

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 08-E-0294

B.V. BROOKS, KENNETH F. CLARK, JR., MARISA DEANGELIS KANE, JOHN H. PLUNKETT, DOUGLAS R. RAICHLE, ROBERT G. REED III, AND JOHN STEEL III,

Petitioners

v.

TRUSTEES OF DARTMOUTH COLLEGE,

Respondent

AFFIDAVIT OF RICHARD C. PEPPERMAN, II

I, Richard C. Pepperman, II, being under oath, hereby depose and say as follows:

1. I am a member of the Bar of the State of New York and of Sullivan & Cromwell LLP, counsel for Respondent in this action. I submit this affidavit to provide the Court with materials cited in the Memorandum of Law of the Trustees of Dartmouth College in Support of its Motion for Summary Judgment.

2. Attached hereto as Exhibit A is a true and correct copy of the deposition of John MacGovern, taken June 1, 2009.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts of the deposition of Frank Gado, taken June 2, 2009.

4. Attached hereto as Exhibit C is a true and correct copy of the June 23, 1891 Resolution of the Board of Trustees of Dartmouth College.

5. Attached hereto as Exhibit D is a true and correct copy of the Constitution of the Association of Alumni of Dartmouth College.

6. Attached hereto as Exhibit E is a true and correct copy of the Petition for Injunctive and Declaratory Relief in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, filed October 3, 2007).

7. Attached hereto as Exhibit F is a true and correct copy of the Minutes of the August 23, 2007 meeting of the Association of Alumni of Dartmouth College (“Association”) Executive Committee, entered as Exhibit 4 to the June 2, 2009 deposition of Frank Gado.

8. Attached hereto as Exhibit G is a true and correct copy of the Minutes of the October 2, 2007 meeting of the Association Executive Committee, entered as Exhibit 5 to the June 2, 2009 deposition of Frank Gado.

9. Attached hereto as Exhibit H is a true and correct copy of an October 5, 2007 Statement Opposing Lawsuit by the Alumni Council of Dartmouth College.

10. Attached hereto as Exhibit I is a true and correct copy of a Press Release entitled “Dartmouth Alumni Association Election Results: Record Number of Alumni Voters Elect New Association Leaders Committed to Ending Lawsuit against College” issued by the Dartmouth College Office of Alumni Relations on June 10, 2008.

11. Attached hereto as Exhibit J is a true and correct copy of the Minutes of the June 10, 2008 meeting of the Association Executive Committee, entered as Exhibit 27 to the June 1, 2009 deposition of John MacGovern.

12. Attached hereto as Exhibit K is a true and correct copy of a Stipulation in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, signed June 20, 2008).

13. Attached hereto as Exhibit L is a true and correct copy of an Order in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, dated June 27, 2008).

14. Attached hereto as Exhibit M is a true and correct copy of a letter from Frank Gado to Robert Muh, Clerk of the Grafton County Superior Court, dated June 27, 2008, entered as Exhibit 9 to the June 2, 2009 deposition of Frank Gado.

15. Attached hereto as Exhibit N is a true and correct copy of a Motion of Frank Gado to Intervene as a Party Plaintiff in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, filed July 14, 2008), entered as Exhibit 10 to the June 2, 2009 deposition of Frank Gado .

16. Attached hereto as Exhibit O is a true and correct copy of a Motion to Disallow Docket Marking In Its Present Form in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, filed July 14, 2008).

17. Attached hereto as Exhibit P is a true and correct copy of a Notice of Decision in *Association of Alumni of Dartmouth College v. Trustees of Dartmouth College*, Docket No. 07-E-0289 (Super. Ct., Grafton County, dated July 18, 2008).

18. Attached hereto as Exhibit Q is a true and correct copy of a letter from Robert M. Cary to Frank Gado dated August 29, 2007, entered as Exhibit 7 to the June 2, 2009 deposition of Frank Gado.

19. Attached hereto as Exhibit R are true and correct copies of seven letters from Robert M. Cary to the Dartmouth Association of Alumni, care of Frank Gado, dated November 14, 2007, December 7, 2007, January 9, 2008, February 7, 2008, March 12, 2008, May 6, 2008, and June 6, 2008, entered as Exhibit 3 to the June 1, 2009 deposition of John MacGovern.

20. Attached hereto as Exhibit S are a true and correct copies of four Hanover Institute checks directing payment to Williams & Connolly, dated August 30, 2007, October 26, 2007, November 19, 2007, and May 27, 2008, entered as Exhibit 5 to the June 1, 2009 deposition of John MacGovern.

21. Attached hereto as Exhibit T is a true and correct copy of a letter from John MacGovern to Robert M. Cary dated November 19, 2007, entered as Exhibit 6 to the June 1, 2009 deposition of John MacGovern.

