

## **APPENDIX**

**APPENDIX**

**TABLE OF CONTENTS**

Appendix A Opinion in the United States Court of Appeals for the Eleventh Circuit (October 28, 2019) . . . . . App. 1

Appendix B Order in the United States Court of Appeals for the Eleventh Circuit (January 10, 2018) . . . . . App. 28

Appendix C Final Order of Dismissal in the United States District Court, Southern District of Florida (August 25, 2017) . . . . . App. 30

Appendix D Order in the United States District Court, Southern District of Florida (August 30, 2016) . . . . . App. 56

Appendix E The Charter & The Bylaws of the Democratic Party of the United States, as amended by The Democratic National Committee (August 28, 2015) . . . . . App. 66

Appendix F Motion to Amend Complaint Pursuant to 28 U.S.C. § 1653 . . . . . App. 120

    Exhibit A: Third Amended Complaint . . . . . App. 123

    Exhibit 1: Democratic National Committee Memorandum, dated May 26, 2015 . . . . App. 149

App. 1

---

**APPENDIX A**

---

[PUBLISH]

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**No. 17-14194**

**D.C. Docket No. 0:16-cv-61511-WJZ**

**[Filed October 28, 2019]**

---

CAROL WILDING, STANLEY RIFKEN,	)
SHARON CRAWFORD, WILLIAM SCOTT	)
FRANZ, DAVID PULASKI, MARY	)
JASMINE WELCH, JOSE ALBERTO	)
GONZALEZ, JANE ELLEN PLATTNER,	)
KIM MARIE HOULE, et al.,	)
Plaintiffs - Appellants,	)
	)
versus	)
	)
DNC SERVICES CORPORATION,	)
DEBORAH WASSERMAN SCHULTZ,	)
Defendants - Appellees.	)

---

Appeal from the United States District Court  
for the Southern District of Florida

(October 28, 2019)

Before JORDAN, GRANT and HULL, Circuit Judges.

JORDAN, Circuit Judge:

In his classic treatise on the United States and its political system, Alexis de Tocqueville famously remarked that “[t]here is almost no political question in the United States that is not resolved sooner or later into a judicial question.” Alexis de Tocqueville, *Democracy in America*, Vol. I, at 257 (U. Chicago Press 2000) [1835]. This case, which pits a political party against some of its supporters, confirms de Tocqueville’s reputation as an astute observer of American life.

The plaintiffs in this putative class action are donors to the Democratic National Committee, donors to the 2016 presidential campaign of Senator Bernie Sanders, and voters affiliated with the Democratic Party in various states. The defendants are the DNC and its former chairwoman (and current U.S. Representative) Deborah Wasserman Schultz. The plaintiffs essentially allege that during the 2016 Democratic presidential primaries the DNC and Ms. Wasserman Schultz improperly tipped the scales in favor of former Secretary of State Hillary Clinton, who was challenging Senator Sanders for the Democratic presidential nomination.

In their complaint against the DNC and Ms. Wasserman Schultz, the plaintiffs asserted a number of common-law and statutory claims, including fraud, negligent misrepresentation, and unjust enrichment. The district court dismissed all of their claims for lack of Article III standing, *see Wilding v. DNC Services Corp.*, 2017 WL 6345492 (S.D. Fla. 2017), and the plaintiffs appealed.

I

We set out the facts as alleged in the operative complaint, and accept them as true for purposes of our discussion. *See Wood v. Moss*, 572 U.S. 744, 755 n.5 (2014).

A

The Democratic Party charter states that its chair “shall exercise impartiality and evenhandedness as between the Presidential candidates and campaigns,” and is “responsible for ensuring” that the DNC’s national officers and staff also “maintain impartiality and evenhandedness during the Democratic Party Presidential nominating process.” First Amended Complaint at ¶ 159.

From September of 2015 through May of 2016, Ms. Wasserman Schultz and Holly Shulman, the DNC’s spokesperson, made public statements promising that the DNC would conduct a neutral and impartial primary process. First, on September 3, 2015, Ms. Wasserman Schultz was quoted in a *Politico* article as saying that she was committed to running a “neutral primary process.” Second, in *Daily Beast* and *Daily Mail Online* articles appearing in September and October of 2015, Ms. Shulman was quoted as saying that the DNC “runs an impartial primary process[.]” Third, in May of 2016, Ms. Wasserman Schultz told CNN and the Associated Press that she and the DNC remained neutral in the primary process. *See id.* at ¶ 160(a)–(d).

**B**

These statements of impartiality, according to the complaint, were false. The DNC was allegedly “biased in favor of one candidate—[Secretary] Clinton [ ]—from the beginning and throughout the process. The DNC devoted its considerable resources to supporting [Secretary] Clinton above any of the other Democratic candidates.” *Id.* at ¶ 161. And “[t]hrough its public claims of being neutral and impartial, the DNC actively concealed its bias from its own donors as well as donors to the campaigns of [Secretary] Clinton’s rivals, including [Senator] Sanders[.]” *Id.*

In June of 2016, someone using the name “Guccifer 2.0” published a number of DNC documents on a publicly accessible website. *See id.* at ¶ 165. The DNC claimed that those documents had been obtained by Russian government hackers who had penetrated its computer network. *See id.* at ¶¶ 163–64. Among the documents was a two-page memorandum (marked “confidential” and dated May 26, 2015) written to the DNC regarding the 2016 Republican presidential candidates. *See id.* at ¶ 166. This memorandum stated that the DNC’s goals in the coming months were to “frame the Republican field and the eventual nominee early and to provide a contrast between the GOP field and HRC [Secretary Clinton].” *Id.* at ¶¶ 166–67. The memorandum also suggested a strategy to “muddy the waters around ethics, transparency, and campaign finance attacks on [Senator Clinton].” *Id.* at ¶ 167. At the time this memorandum was purportedly written, the field for the Democratic presidential nomination included Secretary Clinton and Senator Sanders (who

## App. 5

had announced his candidacy in April of 2015), and there was “widespread speculation” that a number of others (e.g., Senator Elizabeth Warren) would soon enter the race. *Id.* at ¶ 168.

This memorandum, the plaintiffs claim, was not the only document showing the DNC’s favoritism towards Secretary Clinton. Other documents obtained by hackers included research apparently prepared by DNC staff and Secretary Clinton’s campaign staff relating to Secretary Clinton’s vulnerabilities, potential attacks, and policy positions, as well as “opposition research on the other Democratic candidates.” *Id.* at ¶ 170. In sum, the complaint alleges that, “in spite of” the Democratic Party’s charter and multiple public statements, the “DNC devoted its resources to propelling [Secretary] Clinton’s candidacy ahead of all of her rivals, even if it meant working directly against the interests of Democratic Party members, including [Senator] Sanders’ supporters.” *Id.* at ¶ 171.

## C

A number of the named plaintiffs made donations to the DNC in 2015 and 2016. Some of these plaintiffs donated money after at least some of the statements of impartiality made by Ms. Wasserman Schultz and Ms. Shulman and before the hacked documents were published in June of 2016. For example, Emma Young made donations to the DNC in December of 2015 and January of 2016, and Phyllis Criddle made donations to the DNC in May of 2016. *See id.* at ¶¶ 105, 109. All of the plaintiffs who donated money to the DNC or the Sanders campaign expressly alleged that they relied on

the defendants' false statements and omissions "to their injury." *Id.* at ¶¶ 188, 195.

Senator Sanders endorsed Secretary Clinton as the Democratic Party's presidential nominee on July 12, 2016. This allegation is not in the complaint, but we take judicial notice of this undisputed historical and political fact under Federal Rule of Evidence 201(b) (providing that a court "may judicially notice a fact that is not subject to reasonable debate"). *See Shahar v. Bowers*, 120 F.3d 211, 214 (11th Cir. 1997) (en banc) (explaining that a court can judicially notice "matters of political history, such as who was president in 1958").

## D

The plaintiffs filed suit against the DNC and Ms. Wasserman Schultz, invoking jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d). They asserted six state-law claims on behalf of three proposed classes: donors to the DNC (the DNC donor class); donors to the Sanders campaign (the Sanders donor class); and voters who registered as Democrats (the Democratic voter class). Both of the proposed donor classes alleged fraud (Count I), negligent misrepresentation (Count II), and violations of the District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code § 28-3904, which prohibits various unfair or deceptive trade practices (Count III). The proposed DNC donor class also alleged unjust enrichment (Count IV) and negligence (Count VI), the latter based on the DNC's alleged failure to provide donors with a secure computer system and network for the storing of their personal and financial information.



## App. 7

And the proposed voter class separately alleged breach of fiduciary duty (Count V). The plaintiffs sought various forms of relief, including compensatory and punitive damages, attorney's fees and costs, and a judgment declaring illegal and enjoining the defendants' alleged violations of the Democratic Party charter.

The DNC and Ms. Wasserman Schultz moved to dismiss the claims, arguing both that the plaintiffs lacked Article III standing and that they failed to state claims for relief. *See* Fed. R. Civ. P. 12(b)(1) & (6). The district court dismissed all six claims. It concluded that the plaintiffs had not satisfied the injury-in-fact element of Article III standing as to their negligence claim, the causation element as to their fraud, negligent misrepresentation, CPPA, and unjust enrichment claims, and the redressability element as to their fiduciary duty claim.<sup>1</sup>

## II

We begin with the claims of the DNC donor class and the Sanders donor class for fraud, negligent misrepresentation, violations of the CPPA, and unjust enrichment. All of these claims are based on the theory that the plaintiffs in these classes were harmed financially by the allegedly false statements concerning

---

<sup>1</sup> The plaintiffs do not challenge the district court's dismissal of their negligence claim for lack of Article III standing. That claim is therefore abandoned, and we do not express any views on it. *See Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004).

App. 8

the DNC's impartiality and neutrality in the Democratic primary process. We first address standing.

A

Our review of the district court's rulings on standing is plenary. *See Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702, 705 (11th Cir. 2014); *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005). As explained below, we conclude that some of the named plaintiffs representing the DNC donor class have adequately alleged standing, but that no named plaintiffs representing the Sanders donor class have done so.

Article III of the Constitution limits the jurisdiction of federal courts to “cases” and “controversies,” and “[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quotation marks omitted). To have standing, plaintiffs must therefore establish that they “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.*

The three elements of Article III standing—injury, causation, and redressability—must be supported “with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). *See also 31 Foster Children v. Bush*, 329 F.3d 1255, 1263 (11th Cir. 2003) (“How much evidence is necessary to satisfy [the standing requirement] depends on the stage of litigation at which the standing challenge is made.”).

At the “pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we ‘presum[e] that general allegations embrace those specific facts that are necessary to support the claim.’” *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (citation omitted). *See also Moody v. Warden*, 887 F.3d 1281, 1286 (11th Cir. 2018).

“At least one plaintiff must have standing to seek each form of relief requested in the complaint.” *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). *See also id.* at 1650 (standing must exist “for each claim and . . . for each form of relief that is sought”). Where, as here, the plaintiffs seek to proceed as a class, only one named plaintiff for each proposed class needs to have standing for a particular claim to advance. In other words, if “we have at least one individual plaintiff who has demonstrated standing,” we do not need to “consider whether the other . . . plaintiffs have standing to maintain the suit.” *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977). *See also Griffin v. Dugger*, 823 F.3d 1476, 1483 (11th Cir. 1987) (explaining that “a claim can[ ] be asserted on behalf of a class [if] at least one named plaintiff” has standing).

The plaintiffs, as noted, are asserting only state-law claims. But we have held that Article III’s standing requirements apply to state-law claims brought in federal court. *See Nicklaw v. Citimortgage, Inc.*, 839 F.3d 998, 1002–03 (11th Cir. 2016) (holding that the plaintiff lacked standing to assert claims under New York law because he did not allege that he sustained a concrete injury). *Accord Hagy v. Demers & Adams*, 882

F.3d 616, 624 (6th Cir. 2016); *Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 933–35 (8th Cir. 2012); *Cantwell v. City of Long Beach*, 241 F.3d 674, 683–84 (9th Cir. 2001); 13B Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3531.14, at 298 (3d ed. 2019 supp.); 15 Moore’s Federal Practice § 101.33, at 101-36.5 (3d ed. 2019). So the plaintiffs must satisfy Article III with respect to their claims.

## B

At least some of the named plaintiffs representing the DNC donor class and the Sanders donor class have sufficiently alleged injury-in-fact for their fraud, negligent misrepresentation, CPPA, and unjust enrichment claims. The named plaintiffs for the DNC donor class plaintiffs and the Sanders donor class allege that they suffered a financial loss resulting from their donations to the DNC and to the Sanders campaign. *See* First Amended Complaint at ¶¶ 2–109, 176–77. Such economic harm is a well-established injury for purposes of Article III standing. *See, e.g., Chevron Corp. v. Donziger*, 833 F.3d 74, 120 (2d Cir. 2016) (“Any monetary loss suffered by the plaintiff satisfies the injury-in-fact element.”). The alleged economic injury is also concrete and particularized, *see Lujan*, 504 U.S. at 560, because all named plaintiffs for the DNC donor class and the Sanders donor class alleged that they donated a specific amount of money and suffered a corresponding loss. Indeed, the complaint lists the precise dollar amount of each named plaintiff’s donation(s). *See Sweigert v. Perez*, 334 F. Supp. 3d 36, 42 (D.D.C. 2018) (holding, in a similar

case against the DNC and some of its officials, that the plaintiff's "alleged loss of \$30 [made as a donation to the Sanders campaign] is indeed sufficiently concrete, particularized, and actual to satisfy the injury-in-fact requirement of standing").

Causation is next. To satisfy Article III's causation requirement, the named plaintiffs must allege that their injuries are "connect[ed] with the conduct of which [they] complain." *Trump v. Hawai'i*, 138 S. Ct. 2392, 2416 (2018). *See also Duke Power Co. v. Evtl. Study Grp.*, 438 U.S. 59, 75 n.20 (1978) (explaining that Article III standing "require[s] no more than a showing that there is a substantial likelihood" of causation) (quotation marks omitted). Significantly, "[p]roximate causation is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014). "[E]ven harms that flow indirectly from the action in question can be said to be 'fairly traceable' to that action for standing purposes." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003). A plaintiff therefore need not show (or, as here, allege) that "the defendant's actions are the very last step in the chain of causation." *Bennett*, 520 U.S. at 168–69. *See also Moody*, 887 F.3d at 1285 (explaining that we "must not confuse weakness on the merits with absence of Article III standing") (citation and quotation marks omitted).

The named plaintiffs for the DNC donor class sufficiently pled causation. First, they alleged that Ms. Wasserman Schultz and Ms. Shulman made several

public (and allegedly false) statements between September of 2015 and May of 2016 affirming that the DNC would run the Democratic presidential primary process in an impartial way. These statements, as set forth in the complaint, were disseminated by prominent national media outlets. Second, some of the named plaintiffs representing the DNC donor class (Ms. Young and Ms. Criddle) alleged that they made direct donations to the DNC after some of the purportedly false statements were made and before the hacked documents were published. And they expressly alleged that they relied on the false statements to their detriment. Given these allegations, a fair inference is that at least some of the named plaintiffs representing the DNC donor class donated money to the DNC based on the allegedly false statements made by Ms. Wasserman Schultz and Ms. Shulman. *See Bennett*, 520 U.S. at 168. Stated differently, “[b]ecause Article III ‘requires no more than *de facto* causality,’ traceability is satisfied here.” *Dept. of Commerce v. New York*, 139 S.Ct. 2551, 2566 (2019) (citation omitted). *See also Mann v. Bahi*, 251 F. Supp. 3d 112, 119–20 (D.D.C. 2017) (holding that plaintiffs had standing to bring a CPPA claim because they alleged that the defendants made certain misrepresentations, that they relied on those misrepresentations, and that they suffered injury in the form of sub-par nursing services).

The same cannot be said for the named plaintiffs representing the Sanders donor class. The critical question is whether the plaintiffs’ injuries are fairly traceable to the defendants’ allegedly false statements, and on that question there are just too many

unknowns. Although they too alleged that they relied on the false statements to their detriment, not a single named plaintiff who contributed money to the Sanders campaign set out the dates (exact or approximate) of his or her donations. We do not know why the complaint omits the dates of all donations to the Sanders campaign, but the silence makes it impossible to know whether any named plaintiffs representing the Sanders donor class made their donations before or after the false statements were made, or before or after the publication of the hacked documents in June of 2016, or before or after Senator Sanders endorsed Secretary Clinton in July of 2016. These details matter. If, for example, those who donated money to the Sanders campaign did so before the false statements were made, the statements could not have caused them financial injury. *See Sweigert*, 334 F. Supp. 3d at 43 (explaining in a similar case that causation was not adequately pled because the complaint was devoid of allegations that the plaintiff donated money in reliance on anything the DNC or its officials said or did).

That leaves redressability for the DNC donor class with respect to their claims. At least some of the named plaintiffs representing the DNC donor class have satisfied that element. To have Article III standing, a plaintiff need not demonstrate anything “more than . . . a substantial likelihood” of redressability. *Duke Power Co.*, 438 U.S. at 79. *See also Made in the USA Found. v. United States*, 242 F.3d 1300, 1310–11 (11th Cir. 2001) (explaining that even partial relief suffices for redressability). The economic injuries here consist of the monetary donations made to the DNC based on the allegedly false statements about its impartiality during

the presidential primary process. If the plaintiffs were to prevail on their claims, they could obtain money damages in the form of full or partial refunds of their donations. Such relief would sufficiently redress their alleged economic harm for purposes of standing. *See, e.g., Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012) (“Plaintiffs allege a monetary injury and an award of compensatory damages would redress that injury.”); *America’s Cmty. Bankers v. FDIC*, 200 F.3d 822, 828–29 (D.C. Cir. 2000) (holding, in a suit challenging certain past FDIC bank assessments as improper, that receiving a refund of those assessments or a credit against future assessments would provide the plaintiffs with redress).

### III

Because of its rulings on standing, the district court did not reach the defendants’ Rule 12(b)(6) arguments that the claims in the complaint were substantively insufficient. The defendants press those arguments on appeal as an alternative basis for affirmance.

We may affirm the district court’s order of dismissal on any ground supported by the record. *See Krutzig v. Pulte Home Corp.*, 602 F.3d 1231, 1234 (11th Cir. 2010). Exercising de novo review, *see Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1303 (11th Cir. 2009), we hold that the fraud, negligent misrepresentation, CPPA, and unjust enrichment claims of the DNC donor class fail on the merits.<sup>2</sup>

---

<sup>2</sup> The plaintiffs argue that the defendants were barred from making Rule 12(b)(6) arguments because they had earlier filed a



Before addressing the claims, we confront the issue of the applicable law. The complaint is silent on what law governs each of the common-law claims, but in their reply brief the plaintiffs apply Florida law to their claims for fraud, negligent misrepresentation, and unjust enrichment. *See* Reply Br. for Appellants at 18–20 (citing Florida cases). Where necessary, we will do the same. *Cf. Sun Life Assurance Co. of Can. v. Imperial Premium Fin., LLC*, 904 F.3d 1197, 1208 (11th Cir. 2018) (“Under our precedents, a party waives its opportunity to rely on non-forum law where it fails to timely provide—typically in its complaint or the first motion in response when choice-of-law matters—the sources of non-forum law on which it seeks to rely.”).

#### A

Plaintiffs alleging fraud must “state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Rule 9(b)’s heightened pleading standard applies to negligent misrepresentation claims” asserted under Florida law because such claims sound in fraud. *See Lamm v. State Street Bank & Trust*, 749 F.3d 938, 951 (11th Cir. 2014). *See also Souran v. Travelers Ins. Co.*, 982 F.2d 1497, 1511 (11th Cir. 1993) (Cox, J., concurring in the result) (“Historically, in Florida an action for negligent

---

motion to dismiss for insufficient service of process under Rule 12(b)(5). The district court disagreed, construing that first-in-time motion as a motion to quash service of process. We agree with the district court’s characterization of the defendants’ motions. We therefore conclude that nothing barred the defendants from making their Rule 12(b)(6) arguments, and nothing prevents us from considering the sufficiency of the plaintiffs’ claims.

misrepresentation sounds in fraud rather than negligence.”).

“[P]ursuant to Rule 9(b), a plaintiff must allege: (1) the precise statements, documents, or misrepresentations made; (2) the time, place and person responsible for the statement; (3) the content and manner in which these statements misled [him]; and (4) what the defendants gained by the alleged fraud.” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1291 (11th Cir. 2010) (quotation marks omitted). A bare allegation of reliance on alleged misrepresentations, bereft of any additional detail, will not suffice under Rule 9(b). *See* 5A Charles A. Wright, Arthur R. Miller, & A. Benjamin Spencer, *Federal Practice & Procedure* § 1297, at 46 (4th ed. 2018) (“[S]imply alleg[ing] the technical elements of fraud without providing . . . underlying supporting details will not satisfy the rule’s pleading-with-particularity requirement.”).

The named plaintiffs representing the DNC donor class have not satisfied Rule 9(b)’s pleading requirements. Specifically, they have failed to allege with particularity the manner in which they relied on the defendants’ statements. For example, they did not allege on which of the statements they relied. *See* Recording of Oral Argument, Dec. 11, 2018, at 16:45–17:00 (“We did not allege . . . specific reliance on any given statement by any of our clients.”). So, although the general allegation of reliance is not fatal to the Article III standing of the DNC donor class, it falls short of Rule 9(b)’s heightened pleading standard. *See, e.g., Recreational Design & Constr., Inc. v. Wiss,*

*Janney, Elstner Assocs., Inc.*, 820 F. Supp. 2d 1293, 1303–04 (S.D. Fla. 2011) (dismissing a claim for negligent misrepresentation because, among other things, the allegation that the plaintiff “suffered pecuniary damages in justifiable reliance” on the defendants’ false statements was conclusory and lacked factual support). The claims for fraud and negligent misrepresentation are therefore dismissed.

