UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GILDA YAZZIE, **Plaintiff,** **v.** **NATIONAL ORGANIZATION FOR WOMEN *et al.*,** **Defendants.**	**Case No. 1:19-cv-03845-RDM**

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Defendants National Organization for Women ("NOW" or "Organization"), Toni Van Pelt, Beth Corbin and Cynthia Drabek (collectively, "Defendants"), through counsel, and pursuant to Federal Rule of Civil Procedure 56 and Local Rule 7(h) of this Court, submit this memorandum of points and authorities in support of the instant motion for summary judgment.

I. INTRODUCTION

Plaintiff Gilda Yazzie ("Ms. Yazzie") alleges in her Complaint that NOW discriminated against her because of her race, subjected her to harassment in the workplace for racially discriminatory reasons, and retaliated against her in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e *et seq.*, and Section 1981 of the Civil Rights Act of 1866 ("Section 1981), 42 U.S.C. § 1981. The Complaint also asserts a common law claim of defamation against all Defendants.

In July 2017, NOW elected Ms. Yazzie as Vice President. In July 2018, the NOW National Board of Directors ("National Board") modified Ms. Yazzie's job duties pursuant to a motion by Board Member MonaLisa Wallace to permit her to perform her duties remotely (i.e., off-site) and assign her field organizing responsibilities. On May 6, 2019, the National Board voted by a supermajority of 13 in favor and 3 opposed to remove Ms. Yazzie as Vice President and, consequentially, an employee, because her conduct as Vice President had been "contrary to the principles and purposes of NOW and injurious to the organization."

Defendants demonstrate below that Ms. Yazzie's claims are so lacking in merit as justifies dismissal of the entire Complaint. First, the undisputed material facts show that NOW is not an "employer" within the ambit of Title VII and therefore not subject to its provisions. Ms. Yazzie cannot, in any event, prove under Title VII or Section 1981 discrimination, retaliation, or hostile work environment. There is no record evidence that might support a claim that the legitimate, non-discriminatory and non-retaliation reasons – poor performance and inability to adequately

complete her tasks – that formed the bases of the National Board's decision to remove Ms. Yazzie as Vice President was a pretext for discrimination or retaliation. Moreover, no record evidence was adduced or discovered that the National Board, which is composed of individuals with a broad range of racial and ethnic backgrounds, had any discriminatory or retaliatory animus with respect to Ms. Yazzie. The record evidence adduced demonstrates that it was Ms. Yazzie who described herself as "Dine American" and a part of the "Navajo Tribe" in election materials she herself prepared when she ran on the "slate" with Ms. Van Pelt.

Finally, after full and thorough discovery, no incidents were uncovered of defamation by any named Defendant. The record shows that the only discussion of the comments Ms. Yazzie believes were defamatory were made in the context of a confidential National Board executive session and were not published outside of the National Board. The comments were, accordingly, made well within the protection of the "common interest" qualified privilege.

There simply are no triable issues presented by the record. Consequently, Defendants are entitled to judgment dismissing the complaint as a matter of law.

II. STATEMENT OF FACTS[1]

A. The Structure of the National Organization for Women

The National Organization for Women takes pride in being the grassroots arm of the American feminist movement. The Organization has hundreds of chapters and many thousands of members and activists in all 50 states and the District of Columbia, where its headquarters (known as "the National Action Center" or "NAC") is located.

The National Board is comprised of NOW members from the group's nine regions and are elected by members of the various regions. It meets quarterly to discuss important issues facing

[1] Pursuant to the Court's Local Rules, Defendants have filed a separate Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment ("SUMF"). Defendants summarize those facts here.

the organization as well as issues of governance, such as funding and staffing. The National Board makes policy decisions that align with the Organization's Bylaws and decisions by delegates to the annual National Conference. *See* Ex. A, Declaration of Alison N. Davis, Ex. 1-NOW0001444 at 103-06. The National Board has the authority to remove NOW officers, Board members, members, or chapters if it determines that they have acted against NOW's policies or harmed the Organization. SUMF ¶ 3.

NOW is led by two elected officers (the President and Vice President) and the National Board. *Id*. ¶ 1. The two officers serve four-year terms and are elected at the National Conference. https://now.org/about Although both officers are elected, the Vice President reports to, and is subject to the direction of, the President. SUMF ¶ 2. According to the NOW Bylaws (at Article VI, Section 1), the President serves as both the Chief Executive Officer (CEO) and Chief Financial Officer ("CFO"). *Id.* ¶ 13. The Vice President serves as Treasurer for corporate purposes. *Id.* ¶ 14. The Bylaws make clear that the Vice President is to perform such other duties as assigned by the President or National Board. *Id*. ¶ 15.

Title VII, by its terms, is applicable only to employers who have fewer than fifteen (15) employees in each working day of the twenty (20) or more calendar weeks in the current or preceding calendar year in which an alleged unlawful discriminatory act occurred. During the period from July 17, 2017 to May 17, 2019 (the period relevant to the allegations of discrimination alleged in the complaint), NOW never employed more than 14 employees during any relevant week. SUMF ¶ 4. The relevant employment records were made available during the discovery period; but Plaintiff failed to adduce, or assert, any evidence that NOW ever employed more than fourteen (14) employees during any relevant weekly period.

B. Ms. Yazzie's Background

Ms. Yazzie self-identifies as an "American Indian, Navajo." *Id*. ¶ 5. In a news release leading up to the election in July 2017, Ms. Yazzie is identified as a "Navajo American Indian." *Id*. ¶ 6. In the campaign materials that Ms. Yazzie prepared, Ms. Yazzie represented that she was an enrolled member of the Navajo Nation. *Id*. ¶ 7.

C. The Leadership of Ms. Yazzie and Ms. Van Pelt

Bonnie Grabenhofer, who was NOW Vice President until July 2017, recruited Ms. Yazzie to run as a candidate for Vice President. *Id*. ¶ 8. Taking Ms. Grabenhofer up on her suggestion, Ms. Yazzie reached out to Ms. Van Pelt, who was running for President. *Id*. ¶ 9. Ms. Yazzie and Ms. Van Pelt knew each other from attending and participating in National Board meetings. *Id*. ¶ 10. After several phone conversations, Ms. Van Pelt and Ms. Yazzie agreed to run on the same ticket as a "slate". *Id*. ¶ 11.

