

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 07-E-0289

ASSOCIATION OF ALUMNI OF DARTMOUTH COLLEGE,

**Petitioner**

v.

TRUSTEES OF DARTMOUTH COLLEGE,

**Respondent**

**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES  
TO PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

Respondent Trustees of Dartmouth College (the "College"), by its undersigned counsel, hereby answers the Petition for Declaratory and Injunctive Relief filed by Petitioner Association of Alumni of Dartmouth College (the "Petition"), subject to the affirmative defenses set forth below, as follows:

1. Denies the allegations of paragraph 1, except (a) admits that (i) the Association of Alumni of Dartmouth College (the "Association") is an unincorporated association with a mailing address of P.O. Box 525, Hanover, New Hampshire 03755, and (ii) the Association was formed in 1854, and (b) refers to Article II of the Association's Constitution for a description of the Association's membership.
2. Denies the allegations of paragraph 2 as stated, and avers that the respondent Trustees of Dartmouth College is a New Hampshire non-profit corporation established by Royal Charter with a principal business address of Parkhurst Hall, Hanover, New Hampshire 03755.
3. Avers that the allegations of paragraph 3 consist of legal conclusions as to which no response is required or appropriate. To the extent that a response is required, the

College is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies same.

4. Avers that the allegations of paragraph 4 consist of legal conclusions as to which no response is required or appropriate. To the extent that a response is required, the College is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies same.

5. Denies the allegations of paragraph 5, except (a) admits that the Board of Trustees of the College enacted a resolution in 1891 that permitted graduates of the College to nominate a "suitable person" for five trusteeships and refers to that resolution, as well as superseding Board resolutions in 1961 and 2003, for a complete and accurate statement of their contents, and (b) refers to the documents quoted or referenced in paragraph 5 for a complete and accurate statement of their contents.

6. Denies the allegations of paragraph 6, except (a) admits that on September 8, 2007, the Board of Trustees adopted a resolution that increased the total number of Trustees to twenty-six by adding eight new Charter Trustee seats and refers to that resolution for a complete and accurate statement of its contents, and (b) refers to the August 2007 report of the Governance Committee of the Board of Trustees for a description of the Board's decisions and the reasons therefor.

7. Denies the allegations of paragraph 7, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the Association's beliefs.

8. Denies the allegations of paragraph 8, except (a) admits that certain Dartmouth alumni began seeking a role for alumni in the College's governance in the Nineteenth

Century and (b) refers to the document referenced or quoted therein for a complete and accurate statement of its contents.

9. Denies the allegations of paragraph 9, except (a) admits that the ten-member committee of alumni was appointed in 1869 “to take measures to increase the funds of the College and to consider what steps ought to be taken to bring the alumni into a more intimate relation to its management,” and (b) refers to the document referenced or quoted therein for a complete and accurate statement of its contents.

10. Denies the allegations of paragraph 10, and refers to the documents referenced or quoted therein for a complete and accurate statement of their contents.

11. Denies the allegations of paragraph 11.

12. Denies the allegations of paragraph 12, and refers to the documents referenced or quoted therein for a complete and accurate statement of their contents.

13. Denies the allegations of paragraph 13, and refers to the document referenced and quoted therein for a complete and accurate statement of its contents.

14. Denies the allegations of paragraph 14, except (a) admits that the Association appointed a committee in 1890, and (b) refers to the documents referenced or quoted therein for a complete and accurate statement of their contents.

15. Denies the allegations of paragraph 15, except (a) admits that the Board of Trustees adopted resolutions on June 23, 1891, and (b) refers to those resolutions and the minutes of the Association’s June 24, 1891 meeting for a complete and accurate statement of their contents.

16. Denies the allegations of paragraph 16, and refers to the Board’s June 23, 1891 resolution for a complete and accurate statement of its contents.

17. Denies the allegations of paragraph 17.

18. Denies the allegations of paragraph 18.
19. Denies the allegations of paragraph 19, and refers to the document referenced and quoted therein for a complete and accurate statement of its contents.
20. Denies the allegations of paragraph 20, and refers to the document referenced and quoted therein for a complete and accurate statement of its contents.
21. Denies the allegations of paragraph 21, except admits that three Trustees resigned in 1891.
22. Denies the allegations of paragraph 22, except admits that the Board has included an equal number of Charter Trustees and Alumni Trustees since 1892.
23. Denies the allegations of paragraph 23, except (a) admits that the Board of Trustees in 1961 and 2003 voted to expand the total number of Trustees and refers to the April 21, 1961 and November 15, 2003 resolutions for a complete and accurate statement of their contents, and (b) refers to the 2003 press release quoted therein for a complete and accurate statement of its contents.
24. Denies the allegations of paragraph 24, except admits that the Board of Trustees has elected each nominee submitted by the alumni since 1891 and that the Board has included an equal number of Charter Trustees and Alumni Trustees since 1892.
25. Denies the allegations of paragraph 25, except admits that the Board of Trustees has periodically examined and changed its size, composition and organization, as well as the process for selecting Trustees, to ensure that the College continues to have a strong and effective governing body.
26. Denies the allegations of paragraph 26.
27. Denies the allegations of paragraph 27, and refers to the documents referenced and quoted therein for a complete and accurate statement of their contents.

