NO. 21-2206

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

ST. MICHAEL'S MEDIA, INC.,

Plaintiff-Appellant,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, *et al.*,

Defendants-Appellees.

**On Appeal from the United States District Court
For the District of Maryland at Baltimore**

BRIEF OF APPELLEES

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HANNA MARIE C. SHEEHAN
Chief Solicitors, Litigation

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Counsel for Defendants-Appellees Mayor and City Council of Baltimore, James Shea, and Brandon Scott

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21- 2206 Caption: St. Michael's Media, Inc. v. The Mayor and City Council of Baltimore

Pursuant to FRAP 26.1 and Local Rule 26.1,

Mayor and City Council of Baltimore
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:
Defendant, but non-Appellant, SMG is indirectly and partially owned by the Onex Corporation, which is publicly traded on the Toronto Stock Exchange (TSX:ONEX). However, SMG believes that the outcome of this litigation is likely to have negligible, if any, impact on its financials.

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Michael P. Redmond Date: 10/27/21

Counsel for: Appellees

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

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No. 21-________ Caption: St. Michael's Media, Inc. v. The Mayor and City Council of Baltimore

Pursuant to FRAP 26.1 and Local Rule 26.1,

James Shea
(name of party/amicus)

____

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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Signature: /s/ Michael P. Redmond Date: 10/27/21

Counsel for: Appellees

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- Counsel has a continuing duty to update the disclosure statement.

No. 21-2206 Caption: St. Michael's Media, Inc. v. The Mayor and City Council of Baltimore

Pursuant to FRAP 26.1 and Local Rule 26.1,

Brandon Scott
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

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Signature: /s/ Michael P. Redmond Date: 10/27/21

Counsel for: Appellees

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JURISDICTIONAL STATEMENT

Appellant-Plaintiff St. Michael's Media, Inc., ("St. Michael's") appeals from the district court's October 12, 2021, order partially granting Appellant St. Michael's preliminary injunction, but denying specific enforcement of an unsigned contract and requiring a $250,000 injunction bond be posted. *See* ECF. 74 (notice of cross-appeal). Appellant waited nine days before filing its cross-appeal on October 21, 2021. *Id.* Because the original appeal that St. Michael's cross-appealed was taken only by Appellees-Defendants Mayor and City Council of Baltimore, Mayor Brandon M. Scott, and City Solicitor James L. Shea, (collectively and individually, the "City"), the cross-appeal was filed only against those defendants. *Id.*; *see also* CF/ECM System, Appeal No. 21-2206, listing City as Appellees-Defendants and SMG as only Defendant.[1] This Court would have jurisdiction to hear this interlocutory appeal of an order denying part of a requested injunction under 28 U.S.C. § 1292(a)(1), were it not for the fact that this appeal is moot. Appellant has identified no statute granting interlocutory appeal from a determination of the amount of an injunction bond by itself, especially where said bond already has been posted. Appellant St. Michael's now already has a signed contract giving it what it

[1] To whatever extent SMG is deemed to be an appellee in this appeal, it joins in this brief and in all other filings by the City Appellees-Defendants, by undersigned counsel. Whether or not SMG is an appellee is in no way material to the resolution of this appeal.

seeks, has already obtained the insurance that it did not want to be required to obtain, and already posted the bond that it argues is too high. The district court had subject matter jurisdiction on the constitutional questions pursuant to 28 U.S.C. § 1331, and exercised supplemental jurisdiction on the state law questions of contract law pursuant to 28 U.S.C. § 1367.

STATEMENT OF THE ISSUES

1. Is this appeal moot?

2. Was the district court within its discretion when it declined to require, through preliminary injunction, the specific enforcement of an alleged contract where the contract was allegedly formed while the parties were still negotiating the terms of a contract, where the written draft of the contract indicated that dual signatures were necessary to execute the contract, where the parties expressly stated an understanding in writing that dual signatures were necessary to execute the contract, and the parties did not both sign that contract?

3. Even if the unsigned draft contract was somehow binding, would it be improper for this Court to consider and rule upon the validity of the *signed* contract that requires more insurance that was signed and duly executed by both parties *after* the preliminary injunction was issued below, where no lower court has made any ruling on this question?

4. Was the district court's decision to set an injunction bond at $250,000 free of clear error when the City provided ample reason to believe that the injunction put the City at risk of millions of dollars worth of liability in the event that St. Michael's speakers once again actively planned or incited a riot?

STATEMENT OF THE CASE

On November 16, 2021, Appellee St. Michael's will hold a rally in a City-owned outdoor concert venue in order to protest a meeting occurring that day in a nearby hotel. The City did not want to rent the venue to St. Michael's because it fears that the planned rally may result in violence, property damage, and the expenditure of already-scarce public safety resources. On October 12, 2021, however, the U.S. District Court for the District of Maryland (Hollander, J.), entered a preliminary injunction that prevented the City from refusing to rent the venue to St. Michael's, and allowed the company that manages the venue for the City, SMG, to continue negotiations with St. Michael's over the contract. On October 13, 2021, the next day, the City appealed the district court's injunction, and asked that the appeal be expedited. Eight days later, St. Michael's filed this cross-appeal. This Court ruled against the City in the City's appeal on November 3, 2021, and that same day set a briefing schedule for this appeal.

On November 4, 2021, after weeks of negotiations overseen by the district court, SMG and St. Michael's signed a contract allowing St. Michael's to hold its

event at the venue and requiring it to maintain seven million dollars in liability insurance for the event. *See* Doc. 22, Exhibit A (Nov. 4, 2021 Contract for 11/16/21 Event); ECF. 90 (district court denying St. Michael's motion to enforce injunction as moot because "plaintiff subsequently informed the Court that the contract had been signed"). St. Michael's now has the necessary insurance in place. *See* Doc. 22, Exhibit C (certificates of insurance). St. Michael's has also already posted the bond required by the district court's injunction. *See* ECF. 78 (notice of filing bond); ECF. 82-1 at 3 (email from St. Michael's President Michael Voris stating that $250,000 bond was posted in clerk's office).