## B

Whether a plaintiff has Article III standing is a question distinct from whether she has a statutory cause of action. *See Lexmark*, 572 U.S. at 126–28. We conclude, for a number of reasons, that the CPPA claim of the DNC donor class fails the plausibility standard set out in cases like *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007).

As noted, the CPPA prohibits various unfair or deceptive trade practices. *See* D.C. Code § 28-3904 (“It shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived or damaged thereby[.]”). It allows a “consumer [to] bring an action seeking relief from the use of a trade practice in violation of a law of the District [of Columbia].” D.C. Code § 28-3905(k)(1)(A). A “consumer,” in turn, is a person who “does or would purchase . . . or receive consumer goods or services.” D.C. Code § 28-3901(a)(2)(A). *See also Price v. Indep. Fed. Sav. Bank*, 110 A.3d 567, 574 (D.C. 2015) (“[I]n order to obtain redress under the CPPA, [the plaintiffs] must be ‘consumers,’ defined as ‘a person who . . . does or would purchase . . . or receive consumer goods or

services.”) (quoting § 28-3901(a)(2)(A)). As a result, “the CPPA does not cover all consumer transactions, and instead only covers trade practices arising out of consumer-merchant relationships.” *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015).

The named plaintiffs representing the DNC donor class made their donations directly to the DNC, which is a non-profit corporation. See First Amended Complaint at ¶¶ 103–09, 153. Because there are no allegations that any of them purchased or received any consumer goods or services, they are not “consumers” under the CPPA. See *Silvious v. Coca-Cola Co.*, 893 F. Supp. 2d 233, 236 (D.D.C. 2012) (prisoner who had not purchased Coca-Cola was not a “consumer” under the CPPA and could not sue the soft-drink’s manufacturer for fraudulent labeling); *Slaby v. Fairbridge*, 3 F. Supp. 2d 22, 27 (D.D.C. 1998) (person whose research proposals were rejected by a federal agency was not a “consumer” under the CPPA because her claim did not arise out of the purchase or receipt of consumer goods or services).

We note, as well, that the DNC is not subject to liability under the CPPA for the conduct set out in the complaint. As the plaintiffs alleged, the DNC is a non-profit entity, and the CPPA limits the liability of non-profit organizations: “An action brought . . . against a non-profit organization shall not be based on membership in such organization, membership services, training or credentialing services, . . . or any other transaction, interaction, or dispute not arising from the purchase or sale of consumer goods or services in the ordinary course of business.” D.C. Code § 28-

3905(k)(5). In the words of the D.C. Circuit, “the available evidence suggests that the D.C. Council acted specifically to shield non-profit organizations from statutory liability for membership-related disputes.” *In re APA Assessment Fee Litig.*, 766 F.3d 39, 53 (D.C. Cir. 2014). Here the complaint frames a dispute between the DNC and some of its supporters concerning organizational behavior. Because there are no allegations that the DNC acted as a merchant or sold or provided consumer goods and services to the plaintiffs, the CPPA claim fails.<sup>3</sup>

### C

The elements of an unjust enrichment claim in Florida are “a benefit conferred upon a defendant by the plaintiff, the defendant’s appreciation of the benefit, and the defendant’s acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof.” *Fla. Power Corp. v. City of Winter Park*, 887 So. 2d 1237, 1241 n.4 (Fla. 2004). “In Florida, a claim for unjust enrichment is an equitable claim based on a legal fiction which implies a contract as a matter of law even though the parties to such an implied contract never indicated by deed or word that an

---

<sup>3</sup> The plaintiffs argue that the members of the Sanders donor class are “consumers” within the meaning of the CPPA because they made their contributions to the Sanders campaign through ActBlue, a political action committee which charges a 3.95% fee for processing services on each donation. *See* Reply Br. for Appellants at 22–23. We do not address this argument because, as we have explained, the named plaintiffs representing the Sanders donor class lack Article III standing.

agreement existed between them.” *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 880 (Fla. Dist. Ct. App. 2010) (citation omitted).

The DNC and Ms. Wasserman Schultz argue that the unjust enrichment claim of the DNC donor class fails because the complaint does not allege facts which imply a contract as a matter of law, which they say is required in Florida. They also contend that contributions to political campaigns are not contracts, express or implied, and assert that courts have rejected similar unjust enrichment claims. *See* Br. for Appellees at 29–30 (citing *IberiaBank v. Coconut 41, LLC*, 984 F. Supp. 2d 1283, 1296 (M.D. Fla. 2013), *aff’d*, 589 F. App’x 479 (11th Cir. 2014), and *Found. for Developmentally Disabled, Inc. v. Step by Step Early Childhood Educ. & Therapy Ctr.*, 29 So. 3d 1221, 1227 (Fla. Dist. Ct. App. 2010)).

Instead of responding to these arguments, and addressing the cases cited by the defendants, the plaintiffs merely set out the elements of an unjust enrichment claim and say—without any elaboration—that they have alleged these elements. *See* Reply Br. for Appellants at 23–24. That conclusory assertion, “without supporting arguments and authority,” *Sappuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014), is the same response that the plaintiffs submitted in the district court, *see* D.E. 48 at 15, and fails to address the defendants’ arguments.

We agree with the defendants that the plaintiffs in the DNC donor class have failed to state a claim for unjust enrichment. Under Rule 8, a complaint must

allege sufficient underlying facts to make a claim plausible, and the mere formulaic recitation of elements or legal conclusions will not suffice. *See, e.g., Twombly*, 550 U.S. at 555–56. And that pleading standard applies to state-law claims litigated in federal court. *See Palm Beach Golf Center-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1259–60 (11th Cir. 2015). The unjust enrichment claim here contains no factual allegations explaining (a) why Florida law would deem it necessary or appropriate to imply a contract between the DNC and those who contributed money to it, or (b) why it would be inequitable for the DNC to retain the donations made by the members of the DNC donor class. For example, we do not know if the named plaintiffs in the DNC donor class gave money to the DNC to assist with a Democratic presidential primary they believed would be impartial, or to support Democratic candidates running for other offices throughout the country, or to fund projects and policies advanced by the DNC. Why the members of the DNC donor class donated money is, in this context, important. Had the plaintiffs in the DNC donor class alleged that they gave money to the DNC in order to support an impartial presidential primary, then we would be better able to evaluate whether it is plausible that a contract could or should be implied under Florida law, and whether the DNC’s retention of the donations was inequitable. Absent any allegations as to the reasons for their donations, the plaintiffs have not made out a plausible unjust enrichment claim under Florida law.

#### IV

The plaintiffs in the Democratic voter class separately alleged a breach of fiduciary duty by the DNC and Ms. Wasserman Schultz. As we explain, these plaintiffs have failed to allege an injury-in-fact sufficient to confer Article III standing.

None of the plaintiffs in the Democratic voter class allege that they made monetary contributions to the DNC. *See* First Amended Complaint at ¶¶ 110–51, 178. So, unlike the claims asserted on behalf of the DNC and Sanders donor classes, the fiduciary duty claim does not involve an allegation of direct (or even indirect) economic harm. *Cf. Fleming v. Charles Schwab Corp.*, 878 F.3d 1146, 1151 (9th Cir. 2017) (holding that investor’s allegation of higher execution prices for trades established injury-in-fact for a breach of fiduciary duty claim).

In their brief, the plaintiffs assert that “[v]iolations of common law rights protected by the common law of torts and restitution are sufficient for standing purposes.” Br. for Appellants at 13 (quoting *United States v. Real Property, All Furnishings Known as Bridwell’s Grocery*, 195 F.3d 819, 821 (6th Cir. 1999)). There is admittedly some support for the notion that the mere violation of a state-law right satisfies Article III even in the absence of an identifiable injury. *See FMC Corp. v. Boesky*, 852 F.2d 981, 993 (7th Cir. 1988) (plurality opinion: “Properly pleaded violations of state-created rights . . . must suffice to satisfy Article III’s injury requirement.”). But our precedent is to the contrary. We require plaintiffs asserting violations of state-created rights to demonstrate a concrete injury;



the defendant's violation of those rights is not enough. See *Nicklax*, 839 F.3d at 1002–03. Cf. *Trustees of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 569 (2d Cir. 2016) (“[A] breach of fiduciary duty under ERISA in and of itself does not constitute an injury in fact sufficient for constitutional standing.”) (citation omitted).

The plaintiffs in the Democratic voter class do not allege any injury resulting from the defendants' alleged breaches of their fiduciary duty. The complaint says only that the plaintiffs in the Democratic voter class were “proximately damaged” by the alleged breaches. See First Amended Complaint at ¶ 215. Indeed, the plaintiffs conceded at oral argument that the complaint does not specify any resulting injuries. See Recording of Oral Argument, Dec. 11, 2018, at 2:20–2:45 (“The complaint does not, with respect to the fiduciary duty claim, spell out the nature of the damages.”). That concession, which confirms the complaint's deficiencies, is fatal to the standing of the plaintiffs in the Democratic voter class. Cf. *DiMaio v. Democratic Nat'l Comm.*, 520 F.3d 1299, 1302 (11th Cir. 2008) (Florida Democratic voter who claimed that the DNC would violate his Article II and Fourteenth Amendment rights by not seating delegates from Florida at the Democratic National Convention failed to plead the invasion of a legally protected right because, among other things, he failed to allege that he had cast a ballot in the Florida Democratic Primary).<sup>4</sup>

---

<sup>4</sup> Given our conclusion that the plaintiffs in the Democratic voter class did not adequately allege injury-in-fact, we need not and do not address the redressability concerns articulated by the district court. See *Wilding*, 2017 WL 6345492, at \*6.

When pressed at oral argument to clarify the nature of their injuries, the plaintiffs suggested two possible ones: a reduction in the “value” of the DNC, and harm to the “viability” of the Democratic Party as a participant in national politics. *See* Recording of Oral Argument, Dec. 11, 2018, at 5:15–7:45. But even assuming that those injuries would suffice, their articulation comes too late. The plaintiffs’ complaint must contain “general factual allegations of injury resulting from the defendant[s]’ conduct,” *Bennett*, 520 U.S. at 168, and that complaint cannot be supplemented at oral argument. Where, as here, a complaint is facially deficient, a court “lacks the power to create jurisdiction by embellishing a deficient allegation of injury.” *Bochese*, 405 F.3d at 976.

Part of the problem is caused by the complaint’s complete failure to say anything at all about the source, nature, or scope of the alleged fiduciary duty. Under District of Columbia law, on which the plaintiffs rely, a fiduciary duty requires circumstances such that a “relationship of trust may properly be implied.” *Kemp v. Eiland*, 139 F. Supp. 3d 329, 343 (D.D.C. 2013). All the complaint alleges is that the DNC and Ms. Wasserman Schultz “had a fiduciary duty” to the plaintiffs in the Democratic voter class. *See* First Amended Complaint at ¶ 213.

“Although standing in no way depends on the merits of the plaintiffs’ contention that particular conduct is illegal, it often turns on the nature and source of the claim alleged.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (citation omitted). *See* 15 Moore’s Federal Practice § 101.33, at 101-36.6 (“State law may create

the legal interest in a federal case, as it often does when federal jurisdiction is based on diversity.”). Had the plaintiffs specified in the complaint what the alleged fiduciary duty was, or how it came to be, then maybe it would have been possible to determine without speculation how they were injured by the alleged breaches. *See Scanlan v. Eisenberg*, 669 F.3d 838, 842 (7th Cir. 2012) (“That Scanlan must suffer an invasion of a legally protected interest is a principle of federal law. But the nature and extent of Scanlan’s interest as a beneficiary of a discretionary trust, and therefore, whether that interest can form the basis of a federal suit, depend on the law that defines the rights of a discretionary beneficiary.”). Although chapter and verse are not required, a blank page by definition will usually not provide enough for a court to plausibly infer a fiduciary relationship in this political party setting.<sup>5</sup>

---

<sup>5</sup> In their reply brief, the plaintiffs try to provide the framework for a fiduciary duty theory under District of Columbia law. First, the plaintiffs say they were members of the Democratic Party and donated money to the DNC and to the Sanders campaign. Second, they reason that because of their donations, the DNC and Ms. Wasserman Schultz owed them a “duty to ensure a fair and equitable nomination process and not to secretly conspire against Senator Sanders’ presidential campaign.” Reply Br. for Appellants at 26. Even if we could consider this new theory, it would not change the result. The complaint does not allege that registration in the Democratic Party, without more, imposes a fiduciary duty on the DNC or Ms. Wasserman Schultz. And it does not allege that any of the plaintiffs in the Democratic voter class made any monetary contributions to the DNC.

V

In their brief, the plaintiffs argue that the district court should have granted them leave to amend the complaint's allegations regarding standing. We disagree.

The plaintiffs had already amended their complaint once as of right, and district courts are not required to *sua sponte* grant counseled plaintiffs leave to amend their complaint in the absence of a request for such relief. *See Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc). The plaintiffs did not seek to amend their complaint a second time to cure any standing or substantive deficiencies, and they did not explain “how the complaint could be amended to save the[ir] claim[s].” *U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1362 (11th Cir. 2006). We therefore conclude that the district court did not err in dismissing the complaint without *sua sponte* granting the plaintiffs leave to file a second amended complaint.

VI

We are mindful that there are deep disagreements within (and outside) the Democratic Party about the DNC's alleged conduct during the 2016 primaries. *See, e.g.,* John Baglia, *Legal Solutions to a Political Party National Committee Undermining U.S. Democracy*, 51 *John Marshall L. Rev.* 107, 108–09, 118–19 (2017). But federal courts can only adjudicate cognizable claims, and the complaint here fails on a number of jurisdictional and substantive grounds.

The district court's order of dismissal is affirmed, but the case is remanded so that the district court can amend its order consistent with our opinion. The order should dismiss the fraud, negligent misrepresentation, CPPA, and unjust enrichment claims—which fail on the merits—with prejudice, and dismiss the negligence and fiduciary duty claims—which fail for lack of standing—without prejudice.

**AFFIRMED.**

---

**APPENDIX B**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**Nos. 17-14194-HH**

**[Filed January 10, 2018]**

---

CAROL WILDING, STANLEY	)
RIFKEN, SHARON CRAWFORD,	)
WILLIAM SCOTT FRANZ,	)
DAVID PULASKI, MARY	)
JASMINE WELCH, JOSE	)
ALBERTO GONZALEZ, JANE	)
ELLEN PLATTNER, KIM	)
MARIE HOULE, TIMOTHY	)
BINGEN SUSAN REED,	)
ANGELA MONSON, IMEE R.	)
COLEMAN, ELESHA SNYDER,	)
MATTHEW SHAW, ZACHARY	)
JAMES HANEY, ESTRELLA	)
GONZALEZ, CAHTERINE G	)
CYKO, LAURA GENNA,	)
MARIANNE BLAIR,	)
AMARA L. JOHNSTON	)
VALERIE ELYSE RESCH,	)
BRETT TEEGARDIN, DANIEL	)
O'MEARA, PEGGY LEW, et al.,	)
	)
Plaintiffs-Appellants,	)
	)
versus	)

DNC SERVICES CORPORATION, )  
DEBORAH WASSERMAN )  
SCHULTZ, )  
 )  
Defendants-Appellees. )  
\_\_\_\_\_ )

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Florida  
\_\_\_\_\_

Before: WILSON, ROSENBAUM, and NEWSOM,  
Circuit Judges.

BY THE COURT:

Plaintiffs-appellants' motion to amend the complaint is GRANTED. The second amended complaint is sufficient to establish minimal diversity under the Class Action Fairness Act. *See* 28 U.S.C. § 1332(d)(2); *Wright Transp., Inc. v. Pilot Corp.*, 841 F.3d 1266, 1270 (11th Cir. 2016); *Mallory & Evans Contractors & Eng'rs, LLC v. Tuskegee Univ.*, 663 F.3d 1304, 1305 (11th Cir. 2011). Accordingly, we deem the pleadings as so amended and this appeal may proceed. *See* 28 U.S.C. § 1653.

The plaintiffs-appellants are directed to file notice of this order in the district court, along with a copy of the second amended complaint and this order granting the motion to amend.

---

**APPENDIX C**

---

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 16-61511-CIV-ZLOCH**

**[Filed August 25, 2017]**

---

CAROL WILDING, et al.,	)
Plaintiffs,	)
	)
vs.	)
	)
DNC SERVICES CORP., d/b/a/	)
Democratic National Committee and	)
DEBORAH WASSERMAN SCHULTZ,	)
Defendants.	)

---

**FINAL ORDER OF DISMISSAL**

THIS MATTER is before the Court upon Defendants' Motion To Dismiss Plaintiffs' First Amended Complaint (DE 44). The Court has carefully reviewed said Motion, the entire court file, and, with the benefit of oral argument, is otherwise fully advised in the premises.

In the 2016 presidential election's Democratic primaries, Bernie Sanders and others vied against Hillary Clinton for the Party's nomination. This case, in short, involves allegations that the Democratic



National Committee<sup>1</sup> was in cahoots with the Clinton campaign and sought to tip the scales in her favor in the Democratic primaries, all at the direction of, and under the leadership and watchful eye of, its then-chair, Deborah Wasserman Schultz, despite the DNC's and Wasserman Schultz's promise to remain impartial. Plaintiffs discovered what they believe is evidence of that bias after the DNC's computer servers were penetrated by hackers. Shortly thereafter, they brought this putative class action against the DNC and its former chair.

In evaluating Plaintiffs' claims at this stage, the Court assumes their allegations are true—that the DNC and Wasserman Schultz held a palpable bias in favor Clinton and sought to propel her ahead of her Democratic opponents. Plaintiffs assert several fraud-type claims. But they do not allege they ever heard or acted upon the DNC's claims of neutrality. Plaintiffs also assert a tort claim on behalf of all registered Democrats, even though the harm they allege impacted all Democratic-primary-eligible voters—and under their theory, the entire body politic—the same way. And finally, Plaintiffs claim that donors to the DNC are at an increased risk of identity theft as a result of the computer hack. But they do not allege that the DNC regularly keeps the type of information necessary to facilitate identity theft or that the hackers targeted, much less obtained, that information. The Court must now decide whether Plaintiffs have suffered a concrete injury particularized to them, or one certainly

---

<sup>1</sup> The Court will refer to Defendant DNC Services Corp. as the “DNC.”

impending, that is traceable to the DNC and its former chair's conduct—the keys to entering federal court. The Court holds that they have not, which means the truth of their claims cannot be tested in this Court.

I.

According to the First Amended Complaint (DE 8), the DNC is the formal governing body for the Democratic Party in the United States. Its role is to coordinate strategy in support of Democratic Party candidates in local, state, and national elections. With respect to the presidential election, the DNC organizes the Democratic National Convention in order to nominate and confirm a Democratic candidate for the presidency. At the time Plaintiffs filed the First Amended Complaint (DE 8), Deborah Wasserman Schultz served as the DNC's Chairperson and presently serves as a member of the United States House of Representatives.

Through its Charter and Bylaws, the DNC has obliged itself to a policy of neutrality among Democratic presidential candidates. To that end, as it pertains to the "Presidential nominating process, the Chairperson shall exercise impartiality and evenhandedness as between Presidential candidates and campaigns. The Chairperson shall be responsible for ensuring that the national officers and staff of the Democratic National Committee maintain impartiality and evenhandedness during the Democratic Party Presidential nominating process." DE 8, ¶ 159 (emphasis supplied in Complaint). Wasserman Schultz and other DNC officials touted this policy in public statements during presidential primaries. Plaintiffs

attribute the following quotes to Wasserman Schultz or other DNC staff:

- “I count Secretary Clinton and Vice President Biden as dear friends, but no matter who comprises the field of candidates it’s my job to run a neutral primary process and that’s what I am committed to doing.”
- “the DNC runs an impartial primary process.”
- “the DNC runs an impartial primary process, period.”
- “the Democratic National Committee remains neutral in this primary, based on our rules.”
- “even though Senator Sanders has endorsed my opponent, I remain, as I have been from the beginning, neutral in the presidential Democratic primary.”

DE 8, ¶ 160.

Plaintiffs allege that despite the DNC’s Charter and Bylaws, and these public statements of neutrality and impartiality, the DNC devoted its resources to supporting Hillary Clinton over other Democratic Party candidates. The DNC’s bias, according to Plaintiffs, came to light after computer hackers penetrated the DNC’s computer network. An individual identified as “Guccifer 2.0” took credit for the hack and posted several documents purportedly taken from the DNC’s servers on a publically accessible website. Those

documents include: excel spreadsheets containing information of DNC donors; spreadsheets containing information of donors to Hillary Clinton's campaign; research regarding Hillary Clinton's campaign, including vulnerabilities, attacks, rebuttals, policy positions, and opposition research on other Democratic candidates; and various other documents regarding Hillary Clinton's presidential campaign. DE 8, ¶¶ 165 & 169.

Also included in the documents released by "Guccifer 2.0" was a memorandum dated May 26, 2015, addressed to the DNC. That memorandum provides "a suggested strategy for positioning and public messaging around the 2016 Republican presidential field," including use of "specific hits to muddy the waters around ethics, transparency and campaign finance attacks on HRC." DE 8-1. It states, "Our goals in the coming months will be to frame the Republican field and the eventual nominee early and to provide a contrast between the GOP field and HRC." Id. The memorandum observes that "the right wing attack machine has been building its opposition research on Hillary Clinton for decades. HRC's critics have been telegraphing they are ready to attack and do so with reckless abandon." Id. As a tactical response, the memorandum suggests "[w]orking with the DNC and allied groups" to "help pitch stories with no fingerprints and utilize reporters to drive a message" and "insert our messaging into [Republican] press." Id. The memorandum closes with an invitation for further discussion, "to answer the question of who do we want to run against and how best to leverage other candidates to maneuver them into the right place." Id.

