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**THE STATE OF NEW HAMPSHIRE**

**GRAFTON, SS.**

**SUPERIOR COURT**

Docket No. 07-E-0289

**ASSOCIATION OF ALUMNI OF DARTMOUTH COLLEGE**

**v.**

**TRUSTEES OF DARTMOUTH COLLEGE**

**DARTMOUTH COLLEGE ALUMNI COUNCIL'S AMICUS CURIAE BRIEF  
IN SUPPORT OF DISMISSAL**

DARTMOUTH COLLEGE ALUMNI COUNCIL

By its attorney,

David H. Bradley  
Stebbins Bradley Harvey Miller & Brooks  
41 South Park Street  
Hanover, New Hampshire 03755-0382  
(603) 643-3737

Of Counsel,

John B. Daukas  
Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
(617) 570-1686

Date: November 6, 2007

## INTRODUCTION

Dartmouth College's 101-member Alumni Council hereby files this amicus curiae brief in support of the College's motion to dismiss the lawsuit filed by six members of the Executive Committee of the Association of Alumni. The Alumni Council submits this brief for three reasons: (1) to explain the respective compositions, missions and responsibilities of the Alumni Council and the Association of Alumni Executive Committee; (2) to explain why the Executive Committee of the Association lacks capacity and standing to bring this action on behalf of Dartmouth's alumni; and (3) to ask the Court to dismiss this lawsuit as it is contrary to the best interests of Dartmouth College and her alumni. Without claiming that the Alumni Council itself is a legal entity with the capacity to intervene as a party, the Alumni Council in its capacity as the principal spokesman for Dartmouth College's 68,000 alumni requests the Court accept and consider this amicus curiae brief.

The Alumni Council respectfully suggests that before the Court addresses the merits of the Association's claims, it must first determine whether the Association of Alumni is a legal entity with the power to sue and whether the six members of the Association Executive Committee who have brought this suit have authority to sue on behalf of the Association of Alumni and Dartmouth alumni generally.<sup>1</sup> As explained below, the Association Executive Committee has very limited powers that do not include the ability to sue on behalf of the Association of Alumni. To the contrary, it is the Alumni Council that possesses the constitutional authority to act on behalf of the alumni and

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<sup>1</sup> Only six of the 11 members of the Association Executive Committee voted to sue the College. The President of the Association opposes this lawsuit. In addition, the Executive Committee claims not to know who is paying its legal fees.

their Association. The Alumni Council has already issued a statement calling for the dismissal of this lawsuit (Exhibit A, hereto); and has voted to submit this brief supporting dismissal.

## DISCUSSION

I. **The Alumni Council is the principal spokesperson for the alumni; whereas the Executive Committee of the Association of Alumni is a vestigial and traditionally ceremonial body with very limited responsibilities and powers.**

To one unfamiliar with the history of Dartmouth's alumni associations, the composition, missions and responsibilities of the Alumni Council and the Association of Alumni Executive Committee naturally appear confusing. A brief examination of the Association of Alumni's history and the respective constitutions of the Alumni Council and Association of Alumni is instructive.

The Association of Alumni of Dartmouth College was formed in 1854. The Association consists of "[e]very person who has ever matriculated as a full-time student in pursuit of a Dartmouth degree at the undergraduate College" or the graduate schools. "Constitution of the Association of Alumni of Dartmouth College" (as amended February 12, 2006) (hereinafter "2006 Association Constitution") at Article II (Exhibit B).

Throughout the late 1800s and thereafter, the Association of Alumni held sporadic annual meetings during spring reunions coinciding with commencement. *Id.* at Article III.1. Although during the 19<sup>th</sup> century Dartmouth was a small college with most of its graduates living in the New England area, attendance at Association meetings was sparse.

