

GEORGE W. CRISS III, DAVID A. GLOWNY,
JOHN A. KROB, THEODORE F. MIRCZAK, JR.,
JAMES NAPOLITANO, JOSEPH TEMPLIN, PETER
VANDERMINDEN, and PETER VANDERZEE,

Plaintiffs,

-against-

THE RENSSELAER ALUMNI ASSOCIATION,

Defendant.

VERIFIED
COMPLAINT

Index No.

RJI No.

Plaintiffs, by their attorneys, O'Connell and Aronowitz, allege upon information and belief as follows:

INTRODUCTION

1. This is an action seeking prospective relief, specifically a declaratory judgement and permanent injunction to declare that certain bylaws of the Rensselaer Alumni Association ("RAA" or the "Association") violate the New York State Not-for-Profit Corporation Law and are therefore void; to permanently enjoin the RAA's Board of Trustees ("Board") from enforcing the same or acting in accordance therewith; and to enjoin the Board of Trustees from holding an election of Trustees and Officers until such time as the RAA's bylaws are amended to conform to the Association's charter and the Not-for-Profit Corporation Law.

2. As alleged and documented in this Complaint, for the past several years the RAA has been illegally operated and governed by an improperly elected Board of

Trustees, all in violation of its corporate charter and the Not-for-Profit Corporation Law. To ensure self-perpetuation, Defendant has illegally manipulated the RAA's bylaws to control the nomination and election of Trustees and Officers and to deprive RAA members (approximately 100,000 alumni who have graduated from Rensselaer Polytechnic Institute) a meaningful role in that process, thereby ensuring that the current Board and Officers, rather than the RAA's members, control who will succeed the current Board. The Defendant has refused to properly schedule meetings called at the behest of disaffected alumni members and has deliberately scheduled meetings at inconvenient times in order to limit attendance, while allotting insufficient time at such meetings for members to voice their grievances or make appropriate motions. It has held membership meetings without a legal quorum, improperly conducted elections and even altered the results of its most recent election after its membership voted down a slate of Trustees and Officers nominated by the Board's internal Nominating Committee. Not only did it illegally count the votes of members not in attendance at the meeting where the election occurred, but the Board Chairman himself cast an illegal ballot after voting had ended in order to ensure that the slate was "elected" by a margin of one vote.

3. Plaintiffs, who are members of the RAA, as well as a large group of concerned alumni—who collectively refer to themselves as "Renew Rensselaer"—have sought unsuccessfully for several years to reform the RAA and to amend its bylaws and governance to conform to the RAA's charter and the Not-for-Profit Corporation Law. Recently, in response to those efforts, the Board illegally approved an amendment to its bylaws which was deliberately adopted and designed to make it virtually impossible for members to call special meetings of the Association to challenge the Board's illegal

activities. While prior to this amendment, a special meeting could be called by members upon the written petition of 100 members, the bylaws now purport to require a petition signed by ten percent (10%) of the RAA's membership (a number which approximates 10,000) before they can call a special meeting. More recently, and in an effort to avoid unnecessary litigation, Plaintiffs, through their counsel, reached out by letter addressed to counsel for the Defendant, suggesting how to cure this and other problems in the bylaws by amending them to conform to the law and the Association's charter. That overture was rejected out of hand.

4. Plaintiffs do not bring this action to challenge the Defendant's previous illegal actions, but rather to (1) prevent their recurrence, (2) ensure that the RAA's bylaws are properly amended to conform to the Not-for-Profit Corporation Law and the RAA's corporate charter, and (3) to enjoin the conduct of elections (presently scheduled for September 27, 2019), unless and until the bylaws are properly amended and elections are properly conducted in accordance with those amended bylaws, the Not-for-Profit Corporation Law and the RAA's corporate charter.

THE RAA

5. The RAA is a not-for-profit education corporation with its principal place of business in the City of Troy, County of Rensselaer, State of New York. The RAA was formed in 1964 pursuant to a charter granted by the New York State Board of Regents for the "promotion of Rensselaer Polytechnic Institute" ("RPI" or the "Institute"), a nationally renowned university of higher learning founded in 1824 (<https://www.rpi.edu/about/history.html>), with its main campus located in the City of

Troy, New York (<http://catalog.rpi.edu/content.php?catoid=18&navoid=430#locations>). Copies of the RAA's charter and an amendment to its charter are annexed hereto as Exhibit "A".