Accordingly, St. Michael's now has the same right to use the venue for its rally on November 16, 2021, as it would have if the district court had found there was already a contract at the time of the injunction. There is no further practical relief that St. Michael's can obtain on this appeal of the preliminary injunction, so this appeal is moot. Once the contract was signed, the City asked St. Michael's to dismiss this appeal as moot (as it had repeatedly suggested it would), but it refused. The City therefore filed a motion to dismiss the appeal as moot, Doc. 24, which is still pending.

I. FACTUAL BACKGROUND

A. The Contract

St. Michael's has now rented the City-owned, waterfront, Pier Six/MECU Pavilion performance venue ("Pier Six") in order to protest a meeting of the United States Conference of Catholic Bishops ("USCCB") that will be taking place at a hotel next door to the venue on November 16, 2021. *See id.* St. Michael's has a signed and duly executed contract with SMG allowing it to hold the event. *See* Doc. 22, Exhibit A, p. 12 ("IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above," followed by the signatures of Frank Remesh, Jr. on behalf of SMG and Michael Voris on behalf of St. Michael's). This signed, valid contract requires St. Michael's to maintain seven million dollars in liability insurance regarding the November 16, 2021, event. *Id.* at Exhibit A, p. 5, § 11(a)(i).

St. Michael's, however, appears to be asserting that a draft contract that SMG sent to St. Michael's while they were still in the midst of negotiating terms should be binding on the parties, even though that draft was not signed by either party. *See* ECF 14-1, p. 12 ("IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above," followed by empty signature lines for SMG and empty signature lines for "LICENSEE," i.e. St. Michael's).

Moreover, when the SMG employee (who there is no evidence had any authority to bind SMG herself) sent the draft to a St. Michael's employee, she expressly stated that after St. Michael's signed the contract, it still needed to be "return[ed] to [SMG] for execution." ECF. 16-2 at 30. That contract was never signed by anyone from either party. ECF. 14-1, p. 12. And when a further revised version was sent by the same SMG employee, she again indicated that, before it could become effective, it would need to be "review[ed and] sign[ed]" by St. Michael's "and return[ed] to [SMG] . . . for final signature." ECF. 19-2, p. 5. Although a St. Michael's employee (who there is also no evidence below that she could actually bind St. Michael's herself) did then sign and return this draft contract, when she did so, she expressly noted that she was anticipating "receiving the countersigned copy at your soonest convenience," indicating that she too understood that the contract needed to be signed by both parties. *Id.* at pp. 3-4. The following day, the SMG employee emailed back that SMG "cannot fully execute your contract" at that time. *Id.* at p. 2.

Furthermore, all versions of the contract in question contain a provision expressly stating that "[n]o alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto." Doc. 22, Exhibit A, p. 9, § 19(c); ECF. 14-1, p. 10, § 19(c). What is more, the signature pages of each document both indicate that the contract must be "duly executed by the

parties hereto," with signature, name, and title spaces provided for each of the parties. Doc. 22, Exhibit A, p. 12; ECF. 14-1, p. 12. Thus, the documents themselves clearly indicate that the parties did not intend to be contractually bound by anything less than written instruments executed by signature.

B. The Bond

Although St. Michael's rented Pier Six from the City in 2018 and held a roughly 300-person[2] rally that year, this year St. Michael's plans to hold a much larger rally and has invited two headline speakers that have a history of advocating political violence and inciting riots. Specifically, this year St. Michael's plans to bring 3,000 people to the venue, and the scheduled speakers include Steven Bannon and Milo Yiannopoulus. These two speakers have a well-documented history of advocating political violence and engendering, if not outright inciting, civil unrest. Most concerning is Mr. Bannon who has publicly admitted to playing a role in organizing the rally turned riot on January 6, 2021, and who on January 5, 2021, explicitly stated on his podcast that the plan was for the following day's rally to turn violent:

> All hell is going to break loose tomorrow. Just understand this. All hell is going to break loose tomorrow. It's gonna be moving. It's gonna be quick.

[2] Media reports indicate that the 2018 rally had approximately 300 participants; however, St Michael's claims there were between 900 and 1,000. Either way, there is no dispute that the planned 2021 rally will be much, much larger.

See Steve Bannon, *Bannon's War Room*, EP 631 – Pandemic: One Day Away (Jan. 5, 2021), https://www.listennotes.com/podcasts/bannons-war-room/ep-631-pandemic-one-day-away-HzwlUt3Od0k/ (last visited Sept. 19, 2021). (Bannon's comments regarding the following day start at approximately the 29:40 mark of the episode).[3]

Mr. Yiannapoulos also presented a security concern as he too has a history of headlining events that have ended in violence and property destruction. *See* Daniel Gilbert, *Milo Yiannopoulus at UW: A speech, a shooting and $75,000 in police overtime*, The Seattle Times (March 26, 2017, updated March 27, 2017), https://www.seattletimes.com/seattle-news/crime/milo-yiannopoulos-at-uw-a-speech-a-shooting-and-75000-in-police-overtime/ (last accessed Nov. 1, 2021) and Madison Park and Kyung Lah, *Berkeley protests of Yiannopoulos caused $100,000 in damage*, CNN.com (Feb. 2, 2017), https://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/index.html (last accessed Nov. 1, 2021); William Wan, *Milo's appearance at Berkeley led to riots. He vows to return this fall for a week-*

---

[3] Mr. Bannon's support for the use of political violence is well known. He was suspended from Twitter because he said that he would "put the heads [of Dr. Anthony Fauci and FBI Director Christopher Wray] on pikes. Right. I'd put them at the two corners of the White House as a warning to federal bureaucrats." Jaclyn Diaz, *Twitter Permanently Suspends Steve Bannon Account After Beheading Comments*, NPR (Nov. 6, 2020), https://www.npr.org/2020/11/06/932052602/twitter-permanently-suspends-steve-bannon-account-afterbeheading-comments (last accessed Sept. 17, 2021).

long free-speech event, The Washington Post (Apr. 26, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/04/26/milos-appearance-at-berkeley-led-to-riots-he-vows-to-return-this-fall-for-a-week-long-free-speech-event/ (last accessed Nov. 1, 2021).