By the 20<sup>th</sup> century, Dartmouth's alumni body had grown and spread throughout the country and the world. The traditional structure of the Association of Alumni was

cumbersome and no longer adequate to represent and act on behalf of Dartmouth's alumni. Therefore, in 1913 the Association of Alumni created the Alumni Council. See "Constitution of the Association of Alumni of Dartmouth College and of the Council of the Alumni of Dartmouth College" (revised to June, 1916) and accompanying historical notes (hereinafter "1916 Constitution") at pp. 17-19 (Exhibit C).

The purposes of the Alumni Council were several fold. Among other things, the Alumni Council became the "clearinghouse for alumni sentiment and interchange of alumni ideas." *Id.* at Article II, p. 20. The Alumni Council was the body with authority to "approve or disapprove of projects put forth in the alumni name, and . . . the seat of authority in all such matters." *Id.* Moreover, the Alumni Council (not the Executive Committee of the Association of Alumni) was charged "to act as the official spokesman of alumni sentiment." *Id.* In short, upon its creation in 1913, the Alumni Council became the active and principal representative for the Association of Alumni. Thus, if any body has authority to sue on behalf of the Association of Alumni, it is the Alumni Council, not the Association Executive Committee. Since 1913, the Association Executive Committee has had very limited authority.

The Alumni Council's role as the representative of Dartmouth's alumni has carried through to today. Under the current Alumni Council Constitution, the Alumni Council continues to serve as "a representative organization of Dartmouth Alumni acting in the best interest of Dartmouth College." "Constitution of the Council of the Alumni of Dartmouth College" (as amended and approved May 19, 2001) (hereinafter "2001 Alumni Council Constitution") at Article II (Exhibit D). The Alumni Council is "the primary forum for the discussion of issues and concerns relative to the alumni body and

Dartmouth College.” Id. (emphasis added). Furthermore, the Alumni Council is the “principal spokesperson” of the alumni. Id. (emphasis added).

The Alumni Council also is constitutionally charged with designating candidates to run for nomination as so-called “Alumni Trustees” on the College’s Board of Trustees. Id. at Article XIII (Exhibit D) and 2006 Association Constitution at Article V.3 (Exhibit B). From 1913 forward, the Alumni Council designated an alumnus to fill each vacancy on the Board of Trustees for seats that were set aside for alumni-nominated trustees. Candidates could also be designated by petition. If a petition candidate collected the requisite number of signatures, Dartmouth alumni would choose between the Council-designated candidate and the qualifying petitioner(s) in a balloting contest run by the Association. In the absence of a petition candidate, the Alumni Council’s designee was forwarded directly to the Board of Trustees as the alumni’s nominee for election as Alumni Trustee. William K. Tell, Jr. v. The Trustees of Dartmouth College, Docket No. 95-E-58, Order at 4 (October 23, 1995) (McGuire, J.) (Exhibit E). In practice, since petition candidates were infrequent, (only seven from 1913 to 1990) there was rarely a balloting contest and therefore no need for the Association of Alumni to play any role in the nomination process.

In 1990, the Alumni Council and Association of Alumni Constitutions were amended so as to require the Alumni Council to nominate three candidates for each vacancy of an alumni-nominated trustee seat. (Petition candidates could still qualify to run for nomination.) Since there were now three Council-designated candidates (plus any petitioners) for each vacancy, the heretofore generally idle Association Executive Committee thereafter had responsibility for running the resulting elections through a

balloting committee – although the Alumni Council continued to designate the candidates for the nomination election ballot. Id. at 4-6; see also, 2001 Alumni Council Constitution at Article VIII (Exhibit D); 2006 Association Constitution at Article V (Exhibit B).

In sum, from 1913 through 1990, except for the seven instances when a petition candidate qualified to run for an Alumni Trustee vacancy, the only role that the Executive Committee of the Association exercised was purely ceremonial; its meetings sporadic, brief, and sparsely attended. The mission of representing the alumni and acting on their behalf was left solely to the Alumni Council. From 1990 to the present, the Executive Committee of the Association's only additional role has been to oversee, through a balloting committee, Alumni Trustee elections. See Tell v. Dartmouth College, at 2 (Exhibit E) ("At present [1995], the business of the Association is basically limited to two functions: conducting an annual meeting at which the Association's officers and Executive Committee are elected; and conducting balloting contests to determine the alumni's nominees for the seven alumni-nominated trustee seats on the Board.").

