

**IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA**

MILTON PURCELL,	:	
ETHEL CAMPBELL,	:	
GRAHAM MCINTYRE,	:	
IVAN DIETRICH,	:	
RALPH FINK,	:	
HARVEY DEITRICH,	:	
GIRARD GAUGHAN,	:	
HARRY HEATH,	:	
ROBERT PATTON,	:	
GERALD LONG,	:	
JUNIOR VIA,	:	
RICHARD MATTIS,	:	
CHRISTINE COOK, and	:	
ROBERT HEIST,	:	
	:	
PLAINTIFFS	:	
	:	
vs.	:	NO. 2005-CV-0463-EQ
	:	
MILTON HERSHEY SCHOOL	:	
ALUMNI ASSOCIATION,	:	
JOHN RICE, and	:	
JERRY WATERS	:	
	:	
DEFENDANTS	:	

**MEMORANDUM OF LAW IN SUPPORT OF
AMENDED MOTION FOR PRELIMINARY INJUNCTION**

**Allen C. Warshaw
Pa. I.D. No. 17145**

**KLETT ROONEY LIEBER & SCHORLING
240 N. Third Street, Suite 700
Harrisburg, PA 17101
(717) 231-7700 PHONE
(717) 231-7712 FAX**

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**MEMORANDUM OF LAW
IN SUPPORT OF AMENDED MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiffs file this action pursuant to 15 Pa.C.S.A. §5793 in order to seek judicial review of certain actions taken by the Officers and Directors of the Milton Hershey School Alumni Association, a Pennsylvania non-profit corporation. Specifically, Plaintiffs seek judicial review of the election of certain Officers and the removal of certain Directors which took place at meetings of the Board of Directors held on November 14, December 19 and December 26, 2004. Plaintiffs also ask this Court to enjoin the Association from implementing a Resolution which was improperly enacted at the meeting of December 26, 2004, which would purport to require removal of certain Directors in the case that litigation such as this case is commenced. Through those improper actions, a minority of the Board has been able illegally to take control of the Association from the majority of properly elected Board members. Plaintiffs ask this Court to reverse those actions and return control of the Association to the duly elected majority of the members and the Board.

Presently pending before the Court is a Motion for a Preliminary Injunction in which Plaintiffs ask this Court to restore the status quo which existed at the time that Defendants took their illegal actions on November 14, 2004, December 19, 2004, and December 26, 2004, by vacating the actions taken at those meetings and temporarily restoring to the Board those who were members of the Board as of the beginning of the November 14 meeting. Plaintiffs also ask that Defendants be preliminarily enjoined from conducting anything other than routine Board business, such as implementing the Resolutions purportedly passed at the meeting of

December 26, 2005, until this Court can determine the proper members of the Board. This Memorandum of Law is submitted in support of that Motion.

II. STATEMENT OF THE CASE

A. Introduction

Defendant Milton Hershey School Alumni Association (“MHSAA”) is a non-profit corporation with over 6000 members, including Alumni of the Milton Hershey School, as well as honorary and associate members who are not alumni of the school. The other two Defendants are its immediate Past President, John Rice, and its purported President, Jerry Waters. Plaintiffs are properly elected members of the Board of Directors of Milton Hershey School Alumni Association and include several properly elected Officers of the Association.

According to Plaintiffs, Defendants Rice and Waters have improperly removed several Directors, including several properly elected Officers. Rice and Waters have also wrongfully disallowed the votes of several other Directors. Finally, Defendants have allowed Waters to vote and to serve as President despite his patent ineligibility to do so.

B. The Board Of Directors

Under the By-Laws of MHSAA (the “By-Laws”), not less than one-half of the members of the Board of Directors are to be elected by the membership at annual meetings. Article III, Section 2. At present and at all relevant times, there were twelve (12) members of the Board of Directors elected by the membership. The members of the 2005 Board of Directors, elected by the members, include Robert Patton, Robert Heist, Girard Gaughan, Junior Via, Jerry Long,

Richard Mattis, Christine Cook, Francine Serafin, Donald Chappell, John Long, Sonny Jenkins and Charles Welsh. There is no dispute about the right of those Directors to serve on the Board.