In July 2017, at the National Convention, the NOW membership elected Ms. Yazzie and Ms. Van Pelt to be Vice President and President, respectively. *Id*. ¶ 12. As Vice President, Ms. Yazzie initially was responsible for (1) supervision of the staff for Chapter Services, PAC, and Government Relations; (2) Payroll, Benefits Information and References; (3) Charitable Registrations, and (4) Outreach. *Id.* ¶ 17. Following the 2017 election, there was an overlap between the outgoing officers, and Ms. Van Pelt and Ms. Yazzie. Ms. Grabenhofer provided Ms. Yazzie training during the transition period with respect to the duties she had been assigned by the prior NOW administration. *Id.* ¶ 16. Ms. Grabenhofer informed Ms. Yazzie that her job duties, as would Ms. Yazzie's, included reviewing time sheets for the government relations department, the PAC, chapter services, and network administration. *Id*. ¶ 17.

D. National Board's Retention of Anne Durand

Shortly after the formal commencement of the Van Pelt/Yazzie administration, it became apparent that the two officers were having difficulty working together. *Id*. ¶ 18. Upon the

recommendation of Ms. Grabenhofer, who continued to be a National Board member, Ms. Van Pelt requested and the National Board approved hiring Anne Durand on February 28, 2018. *Id*. ¶ 19. Ms. Durand's role was to facilitate communication so the officers could have a shared agenda and continue to conduct NOW's important business. *Id*. ¶ 20.

E. The Audit Committee Recommends the President Not Delegate Financial Responsibilities to Ms. Yazzie

The National Board is comprised of several committees of which the Audit Committee is one. *Id*. ¶ 21. The Audit Committee is responsible for ensuring the integrity of the Organization's finances through internal controls for financial reporting. *Id*. ¶ 22. Audrey Muck, Sinoun Hem, and Ms. Drabek were chosen to be members of this committee during the Van Pelt/Yazzie term. *Id*. ¶ 23. After being alerted to certain banking irregularities, and discovery of several other financial concerns by NOW's independent auditors Halt Buzas and Powell, LLC, the Audit Committee, on April 10, 2018, recommended that Ms. Yazzie be removed from all financial duties, approvals and other related transactions, including access to the Paychex electronic payroll system. *Id.* ¶ 24.

On or about May 19, 2018, the National Board received an audit report from the auditors summarizing their findings. *Id*. ¶ 25. The report highlighted "deficiencies in internal control" and several instances of financial mismanagement by the Vice President. *Id.* ¶ 26. For example, the auditor found that Ms. Yazzie was reimbursed twice for a $465 airline ticket. *Id.* ¶ 27. Additionally, the auditors found that Ms. Yazzie used the Organization's credit card to pay her personal rent. *Id.* ¶ 28. Further, Ms. Yazzie signed her own expense reports when the Organization's expense

reimbursement policy required that the President (*i.e.*, Ms. Van Pelt) approve her expenses. *Id.* ¶ 29. [2]

The auditor also informed the National Board that it found that the Senior Accounting Associate had taken an advance of $2,600. *Id.* ¶ 33. When the $2,600 advance was identified by the auditor, the Senior Accounting Associate and Ms. Yazzie called the outside accountant and asked if Ms. Yazzie had the authority to forgive the $2,600 loan. *Id.* ¶ 34. Ms. Yazzie was informed that she did not have that authority. *Id.* ¶ 35. Nevertheless, the $2,600 was written off without informing Ms. Van Pelt. *Id.* ¶ 36.

F. First Vote By the National Board to Remove Ms. Yazzie as Vice President

An emergency National Board meeting was called for June 10, 2018 for the purpose of discussing concerns with the Vice President's job performance and issues that were raised in the audit report. *Id.* ¶ 37. The National Board, following discussion, held a vote as to whether Ms. Yazzie should be removed from her office. *Id.* ¶ 38. At that time, an insufficient number of National Board members voted to remove Ms. Yazzie from her position. *Id.* ¶ 39. Instead of removing Ms. Yazzie, in July 2018, the National Board, in response to the recommendation of Board Member MonaLisa Wallace and pursuant to authorization of the Bylaws, modified the duties required of Ms. Yazzie by directing that she henceforth work remotely (i.e., off-site) and, in addition, be assigned to encourage the creation of new chapters and work with existing ones. *Id.* ¶ 40. In order to monitor the efficacy of Ms. Yazzie's efforts, the Board created a Vice President Oversight Committee. *Id.* ¶ 41.

[2] In addition, NOW discovered that on two separate occasions Ms. Yazzie signed a petty cash check to herself for $500 without notice to, or approval by, Ms. Van Pelt. *Id.* ¶ 30. There were several more duplicate payments to Ms. Yazzie, including for cable expenses in the amount of $108.07. *Id.* ¶ 31. An accounting of the improper expense reimbursements totaled $1,381.58. *Id.* ¶ 32.

G. Ms. Yazzie's Remote Work under the Vice President Oversight Committee

The Vice President Oversight Committee consisted of one National Board member chosen by Ms. Yazzie, one Board member chosen by Ms. Van Pelt, and a third Board member chosen by the two other committee members. *Id.* ¶ 42. Ms. Yazzie selected Bear Atwood. *Id.* ¶ 43. Ms. Van Pelt chose Christian Nunes. *Id.* ¶ 44. Nancy Campbell Mead was the third person selected to be on the Vice President Oversight Committee. *Id.* ¶ 45.

The Vice President Oversight Committee provided written goals for Ms. Yazzie's new role. *Id.* ¶ 46. Ms. Yazzie, as noted above, was expected to engage in chapter development work (including the development of an Indigenous Women's Caucus) and coordination. *Id.* ¶ 47. The Vice President Oversight Committee instructed Ms. Yazzie to submit biweekly payroll time sheets with itemized field reports, expense reporting logs, and other related paperwork. *Id.* ¶ 48.