Moreover, although St. Michael's asserts that its plans are only for a peaceful "prayer rally," the President and founder of St. Michael's, Michael Voris, has explicitly praised the rally-goers who turned into rioters, assaulted police officers, and stormed the Capitol on January 6, 2021. Mr. Voris broadcast a video of the horrific scenes of political violence unfolding in Washington D.C., and stated, in praise of the rioters:

> Thousands of American patriots fed up with the results of the fraudulent election stormed to the Capitol building today . . . it appears that Joe Biden and his Marxist allies have been denied their fraudulent certification at least one day.

See Post-Election Special: Storming the Capitol, Church Militant (Jan. 6, 2021), https://www.churchmilitant.com/news/article/post-election-special-storming-the-capitol (last accessed Oct. 28, 2021) (these statements from Mr. Voris begin at roughly the 4:00 minute mark of the video, after several minutes of footage of rally-goers assaulting police and graphic video of a woman who had been shot). These statements by Mr. Voris and Mr. Bannon, and a wealth of publicly available materials like them, raised legitimate security concerns that made the City wish not to host this event at its non-public Pier Six concert venue.

Although, on the skeletal record provided by a preliminary injunction hearing, the district court (and this Court, on expedited interlocutory appeal) mistakenly characterized the City's safety concerns as viewpoint discrimination and a heckler's veto, the district court also held that the City had "articulated real, serious harms that could result if, as a result of a wrongfully issued injunction, disruption and violence ensue at the rally." ECF. 45, p. 86. The court explicitly noted the well-known Baltimore police officer shortage and the federal litigation where the City is still litigating millions of dollars in claims against it due to the civil unrest "in the aftermath of the death of Freddie Gray" in 2015. *Id.* at 85; *see Chae Brothers, LLC d/b/a Fireside North Liquors, et al. v. Mayor and City Council of Baltimore*, SAG-17-01657. Because of the possibility of both significant police expenses and massive legal liability (or at the very least litigation expenses) stemming from even a relatively minor disturbance, the City requested that the injunction bond be set at least $1 million. ECF. 45, p. 85. The court acknowledged that if the City's fears prove prescient, the City will suffer significant damages due to this injunction being in place, which has forced it to allow St. Michael's to rent Pier Six, but because the court noted that SMG could contractually require insurance as well, the bond was set at only $250,000. *Id.* at 86. St. Michael's has already posted this bond. ECF. 78; ECF. 82-1 at 3.

II. PROCEDURAL HISTORY

This is an expedited interlocutory appeal being reviewed on the original record from the partial denial of a preliminary injunction. There has not yet been any discovery. St. Michael's has not yet been required to answer the City's motion to dismiss the case below. There has been no trial. There has only been a hearing where testimony and affidavits were taken, and the issuance of a preliminary injunction. St. Michael's disagrees with the court's determination that St. Michael's is not likely to ultimately prevail on its claim for specific performance of an unsigned contract it claims it entered into by mere negotiations for a signed contract. St. Michael's also thinks the court set the bond too high.

Since appealing the district court's ruling on these two decisions, St. Michael's has posted the bond required of it by one of the decisions and entered into a signed, binding contract covering the same subject matter as the alleged contract in the other decision. St. Michael's has also obtained liability insurance coverage that satisfies the requirements of the signed contract. The City has lost its appeal to this Court on the preliminary injunction (No. 21-2158), and will not be seeking rehearing or a writ of certiorari on that appeal.

The City's motion to dismiss this appeal as moot is currently pending.

SUMMARY OF ARGUMENT

This appeal is moot because St. Michael's now has a signed, binding contract to hold its event at Pier Six on November 16, 2021. The material difference that St. Michael's complains about between this contract and the unsigned contract that St. Michael's asserts is specifically enforceable is simply that the signed contract requires a greater amount of insurance coverage, but St. Michael's has already obtained that greater amount. St. Michael's has also already posted the court ordered bond.

Moreover, St. Michael's appeal is entirely without merit. Maryland law clearly states that parties negotiating a contract who demonstrate an intention not to be bound until the contract is signed are not bound until the contract is signed. The evidence (both the language of the document itself and the express statements of the employees negotiating it) abundantly demonstrates that SMG and St. Michael's understood that the contract would not be executed or binding until it was countersigned by both parties. The district court did not abuse its discretion by finding St. Michael's unlikely to prevail on this contract claim.

Furthermore, even if St. Michael's was correct about the unsigned contract being binding, there would still be no reason at this point to enforce it via preliminary injunction, as the only allegedly irreparable harm – not being able to hold a rally at Pier Six on November 16, 2021 – will no longer occur without such an injunction

because St. Michael's has a binding contract to do just that. The only material difference that St. Michael's complains about is a higher insurance requirement, but since St. Michael's has been able to obtain this higher amount, the only harm St. Michael's is even allegedly suffering is monetary damages, which do not constitute an irreparable harm.

In addition, even if St. Michael's was held to be likely to prevail on the question of enforceability of the unsigned contract, that would in no way free it from the responsibility to maintain the higher level of insurance for its event required by the contract that it subsequently signed. St. Michael's now appears to be seeking not just enforcement of an unsigned contract, but a legal ruling that the signed contract is void or unenforceable. Seeking that relief from this appellate Court is entirely inappropriate because St. Michael's has not sought it below in the lower court. There is no district court ruling regarding the validity of the signed contract to appeal, and this Court does not adjudicate legal questions in the first instance (especially in the complete absence of any factual record relevant to the question presented).

