

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TIMOTHY L. JENKINS, <i>ET AL.</i>)
)
PLAINTIFFS,)
)
v.)
)
THE HOWARD UNIVERSITY, <i>ET AL.</i>)
)
DEFENDANTS.)
)

SECOND AMENDED COMPLAINT

COME NOW Plaintiffs, Timothy L. Jenkins, Esq., Willie Lloyd Reeves, Esq., William “Damani” Keene, Alta Jeannette Cannaday, April R. Silver, Stephen D. Jackson, Maria P. Jones, Daanen Strachan, Ph.D., Sowande S. Tichawonna and Angela R. Trapp, by and through undersigned counsel and respectfully file this Second Amended Complaint against the individual Trustees of the Howard University Board of Trustees (“BOT”) pursuant to their respective violations of the Howard University’s 1867 Charter, applicable Howard University Board of Trustee Bylaws, and the District of Columbia Uniform Trust Code.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this matter pursuant to the 1867 Congressionally issued Charter of Howard University, 39 Cong. Ch. 162, 14 Stat. 438Chapter 162 (March 2, 1867).
2. As to venue, the actions herein occurred in the District of Columbia.

PARTIES¹

3. Plaintiff Timothy L. Jenkins, Esq. is a Howard University (hereafter “Howard” or “HU”) Alumnus, Class of 1960, former student body president, former member of the HU Board of Trustees, former Special Counsel to HU during the presidency of the late Dr. James E. Cheek, a co-founder of SNCC, and a resident of the District of Columbia.

4. Plaintiff Willie-Lloyd Reeves, Esq. is an HU Alumnus, Class of 1971, Liberal Arts and Class of 1974 School of Law, and a former student leader in both the undergraduate and law schools. He is a resident of the District of Columbia.

5. Plaintiff William “Damani” Keene is an HU Alumnus, Class of 1966, a former career employee/administrator of HU having served as Dean of Residence Life, Special Assistant to the VP for Student Affairs, Acting Director of Blackburn University Center, and Associate Director of Student Activities. He is also a former Alumni Trustee member of the HU Board of Trustees. He is a resident of Clearwater, Florida.

¹/The Howard University Alumni Association (“HUAA”), which might appear to be the vehicle through which to bring the immediate lawsuit, is neither separate nor independent from the University and simply stated, the University would have to authorize its actions to essentially sue itself. The General Alumni Association of Howard University was incorporated in 1937, and has since been revoked. HUAA enjoys the same tax identification number as the University. It is organized and operated as an entity regulated by the University’s Department of Development and Alumni Affairs. Its elections are subject to oversight and control of the University’s Board of Trustees. Its Constitution, at Article X, Section 1, requires the Association to submit proposed nominations and election procedures to the Board of Trustees for approval not later than January 31 of the year in which an election is to be held. Its nomination and election procedures are required to comply with University By-laws and the policies and procedures established by the Board of Trustees as may be amended. To the extent that the BOT controls and informs HUAA’s governance, including its budget, and HUAA is an arm of the University, it is compromised in its ability to challenge the BOT’s actions, as here in other words, to sue itself. As a result, despite urgings from concerned alumni, at no time did HUAA challenge, legally or otherwise, the BOT’s refusal to fill Affiliate Trustee positions between April 6, 2020, and November 5, 2021. Nor was this issue brought to Alumni attention or presented by HUAA to alumni at large for discussion and debate at any point during this stated period.

6. Plaintiff April R. Silver is an HU Alumna, Class of 1991, BA Liberal Arts, former President of the Howard University Student Association (“HUSA”), and co-leader of the 1989 Howard University student protest. She is a resident of Brooklyn, New York.

7. Plaintiff Maria P. Jones is an HU Alumna, Class of 1988, BA School of Communications, and a resident of the District of Columbia.

8. Plaintiff Sowande S. Tichawonna is an HU Alumnus, Class of 1985, BA School of Communications. He is a resident of the District of Columbia. In 2018, was nominated by Maria Jones to the Board for the purpose of being placed on the ballot for elected Alumni positions. Inexplicably, his name never appeared on that 2018 ballot.

9. Plaintiff Angela R. Trapp is an HU Alumna, Class of 1994, BSEE Engineering. She has held several leadership positions in the Howard University Alumni Association (hereafter “HUAA”). She is a resident of Tyrone, Georgia.

10. Plaintiff, Daanen Strachan, Ph. D is an HU Alumnus, Class of 1988, BS Liberal Arts. He is a former student leader. He is a former career employee/administrator of HU having served as Associate Director of Student Activities and resident of the District of Columbia.

11. Plaintiff Alta Jeannette Cannaday is an HU Alumna, Class of 1991, BS Liberal Arts. She has served in various capacities in HUAA. She is a resident of Silver Spring, MD.

12. Plaintiff Stephen D. Jackson is an HU Alumnus, Class of 1986, BS Liberal Arts, and a former student leader. He is a resident of Inwood, New York.

13. Defendant, The Howard University, is a federally chartered and funded non-profit educational institution originally organized by an Act of the United States Congress. It received its tax-exempt non-profit status in 1940. Its Board of Trustees (hereafter “BOT” or “Board”) is governed by the University’s March 2, 1867 Congressional Charter, and the University Bylaws.

At all times referenced herein, the University's Charter and 2018 Bylaws governed its actions. Its November 2021 amendment of those Bylaws, as well as its recent BOT appointments are void *ab initio* and/or *ultra vires*.