Plaintiffs do not allege who authored this memorandum, but as of May 26, 2016, the Democratic presidential field already included both Clinton and Sanders.

As a result of the information “Guccifer 2.0” released, Plaintiffs conclude that “the DNC was anything but ‘impartial,’ ‘evenhanded,’ or ‘neutral’ with respect to the Democratic nominating process.” DE 8, ¶ 171. And all while Wasserman Schultz was the DNC’s chair. Plaintiffs bring six causes of action on behalf of three proposed classes. The first class comprises “[a]ll people or entities who have contributed to the DNC from January 1, 2015 through the date of this action (‘DNC Donor Class’).” DE 8, ¶ 175. The second, “[a]ll people or entities who have contributed to the Bernie Sanders campaign from January 1, 2015 through the date of this action (‘Sanders Donor Class’).” Id. And the third, “[a]ll registered members of the Democratic Party (‘Democratic Party Class’).” Id. The DNC Donor Class and the Sanders Donor Class each assert causes of action for fraud, negligent misrepresentation, and violation of § 28-3904 of the District of Columbia Code (Counts I, II, and III, respectively). The Democratic Party Class asserts a cause of action for breach of fiduciary duty (Count V). And the DNC Donor Class also asserts causes of action for unjust enrichment and negligence (Counts IV and VI, respectively).

The apparent theories for each of these causes of action merit further discussion. The DNC Donor Class and Sanders Donor Class Plaintiffs’ fraud and negligent misrepresentation causes of action are

premised on the theory that Plaintiffs, as well as putative class members, donated either to the DNC or Senator Sanders's campaign in reliance on the DNC's promise of neutrality in the presidential primaries. According to Plaintiffs, the DNC knew or should have known that those promises of neutrality were false and intended to induce members of the DNC Donor Class and Sanders Donor Class's reliance. The DNC Donor Class Plaintiffs' unjust enrichment cause of action is largely coextensive with these fraud claims. And the DNC Donor Class and Sanders Donor Class Plaintiffs' cause of action for violation of § 28-3904 of the District of Columbia Code presents a similar theory: that the DNC falsely claimed it would remain neutral in the Democratic presidential primaries. The Democratic Party Class Plaintiffs' cause of action for breach of fiduciary duty suggests that the DNC owes a fiduciary duty to all registered Democrats to comply with the terms of the DNC's Charter and Bylaws. By failing to maintain impartiality and evenhandedness in the Democratic presidential primaries, Plaintiffs believe that the DNC breached this fiduciary duty. Lastly, the DNC Donor Class Plaintiffs' negligence cause of action arises from the DNC's failure to secure from computer hackers Plaintiffs' personal information.

The DNC and Wasserman Schultz have moved to dismiss the First Amended Complaint (DE 8) on various grounds. The DNC and Wasserman Schultz argue that Plaintiffs lack standing to assert their claims, that they have insufficiently pled those claims, and that the class allegations must be stricken as facially deficient.

II.

This Order does not concern who should have been the Democratic Party's candidate for the 2016 presidential election; it does not concern whether the DNC or Wasserman Schultz generally acted unfairly towards Senator Sanders or his supporters; indeed, it does not even concern whether the DNC was in fact biased in favor of Hillary Clinton in the Democratic primaries. At this stage, the Court is required to construe the First Amended Complaint (DE 8) in the light most favorable to Plaintiffs and accept its well-pled allegations as true. See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc., 524 F.3d 1229, 1232-33 (11th Cir. 2008). The Court thus assumes that the DNC and Wasserman Schultz preferred Hillary Clinton as the Democratic candidate for president over Bernie Sanders or any other Democratic candidate. It assumes that they stockpiled information useful to the Clinton campaign. It assumes that they devoted their resources to assist Clinton in securing the party's nomination and opposing other Democratic candidates. And it assumes that they engaged in these surreptitious acts while publically proclaiming they were completely neutral, fair, and impartial.

This Order therefore concerns only technical matters of pleading and subject-matter jurisdiction. To the extent Plaintiffs wish to air their general grievances with the DNC or its candidate selection process, their redress is through the ballot box, the DNC's internal workings, or their right of free speech—not through the judiciary. To the extent Plaintiffs have asserted specific causes of action

grounded in specific factual allegations, it is this Court's emphatic duty to measure Plaintiffs' pleadings against existing legal standards. Having done so, and for the reasons that follow, the Court finds that the named Plaintiffs have not presented a case that is cognizable in federal court.

IV.

Federal courts are courts of limited jurisdiction, possessing "only that power authorized by Constitution and statute." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). In cases that do not present a federal claim for relief, like this one, that power derives from 28 U.S.C. § 1332. Section 1332 authorizes this Court to exercise its jurisdiction in two circumstances pertinent here. First, this Court has "original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between . . . citizens of different states." 28 U.S.C. § 1332(a). Section 1332(a) permits the exercise of jurisdiction only where there is complete diversity—that is, no plaintiff maintains citizenship in the same state as any defendant. See Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806); Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998). Second, except in circumstances not present here, this Court has "original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any Defendant." 28 U.S.C. § 1332(d)(2) (hereinafter



“CAFA jurisdiction”). As the text makes plain, § 1332(d) requires only minimal diversity—at least one plaintiff must be diverse from one defendant. See Evans v. Walter Indus., Inc., 449 F.3d 1159, 1163 (11th Cir. 2006).

It is readily apparent that this Court lacks jurisdiction under § 1332(a), for the Parties are not completely diverse. According to the First Amended Complaint (DE 8), two Plaintiffs “reside” in the District of Columbia, where the DNC maintains its citizenship. Seven “reside” in Florida, where Wasserman Schultz ostensibly maintains citizenship.<sup>2</sup> But “[c]itizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person.” Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994). Plaintiffs’ failure to properly allege their own citizenship is, in itself, sufficient to preclude the exercise of the Court’s jurisdiction under 1332(a). Indeed, this pleading failure makes it impossible for the Court to conclude that the Parties are even minimally diverse for purposes of its CAFA jurisdiction. See Travaglio v. Am. Exp. Co., 735 F.3d 1266, 1268 (11th Cir. 2013) (the plaintiff “must allege facts that, if true, show federal subject matter jurisdiction over her case exists”). And even if the Court assumed that residence were the equivalent of citizenship—an assumption the Court is not

---

<sup>2</sup> As with the Plaintiffs, the First Amended Complaint (DE 8) does not specifically allege Wasserman Schultz’s citizenship. Rather, it alleges that she “resides in and is a Congresswoman representing portions of this district.” DE 8, ¶ 1.

permitted to make—Plaintiffs would still not be completely diverse from Defendants.

Putting aside these pleading deficiencies, it is also apparent that Plaintiffs lack standing to assert each of the causes of action raised in this putative class action. In order to maintain a class action lawsuit, the class representatives—as distinct from the putative class members—must establish their standing to sue, as measured by the standard of Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). See Allen v. Wright, 468 U.S. 737 (1984) (applying standing inquiry to a class action); Carter v. West Pub. Co., 225 F.3d 1258, 1263 (11th Cir. 2003). The standing requirement stems from Article III of the Constitution, which limits federal courts’ jurisdiction to certain “Cases” and “Controversies.” U.S. Const. Art. III; see Clapper v. Amnesty Int’l USA, 133 S.Ct. 1138, 1146 (2013). The Supreme Court has made clear that “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006) (internal marks omitted). To effectuate this limitation, Lujan laid out three basic elements of Article III standing: “First, the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Lujan, 504 U.S. at 560 (citations omitted). “Second, there must be a causal connection between the injury and the conduct complained of . . . .” Id. “Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be

‘redressed by a favorable decision.’” Id. The class representatives must meet each of these elements to pursue not only their own claims, but the class members’ claims as well. See Prado-Steiman ex re. Prado v. Bush, 221 F.3d 1266, 1279 (11th Cir. 2000).

a.

As to the fraud-type claims Counts I, II, III and IV, Plaintiffs fail to allege any causal connection between their injuries and Defendants’ statements. The Plaintiffs asserting each of these causes of action specifically allege that they donated to the DNC or to Bernie Sanders’s campaign. See DE 8, ¶¶ 2-109. But not one of them alleges that they ever read the DNC’s charter or heard the statements they now claim are false before making their donations. And not one of them alleges that they took action in reliance on the DNC’s charter or the statements identified in the First Amended Complaint (DE 8). Absent such allegations, these Plaintiffs lack standing. See Lujan, 504 U.S. at 560. To be sure, two paragraphs of the First Amended Complaint (DE 8) assert generally that the “DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, relied on Defendants’ false statements and omissions to their injury.” DE 8, ¶¶ 188 & 195.<sup>3</sup> But this boilerplate recitation, absent factual content to support it, does not permit the Court to “determine that at least one named class representative has Article III standing to raise each

---

<sup>3</sup> Paragraph 195 alleges “justifiable reliance” but is otherwise the same as paragraph 188.

class claim.” Prado-Steiman, 221 F.3d at 1279; cf. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (“A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’”).

Nor do these Plaintiffs’ donations to the DNC or to Bernie Sanders’s campaign create standing. The act of donating to an organization does not, of itself, create a legally protected interest in the organization’s operations. Pearson v. Garrett-Evangelical Theological Seminary, Inc., 790 F. Supp. 2d 759, 763 (N.D. Ill. 2011) (“donating money to a charitable fund does not confer standing to challenge the administration of that fund”); Orient v. Linus Pauling Inst. of Sci. and Med., 936 F. Supp. 704, 707 (D. Ariz. 1996) (“Funding research does not automatically confer a legally protected interest in that organization’s assets on a donor”); cf. Leonard v. Campbell, 189 So. 839, 840 (Fla. 1939) (observing that delivery of a gift “divest[s] the donor of all present control and dominion over [the gift], absolutely and irrevocably”). Just as donating to Sanders’s campaign would not entitle the donor to dictate the campaign’s platform, donating to the DNC or to Bernie Sanders’s campaign does not entitle Plaintiffs to challenge the manner in which the DNC has conducted its affairs. A donor may suffer a cognizable injury from the violation of an independent duty, such as if the donation was procured by fraud. But, for the reasons just explained, Plaintiffs do not allege the causal connection between their donations and the DNC’s statements necessary to give them standing to assert that type of claim.

b.

The Plaintiffs who assert the breach of fiduciary duty cause of action in Count V of the First Amended Complaint (DE 8) are simply alleged to be “registered Democrat[s],” residing in nineteen states. Ostensibly this means that they are registered voters who have publically declared allegiance with their state’s Democratic Party, which in turn follows guidelines established by the DNC. See DE 8, ¶¶ 156-57. They contend that the DNC owes (and Wasserman Schultz owed) all registered Democrats a fiduciary duty to comply with the DNC’s charter, which the DNC and Wasserman Schultz breached by favoring Hillary Clinton during the Democratic primaries. Other than labeling their claim as a common-law tort, these Plaintiffs have done little to make out a concrete injury, particularized to them. See DE 48, 7-8. For their part, the DNC and Wasserman Schultz have characterized the DNC charter’s promise of “impartiality and evenhandedness” as a mere political promise—political rhetoric that is not enforceable in federal courts. The Court does not accept this trivialization of the DNC’s governing principles. While it may be true in the abstract that the DNC has the right to have its delegates “go into back rooms like they used to and smoke cigars and pick the candidate that way,” DE 54, at 36:22-24, the DNC, through its charter, has committed itself to a higher principle. Nevertheless, it is apparent that these Plaintiffs cannot satisfy Lujan’s test, and therefore lack standing to assert Count V of the First Amended Complaint (DE 8).

The Supreme Court has long made clear that “when the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.” Warth v. Seldin, 422 U.S. 490, 499 (1975) (quoting Schlesinger v. Reservists to Stop the War, 418 U.S. 208 1974)). To that end, courts have routinely concluded “that a voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared or is only derivative of a harm experienced by a candidate.” Crist v. Comm’n on Presidential Debates, 262 F.3d 193, 195 (2d Cir. 2001); see also Gottlieb v. Fed. Election Comm’n, (concluding that voters’ “supposed injury to their ‘ability to influence the political process’” was “too vague to constitute an injury-in-fact”). For example, in Crist, a voter sued the sponsor of presidential debates, the Commission on Presidential Debates (“CPD”), contending that the CPD’s policy of limiting participation in its debates to candidates with demonstrated popularity violated the voter’s First Amendment Rights. Crist, 262 F.3d at 194. The Second Circuit held that the voter’s claimed injury was too abstract and generalized to invoke the court’s jurisdiction. Id. at 195. Similarly, in Becker v. Fed. Election Comm’n, several supporters of Ralph Nader sued the Federal Election Commission (“FEC”), claiming that FEC regulations permitting corporate sponsorship of presidential debates corrupted the political process. 230 F.3d 381, 383-84 (1st Cir. 2000). Just as in Crist, the Becker Court held that the Nader supporters’ alleged harm was not sufficiently concrete or personalized to establish standing. Id. at 389-90.

The Plaintiffs asserting Count V of the First Amended Complaint (DE 8) suffer an analogous standing deficiency. Their association with the DNC is voluntary and their relationship to it indirect. The harm they suffered from the DNC's alleged bias is, as their claim makes explicit, undifferentiated from all other registered Democrats. But it also sweeps more broadly. In states with open primaries, where voters unaffiliated with a political party may vote in the Democratic presidential primary, the harm as between unaffiliated voters and those affiliated with their state's Democratic party is undifferentiated. And under Plaintiffs' theory, "the Democratic Party is a custodian of a fair and impartial election process." DE 54, at 63:15-17. If the DNC failed to take proper care of the election process, as Plaintiffs' theory goes, then their injury is also undifferentiated from the voting public at large. Labeling this type of injury as a common-law tort does nothing to alter the generalized nature of Plaintiffs' grievance. For, if the tort harm is failure to act as a proper "custodian of this country's democracy," DE 54, at 18:8-9, then the measure of Plaintiffs' damages must be the extent to which the DNC's actions corrupted the election process. But just like a voter's interest in diverse political discourse (Crist), or in untainted presidential debates (Becker), "the harm done to the general public by corruption of the political process is not a sufficiently concrete, personalized injury to establish standing." Becker, 230 F.3d at 389.

The Court also entertains serious doubts about whether it could redress the harm asserted in Count V. In addition to damages, Plaintiffs seek declaratory and injunctive relief that would bind the DNC to the

present iteration of its charter. But “a political party’s determination of the structure which best allows it to pursue its political goals is protected by the Constitution.” Eu v. S.F. Cnty. Democratic Cent. Comm., 489 U.S. 214, 229 (1989) (internal marks omitted) (quoting Tashjian v. Republican Party of Conn., 479 U.S. 208, 224 (1986)). So, the choice—and attendant consequences—between “impartiality and evenhandedness” and Tammany Hall politics lies in the province of the DNC, not the judiciary. Cf. O’Brien v. Brown, 409 U.S. 1, (1972) (“It has been understood since our national political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates shall be seated.”). Grave questions regarding the DNC’s right of association would undoubtedly arise if this Court were to enjoin the DNC to a particular manner of governance. And those same concerns would arise with respect to any award of damages, which would impose liability for the DNC’s alleged decision to associate with a particular standard-bearer in a manner not otherwise prohibited by law.

c.

Finally, with respect to their negligence claim in Count VI of the First Amended Complaint (DE 8), the six named DNC Donor Class Plaintiffs claim they suffered an injury-in-fact from the data breach of the DNC’s servers. Two of them, Cridde and Berners-Lee, donated to the DNC “by check.” DE 8, ¶¶ 108 & 109. Two others, Lynch and Young, allege they contributed to the DNC “online,” but do not specify where. DE 8,



¶¶ 105 & 106. Davis donated money to the DNC in “various ways, including online at [www.democrats.org](http://www.democrats.org).” DE 8, at ¶ 107. And Cork gave to the DNC but does not specify where or how. Their cause of action is premised on a security breach of the DNC’s computer servers, which Plaintiffs allege was perpetrated by two Russian hacking groups having “a long history of successfully targeting sensitive government and industry computer networks in both the United States and other countries, often using ‘sophisticated phishing attacks.’” DE 8, ¶ 164. A computer hacker known as “Guccifer 2.0” claimed credit for the security breach and posted several documents from the DNC’s servers online. Those documents include “Excel spreadsheets containing the names and personal information of donors to the Democratic Party” and other “spreadsheets of donors to the DNC . . . containing personal information such as names, email addresses, and phone numbers.” DE 8, ¶¶ 164, 165 & 170. Although these Plaintiffs do not specifically so allege, their theory is that this security breach of the DNC’s servers places them at a heightened risk of identity theft. According to these Plaintiffs, “data breaches engender injury sufficient to confer Article III standing based solely on increased risk of identity theft in the future.” DE 48, at 8.

Although the Eleventh Circuit has held that a party who has actually suffered identity theft as a result of a data breach has standing, it has expressly left open the question whether the mere threat of future identity theft creates Article III standing. See Resnick v. AvMed, Inc., 693 F.3d 1317, 1323 n.1 (11th Cir. 2012). The Supreme Court requires that a “threatened injury

must be certainly impeding to constitute an injury in fact, and that allegations of possible future injury are not sufficient.” Clapper, 133 S. Ct. at 1147 (quoting Whitmore v. Arkansas, 495 U.S. 149, 158 (1990)) (internal quotation marks omitted). Theories of standing that “rel[y] on a highly attenuated chain of possibilities do[] not satisfy the requirement that threatened injury must be certainly impending.” Id. To some measure, three circuits have held that a risk of future identity theft can constitute an injury in fact. Galaria v. Nationwide Mut. Ins. Co., 663 F. App’x 384, 387-89 (6th Cir. 2016); Krottner v. Starbucks Corp., 628 F.3d 1139, 1142-43 (9th Cir. 2010); Pisciotta v. Old Nat’l Bancorp., 499 F.3d 629, 632-34 (7th Cir. 2007). Three others have held that it does not. Beck v McDonald, 848 F.3d 262, 274-76 (4th Cir. 2017); Katz v. Pershing, 672 F.3d 64, 80 (1st Cir. 2012); Reilly v. Ceridian Corp., 664 F.3d 38, 40 (3d Cir. 2011). The cases on both sides of this apparent circuit split are largely reconcilable, and each proves instructive here.

In Krottner, current and former Starbucks employees brought suit after a laptop containing the names, addresses, and Social Security numbers of 97,000 Starbucks employees was stolen from Starbucks. 628 F.3d at 1140. Following the theft, one of the employees alleged that someone tried to open a bank account in his name, but his bank closed the account before he suffered any loss. Id. at 1142. The Ninth Circuit held that the employees faced “a credible threat of harm” from the theft of the laptop containing their personal information, constituting an injury-in-fact for purposes of Article III. Id. at 1343.

In Pisciotta, the defendant operated an online marketing service through which individuals could complete applications for banking services. 499 F.3d at 631. Upon completion of the applications, the defendant was privy to the individuals' name, address, Social Security number, driver's license number, date of birth, mother's maiden name, and credit card and other financial account numbers. Id. The plaintiffs had provided this type of personal information to the defendant and brought suit after the defendant's online hosting facility suffered a "sophisticated, intentional and malicious" security breach. Id. at 631-32. The plaintiffs did not allege "any completed direct financial loss to their accounts" or "that they or any other member of the putative class already had been the victim of identity theft as a result of the breach." Id. (emphasis in original). But the Seventh Circuit nevertheless concluded that the plaintiffs had standing, reasoning that "the injury-in-fact requirement can be satisfied by a threat of future harm or by an act which harms the plaintiff only by increasing the risk of future harm that the plaintiff would have otherwise faced, absent the defendant's actions." Id. at 634.

In Galaria, an insurance company maintained sensitive personal information of current customers, as well as prospective customers who had applied for quotes on insurance products. 663 F. App'x at 386. The information retained by the insurance company, including names, dates of birth, marital status, gender, occupation, employer, Social Security numbers, and driver's license numbers, was stolen by computer hackers. Id. Two plaintiffs brought suit as a result of

the breach. Id. The Sixth Circuit held that the plaintiffs had standing because they alleged that “their data has already been stolen and is now in the hands of ill-intentioned criminals.” According to the Sixth Circuit, “[w]here a data breach targets personal information, a reasonable inference can be drawn that the hackers will use the victims’ data for the fraudulent purposes alleged in Plaintiffs’ complaints.” Id. at 389.

In Beck, a Veterans Affairs Medical Center lost two sets of patient data. 848 F.3d at 266-67. The first data set, stored on a laptop that was misplaced or stolen, held the names, dates of birth, partial Social Security numbers, and physical descriptions of 7,400 patients. Id. at 267. The second, kept in four storage boxes that were misplaced or stolen, contained the names, Social Security numbers, and medical diagnoses of 2,000 patients. Id. at 268. Three patients whose personal information was kept on the laptop or in the storage boxes sued as a result of the Medical Center’s mishandling of their data. But the Fourth Circuit rejected as “too speculative” the patients’ argument that their risk of future harm constituted an injury-in-fact. Id. at 274. The Fourth Circuit reasoned that the patients’ theory of standing relied on an “attenuated chain of possibilities”: that the thief targeted the stolen items for the information they contained; selected, from thousands of others, the three patients’ information; and attempted successfully to use that information to steal the patients’ identities. Id. at 275. The Fourth Circuit also concluded that the patients had not established a “substantial risk” of harm. Id.