28. Denies the allegations of paragraph 28, and refers to the October 23, 1995 Order of the Merrimack County Superior Court for a complete and accurate statement of its contents.

29. Denies the allegations of paragraph 29.

30. Denies the allegations of paragraph 30.

31. Denies the allegations of paragraph 31.

32. Denies the allegations of paragraph 32.

33. Denies the allegations of paragraph 33, except (a) admits that Dartmouth's alumni have made, and continue to make important contributions to the College, and (b) avers that (i) the resolution adopted by the Board on September 8, 2007 preserves eight trustee positions for Alumni-nominated Trustees, (ii) with eight Alumni Trustee seats, Dartmouth will continue to have among the highest percentage of Alumni Trustees (31% versus an average of 17%) in its peer group, and (iii) the September 8, 2007 resolution reflected the Board's judgment concerning the Board structure best suited to provide the broad range of backgrounds, skills, expertise and capabilities needed to meet the needs of the College.

34. Denies the allegations of paragraph 34.

35. Denies the allegations of paragraph 35, except (a) admits that William H. Neukom, the Chairman of the Board of Trustees in May 2007, was a Charter Trustee and (b) refers to *The Dartmouth* article referenced and quoted therein for a complete and accurate statement of its contents.

36. The College is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 and therefore denies same. The College refers to the documents quoted or referenced therein for a complete and accurate statement of their contents.

37. Denies the allegations of paragraph 37, except (a) admits that the Board of Trustees adopted a resolution on September 8, 2007 that increased the total number of Trustees to twenty-six by adding eight new Charter Trustee seats, and (b) refers to the resolutions adopted by the Board on September 8, 2007 for a complete and accurate statement of their contents.

38. Denies the allegations of paragraph 38.

39. Denies the allegations of paragraph 39.

40. In answer to the allegations of paragraph 40, the College incorporates and restates its answers to paragraphs 1 through 39 as if fully set forth herein.

41. Denies the allegations of paragraph 41.

42. Denies the allegations of paragraph 42, except admits that the Board of Trustees has elected each nominee submitted by the alumni since 1891.

43. Denies the allegations of paragraph 43.

44. Denies the allegations of paragraph 44.

45. Denies the allegations of paragraph 45.

46. In answer to the allegations of paragraph 46, the College incorporates and restates its answers to paragraphs 1 through 45 as if fully set forth herein.

47. Denies the allegations of paragraph 47.

48. Denies the allegations of paragraph 48, except admits that (a) since 1891, the number of Alumni Trustee positions, for which Dartmouth alumni have submitted nominations, has been equivalent to the number of Charter Trustees on the Board of Trustees, and (b) the Board of Trustees has elected each nominee submitted by the alumni.

49. Denies the allegations of paragraph 49.

50. Denies the allegations of paragraph 50.

51. Denies the allegations of paragraph 51.

52. In answer to the allegations of paragraph 52, the College incorporates and restates its answers to paragraphs 1 through 51 as if fully set forth herein.

53. Denies the allegations of paragraph 53.

54. Denies the allegations of paragraph 54.

55. Denies the allegations of paragraph 55.

56. Denies all allegations of the Petition not specifically admitted above.

### **AFFIRMATIVE DEFENSES**

The College states the following defenses and reserves its right to assert additional defenses when and if they become appropriate. In asserting these defenses, the College does not assume the burden of proof with respect to any issue where applicable law places the burden upon the Association.

#### **First Affirmative Defense**

57. The Petition fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

58. The resolutions adopted by the Board of Trustees on September 8, 2007, increasing the total number of Trustees to twenty-six by adding eight new Charter Trustee seats and establishing precepts for the Alumni Trustee nomination process, are a lawful and appropriate exercise of the Board's fiduciary duty.

#### **Third Affirmative Defense**

59. The Association's claims should be dismissed for lack of standing.

#### **Fourth Affirmative Defense**

60. The Association's breach-of-contract claim is barred by the statute of frauds.

**Fifth Affirmative Defense**

61. The Association's claims should be dismissed, in whole or in part, for failure to join a necessary party.

**Sixth Affirmative Defense**

62. The Association's breach of contract and breach of implied-in-fact contract claims are barred by a failure of consideration and lack of definite terms.

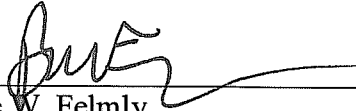
**Seventh Affirmative Defense**

63. All of those legal issues, claims and defenses set forth in Respondent's Motion to Dismiss the Petition dated October 26, 2007.

WHEREFORE, the College demands judgment dismissing the Petition on the merits, its entirety and with prejudice, and awarding such additional relief as the Court may deem just and proper.

Dated: February 29, 2008

Respectfully submitted,



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*Attorneys for Respondent Trustees of  
Dartmouth College*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this February 29, 2008, I caused a copy of the foregoing Respondent's Trustees of Dartmouth College Answer and Affirmative Defenses to Petition for Declaratory and Injunctive Relief to be served by first-class U.S. mail on:

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