

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA	:	Case Number: 2020 CA 003185 B
	:	
v.	:	Judge: Shana Frost Matini
	:	
OPEN TECHNOLOGY FUND	:	

ORDER

This matter comes before the Court upon consideration of the District of Columbia’s (“District”) Unopposed Motion (“Mot.”) for Summary Judgment and Memorandum in Support (“Pl.’s Mem.”), filed on September 15, 2020. On October 1, 2020, the Court ordered the District to supplement its Motion to address the issue of whether Super. Ct. Civ. R. 19(a) required the joinder of the alternative board of directors that the District has contended was unlawfully appointed. *See* Order (Oct. 1, 2020). The District filed a supplemental brief on October 9, 2020 (“Pl.’s Supp.”). The Court has considered the pleadings, the relevant law, and the entire record. For the reasons set forth below, Plaintiff’s Motion for Partial Summary Judgment is granted.

I. BACKGROUND

Defendant Open Technology Fund (“OTF”) is a District of Columbia nonprofit corporation established to facilitate access to circumvention and communications technologies to journalists and audiences in countries that restrict independent media. Mot. at 1. OTF is a grantee of the United States Agency for Global Media (“USAGM”). *Id.* On June 17, 2020, Michael Pack, the Chief Executive Officer of USAGM, attempted to remove OTF’s Board of Directors and install a replacement Board. *Id.*; *see also* Pl.’s Mem. at 2. On July 20, 2020, the District filed its Complaint in this matter seeking to resolve the contested nonprofit corporative action. *See generally* Compl. In its Motion, the District asserts that Mr. Pack’s actions violated the District’s Nonprofit Corporation Act, OTF’s Articles of Incorporation, and OTF’s bylaws. Mot. at 1. The

District therefore seeks a declaration from the Court recognizing OTF's original board as valid, and voiding Mr. Pack's attempt to replace the original Board.

II. STANDARD OF REVIEW

Rule 56(a) provides in relevant part, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See *Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995); *Smith v. Washington Metropolitan Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993).

Summary judgment "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [Superior Court rules] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Mixon v. Washington Metropolitan Area Transit Authority*, 959 A.2d 55, 58 (D.C. 2008) (quotations and citations omitted). "Summary judgment may have once been considered an extreme remedy, but that is no longer the case," and indeed District of Columbia courts have "recognized that summary judgment is vital." *Doe v. Safeway, Inc.*, 88 A.3d 131, 133 (D.C. 2014) (citations omitted).

The moving party has the burden to establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Osbourne*, 667 A.2d at 1324. "In short, what we seek is evidence from which, were it accepted as true, a trier of fact might find for the appellant." *Allen v. District of Columbia*, 100 A.3d 63, 67 (D.C. 2014) (quotation and citation omitted). To determine whether a fact is "material," a court must look to the substantive law on which each claim rests. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Rule 12-I(e) allows the Court to treat unopposed motions as conceded. See also Rule 56(e)(2) (allowing the Court to consider undisputed for purposes of a summary judgment motion

a fact that the non-moving party fails properly to address). In the summary judgment context as in other contexts, “[t]he conceded motion provision is a judicial housekeeping device intended to serve the cause of judicial efficiency and case management and to benefit the administration of justice.” *District of Columbia v. Davis*, 811 A.2d 800, 803 (D.C. 2002) (quotation marks and citation omitted); *National Voter Contact, Inc. v. Versace*, 511 A.2d 393, 397 (D.C. 1986) (“Rule 12-I(e) is a superior judicial housekeeping device”). This provision also furthers the judge’s obligation to “remain a disinterested and objective participant in the proceeding” and not “align himself with any of the parties at trial.” *See Kaliku v. United States*, 994 A.2d 765, 783 (D.C. 2010) (quotation and citation omitted); *Haughton v. Byers*, 398 A.2d 18, 21 (D.C. 1979) (the judge may not “tak[e] on the role of the advocate”) (quotation and citation omitted); *see also* Code of Judicial Conduct Rule 2.2 (“A judge ... shall perform all duties of judicial office fairly and impartially.”).