In Reilly, a payroll processing firm's systems were penetrated by a computer hacker, potentially exposing the personal and financial information of 27,000 employees from 1,900 different companies. 664 F.3d at 40. The nature of the payroll processing firm's business meant that it held information regarding its customers' employees, including their names, addresses, Social Security numbers, dates of birth, and bank account information. Id. Two employees whose employers utilized the payroll processing firm's services sued the payroll processing firm based on their belief that they were at an increased risk of identity theft. Id. The Third Circuit held that the employees lacked standing to sue because they failed to allege an injury that was "certainly impending." Id. at 42. Like in Beck, the Third Circuit reasoned that the employees' theory of standing rested on a speculative chain of "ifs"—"that the hacker: (1) read, copied, and understood their personal information; (2) intends to commit future criminal acts by misusing the information; and (3) is able to use such information to the detriment of Appellants by making unauthorized transactions in Appellants' names." Id.

And in Katz, the defendant sold various finance-related products and services to investment advisers and broker-dealers, who in turn traded securities on behalf of their clients. 672 F.3d at 69. One of the defendant's services was an online platform that allowed the advisers and broker-dealers to obtain research and manage brokerage accounts. Id. If authorized, end users of that platform were able to view the clients' private information, including Social Security and taxpayer identification numbers. Id. at

69-70. Some of the defendant's employees also had access to that information. Id. at 70. The plaintiff maintained a brokerage account with a firm that used the defendant's platform. She sued, concerned that the defendant's platform left her private information vulnerable to abuse. Id. The plaintiff did not allege that any specific data breach occurred; only that many must have occurred. Id. at 79. The First Circuit concluded that this claim fell short of establishing an injury-in fact. Id. Because the plaintiff did not allege that her information had actually been accessed, the court reasoned that "[h]er cause of action rests entirely on the hypothesis that at some point an unauthorized, as-yet unidentified, third party might access her data and attempt to purloin her identity." Id.

One common thread runs through each of these cases that is not present here. The defendant in each had a practice of retaining the plaintiffs' sensitive personal information, for one reason or another. In Krottner and Reilly, it was for purposes of employment; in Pisciotta and Katz for financial services; and in Galaria and Beck for insurance or medical purposes. There is no allegation here that the DNC retains private information of its donors that is not mandated to be disclosed to the Federal Election Commission and thus publically available.<sup>4</sup> That is, unlike Krottner,

---

<sup>4</sup> Federal law mandates that political parties report any donation over \$200.00 to the Federal Election Commission, as well as the donor's name, mailing address, occupation, name of employer, and the date of contribution. 11 C.F.R. § 104.8. The Federal Election Commission in turn makes that information available for public consumption.

Pisciotta, Galaria, Beck, Reilly, and Katz, Plaintiffs do not allege that the DNC has access to and stores information from its donors, such as their Social Security or credit card numbers. Without such an allegation, the DNC donor Plaintiffs' claimed threat of injury is too speculative to support an Article III injury-in-fact. Plaintiffs Young, Lynch, and Davis' threat of injury rests on speculation that the DNC, rather than some third party not before the Court, processed and stored information from their online donations. Plaintiffs Cork, Berners-Lee, and Criddle's threat of injury is even more attenuated. For Criddle and Berners-Lee, the Court must speculate that the DNC copied and stored the account and routing numbers from their checks onto the servers that were attacked. And for Cork, the Court must speculate she provided sensitive personal information to the DNC and that it was stored on the compromised servers. These "what ifs" push their alleged injury near sheer conjecture.

And even if the Court assumed that the DNC did store the named DNC Donor Class Plaintiffs' sensitive personal information on the hacked servers, Plaintiffs' First Amended Complaint (DE 8) still would not make out an injury that is "certainly impending." Lujan, 504 U.S. at 565. If Krottner, Pisciotta, Galaria, Beck, Reilly, and Katz represent a sliding scale—arranged from least speculative harm to most—this case falls far closer to Katz than it does Krottner. Unlike Krottner, none of the DNC donor Plaintiffs have suggested they were the victim of a failed identity theft attempt. And unlike Pisciotta and Galaria, these Plaintiffs do not allege that their personal information was targeted for the purpose of future criminal misuse.

The First Amended Complaint (DE 8) instead paints a picture that hackers were generally rummaging the DNC's files for information pertinent to the presidential election. The named DNC Donor Plaintiffs do not allege that hackers targeted their information, took it, or would be able to make use of it to inflict some harm in the future. See Clapper, 133 S. Ct. at 1150 (observing courts' "usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors."). As a result, this case mirrors Reilly and Beck, in which the Third and Fourth Circuits held that the plaintiffs' claimed injury lacked the degree of immediacy necessary to establish an injury-in-fact. Thus, absent an "actual or imminent" injury, the named DNC Donor Class Plaintiffs lack standing, and this Court lacks jurisdiction over their claim in Count VI of the First Amended Complaint (DE 8). Lujan, 504 U.S. at 560.

#### V. Conclusion

"Federal Courts cannot exercise jurisdiction over cases where the parties lack standing." Florida Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist., 647 F.3d 1296, 1302 (11th Cir. 2012). Because Plaintiffs do not allege a causal link between their donations and the DNC's statements, they lack standing to assert the fraud-type claims in Counts I, II, III, and IV of the First Amended Complaint (DE 8). Their breach of fiduciary duty claim in Count V relies on a harm far too diffuse to constitute an injury-in-fact in federal court. And their negligence claim in Count VI is buffered by too many layers of speculation and conjecture to create the immediacy of harm necessary to unlock this Court's jurisdiction.



That being so, Plaintiffs have not “present[ed] a live case or controversy,” and the Court “must dismiss the case for lack of subject matter jurisdiction.” Id.

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** as follows:

1. Defendants’ Motion To Dismiss Plaintiffs’ First Amended Complaint (DE 44) be and the same is hereby **GRANTED**; and

2. The above-styled cause be and the same is hereby **DISMISSED** without prejudice for lack of subject matter jurisdiction.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of August, 2017.

/s/ William J. Zloch  
WILLIAM J. ZLOCH  
Sr. United States District Judge

Copies furnished:

All Counsel of Record

---

**APPENDIX D**

---

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 16-61511-CIV-ZLOCH**

**[Filed August 30, 2016]**

---

CAROL WILDING, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
DNC SERVICES CORPORATION,	)
d/b/a DEMOCRATIC NATIONAL	)
COMMITTEE, and DEBORAH	)
“DEBBIE” WASSERMAN SCHULTZ,	)
	)
Defendants.	)

---

**ORDER**

THIS MATTER is before the Court upon Defendants’ Motion To Dismiss For Insufficient Service Of Process Or, In The Alternative, Extend Time To Answer Or Respond To Complaint (DE 9), which the Court, by prior Order (DE 25), has construed as a Motion To Quash Service Of Process. The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

I. Background

By the instant Motion (DE 9) and Memorandum (DE 11), Defendants contend that while the Affidavits Of Service Of Process (DE Nos. 6 & 7) purport to show that service of process for both Defendant DNC Services Corporation, d/b/a Democratic National Committee (hereinafter “Defendant DNC”), and Defendant Deborah Wasserman Schultz (hereinafter “Defendant Wasserman Schultz”) was effected by serving an individual named Rebecca Christopher, these Affidavits are incorrect. Defendants provide the Declaration Of Rebecca Herries In Support Of Defendants’ Motion To Dismiss For Insufficient Service Of Process Or, In The Alternative, Extend Time To Answer Or Respond To Complaint (DE 10) to rebut Plaintiffs’ Affidavits (DE Nos. 6 & 7). In her Declaration (DE 10), Rebecca Herries states that she is employed at Defendant DNC as a special assistant to the CEO, who, at that time was Amy Dacey, and that Ms. Herries was the individual Plaintiffs attempted to serve on July 1, 2016. Defendants argue that Rebecca Herries is not a proper recipient of service of process pursuant to Federal Rules of Civil Procedure 4(e) and 4(h). Defendants argue that under no applicable rule permitting service of process, as set forth below, was Rebecca Herries authorized to accept service of process on behalf of either Defendant. The Court reviewed Rebecca Herries’s Declaration (DE 10) and by separate Order (DE 25) set an evidentiary hearing for the purpose of permitting Plaintiffs an opportunity to meet their burden of demonstrating that service of process was proper.

The Court held the evidentiary Hearing on the instant Motion To Quash Service Of Process (DE 9) on August 23, 2016. At said Hearing, the Court heard testimony from one witness on behalf of Plaintiffs, Mr. Ricardo Villalba-Cabral, the videographer of Plaintiffs' process server, Shawn Lucas's, efforts to serve Defendants on July 1, 2016. Both Plaintiffs and Defendants introduced evidence at the Hearing. Plaintiffs introduced a video recording of the alleged service of process, a police report documenting the death of Plaintiffs' process server, an email pertaining to the police report, and a corrected Affidavit of Service. Defendants introduced the original Affidavits Of Service Of Process (DE Nos. 6 & 7). Additionally, Plaintiffs sought to introduce into evidence a document purportedly obtained through WikiLeaks. The Court finds that regardless of whether this proposed exhibit was made a part of the record, its ruling herein would not be affected. Thus, the Court need not reach the issue of the admissibility of this document at this time.

At the evidentiary Hearing, Plaintiffs argued that the Court should exercise its discretion and find that while Rebecca Herries is not an individual listed in any of the rules concerning service, that by receiving service on behalf of both Defendants, she exercised apparent authority sufficient to receive service and thus give this Court personal jurisdiction over Defendants.

Defendants maintain that Plaintiffs have not complied with any applicable rule for service of process and that Rebecca Herries had no authority to accept service on behalf of either Defendant.

The Court notes for the record that, at the Hearing, the Court asked Plaintiffs to clarify whether Defendant Wasserman Schultz is being sued in her corporate or her individual capacity. Plaintiffs confirmed that she is being sued in her individual capacity.

## II. Analysis

“Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served.” Hemispherx Biopharma, Inc. v. Johannesburg Consol. Inv., 553 F.3d 1351, 1360 (11th Cir. 2008) (quoting Pardazi v. Cullman Med. Ctr., 896 F.2d 1313, 1317 (11th Cir. 1990)). Characterizing a party’s suggestion that it “should liberally construe the formal requirements for service under the Federal Rules because [the defendant] received actual notice but simply chose to ‘ignore the whole thing,’” the Eleventh Circuit found that notice was not sufficient and that due process under the Constitution required a “‘basis for the defendant’s amenability to service of summons on the defendant.” Prewitt Enter., Inc. v. Org. of Petroleum Exporting Countries, 353 F.3d 916, 924-25 (11th Cir. 2003) (quoting Omni Capital Int’l v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987)). “And service of process that is not in ‘substantial compliance’ with the requirements of the Federal Rules is ineffective to confer personal jurisdiction over the defendant, even when a defendant has actual notice of the filing of the suit.” Abele v. City of Brookville, 237 Fed. Appx. 809, 811 (11th Cir. 2008) (citing Prewitt, 353 F. 3d at 925).

The Court will begin with the service of process as to Defendant Wasserman Schultz, in her individual

capacity. This issue was not briefed by the Parties, but instead arose at the Hearing, upon the Court's questioning of Plaintiffs. Indeed, the Court posed its question to Plaintiffs because in neither the Complaint (DE 1) nor the First Amended Complaint (DE 8) was there complete clarity on this point. Indeed, Defendants stated at the Hearing that they thought Defendant Wasserman Schultz was being sued in her corporate capacity. Federal Rule of Civil Procedure Rule 4(e) details "Serving an Individual Within a Judicial District of the United States," and it states in pertinent part, the methods of effecting service:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
  - (A) delivering a copy of the summons and of the complaint to the individual personally;
  - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process

Fed. R. Civ. P. 4(e)(1)-(2)(A)-(C). From Plaintiffs' argument at the evidentiary Hearing, it is unclear to the Court why Plaintiffs believe they should be allowed to serve Defendant Wasserman Schultz, in her individual capacity, without complying with any of the options provided by the Rule governing such service.

Certainly, Plaintiffs did not argue that they complied with 4(e)(2)(A) or (B). They did not serve Defendant Wasserman Schultz personally. Nor did they attempt to serve her at her dwelling. In fact, Plaintiffs seemed to suggest that doing either would not be reasonable. Plaintiffs also did not explain, or offer any evidence, as to how Rebecca Herries could be considered “an agent authorized by appointment or by law” under Fed. R. Civ. P. 4(e)(2)(C). The Court fails to see how abandoning the requirements of the Rule would be an appropriate exercise of its discretion. No evidence thus presented would permit the Court to find that Defendant Wasserman Schultz has been properly served in her individual capacity. Thus, the dictates of Rule 4(e) require the Court to quash service as to Defendant Wasserman Schultz, in her individual capacity.

Federal Rule of Civil Procedure 4 includes two pertinent sections the Court must consider in determining whether service was proper with respect to Defendant DNC. Rule 4(e), as detailed above, discusses service on an individual and Rule 4(h) discusses service on a corporation. Rule 4(h) also incorporates a portion of 4(e) which states that service may also be made on a corporation by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). In this instance, therefore, service could be made on Defendant DNC, a corporate defendant, by complying with Rule 4(h), or by complying with the service of process rules of the state of Florida, or by complying with the service of process

rules for the District of Columbia, where service was made.

First, Federal Rule of Civil Procedure 4(h) notes that a corporation may be served, in accord with Fed. R. Civ. P. 4(e)(1), as noted above, or

by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant

Fed. R. Civ. P. 4(h)(B). Turning next to Florida law for service, there is no suggestion that, under Fla. Stat. § 48.091, Rebecca Herries was Defendant DNC's registered agent, as a Florida corporation would be required to designate. Thus, Plaintiffs would be traveling under Fla. Stat. § 48.081, which describes service on a corporation. For any private corporation, domestic or foreign, this statute lists a hierarchy of persons who may be served, depending on the absence of persons in the preceding section:

- (a) On the president or vice president, or other head of the corporation;
- (b) In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;
- (c) In the absence of any person described in paragraph (a) or paragraph (b), on any director;
- or
- (d) In the absence of any person described in



paragraph (a) , paragraph (b), paragraph (c), on any officer or business agent residing in the state.

Fla. Stat. § 48.081(1)(a)-(d) (emphasis added). In Dade Erection Serv., Inc. v. Sims Crane Serv., Inc., the court stated that “Sections 48.081 and 48.091 provide the exclusive means of effecting service of process on an active corporation, and these provisions must be strictly construed.” 379 So. 2d 423, 425 (Fla. Dist. Ct. App. 1980). Finally, Plaintiffs could choose to serve under the District of Columbia’s rules, but this rule closely tracks Fed. R. Civ. P. 4 (h), and suggests no alternative path. See D.C. Super. Ct. Civ. R. 4(h).

Plaintiffs proffered no evidence demonstrating that Rebecca Herries is actually an appropriate recipient of service under any relevant rule. Certainly, she is not “an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.” Fed. R. Civ. P. 4(h)(B). Instead, the Court would characterize Plaintiffs’ argument as being one of apparent authority. The video now in evidence as Plaintiff’s Exhibit 1 shows that, in response to Plaintiffs’ process server, Shawn Lucas’s, request to speak to anyone on a list he provided, Rebecca Herries eventually met Mr. Lucas and accepted the papers he handed to her. The evidence is uncontroverted that Mr. Lucas did not ask Ms. Herries for her last name or her position or for any identification whatsoever. Indeed, he evinced his lack of knowledge as to her identity when he filed his Affidavits (DE Nos. 6 & 7) stating that he served a Rebecca Christopher, instead of Ms. Herries. However, the evidence is also uncontroverted

that Ms. Herries did not refuse to accept the papers Mr. Lucas handed to her and at no point during Mr. Lucas's attempt to serve her did she indicate to him that she lacked authority to accept service of process on behalf of either Defendant. To the contrary, when handed the papers, she said, "perfect."

Based on the evidence presented, the Court cannot find that Ms. Herries was the correct recipient of service of process for either Defendant under any applicable rule. The Court will, therefore, also quash service as to Defendant DNC. While Plaintiff's process server did not fulfill his obligations in satisfying himself as to whom he was attempting to serve, the Court cautions the Defendant DNC about subsequent attempts by Plaintiffs to effect service. No evidence at the Hearing explains Ms. Herries's conduct; however, the Court hereby advises Defendant DNC that it will not tolerate the conduct in which Defendant DNC engaged in this instance.

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion To Dismiss For Insufficient Service Of Process Or, In The Alternative, Extend Time To Answer Or Respond To Complaint (DE 9), which the Court, by its Order (DE 25) has construed as a Motion To Quash Service Of Process, be and the same is hereby **GRANTED**;

2. Service of Process as to Defendant DNC Services Corporation, d/b/a Democratic National Committee, and Defendant Deborah Wasserman Schultz be and the same is hereby **QUASHED**; and

App. 65

3. Plaintiffs be and the same are hereby ordered to serve Defendant DNC Services Corporation, d/b/a Democratic National Committee, and Defendant Deborah Wasserman Schultz within the time prescribed by law.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 29<sup>th</sup> of August, 2016.

/s/William J. Zloch  
WILLIAM J. ZLOCH  
United States District Judge

Copies furnished:

All Counsel and Parties of Record

App. 66

---

**APPENDIX E**

---

**THE CHARTER**  
**&**  
**THE BYLAWS**  
OF THE DEMOCRATIC PARTY  
OF THE UNITED STATES

**As Amended by**  
**The Democratic National Committee**  
**August 28, 2015**

**CONTENTS**

**CHARTER OF THE DEMOCRATIC PARTY  
OF THE UNITED STATES**

1	PREAMBLE	
1	ARTICLE ONE . . . . .	The Democratic Party of the United States of America
2	ARTICLE TWO . . . . .	National Convention
3	ARTICLE THREE . . . . .	Democratic National Committee
5	ARTICLE FOUR . . . . .	Executive Committee
5	ARTICLE FIVE . . . . .	National Chairperson
6	ARTICLE SIX . . . . .	Party Conference
6	ARTICLE SEVEN . . . . .	National Finance Organizations
6	ARTICLE EIGHT . . . . .	Full Participation
7	ARTICLE NINE . . . . .	General Provisions
9	ARTICLE TEN . . . . .	Amendments, Bylaws, and Rules
9	RESOLUTION OF ADOPTION	

**BYLAWS**

*Adopted Pursuant to the Charter of the Democratic  
Party of the United States*

- 1 ARTICLE ONE . . . . . Democratic National  
Convention
- 2 ARTICLE TWO . . . . . Democratic National  
Committee
- 3 ARTICLE THREE . . . . . Executive Committee
- 5 ARTICLE FOUR . . . . . National Finance  
Organizations
- 5 ARTICLE FIVE . . . . . Amendments

---

---

<b>CHARTER</b>
----------------

**CHARTER**

**CHARTER OF THE DEMOCRATIC PARTY  
OF THE UNITED STATES**

***PREAMBLE***

We, the Democrats of the United States of America, united in common purpose, hereby rededicate ourselves to the principles which have historically sustained our Party. Recognizing that the vitality of the Nation's political institutions has been the foundation of its enduring strength, we acknowledge that a political party which wishes to lead must listen to those it would lead, a party which asks for the people's trust must prove that it trusts the people and a party which hopes to call forth the best the Nation can achieve must embody the best of the Nation's heritage and traditions.

What we seek for our Nation, we hope for all people: individual freedom in the framework of a just society, political freedom in the framework of meaningful participation by all citizens. Bound by the United States Constitution, aware that a party must be responsive to be worthy of responsibility, we pledge ourselves to open, honest endeavor and to the conduct of public affairs in a manner worthy of a society of free people.

Under God, and for these ends and upon these principles, we do establish and adopt this Charter of the Democratic Party of the United States of America.

**ARTICLE ONE**

**The Democratic Party of the United States  
of America**

The Democratic Party of the United States of America shall:

Section 1. Nominate and assist in the election of Democratic candidates for the offices of President and Vice President of the United States;

Section 2. Adopt and promote statements of policy;

Section 3. Assist state and local Democratic Party organizations in the election of their candidates and the education of their voters;

Section 4. Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and the conduct of other Party affairs, without prejudice on the basis of sex, race, age (if of voting age), color, creed, national origin, religion, economic status, gender identity, sexual orientation, gender identity, ethnic identity or physical disability, and further, to promote fair campaign practices and the fair adjudication of disputes. Accordingly, the scheduling of Democratic Party affairs at all levels shall consider the presence of any religious minorities of significant numbers of concentration whose level of participation would be affected;



App. 71

Section 5. Raise and disburse monies needed for the successful operation of the Democratic Party;

Section 6. Work with Democratic public officials at all levels to achieve the objectives of the Democratic Party; and

Section 7. Encourage and support codes of political ethics that embody substantive rules of ethical guidance for public officials and employees in federal, state and local governments, to assure that public officials shall at all times conduct themselves in a manner that reflects creditably upon the office they serve, shall not use their office to gain special privileges and benefits and shall refrain from acting in their official capacities when their independence of judgement would be adversely affected by personal interest or duties.

***ARTICLE TWO***

**National Convention**

Section 1. The Democratic Party shall assemble in National Convention in each year in which an election for office of President of the United States is held.