6. RAA's membership is comprised mainly of RPI's alumni/ae (hereinafter "alumni") worldwide, a group consisting of approximately 100,000 members. *See* RAA's current bylaws annexed hereto as Exhibit "B", at Art. II, §§ 1-2; *see also* Exhibit "C", annexed hereto, at 3 (stating the approximate number of RPI alumni worldwide). The RAA's "Long-Range Strategic Plan 2017–2024", which is annexed hereto as Exhibit "D", states that the RAA serves as the "representative body" of all RPI alumni.

7. Purposes of the RAA include promoting "the interests, welfare and educational aims of [RPI] and its alumni/ae", "[d]evelop[ing], institut[ing], and maintain[ing] policies, services, and programs which are consistent with the educational aims of [RPI], and which address the broad spectrum of interests and needs of alumni/ae" and serving RPI's "alumni/ae and friends, and establish[ing] and maintain[ing] a mutually beneficial relationship among these groups[.]" Exhibit "B" at Art. I, § 3.

8. The RAA is an entity separate from RPI and its administration, and each of the two entities (RAA and RPI) are managed by a separate Board of Trustees. *Id.* at Art. IV, § 4; New York State Not-For-Profit Corporation Law § 701 (a).

9. The current President of the RAA is Kareem I. Muhammad. *Rensselaer Alumni Association Board of Trustees*, RPI, <https://alumni.rpi.edu/s/1225/alumni/index2col.aspx?sid=1225&gid=1&pgid=5973>. As President, Mr. Muhammad serves as Chairman for all meetings of the Association. Exhibit "B" at Art. V, § 2.

PLAINTIFFS

10. Plaintiffs are all very accomplished members of the RAA (“Members”) who have earned their undergraduate and/or graduate degrees from RPI. They share a deep affection for their alma mater and the RAA, but all have become greatly concerned about the future of both.

11. Plaintiff George W. (also nicknamed “Bill”) Criss resides in Ocean Isle Beach, North Carolina. He earned his Bachelor of Science degree in Aeronautical Engineering in 1968 and his Master of Science degree in Astro/Aeronautical Engineering in 1969, both from RPI. After graduating from RPI, Mr. Criss spent 26 years in the United States Air Force where he built and flew spy satellites, and eventually obtained the rank of Colonel. Since retiring from the Air Force twenty-two years ago, Mr. Criss has had a successful career in technical consulting and research, working for Booz Allen Hamilton, Tesla Laboratories, and a non-profit government think tank. Since graduating from RPI, Mr. Criss has been actively involved with the RAA and was a key leader in rejuvenating its Baltimore-Washington DC area chapter, which has since won two consecutive RAA Best Chapter Awards. Mr. Criss is also a member of RPI’s Patroon Society as a result of having made significant financial donations to RPI and has received multiple awards for his service to the RAA, including the Albert Fox Demers Medal in 2009. The Albert Fox Demers Medal is “the second highest award that the RAA bestows” and recognizes an individual’s “substantial contributions to the welfare of the Institute [(RPI)] by either alumni or non-alumni and to stimulate further interest in the support of Rensselaer [(RPI)].”

<https://alumni.rpi.edu/s/1225/alumni/index.aspx?sid=1225&gid=1&pgid=614>.

12. Plaintiff David A. Glowny resides in Milford, Connecticut. In 1988, he earned his Bachelor of Science degree in Applied Mathematics and Computer Science from the University of Rochester. In 1993, while working for IBM, he earned his Master of Science degree in Computer Science from RPI through its satellite campus in Hartford, Connecticut. After receiving these degrees, he continued his career as a software developer at a variety of technology companies, and has received fifteen United States patents for his software innovations.

13. Plaintiff John A. Krob resides in Cos Cob, Connecticut. In 1978, he earned his Bachelor of Science degree in Civil Engineering from RPI. After graduating from RPI, John worked as an engineer for a year prior to attending Columbia University School of Business, where in 1981, he earned an MBA with concentrations in Finance and Accounting. Subsequently, he embarked on a twenty-eight-year career in commercial and investment banking and portfolio management, during which time he earned a CPA Certificate from the University of Illinois, as well as Series 7 and Series 24 Securities licenses. Mr. Krob retired from Citigroup as a Managing Director in 2008.