Finally, St. Michael's points to absolutely nothing in the district court's decision to require a $250,000 injunction bond that could possibly constitute clear error. A trial court judge has extraordinary latitude in setting such a bond when giving a plaintiff the extraordinary relief of a preliminary injunction. St. Michael's

insistence that the City somehow failed to meet a necessary evidentiary burden is entirely without supporting authority and demonstrates a misunderstanding of the nature of such a bond. The party preliminary enjoined has no burden to prove itself likely to be harmed by the injunction in order to require a bond; indeed, if such a showing could be made, the injunction would be unlikely to issue at all. Rather, a bond is required when the court acknowledges a mere risk of possible damages caused by the requested injunction, and should be set high enough to allow recovery of such damages (which would still need to be proven in court after the fact) if the risk comes to fruition. Here the risk of St. Michael's rally turning into a riot, by design or by happenstance, is significant. There is no reason to reverse the district court's bond requirement as too high; if anything, it is too low.

ARGUMENT

I. THIS APPEAL IS MOOT.

This is an expedited interlocutory appeal of a partial denial of a preliminary injunction for specific performance of an alleged contract and of the setting of an injunction bond. Since the filing of this appeal, the parties to the alleged contract have voluntarily entered into an actual signed written contract covering the same subject matter as the alleged contract, St. Michael's has satisfied the greater insurance coverages required by the signed contract, and St. Michael's has posted the injunction bond that it complains is too high. These events have rendered this

extremely limited appeal entirely moot, as the Court could no longer grant effective relief to St. Michael's even if it did prevail (which it would not), and the Court therefore no longer has jurisdiction and must dismiss the appeal.

As this Court explained earlier this year:

> "The doctrine of mootness constitutes a part of the constitutional limits of federal court jurisdiction, which extends only to actual cases or controversies." *Porter v. Clarke*, 852 F.3d 358, 363 (4th Cir. 2017) (cleaned up). A case becomes moot, and therefore nonjusticiable, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Pashby v. Delia*, 709 F.3d 307, 316 (4th Cir. 2013) (cleaned up). "If an event occurs during the pendency of an appeal that makes it impossible for a court to grant effective relief to a prevailing party, then the appeal must be dismissed as moot." *Int'l Bhd. of Teamsters v. Airgas, Inc.*, 885 F.3d 230, 235 (4th Cir. 2018).

Fleet Feet, Inc. v. NIKE, Inc., 986 F.3d 458, 463 (4th Cir. 2021).[4] In *Fleet Feet*, the district court had preliminarily enjoined the defendant from using a phrase in an ad campaign that was similar to the plaintiff's trademark, and the defendant appealed. *Id.* at 462. While the appeal was pending, the ad campaign came to an end and the defendant had no plans to continue using the plaintiff's trademark. *Id.* Accordingly, the Court dismissed the appeal as moot. *Id.* at 467.

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[4] A determination that an appeal is moot is, by logical necessity, a *de novo* determination.

Similarly, in St. Michael's appeal here has been mooted by St. Michael's own subsequent behavior. As St. Michael's itself has explained, "[t]o ensure that its rally can go forward, St. Michael's entered into another contract with SMG" to rent Pier Six on November 16, 2021. Doc. 25, p. 3. This signed contract requires St. Michael's to obtain more insurance than the unsigned contract that St. Michael's alleges, but St. Michael's has already obtained that higher amount of insurance. *Id.* To be sure, St. Michael's now also appears to claim that it was "under duress" when it signed the contract with the higher insurance requirement, *id.,* but that is not an issue that has been adjudicated in the district court and is therefore not before this Court on appeal, *see, e.g., Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) ("[A]ppellate courts must constantly have in mind that their function is not to decide factual issues *de novo*.").

This appeal is only of the district court's denial of a preliminary injunction that would require SMG and the City to allow St. Michael's the right to use Pier Six on November 16, 2021. St. Michael's now has that right. As the Court cannot give St. Michael's what it already has, this interlocutory appeal is moot. That there may be additional disputes in the underlying case does not mean that St. Michael's can put them before this Court in an interlocutory appeal when the dispute that was properly before this Court has become moot. For instance, any allegation that SMG breached an unsigned contract, thereby causing St. Michael's monetary damages by

requiring it to sign a different contract with different terms, is not what was before the district court below and it is not before this Court now (nor would it be an even remotely plausible subject for determination via preliminary injunction if it were). Likewise, the asserted fears of St. Michael's that "bad-faith conduct by both the City and SMG" will "impose an obstruction to the rally," Doc. 25, pp. 4-5, does not create a justiciable appellate controversy for this Court to adjudicate, *see Fleet Feet*, 986 F.3d at 463 (appellant's concern about future dispute "at best . . . presents only a potential controversy, which can't sustain this appeal").

Nor can St. Michael's argument that the district court set the injunction bond too high save this interlocutory appeal from mootness because St. Michael's has already posted the injunction bond that the district court required. *See Fleet Feet*, 986 F.3d at 464 ("As a general rule, when the injunctive aspects of a case become moot on appeal of a preliminary injunction, any issue preserved by an injunction bond can't be resolved on appeal but must instead be resolved in a trial on the merits.") (cleaned up). If St. Michael's ultimately prevails at trial on the issue of the enforceability of the alleged unsigned contract, then St. Michael's may be able to recover monetary damages for the expense of posting the bond, but that is not a controversy that may be resolved in the first instance on appeal. If St. Michael's had proven unable to post the higher bond amount, such that the requirement had the practical effect of *denying* the injunction, that could perhaps make the allegation that

the bond was too high a live controversy capable of interlocutory appeal under 28 U.S.C. § 1292(a)(1), but since St. Michael's has posted the bond, it is receiving the benefit of the district court's injunctive relief. It would be wholeheartedly nonsensical for the prevailing party on a preliminary injunction to be able seek interlocutory appellate relief on a matter of exclusively monetary concern.