Section 2. The National Convention shall be the highest authority of the Democratic Party, subject to the provisions of this Charter. The National Convention shall recognize the state and other Parties entitled to participate in the conduct of the national affairs of the Democratic Party, including its conventions, conferences and committees. State Party rules or state laws relating to the election of delegates

to the National Convention shall be observed unless in conflict with this Charter and other provisions adopted pursuant to authority of the Charter, including the resolutions or other actions of the National Convention. In the event of such conflict with state laws, state Parties shall be required to take provable positive steps to bring such laws into conformity and to carry out such other measures as may be required by the National Convention or the Democratic National Committee.

Section 3. The National Convention shall nominate a candidate for the office of President of the United States, nominate a candidate for the office of Vice President of the United States, adopt a platform and act upon such other matters as it deems appropriate.

Section 4. The National Convention shall be composed of delegates equally divided between men and women. The delegates shall be chosen through processes which:

- (a) assure all Democratic voters full, timely and equal opportunity to participate and include affirmative action programs toward that end,
- (b) assure that delegations fairly reflect the division of preferences expressed by those who participate in the Presidential nominating process,
- (c) exclude the use of the unit rule at any level,
- (d) do not deny participation for failure to pay a cost, fee or poll tax,
- (e) allow participation in good faith by all voters who are Democrats and, to the extent determined by a State Party to be in the interests of

App. 73

the Democratic Party in that State, by voters who are not registered or affiliated with any party; and

(f) except with respect to persons referred to in Section 5(b) of this Article, begin within the calendar year of the Convention provided, however, that fairly apportioned and openly selected state Party Committees, elected no earlier than the date of the previous presidential election, shall not be precluded from selecting such portion of their respective state delegations, according to the standards provided in this Charter and the Bylaws and the Delegate Selection Rules, as may be specifically authorized by the Democratic National Committee in the Call to the Convention,

(g) prohibit unpledged and uncommitted delegates, except delegates or alternates expressing an uncommitted preference shall be permitted to be elected at the district level, in which event, if such preference meets the applicable threshold and qualifies for at-large or similar delegates or alternates, such at-large or similar delegates or alternates shall be allocated to that uncommitted preference as if it were a presidential candidate,

(h) notwithstanding any provision to the contrary in this Section:

(i) provide for all of the members of the Democratic National Committee to serve as unpledged delegates,

(ii) permit unpledged delegates consisting of:

1) the President and Vice President of the United States, if Democrats,

2) the Democratic members of the United States Senate and the Democratic members of the House of Representatives,

App. 74

- 3) the Democratic Governors,
- 4) former Democratic Presidents and Vice Presidents of the United States,
- 5) former Democratic Majority and Minority Leaders of the United States Senate,
- 6) former Democratic Speakers and Minority Leaders of the United States House of Representatives,
- 7) former Chairs of the Democratic National Committee,
- 8) such delegates shall not be permitted to have alternates and such delegates shall constitute an exception to Subsection (b) of this Section 4.

Section 5. The delegate vote allocable to each state shall be determined as provided in the Bylaws, consistent with the formula:

(a) giving equal weight to population, which may be measured by electoral vote, and to the Democratic vote in elections for office of the President; and

(b) giving such additional delegate votes as may be specifically designated by the Democratic National Committee in the Call to the Convention, subject to such conditions as may be set forth by the Democratic National Committee in said Call, for the purpose of providing incentives for scheduling the event constituting the first determining stage in the presidential nominating process in each state later in the year of the Convention than such event would otherwise be scheduled in the absence of such incentive; and

(c) which shall also provide additional delegate positions to members of the Democratic

National Committee; and

(d) which may also provide additional delegate positions to Democratic elected public officials specifically designated by the Democratic National Committee in the Call to the Convention, subject to the provisions of Section 4.

### ***ARTICLE THREE***

#### **Democratic National Committee**

Section 1. The Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions, subject to the provisions of this Charter and to the resolutions or other actions of the National Convention. This responsibility shall include:

- (a) issuing the Call to the National Convention;
- (b) conducting the Party's Presidential campaign;
- (c) filling vacancies in the nominations for the office of President and Vice President;
- (d) formulating and disseminating statements of Party policy;
- (e) providing for the election or appointment of a Chairperson, five Vice Chairpersons, one of whom shall be the President of the Association of State Democratic Chairs and one of whom shall be the Vice Chairperson for Civic Engagement and Voter Participation, a Treasurer, a Secretary, a National Finance Chair and other appropriate officers of the National Committee, who with the exception of the Chairperson and the President of the Association of State Democratic Chairs, shall be as equally divided as practicable according to gender, and for the filling of vacancies, all in accordance with Rules of Procedure

adopted by the Democratic National Committee; and

(f) all other actions necessary or appropriate in order to carry out the provisions of this Charter and the objectives of the Democratic Party.

Section 2. The Democratic National Committee shall be composed of:

(a) the Chairperson and the highest ranking officer of the opposite sex of each recognized state Democratic Party and of the Democratic Parties of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands;

(b) two hundred additional members apportioned to the states on the basis set forth in Article Two, Section 5(a) of the Charter, consistent with the full participation goals of Sections 3 and 4 of Article Eight of the Charter; provided that each state shall have at least two such additional members;

(c) two additional members, consisting of one national committeeman and one national committeewoman, from each of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands;

(d) the Chairperson of the Democratic Governors' Association and two additional governors, of whom, at least one shall be of the opposite sex of the Chairperson, as selected by the Association;

(e) the Democratic Leader in the United States Senate and the Democratic Leader in the United States House of Representatives and one additional member of each body, who shall be of the opposite sex of, and appointed by, the respective leaders;

(f) the Chairperson, the five Vice Chairpersons, the National Finance Chair, the

App. 77

Treasurer, and the Secretary of the DNC;

(g) the Chairperson of the National Conference of Democratic Mayors and two additional mayors, at least one of whom shall be of the opposite sex of the Chairperson, as selected by the Conference;

(h) the President of the Young Democrats of America and two additional members, at least one of whom shall be of the opposite sex as the President, as selected by the organization biennially in convention assembled;

(i) the Chairperson of the Democratic County Officials and two additional county officials, at least one of whom shall be of the opposite sex as the Chairperson, as selected by the organization;

(j) the Chairperson of the Democratic Legislative Campaign Committee and two additional state legislators, at least one of whom shall be of the opposite sex as the Chairperson, as selected by the Committee;

(k) the Chairperson of the National Democratic Municipal Officials Conference and two additional municipal officials, at least one of whom shall be of the opposite sex as the Chairperson, as selected by the Conference;

(l) the President of the National Federation of Democratic Women and two additional members selected by the Federation;

(m) the President of the College Democrats of America and the Vice President, who shall be of the opposite sex, as elected by the organization annually;

(n) the Chairperson of the National Association of Democratic State Treasurers and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(o) the Chairperson of the National

App. 78

Association of Democratic Lieutenant Governors and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(p) the Chairperson of the Democratic Association of Secretaries of State and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(q) the Chairperson of the Democratic Attorneys General Association and one additional attorney general who shall be of the opposite sex of the Chairperson, as selected by the Association;

(r) the Chairperson of the National Democratic Ethnic Coordinating Committee, who is not otherwise a member of the Democratic National Committee and one additional member, who shall be of the opposite sex, as selected by the Coordinating Committee;

(s) the Chairperson of the National Democratic Seniors Coordinating Council, who is not otherwise a member of the Democratic National Committee and one additional member, who shall be of the opposite sex, as selected by the Coordinating Council;

(t) additional members as provided in Article Nine of this Charter. No more than seventy-five additional members of the Democratic National Committee may be added by the foregoing members.

Section 3. Members of the Democratic National Committee apportioned to the states and those provided for in Article Nine who are not otherwise members by virtue of Party office, shall be selected by each state Democratic Party in accordance with standards as to participation established in the Bylaws of the Democratic Party for terms commencing on the day the National Convention adjourns and terminating



## App. 79

on the day the next Convention adjourns. Such members shall be selected during the calendar year in which a National Convention is held, through processes which assure full, timely and equal opportunity to participate. Vacancies shall be filled by the state party as provided in the Bylaws. The members of the National Committee from each state shall be divided as equally as practicable between committeemen and committeewomen. Members of the Democratic National Committee who serve by virtue of holding public or Party office shall serve on the Committee only during their terms in such office. Members of the Democratic National Committee added by the other members shall serve a term that runs coterminously with the Chairperson of the Democratic National Committee, through the election of the new Chairperson, and until their successors are chosen; members in this category shall have the right to vote for the new Chairperson. Members of the Democratic National Committee who serve by virtue of holding state Party office shall be selected by such parties in accordance with standards as to participation established in Bylaws.

Section 4. The Bylaws may provide for removal of members of the Democratic National Committee for cause by a two-thirds vote of the National Committee and may also require continued residence in the jurisdiction represented by the member and affirmative support for the Democratic Presidential and Vice Presidential nominees as a condition of continued membership thereon. The Bylaws may further provide for a minimum level of attendance at National Committee meetings for Democratic National Committee members. The Bylaws may establish that

any member of the Democratic National Committee who misses three consecutive meetings of the Democratic National Committee has failed to meet the minimum level of attendance and is deemed to have resigned from the Democratic National Committee.

Section 5. The Democratic National Committee shall meet at least once each year. Meetings shall be called by the Chairperson, by the Executive Committee of the Democratic National Committee, or by written request of no fewer than one-fourth of the members of the Democratic National Committee.

#### ***ARTICLE FOUR***

##### **Executive Committee**

Section 1. There shall be an Executive Committee of the Democratic National Committee, which shall be responsible for the conduct of the affairs of the Democratic Party subject to this Charter, the National Convention and the Democratic National Committee.

Section 2. The Executive Committee shall be elected by and serve at the pleasure of the members of the Democratic National Committee. The size, composition and term of office shall be determined by the Democratic National Committee, provided that, the number of members elected by the regional caucuses of members of the Democratic National Committee shall be no fewer than twenty-four less than the number selected by other means.

Section 3. The Executive Committee shall meet at least four times each year. Meetings shall be called by the Chairperson or by written request of no fewer

than one-fourth of its members. The Executive Committee shall keep a record of its proceedings which shall be available to the public.

## ***ARTICLE FIVE***

### **National Chairperson**

Section 1. The National Chairperson of the Democratic Party shall carry out the programs and policies of the National Convention and the Democratic National Committee.

Section 2. The National Chairperson, the five Vice Chairpersons, the National Finance Chair, the Treasurer, and the Secretary, shall be elected:

(a) at a meeting of the Democratic National Committee held after the succeeding presidential election and prior to March 1 next, and,

(b) whenever a vacancy occurs. The National Chairperson shall be elected and may be removed by a majority vote of the Democratic National Committee, and each term shall expire upon the election for the following term.

Section 3. The National Chairperson shall preside over meetings of the Democratic National Committee and of the Executive Committee. In the event of a vacancy in the office of the National Chairperson, the designated Vice Chair as provided for in Article Two, Section 12(b) of the Bylaws, or the next highest ranking officer of the National Committee present at the meeting shall preside.

Section 4. The National Chairperson shall serve full time and shall receive such compensation as may

be determined by agreement between the Chairperson and the Democratic National Committee. In the conduct and management of the affairs and procedures of the Democratic National Committee, particularly as they apply to the preparation and conduct of the Presidential nomination process, the Chairperson shall exercise impartiality and evenhandedness as between the Presidential candidates and campaigns. The Chairperson shall be responsible for ensuring that the national officers and staff of the Democratic National Committee maintain impartiality and evenhandedness during the Democratic Party Presidential nominating process.

## ***ARTICLE SIX***

### **Party Conference**

The Democratic Party may hold a National Party Conference between National Conventions. The nature, agenda, composition, time and place of the Party Conference shall be determined by the Democratic National Committee.

## ***ARTICLE SEVEN***

### **National Finance Organizations**

Section 1. The Democratic National Committee shall establish National Finance Organizations which shall have general responsibility for the finances of the Democratic Party. These National Finance Organizations shall raise funds to support the Democratic Party and shall advise and assist state Democratic Parties and candidates in securing funds for their purposes.

Section 2. The National Finance Chair shall be elected or approved by the Democratic National Committee.

## ***ARTICLE EIGHT***

### **Full Participation**

Section 1. The Democratic Party of the United States shall be open to all who desire to support the Party and who wish to be known as Democrats.

Section 2. Discrimination in the conduct of Democratic Party affairs on the basis of sex, race, age (if of voting age), color, creed, national origin, religion, economic status, sexual orientation, gender identity, ethnic identity or physical disability is prohibited, to the end that the Democratic Party at all levels be an open party.

Section 3. To encourage full participation by all Democrats, with particular concern for minority groups, Blacks, Native Americans, Asian/Pacifics, Hispanics, women and youth in the delegate selection process and in all Party affairs, as defined in the Bylaws, the National and State Democratic Parties shall adopt and implement an affirmative action program which provides for representation as nearly as practicable of the aforementioned groups, as indicated by their presence in the Democratic electorate. This program shall include specific goals and timetables to achieve this purpose.

Section 4. This goal shall not be accomplished either directly or indirectly by the national or state Democratic Parties' imposition of mandatory quotas at

any level of the delegate selection process or in any other Party affairs, as defined in the Bylaws; however, representation as nearly as practicable of minority groups, Blacks, Native Americans, Asian/Pacifics, Hispanics, women and youth, as indicated by their presence in the Democratic electorate, as provided in this Article, shall not be deemed a quota.

Section 5. Performance under an approved affirmative action program and composition of the Convention delegation shall be considered relevant evidence in the challenge of any state delegation. If a state Party has adopted and implemented an approved and monitored affirmative action program, the Party shall not be subject to challenge based solely on delegate composition or solely on primary results.

Section 6. Notwithstanding Section 5 above, equal division at any level of delegate or committee positions between delegate men and delegate women or committeemen and committeewomen shall not constitute a violation of any provision thereof.

## ***ARTICLE NINE***

### **General Provisions**

Section 1. Democratic Party means the Democratic Party of the United States of America.

Section 2. The Bylaws shall provide for states in which the Democratic nominee for President or electors committed to the nominee did not appear on the ballot in elections used for apportionment formulae.

Section 3. For the purposes of this Charter, the District of Columbia shall be treated as a state containing the appropriate number of Congressional Districts.

Section 4. For the purposes of this Charter, Puerto Rico shall be treated as a state containing the appropriate number of Congressional Districts.

Section 5. Recognized Democratic Party organizations in areas not entitled to vote in Presidential elections may elect such voting delegates to National Conventions as the Democratic National Committee provides in the Call to the Convention.

Section 6. Democrats Abroad shall have four votes on the Democratic National Committee, which votes shall be shared by the Chairperson, the highest ranking officer of the opposite sex, three National Committeemen and three National Committeewomen except as may otherwise be provided by the Bylaws.

Section 7. The Bylaws shall provide for regional organizations of the Party.

Section 8. To assure that the Democratic nominee for the office of President of the United States is selected by a fair and equitable process, the Democratic National Committee may adopt such statements of policy as it deems appropriate with respect to the timing of Presidential nominating processes and shall work with state Parties to accomplish the objectives of such statements.

Section 9. The Democratic National Committee shall maintain and publish a code of fair campaign

practices, which shall be recommended for observance by all candidates campaigning as Democrats.

Section 10. The Democratic Party shall not require a delegate to a Party convention or caucus to cast a vote contrary to his or her expressed preference.

Section 11. Voting by proxy shall not be permitted at the National Convention. Voting by proxy shall otherwise be permitted in Democratic Party affairs only as provided in the Bylaws of the Democratic Party.

Section 12. All meetings of the Democratic National Committee, the Executive Committee, and all other official Party committees, commissions and bodies shall be open to the public, and votes shall not be taken by secret ballot.

Section 13. The Democratic National Committee shall prepare and make available to the public an annual report concerning the financial affairs of the Democratic Party.

Section 14. In the absence of other provisions, Robert's Rules of Order (as most recently revised) shall govern the conduct of all Democratic Party meetings.

Section 15. The text of the Charter and the Bylaws, or portions thereof, shall be made available in other languages as needed upon reasonable request.

Section 16. Except as otherwise provided herein, the membership of the Democratic National Committee, the Executive Committee, Democratic state central committees, and all national official Party Conventions, committees, commissions, and like bodies



shall be as equally divided as practicable according to gender. State Parties shall take provable positive steps to achieve legislative changes to bring the law into compliance with this provision wherever this provision conflicts with state statutes.

Section 17. Democratic Party Credo.

We Democrats are the oldest political party in America and the youngest in spirit. We will remain so, because we enjoy the challenge of government. Time and again, for almost two centuries, the Democratic Party has made government work -- to build and defend a nation, to encourage commerce, to educate our children, to promote equal opportunity, to advance science and industry, to support the arts and humanities, to restore the land, to develop and conserve our human and natural resources, to preserve and enhance our built environment, to relieve poverty, to explore space. We have reached difficult and vital goals.

We recognize that the capacity of government is limited but we regard democratic government as a force for good and a source of hope.

At the heart of our party lies a fundamental conviction, that Americans must not only be free, but they must live in a fair society.

We believe it is the responsibility of government to help us achieve this fair society.

- a society where the elderly and the disabled can lead lives of dignity and where Social Security remains an unshakable commitment;
- a society where all people can find jobs in a growing full-employment economy;

## App. 88

- a society where all workers are guaranteed without question the legal right to join unions of their own choosing and to bargain collectively for decent wages and conditions of employment;
- a society where taxes are clearly based on ability to pay;
- a society where the equal rights of women are guaranteed in the Constitution;
- a society where the civil rights of minorities are fully secured and where no one is denied the opportunity for a better life;
- a society where both public and private discrimination based upon race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation, gender identity, economic status, philosophical persuasion or physical disability are condemned and where our government moves aggressively to end such discrimination through lawful means;
- a society where we recognize that the strengthening of the family and the protection of children are essential to the health of the nation;
- a society where a sound education, proper nutrition, quality medical care, affordable housing, safe streets and a healthy environment are possible for every citizen;
- a society where the livelihoods of our family farmers are as stable as the values they instill in the American character;
- a society where a strong national defense is a common effort, where promoting human rights is a basic value of our foreign policy, and where we ensure that future by ending the nuclear arms race.

This is our purpose and our promise.

***ARTICLE TEN***

**Amendments, Bylaws, and Rules**

Section 1. This Charter may be amended by a vote of a majority of all of the delegates to the National Convention, provided that no such amendment shall be effective unless and until it is subsequently ratified by a vote of the majority of the entire membership of the Democratic National Committee. This Charter may also be amended by a vote of two-thirds of the entire membership of the Democratic National Committee. At least thirty days written notice shall be given of any National Committee meeting at which action will be taken pursuant to this Section, and any proposed amendment shall be given to all members of the National Committee and shall be released to the national news media. This Charter may also be amended by a vote of two-thirds of the entire membership of any Democratic Party Conference called under the authority of this Charter for such purpose.

Section 2. Bylaws of the Democratic Party shall be adopted to provide for the governance of the affairs of the Democratic Party in matters not provided for in this Charter. Bylaws may be adopted or amended by a majority vote of:

- (a) the National Convention; or
  - (b) the Democratic National Committee
- provided that thirty days written notice of any proposed Bylaw or amendment has been given to all members of the National Committee.

Unless adopted in the form of an amendment to this Charter or otherwise designated, any resolution

App. 90

adopted by the National Convention relating to the governance of the Party shall be considered a Bylaw.

Section 3. Each official body of the Democratic Party created under the authority of this Charter shall adopt and conduct its affairs in accordance with written rules, which rules shall be consistent with this Charter, the Bylaws and other provisions adopted pursuant to authority of the Charter, including resolutions or other actions of the National Convention. The Democratic National Committee shall maintain copies of all such rules and shall make them available upon request.

Section 4. Each recognized state Democratic Party shall adopt and conduct its affairs in accordance with written rules. Copies of such rules and of any changes or amendments thereto shall be filed with the Democratic National Committee within thirty days following adoption.

***RESOLUTION OF ADOPTION***

Section 1. The Democratic Party of the United States of America, assembled in a Conference on Democratic Party Organization and Policy pursuant to resolution adopted by the 1972 Democratic National Convention and the Call to the Conference hereby adopts for the governance of the Party the Charter attached hereto.

**BYLAWS**

*Adopted Pursuant to the Charter of the Democratic  
Party of the United States*

***ARTICLE ONE***

**Democratic National Convention**

Section 1. The National Convention is the highest authority of the Democratic Party, subject to the provisions of the Charter.

Section 2. The National Convention shall adopt permanent rules governing the conduct of its business at the beginning of each Convention, and until the adoption of such permanent rules, the Convention and the activities attendant thereto shall be governed by temporary rules set forth in the Call to the National Convention.

Section 3. Delegates to the National Convention shall be allocated in the Call to the Convention consistent with the Charter.

***ARTICLE TWO***

**Democratic National Committee**

Section 1. *Duties and Powers.* The Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions, subject to the provisions of the Charter and to the resolutions or other official actions of the National Convention. This responsibility shall include, but not be limited to:

- (a) Issuing the Call to the National Convention;

App. 92

- (b) Conducting the Party's Presidential Campaign;
- (c) Filling vacancies in the nominations for the office of the President and Vice President;
- (d) Assisting state and local Democratic Party organizations in the election of their candidates and the education of their voters;
- (e) Formulating and disseminating statements of Party policy, promoting programs for the systematic study of public policy issues, through participation of members of the Democratic National Committee and through specific projects administered under the authority of the Chairperson of the Democratic National Committee;
- (f) Providing for the election or appointment of a Chairperson, five Vice Chairpersons, one of whom shall be the President of the Association of State Democratic Chairs and one of whom shall be Vice Chairperson for Voter Registration and Participation, a Treasurer, a National Finance Chair, a Secretary and other appropriate officers of the National Committee, who, with the exception of the Chairperson and President of the Association of State Democratic Chairs, shall be as equally divided as practicable according to gender, and for the filling of vacancies, all in accordance with Rules of Procedure adopted by the Democratic National Committee;
- (g) Establishing and maintaining National Headquarters of the Party;
- (h) Promoting and encouraging Party activities at every level, including but not limited to the following:
  - (i) promoting and encouraging implementation of all Party mandates;
  - (ii) the fulfillment by the Party of its

platform pledge and other commitments;

(iii) establishment and support of an adequate system of political research;

(iv) the preparation, distribution and communication of Party information to its members and the general public;

(v) the development and maintenance of a program of public relations for the Party; and

(vi) development of a program for the coordination of Party committees, organizations, groups, public officials and members.