14. *Defendants, Trustees of Howard University*, are hereby being sued in their official capacities. They include: Laurence C. Morse, Chairman; Ms. Leslie D. Hale, Vice-Chair; Mark A. L. Mason; Minnie Baylor-Henry, Esq.; Dr. Charles Boyd; Mr. Chris Carr; Donald B. Christian, CPA, CISA; Mr. Godfrey Gill; Dr. Richard Goodman; The Honorable Marie C. Johns; Jill B. Louis, Esq.; Mr. James J. Murren; Hillary Rosen; Dr. Reed Tuckson; Chris Washington; Dr. Danette G. Howard; The Honorable Alphonso Jackson; The Honorable Ronald Rosenfeld; Shelly Stewart, Jr., and Benaree P. Wiley.

FACTS COMMON TO ALL CLAIMS

15. Howard University was founded at the end of the civil war in response to centuries of intellectual deprivation of formerly enslaved Americans of African descent. General Oliver Otis Howard, known as the "Christian General" was given charge of the Freedmen's Bureau in mid-1865 shortly after the conclusion of the civil war with the mission of integrating former slaves in to Southern society and politics. He was a leader in promoting higher education for freedmen, most notably in founding Howard University and serving as its President between 1867 and 1873, and aided in the chartering of Howard University and what is now Clark Atlanta University, both in 1867.

16. Howard University was founded to liberate the minds of youths from ignorance and superstition, and of developing in them the physical and moral strength necessary for a useful life. The United States Congress chartered Howard University in 1867. It chartered several additional Universities during that same period.

17. The Act of Incorporation, granted March 2, 1867, Section 1, reads as follows: "Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled that there be established, and is hereby established, in the District of Columbia, a University for the Education of youth in the liberal arts and sciences, under the name, style and title of The Howard University.

18. The Congressional charter issued to the university created a contract between the federal government and the university, pursuant to which the University would create and follow its Bylaws as long as they were consistent with the Charter.

19. In establishing the University, Congress intended its incorporators establish a trust to hold and operate the university. As a Trust, the University is governed by the D.C Uniform Trust Code

20. The Congressional Charter established and required trustees to hold trust property including, but not limited to, congressional appropriations, subject to equitable duties to benefit the education of its students to whom the trustee owed specific duties. As a charitable trust, Defendants are required to apply the university's trust res for the public benefit as identified in the Congressional charter, and to manage the governance of the University in a manner that is consistent with perpetual succession.

21. Section 2 of the charter states that the trustees constitute a body politic and corporate with perpetual succession in deed or law to all intents and purposes whatsoever by the name, style, and Title, The Howard University by which name and title they and their successors shall be competent at law and in equity, to take themselves and their successors *for the use of said university*. . . . Section 3 states the corporators may enact Bylaws, not inconsistent with the laws of the United States, regulating the government of the corporation.

22. Section 4 of the Charter places the government of the University in the hands of a Board of Trustees. Section 6 states that the immediate governance of each university department, subject to the control of the trustees, shall be “intrusted to their respective faculties” and that the trustees regulate the subjects and course of instruction

23. Section 7 states that the Board of Trustees shall have the power to remove any professor or tutor, or other officers connected with the institution, when, in their judgment, the interests of the University shall require it.

24. Coupled with Congressional entrustment of resources to the BOT, the appointment of a Board of Trustees, Congress created a contractual Trust relationship with The Howard University to executed and administered by its Board of Trustees. The intent of the Trust was established by the language of the Charter.

25. The federal government appropriates an annual payment to the University to achieve its entrusted Charter objectives and charitable educational purpose. The Congress requires Howard to submit annual reports to the United States Congress regarding the status and management of its trust res, appropriated funds. Defendants’ annual reports, however, do not contain Board minutes.

26. As University Trustees charged with overseeing resources, including substantial Congressional appropriations, Defendant trustees, as fellow or co-trustees, enjoyed certain fiduciary trust obligations.

27. Historically included in the proscription of the University Trust is a significant and meaningful role for its alumni to elect fellow alumni to the BOT, financially support the University, and support University students consistent with the Charter’s stated purpose, as well as operate in compliance with applicable laws and contracts which the BOT has entered.

28. The University's present Bylaws contain a provision which, as a matter of law, precludes scrutiny by any non-board member regarding the exercise of its members' fiduciary duties; Board minutes of its meetings are not released for twenty-five (25) years, one quarter of a century. This extraordinary absence of transparency precludes any assessment by its stakeholders, or other interested persons, regarding the BOYT's compliance with the Charter's expressed purpose, the education of youth and other sections of the Charter. .

29. The Charter does not authorize the removal of Trustees. Nor do University Bylaws for the reasons in which affiliate trustees had removed her. Removal of Trustees is governed by the D.C. Uniform Trust Code, at Section 19-1307.06.

30. Defendants, by removing a distinct class of trustees in a manner unauthorized by its Charter and by-laws, created a single class of self-selected trustees, and reduced accountability and transparency regarding its governance and execution of fiduciary duties, including scrutiny of potential conflicts of interest and/or ethical considerations.

31. In 1867, there were no United States laws regulating the government of corporations; however, in 1901 Congress granted the District of Columbia power to issue corporate charters, and provided that existing corporations such as The Howard University may reincorporate under the District of Columbia. On December 13, 1928, Congress passed a law signed by Calvin Coolidge to amend the Charter at Section 8 to authorize the University's annual appropriations. Said amendment to the Charter had the effect of reincorporating the Howard not just in the District of Columbia, but under D.C. law. Whereas in 1867, the District did not have the authority to issue a corporate charter, the District in 1928 did have that power.