Within the first month of Ms. Yazzie's supervision, the members of the Vice President Oversight Committee had to meet with her because of late or missing reports and delayed responses to emails while working remotely. *Id.* ¶ 49. In January 2019, the Vice President Oversight Committee reported to the National Board major concerns with the lack of communication between Ms. Yazzie and the Committee. *Id.* ¶ 50. The Vice President Oversight Committee expressed concern that Ms. Yazzie had not been following the National Board approved guidelines for her new duties and had been unable to fulfill her duties. *Id.* ¶ 51. The Vice President Oversight Committee stated to the National Board that the "process has been tedious and unsuccessful due to noncompliance and minimal collaboration from the Vice President." *Id.* ¶ 52.

H. The National Board Retains Human Resources Consultant Andrea Grayson

After the members of the Vice President Oversight Committee determined that they were unable to effectively communicate with Ms. Yazzie, NOW retained Andrea Grayson, an experienced human resources consultant, to work with Ms. Yazzie. *Id.* ¶ 53. It was the

Organization's intention than Ms. Grayson could help Ms. Yazzie become effective in the roles assigned to her by the Board. *Id.* ¶ 54. After several months of working with Ms. Yazzie, Ms. Grayson, on April 24, 2018 delivered a report to the National Board. *Id.* ¶ 55. Ms. Grayson reported that Ms. Yazzie did "not routinely respond to emails and texts in a timely manner" and "[did] not follow policies and procedures as established by the NOW organization." *Id.* ¶ 56. Ms. Grayson also reported that Ms. Yazzie did not have solid organizational skills, did not communicate effectively regarding her availability, and was noncompliant with requests. *Id.* ¶ 57. Especially concerning to Ms. Grayson was that Ms. Yazzie had stated that she did not agree with the Organization's priorities and directives and continued to view her role in a different light than how it was defined by the Organization. *Id.* ¶ 58. Ms. Grayson told the National Board that Ms. Yazzie appeared to be uncomfortable and overwhelmed by the Vice President job duties. *Id.* ¶ 59.[3]

I. The National Board Votes to Remove Ms. Yazzie As Vice President

On May 6, 2019, Ms. Drabek moved the Board, pursuant to Article XIII, Section 2 of the Bylaws to remove Ms. Yazzie for consistently failing to complete the tasks assigned to her, attending conferences and meetings representing NOW when she was not authorized to do so, demonstrating opposition to NOW's philosophy, deliberately attempting to sow dissent among NOW's administrative staff, failing to maintain confidentiality, and refusing to pay sums determined by NOW's auditors to be owed by her to NOW – in the parlance of the Bylaws actions "injurious to the Organization." *Id.* ¶ 62. In accordance with NOW's Bylaws, Ms. Yazzie was removed from office by a supermajority of at least two-thirds of the National Board in attendance at the meeting. *Id.* ¶ 63.

[3] The National Board subsequently decided to retain an independent investigator to look into allegations which former staff had made regarding Ms. Van Pelt being dishonest, toxic, dangerous, and that she had created a hostile work environment. The investigator did not find any basis for a determination that Ms. Van Pelt had discriminated against Ms. Yazzie or any other staff because of their race. *Id.* ¶¶ 60-61,

J. The National Board Did Not Publish Defamatory Statements About Ms. Yazzie

Ms. Yazzie testified during her deposition that "somebody" defamed her by accusing her of embezzlement during a Board meeting, but that she did not remember who made the accusation. *Id.* ¶ 64. Ms. Yazzie testified that she did not have knowledge as to whether Ms. Van Pelt ever shared the accusation that Ms. Yazzie had illegally used a credit card with anyone who was not a member of the National Board. *Id.* ¶ 65. Ms. Yazzie also testified that she did not have knowledge of either Ms. Corbin or Ms. Drabek sharing accusations of embezzlement with members outside of the National Board. *Id.* ¶ 66.

III. ARGUMENT

A. Standard Of Review

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure when the pleadings, discovery, and exhibits show there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. A principal purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment is beneficial because it conserves scarce judicial resources by eliminating or narrowing issues that would otherwise be tried unnecessarily to a jury. *Id.* at 327.

Stressing that summary judgment is "an integral part of the Federal Rules as a whole," and not a "disfavored procedural shortcut," the U.S. Supreme Court stated:

> Rule 56 must be construed with due regard not only to the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses had no factual basis.

Id. Once the moving party has shown that no genuine issue of material fact exists, the non-moving party must go beyond the pleadings and come forth with sufficient proof to establish the elements of the party's case upon which that party bears the burden of proof. *Id*. at 323-24. The mere existence of a minor factual dispute will not preclude summary judgment if there is no "genuine" issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Any disputed facts must be material, meaning they must be facts that might affect the outcome of the claim under governing law. *Id.*, 477 U.S. at 249. "[P]laintiff, as the non-moving party, is 'required to provide evidence that would permit a reasonable [factfinder] to find' in her favor." *Gary v. Washington Metro. Area Transit Auth.*, 886 F. Supp. 78, 83 (D.D.C. 1995) (quoting *Laningham v. U.S. Navy*, 813 F.2d 1236, 1242 (D.C. Cir. 1987) (per curiam)). Also, a plaintiff's speculative testimony about the motive for an employer's employment action cannot create a triable issue of material fact. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990) (conclusory allegations insufficient to defeat summary judgment motion).

In deciding a motion for summary judgment, a court must construe the facts in a light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255. However, a plaintiff must do more than demonstrate there is some "metaphysical doubt as to the material facts." *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *see also Anderson*, 477 U.S. at 247-48 ("the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact") (emphasis in original); *Owens v. Nat'l Med. Care, Inc.*, 337 F. Supp. 2d 131, 136 (D.D.C. 2004) ("[T]he non-moving party cannot rely on 'mere allegations or denials . . . but must set forth specific facts demonstrating that there are genuine issues for trial.'").