At present, the Association Executive Committee consists of only eleven members. 2006 Association Constitution at Article IV (Exhibit B). The Alumni Council, by comparison, consists of 101 members with individuals representing: (1) each of Dartmouth College's alumni classes, (2) the largest metropolitan alumni clubs from across the country, (3) other regional and geographic alumni clubs, (4) graduate school alumni, (5) affiliated group alumni, and (6) numerous other alumni groups. See 2001

Alumni Council Constitution at Article VI (Exhibit D).<sup>2</sup> The eleven members of the Association Executive Committee are elected annually for one-year terms. In contrast, the 101 members of the Alumni Council are elected for staggered three-year terms. The six Executive Committee members who filed the instant lawsuit must stand for reelection again in May 2008.

On October 26, 2007 an e-mail was sent to all members of the Alumni Council requesting them to vote by reply e-mail by November 2, 2007 indicating whether they approve or disapprove the resolution attached hereto as Exhibit F. Of the 96 members of the Alumni Council eligible to vote (5 are non-voting), 69 voted for “approve” and no one voted for “disapprove.” Two members specifically abstained and 25 members didn’t respond. All members of the Alumni Council do have e-mail addresses. While the vote is unofficial, it is rather dramatic.

**II. The Association of Alumni Executive Committee lacks standing to bring suit on behalf of Dartmouth’s alumni.**

As discussed above, the Alumni Council was created in 1913 “to act as the official spokesman of alumni sentiment,” and “[t]o approve or disapprove projects put forth in the alumni name, and to be the seat of authority in all such matters.” 1916 Constitution at Article II, p. 20 (Exhibit B). Thus, it is the Alumni Council (if anyone), not the Association Executive Committee, that has the constitutional authority to pursue litigation on behalf of the alumni. Indeed, historical notes concerning the formation of

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<sup>2</sup> Until 2006, the Executive Committee of the Association was elected only by those alumni physically present at the annual meeting in Hanover, New Hampshire. In 2006, the Executive Committee was elected by mail and e-mail ballots of all alumni eligible to vote. Unfortunately, less than 30% of alumni participated in this election. In contrast, the Alumni Council’s class representatives, geographic representatives, affiliated group representatives, graduate school representatives, and certain other representatives are chosen by their respective constituents through various methods including elections within those represented bodies.

the Alumni Council demonstrate that the Council was formed in order to prevent other alumni groups from making demands upon the College purportedly on behalf of all alumni:

[T]he growth of alumni organizations and of alumni enterprises had made manifest the need of some fully representative group of graduates to give the stamp of approval to common undertakings of real value for the College and to prevent the multiplication of unnecessary and unauthorized appeals for projects of minor importance.

Id. at pp. 17-18 (Exhibit C). The instant lawsuit is just such an “unnecessary and unauthorized” act.

Consistent with the very limited role of the Association Executive Committee, the Association of Alumni Constitution is only four pages long and roughly two-thirds of it concerns procedures for nominating alumni trustees. See generally 2006 Association Constitution (Exhibit B). The role of the Executive Committee is defined in one short section which includes such things as its responsibility in connection with Alumni Trustee elections, nomination of “honorary” alumni, and similar perfunctory duties. Id. at Article IV.3. (Exhibit B).<sup>3</sup>

In contrast, the current and historic versions of the Alumni Council Constitutions clearly demonstrate that it is the Alumni Council which represents and can act on behalf of Dartmouth’s alumni. The Alumni Council Constitution provides:

## II. Purposes.

The purposes of the Alumni Council shall be:

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<sup>3</sup> The six members of the Executive Committee who voted to sue the College have attempted to justify their actions based on one terse phrase of Article IV.3(i) of the Association’s Constitution, which states that the Executive Committee shall “have charge of the general interests of the Association, including the raising and expending of money to meet current expenses.” (Exhibit B). Read in context, this is far too slender a reed to give the Executive Committee authority to sue the College on behalf of the alumni.