(i) Devising and executing ways and means of financing activities of the Party;

(j) Taking such other action as may be necessary and proper to carry out the provisions of the Charter, these Bylaws, the resolutions and other official actions to achieve the objectives of the Party and the Convention; and

(k) Approval of the budget of the Democratic National Committee.

Section 2. *Membership.* The Democratic National Committee shall be composed of:

(a) The Chairperson and the highest ranking officer of the opposite sex of each recognized State Democratic Party as defined by Article Nine of the Charter and of the Democratic Parties of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands;

(b) Two hundred additional members apportioned to the states on the basis set forth in Article Two, Section 5(a) of the Charter, provided that each state shall have at least two additional members;

(c) Two additional members, consisting of one

national committeeman and one national committeewoman, from each of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands;

(d) The Chairperson of the Democratic Governors' Association and two additional governors, of whom at least one shall be of the opposite sex of the Chairperson, as selected by the Association;

(e) The Democratic Leader in the United States Senate and the Democratic Leader in the United States House of Representatives and one additional member of each body, who shall be of the opposite sex of, and appointed by the respective leaders;

(f) The Chairperson, five Vice Chairpersons, the National Finance Chair, the Treasurer and the Secretary of the Democratic National Committee;

(g) The Chairperson of the National Conference of Democratic Mayors and two additional mayors, at least one of whom shall be of the opposite sex of the Chairperson, as selected by the Conference;

(h) The President of the Young Democrats of America and two additional members, at least one of whom shall be of the opposite sex of the President, as selected by the organization biennially in convention assembled;

(i) The President of the National Federation of Democratic Women and two additional members selected by the Federation;

(j) The Chairperson of the Democratic County Officials and two additional members, at least one of whom shall be of the opposite sex of the Chairperson, as selected by the organization;

(k) The Chairperson of the Democratic Legislative Campaign Committee and two additional



App. 95

state legislators, at least one of whom shall be of the opposite sex of the Chairperson, as selected by the Committee;

(l) The Chairperson of the National Democratic Municipal Officials Conference and two additional municipal officials, of whom, to the extent possible, at least one shall be of the opposite sex of the Chairperson, as selected by the Conference;

(m) Additional members as provided in Article Nine of the Charter;

(n) The President of the College Democrats of America and the Vice President, who shall be of the opposite sex, as elected by the organization annually;

(o) The Chairperson of the National Association of Democratic State Treasurers and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(p) The Chairperson of the National Association of Democratic Lieutenant Governors and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(q) The Chairperson of the Democratic Association of Secretaries of State and the Vice Chair who shall be of the opposite sex, as selected by the Association;

(r) The Chairperson of the Democratic Attorneys General Association and one additional attorney general who shall be of the opposite sex of the Chairperson, as selected by the Association;

(s) the Chairperson of the National Democratic Ethnic Coordinating Committee, who is not otherwise a member of the Democratic National Committee and one additional member, who shall be of the opposite sex, as selected by the Coordinating Committee;

(t) the Chairperson of the National Democratic Seniors Coordinating Council, who is not otherwise a member of the Democratic National Committee and one additional member, who shall be of the opposite sex, as selected by the Coordinating Council;

(u) No more than seventy-five additional members of the Democratic National Committee may be added by the foregoing members.

Section 3. *Selection of Members.*

(a) Members of the Democratic National Committee apportioned to the States pursuant to the provisions of Sections 2(b) and 2(c) of this Article and those apportioned pursuant to the provisions of Article Nine of the Charter who are not otherwise members by virtue of Party office shall be selected by each state or territorial Democratic Party in accordance with standards as to participation established under Section 11 of this Article through processes which assure full, timely and equal opportunity to participate. The method of selection for such members shall be described in detail in each state or territory's Party rules and shall be by one of the following methods or any combination thereof:

(i) by a meeting of the National Convention delegation from the state or territory authorized to elect National Committee members, at an open meeting called within the calendar year of the Convention after effective public notice of the agenda;

(ii) by state or territorial Primary within the calendar year of the National Convention;

(iii) by state or territorial Party committees in an open meeting within the calendar year of the National Convention called after effective public notice

of the agenda;

(iv) by a state or territorial convention authorized to select national committee members in an open meeting within the calendar year of the National Convention called after effective public notice of the agenda; and

(v) by such other method as may be adopted by a state or territorial Party and approved by the Democratic National Committee.

(b) Selection by any of the above methods shall be held to meet the requirements of full, timely and equal opportunity to participate if the selecting body has been established according to law and the Charter and the rules of such body have been approved by the Democratic National Committee.

(c) Members of the Democratic National Committee who serve by virtue of holding Party office shall be selected by each State Party in accordance with standards as to participation appearing in Section 11 of this Article.

(d) When the number of members apportioned to a state or territory pursuant to Section 2(b) of this Article or Article Nine of the Charter is even, there shall be equal division of members between men and women. In such cases where the number is odd, the variance between men and women may not be greater than one.

(e) Members of the Democratic National Committee apportioned pursuant to the provisions of Section 2(u) of this Article shall be elected by the membership provided that notice of any such nomination must be mailed to the membership no less than seven (7) days prior to the election.

Section 4. *Certification and Eligibility of Members.*

(a) Members of the Democratic National Committee provided for in Section 2 of this Article shall be certified to the National Committee as follows:

(i) those authorized under subsections (a), (b) and (c) of Section 2 shall be certified by the proper Party authority of the state or territory;

(ii) those authorized under subsection (d) of Section 2 shall be certified by the Chairperson of the Democratic Governors' Association;

(iii) those authorized under subsection (e) of Section 2 shall be certified by the Democratic Leader in the United States Senate for the members from that body and by the Democratic Leader in the United States House of Representatives for the members from that body;

(iv) those authorized under subsection (g) of Section 2 shall be certified by the Chairperson of the Conference of Democratic Mayors;

(v) those authorized under subsection (h) of Section 2 shall be certified by the President of the Young Democrats of America;

(vi) those authorized under subsection (i) of Section 2 shall be certified by the President of the National Federation of Democratic Women;

(vii) those authorized under subsection (j) of Section 2 shall be certified by the Chairperson of the Democratic County Officials Conference;

(viii) those authorized under subsection (k) of Section 2 shall be certified by the Chairperson of the Democratic Legislative Campaign Committee;

(ix) those authorized under subsection (l) of Section 2 shall be certified by the Chairperson of the National Democratic Municipal Officials Conference;

App. 99

(x) those authorized under subsection (n) of Section 2 shall be certified by the President of the College Democrats of America;

(xi) those authorized under subsection (o) of Section 2 shall be certified by the Chairperson of the National Association of Democratic State Treasurers;

(xii) those authorized under subsection (p) of Section 2 shall be certified by the Chairperson of the National Association of Democratic Lieutenant Governors;

(xiii) those authorized under subsection (q) of Section 2 shall be certified by the Chairperson of the Democratic Association of Secretaries of State;

(xiv) those authorized under subsection (r) of Section 2 shall be certified by the Chairperson of the Democratic Attorneys General Association;

(xv) those authorized under subsection (s) of Section 2 shall be certified by the Chairperson of the National Democratic Ethnic Coordinating Committee;

(xvi) those authorized under subsection (t) of Section 2 shall be certified by the Chairperson of the National Democratic Seniors Coordinating Council;

(xvii) those otherwise authorized under Section 2 shall be certified by the Chairperson of the Democratic National Committee.

(b) No person who is not or who does not continue to be a resident for voting purposes of the jurisdiction which he or she represents shall be eligible to hold such office.

(c) No person shall be entitled to vote on a challenge to his or her credentials.

(d) Contests involving membership or challenges to credentials of members shall be heard and adjudicated by the National Committee as

determined or provided in Article Two, Section 10(b) of these Bylaws.

Section 5. *Resignation or Removal of Members.*

(a) A member of the Democratic National Committee may resign by written notice to the Chairperson of the National Committee, and such resignation shall be effective immediately.

(b) After notice and opportunity for public hearing and upon grounds found by the National Committee to constitute good and sufficient cause, the National Committee may remove a member by two-thirds vote of the National Committee.

(c) Failure of any member of the National Committee to declare affirmatively his or her support for the Democratic Presidential and Vice Presidential nominees within thirty (30) days after the adjournment of the National Convention shall constitute good and sufficient cause for removal.

Section 6. *Vacancies.* Vacancies created by resignation or removal of any member of the National Committee shall be filled as follows:

(a) Vacancies in membership apportioned to the states and territories pursuant to Sections 2(b) and 2(c) of this Article and Article Nine of the Charter shall be filled by a state or territorial Party in open meeting called after effective public notice of the agenda.

(b) Vacancies created by the removal or resignation of a state Chairperson or highest ranking officer of the opposite sex shall be filled only by their successors in accordance with Section 3(b) of this Article.

(c) Vacancies in the at-large membership of

the National Committee shall be filled by the National Committee.

(d) Vacancies in positions filled by the Democratic Governors' Association, the Democratic Mayors Conference, the House and Senate Leadership, the Young Democrats of America, the Democratic County Officials Conference, the Democratic Legislative Campaign Committee, the National Federation of Democratic Women, the National Democratic Municipal Officials Conference, and the College Democrats of America shall be filled by the selecting authority, and in the case where the selecting authority is not in session nor will be in session for a year subsequent to the vacancy, by the body charged with fulfilling the responsibilities operating the organization between meetings of the full group.

Section 7. *Meetings.*

(a) The National Committee shall meet as soon as possible after the adjournment of the National Convention on the call of the Chairperson. The Committee is authorized to organize with those members already selected, including any person seated temporarily as provided in Section 10(b)(iv) and entitled to serve as of the first meeting of the Committee. They shall select those members of the Executive Committee who are selected by the Regional Caucuses, who shall serve with those who serve by reason of office until the next regular meeting of the Democratic National Committee.

(b) At least two meetings of the National Committee shall be held each year upon call of the Chairperson and after notice to members, unless any such meeting is dispensed with by prior vote of a

majority of the full membership of the National Committee.

(c) Special meetings of the National Committee may be held upon the call of the Chairperson with the approval of the Executive Committee with reasonable notice to the members, and no action may be taken at such a special meeting unless such proposed action was included in the notice of the special meeting. The foregoing notwithstanding, a special meeting to fill a vacancy on the National ticket shall be held on the call of the Chairperson, who shall set the date for such meeting in accordance with the procedural rules provided for in Article Two, Section 8(d) of these Bylaws.

(d) No later than thirty (30) days before each regularly scheduled meeting, and as soon as possible before a special meeting of the Democratic National Committee, the Secretary of the Democratic National Committee shall send written notice of the date, time and place of such meeting, and the tentative agenda to all members of the Democratic National Committee.

(e) Upon the written request of twenty-five percent or more of the members of the National Committee, filed with the Chairperson within a period of thirty (30) days, it shall be the duty of the Chairperson within fifteen (15) days from receipt of such request to issue a call for a meeting of the National Committee. The date of such meeting shall be fixed by the Chairperson not later than thirty (30) days nor earlier than fifteen (15) days from the date of the call.

Section 8. *Attendance and Quorum and Voting.*

(a) Members of the National Committee



apportioned pursuant to the provisions of Section 2 of this Article who miss three consecutive meetings of the Democratic National Committee have failed to meet the minimum level of attendance and shall be deemed to have resigned from the Democratic National Committee. Vacancies created by any member for failing to meet the minimum level of attendance shall be filled in accordance with the provisions of Section 6 of this Article. Proxies shall not be counted at any meeting for the purpose of meeting the minimum level of attendance.

(b) A majority of the full membership of the Democratic National Committee present in person or by proxy shall constitute a quorum, provided that no less than forty percent (40%) of the full membership be present in person for the purpose of establishing a quorum; provided, however, that for purposes of voting to fill a vacancy on the National ticket, a quorum shall be a majority of the full membership present in person.

(c) Forty percent (40%) of the full membership present in person or by proxy, or 50 members present in person, whichever is fewer, shall constitute a quorum for meetings of:

(i) the DNC standing committees on Credentials, Resolutions, Rules and Bylaws and Budget and Finance;

(ii) the Eastern, Southern, Midwestern, and Western Regional Caucuses;

(iii) the Hispanic, Black, Women's, Asian American and Pacific Islander, and Lesbian, Gay, Bisexual and Transgender American Caucuses; and

(iv) other standing or ad hoc committees created pursuant to the provisions of Section 10(f) of these Bylaws.

(d) Except as otherwise provided in the Charter or in these Bylaws, all questions before the Democratic National Committee shall be determined by majority vote of those members present and voting in person or by proxy.

(i) Up to seventy-five additional members at-large of the Democratic National Committee added by the remaining members pursuant to Article Three, Section 2 of the Charter and eleven members at-large of the Executive Committee selected by the Democratic National Committee pursuant to Article Three, Section 2 of the Bylaws may be elected by plurality vote of the members voting in person or by proxy; and

(ii) A roll call may be requested by a vote of twenty-five percent (25%) of those Democratic National Committee members present and voting.

(e) Each member of the National Committee shall be entitled to one vote on each issue before it, except that Democrats Abroad shall have four votes on the Democratic National Committee, which votes shall be shared by the Chairperson, the highest ranking officer of the opposite sex, three National Committeemen and three National Committeewomen.

(f) Voting to fill a vacancy on the National ticket shall be in accord with procedural rules adopted by the Rules and Bylaws Committee and approved by the Democratic National Committee.

(g) Proxy voting shall be permitted. Proxies may be either general or limited and either instructed or uninstructed. All proxies shall be in writing and transferable if so specified. No DNC member may at any one time hold or exercise proxies for more than one other DNC member; provided, however, that proxy voting shall not be permitted in voting to fill a vacancy

on the National ticket.

(h) The Chairperson of the National Committee may refer matters to the members of the National Committee for consideration and vote by mail, provided, however, that if members aggregating more than twenty percent (20%) of the full membership shall so request, the matter shall be presented to the next meeting of the National Committee.

Section 9. *Regional Caucuses.* There shall be four Regional Caucuses of the members of a Democratic National Committee, comprised as follows:

**EASTERN**

Connecticut	Massachusetts	Puerto Rico
Delaware	New Hampshire	Rhode Island
District of Columbia	New Jersey	Vermont
Maine	New York	Virgin Islands
Maryland	Pennsylvania	Democrats Abroad (½ vote)

**SOUTHERN**

Alabama	Louisiana	Texas
Arkansas	Mississippi	Virginia
Florida	North Carolina	West Virginia
Georgia	South Carolina	Democrats Abroad (½ vote)
Kentucky	Tennessee	

**MIDWESTERN**

Illinois	Missouri	Wisconsin
Indiana	Nebraska	Democrats Abroad (½ vote)
Iowa	North Dakota	
Kansas	Ohio	
Michigan	Oklahoma	
Minnesota	South Dakota	

**WESTERN**

Alaska	Hawaii	Oregon
American Samoa	Idaho	Utah
Arizona	Montana	Washington
California	Nevada	Wyoming
Colorado	New Mexico	Democrats Abroad (½ vote)
Guam	Northern Mariana Islands	

**Section 10. Committees.**

(a) In addition to the Committees otherwise provided for in the Charter or in these Bylaws, there shall be the following standing committees of the Democratic National Committee:

- (i) Credentials Committee;
- (ii) Resolutions Committee;
- (iii) Rules and Bylaws Committee;
- (iv) Budget and Finance Committee.

(b) (i) The Credentials Committee shall receive and consider all challenges to the credentials of

Democratic National Committee members.

(ii) Any challenge to the credentials of a member of the Democratic National Committee may be made by any Democrat from the state or territory of the member challenged or any member of the Democratic National Committee and shall be filed by Registered Mail (return receipt requested) within thirty (30) days of the selection of such member.

(iii) The Credentials Committee shall determine the validity of the credentials of those elected to the National Committee, and decide all challenges to the seating of such members. The Credentials Committee shall provide each party to a dispute a reasonable opportunity to be heard, and may give an opportunity for submission of briefs and oral argument and shall render a written report on the issues to the National Committee.

(iv) The National Committee shall proceed to a determination of such contest or contests as its first order of business, if feasible, including the temporary seating of challenged members, in order that the members may participate in other business before the National Committee.

(c) (i) The Resolutions Committee shall receive and consider all resolutions proposed by a member of the Democratic National Committee on matters of policy proposed for adoption by the Democratic National Committee, and shall report in writing. Said report shall contain the text of each resolution recommended by the Committee for adoption, and shall identify resolutions considered but not recommended for adoption; and

(ii) resolutions shall be submitted to the Secretary of the Democratic National Committee at

least twenty-one (21) days prior to the meeting of the National Committee, and copies of all such resolutions shall be sent to each member no less than fourteen (14) days prior to the National Committee meeting, provided that the Executive Committee may vote to submit urgent timely resolutions to the National Committee even though not submitted within these time periods.

(d) (i) The Rules and Bylaws Committee shall receive and consider all recommendations for adoption and amendments to the Rules and Bylaws of the National Committee and to the Charter of the Democratic Party of the United States;

(ii) recommendations for amendment to the Charter of the Democratic Party of the United States shall be received by the Rules and Bylaws Committee no less than sixty (60) days prior to a regular meeting of the Democratic National Committee, provided that the Executive Committee may approve direct submission of a recommended amendment to the Charter if the requirements of timeliness of the Charter are otherwise met;

(iii) recommendations for amendment to the Bylaws or adoption of Rules for the Democratic National Committee shall be submitted to the Rules Committee no less than thirty (30) days prior to a meeting of the National Committee, and the Secretary of the National Committee shall mail such proposed recommendations to the members no less than thirty (30) days prior to the National Committee. It shall be the responsibility of the member of the National Committee submitting a Bylaws Amendment to distribute a copy to all members of the Committee within the time required by these Bylaws for

consideration, or submit the request to the Secretary with ample time to make such distribution;

(iv) the Executive Committee may refer to the Rules and Bylaws Committee for preliminary consideration the temporary Rules of the National Convention to be included in the Call to the Convention, and the Executive Committee may adopt the recommendations of the Rules and Bylaws Committee as such temporary Convention rules;

(v) the Rules and Bylaws Committee shall conduct a continuing study of the Bylaws, Rules and Charter and make periodic recommendations for amendment, extension or other action, provided that any such recommendations by the Rules and Bylaws Committee be submitted to the members of the National Committee at the time the agenda is presented; and

(vi) the report of the Rules and Bylaws Committee shall be in writing and shall contain the full text of action recommended and shall identify recommendations not approved by the Committee for adoption.

(e) Budget and Finance Committee

(i) The Budget and Finance Committee shall be composed of the Treasurer, the National Finance Chair and not more than nine other members of the Democratic National Committee who have training or experience in finance or management;

(ii) the Budget and Finance Committee shall in full consultation with the National Chairperson of the Democratic National Committee, review the budget of the Democratic National Committee on an on-going basis, make periodic reports including an annual report to the Executive Committee

and the full Democratic National Committee on the goals, purposes of expenditures and results of expenditures of the Democratic National Committee and its staff;

(iii) the Budget and Finance Committee shall, working with the National Chairperson, Chief Financial Officer and counsel, develop and present to the Executive Committee, policies and procedures with respect to:

(a) contracting and procurement of goods and services by the Democratic National Committee, including affirmative action policies; and

(b) avoidance of conflicts of interest;

(iv) meetings of the Budget and Finance Committee shall not be subject to the provisions of Article Nine, Section 12 of the Charter

(f) The National Committee may from time to time create such other standing or *ad hoc* committees as it shall deem appropriate.

(g) Except as otherwise provided in the Charter or in these Bylaws, the members of all committees of the National Committee shall be appointed by the Chairperson of the Democratic National Committee, in consultation with the Executive Committee, subject to ratification by the Democratic National Committee, and shall be appointed to serve for the tenure of the Chairperson. Notwithstanding the above provision, notice of such pending appointment must be mailed to the Democratic National Committee membership no less than seven (7) days prior to the vote on ratification.

(h) Failure by members to attend three consecutive meetings of the committees of the National Committee shall constitute a failure to meet the



minimum level of attendance and shall constitute automatic resignation from the committee. The provisions of Section 8(g) of this Article shall apply to committees of the National Committee, except that proxies shall not be counted at any meeting for the purpose of meeting the minimum level of attendance. Attendance records of committees of the National Committee shall be reported annually to the Executive Committee.

(i) All matters referred to any council, special committee, standing committee, conference or any other sub-group must be acted upon and said action reported to the body which originated the reference.

Section 11. *Participation in All Party Affairs.*

(a) The Democratic Party of the United States shall be open to all who desire to support the Party and who wish to be known as Democrats. Participation in the affairs of the Democratic Party shall be open pursuant to the standards of non-discrimination and affirmative action incorporated into the Charter of the Democratic Party of the United States.