B. The Court Should Enter Judgment as a Matter of Law on Plaintiff's First, Second and Third Claims For Relief Under Title VII

1. NOW is not a "covered employer" subject to the provisions of Title VII.

Ms. Yazzie cannot state a claim of discrimination, retaliation or hostile work environment against NOW under Title VII because NOW is not a "covered employer." Under Title VII, to be a covered employer, NOW had to have employed 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year when the alleged discriminatory act occurred. 42 U.S.C. § 2000e(b). The record shows that NOW did not meet the statutory threshold of 15 enumerated individuals. At all times during the relevant period, NOW employed less than fourteen people in the National Action Center. SUMF ¶ 4.

Title VII defines "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year…." When addressing the question of how to determine whether "an employer 'has' an employee on any working day" for purposes of 42 U.S.C. § 2000(e)(b), the U.S. Supreme Court determined that the relevant inquiry is whether "the employer has an employment relationship with the individual on the day in question." *Walters v. Metropolitan Educational Enterprises, Inc.*, 519 U.S. 202, 206 (1997); *see also Dean v. Am. Fed'n Am. of Gov't Employees, Local 476*, 509 F. Supp. 2d 39, 52 (D.D.C. 2007).

The U.S. Supreme Court has called this test the "payroll method" as the employment relationship is most readily demonstrated by the individual's appearance on the employer's payroll." *Id.* at 206; *Barot v. Embassy of Republic of Zambia*, 299 F. Supp. 3d 160, 173 (D.D.C. 2018). Additionally, not only does the individual need to appear on the employer's payroll, the individual must also be considered an employee "under traditional principles of agency law" to count towards the 15-employee minimum. *Id.* at 211; *see also Spirides v. Reinhardt*, 613 F.2d 826,

831 (D.C. Cir. 1979) (directing courts to apply general principles of agency law when analyzing if an individual is an employee or independent contractor under Title VII).

Under the general principles of agency law, the primary factor of whether an individual is an employee is "the extent of the employer's right to control the 'means and manner' of the worker's performance." *Barot*, 299 F. Supp. 3d at 173 (quoting *Spirides*, 613 F.2d at 831). The relevant time period to examine is when the alleged discrimination took place. *Dean*, 509 F. Supp. 2d at 52 n.10; *see Walters*, 519 U.S. 202, 205 (held that the relevant time period was the year in which the alleged discrimination took place and the preceding year).

Here, Ms. Yazzie alleges that she was terminated for discriminatory reasons on May 6, 2019. ECF No. 1-3 ¶ 62. Therefore, January 2018 through May 2019 is the relevant time period for purposes of determining whether NOW is an "employer" subject to Title VII. During this time, Defendant NOW never had more than fourteen employees at a time on the payroll. Accordingly, Defendant NOW is not subject to Title VII and Ms. Yazzie's Title VII claims against the Organization must be dismissed with prejudice.

2. Even if NOW is a Title VII employer, Ms. Yazzie has not, and cannot create a genuine dispute that a motivating factor in the decision to remove her was her race or association with or advocacy for people of color.

Even if NOW is an employer subject to Title VII the undisputed evidence adduced during discovery clearly indicates that Ms. Yazzie was removed from her position as Vice President for legitimate, nondiscriminatory reasons. Ms. Yazzie may maintain that the legitimate reasons asserted were pretextual and that discrimination was a factor in her removal. Such a contention is unavailing. No evidence was adduced during discovery from which a factfinder could infer that NOW's stated reasons for Ms. Yazzie's removal were pretextual and that NOW intentionally discriminated against her because of her race.

Courts evaluate discrimination claims under Title VII under the burden-shifting framework set out in *McDonnell Douglas. McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (applying burden-shifting to Title VII discrimination claim.) [4] Under that framework, a plaintiff must first establish a *prima facie* case. *Badibanga v. Howard Univ. Hosp*., 679 F. Supp. 2d 99, 102 (D.D.C. 2010). The burden then shifts to the defendant to offer a legitimate, nondiscriminatory reason for the challenged action. *McDonnell Douglas*, 411 U.S. at 802; *see also Felder v. Johanns*, 595 F. Supp. 2d 46, 63 (D.D.C. 2009). This is a burden of production, not persuasion. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993). Once the defendant articulates a legitimate reason, the burden shifts back to the plaintiff to prove that the defendant's reason is pretext and the real reason is unlawful discrimination. *Id.*

The D.C. Circuit has held that, for summary judgment purposes, the three-step analysis is really just two where a legitimate, non-discriminatory reason for an adverse employment action has been established. *See Brady v. Office of Sergeant at Arms*, 520 F.3d 490, 492-9; *see also Felder*, 595 F. Supp. 2d at 63-64 (citing *Brady* for the proposition that the *McDonnell Douglas prima facie* factors are "'almost always irrelevant' and are 'largely [an] unnecessary sideshow'"). In such circumstances, where the employer has put forth a legitimate business reason, the Court's inquiry collapses into a single question: "[h]as the employee produced sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of [the protected category]." *Brady*, 520 F.3d at 494; *see also Morgan v. Vilsack*, 715 F. Supp. 2d 168, 174 (D.D.C 2010).[5]

[4] There is no direct evidence of race discrimination in the record. Therefore, the *McDonnell Douglas* burden shifting paradigm applies. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

[5] At all times, the plaintiff bears the burden of persuasion on the ultimate issue, *i.e.*, whether the employment decision was intentionally discriminatory. *See St. Mary's Honor Ctr.*, 508 U.S. at 511 (1993).

The undisputed record evidence overwhelmingly supports NOW's position that the National Board terminated Ms. Yazzie's employment because she was not able to consistently and effectively perform the responsibilities necessary as Vice President. That evidence includes the findings by NOW's independent auditing firm of instances of financial mismanagement at the hands of the Ms. Yazzie. SUMF ¶¶ 24-39. For example, Ms. Yazzie submitted duplicate reimbursement requests and received payment for both. *Id.* ¶ 27. Ms. Yazzie, moreover, used the organization's credit card for her personal expenses without authorization. *Id.* ¶ 28. Ms. Yazzie failed to follow established NOW protocols by authorizing payment of her own expense submissions. *Id.* ¶ 29.