In addition, the By-Laws provide that members of the Association may, with the approval of the Board of Directors, form Chapters which are then to elect a Representative to serve on the Board of Directors by appointment. Article X, Section 1. There are presently eight (8) approved Chapters: Homestead, Honorary, Lancaster, Delaware Valley, Harrisburg, New York, Philadelphia and Washington D.C. The Representatives of those Chapters on the 2005 Board of Directors include Milton Purcell, Ethel Campbell, Brian Russell, Graham McIntyre, Al Greer, George Russ, Robert Chalmers and Charles Hill. Defendants removed one of those Representatives from the Board and disallowed the votes of two others at the Association's organizational meeting.

The Board of Directors also includes three Emeritus Directors who have the right to vote on all matters. Article V, Section 2. The Emeritus members of the 2005 Board of Directors are Plaintiffs Ivan Dietrich, Ralph Fink and Harvey Deitrich. The Defendants have purported to remove all three of these Directors from the Board.

Finally, the Board of Directors includes the Officers of the Association, including the President, the Past-President, the Vice-President/President Elect, Treasurer, Secretary and Assistant Secretary/General Counsel. All but one of these positions, Past President, is disputed. Plaintiffs contend that the positions of President and Vice-President are vacant because Jerry Waters is ineligible to serve as President and Chuck Welsh was illegally elected to the position of Vice President/President Elect. Plaintiffs also contend that Girard Gaughan and

Harry Heath are the properly elected Secretary and Treasurer of the Association. Defendants claim that Christopher Ortiz and James Behren were elected to those positions.

C. Meeting Of November 14, 2004

The 2004 organizational meeting of the MHSAA Board of Directors was held on November 14, 2004. Attending that meeting were twenty-six (26) 2004 Board members. Also attending the organizational meeting were the four (4) members elected by the membership to serve on the Board beginning in 2005. Those members were Plaintiffs Robert Patton, Jerry Long, Junior Via and Girard Gaughan. Under the By-Laws, only 2005 Board members are permitted to vote for Officers. Article VI, Section 7(a).

During the meeting, a question was raised as to whether three of the Chapters had held proper elections to elect their Chapter Representatives and, for that reason, the 2004 Board members voted fifteen (15) to ten (10) to disallow the votes of those three Representatives: Plaintiff Milton Purcell of the Homestead Chapter; Plaintiff Ethel Campbell of the Honorary Chapter; and Plaintiff Graham McIntyre of the Washington D.C. Chapter.

Francine Serafin, an elected member of the 2004 and 2005 Boards, was unable to attend the meeting in person, but requested in writing to the 2004 President, Defendant John Rice, that she be allowed to participate by telephone. Rice, who presided over the meeting, made no effort to allow her to participate by telephone and excluded her from the meeting.

Jerry Waters had served a three-year term on the Board, which ended December 31, 2003, when he was replaced by a newly-elected Board member. Pursuant to Article IV, Section 3 of the By-Laws, a person is not eligible to serve on the Board after his or her three-year term expires

and they are replaced unless they sit out from the Board for one year. There are some exceptions, none of which apply to this case. Waters continued to serve on the 2004 Board as Vice President/President Elect.

At the organizational meeting, the 2005 Board purported to elect Officers. Chuck Welsh was purportedly elected Vice President/President Elect by a vote of eleven (11) to ten (10). Waters voted in favor of Welsh. Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Welsh. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Welsh and he would not have been elected the Vice President/President Elect.

Plaintiff Girard Gaughan was elected Secretary by a vote of eleven (11) to ten (10). Waters voted against Plaintiff Gaughan. Director Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted in favor of Plaintiff Gaughan. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Gaughan.

Plaintiff Harry Heath was elected Treasurer by a vote of eleven (11) to ten (10). Waters voted against Plaintiff Heath. Directors Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted in favor of Plaintiff Heath. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Heath.

Prior to electing Plaintiff Gaughan as Secretary, the Board rejected a motion to elect Chris Ortiz as Secretary. Waters voted in favor of Ortiz. Director Brian Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Ortiz. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Ortiz.

Prior to electing Plaintiff Heath as Treasurer, the Board rejected a motion to elect James Behren as Treasurer. Waters voted in favor of Behren. Director Brian Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Behren. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Behren.