The Court’s obligation to determine whether the moving party established a prima facie entitlement to summary judgment if the motion is not opposed requires the Court to examine the record – but not with the degree of scrutiny that the Court would apply if the non-moving party had actually objected. This approach is consistent with the requirement that a failure to respond to a summary judgment motion does not allow the trial court to treat the motion “as *automatically* conceded, given the requirement of Rule 56(c) that the court itself must examine the record to confirm that there is no genuine issue of material fact....” *See Crawford v. Katz*, 32 A.3d 418, 436 (D.C. 2011) (emphasis added, quotation marks and citation omitted); *Steele v. Salb*, 93 A.3d 1277, 1284 (D.C. 2014) (even when the non-moving party failed to respond to a motion for summary judgment, it is also important to confirm, on the basis of the pleadings,

affidavits, and other papers, whether summary judgment is appropriate) (quotation and citation omitted).

II. DISCUSSION

A. UNDISPUTED MATERIAL FACTS

The Court finds that the following material facts are undisputed:

1. Defendant OTF is a nonprofit corporation incorporated under the District of Columbia Nonprofit Corporation Act on September 20, 2019. Ex. 1 (OTF Articles of Incorporation, Ex. A to Decl. of Libby Liu, *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 29, 2020), ECF No. 10-2). Its principal office is located in Washington, D.C. and it is registered to do business in Washington, D.C. *Id.*
2. OTF was established for the public purpose of facilitating access to circumvention and communications technologies to journalists and audiences in countries where access to independent media is restricted. Ex. 2 (OTF Bylaws, § 2.2.1, Ex. E to Decl. of Deepak Gupta, *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-8).
3. OTF receives funds through annual grant agreements from the United States Agency for Global Media (“USAGM”) to help fulfill its mission. Open Technology Fund, *OTF’s History*, <https://www.opentech.fund/about/our-history/> (last visited Oct. 1, 2020).
4. It received its first USAGM grant on September 26, 2019. *See* Ex. 3 (Grant Agreement between USAGM and OTF, Ex. A to Decl. of Deepak Gupta, *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-4).

5. OTF works with grantee organizations that are funded by USAGM to promote freedom of access to independent, objective journalism overseas, including by protecting the online content of the USAGM-funded networks. OTF awards contracts to partner organizations and individuals to develop and implement technology to circumvent repressive censorship and surveillance and facilitate safe access to USAGM content in informative-restrictive countries. Ex. 4 (Decl. of J. Lauren Turner in Supp. of Pls.’ Mot. for Prelim. Inj. (“Turner Decl.”), *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-12, at ¶¶ 3-4).

6. OTF’s bylaws call for the creation of a Board of Directors. *See* Ex. 2, § 5.0. The original Board consisted of technical experts and individuals who were serving on the USAGM Board of Governors at the time OTF’s articles of incorporation and bylaws were adopted. These members include Leon Aron, Ambassador Ryan Crocker, Michael Kempner, Ambassador Karen Kornbluh, Ben Scott, William Schneider, and Chairman of the Board Kenneth Weinstein. Ex. 1, Art. X.

7. As of the filing of the instant Motion, the Board of Directors consisted of Board Chair Ambassador Karen Kornbluh, Ambassador Ryan Crocker, Michael Kempner, Ben Scott, and William Schneider. Ex. 5 (September 10, 2020 Email from Deepak Gupta to Jennifer Jones).

8. USAGM is an independent arm of the United States government that oversees five media networks. Two networks are federal organizations: the Voice of America and the Office of Cuba Broadcasting. The remaining three networks are non-profit organizations that receive annual grants from USAGM: Radio Free Europe/Radio Liberty, Radio Free Asia, and Middle East Broadcasting Networks. U.S. Agency for

Global Media, *Structure*, <https://www.usagm.gov/who-we-are/organizational-chart/> (last visited Oct. 1, 2020).

9. Michael Pack was confirmed by the Senate to be Chief Executive Officer (“CEO”) of USAGM on June 4, 2020. U.S. Agency for Global Media, *Michael Pack: Chief Executive Officer*, <https://www.usagm.gov/who-we-are/management-team/michael-pack/> (last visited Oct. 1, 2020). He was sworn in as CEO of USAGM on June 8, 2020. Ex. 6 (July 9, 2020 Email from USAGM personnel to OTF personnel, Ex. A to Turner Decl., *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-13).