The undisputed record shows that the National Board bent over backwards to accommodate Ms. Yazzie by enabling her to work off-site and assigning her field work duties at which she could become successful. *Id.* ¶ 40. It further shows that Ms. Yazzie's work continued to be unsatisfactory. The Vice President Oversight Committee, which was created to supervise Ms. Yazzie reported to the National Board that there were major concerns with Ms. Yazzie's lack of communication and unwillingness to follow the guidelines. Its report concluded by stating that the committee felt that the "process has been tedious and unsuccessful due to noncompliance and minimal collaboration from the Vice President." SUMF ¶¶ 42-52.

The undisputed record further discloses that NOW yet again tried to accommodate Ms. Yazzie and make her successful by retaining Ms. Grayson to help her effectively communicate with NOW and Ms. Van Pelt. In her report to the National Board, Ms. Grayson reported that Ms. Yazzie lacked solid organizational skills, did not communicate effectively, and was noncompliant with requests. Ms. Grayson also told the National Board that Ms. Yazzie appeared to be uncomfortable and overwhelmed by the Vice President job duties. SUMF ¶¶ 53-59.

The undisputed record demonstrates that NOW expended major effort to remedy Ms. Yazzie's documented shortcomings. Indeed, the National Board's decision to remove Ms. Yazzie from office was made only after two years of unsuccessful attempts to accommodate Ms. Yazzie and helping her develop the skill set she needed to excel.

Any arguments Ms. Yazzie may make that her performance was not as poor as reflected in the above reports to the National Board will fall short. Even if an employer errs in its assessment of the underlying facts concerning performance, error does not by itself demonstrate pretext. *See George v. Leavitt*, 407 F.3d 405, 415 (D.C. Cir. 2005). For example, the plaintiff in *Brady* attempted to show pretext by arguing that the misconduct for which his employer fired him never occurred, and that rather, the individuals who falsely accused him of misconduct did so because of his race. *See Brady*, 520 F.3d 490, 495-96 (D.C. Cir. 2008). The D.C. Circuit rejected the plaintiff's pretext argument, explaining that "[t]he question is not whether the underlying [misconduct] occurred; rather, the issue is whether *the employer honestly and reasonably believed* that the underlying [misconduct] occurred." *See id.* at 496 (emphasis in original). Here, Ms. Yazzie's performance was evaluated by multiple third parties who all found incompetence and poor communication skills.

Ms. Yazzie cannot present any credible fact supporting her assertion that her termination was race based. Ms. Yazzie has no deposition testimony or other supporting evidence to show NOW treated similarly situated employees, who were not within her protected category more favorably in the same factual circumstances or that NOW is making up or lying about the underlying facts that formed the basis for the vote to remove Ms. Yazzie. There are no similarly situated individuals in this case. Ms. Yazzie served as the only Vice President. There is no genuine dispute that an independent auditor report and feedback regarding Ms. Yazzie's performance from

the Vice President Oversight Committee and an independent HR Consultant were presented to the National Board as grounds for Ms. Yazzie's removal, and thereafter a vote was taken that supported removal of Ms. Yazzie as Vice President. SUMF ¶ 18.

Finally, there exists no grounds on which to base a conclusion that the decision maker, the National Board, the evaluators who performed the reports upon which the Board relied upon for its decisions, or Ms. Van Pelt, made decisions based on Ms. Yazzie's race. Neither the Vice President Oversight Committee report nor the report by Ms. Grayson mentioned race and each highlighted the same performance, availability, and communication deficiencies.

3. Even if NOW is a Title VII employer, there is no genuine dispute that Ms. Yazzie was not subjected to a hostile work environment because of her race or association with or advocacy for people of color. [6]

Even if NOW is a Title VII employer, the undisputed record evidence demonstrates that Ms. Yazzie was not subjected to a hostile work environment. To prevail on a hostile work environment claim, "a plaintiff must show that (1) she is a member of a protected class; (2) she endured harassment that was severe or pervasive such that it altered a term, condition, or privilege of employment; and (3) the harassment was based on her membership in the protected class." *Walden v. Patient-Centered Outcomes Research Inst.*, 177 F. Supp. 3d 336, 344 (D.D.C. 2016) (citing *Briscoe v. Costco Wholesale Corp.*, 61 F. Supp. 3d 78, 86 (D.D.C. 2014). A plaintiff needs to demonstrate that the alleged harassment "was based on plaintiff's membership in a protected class, and that [plaintiff's] employer knew or should have known of the harassment and failed to take any remedial action." *Rattigan*, 503 F. Supp. at 78.

[6] Likewise, Ms. Yazzie cannot prevail on her Fifth Claim for Relief (Hostile Environment Race) under Section 1981. For a plaintiff to prevail on a hostile work environment claim under Section 1981, a "plaintiff must show that her employer subjected her to discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Baloch v. Kempthorne*, 550 F.3d 1191, 1201 (D.C. Cir. 2008). Ms. Yazzie has no evidence to show that she was subjected to any conduct because of race.

"The workplace becomes 'hostile' for purposes of a Title VII claim only when it is 'permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Rattigan*, 503 F. Supp. at 78 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998)). In determining whether the environment is sufficiently hostile, the court will assess all the circumstances, including "the 'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Id.* (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998)). The conduct must be "*extreme*" to satisfy the standard. "[H]ostile acts 'must be adequately connected to each other . . . as opposed to being an array of unrelated discriminatory or retaliatory acts.'" *Walden*, 177 F. Supp. 3d at 344 (quoting *Baird v. Gotbaum*, 662 F.3d 1246, 1252 (D.C. Cir. 2011)). "These standards for judging hostility are sufficiently demanding to ensure that [antidiscrimination laws do] not become a general civility code." *Faragher*, 524 U.S. at 788. "Properly applied, they will filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing." *Id.* (internal citation and quotation marks omitted). Additionally, courts have refused to hold that "a few isolated incidents of offensive conduct . . . amount to actionable harassment." *Stewart v. Evans*, 275 F.3d 1126, 1134 (D.C. Cir. 2002)(citations omitted).