At the November 14, 2004 meeting, the Board recognized, by a vote of confirmation, the rights of the three Emeritus Directors to vote for the 2005 Officers and their votes were recognized and included in the elections of 2005 Officers.

D. Meeting Of December 19, 2004

On December 19, 2004, the Board of Directors held a special meeting. Attending that meeting in person or by telephone were twenty-five (25) members of the 2004 Board of Directors. In addition, two (2) other members who were not present had given their proxies to members who were present.

During the meeting, Defendant John Rice announced that the votes cast by the Emeritus Directors at the November 14, 2004 organizational meeting were void ab initio because those three members served terms of only one year and their terms had expired. There was no vote on that issue.

As a result of that ruling, Plaintiff Gaughan was purportedly replaced by Chris Ortiz as Secretary on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Ortiz and ten (10) to eight (8) against Gaughan. Similarly, as a result of that ruling, Plaintiff Heath was purportedly replaced by James Behren as Treasurer on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Behren and ten (10) to eight (8) against Heath.

By vote of thirteen (13) to thirteen (13), the Board failed to pass a motion that Francine Serafin be given the right to vote on all issues of the November 14 meeting. Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If they had been permitted to vote, they each would have voted for the motion.

By a vote of fifteen (15) to ten (10) in favor of the motion, the Board failed to pass a motion to overturn the action of the MHSAA Board to disallow the Homestead Chapter representative to vote on 2005 Officer elections held on November 14, 2004. According to the President, the motion required a 2/3 majority to pass. Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the

motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

By a vote of fifteen (15) to nine (9), in favor of the motion, the Board failed to pass a motion that the MHSAA action disallowing the Honorary Chapter's Representative from voting in the MHSAA Board of Directors Officers election held on November 14, 2004, should be overturned. According to the President, the motion required a 2/3 majority to pass. Plaintiffs Purcell, McIntyre, Campbell, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

By a unanimous vote, the Board adopted motions permitting the Homestead and Honorary Chapter Representatives to vote in the future on the apparent ground that the Chapters adequately answered the questions raised about the election of those Representatives. However, by a vote of thirteen (13) to ten (10) against the motion, the Board failed to pass a motion to reverse the MHSAA action disallowing the DC Chapter's Representative from voting in the MHSAA Board of Directors Officers election held on November 14, 2004. Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

E. Meeting Of December 26, 2004

On December 26, 2004, the Board of Directors of MHSAA held another special meeting by telephone conference call. They did not have a quorum of 2005 Directors present at that meeting. At that meeting, the 2004 Board passed the following resolution:

Whereas, the MHSAA alumni mailing database was used in an apparently unauthorized manner during the course of the Homecoming 2004 MHSAA Board of Director elections on behalf of certain candidates;

Whereas, the MHSAA Board of Directors (the "Board") believes that certain Chapter Representative elections had not been adequately conducted;

Whereas, the MHSAA Board has examined these matters in good faith and taken action where it felt appropriate, while showing restraint in others;

Whereas, the MHSAA Board has learned that some persons have suggested litigation against the Board, or certain individual Directors, or the Association, because of dissatisfaction with the manner in which the Board has addressed these matters, even though the Board has acted in good faith to resolve these matters with due regard for fairness, public decorum, due process, application of MHSAA rules and By-Laws to difficult and novel problems, amicable relations among members, and the goals and best interests of the Association;

Now, therefore, be it resolved, that:

In the event of any action or proceeding of any kind whatsoever against MHSAA, its Board, any current Director (whether or not still a Director at the time of such action or proceeding), any person now believed to be a Director or listed on the current Director roster, arising from or related in any way to the matters described above;

The Board of Directors shall:

- a) Immediately commence all steps necessary to conduct new elections for the four Director positions selected at the 2004 Homecoming Election, if and as permitted by applicable law, with all candidates who ran before running again should they so choose, but with all candidates having equal access to the alumni mailing database, and with the winners of the new

election to replace and complete the terms of the Directors elected in 2004, whoever the winners may be;

- b) Take any appropriate legal measures seeking damages, if cause for such exists, against any persons or organizations who may have harmed the Association in regard to the above-described matters; and,
- c) Take any other legal measures necessary to protect the interests of the Association, with implementation of all of the actions described herein to be carried out by an Election Dispute Resolution Committee consisting of five Directors to be selected by Jerry Waters at his sole discretion.