HISTORY OF ALUMNI PARTICIPATION IN GOVERNANCE AT HOWARD UNIVERSITY

32. Howard University enjoys a rich history of Alumni participation in its governance. Throughout Howard's history, its alumni, as well as its students, have been vocal and critical of University leadership about transparency and accountability, and its sensitivity to meeting students' needs against the history of unequal educational opportunity preceding its creation. Prior to 1921, several Alumni leaders mounted a campaign to give the alumni a voice in the election of Trustees, culminating in the BOT allowing the alumni to select a nominee to be voted on by the Board. In 1924, Alumni advocacy influenced the resignation of the University's then president and the election of Attorney Thomas Walker as the first elected alumnus to the Board.

33. In 1923-24, Howard Alumni, pursuant to alumni campaign and pressure, entered into an agreement with Defendant University to allow alumni to nominate alumni members.

34. In 1925, Howard alumni openly campaigned for the resignation of its then President. In 1926, the BOT appointed the University's first Black President, namely Mordecai Johnson.

35. In 1926, the University Board formalized a bylaw amendment to authorize the election of alumni to the Board on a staggered term basis. These Bylaws constituted a contract with Alumni. The BOT adopted rules and procedures which provided and formalized the manner in which alumni would participate in the election of trustees, providing that the alumni would nominate members to be considered by the Board. From such nominees the Board was required to vote for three. Once elected, the BOT did not have the power to substitute alumni selected candidates, nor upon information and belief, reject any nominees put forth by the alumni..

36. At that time through the present, Howard alumni have been a major source of funds needed by sustain Howard in order to educate youth. Additionally, throughout its history Howard alumni

have played a vital role in recruiting students to Howard and their involvement was critical to the University's early survival.

37. Until Defendant's 2020-2021 removal actions, no previous BOT has attempted to remove and eliminate alumni trustees, notwithstanding the raucous advocacy of the Alumni. Rather, as reported by the New York Times in 1942, the Howard alumni President wrote a letter to the editor urging support of Senate Bill that sought to make the BOT more efficient and effective by reducing its size and saving money.

38. On October 31, 1969, after an extraordinary 1968 student protest seeking enhanced BOT transparency and accountability, the Board considered its students' request for Trustee membership. At this meeting, then President of Howard, the late Dr. James Cheek, stated

"... that prior structures and forms which evolved over the years to govern American institutions of higher learning were no longer appropriate. The University is a community and that to protect this concept, all aspects of the community must be active participants in the decision-making apparatus of the institution." (Emphasis added)

39. In 1970, per a resolution introduced by the 84-year-old lead Plaintiff, Timothy Jenkins, a former student body president and then a BOT member, the BOT voted to add elected student and faculty to its membership. See Board of Trustees Bylaws at Article I, Sections 2. Hence, faculty and student membership on the BOT approximated 50 years until the June 2020 suspension.

40. Such inclusion of student representation was akin to the initial spirit of inclusion surrounding the founding of Howard University wherein all stakeholders had a voice at the table.

APPLICABLE BYLAWS

41. The following By-law provisions are pertinent to the claims herein:

ARTICLE I: BOARD MEMBERSHIP

SECTION 2: Membership on the Board.

The number of Trustees shall be up to 35, unless otherwise specified by recommendation of the Governance Committee, for a specific period of time, and by majority vote of the full Board. *Of such number, three shall be designated as Alumni Trustees, two as Faculty Trustees, and two as Student Trustees.* (Emphasis added)

SECTION 4: Action without Formal Meeting.

Any action required or permitted to be taken by the Board or by any Committee thereof may be taken without a formal meeting, *if a majority of the Trustees entitled to vote approve* the action in writing, fax, electronic mail, website voting or other record. The Secretary shall prepare and maintain a record of the action and the individual approvals of the Members of the Board or of a Committee and shall file the same with the minutes of the proceedings of the Board or the Committee.

SECTION 5: Board Action.

The affirmative vote of a majority of the Trustees present at a meeting of the Board, or at any Committee thereof, at which a quorum is present shall be required for any action of the Board, or of such Committee, unless the vote of a greater number of Trustees is required by a statute, the University Charter, or by these Bylaws:

....

SECTION 6: Quorum.

Except as otherwise provided in these Bylaws, one-third of the membership of the Trustees, or of a Committee thereof, shall constitute a quorum for any meeting of the Board or of such Committee, except that a majority shall be necessary to establish a quorum of the Executive Committee when such Committee is acting for the entire Board. ...

SECTION 7: Terms of Office for Trustees

a. General Rule -- Trustees shall be elected by the Board of Trustees at any regular or special Meeting of the Board, *provided that the notice required for such meeting advises the Trustees of such election.* The term of Office of a Trustee shall begin on the first day of the month next following the month in which the Trustee was elected. Except as provided for in subsection (c) of this Section 7 with respect to the term of Office applicable to Alumni, Faculty, and Student Trustees, and except with respect to the President (who shall remain a Trustee for his or her entire term as President of the University):

....

SECTION 8. Nomination and Election of Trustees.

Affiliate Trustees are nominated via a process by their respective constituents, however, election to the Board is the exclusive authority of the Board of Trustees. The number and term of Affiliate Trustees shall be as provided for in this subsection (c). (Emphasis added).

(i) *Alumni Trustees* – *The three Alumni Trustees shall be elected for terms of three years each. Such terms shall be staggered so that one such term expires each year. An individual shall be eligible to serve only two consecutive terms as an Alumni Trustee.*

(ii) *Faculty Trustees* – *The two Faculty Trustees shall be elected for terms of three years each. Such terms shall be staggered, in a manner deemed appropriate by the Board, so that both terms do not expire during the same year. An individual shall be eligible to serve only two consecutive terms as a Faculty Trustee.*

(iii) *Student Trustees* – *The two Student Trustees shall be elected for terms of one year each. Student Trustees shall be eligible to serve no more than one term as a Student Trustee.*

ARTICLE II: BOARD MEETINGS

SECTION 1: Regular Meetings.