1) To serve as a representative organization of Dartmouth alumni acting in the best interest of Dartmouth College.

2) To serve as the primary forum for the discussion of issues and concerns relative to the alumni body and Dartmouth College.

3) To carry out the responsibility assigned to it under the Constitution of the Association of Alumni of Dartmouth College with respect to the nomination of Alumni Trustees for positions on the Board of Trustees at the College.

4) To act as a clearinghouse for, and principal spokesperson of, alumni sentiment to the administration and as an avenue of approach by which the administration may have access to the alumni collectively.

5) To act as a resource for alumni providing service and talents to Dartmouth College.

6) To encourage and maintain a relationship with the Board of Trustees of the College, providing regular expression of alumni concerns and assisting the Board in evaluating and assessing programs and policies.

7) To communicate effectively information about the College and the Council to the alumni body.

8) To initiate projects and carry on such other undertakings as are reasonably within the province of alumni activity, or to provide for their being pursued.

2001 Alumni Council Constitution at Article II (Exhibit D) (emphasis added); see also 1916 Constitution at Article II, p. 20 (Exhibit C).

There is a serious legal question whether the alumni of Dartmouth College have the capacity through either the Executive Committee of the Alumni Association or the Alumni Council to bring a law suit. The alumni of the College would seem to have no more capacity to sue than the medical staff of the Exeter Hospital. See Exeter Hospital Medical Staff v. Board of Trustees of Exeter Health Resources, Inc., 148 N.H. 492 (2002).

For these reasons, petitioner Association Executive Committee lacks capacity and standing to bring a lawsuit on behalf of Dartmouth's alumni and its Association of Alumni, and the suit therefore should be dismissed.

**III. The lawsuit should be dismissed because it is contrary to the interests of Dartmouth College and her alumni.**

In furtherance of its constitutional obligations as a representative organization of Dartmouth's alumni acting in the best interests of Dartmouth College, and as the principal spokesperson of the alumni, the Alumni Council hereby asks this Court to grant the College's motion to dismiss.

The lawsuit is contrary to the interests of Dartmouth alumni and of the College itself. It is a distraction from the College's primary mission of educating students. The lawsuit requires the needless expenditure of legal fees and demands the time of Dartmouth College personnel and volunteers. In addition, the lawsuit has generated and will continue to generate negative publicity for the College which is harmful in a myriad of ways (e.g. to admissions, recruitment of faculty). Finally, Dartmouth's internal issues should be resolved within the Dartmouth family and not publicly in the courts.

## CONCLUSION

For the reasons stated herein, the Alumni Council of Dartmouth College respectfully asks the Court to grant the College's motion to dismiss the lawsuit filed by six members of the Association of Alumni Executive Committee.

Respectfully submitted,

DARTMOUTH COLLEGE ALUMNI COUNCIL

By its attorney,

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David H. Bradley  
Stebbins Bradley Harvey Miller & Brooks  
41 South Park Street  
Hanover, New Hampshire 03755  
(603) 643-3737

Of counsel,

John B. Daukas  
Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
(617) 570-1686

Date: November 6, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing and any attachments were served by U.S. Mail to Bruce W. Felmly, Esq., McLane Graf, Raulerson & Middleton, City Hall Plaza, 900 Elm Street, P.O. Box 326, Manchester, NH 03105, Richard C. Pepperman, II, Esq., Sullivan & Cromwell, LLP, 125 Broad Street, New York, NH 10004, Robert M. Cary, Esq., Williams & Connolly, LLP, 725 Twelfth Street, N.W., Washington, D.C. 20005, and Patrick E. Donovan, Esq., Hatem & Donovan, P.C., 215 Main Street, Suite 1, Salem, NH 03079, this 6<sup>th</sup> day of November, 2007.

David H. Bradley, Esq.