F. Effects Of Defendants' Illegal Actions

But for the improper actions of Defendants, Serafin, the Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters, Purcell, Campbell and McIntyre, the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich, all would have voted at the November 14, 2004 meeting. In addition, Jerry Waters would not have been permitted to vote. Thus, but for those illegal actions: (a) Jerry Waters would not be the purported President of MHSAA; (b) Chuck Welsh would not be the purported Vice President/President Elect of MHSAA; (c) Girard Gaughan would be the Secretary of MHSAA; and (d) Harry Heath would be the Treasurer of MHSAA.

III. ARGUMENT

A. Standards For Granting Preliminary Injunctive Relief

In order to obtain a preliminary injunction to issue, Plaintiffs must prove the following: (i) A strong likelihood of success on the merits; (ii) A showing of immediate and irreparable harm that cannot be compensated by money damages; (iii) A showing that greater injury will result if preliminary injunctive relief is denied than if such injunctive relief is granted; and (iv) A

showing that a preliminary injunction would restore the status quo. Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz, 529 Pa. 241, 252-53, 602 A.2d 1277, 1282-83 (1992); Milicic v. Basketball Mktg. Co., 2004 Pa. Super. 333, P12 (Pa. Super. Ct. 2004). As is demonstrated below, Plaintiffs will easily meet their burden in this case.

B. Plaintiffs Have A Strong Likelihood Of Success On The Merits Of Their Claims

1. Francine Serafin Was Wrongfully Deprived Of Her Right To Participate In The November 14, 2004 Meeting By Conference Telephone

Francine Serafin requested to be allowed to participate by conference telephone in the November 14, 2004 meeting of the 2004 and 2005 Boards of Directors. Under Pennsylvania Law, 15 Pa.C.S.A. §5708, Serafin clearly had the right to participate by conference telephone in the November 14, 2004 meeting. In fact, in the past, members of the MHSAA have often been permitted to participate in meetings by telephone conference.

The person presiding over the November 14, 2004 meeting, Defendant John Rice, had a duty to make a good faith effort to allow Serafin to participate in that meeting by conference telephone. Instead, Rice, who knew that Serafin wished to participate in that meeting by conference telephone, made no effort to allow Serafin to participate in that meeting by conference telephone. And, when questioned at the meeting about whether Francine Serafin had provided notice of her intent to participate in the meeting by phone conference, Rice falsely denied that she had given him any such notice.

As a result of Rice's failure, Francine Serafin was wrongfully denied her lawful right to participate in the meeting of November 14, 2004, and to vote at that meeting. The actions taken at that meeting were, therefore, illegal and must be vacated.

2. The Chapter Representatives Of The Homestead, Honorary And Washington D.C. Chapters Were Improperly Excluded From Voting At The November 14, 2004 Meeting

According to the By-Laws, the Chapters are authorized to elect Chapter Representatives. Article X, Section 9. However, at the organizational meeting held on November 14, 2004, the Board of Directors of MHSAA purported to disallow the votes of the Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters because of alleged irregularities in the election of those representatives.

While authorizing the Chapters to elect Representatives to serve on the Board of Directors, the By-Laws are silent as to how those elections are to be held. And, nothing in the By-Laws or the relevant statute gives the Board of Directors of MHSAA the power to review, reverse or reject the election of a Chapter Representative by an approved Chapter.

Plaintiffs Milton Purcell, Ethel Campbell and Graham McIntyre were wrongfully denied their lawful right to participate in the meeting of November 14, 2004, and to vote at that meeting. As a result, the actions taken at that meeting were illegal and must be vacated.

3. Jerry Waters Was Not Qualified To Participate In The Meetings Of November 14, December 19 Or December 26, 2004

Jerry Waters served a three-year term on the Board, which ended December 31, 2003. On December 31, 2003, Waters was replaced by a newly-elected Board member.

The MHSAA By-Laws provide that:

Each member of the Board of Directors shall serve for a period of three (3) years, or until his/her successor shall be elected and qualified, except as otherwise provided by these By-Laws and provided further, that the President and past President shall be members of the Board without regard to the term for Directors provided in these By-Laws.

Article IV, Section 4.