14. Plaintiff Theodore F. (also nicknamed "Ted") Mirczak, Jr. resides in Hadley, New York. In 1966, he earned his Bachelor of Science degree in Electrical Engineering from RPI. Subsequently, he worked for twenty years at New York Telephone in both Treasury and Facilities Management, during which time he earned an Executive MBA from Pace University and a CEP Certificate from Texas A&M University. In 1990, Mr. Mirczak returned to RPI to become the Director of Campus Planning and Facilities Design, and he remained in this position until his retirement in

2001. During his final year at RPI, Mr. Mirczak also served as its Acting Vice President for Administration.

15. Plaintiff James (also nicknamed “Jim”) Napolitano resides in Elkins Park, Pennsylvania. In 1977, he earned his Bachelor of Science and Master of Science degrees in Physics, both from RPI. In 1982, he earned a PhD in Physics from Stanford University. Mr. Napolitano worked as a research scientist at Argonne National Laboratory in Illinois and at Jefferson Laboratory in Virginia, and in 1992, joined the RPI faculty, ultimately becoming a Professor there in 1999. In addition to teaching at RPI, he also served as its Vice Provost for Information Technology and as President of the Faculty Senate. In 2014, he joined the faculty at Temple University where he currently serves as the Chair of its Physics Department. Mr. Napolitano has authored/co-authored four textbooks and over 300 professional articles. In 2011 he was elected as a Fellow of the American Physical Society.

16. Plaintiff Joseph Templin earned his undergraduate degree from RPI in 1994, later earning the designations of Chartered Financial Consultant, Chartered Life Underwriter, Certified Financial Planner® (Retired) and Chartered Advisor on Philanthropy™. Among his many career achievements, Mr. Templin has served on the National Association of Insurance and Financial Advisors (“NAIFA”) on the local, state, and national level, including three terms on the NAIFA National Young Advisors Team (YAT) Subcommittee, and was honored as one of the 2011 Four Under 40. Mr. Templin is the Managing Director of the Unique Minds Consulting Group, LLC, and is the author of *Top Tax Plays* and *Financial Mistakes of New College Grads*, both which hit the Top 10 on Amazon Kindle in their respective sections. Mr. Templin lectures throughout the

United States and Canada on business ethics and productivity and is a business columnist for the Albany Times Union, Adviser Today Magazine, and The Ballston Journal. Outside of his professional achievements, Mr. Templin serves as the adviser to the Alpha Tau Chapter of the Pi Kappa Phi Fraternity and is also a former International Chung Do Kwan Tae Kwon Do Champion.

17. Plaintiff Peter Vanderminden earned his Bachelor of Science degree in Communications Science from RPI in 1978. He is a widely recognized thought leader, speaker and writer on the “Internet of Things” and digital supply chain management practices, and is a former Professor of Practice at RPI’s Lally School of Management. In addition to working for other major companies such as UPS, General Electric and Pitney Bowes/MapInfo., from 2001 to 2010, he served as the VP Technology Director at JP Morgan, and from 2010 to 2015, he was the Industry Manager of Manufacturing & Supply Chain at Microsoft. From 2012 to 2014, he served on the Board of Directors for the Supply Chain Council and from 2014-2015, sat on the Board of Directors for APICS, whose mission is “fostering the advancement of end-to-end supply chain management[.]” <http://www.apics.org/about/overview>. Mr. Vanderminden holds an MBA, with Distinction, from Leeds University in Leeds, United Kingdom, a post-graduate certificate in System Dynamics from the Massachusetts Institute of Technology, and has a Six Sigma Master Black Belt certification.

18. Plaintiff Peter Vanderzee resides in Atlanta, Georgia. He graduated from RPI in 1970 with a Bachelor of Science degree in Mechanical Engineering, and in 1972, earned a Master of Science degree in Industrial Engineering from Texas A&M University. While at RPI, Mr. Vanderzee was a member of the Men’s Varsity Basketball

Team, was team Captain during his Junior and Senior years, was elected to the RPI athletic department's student-athlete honor society, "Olympia", and was named in the 1970 book "Outstanding College Athletes of America". Mr. Vanderzee has held a variety of corporate positions for more than 30 years at several different companies, and is the Founder, President and CEO of LifeSpan Technologies, an entrepreneurial firm that specializes in structural monitoring solutions.