(a) *Dates* -- There shall be at least three Regular Meetings of the Board of Trustees each year, one of which shall be designated as the Annual Meeting of the Board. Regular Meetings shall take place at such time and locations as may be established from time-to-time by the Board.

Notice -- Notice of the time and place of Regular Meetings *shall be sent to all Members of the Board* upon adoption of the Regular Meeting scheduled by the Board and at least 30 days prior to each such meeting. (Emphasis added).

SECTION 5: Board Action.

The affirmative vote of a majority of the Trustees presents at a meeting of the Board, or at any Committee thereof, at which a quorum is present shall be required for any action of the Board, or of such Committee, unless the vote of a greater number of Trustees is required by a statute, the University Charter, or by these Bylaws... (Emphasis added)

SECTION 6: Quorum.

Except as otherwise provided in these Bylaws, one-third of the membership of the Trustees, or of a Committee thereof, shall constitute a quorum for any meeting of the Board or of such Committee, except that a majority shall be necessary to establish a quorum of the Executive Committee when such Committee is acting for the entire Board....

ARTICLE VIII. AMENDMENTS

*These Bylaws may be amended by the affirmative vote of three-fourths of the members present, provided, that **one half of the total membership of the Board is present and notice of the proposed amendment has been given to each member of the Board at least 30 days before the meeting.** (Emphasis added)*

42. The Board's actions implicate Article 2, Section 7, which reads:

Confidential Records -- Unless otherwise approved by the Board, minutes, and other records of the Board, and of the Committees thereof, that are less than 25 years old are confidential and are closed for research purposes and public inspection. Upon request for an exception from an interested party for the release of any such minutes or records, or upon its own initiative, the Board may request the University Archivist to give an opinion on the legitimate research value or other academic interest that may be served by the release thereof.

43. *United States Treasury regulations require nonprofits such as Treasury to make their Board minutes available for annual public inspection. Howard's BOT does not make its minutes available for inspection until the 25th annual anniversary of its Board meetings. (Emphasis added)*

44. Howard Bylaws provide governance of the Board shall be vested in a Board of trustees.

The Bylaws authorized involuntarily removal by other Board members as follows: Any Trustee may be removed by a majority vote of the Board, a quorum being present, at any meeting of the Board, upon certification by either the Governance Committee that the Trustee proposed to be removed has acted in a way that was either an actual or apparent violation of the Statement of Responsibilities of the Board; inconsistent with the fiduciary role of a trustee; or has otherwise acted in a way to bring discredit to the University or Board; or violated the Code of Ethics and Conduct or has failed to timely submit an accurate and complete Disclosure Form as required under such Code.

45. Faculty or Student Trustees may also be removed by a majority vote of the Board, a quorum being present, at any meeting of the Board, upon certification by the Secretary and

recommendation of the Governance Committee that such Trustee has failed to maintain a requisite condition of eligibility for nomination or election, as described in Section 8 (a) (3) or (4), as may be applicable.

46. The Bylaws define a vacancy on the Board as resulting from the following: by reason of death, resignation, disqualification, removal, or inability to perform one or more essential functions of a Trustee, or otherwise.

47. The Bylaws further specify that a vacancy on the Board shall be filled for the unexpired term by a majority vote of the remaining Trustees, though less than a quorum, at any Regular Meeting or Special Meeting of the Board held for that purpose.

48. The Bylaws do not contemplate a vacancy occurring because the Board canceled the election of successor Board Members to replace the Members whose terms have expired.

49. The Bylaws contemplate a vacancy as occurring when the removal of a Trustee occurs prior to the expiration of the removed Trustee's Term.

50. The Bylaws contemplate that the only time a Board member will not be legally eligible to vote on his successor is when such Board has been removed prior to the expiration of such Board Members Term. At the time of the BOT November 2021 amendment, Alumni enjoyed the right to participate in the nomination and election of successor Alumni Board members to fill completed and expiring terms of Alumni Board Members.

51. The election of successor Board members to Alumni, Faculty and Student Trustees was a violation of the Charter and Bylaws. Defendant Trustees violated the Charter and applicable Bylaws by precluding seated Board members from voting on successor Board members.

52. The Bylaws created a contractual relationship with alumni following its initial 1924 contract to allow alumni elections. Its subsequent Bylaw amendment in 1925-1926 authorizing

alumni to elect three alumni to the Board constituted an additional contract between the Alumni and the Board. The latter agreement assured alumni the right to select or nominate an alumni candidate slate from which the Board would exclusively elect Board members to lend their views to the BOT's representation of the University's interests.

53. The 1867 Charter (Incorporation papers), the 1924 and 1926 agreements between the BOT and the general alumni, and the 2018 Bylaws govern the dispute here.

54. The 1867 Charter and University Bylaws through 2018 give alumni plaintiffs the right to participate in the election of alumni members to the Board and thereby share in the highest level of the University's governance. Plaintiffs, lost the right to participate and vote in the selection of elected Alumni membership on the Howard University BOT. More than 2,500 alumni signed a petition to the BOT to reinstate elected affiliate Trustee Stakeholders.

THE BOT'S CONSOLIDATION OF POWER AND AUTHORITY

55. The 1867 Charter mandated "perpetual succession" in the interest of continuity, and required all subsequent trustees to be nominated and voted on only by then existing Trustees. As a result, the Charter gave existing Board members the right to cast a vote on successor Board members.