According to Ms. Yazzie, she was subjected to public humiliation, racial slurs, and other acts demonstrating "meanness toward her on account of her race and her association with other women of color." (ECF No. 1-3 at ¶ 75). Ms. Yazzie further alleges that she was denied the authority and resources to fulfill the role for which she was elected. (*Id*. at ¶ 76). Also, according to Ms. Yazzie, on one occasion, Ms. Van Pelt blocked Ms. Yazzie in her office, and called her a

"POC" (apparently meaning person of color) in a "very demeaning, racist way." (Yazzie Dep. 58:4-12)[7]. NOW vehemently denies these allegations. Notably, an independent investigator found there was not a hostile work environment based on race at NOW. SUMF ¶ 61("insufficient evidence to claim [Ms. Van Pelt] is a racist.")

Regardless, viewing Ms. Yazzie's testimony in the light most favorable to her, the conduct in which Ms. Van Pelt allegedly engaged could be best described as rude and unwelcome. But the alleged conduct must be more than merely offensive. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 17, 21 (1993). There are countless cases in which courts found similarly offensive behavior falls short of creating a hostile work environment. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (A "'mere utterance of an . . . epithet which engenders offensive feelings in an employee' does not sufficiently affect the conditions of employment.").

When courts have recognized that a hostile work environment occurred, the hostile behavior at issue was far more pervasive and egregious than alleged here. *See, e.g., Faragher*, 524 U.S. at 782, (finding actionable hostile environment where, over five-year period, supervisors repeatedly touched and sexually propositioned female lifeguards, made lewd remarks and gestures, spoke of women in offensive terms). Even rude office conduct that generates stressful working conditions does not create liability for discrimination under Title VII, unless that conduct is "permeated with discriminatory intimidation, ridicule, and insult." *Harris v. Forklift System. Inc.*, 510 U.S. 17, 21 (1993); *see also George v. Leavitt*, 407 F.3d 405, 408, 416-17 (D.C. Cir. 2005) (Holding that statements by three employees over a six month period that plaintiff should "go back where she came from," separate acts of yelling and hostility and allegations that the plaintiff was not given the type of work she deserved were isolated instances that did not rise to the level of

[7] For the Court's convenience only, Defendants have attached this transcript designation as Ex. D to Defendants' Statement of Undisputed Material Facts.

severity necessary to find a hostile work environment); *Akosile v. Armed Forces Ret. Home*, 938 F. Supp. 2d 76, 87 (D.D.C. 2013)("Negative interactions with supervisors, even when a supervisor yells and uses profanity, generally do not meet this standard"); *Goode v. Billington*, 932 F. Supp. 2d 75, 89 (D.D.C. 2013) (quoting *Park v. Howard Univ*., 71 F.3d 904, 906 (D.C. Cir. 1995)("The D.C. Circuit has repeatedly emphasized that 'casual or isolated manifestations of a discriminatory environment, such as a few ethnic or racial slurs, may not raise a cause of action.'") The alleged conduct here did not have nearly the level of frequency or severity as cases where courts have found there to be a hostile work environment. Accordingly, this Court should find that there was no hostile work environment based on race.

4. Even if NOW is a Title VII employer, Ms. Yazzie cannot produce evidence that she engaged in Title VII protected activity and suffered a materially adverse employment action as a consequence.

Even if NOW is a Title VII employer, Ms. Yazzie cannot establish "but-for" causation, which is required for a plaintiff to prevail on a Title VII retaliation claim. *Univ. of Texas Sw. Med. Center v. Nassar*, 570 U.S. 338 (2013). When brought under Title VII, retaliation claims are analyzed under the U.S. Supreme Court's decision in *McDonnell Douglas. Johnson v. Interstate Mgmt. Co. LLC*, 2014 U.S. Dist. LEXIS 131557, (D.D.C. Sept. 19, 2014); *Brady*, 520 F.3d at 493-94 (applying burden-shifting to Title VII retaliation claim). This framework first requires a plaintiff to make out a *prima facie* case. The *prima facie* case in a retaliation claim has three elements: (1) the plaintiff engaged in protected activity, (2) the defendant took a materially adverse action against her, and (3) there was a causal connection between the protected activity and the adverse action. *Shinabargar v. Board of Trustees of Univ. of D.C.*, 164 F. Supp. 3d 1, 16 (D.D.C. 2016).

To prove the third element, the plaintiff must at least show that the decision-maker knew about the protected activity. *See, e.g.*, *Morris v. McCarthy*, 825 F.3d 658, 673 (D.C. Cir. 2016)

("To establish either type of retaliation claim, an employee must have engaged in protected participation or opposition activity about which the employer knew."); *Furline v. Morrison*, 953 A.2d 344, 355 n.36 (D.C. 2008) ("Constructive knowledge is not enough; the 'employee must show that the decision-makers responsible for the adverse action had actual knowledge of the protected activity.'" (quoting *McFarland v. George Washington Univ.*, 935 A.2d 337, 357 (D.C. 2007)).

It is clear from the undisputed record evidence that Ms. Yazzie cannot make out a *prima facie case* under Title VII because she cannot show a causal connection between any protected activity and the adverse action. NOW disputes that Ms. Yazzie engaged in protected activity.[8] While Ms. Yazzie did present her concerns regarding her ability to work with Ms. Van Pelt to the National Board of directors and the Audit Committee, she did not complain that Ms. Van Pelt was treating her differently because she was American Indian, Navajo or Dine American. As set forth above, *supra* at 14-15, the National Board had a legitimate reason for voting to remove Ms. Yazzie as Vice President. Ms. Yazzie has no evidence to show "but for" any complaint about Ms. Van Pelt she would not have been terminated. Accordingly, there is no evidence in the record that would create a genuine issue of material fact as to whether the legitimate, non-retaliatory reasons for any adverse employment actions which the National Board took were a pretext for retaliation.