BACKGROUND

19. In 2016, Plaintiffs became increasingly concerned about developments which had affected RPI in recent years, such as the weakening of RPI's financial condition and the decline in its academic program rankings. *See* Exhibit "E", annexed hereto and *available at*: <https://renewrensselaer.org/about/>, describing the organization founded by Plaintiffs known as "Renew Rensselaer".

20. Plaintiffs researched financial, academic, and student admissions data in order to understand the underlying cause of these developments. *See* the "Untold Story" annexed hereto as Exhibit "F" and *available at*: <https://renewrensselaer.org/findings/>, which describes their findings. Their research uncovered additional problems facing the Institute including underperformance in research, a lack of financial transparency, low morale among faculty and staff, divisive confrontations with students, and improper governance practices. These findings were inconsistent with what RPI's administration had been communicating to its alumni. *Id.*

21. Seeking to promote a discussion of Plaintiffs' findings within the RPI community and thereby "bring about positive changes in the financial status, academic

performance, governance, and leadership of Rensselaer Polytechnic Institute”, Plaintiffs and other disaffected alumni created an internet platform called “Renew Rensselaer”. There, Plaintiffs detailed what they considered to be their most important findings. *Id.*; *see also* Exhibit “G”, annexed hereto, describing the purpose and mission of Renew Rensselaer.

22. Plaintiffs also sought to hold a special meeting of the RAA’s membership to bring these findings to the attention of Members. Subject to meeting certain requirements under the RAA’s bylaws as they existed at the time, RAA Members had the right to call such a meeting.

23. In May 2018, Plaintiffs fulfilled these requirements and submitted a petition calling for a special meeting. The Board, however, ignored their efforts for months, then scheduled the meeting for a time during which many Members would be unable to attend. *See* letter dated September 13, 2018 and associated attachments, from Plaintiff Criss to Chancellor B.A. Rosa and Regent J.V. Finn in the New York State Education Department Board of Regents, annexed hereto as Exhibit “H” at 1, 11-13.

24. To determine why the Board was resistant to hearing from its Members, in August 2018 Plaintiff Krob and fellow RAA Member Michael J. Gardner II (“Gardner”) went to the offices of the RAA, located on RPI’s campus, where they inspected minutes of RAA meetings for the previous five years. *Id.* at 1, 14-19.

25. The RAA’s meeting minutes for the five previous years revealed that for at least this period of time, if not longer, the Board had been operating in violation of the Not-for-Profit Corporation Law, as well as its own charter and bylaws. *Id.* at 1, 16, 19.

**THE RAA BOARD'S HISTORY OF DISREGARDING
ITS CHARTER, ITS BYLAWS AND THE N-PCL**

26. As a not-for-profit education corporation, the RAA is governed by the New York State Not-for-Profit Corporation Law (“NPC-L”), the New York State Education Law (“Education Law”), its certificate of incorporation (hereinafter also referred to as its “Charter”) and its bylaws. N-PCL §§ 102(5), 103(a), 602; Education Law § 216-a(4). A not-for-profit education corporation’s bylaws may not contravene either its Charter, the N-PCL, or any other New York State statute. N-PCL § 602(f); Education Law § 226(10).

27. The following describes Defendant’s recent violations of the RAA’s Charter, bylaws and the N-PCL, most of which continue to this day. Despite the Board’s previous conduct, however, Plaintiffs are only seeking prospective relief through this action.

A. Failure to Require the Correct Number of Trustees

28. The RAA’s Board has failed to comply with even the most basic requirements applicable to its operation. The RAA’s Charter as well as the Education Law require that the RAA’s Board be comprised of no fewer than five Trustees. Exhibit “A”; Education Law § 226(1). However, the RAA’s bylaws state that the “Board shall be composed of not less than three (3)” Trustees. Exhibit “B” at Article IV, § 1. Article IV, § 1, therefore, violates Education Law § 226(1) and the RAA’s Charter, thereby also violating the N-PCL. N-PCL § 602(f).

