

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

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<p><b>BARBARA DUNN, <i>et al.</i>,</b></p> <p style="text-align:center"><b>Plaintiffs,</b></p> <p style="text-align:center"><b>v.</b></p> <p><b>MARVIN DULANEY, <i>et al.</i>,</b></p> <p style="text-align:center"><b>Defendants.</b></p>	<p><b>Case No. 2023-CAB-007866</b></p> <p><b>Judge Juliet J. McKenna</b></p> <p><b>CLOSED CASE</b></p>
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**ORDER DENYING PLAINTIFFS’ MOTION FOR RECONSIDERATION**

Pending before this Court is Plaintiffs’ Motion for Reconsideration and Limited Organizational Data, filed on March 1, 2024. Defendants filed an Opposition to the Motion on March 15, 2024, to which Plaintiffs filed a Reply on April 9, 2024.<sup>1</sup> Plaintiffs seek reconsideration of this Court’s February 2, 2024, oral ruling granting Defendants’ Motion to Dismiss Plaintiffs’ Complaint, following full briefing of the issues and a one-hour hearing on February 2, 2024, at which the Court heard additional argument from counsel for both parties. For the reasons articulated at the February 2 hearing, and incorporated herein by reference, this Court granted the Defendants’ Motion to Dismiss on the grounds that the Association for the Study of African American Life and History’s (hereinafter “ASALH”) Constitution provided Plaintiffs with a mechanism for removing Defendant Dulaney as ASLAH President. As a result, this Court found that D.C. Code § 29-401.22 and the D.C. Court of Appeals’ decision in *OverDrive, Inc. v. Open eBook Forum*, 288 A.3d 305 (D.C. 2023), limiting the D.C. Superior Court’s authority to determine the validity of a contested nonprofit corporate action “if a nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to a corporate action,”

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<sup>1</sup> This Court twice granted Plaintiffs an extension to file their Reply, thus all filings are considered timely. *See* Order, Mar. 28, 2024; *see also* Order, Apr. 15, 2024.

precluded the undersigned from entertaining Plaintiffs' claims. *See* D.C. Code § 29-401.22(c); *see also OverDrive*, 288 A.3d at 313–314 (D.C. 2023) (Section 29-401.22(c)'s strictures on the Court's authority "accords with the principle that courts ordinarily will not interfere with the management and internal affairs of a voluntary association.") (internal citations and quotations omitted)).

Plaintiffs again petition this Court to intervene in an internal organizational governance dispute involving the ASLAH presidency, notwithstanding this Court's prior finding that the ASALH Constitution provides two different procedures for the removal of an ASLAH officer, including the President. *See* ASLAH Constitution (hereinafter "Bylaws"), Article III, § 2(h) ("Petitions for removal of an Executive Council member[] from the Executive Council may originate in the Executive Council by affirmative action of two-thirds of the members of the Executive Council or may be submitted to the Executive Council, with the support of at least one hundred members of the Association who are in good standing."); *see also* Tr. Feb 2, 2024, 9:3–11 (Court: "it does appear that the bylaws themselves provide for two alternative means for removing Marvin Dulaney; either two-thirds of the Executive council can act, or 100 members of the association in good standing can file a petition. What you're asking me to do is basically circumvent the bylaws, and with the roughly 16 folks who have signed onto this complaint basically . . . impose my own will upon the nonprofit."). The ASLAH Bylaws continue to provide the Plaintiffs with a meaningful means of redress through Section 2(h) to seek the ouster of Defendant Dulaney as President, limiting this Court's authority to entertain Plaintiffs' claims pursuant to D.C. Code § 29-401.22. Plaintiffs' instant Motion introduces no new evidence or additional argument that provides a basis to reconsider this Court's decision and therefore is denied.