10. On June 17, 2020, Pack asserted authority to remove OTF’s operational head and the members of its Board of Directors. Pack also claimed authority to install a replacement Board of Directors. Pack relied on his “authorities as Chief Executive Officer (CEO) of the United States Agency for Global Media (USAGM), including under 22 USC 6209(d) and [OTF’s] bylaws,” as stated in a letter to the CEO of OTF at the time. Ex. 7 (June 17, 2020 Letter from Michael Pack to Libby Liu Regarding Board of Directors, Ex. B to Turner Decl., *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-14); Ex. 8 (June 17, 2020 Letter from Michael Pack to Libby Liu Regarding Removal as CEO, Ex. C to Turner Decl., *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-15).

11. Pack appointed the following individuals as the purported new Board of Directors:

- Jonathan Alexandre (Senior Counsel, Liberty Counsel Action),

- Robert Bowes (Senior Advisor to the Secretary, U.S. Department of Housing and Urban Development),
- Bethany Kozma (Deputy Chief of Staff, United States Agency for International Development),
- Rachel Semmel (Communications Director, Office of Management and Budget),
- Emily Newman (Chief of Staff, USAGM), and
- Michael Pack (CEO, USAGM) as Chairman.

Ex. 7.

12. The following day, Pack asserted purported authority to remove Laura Cunningham from her position as OTF President. Ex. 9 (June 18, 2020 Letter from Michael Pack to Laura Cunningham, Ex. D to Turner Decl., *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 25, 2020), ECF No. 4-16). Cunningham at the time had also assumed the role of acting CEO of OTF. *See* Ex. 10 (Decl. of Laura Cunningham (“Cunningham Decl.”) in Support of Pl.-Appellants’ Emergency Mot. for Inj. Pending App., *Open Technology Fund v. Pack*, No. 20-5195 (D.C. Cir. July 9, 2020) at ¶¶ 1-2).

13. On July 3, 2020, Pack informed OTF that he was appointing an acting CEO. Ex. 10 at ¶ 4, Ex. A to Cunningham Decl.

14. The General Counsel of OTF responded to Pack on July 6, 2020, informing him that the current Board of Directors did not accept Pack’s appointment of the new acting CEO. Ex. 10 at ¶ 5, Ex. B to Cunningham Decl.

15. In the following days, USAGM personnel repeatedly attempted to effectuate the

purported acting CEO's onboarding process and enter OTF's office space, but OTF continued to advise Pack and representatives from USAGM that such efforts would be rejected in light of the current Board's position that it retained governance authority over OTF and the ongoing litigation between OTF and USAGM and Pack. *See* Ex. 10 at ¶¶ 6-15, Exs. C-F to Cunningham Decl.

16. Neither OTF's bylaws nor the International Broadcasting Act ("IBA"), as incorporated by reference in the bylaws, provides the USAGM CEO with the removal and replacement authority Pack claims.

17. OTF's bylaws presume that the Board of Directors is responsible for both election and removal of directors. The bylaws state, "Individuals shall be elected by the Board of Directors for three-year terms upon majority vote of the Board of Directors, or as may be authorized by 22 U.S.C. 6203 et seq....He or she shall hold office until the expiration of his or her term and until his or her successor is elected and qualified, or his or her earlier resignation or removal or as may be authorized by 22 U.S.C. 6203 et seq." Ex. 2, § 5.2.

18. OTF bylaws also grant authority to the Board of Directors to fill vacant positions on the Board: "Any vacancy occurring on the Board of Directors due to removal or resignation may be filled by a majority vote of the remaining Directors. The Director so elected shall hold office for the remainder of his or her predecessor's term or until his or her successor is elected and qualified or until his or her earlier resignation or removal." Ex. 2, § 5.2.

19. The Board of Directors did not hold a vote to elect any of the new directors that Pack attempted to appoint. *See* Ex. 11 (OTF Emergency Meeting Board Minutes, July 10, 2020); Ex. 12 (Emergency Board Resolution, July 10, 2020).

20. Section 6.12 of OTF's bylaws contains the only clear mechanism for removal of directors: "Any Director may be removed from office for cause by the vote of two-thirds (2/3) of those Directors present at a meeting of the Board of Directors at which a quorum is present, provided that all Directors, including the Director to be removed are provided no less than ten (10) days' notice of such meeting." Ex. 2, § 6.12.

21. The Board of Directors did not hold a vote to remove any of the directors that Pack attempted to remove. *See* Ex. 11; Ex. 12.