St. Michael's already has what it asked the district court to give it via preliminary injunction. That St. Michael's allegedly has had to pay a bit more than it wanted to in order to get all the relief it asked for is not a proper subject for resolution on interlocutory appeal. Therefore, this appeal is moot and should be dismissed.

II. THE DISTRICT COURT'S DENIAL OF A PRELIMINARY INJUNCTION REQUIRING SPECIFIC PERFORMANCE OF THE UNSIGNED CONTRACT WAS NOT AN ABUSE OF DISCRETION.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see also Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 300, 339 (4th Cir. 2021) (en banc). Rather, a preliminary injunction is "'granted only sparingly and in limited circumstances.'" *Micro Strategy, Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1991)). "This principle reflects the reality that courts are more likely to make accurate decisions after the development of a complete factual record

during the litigation." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 979 F.3d 219, 225 (4th Cir. 2020), *rev'd on other grounds*, 2 F.4th 330 (4th Cir. 2021). Here, the district court properly denied St. Michael's a preliminary injunction requiring specific performance of an unsigned contract because St. Michael's provided no evidence that, under Maryland law, the unsigned contract was enforceable. This determination was legally correct and more than sufficient to require the denial of the requested relief.

Moreover, because St. Michael's is required to show that *all* four *Winter* factors are satisfied to obtain the relief it seeks, a preliminary injunction would now be improper for lack of the other factors as well. To qualify for a preliminary injunction under Rule 65, a plaintiff bears the burden to "establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *see also Leaders of a Beautiful Struggle*, 2 F.4th at 339. A preliminary injunction cannot issue absent a "clear showing" that all four requirements are satisfied. *Leaders*, 979 F.3d at 226; *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013). The "'[p]laintiff bears the burden of establishing that each of these factors supports granting the injunction.'" *Direx Israel*, 952 F.2d at 812 (quoting *Tech. Publ'g Co. v. Lebhar-Friedman, Inc.*, 729 F.2d 1136, 1139 (7th Cir. 1984); *Shaffer v. Globe Prod, Inc.*, 721 F.2d 1121,

1123 (7th Cir. 1983)). Accordingly, a court need not address all four *Winter* factors if one or more factors is not satisfied. *Henderson ex rel. NLRB v. Bluefield Hosp. Co., LLC*, 902 F.3d 432, 439 (4th Cir. 2018).

As the district court held, St. Michael's was not entitled to a preliminary injunction requiring specific performance of an unsigned contract because St. Michael's did not show that it was likely to prevail on its legal claim that the unsigned contract was enforceable. Moreover, now that St. Michael's has a new *signed* contract that grants it the rights it sought to be specifically enforced from the unsigned contract, there is no showing (or even an allegation) of irreparable harm that would befall St. Michael's if the unsigned contract is not enforced by preliminary injunctions. Accordingly, St. Michael's fails the second *Winter* factor. Likewise, the only material difference St. Michael's has complained about between the unsigned and signed contracts is a difference in the amount of insurance required. The only conceivable harm to St. Michael's under the new contract is paying an allegedly somewhat higher insurance premium, whereas the risk to both the City and the public if the signed contract is abandoned is a potential uninsured loss of millions of dollars. Accordingly, both the balance of equities and public interest (the third and fourth *Winter* factors, respectively), weigh heavily against granting a preliminary injunction specifically enforcing the unsigned contract. Thus, the district court did not abuse its discretion in any way when it denied this aspect of St.

Michael's requested preliminary injunction, and it would be contrary to this Court's clear precedents to require the granting of St. Michael's request now.

A. Standard of Review

"This Court reviews a district court's denial of a motion for preliminary injunction for abuse of discretion." *Di Biase v. SPX Corp.*, 872 F.3d 224, 229 (4th Cir. 2017); *see also Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980); *Sinclair Refining Co. v. Midland Oil Co*., 55 F.2d 42, 45 (4th Cir. 1932). The appellant's "burden [to show an abuse of discretion] is a heavy one, as a district court abuses its discretion only where it 'has acted arbitrarily or irrationally, has failed to consider judicially recognized factors constraining its exercise of discretion, or when it has relied on erroneous factual or legal premises.'" *United States v. Welsh*, 879 F.3d 530, 536 (4th Cir. 2018) (quoting *L.J. v. Wilbon*, 633 F.3d 297, 304 (4th Cir. 2011) (cleaned up).

B. St. Michael's did not have a binding contract with SMG at the time of the preliminary injunction hearing, and was therefore unlikely to prevail on its request for specific performance.

Appellant St. Michael's is correct that under Maryland law, the formation of a contract requires the mutual assent of the parties. *Cockran v. Norkunas*, 398 Md. 1, 14, 919 A.2d 700, 708 (Md. 2007). St. Michael's is incorrect, however, when it argues that the parties here had demonstrated mutual assent in their negotiation of the unsigned contract; the opposite is true.

Mutual assent has two requirements: (1) intent to be bound and (2) definiteness of terms. *Id.* Although acceptance can be accomplished by "acts as well as words," there must be evidence that the party against whom enforcement is sought intended to be bound. *See Porter v. Gen. Boiler Casing Co.*, 284 Md. 402, 396 A.2d 1090, 1094 (Md. 1979); *Cockran*, 919 A.2d at 714. As a general rule, silence and inaction cannot operate as acceptance. *See International Broth. of Teamsters v. Willis Corroon Corp.*, 369 Md. 724, 738 n. 3, 802 A.2d 1050, 1058 n. 3 (Md. 2002). Further, when reviewing the existence of a contract, courts rely on parol evidence. *Cockran*, 919 A.2d at 708.