56. The Bylaws required that vacancies be filled for *the unexpired term* by a majority vote of the remaining Trustees, though less than a quorum, at any Regular Meeting or Special Meeting of the Board held for that purpose. They define a BOT vacancy as one which results from a death, resignation, disqualification, removal, or inability to perform one or more essential functions of a Trustee, or otherwise. Based thereupon, no Board vacancy existed in June or November 2021

57. Pursuant to the Bylaws, in the absence of a vacancy, alumni BOT members could only be "involuntarily" removed for specific reasons: "that the Trustee proposed to be removed has acted in a way that is: either an actual or apparent violation of the Statement of Responsibilities of the

Board; inconsistent with the fiduciary role of a trustee; or has otherwise acted in a way to bring discredit to the University or Board; or that the Trustee proposed to be removed has violated the Code of Ethics and Conduct or has failed to timely submit an accurate and complete Disclosure Form as required under such Code. None of these justifications existed in June or November, 2021 to justify the involuntary removal of Affiliate Trustees.

58. The BOT's halting of the on-line election of Affiliate trustees for 18 months, and immediate vote thereafter to remove their membership from the Board constituted removal of the Affiliate Trustee members from the Board in bad faith, and derogation and disobedience to the Bylaws and the 1867 Charter's perpetual succession requirement.

59. Defendants admit that its Governance Committee Chair's recommendation was not voted upon by the BOT. In allowing a BOT committee chairperson and/or committee to independently halt affiliate trustee elections without Board approval, Defendant trustees violated Article 1, Section 2, 4, and 5 of the Bylaws. The specific action prevented notice of the June and November meetings from service upon the full Board.

60. Defendant Trustees strategically and deliberately allowed fellow trustees to disobey its Bylaws in order to effectively nullify prospective affiliate alumni trustees' rights to sit on the Board.

61. District of Columbia trust law prohibited the removal of alumni trustee members in the manner and procedure undertaken by Defendant trustees.

62. Neither the Charter nor the Bylaws authorized the BOT to remove at will fellow alumni trustee from BOT membership in the manner in which it occurred here.

63. Beginning in January 2015, the BOT targeted Affiliate Trustees selected by their respective constituencies. Its action at that time violated the Bylaws and was repealed on April 18, 2015. In

September 2015, the BOT reinstated its vetting decision, thereby qualifying (by pre-clearance) stakeholder selections of candidates elected by their membership to the BOT.

64. At the expiration of respective Affiliate Trustee terms, applicable Bylaws at Article I, sections 7 and 8 required stakeholder nominations and elections to fill those specific seats to comply with the By-law membership requirement at Article I, Section 2.

65. On October 23, 2018, the BOT seated two (2) newly elected Affiliate Trustees: An alumni Trustee and an Undergraduate Student Trustee: but it did not seat the Undergraduate Faculty Trustee. It also appointed one (1) General Trustee.

66. On November 13, 2019, one year later, the BOT seated three (3) new Affiliate Trustee members: an alumni trustee, and the undergraduate and graduate student trustees; it also appointed an additional general trustee.

67. Between January and February 2020, consistent with past practice consistent with past practice the University sought nominations from alumni to fill a then vacant alumni trustee position. The elected alumni trustees at that time were Eugene “Rock” Newman and Jill B. Louis. Mr. Newman’s term expired in June 2020, Ms. Louis’s in June 2021.

68. In April, 2020 prior to the expiration of the terms then alumni trustees Mr. Newman and Ms. Louis, the Governance Committee Chairwoman unilaterally suspended the Affiliate Trustee election process. No Affiliate Trustee election occurred between June 2020 and November, 2021; the BOT did not fill these two (2) alumni seats. See Ex. 1 (Chart depicting Affiliate Trustee vacancy status).

69. Chris Washington, the then most recently elected Alumni Trustee, remained the sole Alumni on the BOT. Although his term as an alumni trustee ended in 2022, he was subsequently appointed as a general trustee after his vote to remove Affiliate Trustees.

70. Upon information and belief, at or near the Governance Committee's April 2020 recommendation, and near the March 2020 completion of Defendant The Howard University's Self-Study, the Board retained the consulting services of Independent Educational Services (hereafter "the Consultant" or "IES"), to study the value and need for shared governance.

71. On April 6, 2020, approximately one month after the University completed its March 2020 Self-Study, in which for accreditation purposes, it touted its commitment to "Shared Governance" the BOT's Governance Committee Chair notified "the Howard University Community" that the BOT was freezing the Affiliate Trustee nomination, election, and BOT seating process "due to the COVID-19 pandemic."

72. Without reference to any Bylaw provision authorizing the Committee Chairperson's singular shut down of the Howard Affiliate Trustee elections and without BOT approval of her "recommendation", she stated as follows:

As you know, the country is in the midst of an unprecedented global public health crisis as a result of the COVID-19 pandemic. Among the unprecedented actions the University has taken in response is the evacuation of the campus, except for essential personnel, and the migration of all classroom instruction to a remote learning platform. The Board of Trustees has been engaged as these decisions were made for the health and safety of every member of the Howard Community and the surrounding neighborhood....

While these considerations are underway and given the urgent business at hand in addressing COVID-19, the Committee has asked the Board of Trustees to pause on adding any new Board members including via elections for affiliate trustees. These deliberations will take into account how to assure that our critical stakeholders can make the most positive contributions towards university governance, as well as how the Board of Trustees should benefit from the most diverse and comprehensive experiences and views available.

The Governance Committee has notified the Office of Alumni Relations on behalf of the alumni trustee election and the Faculty Senate Committee on behalf of the faculty trustee election of this decision. In addition, the Governance Committee will not recommend any new general trustees for election to the Board until further notice. (The Board values the input of all University stakeholders and is committed to engaging the current elected leaders of the Howard University Student

Association (HUSA), the Howard University Alumni Association (HUAA), the Faculty Senate and the Howard University Staff Organization (HUSO) as they continue the stewardship of the University through this very difficult period. See Ex. 2.