(b) (i) The National, State, and Local Democratic Party organizations shall undertake affirmative action programs designed to encourage the fullest participation of all Democrats in all Party affairs. All Party affairs shall mean all activities of each official Party organization commencing at the lowest level and continuing up through the National Democratic Party. Such activities shall include but need not be limited to the processes in which delegates are selected to the National Democratic Convention; Party officials are nominated or selected; Party policy, platforms, and rules are formulated; and regular programs of voter

registration, public education and public relations. Such programs may be developed and sponsored in cooperation with the Democratic National Committee.

(ii) National and State Democratic Parties shall carry out programs to facilitate and increase the participation of low and moderate income persons. These programs shall include provisions and resources for outreach and recruitment to achieve representation and equitably minimize economic factors which act to bar full participation by such persons.

(iii) State and National Parties shall act affirmatively to develop and implement appropriate education, training, fund-raising and outreach programs directed at low and moderate income Democrats and shall implement rules and regulations of the Party in their most constructive interpretation to effect increased participation and representation by people of low and moderate income. Non-discrimination as it relates to this Section (11(b)) and as provided in Article Eight, Section 2 of the Charter shall be strictly enforced.

(c) (i) Each state or territorial Party shall require each unit of the Party which holds such meetings to publicize effectively and in a timely fashion the dates, times, and places of all such meetings, and the name or names of the person responsible for such meetings.

(ii) Notice of meetings shall be published as required in this Section prior to the meeting. Such notice may appear as legal notice, paid advertisement, news item, direct mail, radio or television announcement, or in such other form as may reasonably be designed to notify Democrats of the meeting provided no state, territorial, or county Party

is required to purchase paid advertising; and

(iii) If challenged, a state or territorial Party shall be deemed to be in compliance with this Section upon proof of effective notice from the reporting unit of the Party.

(d) If a county or any local unit of the state or territorial Party fails to comply with the foregoing provisions of this Section, the state or territorial Party may assume responsibility for setting dates, times and places for local meetings and for giving notice of the same as provided in this Section.

(e) Each state or territorial Party may establish such procedures and structures as are necessary to ensure compliance with this Section, including procedures for review of complaints of non-compliance with this Section by any unit of the political process, including the state.

(f) If a state or territorial Party is alleged to have failed to comply with this Section, the alleged non-compliance shall be referred to the Democratic National Committee for review provided that any person alleging non-compliance at any level shall be a resident of the affected jurisdiction and provided that any person alleging non-compliance of a state or territorial Party with this section shall have exhausted all remedies provided by the state or territorial Party.

Section 12. *Duties and Responsibilities of the Chairperson.*

(a) The Chairperson shall be the chief executive officer of the Democratic National Committee and shall exercise authority delegated to him or her by the Democratic National Committee and the Democratic National Committee's Executive

Committee in carrying out the day-to-day activities of the Committee.

(b) By the time of the next DNC meeting following his or her election, the Chairperson shall designate a Vice Chair who will have authority to act as Chairperson should a vacancy occur or should the Chairperson become incapacitated. In the event of such succession, the designated Vice Chair will serve in the capacity of the Chairperson until a new Chairperson is elected at the next regularly scheduled meeting of the full Democratic National Committee.

### ***ARTICLE THREE***

#### **Executive Committee**

Section 1. *Powers and Duties.* The Executive Committee of the Democratic National Committee shall be responsible for the conduct of the affairs of the Democratic Party in the interim between the meetings of the full Committee. This responsibility shall include, but not be limited to:

- (a) Authority for the Democratic National Committee between meetings thereof;
- (b) Recommending approval of the budget of the Democratic National Committee; and
- (c) Reporting all of its proceedings to the Democratic National Committee.

Section 2. *Membership.* The Executive Committee shall be composed of:

- (a) The Chairpersons of the Regional Caucuses of the Democratic National Committee who must be members of the Democratic National Committee;
- (b) Four members elected by each of the

Regional Caucuses of the Democratic National Committee, who shall be equally divided between men and women and all of whom shall be members of the Democratic National Committee;

(c) The Chairperson, the five Vice Chairpersons, the Treasurer, and the Secretary of the Democratic National Committee;

(d) The National Finance Chair;

(e) The Chairperson of the Democratic Governors' Association or his or her designee from that Association, who must be a member of the Democratic National Committee;

(f) The Democratic Leader of the United States Senate or his or her designee, who must be a member of the Democratic National Committee, and the Democratic Leader from the United States House of Representatives or his or her designee, who must be a member of the Democratic National Committee;

(g) The Chairperson of the National Conference of Democratic Mayors or his or her designee, who must be a member of the Democratic National Committee;

(h) The Chairperson of the Democratic Legislative Campaign Committee or his or her designee from that Committee, who must be a member of the Democratic National Committee;

(i) The Chairperson of the National Democratic County Officials or his or her designee, who must be a member of the Democratic National Committee;

(j) The Chairperson of the National Democratic Municipal Officials Conference or his or her designee, who must be a member of the Democratic National Committee;

(k) The President of the Young Democrats of

America or his or her designee, who must be a member of the Democratic National Committee;

(l) Three additional members of the Association of State Democratic Chairs to be selected by the Association;

(m) The President of the National Federation of Democratic Women or her designee, who must be a member of the Democratic National Committee;

(n) The Chairs of the Hispanic, Black, Asian American and Pacific Islander, and Lesbian, Gay, Bisexual and Transgender American Caucuses of the Democratic National Committee or his or her designee, who must be a member of the Democratic National Committee;

(o) The Chair of the Women's Caucus of the Democratic National Committee or her designee, who must be a member of the Democratic National Committee;

(p) The President of the College Democrats of America or his or her designee, who must be a member of the Democratic National Committee;

(q) Eleven members at-large, elected by the Democratic National Committee, who shall be equally divided between men and women, all of whom must be members of the Democratic National Committee;

(r) The Chairs of the standing committees on Credentials, Resolutions, and Rules and Bylaws.

(s) Any designee as provided for in this section, may not otherwise be a member of the Executive Committee and must be a member of the organization or constituency he or she is designated to represent.

Section 3. *Election of Members.*

(a) Members of the Executive Committee representing the Regional and Constituency Caucuses pursuant to Section 2(b), 2(n) and 2(o) of this Article shall be elected:

(i) at the second meeting of the Democratic National Committee held after the succeeding presidential election; and

(ii) whenever a vacancy occurs.

(b) Members of the Executive Committee elected at-large as apportioned pursuant to Section 2(q) of this Article shall be elected:

(i) at the second meeting of the Democratic National Committee held after the succeeding presidential election; and

(ii) whenever a vacancy occurs.

(iii) Notwithstanding the above provisions, notice of any such nomination must be mailed to the Democratic National Committee membership no less than seven (7) days prior to the election.

(c) Members of the Executive Committee shall serve until the election of their successors. Upon the resignation of a member, a successor shall be selected by the original official authority to serve the unexpired portion of the term.

Section 4. *Meetings.* The Executive Committee shall meet at least four times each year. Meetings shall be called by the Chairperson or by written request of no fewer than one-fourth of its members. All members of the Democratic National Committee shall be notified of meetings of the Executive Committee. The Executive Committee shall keep a record of its proceedings which shall be available to the public.

Section 5. *Attendance and Quorum and Voting.*

(a) Members of the Executive Committee apportioned pursuant to the provisions of Section 2 of this Article who miss three consecutive meetings of the Democratic National Committee Executive Committee have failed to meet the minimum level of attendance and shall be deemed to have resigned from the Executive Committee. Vacancies created by any member for failing to meet the minimum level of attendance shall be filled by the original authority. Proxies shall not be counted at any meeting for the purpose of meeting the minimum level of attendance.

(b) Notwithstanding the above provision, the provisions of Section 8 of Article Two of these Bylaws shall apply to the Executive Committee.

**ARTICLE FOUR**

**National Finance Organizations**

Section 1. *Duties and Powers.* The National Finance Organizations of the Democratic Party shall have general responsibility for the finances of the Democratic Party for raising funds to support the Democratic Party and the Democratic National Committee to advise and assist State Democratic parties and candidates in securing funds for their purposes. The National Finance Chair and the Treasurer will advise the National Chairperson of the Democratic Party and the Executive Committee of the Democratic National Committee with respect to the finances of the Democratic Party.



***ARTICLE FIVE***

**Amendments**

Bylaws may be adopted or amended by majority vote of:

- (a) the National Convention; or
  - (b) the Democratic National Committee
- provided that thirty (30) days written notice of any proposed Bylaw or amendment has been given to all members of the National Committee. Unless adopted in the form of an amendment to the Charter or otherwise designated, any resolution adopted by the National Convention relating to the governance of the Party shall be considered a Bylaw.

---

**APPENDIX F**

---

**MOTION TO AMEND COMPLAINT PURSUANT  
TO 28 U.S.C. § 1653**

Pursuant to 28 U.S.C. § 1653, Petitioners respectfully move this Court for leave to file the attached proposed Third Amended Complaint on the following grounds:

1. Under 28 U.S.C. § 1653, “Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.” The statute authorizes the Supreme Court to permit amendment of jurisdictional allegations. *Molnar v. Nat’l Broadcasting Co.*, 231 F.2d 684, 686 (9th Cir. 1956) (citing *Norton v. Larney*, 266 U.S. 511, 516 (1925)).

2. The attached proposed Third Amended Complaint (**Exhibit A**) seeks to remedy defective allegations of jurisdiction identified by the district court and circuit court. *See Wilding v. DNC Servs. Corp.*, 2017 WL 6345492, \*4 (S.D. Fla. Aug. 25, 2017); *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126 (11th Cir. 2019). To wit, the proposed amended complaint identifies the statements and omissions of the defendants on which the plaintiffs relied in making donations to the Bernie Sanders campaign and the Democratic National Committee, and identifies the dates on which the Sanders donor plaintiffs made payments. *See* Ex. A ¶¶ 2-5.

3. Given the magnitude of the issues raised by this action (as set forth in detail in the accompanying petition for writ of certiorari), Petitioners respectfully request that the Court grant leave to amend the complaint so that the case may be adjudicated on the merits and not on matters of pleading technicality. *See Foman v. Davis*, 371 U.S. 178, 181 (1962) (“It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.”).

### CONCLUSION

Petitioners respectfully request that the Court grant leave to file the attached proposed Third Amended Complaint along with such other and further relief as may be necessary and proper.

DATED: March 26, 2020

Respectfully submitted,

/s/ Cullin O'Brien

CULLIN O'BRIEN

Counsel of Record for Petitioners

Supreme Court Bar No. 275829

Florida Bar No. 597341

CULLIN O'BRIEN LAW, P.A.

6541 NE 21st Way

Ft. Lauderdale, FL 33308

Tel: (561) 676-6370

Fax: (561) 320-0285

cullin@cullinobrienlaw.com

App. 122

JARED H. BECK

Florida Bar No. 20695

ELIZABETH LEE BECK

Florida Bar No. 20697

VICTOR ARCA

Florida Bar No. 1014225

BECK & LEE TRIAL LAWYERS

Corporate Park at Kendall

12485 SW 137th Ave., Suite 205

Miami, FL 33186

Tel: (305) 234-2060

Fax: (786) 664-3334

jared@beckandlee.com

elizabeth@beckandlee.com

victor@beckandlee.com

ANTONINO G. HERNANDEZ

Florida Bar No. 164828

ANTONINO G. HERNANDEZ, P.A.

4 SE 1st St. 2nd Floor

Miami, FL 33131

Tel: (305) 282-3698

Fax: (786) 513-7748

hern8491@bellsouth.net

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**FORT LAUDERDALE DIVISION**

**CASE NO. 16-cv-61511-WJZ**

---

CAROL WILDING, LAURA GENNA; )  
SHERRY DAVIS; NANCY BERNERS- )  
LEE; VINCENT CAUCHI; and GEORGE )  
THOMAS, individually, and on behalf )  
of all those similarly situated, )

Plaintiffs, )

vs. )

DNC SERVICES CORPORATION, )  
d/b/a DEMOCRATIC NATIONAL )  
COMMITTEE, and DEBORAH )  
“DEBBIE” WASSERMAN SCHULTZ, )

Defendants. )

---

THIRD AMENDED COMPLAINT –

CLASS ACTION

DEMAND FOR JURY TRIAL

Plaintiffs, CAROL WILDING, LAURA GENNA, SHERRY DAVIS, NANCY BERNERS-LEE, VINCENT CAUCHI, and GEORGE THOMAS, individually, and on behalf of all those similarly situated (collectively, “Plaintiffs”), individually and on behalf of all those

similarly situated, by and through undersigned counsel, hereby sue Defendants, DNC SERVICES CORPORATION d/b/a DEMOCRATIC NATIONAL COMMITTEE and DEBORAH “DEBBIE” WASSERMAN SCHULTZ (collectively, “Defendants”), and allege the following:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction over the claims asserted herein individually and on behalf of the class pursuant to 28 U.S.C. §1332(d), as amended in February 2005 by the Class Action Fairness Act. Alternatively, this Court has original jurisdiction under 28 U.S.C. §1332(a). Subject matter jurisdiction is proper because: (1) the amount in controversy in this class action exceeds five million dollars, exclusive of interest and costs; and (2) a substantial number of the members of the proposed classes are citizens of a state different from that of Defendants. Personal jurisdiction is proper as both Defendants have purposefully availed themselves of the privilege of conducting business activities within this District, and Defendant, Deborah “Debbie” Wasserman Schultz resides in and is a Congresswoman representing portions of this District. Venue is proper in this judicial district under 28 U.S.C. §1391(b)(1) because both Defendants are deemed to reside in this District and under 28 U.S.C. §1391(b)(2) because both Defendants conduct business in this District and a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this District.

**THE PARTIES AND CERTAIN RELEVANT  
NON-PARTIES**

**Plaintiffs**

2. Plaintiff Carol Wilding (“Wilding”) is a citizen of Florida. She contributed a total of \$445.50 to Bernie Sanders’ presidential campaign via ActBlue with payments made on the following dates: September 18 and December 19, 2015; and February 10, February 19, March 6, March 31, April 27, May 4, May 18, May 28, and June 13, 2016. In making these payments, she relied on her belief that the Democratic nominating process was fair and evenhanded, and she relied on Defendants’ omission from their statements set forth in paragraphs 15 and 16(a)-(e), *infra*, to disclose that the DNC was favoring candidate and eventual nominee Hillary Clinton behind the scenes.

3. Plaintiff Laura Genna (“Genna”) is a citizen of New Jersey. She contributed a total of \$87.80 to Bernie Sanders’ presidential campaign via ActBlue with payments made on the following dates: January 29, March 27, April 29, May 14, May 16, May 28, and June 8, 2016. In making these payments, she relied on her belief that the Democratic nominating process was fair and evenhanded, and she relied on Defendants’ omission from their statements set forth in paragraphs 15 and 16(a)-(e), *infra*, to disclose the DNC was favoring candidate and eventual nominee Hillary Clinton behind the scenes.

4. Plaintiff Sherry Davis (“Davis”) is a citizen of Washington. She contributed a total of \$173 to the DNC on the following dates: August 13 and December

19, 2015, and January 17, January 27, March 14, April 20, and April 21, 2016. In making these payments, she relied on her belief that the Democratic nominating process was fair and evenhanded, and she relied on Defendants' omission from their statements set forth in paragraphs 15 and 16(a)-(d), *infra*, to disclose the DNC was favoring candidate and eventual nominee Hillary Clinton behind the scenes.

5. Plaintiff Nancy Berners-Lee ("Berners-Lee") is a citizen of Massachusetts. She contributed a total of \$100 to the DNC on July 20, 2015. In making this payment, she relied on her belief that the Democratic nominating process was fair and evenhanded, and she relied on Defendants' omission from their statement set forth in paragraph 15, *infra*, to disclose the DNC was favoring candidate and eventual nominee Hillary Clinton behind the scenes.

6. Plaintiff Vincent Cauchi ("Cauchi") is a citizen of California. He is a registered Democrat, and has been for 40 years. He voted for Bernie Sanders in the 2016 California Democratic primary.

7. Plaintiff George Thomas ("Thomas") is a citizen of Washington. He is a registered Democrat, and has been for the past 35 years. He caucused for Bernie Sanders in the 2016 Washington Democratic caucuses.

8. Plaintiffs collectively represent only a fraction of the individuals who are willing and able to serve as class representatives in this action. Over 1,000 additional members of the proposed classes have volunteered to be class representatives, and have



retained undersigned counsel in order to do so. To date, undersigned counsel have received over 13,000 inquiries from potential class members seeking information about the suit.

### **Defendants**

9. Defendant, DNC Services Corporation, d/b/a Democratic National Committee (the “DNC”), at all times relevant hereto, was and is a not-for-profit corporation organized under the laws of the District of Columbia and is the operating body of the United States Democratic Party. The DNC maintains its principal place of business at 430 South Capitol Street Southeast in Washington, District of Columbia.

10. Defendant, Deborah “Debbie” Wasserman Schultz (“Wasserman Schultz”) was the Chairperson of the DNC since 2011. Wasserman Schultz is a citizen of Florida with offices in Pembroke Pines, Florida, and Aventura, Florida, in addition to offices in Washington, D.C.

### **Non-Party**

11. Non-party ActBlue is a United States political action committee established in June 2004 that enables online fundraising for Democratic Party campaigns. ActBlue charges a 3.95% “processing” fee for each contribution. Some Plaintiffs utilized ActBlue’s online services to make the contributions referred to herein.

**GENERAL FACTS**

12. The DNC is the formal governing body for the United States Democratic Party. The DNC is responsible for coordinating strategy in support of Democratic Party candidates for local, state, and national office.

13. As part of its duties, the DNC organizes the Democratic National Convention every four years to nominate and confirm a candidate for President, and establishes rules for the state caucuses and primaries that choose delegates to the convention.

14. Since 2011, Wasserman Schultz was Chairperson of the DNC. Wasserman Schultz has also served as the U.S. Representative for Florida's 23rd congressional district since 2013; before then, she represented Florida's 20th district in the U.S. House of Representatives starting in 2005.

15. The DNC is governed by the Charter and Bylaws of the Democratic Party. These governing documents expressly obligate the DNC to maintain a neutral posture with respect to candidates seeking the party's nomination for President during the nominating process. Article 5, Section 4 of the Charter states:

The National Chairperson shall serve full time and shall receive such compensation as may be determined by agreement between the Chairperson and the Democratic National Committee. In the conduct and management of the affairs and procedures of the Democratic National Committee, particularly as they apply to the preparation and conduct of the

Presidential nominating process, the Chairperson **shall exercise impartiality and evenhandedness** as between the Presidential candidates and campaigns. The Chairperson shall be responsible for ensuring that the national officers and staff of the Democratic National Committee **maintain impartiality and evenhandedness** during the Democratic Party Presidential nominating process.

(emphasis added).

16. Consistent with what the Charter requires, the DNC, through Wasserman Schultz and other employees, and from the very beginning of the presidential race, has consistently and publicly affirmed its impartiality and evenhandedness with respect to the nominating process for the Democratic nominee for President in 2016. For example:

a) A September 3, 2015 article in *Politico* reporting on Wasserman Schultz's relationships with Hillary Clinton and Joe Biden quoted Wasserman Schultz as saying, "I count both Secretary Clinton and Vice President Biden as dear friends, but no matter who comprises our field of candidates it's my job to run a neutral primary process and that's what I am committed to doing[.]"<sup>1</sup>

---

<sup>1</sup> See Edward-Isaac Dovere & Marc Caputo, "Wasserman Schultz's divided loyalties," *Politico*, available at <http://www.politico.com/story/2015/09/debbie-wasserman-schultz-joe-biden-hillary-clinton-2016-loyalty-213294> (last visited June 20, 2016).

b) A September 16, 2015 article in *The Daily Beast* on the Democratic candidate debate schedule quoted DNC spokesperson Holly Shulman (“Shuman”) as stating, “[t]he DNC runs an impartial primary process.”<sup>2</sup>

c) Shulman was also quoted in an article appearing in the Daily Mail Online (UK) on October 16, 2015, as stating, “[t]he DNC runs an impartial primary process, period.”<sup>3</sup>

d) In a CNN appearance on May 17, 2016, where she discussed alleged “violence” by supporters of Bernie Sanders at the Nevada State Democratic Convention, Wasserman Schultz stated that, “[t]he Democratic National Committee remains neutral in this primary, based on our rules.”<sup>4</sup>

---

<sup>2</sup> See Olivia Nuzzi, “Is the Democratic National Committee in the Tank for Hillary?,” **The Daily Beast**, *available at* <http://www.thedailybeast.com/articles/2015/09/16/is-the-democratic-national-committee-in-the-tank-for-hillary.html> (last visited June 20, 2016).

<sup>3</sup> See David Martosko, “Democratic National Committeewoman says her party is ‘clearing a path’ for Hillary because ‘the women in charge’ want it that way,” *available at* <http://www.dailymail.co.uk/news/article-3273404/Democratic-National-Committeewoman-says-party-clearing-path-Hillary-women-charge-want-way.html> (last visited June 20, 2016).

<sup>4</sup> The video may be viewed on the internet at [http://www.realclearpolitics.com/video/2016/05/17/debbie\\_wasserman\\_schultz\\_what\\_happened\\_at\\_nevada\\_convention\\_was\\_unacceptable\\_sanders\\_added\\_fuel\\_to\\_the\\_fire.html](http://www.realclearpolitics.com/video/2016/05/17/debbie_wasserman_schultz_what_happened_at_nevada_convention_was_unacceptable_sanders_added_fuel_to_the_fire.html) (last visited June 20, 2016).

e) In a statement quoted by the Associated Press on May 21, 2016, while discussing Sanders' endorsement of her primary opponent for Congress, Wasserman Schultz stated, "[e]ven though Senator Sanders has endorsed my opponent, I remain, as I have been from the beginning, neutral in the presidential Democratic primary."<sup>5</sup>

17. Despite the requirements in the Charter, and in spite of the multiple public declarations of neutrality and impartiality with respect to the Democratic primary process, the DNC was not neutral. To the contrary, the DNC was biased in favor of one candidate – Hillary Clinton ("Clinton") – from the beginning and throughout the process. The DNC devoted its considerable resources to supporting Clinton above any of the other Democratic candidates. Through its public claims to being neutral and impartial, the DNC actively concealed its bias from its own donors as well as donors to the campaigns of Clinton's rivals, including Bernie Sanders ("Sanders").