B. Failure to Hold Annual Meetings of Members

29. The RAA’s Charter states that the Association’s incorporators would serve

as the first Board of Trustees, with “their successors to be elected by the membership of Rensselaer Alumni Association for terms fixed in accordance with the bylaws of this corporation. Vacancies due to causes other than expiration of term shall be likewise filled [by the Members] for the balance of the unexpired term.” Exhibit “A”.

30. RAA’s bylaws mandate that the Association hold an Annual Meeting of Members (“Annual Meeting”) at which time Members may vote to fill the term of Trustees and any vacant officer positions. Exhibit “B”, Art. III, § 1, Art. V, § 1, Art. VI, § 2).

31. Sections 603(b), 605 and 608 of the N-PCL require that a meeting of Members which is properly noticed and at which a legally sufficient quorum exists shall be held annually for the election of directors.

32. Section 703(b) of the N-PCL requires that Directors of a not-for-profit corporation be elected or appointed in the manner provided in its certificate of incorporation or bylaws.

33. After reviewing the records of the RAA in August 2018, Plaintiff Krob and fellow alumnus Gardner discovered that no Annual Meeting of Members had been held since at least 2014. Exhibit “H” at 16, 19. Those minutes indicate that from at least 2014 to 2018, the Board unilaterally elected Trustees instead of allowing Members to do so. *See* Minutes from April 12, 2014 RAA Board Meeting, annexed hereto as Exhibit “I”, at 2; Minutes of the May 2, 2015 RAA Board Meeting, annexed hereto as Exhibit “J”, at 2; Minutes of the May 14, 2016 RAA Board Meeting, annexed hereto as Exhibit “K”, at 2-3; Minutes of the April 29, 2017 RAA Board Meeting, annexed hereto as Exhibit “L”, at 5; Minutes of the April 28, 2018 RAA Board Meeting, annexed hereto as Exhibit “M”,

at 3.

34. The Board's failure to hold Annual Meetings of Members and its usurpation of Members' right to elect Trustees violated the RAA's Charter, the Association's bylaws and the N-PCL. Exhibit "A"; Exhibit "B" at Art. III, § 1; N-PCL §§ 603(b), 703(b).

C. The Board Illegally Manipulated the Bylaws to Deprive Members of Their Right to Elect Trustees

35. The Board developed a self-perpetuating and self-selecting election process that deprives Members of their right to elect Trustees. Exhibit "B" at Art. VI, § 2.

36. This process allows Members to submit nominations for Trustee or Officer positions. However, the final slate of candidates is chosen by the Board's internal Nominating Committee, and thereafter approved by the Board. The Board's nomination process is confidential. At the Annual Meeting of Members, Members can only vote to approve or disapprove the Board's selected slate in its entirety, and neither nominations from the floor nor write-in ballots are permitted. *Id.*; *see also*, a previous version of the RAA's bylaws, in effect in 2018, annexed hereto as Exhibit "N", at Art. VI, § 2.

37. If the slate chosen by the Nominating Committee is not approved at the Annual Meeting, then "the Trustees then in office shall remain in office until their successor(s) are duly elected and qualified [or] until a Special Meeting of the Members may be called in accordance with the Not-For-Profit Corporation Law." Exhibit "B" at § 2(9). This provision, in conjunction with the Nominating Committee's sole power to choose the slate of candidates, renders Members' right to elect Trustees meaningless since they can only approve the slate chosen by the Nominating Committee or disapprove

it and thereby leave the current Board—chosen by the Nominating Committee—in place until that slate or another one chosen by the Nominating Committee is approved.

38. Additionally, the RAA’s bylaws state that if an elected Trustee position becomes vacant between annual elections, that vacancy “shall be filled by a majority vote of the [Board’s] Executive Committee” and the “individual so elected shall serve until the next Annual Meeting, at which time the Nominating Committee shall make a nomination to fill the remainder of the unexpired term.” Exhibit “B” at Art. IV, § 3. Similarly, “[i]f an Officer resigns during a term, or is otherwise unable to perform the duties, the Executive Committee may, by a two-thirds (2/3) vote, declare the office vacant, and by a majority vote, elect a successor to serve until the following Annual Meeting.” *Id.* at Art. V, § (1)(c).