73. The Howard University President admitted to Alumni in an “interview” (via an “Alumni Insight” Zoom session) in January 2022 that the “Governance Committee” Chair independently suspended elections between April 2020 and November 2021. That recommendation was expressly characterized by the University president as a “decision.”

74. Consistent with the Governance Committee’s decision and absent a vote the BOT took no further action to conduct affiliate elections upon expiration of their terms.

75. When the BOT votes on an issue affecting governance, its Secretary formally notifies the Howard University student, alumni, and faculty representatives regarding its action(s). No such notice was issued by the Secretary regarding a Board vote between April 6, 2020 and the present which memorialized its approval of the Governance Committee’s April 6, 2020, action.

76. Nor does any record exist in subsequent University communications or pleadings in this case that confirm, nonetheless suggest, that the Board of Trustees approved the aforementioned recommendation.

77. No individual Trustee, Committee Chair, or Officer of the Board can singularly act and make Board decisions that implicate obedience to the Bylaws without an appropriate corporate action, consistent with Article 1, Sections 4 and 5.

78. There is no provision in the 1867 Charter or the applicable 2018 Bylaws that authorize the BOT to suspend its Bylaws for alleged emergency reasons such as COVID. Moreover, BOT meetings commenced after April 6, 2020, virtually in “business as usual” mode and the Affiliate elections were conducted on-line, not in a covid sensitive environment.

79. Although the April 20, 2020 letter referenced “further notice”, there was none.

80. On June 14, 2021, 14 months after the April 6, 2020 letter, notably after the terms of Mr. Newman expired, BOT Chairman Lawrence Morse (hereafter “Morse”) announced the BOT had *unanimously* changed, but not amend, the Board’s governance structure. The announcement, based on the findings of the BOT’s review submitted to the governance committee in February, 2020 informed the BOT’s vote “to approve a single unitary class of trustees. He added that there was an “overwhelming consensus” of yet disclosed persons that the current process of governance and engagement across the university “from the Board through various stakeholder groups is not working.” Ex. 3.

81. Absent the committee chair’s halted elections, the Affiliate Trustees would have enjoyed access to the Consultant Report purportedly relied upon by the BOT, enjoyed the right to engage in BOT debate, if any, on the subject, and to vote on the matter.

82. Neither Mr. Newman nor Ms. Louis participated in the BOT’s November 2021 vote to amend the Bylaws.

83. Contrary to the Governance Committee Chair’s April 20, 2020 letter, at the exact time that the committee froze Affiliate Trustee elections it was simultaneously developing and finalizing its recommendations to remove Affiliate Trustee.

84. Chairman Morse’s June, 2020 remarks stated the BOT engaged in the process of evaluating best practices for Boards and that it used the services of IES, an external consulting firm with a specialization in higher education Board governance, to assist with this process. No date was given as to when the BOT retained IES; nor did the Chairman disclose the consultant’s written findings or a summary thereof.

85. Even before the BOT voted in November 2021 to amend the Bylaws, Chairman Morse effectuated the amendment, noting certain alumni and students would prospectively serve on

BOT Committees at the pleasure of the BOT, but no longer enjoy full trustee status, which included voting rights.

86. According to Article I, Sections 2, 7 and 8, all Howard University students, faculty, and alumni “shall” be included among the BOT’s membership. Absent an amendment to the Bylaws, the BOT did not have the authority to exclude Affiliate Trustees from the BOT during April 2020 through November 5, 2021.

87. To date, no specific details have been disclosed to alumni regarding the Board’s June 2021 vote, except that it was “unanimous” and attributed to the finding(s) of the IES consultants. Despite repeated requests from concerned Alumni, the BOT has refused to disclose the final IES findings, a summary thereof, or BOT minutes regarding its June and November 2021 votes.

88. The Defendant Trustees June 14, 2021 decision required an appropriate amendment of Article 1, Section 2 and Article II, Section 8 in accordance with Article VIII’s required notice to the entire BOT, including the excluded and simultaneously removed Affiliate Trustee member positions.

89. On November 5, 2021, subject to yet disclosed recommendation from its Audit and Legal Committee, the Board voted to amend Article I, Section 2 to remove Affiliate Trustee members. The record of that vote will not be available to the Affiliate stakeholder community for 25 years. Nor will the minutes of said vote be included in the University’s annual report.

90. The Governance Committee Chairwoman’s independent decision to freeze Board member elections of Affiliate Trustees between April 20, 2020 and June 21, 2020 constituted the first step in the removal of affiliate trustees, precluded their participating and vote in filling the successor terms of expiring Affiliate Trustee Board members, contributed to the BOT’s creation of

unauthorized vacancies and ultimate removal from the BOT, in derogation and disobedience to the mandates of Article 1 Section 2, 4, and 5, 7 and 8 and the Charter's requirement of perpetual succession.

91. Once seated, as required, Affiliate Trustees would have enjoyed the same right as other BOT members to participate in and to vote in the Board's June and November 2021 meetings, including a "full" BOT vote, corresponding notice thereof, including the debate and consideration of the elimination of their positions.

92. Defendants' actions disenfranchised Plaintiffs and thousands of other alumni stakeholders who were eligible to vote for prospective Affiliate Trustee candidates between June 2020 and June 2021 if the then existing election process had been followed.

93. The Defendant's violations of the Bylaws and the Charter, and disobedience to its governance requirements, are paramount to the Plaintiff's breach of contract claim against the University and breach of fiduciary duty claim against the Defendant trustees.