22. No other provisions within OTF's bylaws modify this removal authority. *See* Ex. 2.

23. Two provisions in OTF's bylaws mention the IBA in relation to the resignation or removal of directors: section 2.3 and section 5.2 (the election of Board members). Section 2.3 is a compliance provision that requires OTF to revise its bylaws to comply with amendments made to the IBA that are "applicable to the Corporation's affairs," including provisions relating to "the election, resignation or removal of the members of its Board of Directors." Ex. 2, § 2.3. The IBA has not been amended since OTF's incorporation to include any provisions that would be applicable to OTF's removal of directors. *See* 22 U.S.C. § 6201 *et seq.* (as amended in 2016 by Pub. L. No. 114-328).

24. On July 10, 2020, the original OTF Board of Directors met to take emergency action disavowing Pack's removal and replacement of the OTF Board and officers. The Directors present at the meeting included Michael Kempner, Ambassador Karen Kornbluh, Ambassador Ryan Crocker, Bill Schneider, and Ben Scott. Also present were Laura Cunningham, President and Acting CEO, and Heidi Pilloud, OTF's Treasurer and Chief Financial Officer. Ex. 11.

25. At this meeting, the original Board of Directors passed resolutions rejecting Pack's dismissal and replacement of the original Board of Directors and affirming the status quo of OTF leadership, including Cunningham's position as President and acting CEO of OTF. Ex.11; Ex. 12.
26. The Emergency Board Resolution stated, "It is RESOLVED that USAGM CEO Michael Pack acted without authority to dismiss this Board of Directors, appoint a replacement Board of Directors, terminate OTF CEO Libby Liu[,] terminate OTF President Laura Cunningham, and appoint an 'Acting CEO' to the Open Technology Fund; therefore, these actions are without effect." Ex. 12 at 1-2.
27. The OTF Board of Directors also passed a resolution stating "Laura Cunningham remains an Officer of the Open Technology Fund as President and Acting CEO." Ex. 12 at 2.
28. On July 10, 2020, the original OTF Board of Directors provided the Attorney General with notice of these resolutions disavowing Pack's attempts to assert control of OTF by purportedly replacing crucial leadership roles and seeking to obtain physical control of OTF's offices. Ex. 13 (July 10, 2020 Letter from Deepak Gupta to Attorney General Karl Racine).
29. Section 14 of the bylaws provide a dispute mechanism procedure that relies on a vote of the Board of Directors to resolve contested corporate actions. The mechanism provides, "In the event that any of the members of the Board of Directors, officers, or any other party or parties that are permitted by applicable law to be subject to this provision, seeks to contest or otherwise challenge the validity of any action taken by the Corporation or the Board of Directors, then to the fullest extent permitted by applicable

law, such challenge shall be resolved as permitted by and in accordance with Section 20-401.22(c) of the District of Columbia Nonprofit Corporation Act of 2010, as amended, as follows: Such contest or other challenge of the validity of an action taken by the Corporation or the Board of Directors shall be submitted for final disposition to the Board of Directors who shall resolve such challenge by a majority vote of all of the then-existing members of the Board of Directors; and such disposition by the Board of Directors shall be final to the fullest extent permitted by applicable law.” Ex. 2, §14.0.

The Bylaws contain no dispute resolution procedure applicable to a situation where the composition and authority of the Board of Directors is itself in dispute. *See id.*

30. Pack’s purported removal and replacement of the OTF’s original Board of Directors has left OTF without clear leadership. This confusion has made OTF incapable of authorizing decisions on behalf of the nonprofit corporation that allow it to carry out its functions, including an inability to authorize funding for partner organizations or provide support for potential partner organizations. Ex. 10 at ¶16.

31. The actions of Pack and USAGM have undermined trust in OTF as an organization. The nature of the projects funded by OTF means that partner organizations and individuals, who are often citizens of repressive regimes, could be subjected to harsh repercussions – even having their lives endangered – if their personal information is jeopardized. However, OTF has been able to work with these partners to promote internet freedom because it has earned their trust that it will ensure the safety of their identities and their work. This trust in OTF will continue to erode, though, the longer that there is uncertainty about the legitimacy of the leadership of the organization. Without the trust of

its partners, OTF cannot fulfill its mission of promoting internet freedom efforts. Ex. 4 at ¶ 12.

