

Dartmouth *Association of Alumni*

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LEGAL ACTION TO MAINTAIN PARITY ON THE BOARD OF TRUSTEES REPORT TO ALUMNI

Dear fellow Dartmouth alumnus or alumna,

Some very good news: following a court order handed down last month, the Board of Trustees has delayed its board-packing plan indefinitely.

We write as officers of your Association of Alumni. Established in 1854, the Association is the only body consisting of all 70,000 Dartmouth alumni, and its Executive Committee represents your interests. Upon our election last spring, we confronted an effort to eliminate parity on the Board of Trustees between self-perpetuating “charter” trustees and democratically elected “alumni” trustees—a parity that has existed for well over a century. We want to tell you about the actions we felt forced to take, where matters now stand, and what the future might hold.

THE BOARD-PACKING PLAN AND OUR LAWSUIT

Let’s put this in perspective: In 1891, after years of negotiations, the Association and the Trustees concluded a compact awarding the College’s alumni—you—a voice in its governance. Half of all non-*ex officio* trustee seats were to be filled through election, conducted by the Association. This system of free and open elections, unlike a self-propagating and insular governance structure such as exists at Harvard, has ushered our College through its most prosperous period. More important, it has kept Dartmouth true to its purpose: world-class undergraduate education. Our College could never slip from this mission when its own graduates were enfranchised to elect its trustees.

We first wrote to you last summer, as you may recall, asking your opinion on an urgent matter. Unhappy with the results of recent trustee elections, a small committee within Dartmouth’s Board of Trustees was proposing, unilaterally, to change the structure of the Board, leaving unchanged the number of elected trustees while *doubling* the number of unelected trustees—in other words, reducing your representation on the Board from a state of balance, or parity, to one of permanent minority.

Like the proposed constitution two years ago, which alumni rejected, this Board-packing plan reflected the Administration’s tendency to change the rules when the debate isn’t going its way—indeed *whenever* the College’s substantive issues were being discussed honestly and openly. We could not imagine an attitude less suited to a college that considers itself America’s finest.

Immediately recognizing how damaging this plan, if enacted, would prove for Dartmouth, your newly elected Association leaders acted. Ten of the eleven members sent a letter to the Board stating that the Association would

use “all appropriate means” to protect the 1891 Agreement establishing equality between elected and unelected trustees. But we coupled firmness on that issue with an invitation to meet, to discuss any governance issues about which the Board was concerned, and to resolve our differences. We were rebuffed.

More than 4,000 of you responded to our poll. Of those, an overwhelming 92% opposed any alteration or violation of parity. We therefore told the trustees that, whatever changes they might enact, parity was the one principle on which we could not compromise. Then as now, we believed we simply cannot give up our place at the table—or allow our role to be marginalized. Before and after the Board voted on its enlargement plan, we offered mediation; but to our dismay these invitations elicited no interest. On a split vote, the Board instead issued its plan *by fiat*, in violation of a clear understanding observed for more than a century. To defend the rights of the alumni we were elected to represent, we concluded, after extended deliberation, that we had no choice but to seek legal remedy. We therefore petitioned the Grafton County Superior Court to hear our case.

The Court has now issued its first ruling—in favor of the Association of Alumni.

On February 1, the Court denied the Trustees’ motion to dismiss the Association’s case, rejecting the Trustees’ argument that the 1891 Agreement is not legally enforceable. In its order, the Court wrote that the “Association has...established sufficient evidence to go forward with its claim of breach of contract” and that “the Court considers the Association to have set forth sufficient evidence to avoid finding the contract invalid as a matter of law.” The Court also rejected the Trustees’ argument that the Association of Alumni lacked the legal capacity to enter into the 1891 Agreement.

In other words: The Trustees and the Administration attempted to argue that you, the alumni, lacked the legal capacity to contract with the College for the election of Trustees. But the College has already reaped the fruits of the 1891 Agreement—your dollars, your votes, and your reasoned input. How could the Trustees now argue that the Agreement they abided by for over a century simply never existed?

The Court wrote: “The College, having agreed with the Association such that the Association undertook to raise funds for the College, modified its constitution, lifted an embargo on alumni donations, and forbore to file suit, ought not to reap the benefit of its bargain and then deny that the Association has the capacity to make such an agreement. Such a notion offends the obligation of good faith and fair dealing implicit in any contract.”

An offense against the obligation of good faith and fair dealing. The 1891 Agreement was *genuine*. And what is more, as the Court wrote, “it has been ratified by the actions of both parties for 116 years thereafter.” For well over a century, and continuing profitably today, the “Association [of Alumni] and its members have sought out, vetted, and nominated trustees to fill one-half of the seats on the Board; the Board has seated every such nominee.”

The Court, we want to emphasize, has yet to render its final judgment. We are confident, however, that the Association of Alumni can establish the facts pleaded in its petition with evidence gleaned from the College’s rich historical archives. We fervently hope that this preliminary ruling by the Court will encourage the Board to open a genuine dialogue with the Association about maintaining the alumni democracy that has sustained Dartmouth for 117 years.

Last October, President Wright wrote that “[t]he College has been advised by its attorneys that the Board has full authority to enlarge the Board as it did and to make the other governance changes it authorized, and that there is no merit to the legal claims asserted by the [Association of Alumni].”

The Court has now ruled otherwise. The Court found *merit* not only in our suit but also judged valid the Association’s three causes of action.

We made the difficult decision to file suit in search of a single end: to maintain parity on Board of Trustees, a principle enshrined by over a century of practice. To abandon it for the sake of politics would shortchange Dartmouth students, today and tomorrow.

ON BEHALF OF ALUMNI, A SIMPLE REQUEST OF THE BOARD

The court’s ruling, we believe, represents a victory not just for the Association of Alumni but also for Dartmouth. Open and honest Trustee elections, inviting open and honest debate, have time and again redounded to the College’s benefit. From overcrowded classrooms and class waitlists, to speech codes, to more professors, to disciplinary reform, to the speech program, to the writing program, to the football team, to the swim team—debating about Dartmouth has not harmed the College but *strengthened* it.

As the search for a new president commences, the College stands at a crossroads. If the Board remains insular, if elected Trustees are reduced to a marginalized minority, if reasoned student and alumni input is met with resentment—then the next successor to Eleazar Wheelock will preside over a tragedy. Once legendary, alumni involvement in the life of the College will ebb away. The character of Dartmouth will change. The College will become less than its finest self.

Our one and only goal is to prevent this tragedy, preserving Dartmouth as an institution that embraces its alumni—and is embraced by its alumni in turn. We will therefore continue to pursue the withdrawal of the Board-packing plan, whether by Court judgment or by any reasonable mutual agreement. The Board spurned our offers of mediation last autumn. Nevertheless, we renew the invitation. The one condition we make is retention of parity. Parity lies at the heart of our relation to the College. Respect for that principle is all we ask.

Sincerely,

Frank Gado ’58

Bert Boles ’80

Tim Dreisbach ’71

David Gale ’00

Alex Mooney ’93

Marji Grant Ross ’81