94. The effective exclusion of elected Affiliate Trustee members from participation as full Board members since June 2020 renders all Board actions since then *ultra vires* and precludes alumni from electing as before November alumni to serve as DOT members in the future.

ALUMNI DEMAND BOARD TRANSPARENCY AND ACCOUNTABILITY

95. Before filing this action, Plaintiffs, among others, directly communicating their concerns to the BOT in an unsuccessful attempt to amicably resolve this despite.

96. On or about June 25, 2021, ten (10) former graduate and undergraduate student trustees who served between 2008 and 2021 sent a letter to the BOT regarding its action. These former BOT members stated as follows about the Board's June 2021 unanimous vote:

We were founded in the midst of a social climate that rejected diversity in higher education, from the student body, to faculty, and even Board membership. The

Board's recent decision seems to reject that history. Our founders endeavored to reject leading higher education models and to create a space where we could do things differently. They recognized something that we are affirming today: "difference does not mean deficient.

They added:

Furthermore, we are concerned about the context in which this "unanimous" vote took place – without student and faculty trustee participation. As mentioned, nominees for the undergraduate and graduate student trustee position were elected during the Spring 2020 elections. Neither student was granted the standard confirmatory interview with the Board's Governance Committee. Even throughout the 2020-2021 academic year, those students were still not granted an interview. As the Board pursued its governance review, no student or faculty trustee were present during the Board's confidential discussions on this matter. Even consultation with former student trustees, in a separate forum, cannot substitute sitting, voting student trustees participating in the Board's deliberations and final vote. More importantly, it is hard to escape the less-than-ideal optics of the Board pushing this matter forward in the midst of a global pandemic when no student or faculty were on campus or were granted the opportunity to offer contemporaneous arguments. Ex. 5.

97. The remainder of their letter highlighted the value that Student Trustees bring to the BOT and urged the BOT to reverse its decision.

98. Various alumni urged the BOT Chairman, the President, and current and Emeritus Board members to reconsider the BOT's actions. In July 2021 more than thirty-five (35) alumni from the classes of 1960 through 2020, all former student government leaders, including former Affiliate Trustees and several of the immediate plaintiffs, sent a collaborative seven-page letter to the BOT. That letter articulated its forceful opposition to the BOT's June 2021 decision. Ex.6.

99. The July 2021 letter reminded the BOT of the sacred history of University's "Shared Governance" from 1926 to the present, including the University's 2009 and 2020 Self-studies. A pertinent excerpt follows:

As noted earlier, shared governance has been a part of Howard University since 1926, with a significant expansion in 1970. Affiliate Trustees representing alumni, faculty, and students have thus participated in the governance of the University during some of the University's most critical time periods. Their voices and points of view have helped to

shape the present-day Howard University. We believe that a continuation of shared governance is critical in shaping the future of Howard University. The Affiliate Trustee structure ensures that alumni, faculty, and students will have a continued guaranteed voice in the development of the University's policies and procedures.

....

Based on the above, we request that the Board take action immediately to reverse its decision to eliminate Affiliate Trustees.

....

Consistent with the duty to inform stakeholders about the most important decision to impact them in recent years, we request and strongly urge that the Board produce the following documents as soon as possible:

1. The IES report.
2. The Board and committee minutes which cover the deliberations and the subsequent decision to eliminate Affiliate Trustees.
3. The Board Bylaws in effect at the time the decision was made to eliminate Affiliate Trustees; and
4. Any newly revised Board Bylaws.

100. The Board tersely responded to the concerned Alumni plea and offered a one-hour "listening session", with a "hard stop" at 60 minutes, all the while indicating it had no intention whatsoever of reconsidering its vote to exclude Affiliate Trustees. It refused to honor the request to disclose the IES Report, BOT and Governance Committee minutes, and any newly revised Bylaws. The one-hour meeting occurred and was abruptly ended by the University exactly at the sixty-minute mark.

101. On October 15, 2021, former student government leaders sent a second letter to the BOT urging reconsideration of its June 2021 vote:

This letter is being sent as a follow-up to our letter to you dated July 15, 2021 (see attachment). The primary purpose of this letter is to request again that the Board of Trustees (the "Board") take immediate action to reverse its decision to eliminate Affiliate Trustees from membership on the Board. As we expressed in our initial letter, shared governance has been a part of Howard University since the 1920s, and the voices and points of view of alumni, students, and faculty on the Board have helped to shape the present-day Howard University. We believe that a

continuation of shared governance is critical in shaping the future of the University.
Ex. 7.

102. The BOT never responded. Every reasonable avenue taken by alumni to resolve alumni rights has been exhausted and met by an intransigent resolve by the University and the BOT.

103. Howard University likely remains subject to D.C. Code §29, the DC Uniform Trust Act, and D.C. common law regarding non-profit corporations.

104. Despite persistent stakeholder urgings for transparency and accountability, the BOT has stubbornly defended the violation of the Charter and governing Bylaws to the detriments of thousands of Alumni. The only check and balance on the BOT's governance of the Congressionally Chartered, charitable non-profit, Howard University is the BOT's self-policing, which is concealed by virtue of its 25-year confidential minutes rule. This absence of accountability and transparency has left plaintiffs with no meaningful recourse but judicial intervention to compel BOT's compliance with its rules of governance and fulfillment of its duty of loyalty and obedience to the University Charter and Bylaws.

105. This extremely lengthy confidential period precludes any external assessment regarding the Board's adherence to its Charter and By-law obligations and is oxymoronic to transparency and accountability and the Defendant trustees duties under the D.C. Uniform Trust Code.