Here, there was neither an intent to be bound by either party nor definiteness of terms. St. Michael's argues that it had entered into a contract with SMG by August 2, 2021, *see* Appellant Br. 15, but in the same breath admits that both parties were still negotiating the terms of said contact at that point, *see id.* Although St. Michael's tries to claim these negotiation were "merely discussi[ons of] modifications to small details, such as an additional fee for opening the doors of [Pier Six] earlier," *id.*, the district court aptly noted that, far from being a small detail, the change in the rally time "led to an increase in costs for St. Michael's, including an additional $8,000 in rent plus production expenses—a significant percentage of an ultimate cost of $23,000 plus other expenses," ECF. 45, p. 80. Increasing the price paid by more than fifty percent (50%) is an obviously material change to the

terms of a contract. Likewise, the change in character from a public event (where tickets could be sold, but only through Ticketmaster) to a private event (where tickets could not be sold, and St. Michael's could control who attended) was obviously a material change to the terms. *See id.* The district court was correct, therefore, to determine that the parties had not reached definite terms by the time St. Michael's claims there was a contract. Indeed, as the court noted below, in an email sent on August 2, 2021, the SMG employee working with St. Michael's expressed her desire "to try and finish the contract." *Id.* (citing ECF. 16-2 at 17-18). The parties were clearly not done establishing the terms.

Nor did SMG ever express an intent to be bound prior to duly executing a formal written contract via authorized signatures. To the contrary, when an unsigned draft contract was e-mailed from Teresa Waters of SMG to Carmen Allard of St. Michael's on July 14, 2021, Ms. Waters made clear that execution of the contract both by St. Michael's and then by SMG was required. ECF. 16-2 at 30. "Please sign and return to me for execution." *Id*. Instead of executing the document, Ms. Allard continued to negotiate and change essential terms of the same with Ms. Waters—these changes continued up to the time when SMG cancelled the contract and returned the deposit on August 5, 2021. Moreover, when a further revised version was sent by Ms. Waters, she again indicated that, before it could become effective, it would need to be "review[ed and] sign[ed]" by St. Michael's "and

return[ed] to [SMG] . . . for final signature." ECF. 19-2, p. 5. Although Ms. Allard did then sign and return this draft contract, when she did so, she expressly noted that she was anticipating "receiving the countersigned copy at your soonest convenience," indicating that she too understood that the contract needed to be signed by both parties. *Id.* at pp. 3-4. The following day, however, Ms. Waters e-mailed back that SMG "cannot fully execute your contract" at that time. *Id.* at p. 2. These e-mail exchanges between Ms. Waters and Ms. Allard make clear that both understood that a written, executed, final agreement was required before any contract was formed.

Further, St. Michael's has presented no evidence that either Ms. Waters or Ms. Allard had the authority to bind either of their respective organizations. Indeed, when a contract actually *was* signed, after the preliminary injunction, it was signed not by Ms. Waters and Ms. Allard, but by their bosses, which strongly implies that although they had authority to negotiate on behalf of their organizations, they did not have authority to bind them. *See* Doc. 22, Exhibit A, p. 12 (signatures of Frank Remesh, Jr., General Manager, on behalf of SMG, and Michael Voris, CEO, on behalf of St. Michael's).

Moreover, the contract itself indicates that it needs to be signed in order to be binding. All versions of the contract in question contain a provision expressly stating that "[n]o alterations, amendments, or modifications hereof shall be valid unless

executed by an instrument in writing by the parties hereto." Doc. 22, Exhibit A, p. 9, § 19(c); ECF. 14-1, p. 10, § 19(c). What is more, the signature pages of each document both indicate that the contract must be "duly executed by the parties hereto," with signature, name, and title spaces provided for each of the parties. Doc. 22, Exhibit A, p. 12; ECF. 14-1, p. 12. Thus, the documents themselves clearly indicate that the parties did not intend to be contractually bound by anything less than written instruments executed by signature. St. Michael's insistence that the signature pages were just ceremonial is laughable, and its suggestion that § 19(c) shows an intent only to require signatures for amendments is nonsense. Eliminating disputes over oral modifications of a contract would do nobody any good if one could simply dispute that there had been an oral contract to something different in the first place.

In *All State Home Mortg., Inc. v. Daniel*, 187 Md. App. 166, 977 A.2d 438 (Md. Ct. Sp. App. 2009) the Maryland Court of Special Appeals ruled that there was no enforceable contract because the terms and conduct of the parties indicated they did not intend to be bound until the contract was duly executed. *Id.* at 183. Here, the contract's terms (that it needed to be "duly executed by the parties," ECF 14-1, p. 12, and the express requirement for signed amendments, *id.* at p. 10, § 19(c)) indicated the parties' intent not to be bound without formal execution, and the parties' words and actions (the emails discussed above) indicated the same. The

assertion in St. Michael's brief that "there is nothing in the record suggesting that such a term is in the contract, or was even hinted at during the creation of the contract," Appellant Br. 16-17, is an unadulterated misrepresentation. As set forth above, the communications between St. Michael's and SMG clearly indicated that SMG did not intend to bind itself until it signed on the signature line, and the draft contract indicated exactly this as well. What *is* lacking in the record is any indication SMG intended to be bound *without* signing the document.[5] This is exactly what the district court found, *see* ECF. 45, pp. 73-82, and its finding was in no manner an abuse of discretion.

C. Because St. Michael's does *now* have a signed, binding contract to hold its event at Pier Six on November 16, 2021, it has made no showing of any irreparable harm that it would suffer without an injunction specifically enforcing the unsigned contract.

The only irreparable harm that St. Michael's asserts is that it would not be able to hold its rally on November 16, 2021, without a preliminary injunction requiring specific performance of the unsigned draft contract. *See* Appellant Br. 20-

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[5] This is the most obvious distinction (besides the different controlling state law) between this case and *Marilyn Manson, Inc. v. New Jersey Sports & Exposition Auth.*, 971 F. Supp. 875, 888 (D.N.J. 1997) (holding that under New Jersey law, a "contract need not be expressed in writing as long as the parties agreed to do something that they previously did not have an obligation to do."), which St. Michael's relies upon: SMG never did anything to indicate it was bound by an unsigned contract, whereas NJSEA "approved an advertisement displaying all of the relevant details about the concert including" the alleged oral revision to the contract. *Id.* at 889.