22. Attached hereto as Exhibit U is a true and correct copy of an e-mail from Charles Davant to John MacGovern dated September 11, 2007, entered as Exhibit 8 to the June 1, 2009 deposition of John MacGovern.

23. Attached hereto as Exhibit V is a true and correct copy of an e-mail from Charles Davant to John MacGovern dated September 25, 2007, entered as Exhibit 9 to the June 1, 2009 deposition of John MacGovern.

24. Attached hereto as Exhibit W is a true and correct copy of an e-mail from Charles Davant to John MacGovern dated November 13, 2007, entered as Exhibit 10 to the June 1, 2009 deposition of John MacGovern.

25. Attached hereto as Exhibit X is a true and correct copy of an e-mail thread between John MacGovern and Robert M. Cary dated January 15, 2008, entered as Exhibit 11 to the June 1, 2009 deposition of John MacGovern.

26. Attached hereto as Exhibit Y is a true and correct copy of an e-mail from Charles Davant to John MacGovern dated December 7, 2007, entered as Exhibit 12 to the June 1, 2009 deposition of John MacGovern.

27. Attached hereto as Exhibit Z is a true and correct copy of an e-mail thread concerning a "Caucus Call" among multiple individuals dated September 19, 20, and 21, 2007, entered as Exhibit 8 to the June 2, 2009 deposition of Frank Gado.

28. Attached hereto as Exhibit AA is a true and correct copy of an e-mail from Rob Cary to John Mathias dated June 16, 2008, entered as Exhibit 13 to the June 1, 2009 deposition of John MacGovern.

29. Attached hereto as Exhibit BB is a true and correct copy of an excerpt of plaintiff Robert G. Reed III's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

30. Attached hereto as Exhibit CC is a true and correct copy of an excerpt of plaintiff B.V. Brooks' Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

31. Attached hereto as Exhibit DD is a true and correct copy of an excerpt of plaintiff Kenneth F. Clark's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

32. Attached hereto as Exhibit EE is a true and correct copy of an excerpt of plaintiff John H. Plunkett's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

33. Attached hereto as Exhibit FF is a true and correct copy of an excerpt of plaintiff Douglas R. Raichle's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

34. Attached hereto as Exhibit GG is a true and correct copy of an excerpt of plaintiff John Steel III's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

35. Attached hereto as Exhibit HH is a true and correct copy of an excerpt of plaintiff Marisa DeAngelis Kane's Responses to Respondent's First Set of Interrogatories to Petitioners, sworn to April 16, 2009.

36. Attached hereto as Exhibit II is a true and correct copy of an e-mail thread between John MacGovern and John Steel dated September 13, 2008, entered as Exhibit 14 to the June 1, 2009 deposition of John MacGovern.

37. Attached hereto as Exhibit JJ are true and correct copies of excerpts of separate e-mail threads between John MacGovern and five plaintiffs in this case—John Plunkett, B.V. Brooks, Doug Raichle, Marisa Kane, and Ken Clark—dated September 15 and 16, 2008, entered as Exhibit 15 to the June 1, 2009 deposition of John MacGovern.

38. Attached hereto as Exhibit KK is a true and correct copy of an advertisement placed by the Hanover Institute in *The Dartmouth* on February 18, 2009, entered as Exhibit 17 to the June 1, 2009 deposition of John MacGovern.

39. Attached hereto as Exhibit LL is a true and correct copy of a Privilege Log provided by counsel for the Hanover Institute to counsel for Respondent on May 27, 2009.

40. Attached hereto as Exhibit MM is a true and correct copy of a letter from John MacGovern dated September 21, 2007, entered as Exhibit 18 to the June 1, 2009 deposition of John MacGovern.

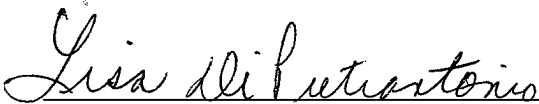
41. Attached hereto as Exhibit NN is a true and correct copy of a letter from John MacGovern dated March 28, 2008, entered as Exhibit 19 to the June 1, 2009 deposition of John MacGovern.

FURTHER, THE AFFIANT SAYETH NOT.


Richard C. Pepperman, II

STATE OF NEW YORK
COUNTY OF NEW YORK

On this the 16th day of July 2009, before me, the undersigned officer, personally appeared, Richard C. Pepperman, II, Esq., known to be (or satisfactorily proven to be) the person whose name is subscribed to the foregoing instrument, and made oath that the statements subscribed by him are true to the best of his knowledge and belief.


Notary Public
My Commission Expires:

LISA DIPIETRANTONIO
Notary Public, State of New York
No. 01D16044245
Qualified in Bronx County
Commission Expires July 3, 2010