39. Section 712 of the N-PCL states that “no [Board] committee of any kind shall have authority as to ...[t]he submission to members of any action requiring members’ approval under this chapter”, [t]he filling of vacancies in the board of directors or in any committee” or the “election or removal of officers and directors.” *Id.* at (1)-(2), (6). Because Article IV, § 3 and Article V, § (1)(c) of the RAA’s bylaws allow the Board’s Executive Committee to fill Board vacancies arising between elections, these provisions violate N-PCL § 712(1)-(2),(6).

40. Since the procedures set forth under the RAA’s bylaws for elections and filling Board vacancies between Annual Meetings deprives Members of their rights under the RAA’s Charter to elect Trustees and fill Board vacancies arising between elections, these bylaw provisions violate the RAA’s Charter such that they also are prohibited under N-PCL § 602(f) (A not-for-profit corporation’s bylaws may not contravene its Charter or

the N-PCL) and Education Law § 226(10) (Trustees of an education corporation may not create bylaws inconsistent with law or the corporation's Charter).

D. The Election of Directors at the December 1, 2018 Annual Meeting of Members Was and is Invalid

i. The election process deprived members of their right under the RAA's Charter to Elect Trustees

41. On December 1, 2018, the RAA held an Annual Meeting of Members for the first time since at least 2014. This meeting was also the first time during the same period that Members were scheduled to elect Trustees. Exhibit "H" at 16, 19; *see* Minutes of the December 1, 2018 Annual Meeting of Members, annexed hereto as Exhibit "O".

42. Prior to the meeting, the Board's Nominating Committee selected the final slate of candidates, which was thereafter approved by the Board's Executive Committee and the full Board. Exhibit "O" at 2; *see also* Exhibit "N" at Art. VI, § 2.

43. The slate consisted of one candidate per Board vacancy and Members attending the Annual Meeting were permitted only to approve or disapprove the slate in its entirety. Nominations from the floor were not allowed. Exhibit "N", annexed hereto, at Art. VI, § 2; Exhibit "O", annexed hereto, at 2-3.

44. Under the N-PCL, a not-for-profit corporation's bylaws may not contain any provision inconsistent with its Charter or the N-PCL itself. N-PCL § 602(f). The N-PCL forbids a not-for-profit corporation from giving any internal Board committee the authority to fill vacancies in the Board or elect officers and directors. N-PCL § 712 (a)(2),(6).

45. The nomination and election procedure in effect in 2018 allowed Members

to approve or disapprove only the candidates listed on the slate chosen by the Board's Nominating Committee. This rendered Members' right to elect Trustees meaningless, and in effect, gave two internal Board committees the sole power to do so. Thus, the election held on December 1, 2018, was carried out in violation of the RAA's Charter and the N-PCL. *Id.*; N-PCL § 602(f).

ii. The RAA failed to meet the N-PCL's quorum requirement at the December 1, 2018 Annual Meeting

46. A meeting of Members at which a quorum exists must be held annually for the election of directors. N-PCL §§ 603(b), 608. The NPC-L's quorum requirement was not satisfied at the December 1, 2018 Annual Meeting of Members.

47. In the absence of Supreme Court intervention pursuant to N-PCL§ 608(e), or an amendment to a corporation's certificate of incorporation or bylaws which allows for a smaller quorum, "Members entitled to cast a majority of the total number of votes entitled to be cast" constitutes a quorum at a meeting of members where business is transacted. N-PCL § 608. Given the number of RAA alumni, this would require a quorum of tens of thousands of alumni.

48. A corporation's certificate of incorporation or the bylaws may, however, provide for a lesser quorum of "not less than the members entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast[.]" *Id.* at (b). Members may approve of such an amendment "at a special meeting at which the quorum requirements applicable to the corporation immediately prior to the effective date" of the N-PCL are satisfied. *Id.* at (c).

49. The bylaws in effect at the time of the December 1, 2018 Annual Meeting

providing that twenty members constituted a quorum violated the N-PCL. Exhibit “N” at Art. III, § 4.