As an initial matter, Plaintiffs' Motion to Reconsider fails to cite to any legal authority in support of the request that this Court revisit its earlier ruling. In response to Defendants' Opposition pointing out this basic deficiency, Plaintiffs clarify in their Reply that "the Motion is based on Superior Court Rules 59 (error of law), and 60(b)(2) (newly-discovered facts)." *See* Reply at 1. "Although the trial court rules do not expressly provide for motions to reconsider . . . we have observed that they are in fact entertained from time to time." *Williams v. Vel Rey Props.*, 699 A.2d 416, 419 (D.C. 1997) (internal citations omitted). "Whether a motion is properly classified as a Rule 59(e) motion or a Rule 60(b) motion 'is determined by the relief sought, not by its label or caption.'" *Amatangelo v. Schultz*, 870 A.2d 548, 553 (D.C. 2005) (quoting *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804 (D.C. 1984)). While Rule 59(e) and Rule 60(b) overlap, the difference lies in

whether, for the first time, the movant is requesting consideration of additional circumstances; if so, the motion is properly considered under Rule 60(b), but if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59(e).

*Wallace*, 482 A.2d at 804.

Generally, a motion made pursuant to Rule 59(e) is appropriate where the movant "is seeking relief from the adverse consequences of the original order on the basis of error of law." *Allstate Ins. Co. v. Ramos*, 782 A.2d 280, 285 n.5 (D.C. 2001). However, a trial court may grant a Rule 59(e) motion only to correct "manifest errors of law or fact." *In re Estate of Derricotte*, 885 A.2d 320, 324 (D.C. 2005) (citing *Dist. No. 1 -- Pac. Coast Dist., Marine Eng'rs' Ben. Ass'n v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278–79 (D.C. 2001)). Such motions are committed to the court's broad discretion. *Wallace*, at 810. Civil Rule 60(b)(2) provides in relevant part that an order or judgment may be vacated for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time" to invoke previously. D.C. SCR-Civil Rule 60(b)(2).

“Regardless of the Rule pursuant to which reconsideration is sought, it is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.” *Ali v. Carnegie Institute of Washington*, 309 F.R.D. 77, 81 (D.D.C. 2015) (internal quotations and citations omitted). Nor can a motion for reconsideration “be employed simply to rescue a litigant from strategic choices that later turn out to be improvident.” *Id.* Whether evaluated pursuant to Rule 59 or 60, the Plaintiffs’ Motion fails to establish grounds for relief.

Plaintiffs primary argument is that this Court erred in determining that Article III, § 2(h) of the ASLAH Bylaws (hereinafter the “Removal Clause”) provided the Plaintiffs with a meaningful avenue to challenge Defendant Dulaney’s presidency, and that the Court failed to adequately consider Article III, § 2(g) (hereinafter the “Vacancy Clause”), which provides that “[i]f the Office of the President, through any cause shall become [vacant], the Vice President for Membership shall thereupon become President.” Plaintiffs now argue that Defendant Dulaney’s alleged subversion of the Vacancy Clause provides a basis for Superior Court intervention. *See* Pl. Mot. at 2–5. This argument fails both procedurally and substantively.

First, as Plaintiffs acknowledge, the “Vacancy Clause Arguments are New Arguments Not Yet Analyzed by the Court.” *See* Reply at 2. These arguments could have been, but were not, advanced by the Plaintiffs either in their Opposition to the Defendants’ Motion to Dismiss or during the hour-long hearing on February 2, 2024. A motion for reconsideration, whether pursuant to Rule 59 or 69, is not “an opportunity for unsuccessful litigants to take a mulligan.” *Kramer v. Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007). *See also Mcmanus v. District of Columbia*, 545 F. Supp. 2d 129, 134 (D.D.C. 2008) (“Although they might have, Plaintiffs did not make this

argument in response to [defendant's] motion for sanctions, and their belated attempt to challenge the Court's grant of sanctions on this ground is therefore improper."). Plaintiffs' fleeting references to Section 2(g) in their December 30, 2023, Complaint, referred to as "the Assignment Rule" and erroneously cited as Section 2(b) in Paragraph 8, does not give rise to an obligation for this Court to spontaneously raise this issue on their behalf, particularly in the absence of argument concerning the relevance of this provision either in Plaintiffs' Motion to Dismiss or at the motions hearing. As a result, to the extent that Plaintiffs now seek to invoke new arguments that were previously available but not advanced, the Motion for Reconsideration is procedurally improper and must be denied.