[8] Under Title VII, "protected activity" is participation in a Title VII proceeding or opposition to practices made illegal by Title VII. *See Parker v. Balt. & Ohio R.R. Co.*, 652 F.2d 1012, 1019 (D.C. Cir. 1981). Solely for purposes of this Motion, Defendants do not dispute that Ms. Yazzie engaged in protected activity for purposes of Title VII.

C. The Court Should Enter Judgement as a Matter of Law on Plaintiff's Fourth, Fifth and Sixth Claims For Relief Under Section 1981

1. Ms. Yazzie has adduced no evidence that might establish that she would not have been terminated "but-for" unlawful racial considerations.

Ms. Yazzie cannot prove that, "but for" race, she would have suffered the loss of a legally protected right under Section 1981. *Comcast Corp. v. Nat'l Assoc. of African Am.-Owned Media*, 140 S.Ct. 1009, 1019 (2020). Section 1981 prohibits private employers from intentionally discriminating on the basis of race with respect to the "benefits, privileges, terms, and conditions" of employment. 42 U.S.C. § 1981; *see Runyon v. McCrary*, 427 U.S. 160, 170 (1976). As noted in our discussion of Ms. Yazzie's disparate treatment claim under Title VII, *supra* at 15-16, Ms. Yazzie has no evidence to meet the motivating factor standard. Thus, Ms. Yazzie certainly cannot satisfy the heightened "but for" standard that governs her disparate treatment claim based on race under Section 1981.

2. Ms. Yazzie cannot create a genuine dispute regarding retaliatory motivation for any purported adverse employment action.

The U.S. Supreme Court has held that Section 1981 encompasses claims of retaliation. *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 445 (2008). An employer cannot retaliate against an employee for complaining about a violation of her own or another person's contract-related right. *See Telesford v. Md. Provo-I Med. Servs., P.C.*, 204 F. Supp. 3d 120, 132 (D.D.C. 2016). The D.C. Circuit has not addressed whether the *Nassar* but-for causation requirement, which applies to a Title VII claim, applies to a Section 1981 retaliation claim. *See Jones v. D.C. Water & Sewer Auth.*, Civil Action No. 12-1454, 2016 U.S. Dist. LEXIS 19455, at *15-19 (D.D.C.)(J. Boasberg).[9] Regardless, as stated above, Ms. Yazzie has not adduced any evidence which could

[9] We did not uncover a published decision post-*Comcast* in this Circuit in which the Court decided the rationale of that case impacted the framework for Section 1981 retaliation claims.

be presented in admissible form at trial to create an issue regarding the veracity of NOW's legitimate reasons for any purported adverse employment actions.[10]

Absent direct evidence of retaliation, this Circuit continues to analyze § 1981 retaliation claims according to the familiar burden-shifting framework set forth in *McDonnell-Douglas Corp.*, 411 U.S. at 792. Pursuant to that framework, a plaintiff who has stated a *prima facie* case of retaliation may rely on indirect evidence to show that the defendant engaged in the challenged adverse employment action because she engaged in protected activity.

To state a *prima facie* retaliation claim under § 1981, Ms. Yazzie must show: (1) she engaged in a protected activity; (2) NOW took materially adverse action against her; and (3) there is a causal link between the protected activity and the adverse action. *See Wiley v. Glassman*, 511 F.3d 151, 155 (D.C. Cir. 2007). To constitute protected activity in the context of a Section 1981 claim, Ms. Yazzie must have raised concerns related to discrimination based on her race or ethnicity. *See Harris v. D.C. Water & Sewer Auth.*, 922 F. Supp. 2d 30, 34 (D.D.C. 2013) ("[T]he plaintiff must be opposing an employment practice made unlawful by the statute under which she has filed her claim of retaliation."). Here, Ms. Yazzie cannot point to any facts that demonstrate that the National Board's actions were taken because she engaged in activity protected under Section 1981.[11]

Ms. Yazzie's retaliation claim fails because she has not demonstrated, and cannot demonstrate, that she experienced an adverse action because of her complaints about Ms. Van Pelt.

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[10] For purposes of a Section 1981 retaliation claim, Ms. Yazzie would have to prove NOW took an action that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Railway Co. v. White*, 548 U.S. 53, 68 (2006).

[11] NOW disputes that Ms. Yazzie engaged in protected activity under Section 1981. Ms. Yazzie complained only about her inability to work with Ms. Van Pelt. Complaints of mistreatment, "without mentioning discrimination ... [do] not constitute protected activity, even if the employee honestly believes she is the subject of . . . discrimination." *Broderick v. Donaldson*, 437 F.3d 1226, 1232 (D.C. Cir.2006) (citing *Sitar v. Ind. Dep't of Transp*., 344 F.3d 720, 727–28 (7th Cir.2003)).

As has been discussed above, and extensively documented, NOW had legitimate non-retaliatory reasons for its employment decisions. Indeed, undisputed record evidence shows that the National Board took significant steps to assist Ms. Yazzie in becoming a successful officer and investigating her allegation of a hostile work environment. There is no dispute that the National Board voted for the termination of Ms. Yazzie's employment only after it received reports of her failure to meet the National Board's expectations of her performance and financial improprieties.

Moreover, there is nothing in the record that even arguably suggests that the National Board members harbored retaliatory animus. Rather, the evidence shows that the National Board hired an investigator to investigate Ms. Yazzie's claims that she was being unfairly treated and concluded that the substance of those allegations was without merit. Because no reasonable jury reviewing the undisputed evidence in this record could find statutorily protected activity was the cause of her termination, summary judgment on her § 1981 retaliation claim is appropriate and must be dismissed.

3. Ms. Yazzie cannot establish that she was subjected to discriminatory intimidation, ridicule, or insult sufficiently pervasive to alter the conditions of her employment and create a hostile work environment.