32. Because of the conflict created by these actions, OTF has been denied business for foreign currency payment services, resulting in increased transaction fees and additional financial burden to the organization. Ex. 10 at ¶16.

33. These actions have caused serious delays in OTF's ability to hire necessary staff, including delaying the hiring for six open positions crucial to the management and monitoring of OTF's applications and projects. Ex. 10 at ¶16. The sudden upheaval in leadership also leaves the organization at risk of losing expert staff, including researchers, technologists, and regional experts. Losing such staff could compromise OTF's ability to carry out its mission. Ex. 4 at ¶ 14.

34. On June 23, 2020, the original OTF Board of Directors filed an action in the U.S. District Court for the District of Columbia challenging Pack's authority to remove and replace the original Board of Directors. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 23, 2020).

35. On July 2, 2020, the District Court issued an order and opinion denying OTF's motion for a temporary restraining order and preliminary injunction. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. July 2, 2020), ECF Nos. 21, 22.

36. On July 2, 2020, the OTF Board of Directors filed a notice of appeal of the District Court's decision in the U.S. Court of Appeals for the District of Columbia Circuit. *Id.*, ECF No. 23.

37. On July 7, 2020, the OTF Board of Directors filed a motion for reconsideration, or in the alternative, a motion for an injunction pending appeal, with the District Court.

Id., ECF No. 26. The District Court denied the motions later that same day in a minute order. *Id.*, Minute Order entered July 7, 2020.

38. The OTF Board of Directors filed an amended notice of appeal on July 8, 2020. *Id.*, ECF No. 28.

39. The OTF Board of Directors filed an emergency motion for an injunction pending appeal with the D.C. Circuit on July 9, 2020. *Open Technology Fund v. Pack*, No. 20-5195 (D.C. Cir. July 9, 2020).

40. On July 21, 2020, the D.C. Circuit enjoined the government from taking any action to remove or replace any officers or directors of OTF during the pendency of the appeal. It further ordered that that the officers and directors of OTF that were in those roles prior to the government's actions on June 17, 2020, shall continue in their normal course through the pendency of the appeal. Ex. 14 (Order Granting Pls.-Appellants' Mot. for Inj. Pending App., *Open Technology Fund v. Pack*, No. 20-5195 (D.C. Cir. July 21, 2020)).

41. The opinion stated, in part, "Initially, appellants have demonstrated a likelihood of success on the merits. At this juncture, it appears likely that the district court correctly concluded that 22 U.S.C. § 6209(d) does not grant the Chief Executive Officer of the United States Agency for Global Media, Michael Pack, with the authority to remove and replace members of the OTF's board. OTF is not a broadcaster, is not mentioned in § 6209(d), and is not sufficiently similar to the broadcast entities expressly listed in § 6209(d) to fit within the statutory text." Ex. 14 at 1-2. The Circuit went on to say, "As for the government's argument that the bylaws authorize such intervention by Mr. Pack, they

appear at this juncture only to reference the exercise of statutory authority, which does not seem to include control of OTF’s board or operations.” *Id.* at 2.

42. The appeal has been fully briefed. Argument in the D.C. Circuit was set for October 2, 2020. *Open Technology Fund v. Pack*, No. 20-5195 (D.C. Cir. Aug. 6, 2020), Doc. No. 1855447.

B. ANALYSIS

Nonprofit organizations incorporated in the District are governed by the District’s Nonprofit Corporation Act (“NCA”) which, *inter alia*, contain provisions that govern the establishment and composition of a board of directors, including procedures for selecting and removing directors from the board. *See* D.C. Code § 29-406.01 *et seq.* The Attorney General is authorized to oversee District nonprofits, and is vested with the authority to intervene in or commence proceedings related to nonprofit governance when notice is received. D.C. Code § 29-401.60(b). This authority includes a proceeding involving a contested corporate action, such as removal of members of a board, by a nonprofit corporation. *Id.* § 29-401.20(1); § 29-401.23. The Superior Court has authority to enforce provisions of a nonprofit corporation’s bylaws where the bylaws include a means of resolving a challenge to a corporate action, or to hear and determine the validity of the contested action where the bylaws contain no such provision or such a provision cannot be effectively enforced. *Id.* § 20-401.22.¹