The MHSAA By-Laws also provide that:

Any active member of the Association shall be eligible to be a member of the Board of Directors, provided however, that **no member of the Association shall be eligible for re-election or appointment to the Board of Directors, except the Secretary, the Assistant Secretary and Counsel, a Chapter Representative and the Treasurer, until after the lapse of one (1) year from his/her term as a Director unless he/she has served less than thirteen (13) months.**

Article IV, Section 3 (emphasis added).

Under Article IV, Section 3, Waters was not eligible to serve on the Board or to serve as Vice President/President Elect in 2004 because there had not been a lapse of one (1) year from the expiration of his previous three-year term as a Director. The office of Vice President/President Elect is not exempt from that requirement.

Since Waters is presently serving as President only by reason of his having been illegally elected Vice President/President Elect in 2004, he cannot serve as President in 2005 without being separately elected to that position. As a result, he was not eligible to cast a vote at any of the meetings held in November and December of 2004 and the actions taken at that meeting were illegal and must be vacated.

4. The Votes Of The Emeritus Directors Were Improperly Disallowed

During the meeting held on December 19, 2004, Defendant John Rice announced that the votes cast by the Emeritus members of the Board of Directors at the November 14, 2004 organizational meeting were void ab initio because those three members served terms of only one year and their terms had expired. As a result, those Directors were not allowed to vote at the December 19, 2004 meeting and their votes at the November 14 meeting were disallowed.

Under statute, 15 Pa.C.S.A. §5724:

Each director shall hold office until the expiration of the term for which he was selected and until his successor has been selected and qualified or until his earlier death, resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided in the Bylaws. In the absence of a provision fixing the term, it shall be one year.

There has been no successor selected or qualified for the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich. Accordingly, under 15 Pa.C.S.A. §5724, Deitrich, Fink and Dietrich continue to serve in their positions as Emeritus Directors with full voting rights until a successor has been selected and qualified.

The Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich, were wrongfully denied their right to vote at the November 14, December 19 and December 26, 2004 meetings. As a result, the actions taken at those meetings were illegal and must be vacated.

5. The Board Was Without Authority To Enact The Resolution Which Was Purportedly Enacted At The December 26, 2004 Meeting

At the meeting of December 26, 2004, the Board passed the following resolution:

Whereas, the MHSAA alumni mailing database was used in an apparently unauthorized manner during the course of the Homecoming 2004 MHSAA Board of Director elections on behalf of certain candidates;

Whereas, the MHSAA Board of Directors (the "Board") believes that certain Chapter Representative elections had not been adequately conducted;

Whereas, the MHSAA Board has examined these matters in good faith and taken action where it felt appropriate, while showing restraint in others;

Whereas, the MHSAA Board has learned that some persons have suggested litigation against the Board, or certain individual Directors, or the Association, because of dissatisfaction with the manner in which the Board has addressed these matters, even though the Board has acted in good faith to resolve these matters with due regard for fairness, public decorum, due process, application of MHSAA rules and By-Laws to difficult and novel problems, amicable relations among members, and the goals and best interests of the Association;

Now, therefore, be it resolved, that:

In the event of any action or proceeding of any kind whatsoever against MHSAA, its Board, any current Director (whether or not still a Director at the time of such action or proceeding), any person now believed to be a Director or listed on the current Director roster, arising from or related in any way to the matters described above;

The Board of Directors shall:

- a) Immediately commence all steps necessary to conduct new elections for the four Director positions selected at the 2004 Homecoming Election, if and as permitted by applicable law, with all candidates who ran before running again should they so choose, but with all candidates having equal access to the alumni mailing database, and with the winners of the new election to replace and complete the terms of the Directors elected in 2004, whoever the winners may be;

- b) Take any appropriate legal measures seeking damages, if cause for such exists, against any persons or organizations who may have harmed the Association in regard to the above-described matters; and,
- c) Take any other legal measures necessary to protect the interests of the Association, with implementation of all of the actions described herein to be carried out by an Election Dispute Resolution Committee consisting of five Directors to be selected by Jerry Waters at his sole discretion.