21. However, now that St. Michael's has a *signed* contract, this is no longer true. St. Michael's has just as much right to hold its rally at Pier Six on November 16, 2021, as it would have if a preliminary injunction enforcing the unsigned draft contract were issued. Although the signed contract requires more insurance, St. Michael's has been able to obtain that additional insurance, so the only harm St. Michael's even allegedly suffers from a lack of this preliminary injunction is the alleged monetary expense of having to pay for additional insurance. "Where the harm suffered by the moving party may be compensated by an award of money damages at judgment, courts generally have refused to find that harm irreparable." *Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp*., 17 F.3d 691, 694 (4th Cir. 1994). If St. Michael's ultimately prevails on the claim that it had a binding contract before SMG ever signed it, these alleged damages can be easily quantified, and the harm easily repaired through an award of money damages. The second *Winter* factor, therefore, has not been demonstrated by St. Michael's and a preliminary injunction would therefore be improper on the current record.

D. Both the balance of equities between the parties and the public interest factors favor St. Michael's having more insurance for this event rather than less.

St. Michael's likewise fails on the third and fourth *Winter* factors as well because its arguments exclusively rely on the false premise that its ability to hold a rally at Pier Six on November 16, 2021, depends upon a preliminary injunction

requiring specific performance of the unsigned contract. Appellant Br. 21-23. It does not. St. Michael's now has a *signed* contract to do so. Doc. 22, Exhibit A. To whatever extent holding the rally allows St. Michael's to exercise constitutional rights, St. Michael's no longer needs a preliminary injunction to do so. Accordingly, the only benefit that the preliminary injunction requiring specific enforcement could even arguably have for St. Michael's is reducing its insurance expenses. For the reasons discussed above, that benefit is wholly inadequate to justify a preliminary injunction, and it pales in comparison to the benefit that SMG and the City receive from the reduced risk of having to absorb millions of dollars worth of damages that St. Michael's may cause if its rally turns into a civil disturbance and St. Michael's turns out to be judgment proof. Moreover, the public interest is clearly benefitted by St. Michael's maintaining *more* insurance for this event rather than *less*. While St. Michael's private interest is advanced by trying to reduce its insurance expenses, the public interest – especially the interest of the residents and taxpayers of Baltimore – is advanced when private parties are required to pay for the very real risks that they create when utilizing City property. Accordingly, St. Michael's has not met its burden of showing that these factors are met at this time, and therefore a preliminary injunction specifically enforcing an unsigned contract is inappropriate for those reasons as well.

III. THERE IS NO DISTRICT COURT RULING ON THE VALIDITY OF THE *SIGNED* CONTRACT FOR THIS COURT TO REVIEW.

In what may be the most bizarre feature of this appeal, St. Michael's appears to be asking this Court not just to reverse a decision to deny specific performance of an alleged unsigned contract, but also to make an initial determination without the benefit of any trial court proceedings that the terms of the admittedly *signed* contract are not binding upon St. Michael's. *Compare* Appellant Br. 19 ("[T]his Court should find that the $2 million insurance requirement is binding on SMG[.]") *with* Doc. 22, Exhibit A, § 11(a)(i) (signed contract requiring St. Michael's to obtain insurance "in an amount not less than seven Million Dollars ($7,000,000) for bodily injury"). Although St. Michael's offers absolutely no justification in its brief for why it believes the enforcement of the alleged unsigned contract would eliminate the legal obligation of St. Michael's to fulfill the terms of the signed contract, it has suggested in other filings that St. Michael's only signed the contract "under duress" because the rally date was so soon. Doc. 25, p. 2.

Not only is this scenario utterly insufficient to void St. Michael's signed contract as "under duress" under Maryland contract law,[6] but also this assertion has

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[6] In *U.S. for Use of Trane Co. v. Bond*, 322 Md. 170, 586 A.2d 734 (1991), the Maryland Court of Appeals explained that under Maryland law:

> [D]uress sufficient to render a contract void consists of the actual application of physical force that is sufficient to, and does, cause the person unwillingly to execute the document; as well as the threat of

not been adjudicated in any way, shape, or form in the district court and is therefore not before this Court on appeal. *See, e.g., Clayland Farm Enterprises, LLC v. Talbot Cty., Maryland*, 987 F.3d 346, 354 (4th Cir. 2021) (citing *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 n.2 (4th Cir. 2000) for the Court's policy of "refusing to consider argument raised for the first time on appeal"). Far from having argued to the district court that the signed contract terms should be void, St. Michael's readily admits that the negotiations between St. Michael's and SMG that led to the contract being signed were facilitated by the district court. Doc. 25, p. 2.

Indeed, on November 3, 2021, St. Michael's filed a motion asking the district court to *order* SMG to sign the contract that St. Michael's had already signed, ECF. 89, p. 6, and then on November 5, 2021, just two days later, St. Michael's represented to this Court that it had only entered into this same signed contract "under duress," Doc. 25, p. 2. Such shenanigans should not be tolerated by this Court, and St. Michael's request for a ruling freeing it from the insurance obligations to which it bound itself voluntarily should not be entertained – for the first time in

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> application of immediate physical force sufficient to place a person in the position of the signer in actual, reasonable, and imminent fear of death, serious personal injury, or actual imprisonment.

Id. at 183. Although St. Michael's has baselessly accused the City of many terrible things, it has not alleged any threats of death, injury, or imprisonment. Accordingly, its "duress" argument is insufficient as a matter of Maryland contract law.

any court – by this Court. If St. Michael's believes that it has valid contract claims against SMG or the City, it should file those claims in a court of appropriate jurisdiction, have them adjudicated at the trial level, and then, if dissatisfied with the result, seek appellate review. The attempt to shoehorn every issue St. Michael's would like resolved into an expedited interlocutory appeal of the partial denial of preliminary injunction is improper and should be rejected.