Second, Plaintiffs' argument that the Vacancy Clause is the operative provision of the ASLAH Bylaws and that Defendants' alleged violation of the Vacancy Clause warrants this Court's intervention is unavailing. Plaintiffs gloss over the fact that, after considering and debating competing legal opinions on the issue, a majority of the ASLAH membership affirmed the validity of Defendant Dulaney's revocation of his resignation and his continued legitimacy as President, rendering the Vacancy Clause inapplicable as no vacancy was ever created. *See* Def. Opp. at 5; *see also* Tr. Feb. 2, 2024, 24:21–25:1 (Court: "that very issue has been put to the membership, and . . . the membership voted on that issue, and found that Mr. Dulaney, Marvin Dulaney, should remain in place as the president, and now four months later the plaintiffs are asking for a redo on that with only 19 members of the organization represented."). Even if the Plaintiffs were able to establish that the Defendants violated the Vacancy Clause, which they have not, the fact remains that the Bylaws provide them with an effective means of challenging this action through the Removal Clause. While Plaintiffs may prefer judicial intervention over the removal procedures set forth in Article III, § 2(h), "nothing in the statutory text (or any other authority that [Plaintiffs]

can point to) requires that the internal mechanism for a challenge be as sweeping and permissive as the challenges otherwise permitted by § 29-401.22(a),” so long as the internal process is not illusory. *OverDrive*, at 313.

Plaintiffs additionally argue that events following the February 2, 2024, hearing demonstrate that “the Removal Procedures are illusory, given the continuing actions of the Defendant Marvin Dulaney . . . and his agents to successfully subvert the removal process before it can begin.” Pl. Mot. at 1. The fact that 19 Plaintiffs have been unsuccessful in garnering the support of 81 other active ASLAH members to initiate removal proceedings does not render the process illusory. As Plaintiffs acknowledge, the Defendants provided them with a mailing list of the roughly 1,500 active members current with their 2024 dues payment. *See* Pl. Mot. at 11. It is only the vote of such members in good standing that can be considered in initiating and voting on the removal of Defendant Dulaney. Thus, while Plaintiffs may desire the full membership list containing the names and contact information of non-dues paying members, the Defendants refusal to produce this list does not undermine Plaintiffs’ efforts to pursue relief pursuant to Section 2(h).

The remainder of Plaintiffs’ complaints are comprised of nothing more than internal organizational petty politics, undoubtedly exacerbated by Plaintiffs’ initiation and continued pursuit of this litigation. While regrettable, they do not render the removal procedures invalid or support a finding that the Defendants have impermissibly obstructed Plaintiffs’ efforts to remove Defendant Dulaney as President such that “§ 29-401.22(c)’s restrictions on the court’s authority may not apply.” *OverDrive*, at 314. While Defendants may not obstruct Plaintiffs efforts to seek Defendant Dulaney’s removal, they are under no obligation to facilitate them. As in *OverDrive*, “[t]he substance of [Plaintiffs’] complaints is not really about obstruction at all, but about a lack of facilitation that [Defendants were] under no obligation to provide.” *Id.*


To the extent that Plaintiffs alternatively request organizational data from the Defendants, such as minutes or video recordings of various meetings, this Court finds that such additional information and materials are not required to be produced pursuant to D.C. law or the ASLAH Bylaws, or have either already been provided to the Plaintiffs, will be provided by counsel for the Defendants upon request, are publicly available on the ASLAH website or are available to those Plaintiffs who are members of the ASLAH Executive Council. Plaintiffs acknowledge that Defendants have provided them with a current list of all dues paying ASLAH members, but additionally request the entire ASLAH membership list so that they may respond to Defendant Dulaney's communications with the full membership. As noted above, given that only members in good standing may be counted in a removal petition, the full membership list has no bearing upon Plaintiffs' ability to pursue removal proceedings and Plaintiffs cite to no provision in the Bylaws or other authority entitling them to the identities and contact information of all ASLAH members. Thus, Plaintiffs' request that this Court order the production of the requested data is denied.

**WHEREFORE**, it is this 14<sup>th</sup> day of May 2024, hereby

**ORDERED** that Plaintiffs' Motion for Reconsideration and Limited Organizational Data is **DENIED**, and it is

**FURTHER ORDERED**, that the above-captioned matter, previously dismissed without prejudice, is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

  
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Judge Juliet J. McKenna

**Copies to:** Counsel of Record via Odyssey.