18. The truth of the DNC's deception started to come to public light in June 2016.

19. On June 14, 2016, officials of the DNC announced that Russian government hackers had penetrated its computer network. The hackers had access to the network for approximately one year.

---

<sup>5</sup> See Tribune news services, "Sanders says he is backing opponent of DNC chair Wasserman Schultz," **Chicago Tribune** (May 21, 2016), available at <http://www.chicagotribune.com/news/nationworld/politics/ct-sanders-dnc-chair-20160521-story.html> (last visited June 20, 2016).

According to the Washington Post, “[t]he intruders so thoroughly compromised the DNC’s system that they also were able to read all email and chat traffic” – but in the same article, “[t]he DNC said that no financial, donor or personal information appears to have been accessed or taken[.]”<sup>6</sup>

20. The same day, CrowdStrike – a network security consulting firm retained by the DNC to investigate and respond to the breach – publicly released more details. According to CrowdStrike, two separate hacker groups affiliated with the Russian government, codenamed “Cozy Bear” and “Fancy Bear,” were detected as having infiltrated the DNC network. Both groups have a long history of successfully targeting sensitive government and industry computer networks in both the United States and other countries, often using “sophisticated phishing attacks.” CrowdStrike concluded that Cozy Bear’s intrusion of the DNC network began in summer of 2015, while Fancy Bear separately breached it in April 2016.<sup>7</sup>

---

<sup>6</sup> See Ellen Nakashima, “Russian government hackers penetrated DNC, stole opposition research on Trump,” **The Washington Post** (June 14, 2016), *available at* [https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0\\_story.html](https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html) (last visited June 23, 2016).

<sup>7</sup> See Dmitri Alperovitch, “Bears in the Midst: Intrusion into the Democratic National Committee,” **CrowdStrike Blog** (June 14, 2016, updated June 15, 2016), *available at* <https://www.crowdstrike.com/blog/bears-midst-intrusion-democratic-national-committee/> (last visited June 23, 2016); Michael Kan, “Russian hackers breach DNC computers, steal data

21. On June 15, 2016, an individual using the name “Guccifer 2.0” established a publicly accessible website (<https://guccifer2.wordpress.com>) and posted a statement taking credit for the DNC server hack.<sup>8</sup> Below the statement, Guccifer 2.0 posted a series of documents purportedly taken from the DNC’s servers including: (a) a 281-page confidential “Donald Trump Report” purportedly submitted to the DNC on 12/19/15 and containing extensive research on the presumptive Republican presidential nominee; (b) Excel spreadsheets containing the names and personal information of donors to the Democratic Party and Hillary Clinton’s campaign; and (c) a 59-page memorandum marked “Secret” setting forth national security and foreign policy “promises and proposals” and purportedly obtained from Clinton’s personal computer.<sup>9</sup>

22. Among the documents released by Guccifer 2.0 on June 15th is a two-page Microsoft Word file with a “Confidential” watermark that appears to be a

---

on Donald Trump,” **PCWorld** (June 14, 2016), *available at* <http://www.pcworld.com/article/3083440/security/russian-hackers-breach-dnc-computers-steal-data-on-trump.html> (last visited June 23, 2016).

<sup>8</sup> See Ellen Nakashima, “Guccifer 2.0’ claims credit for DNC hack,” **The Washington Post** (June 15, 2016), *available at* [https://www.washingtonpost.com/world/national-security/guccifer-20-claims-credit-for-dnc-hack/2016/06/15/abdcd48-3366-11e6-8ff7-7b6c1998b7a0\\_story.html](https://www.washingtonpost.com/world/national-security/guccifer-20-claims-credit-for-dnc-hack/2016/06/15/abdcd48-3366-11e6-8ff7-7b6c1998b7a0_story.html) (last visited June 23, 2016).

<sup>9</sup> Guccifer 2.0, “DNC’s Servers Hacked By A Lone Hacker,” *available at* <https://guccifer2.wordpress.com/2016/06/15/dnc/> (last visited June 23, 2016).

memorandum written to the Democratic National Committee regarding “2016 GOP presidential candidates” and dated May 26, 2015. A true and correct copy of this document (hereinafter, “DNC Memo”) is attached as **Exhibit 1**.<sup>10</sup>

23. The DNC Memo presents, “a suggested strategy for positioning and public messaging around the 2016 Republican presidential field.” It states that, “Our goals in the coming months will be to frame the Republican field and the eventual nominee early and to ***provide a contrast between the GOP field and HRC***.”<sup>11</sup> (emphasis added). The DNC Memo also advises that the DNC, “[u]se specific hits to muddy the waters around ethics, transparency and campaign finance attacks on HRC.” In order to “muddy the waters” around Clinton’s perceived vulnerabilities, the DNC Memo suggests “several different methods” of attack including: (a) “[w]orking through the DNC” to “utilize reporters” and create stories in the media “with no fingerprints”; (b) “prep[ping]” reporters for interviews with GOP candidates and having off-the-record conversations with them; (c) making use of

---

<sup>10</sup> Despite being asked the question repeatedly, the DNC has never confirmed or denied the authenticity of any of the documents released by Guccifer 2.0. See Reno Berkeley, “DNC Tight-Lipped About Authenticity Of Documents From Guccifer 2.0 Hack,” **Inquisitr** (June 17, 2016), available at <http://www.inquisitr.com/3212344/dnc-tight-lipped-about-authenticity-of-documents-from-guccifer-2-0-hack/> (last visited June 24, 2016).

<sup>11</sup> “HRC” is short for Hillary Rodham Clinton.



social media attacks; and (d) using the DNC to “insert our messaging” into Republican-favorable press.

24. By the date of the DNC Memo, the Democratic presidential nomination field already included, in addition to Clinton, Bernie Sanders, who announced his candidacy on April 30, 2015.<sup>12</sup> And at the time, there was also widespread speculation that others would soon enter the primary race including Joe Biden, Lincoln Chafee, Martin O’Malley, Elizabeth Warren, and Jim Webb.<sup>13</sup>

25. Despite there being every indication that the 2016 Democratic primary would be contested by multiple candidates, including Sanders, the DNC Memo makes *no mention* of any Democratic candidate except Clinton, and builds the DNC’s election strategy on the assumption that Clinton *will be* the nominee, with no doubts attached. Rather than reflecting an “impartial” or “evenhanded” approach to the nominating process, as required by the Charter, the DNC Memo strongly indicates that the DNC’s entire approach to the process was guided by the singular goal of elevating Clinton to the general election contest.

---

<sup>12</sup> See Dan Merica, “Bernie Sanders is running for president,” **CNN Politics** (Apr. 30, 2015), *available at* <http://www.cnn.com/2015/04/29/politics/bernie-sanders-announces-presidential-run/> (last visited June 23, 2016).

<sup>13</sup> See Newsday.com with the Associated Press, “2016 presidential race: Possible Democratic candidates,” **Newsday** (Apr. 29, 2015), *available at* <http://www.newsday.com/news/nation/democrats-who-may-run-for-president-in-2016-from-clinton-to-biden-1.9988978> (last visited June 23, 2016). Of these, only Joe Biden and Elizabeth Warren ultimately decided not to run.

26. On June 18 and 21, 2016, Guccifer 2.0 released additional files purportedly taken from the DNC's servers. Among these documents are even more items that appear to be of a highly sensitive nature including: (a) multiple spreadsheets of donors to the DNC and other organizations, including the Clinton Foundation, containing personal information such as names, email addresses, and phone numbers; (b) a "private and confidential" memorandum to Secretary of Defense Ashton Carter from a senior advisor regarding appointments to the Joint Chiefs of Staff; (c) fee, travel, and lodging requirements for Clinton's paid speeches; (d) Clinton's tax returns; and (e) thousands of pages of research, apparently prepared by DNC staff as well as Clinton's campaign staff, relating to Clinton's candidacy including her "vulnerabilities," potential attacks, rebuttals, policy positions, and opposition research on the other Democratic candidates.<sup>14</sup>

---

<sup>14</sup> See "DNC Researched Clinton Speeches, Travel Records," **The Smoking Gun** (June 21, 2016), *available at* <http://www.thesmokinggun.com/documents/crime/dnc-researched-clinton-speeches-travel-records-621985> (last visited June 24, 2016); Salam Marcos, "Guccifer 2.0: 'Neutral' DNC Staff Conducted Research for Clinton," **Progressive Army**, (June 21, 2016) *available at* <http://progressivearmy.com/2016/06/21/guccifer-2-0-dnc-conducted-research-clinton/> (last visited June 24, 2016); Stephen K. Bannon & Alexander Marlow, "Secret Memo: 42-Page Leaked DNC Document Reveals Clinton Foundation Scandal 'Vulnerabilities' For Hillary Clinton," **Breitbart** (June 21, 2016), *available at* <http://www.breitbart.com/2016-presidential-race/2016/06/21/secret-memo-42-page-leaked-dnc-document-reveals-clinton-foundation-scandal-vulnerabilities-hillary-clinton/> (June 24, 2016).

27. These additional files entail further, substantial evidence that the DNC was anything but “impartial,” “evenhanded,” or “neutral” with respect to the Democratic nominating process. To the contrary, and in spite of the governing Charter and its multiple public statements, the DNC devoted its resources to propelling Clinton’s candidacy ahead of all of her rivals, even if this meant working directly against the interests of Democratic Party members, including Bernie Sanders’ supporters.

28. All conditions precedent to the commencement and prosecution to final judgment of this civil action have taken place, have been performed, or have been waived or excused by Defendants.

29. Plaintiffs have been compelled to engage the services of the undersigned attorneys and to pay them a reasonable fee.

### **CLASS ACTION ALLEGATION**

30. Plaintiffs bring this lawsuit on behalf of themselves and the proposed class members under Rules 23(b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, as noted below.

31. There are three proposed classes (hereinafter collectively referred to as the “Classes”):

- a) All people or entities who have contributed to the DNC from January 1, 2015 through the date of this action (“DNC Donor Class”);
- b) All people or entities who have contributed to the Bernie Sanders campaign from January 1,

2015 through the date of this action (“Sanders Donor Class”); and

- c) All registered members of the Democratic Party (“Democratic Party Class”).<sup>15</sup>

32. Plaintiffs, Davis and Berners-Lee bring this action on behalf of themselves and the DNC Donor Class. Hereinafter, they will be referred to collectively as the “DNC Donor Class Plaintiffs.”

33. Plaintiffs, Wilding and Genna bring this action on behalf of themselves and the Sanders Donor Class. Hereinafter, they will be referred to collectively as the “Sanders Donor Class Plaintiffs.”

34. Plaintiffs, Cauchi and Thomas bring this action on behalf of themselves and the Democratic Party Class. Hereinafter, they will be referred to collectively as the “Democratic Party Class Plaintiffs.”

35. **Numerosity.** The members of each of the Classes are so numerous that their individual joinder is impracticable.

36. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the Classes and

---

<sup>15</sup> Specifically excluded from the class definitions are Defendants; the officers, directors, or employees of Defendants; any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

predominate over any questions affecting only individual members of the Classes.

37. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Classes they seek to represent, and Plaintiffs have the same claims as those of the other class members they seek to represent.

38. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the members of their respective Classes. Plaintiffs have retained counsel highly experienced in class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes.

39. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes which would establish incompatible standards of conduct for the parties opposing the Classes.

40. Defendants acted on grounds generally applicable to the Classes with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to each of the Classes as a whole.

**CAUSES OF ACTION**

**COUNT I**

**(Fraud)**

**(DNC Donor Class & Sanders Donor Class)**

41. The DNC Donor Class Plaintiffs and the Sanders Donor Class Plaintiffs re-allege paragraphs 1 through 40 above as if fully set forth herein.

42. Defendants knowingly made false statements and omissions concerning material facts.

43. Defendants intended that the false statements and omissions would induce the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, to rely on them.

44. The DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, relied on Defendants' false statements and omissions to their injury.

45. Defendants' conduct was intentional, willful, wanton, and malicious. Defendants had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury.

46. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class.

## **COUNT II**

### **(Negligent Misrepresentation) (DNC Donor Class & Sanders Donor Class)**

47. The DNC Donor Class Plaintiffs and the Sanders Donor Class Plaintiffs re-allege paragraphs 1 through 40 above as if fully set forth herein.

48. Defendants made misrepresentations and omissions concerning material facts.

49. At the time of the misrepresentations and omissions, Defendants either knew them to be false, made them without knowledge of the truth or falsity, or should have known them to be false.

50. Defendants intended that the misrepresentations and omissions would induce the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, to rely on them.

51. The DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, justifiably relied on Defendants' misrepresentations and omissions to their injury.

52. Defendants' conduct was intentional, willful, wanton, and malicious. Defendants had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury.

53. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of The DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class and members of the DNC Donor Class and Sanders Donor Class.

### **COUNT III**

#### **(Violation of § 28-3904 of the D.C. Code) (DNC Donor Class & Sanders Donor Class)**

54. The DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class re-allege paragraphs 1 through 40 above as if fully set forth herein.

55. For purposes of the allegations in this complaint, the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class, are "consumers" pursuant to subsection 28-3901(a)(2) of the District of Columbia Code.



56. For purposes of the allegations in this complaint, Defendants are “persons” pursuant to subsection 28-3901(a)(1) of the District of Columbia Code.

57. Defendants misrepresented as to material facts that had a tendency to mislead the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class.

58. Defendants failed to state material facts, and such failure tended to mislead the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class.

59. As such, Defendants violated subsections 28-3904(e) and 28-3904(f) of the District of Columbia Code.

60. Defendants’ conduct was intentional, willful, wanton, and malicious. Defendants had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury.

61. Defendants’ conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of The DNC Donor Class Plaintiffs, the Sanders Donor Class Plaintiffs, and members of the DNC Donor Class and the Sanders Donor Class.

**COUNT IV**

**(Unjust Enrichment)  
(DNC Donor Class)**

62. The DNC Donor Class Plaintiffs re-allege paragraphs 1 through 40 above as if fully set forth herein.

63. The DNC Donor Class Plaintiffs and members of the DNC Donor Class conferred benefits on the Defendants, who had knowledge thereof.

64. Defendants voluntarily accepted and retained the benefits conferred.

65. The circumstances are such that it would be inequitable for the Defendants to retain the benefits without paying the value thereof to the DNC Donor Class Plaintiffs and members of the DNC Donor Class.

66. Defendants' conduct was intentional, willful, wanton, and malicious. Defendants had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the DNC Donor Class Plaintiffs and members of the DNC Donor Class would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury.

67. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of the DNC Donor Class Plaintiffs and members of the DNC Donor Class.

**COUNT V**

**(Breach of Fiduciary Duty)  
(Democratic Party Class)**

68. The Democratic Party Class Plaintiffs re-allege paragraphs 1 through 40 above as if fully set forth herein.

69. Defendants had a fiduciary duty to the Democratic Party Class Plaintiffs and members of the Democratic Party Class.

70. Defendants breached their fiduciary duty to the Democratic Party Class Plaintiffs and members of the Democratic Party Class.

71. The Democratic Party Class Plaintiffs and members of the Democratic Party Class have been proximately damaged by Defendants' breach.

72. Defendants' conduct was intentional, willful, wanton, and malicious. Defendants had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the Democratic Party Class Plaintiffs and members of the Democratic Party Class would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury.

73. Defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the rights of the Democratic Party Class Plaintiffs and members of the Democratic Party Class.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for a judgment:

74. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and permanently, Defendants' violation of and failure to follow the Charter and Bylaws of the Democratic Party;

75. Certification of this action as a class action, designation of Plaintiffs as class representatives and undersigned counsel as class counsel;

76. For compensatory, general, restitutionary, restorative, statutory, treble, and special damages for Plaintiffs against Defendants;

77. Exemplary/punitive damages as against Defendants in an amount sufficient to deter and to make an example of Defendants;

78. Attorneys' fees and costs;

79. Prejudgment and post-judgment interest; and

80. The cost of this suit and such other relief as the court finds just and proper.

**JURY DEMAND**

81. Plaintiffs demand a jury trial on all issues so triable.

*~signature page follows~*

App. 147

DATED: March 26, 2020

RESPECTFULLY SUBMITTED,

/s/ Jared H. Beck

By: Jared H. Beck

BECK & LEE TRIAL LAWYERS

JARED H. BECK

ELIZABETH LEE BECK

VICTOR ARCA

Corporate Park at Kendall

12485 SW 137th Ave., Suite 205

Miami, Florida 33186

Telephone: (305) 234-2060

Facsimile: (786) 664-3334

jared@beckandlee.com

elizabeth@beckandlee.com

victor@beckandlee.com

CULLIN O'BRIEN LAW, P.A.

CULLIN O'BRIEN

6541 NE 21st Way

Fort Lauderdale, Florida 33308

Telephone: (561) 676-6370

Facsimile: (561) 320-0285

cullin@cullinobrienlaw.com

ANTONINO G. HERNANDEZ P.A.

ANTONINO G. HERNANDEZ

4 SE 1st Street, 2nd Floor

Miami, Florida 33131

Telephone: (305) 282 3698

App. 148

Facsimile: (786) 513 7748  
Hern8491@bellsouth.net

Counsel for Plaintiffs and the  
Proposed Classes

App. 149

**Exhibit 1**

**[CONFIDENTIAL watermark in original]**

To: The Democratic National Committee  
Re: 2016 GOP presidential candidates  
Date: May 26, 2015

---

Below, please find a suggested strategy for positioning and public messaging around the 2016 Republican presidential field. Ultimately, we need to

**Our Goals& Strategy**

Our goals in the coming months will be to frame the Republican field and the eventual nominee early and to provide a contrast between the GOP field and HRC. Over the long-term, these efforts will be aimed at getting us the best match-up in the general election, and weakening the eventual nominee through the course of the primary. We have outlined three strategies to obtain our goal:

- 1) Highlight when GOP candidates are outside of the mainstream on key issues, ideally driving the rest of the field to follow with positions that will hurt them in a general election;
- 2) Damage Republican presidential candidates' credibility with voters by looking for targeted opportunities to undermine their specific messaging;

- 3) Use specific hits to muddy the waters around ethics, transparency and campaign finance attacks on HRC

### **Operationalizing the Strategy**

#### *Highlighting Extreme or Unpopular Positions*

There are two ways to approach the strategies mentioned above. The first is to use the field as a whole to inflict damage on itself similar to what happened to Mitt Romney in 2012. The variety and volume of candidates is a positive here, and many of the lesser known can serve as a cudgel to move the more established candidates further to the right. In this scenario, we don't want to marginalize the more extreme candidates, but make them more "Pied Piper" candidates who actually represent the mainstream of the Republican Party. In these issues, we would elevate statements and policies from any candidate—including second and third-tier candidates—on issues that will make them seem too far to the right on social issues and too far from the priorities of everyday Americans on economic issues.

#### *Undermining Their Message & Credibility, Based on our General Election Priorities*

In addition to pinning down the field on key issues, we will work to undermine the Republican candidate's specific messaging, while keeping in mind which candidates and which messages we believe are most powerful. These messages and the responses to them will change given new campaign positioning and new learnings from polling and research, but on these issues, we will keep the focus on the most likely



candidates to allow some possibility for growth with the weaker candidates.

- Jeb Bush
  - o What to undermine: the notion he is a “moderate” or concerned about regular Americans; perceived inroads with the Latino population.
- Marco Rubio
  - o What to undermine: the idea he has “fresh” ideas; his perceived appeal to Latinos and younger voters
- Scott Walker
  - o What to undermine: his Wisconsin record, particularly on jobs; the idea he can rally working- and middle class Americans.
- Rand Paul
  - o What to undermine: the idea he is a “different” kind of Republican; his stance on the military and his appeal to millennials and communities of color.
- Chris Christie
  - o What to undermine: his success as governor, his hypocrisy in telling it like it is vs. his ethical issues and acts of a typical politician.

### *Muddying the Waters*

As we all know, the right wing attack machine has been building its opposition research on Hillary Clinton for decades. HRC’s critics have been telegraphing they

are ready to attack and do so with reckless abandon. While reporters have much less of an appetite for ethics stories about GOP candidates, we will utilize the research to place highly targeted hits—for example, GOP candidates taking positions supported by their major super PAC donors.

### **Tactics**

Working with the DNC and allied groups, we will use several different methods to land these attacks, including:

- **Reporter Outreach:** Working through the DNC and others, we should use background briefings, prep with reporters for interviews with GOP candidates, off-the-record conversations and oppo pitches to help pitch stories with no fingerprints and utilize reporters to drive a message.
- **Releases and Social Media:** Where appropriate these attacks can be leveraged for more public release, particularly the attacks around specific issues where a public release can point out that Republicans are outside of the mainstream.
- **Bracketing Events:** Both the DNC and outside groups are looking to do events and press surrounding Republican events to insert our messaging into their press and to force them to answer questions around key issues.

We look forward to discussing this strategy further. Our goal is to use this conversation to answer the questions who do we want to run against and how best

App. 153

to leverage other candidates to maneuver them into the right place.