IV. ST. MICHAEL'S POINTS TO NO ERROR IN THE DISTRICT COURT'S SETTING OF AN INJUNCTION BOND AT $250,000 WHERE THE CITY COULD SUFFER MILLIONS OF DOLLARS OF DAMAGES TO ITS PROPERTY, IN EXPENSES FOR ITS POLICE FORCE, AND IN LEGAL LIABILITY IF ITS FEARS OF CIVIL DISTURBANCE OR RIOT PROVE PRESCIENT.

A preliminary injunction is "an extraordinary remedy," *Winter*, 555 U.S. at 24, to be "granted only sparingly and in limited circumstances," *Micro Strategy, Inc.*, 245 F.3d at 339, precisely because it requires district courts to make decisions **not** "after the development of a complete factual record during the litigation," *Leaders of a Beautiful Struggle*, 979 F.3d at 225, but on what the judge thinks is "likely" based on only initial motions and a hearing. Because such best guesses are highly uncertain, i.e., at high risk of being wrong, the Federal Rule of Civil Procedure 65(c) requires the district court to set a bond "in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The bond is mandatory, and "[t]he amount of the bond . . . ordinarily depends on the gravity of the potential harm to the enjoined party."

Hoechst Diafoil Co. v. Nan Ya Plastics Corp., 174 F.3d 411, 421 (4th Cir. 1999). Thus, the bond must be large enough to cover all *potential* harm *in the event that the court was wrong about issuing the injunction*, not just harm that the court deems to be likely if the court's injunction was justified.

If an enjoined party could muster enough evidence to prove that significant damages to it were likely, the court probably would not enjoin them in the first place. Therefore, trying to read such a requirement into the procedure for setting an injunction bond, as St. Michael's suggests, would completely frustrate the very purpose of such bonds. The bond is there to be executed against, if the court was wrong about what was likely in its decision to issue the preliminary injunction. By demanding that the court limit the bond amount to the cost of what it thinks is likely to happen, St. Michael's entirely misunderstands the very reason for the bond's existence.

As the Seventh Circuit explained in *Mead Johnson & Co. v. Abbott Laboratories,* 201 F.3d 883 (7th Cir. 2000), "[w]hen setting the amount of security, district courts should err on the high side" because even if the bond is too high, the wrongfully enjoined party "still would have had to prove its loss" to recover any part of it, whereas "an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond." *Id.* at 888; *see also* ECF. 45, p. 85 (quoting same). Here, the district

court considered this all at length and found "that there is a case for a meaningful bond" because the City and SMG "have articulated real, serious harms that could result if, as a result of a wrongfully issued injunction, disruption and violence ensue at the rally." ECF. 45, p. 86. Accordingly, after noting both that St. Michael's was required to have a certain amount of insurance and that insurance being in place "is not a guaranty that the insurer will pay a claim," the court set the bond at $250,000. *Id.* This amount was in no way excessive. Indeed, if anything, it was significantly too low.

A. Standard of Review

St. Michael's admits that the setting of an injunction bond "is reviewed for clear error." Appellant Br. 13. As this Court has explained:

> [C]lear error [is found] when the appellate court is "left with the definite and firm conviction that a mistake has been committed." *United States v. Hall*, 664 F.3d 456, 462 (4th Cir. 2012) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746 (1948)). This deference is strong, and a court of appeals is not entitled to second guess the district court "simply because it is convinced that it would have decided the case differently" or "weighed the evidence differently." *Anderson v. Bessemer City*, 470 U.S. 564, 573–74, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985).

United States v. Shea, 989 F.3d 271, 277–78 (4th Cir. 2021). St. Michael's has pointed to nothing that would allow reversal under such a deferential standard.

B. If the district court's preliminary injunction was wrongly issued, the City and SMG may suffer millions of dollars in damages.

The bond amount argument that St. Michael's offers begins with the wrong premise because it assumes that the preliminary injunction was correctly issued. *See* Appellant Br. 23-26. The purpose of the bond is to be available to cover damages in the event that the injunction was *wrongly* issued. If the district court's assessment of what was likely is *incorrect*, that is when the bond will be needed. And here, if the district court was incorrect, if the City's fears about the rally turning into a riot prove to have been justified, then the damages to the City and to SMG will far exceed $250,000. St. Michael's analysis simply begins with the assumption that nothing bad will happen, but the purpose of the bond is to be there in case something bad *does* happen.

Moreover, the City provided ample justification for the district court to require such a bond. As discussed above, the City cited to the court video evidence of the president of St. Michael's praising political violence committed by the rally-goers who turned into rioters at the Capitol on January 6, 2021. *See* ECF. 25-1, p. 5-7. The City cited to Mr. Bannon's own podcast where he admitted to being involved in planning said riot. *Id.* The City cited to numerous articles explaining that "peaceful" appearances by Mr. Bannon and Mr. Yiannopoulus frequently resulted in civil disturbances. *Id.* The district court is well aware of the high levels of civil liability that SMG and the City could be exposed to if even a relatively minor disturbance resulted in an injury or death to anyone. If the rally that St. Michael's holds on November 16, 2021, goes wrong, it

could go very, very wrong, and $250,000 is an incredibly small sum in comparison to the damages that could be inflicted. Accordingly, St. Michael's points to no reason to disturb the bond set by the district court.

CONCLUSION

For all these reasons, Appellees Mayor and City Council of Baltimore, Mayor Brandon M. Scott, and City Solicitor James L. Shea respectfully request that this Court dismiss this appeal as moot, or in the alternative, affirm the district court's judgment denying a preliminary injunction requiring specific performance as to an unsigned draft contract, and hold that the district court committed no clear error by setting the injunction bond at $250,000.

Dated: Nov. 9, 2021

Respectfully submitted,

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