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT/THIRD PARTY BENEFICIARY CONTRACT HOWARD UNIVERSITY

106. Plaintiffs incorporate by reference the substance of all foregoing factual allegations in paragraph 1-105.

107. In 1923 through 1926, Howard University Alumni engaged the University management and administration. In addition to national organizations, the United States House of

Representatives and federally elected officials, supported their cause, noting the need for Howard Alumni to assume responsibility for the education of students previously denied educational opportunities.

108. In direct response to alumni, and in exchange for continued financial, student recruitment, and other support. Defendant Howard University entered into two distinct agreements to authorize alumni to sit on its BOT to the distinct benefit of existing and future alumni.

109. In 1923-24, the BOT agreed with the unincorporated General Alumni to authorize the first alumni trustee for the 1924-25 year.

110. Defendant's 1926 amendment of its Bylaws formalized an agreement with alumni to authorize three elected alumni to the BOT with staggered terms.

111. The Board 2021 removal of the Affiliate Alumni Trustees violated its previous alumni enfranchisement and participatory role in Board governance, thereby disenfranchising alumni and breaching its contracts and/or third-party beneficiary agreements with university alumni. Such breach has impeded Plaintiffs' rights to elect prospective alumni trustees to the Board.

COUNT II

BREACH OF FIDUCIARY DUTY AND VIOLATION OF DISTRICT OF COLUMBIA UNIFORM TRUST CODE INDIVIDUAL NAMED DEFENDANT BOARD TRUSTEES

112. Plaintiffs incorporate by reference the substance of all foregoing factual allegations in paragraph 1-111.

113. As a Trust operating in the District of Columbia, the individual named defendants and The Howard University are subject to the District of Columbia Uniform Trust Code Section 19-1307.

114. By virtue of its Charter, the University and its Trustees are entrusted with resources and properties, in order to protect and manage the University's obligation to educate youth.

115. As such, the Defendant Trustees owe a common law and statutory fiduciary duty to the special class of affiliate alumni University, and is required to act in good faith consistent with said duty. As such, the Board should have exercised careful, skillful, prudent, and diligent oversight of Board decisions affecting its members, the election thereof, their voting rights, and appropriate Board notices as would be exercised by a prudent individual acting in a like capacity and familiar with such matters under like circumstances.

116. The BOT knew or should have known, pursuant to its Bylaws, the single committee Chairperson of its Governance Committee was unauthorized to suspend the elections of then required affiliate alumni Board members for nearly 18 months on the pretext of COVID-19, while simultaneously planning to remove them at will from the BOT upon expiration of their terms.

117. The alleged Covid Crisis should not have affected on-line elections and did not halt continued electronic BOT meetings and votes on issues of importance during the period in which affiliate stakeholder votes were frozen.

118. The BOT's November 2021 formal amendment of the Bylaws and removal of Alumni was unauthorized by the 1867 Charter, the Bylaws, and the District's Uniform Trust Code.

119. Defendant Trustees sanctioning of the Bylaw violations of its fellow Trustees resulted in the removal of required alumni, faculty, and student members from Board membership and governance.

120. The trustees' actions clearly violated the applicable charter, and agreement with Alumni Bylaws.

121. Defendants' governance system offers absolutely no objective, impartial internal vehicle, policy, or practice in which to otherwise ensure respect for its stakeholders' divergent concerns

and interests and urgings for transparency and accountability in BOT decisions, such as the immediate one.

122. The secretive, clandestine, exclusive way in which the Board amended its Bylaws at Article I, Section 2, and refused to provide a single document upon which it relied to do so, including the IES consultant report and applicable minutes, contradicts the University's promotion of shared governance, transparency and accountability. The greatest harm caused by the BOT's actions here is evident in its illegal November 2021 by-law amendment and removal of affiliate trustees after having illegally excluded them from the BOT who then, is minding the trustees enforcement of their trust duties.

123. Additional harm to Alumni and Plaintiffs is rooted in the now transparent management of the University's risk as it aggressively engages in significant real estate development, bond, and investment deals, and makes significant risk intense financial decisions that affect the University for decades to come.

WHEREFORE, Plaintiffs respectfully demand:

- a. That this Honorable Court issue an Order declaring that the April 2020 Governance Committee's decision and action halting the nomination/election/seating of Affiliate Trustee Board Members between April 6, 2020, and November 5, 2021, violated its Charter, applicable Bylaws at Article 1, Sections 2, 7, and 8, and Article VIII;
- b. That the BOT's June 2021 and November 5, 2021 votes which excluded and removed Affiliate Trustees members, be declared null and void and of no lawful effect; this includes the Board's November 5, 2021 amendment to the Bylaws;
- c. That any election or decision regarding the filling of Board seats after June 2020 through the present be deemed *void ab initio*;

- d. That all Affiliate Trustee positions entitled to have been nominated, elected, and seated between April 20, 2020, and November 5, 2021 and prospective alumni Board membership positions be filled consistent with Articles I, Sections 2, 7, and 8.
- e. Subsequent to corrective elections, that the BOT properly notify newly elected stakeholder members of any meetings, minutes, and votes in which they were illegally excluded since June, 2020;
- f. That Article 2, Section 7, which authorizes a 25- year sealing of records from interested parties, such as Alumni and the public, be deemed inconsistent with the University's regarding the exercise of BOT's fiduciary duty;
- g. That the University be compelled to acknowledge its status as a non-profit charitable trust for all purposing; and
- h. Such other equitable, declaratory, and other relief deemed necessary and appropriate by this court, including, but not limited, to cost and legal fees.

JURY DEMAND

Respectfully submitted,

_____/s/_____
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