There is no authority in either the By-Laws or the statute for the Board to remove certain Directors solely as a result of those Directors and other Directors exercising their legal right to challenge actions of the Association. At the least, the removal of Directors requires good cause, and the exercise of legal rights does not constitute good cause. Accordingly, this Court should enjoin MHSAA from taking any action pursuant to those Resolutions.

C. Plaintiffs And The Membership Of MHSAA Will Be Irreparably Harmed If Defendants Are Permitted To Conduct Association Business Without Permitting All Of The Plaintiffs And Francine Serafin To Participate As Voting Members Of The Board In All Future Meetings And In The 2005 Organizational Meeting

In the meetings of November 14 and December 19, 2004, Defendants took actions which deprived many of the Plaintiff Directors and Officers of their right to cast their votes. Those same actions also eliminated the votes of many of the members by removing or rejecting the votes of Directors for whom those members had voted.

“The right to vote is a shareholder's most fundamental right.” Reifsnyder v. Pittsburgh Outdoor Advertising Co., 405 Pa. 142, 149 n.8, 173 A.2d 319, 322 n.8 (1961). That is because:

The right to vote helps ensure corporate democracy, the principle that the owners of a corporation should control the direction that their corporation takes. In the face of disagreements with management, shareholders' most basic alternatives are either to sell their shares or to vote in new directors. . . .

Warehime v. Warehime, 2001 Pa. Super. 141, 777 A.2d 469, 477-78 (Pa. Super. 2001) (citing, inter alia, Blasius Indus. Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988)). (quotation marks omitted).

The right of a director to vote is equally important since a director has fiduciary duties to the corporation which can only be carried out by voting. The failure or inability to cast a vote on corporate affairs puts the director at risk of violating those duties.

In the meetings of November 14 and December 19, 2004, Defendants took actions which deprived many of the Plaintiff Directors and Officers of their right to cast their votes. Those same actions also eliminated the votes of many of the members by removing or rejecting the votes of Directors for whom those members had voted. In both cases, the harm to those Directors, Officers and Members was both immediate and irreparable.

"An injury is regarded as 'irreparable' if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard." West Penn Specialty MSO, Inc. v. Nolan, 1999 Pa. Super. 218, 737 A.2d 295, 299 (Pa. Super. 1999) (quoting Sovereign Bank v. Harper, 449 Pa. Super. 578, 674 A.2d 1085, 1091 (Pa. Super. 1996)). Certainly, the harm in this case easily meets that standard and mandates that relief be granted.

D. Greater Injury Will Result If Preliminary Injunctive Relief Is Denied Than If Such Injunctive Relief Is Granted, And The Requested Relief Maintains The Status Quo

If preliminary injunctive relief is denied, Plaintiffs and other members of the Association will be denied their rightful say in the Association affairs. And, all actions taken by the Board during the pendency of this action will be subject to challenge.

If, on the other hand, the limited injunction requested by Plaintiffs is granted, no harm will result to Defendants. Both the individual Defendants will remain on the Board. And, the Board will be able to conduct the routine business of the Association pending resolution of this action.

By reinstating the Board as it existed as of the beginning of the November 14, 2004 meeting, the Court will reinstate or leave in place (in the case of Jerry Waters) those Directors whose status is at issue in this case because of the illegal actions of the Defendants. It will replace two Officers whose election is in question, but restore in their place two Officers who have generally supported the policies of Rice and Waters. As a result, Defendants suffer virtually no harm.

Moreover, in restoring the Board as it existed at the time of Defendants' illegal actions, the Court will clearly be restoring the status quo as it existed at the time of those actions. Thus, the scope of the requested injunction is clearly appropriate.

IV. CONCLUSION

For the foregoing reasons, this Court should enter an Order preliminarily enjoining Defendants to vacate the actions taken at those meetings and to restore to the Board those who were members of the Board as of the beginning of the November 14 meeting. The Court should also enjoin Defendants from conducting anything other than routine Board business, including

such non-routine business as implementing the Resolutions purportedly passed at the meeting of December 26, 2004, until this Court can determine the proper members of the Board.

Respectfully submitted,

KLETT ROONEY LIEBER & SCHORLING
A Professional Corporation

Dated: February 2, 2005

BY:

Allen C. Warshaw, Esquire
240 North Third Street, Suite 700
Harrisburg, PA 17101-1503
(717) 231-7700
Counsel for Plaintiffs