law, it is generally proper to issue a preliminary injunction that will preserve the status quo of the parties rather than alter it.”). While the status quo may mean a reversion to the state prior to the dispute, “sometimes it happens that the status quo is not a

condition of rest but, rather, is one of action and the condition of rest is exactly what will inflict the irreparable harm.” *Kalbfleisch*, 396 Ill. App. 3d at 1117, 920 N.E.2d at 662. Accordingly, the meaning of status quo is not simply inaction, but rather “the condition necessary to prevent a dissipation or destruction of the property in question.” *Id.* at 1118. The Majority Directors have alleged in their Verified Complaint that Defendants have engaged in, and continue to engage in, conduct that damages the Majority Directors, the rest of the Eagle Board and the interests and assets of the Eagle Forum 501(c)(4). Accordingly the status quo in this case—the condition of least harm—is: (1) the sustained removal of Martin as President of the Eagle Forum 501(c)(4); (2) allowing the Majority Directors to implement, without obstruction, the actions and resolutions taken by the Eagle Board on April 11, 2016; (3) allowing Smith to continue to serve as acting President of the Eagle Forum 501(c)(4); (4) allowing the Majority Directors access to the offices, property and assets of the Eagle Forum 501(c)(4); and (5) the prohibition of the current proceedings of the Eagle Forum 501(c)(4) that purport to replace the At-Large Director. Accordingly, the injunctive relief sought by the Majority Directors preserves the status quo.

**VI. A Balancing Of The Hardships Favors Granting The Majority Directors’ Request For Injunctive Relief. Even Were This Not The Case, Defendants’ Willful And Tortious Conduct In Violation Of Majority Directors’ Rights Excuses This Requirement.**

“In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction.” *Schweickart v. Powers*, 245 Ill. App. 3d 281, 291, 613 N.E.2d 403, 410-11 (2d Dist. 1993). As an initial matter, “[t]his general rule, however, is not applied where the violation is willful, where the existence of a private right and the violation thereof are clear, or where the act complained of is tortious in itself.” *Kalbfleisch*, 396 Ill. App. 3d at 1119, 920 N.E.2d at 664. The Majority Directors have established a *prima facie* case that the conduct of Martin and John Schlafly, which conduct they



presently seek to restrain and enjoin, is willful, tortious and in clear violation of the Majority Directors' rights. In the face of such extreme conduct, this Court does not even need to consider the countervailing hardships of injunctive relief; Defendants have forfeited such consideration. *Barrett v. Lawrence*, 110 Ill. App. 3d 587, 593, 442 N.E.2d 599, 603 (1st Dist. 1982) (“[I]t has been recognized that there will be no balancing of equities where the violation is willful.”).

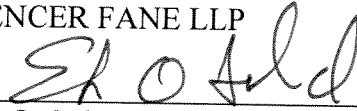
Even were this not the case—which the Majority Directors vehemently deny—the balancing of the hardships demonstrates that the requested injunctive relief favors the public interest. In the absence of injunctive relief in this case, the Majority Directors will continue to be blocked from accessing the offices of the Eagle Forum 501(c)(4) and/or the property of the Eagle Forum 501(c)(4); the Majority Directors will continue to be blocked from undertaking actions to implement the actions and resolutions of the Board Meeting convened on April 11, 2016; Martin will continue to flout the Majority Directors by continuing to conduct business on behalf of the Eagle Forum 501(c)(4); and Defendants will improperly purport to elect a new At-Large Director to the Eagle Board, in direct contravention of the Bylaws. By the time a hearing on the merits could be held in this case, Defendants will have undertaken so many actions under the guise of the Eagle Forum 501(c)(4), yet against its Bylaws and the authority of the Majority Directors, that even determining, let alone unwinding, their tortious conduct will be impracticable, if not impossible. The interests of the Majority Directors, and the harm of *not* granting the injunctive relief sought, far outweigh the interests of the only individual conceptually harmed by granting the relief sought: Martin, who, because of a vote of the Majority Directors of the Eagle Board, will no longer serve as President of the Eagle Forum 501(c)(4).

## CONCLUSION

For all of the reasons set forth in this Memorandum, the Majority Directors' Motion, and the Verified Complaint, the Plaintiffs have established a right to immediate equitable relief (1) enjoining and restraining Martin from conducting any business on behalf of the Eagle Forum 501(c)(4) or holding himself out as the President of the Eagle Forum 501(c)(4) to any third party; (2) enjoining and restraining Defendants from interfering with or frustrating activities to implement the actions and resolutions of the Board Meeting convened on April 11, 2016; (3) enjoining and restraining Defendants from preventing the Majority Directors from accessing the offices, property and assets of the Eagle Forum 501(c)(4); (4) declaring that all prior signatories on the U.S. Bank Account, the Fidelity Investments Account, the U.S. Bancorp Investments Account, and any other accounts owned by the Eagle Forum 501(c)(4) have been revoked; (5) declaring that Anne Schlafly Cori, Smith and Linton shall be authorized on the U.S. Bank Account, the Fidelity Investments Account and the U.S. Bancorp Investments Account owned by the Eagle Forum 501(c)(4); (6) enjoining and restraining Defendants from attempting to nominate, call for an election of, or elect any candidate for the position of the At-Large Director to serve on the Eagle Board in 2016; and (7) authorizing the Majority Directors to retain Andrew K. Carruthers and the law firm of HeplerBroom LLC to serve as independent counsel to the Eagle Forum 501(c)(4) as nominal defendant in the present action, to be paid by the Eagle Forum 501(c)(4).

Respectfully submitted,

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