To prevail on a hostile work environment claim under Section 1981, "a plaintiff must show that [her] employer subjected [her] to discriminatory intimidation, ridicule, and insult that [wa]s sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Baloch v. Kempthorne*, 550 F.3d 1191, 1201 (D.C. Cir. 2008) (internal citations and quotations omitted). Whether a workplace is actionably hostile is both a subjective and objective analysis – "[t]he victim must subjectively perceive the environment to be abusive, and the complained about conduct must be so severe or pervasive that it objectively creates a hostile or abusive work environment." *Toomer v. Mattis*, 266 F. Supp. 3d 184, 193 (D.D.C. 2017). Importantly, to succeed with a hostile environment claim, a plaintiff must show

that the alleged harassment occurred because of the plaintiff's protected trait (race). *Peters v. District of Columbia*, 873 F. Supp. 2d 158, 189 (D.D.C. 2012).

The U.S. Supreme Court has "made it clear that conduct must be so extreme as amounts to a change in the terms and conditions of employment" in order to "filter out" complaints attacking the "ordinary tribulations of the workplace." *Carter-Frost*, 305 F. Supp. 3d at 75 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998)). As such, "mere reference to alleged disparate acts of discrimination . . . cannot be transformed, without more, into a hostile work environment." *Nurriddin v. Bolden*, 674 F. Supp. 2d 64, 94 (D.D.C. 2009). Moreover, hostile work environment assertions must not be undermined by "the sporadic nature of the conflicts." *Baloch*, 550 F.3d at 1201. Instead, a plaintiff must "describe the day-to-day insult or intimidation" necessary to demonstrate a "sufficiently pervasive pattern" of hostile conduct. *Carter-Frost v. District of Columbia*, 305 F. Supp. 3d 60, 76 (D.D.C. 2018); *Toomer*, 266 F. Supp. 3d at 196.

The undisputed evidence adduced during discovery makes clear that Ms. Yazzie cannot meet any portion of this standard. Ms. Yazzie cannot connect any perceived discriminatory intimidation to her race. Other than Ms. Yazzie's feelings, she has neither adduced nor demonstrated any evidence supporting a claim that she was subject to insult or intimidation as is necessary to demonstrate a sufficiently pervasive pattern of hostile conduct. In fact, quite the opposite is true.

The National Board modified Ms. Yazzie's duties to make her more successful as an officer. The National Board enabled her working off-site and assigned new field duties for which it felt Ms. Yazzie well suited to perform. Ms. Yazzie testified during her deposition to one purportedly derogatory comment connected to race which Ms. Van Pelt allegedly made against

her, calling her a "POC".[12] (Yazzie Dep. 170:20-171:9)[13]. Ms. Yazzie testified that neither Ms. Corbin nor Ms. Drabek ever made a derogatory comment about her race to her.[14] (Yazzie Dep. 171:14-172:7)[15]. Therefore, Ms. Yazzie has not established that she was subjected to a hostile work environment because of her race in violation of Section 1981.

D. The Court Should Enter Judgment as a Matter of Law on Plaintiff's Defamation Claim

To state a claim for defamation, a plaintiff must show "(1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement *without privilege* to a third party; (3) that the defendant's fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm." *Beeton v. District of Columbia*, 779 A.2d 918, 923 (D.C. 2001); *see also Williams v. District of Columbia*, 9 A.3d 484, 491 (D.C. 2010).

Ms. Yazzie has not adduced any evidence of an actual statement that was both untrue and published to individuals not covered by the "common interest" limited privilege. To come within the "common interest" privilege, statements must have been (1) made in good faith, (2) on a subject in which the party communicating has an interest, or in reference to which the party has, or honestly believes, that she/he has, a duty to a person having a corresponding interest or duty, or (3) to a person who has such a corresponding interest. *Blodgett v. Univ. Club*, 930 A.2d 210, 223 (D.C. 2007) (citing *Ingber v. Ross*, 479 A.2d 1256, 1264 n.8 (D.C. 1984)).

[12] NOW denies that this incident ever happened. (Van Pelt Dep. 120:1-17).
[13] *See supra* n.7.
[14] Ms. Yazzie has not alleged that she her race was the subject of comment by any other Board member.
[15] *Id.*

Ms. Yazzie testified at her deposition that she was not aware of any alleged defamatory statements being made to individuals who were not National Board members. (Yazzie Dep. 172:8-178:3).[16] Further, it is implausible that the National Board members did not have an interest in financial matters relating to NOW. Discovery has shown that Ms. Yazzie was not defamed by any of the named Defendants. As such, Defendants respectfully request that this Court grant their motion as to the defamation claim for relief and dismiss the count alleging defamation.

IV. CONCLUSION

As the undisputed material facts amply demonstrate, Title VII is not applicable to NOW because it never employed at least 15 people; the number of employees required for coverage by the law. The undisputed material facts also demonstrate that Ms. Yazzie was removed as an officer of NOW by the Organization's National Board solely because she was unable to perform satisfactorily the duties required of her office even after significant efforts were made to help her become successful. The undisputed facts, moreover, demonstrate that the comments that Ms. Yazzie asserts to be defamatory are not actionable under District of Columbia law because they were made only to the National Board in the context of its consideration of her suitability to hold the role of Vice President and therefore were protected by the "common interest" privilege.

For the foregoing reasons, NOW, Toni Van Pelt, Cynthia Drabek, and Beth Corbin respectfully request that the Court grant their Motion for Summary Judgment, declare them the prevailing party, enter judgment in NOW's favor, and grant NOW such other and further relief as the Court deems appropriate.

[16] *See supra* n.7. Ms. Yazzie was asked about each of the Defendants whom she has accused of defamation, and testified that she was not aware of any of them sharing accusations of embezzlement with anyone outside of the Board. (Yazzie Dep. 176:15-177:6, 177:10-178:3).

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Respectfully submitted,

/s/ Alison N. Davis

Alison N. Davis (Bar No. 429700)
Anna Sheridan (Bar No. 1671005)
LITTLER MENDELSON, P.C.
815 Connecticut Avenue, NW, Suite 400
Washington, DC 20006-4006
202.842.3400 Telephone
202.842.0011 Facsimile
andavis@littler.com
pdonkor@littler.com

Counsel for Defendants