¹ As noted, the Court requested that the District supplement its Motion for Summary Judgment with additional argument as to why the members of the alternative board of directors should not be joined as interested parties pursuant to Super. Ct. Civ. R. 19(a). In its brief, the District argued that D.C. Code § 29-401.22(b) provides that only notice be given to all persons affected. *See* Pl.’s Supp. at 2. The District has also set forth the manner in which notice was provided to Mr. Pack and the alternative board members, and further cited a brief filed on Mr. Pack’s behalf in another case currently pending in this Court that specifically refers to this litigation. *See id.* at 2-3 (citing *In re Subpoenas of Alan Dye, Robert Coonrod, Michael Pack and Public Media Lab*, 2020 C.A. 4200 3 (D.C. Super. Ct.)). Based on the District’s supplemental filing and the Court’s review of the law therein, the Court concludes that joinder of the alternative board is not required, *see Jackson v. George*, 146 A.3d 405 (D.C. 2016), and that sufficient notice was provided.

Here, it is undisputed that two different sets of directors are currently seeking to assert control over a District nonprofit corporation. The Court finds that, pursuant to OTF's bylaws, the Board of Directors is responsible for both the election and removal of directors. Specifically, the bylaws require that individual directors be elected by majority vote of the Board of Directors. Ex. 2, OTF Bylaws, § 5.2. Vacancies on the Board caused by resignation or removal may also be filled by a majority vote of the remaining directors. *Id.* Directors may only "be removed from office for cause by the vote of two-thirds (2/3) of those Directors present at a meeting of the Board of Directors at which a quorum is present, provided that all Directors, including the Directors to be removed are provided no less than ten (10) days' notice of such meeting." *Id.* § 6.12.² Accordingly, pursuant to the plain language of the OTF's bylaws, the Court concludes that Plaintiff has demonstrated prima facie entitlement to summary judgment insofar as Plaintiff has demonstrated that the original Board is the only valid board. *See also* Order Granting Pls.-Appellants' Mot. for Inj. Pending App, *Open Technology Find v. Pack*, No. 20-5192 (D.C. Cir. July 21, 2020) (observing that OTF's bylaws "appear at this juncture only to reference the exercise of statutory authority, which does not seem to include control of OTF's board or operations.").

The Court further finds that declaratory relief is appropriate. As Plaintiff notes, this Court is authorized to hear and determine the validity of corporate action when contested, and here a declaratory judgment is necessary to identify the appropriate scope of OTF's directors' status,

² There are two other provisions in the bylaws that refer to the removal of directors; both are inapplicable here. Section 2.3 requires OTF to revise its bylaws to comply with amendments made to the International Broadcasting Act applicable to the OTF's affairs, including, *inter alia*, the removal of directors. The IBA has not been amended since OTF's incorporation to include any provisions that would be applicable to OTF's removal of directors. *See* 22 U.S.C. § 6201 *et seq.* (as amended in 2016 by Pub. L. No. 114-328). Section 5.2 of the bylaws relates to electing directors and the length of terms of directors "as may be authorized by 22 U.S.C. 6203 *et seq.*" The statute does not authorize the USAGM CEO to remove the directors of an independent grantee organization such as OTF.

rights, and duties. Pl.'s Mem. at 11 (citing *McIntosh v. Washington*, 395 A.2d 744 (D.C. 1978)).
Therefore, the relief requested by Plaintiff will be granted.

III. CONCLUSION

The Court finds that the Plaintiff has established that the undisputed material facts demonstrate that the Plaintiff is entitled to judgment as a matter of law. Thus, for the reasons set forth above, it is this 14th day of October 2020 hereby

ORDERED that Plaintiff's Motion for Summary Judgment is **GRANTED**; and it is further

ORDERED that **JUDGMENT** is entered in favor of the Plaintiff; and it is further

ORDERED that the removal of Defendant's Board of Directors by Michael Pack, the Chief Executive Officer of the United States Agency for Global Media was not authorized; and it is further

ORDERED that the removed Board of Directors is the valid, operating Board of Directors; and it is further

ORDERED that any other actions by USAGM CEO Michael Pack and/or the replacement Board of Directors are invalid.

SO ORDERED.



Judge Shana Frost Matini
District of Columbia Superior Court

Copies to all counsel of record via CaseFileXpress.