50. Upon information and belief, the RAA has never held a special meeting to approve a quorum of 100, the minimum required by the N-PCL for a corporation like the RAA, whose membership approximates 100,000. Thus, neither the RAA’s bylaws or its Charter have never been amended to allow for such a quorum. It also has never sought Supreme Court intervention pursuant to N-PCL § 608(e). Given these facts and the RAA’s membership count of approximately 100,000 Members, “Members entitled to cast a majority of the total number of votes entitled to be cast thereat” (approximately 50,000) needed to be present at the December 1, 2018 Annual Meeting for a quorum to have existed. N-PCL § 608; *see also* ¶ 2, *supra*.

51. The December 1, 2018 Annual Meeting minutes show that in the aggregate, the number of Members in attendance either in-person or through electronic means, was less than 100. *See* Exhibit “O” at 1-2. The N-PCL’s quorum requirement was therefore not met.

52. To date, the RAA still has not properly amended the quorum requirement at meetings of Members to conform to the N-PCL. While the Board purported to amend the bylaws on June 22, 2019 to allow for a quorum of 100 Members (Exhibit “B” at Art. III, § 4), this amendment was not adopted in accordance with N-PCL § 608(c) or (e) and is therefore null and void.

iii. Only In-Person Voting was Allowed at the December 1, 2018 Meeting of Members

53. The bylaws in effect in 2018 stated that Members could only cast their

vote “in person”. The bylaws contained no definition or explanation of the term “in person”. See Exhibit “N”.

54. The bylaws further stated that Robert’s Rules of Order (Newly Revised) governed all meetings of the Board and of Members as long as they were not inconsistent with the bylaws. *Id.* at Art. VIII, § I.

55. Under Robert’s Rules of Order, 11th Edition:

A meeting of an assembly is a single official gathering of its members in one room or area to transact business for a length of time during which there is no cessation of proceedings and the members do not separate, unless for a short *recess*[.] Exhibit “P”, attached hereto, at 81-82 (emphasis in original).

56. Robert’s Rules of Order further states that if the Chairman fails “to vote before the polls are closed, he cannot then do so without the permission of the assembly.” *Id.* at 414.

57. Of Members attending in-person, 17 voted in favor of the slate while 21 voted against it. Of Members attending the meeting through electronic means, 8 voted to approve the slate while 2 voted against it. Exhibit “O” at 3.

58. According to RAA President Muhammad, who served as Chairman at the Annual Meeting, there was a “discrepancy” with the online votes at the meeting. He therefore conducted a recount of electronic and in-person votes, although the meeting had adjourned, and at this time he also cast his own vote. Upon conducting the “recount” and after casting his own vote, Muhammad determined that the total number of in-person votes approving the slate had increased to 18, the number of electronic votes approving the slate increased to 10, and the number of electronic votes disapproving the slate

increased to 6. As a result, Muhammad determined that the slate selected by the Nominating Committee had been approved by a 28-27 vote. *Id.*

59. Since the bylaws in effect in 2018 required Members to cast their votes in person, it was illegal for Chairman Muhammad to have counted electronic votes when determining the election results. Likewise, the Chairman's failure to obtain permission from Members to cast his vote once the meeting had adjourned violated the RAA's bylaws.

E. The Board Has Illegally Deprived Members of Their Right to Call Special Meetings

60. Under the N-PCL, special meetings of Members can be called by a not-for-profit corporation's Board of Directors or by its members to the extent permitted by its charter or bylaws. A special meeting may also be called by written demand of members entitled to cast ten per cent of the total number of votes which may be cast at such meeting. Upon receiving this demand, the corporation's Secretary must promptly give notice of the meeting and if he fails to do so within five business days of its receipt, any member who signed the demand may do so. N-PCL § 603(c).

i. October 8, 2018 Special Meeting:

61. In 2018, the RAA's bylaws allowed Members to call a special meeting if 100 Members submitted a petition for the same. Exhibit "N" at Art. III, § 2. In accordance therewith, on May 26, 2018, a petition containing at least 100 signatures, including Plaintiffs', was submitted to the RAA's President and Secretary. Exhibit "H" at 1-2. As indicated in the petition for the meeting, its purpose was to discuss the decline of

RPI's financial health and academic ranking, problems with the Institute's governance, the "failure of the Administration to communicate truthfully with Alumni as to the current state" of the Institute, and to "propose and adopt one or more resolutions of the RAA" to address those issues. *Id.* at 2.

62. As of August 1, 2018, neither the Secretary nor any other member of the Board had scheduled or provided notice of the special meeting. *Id.* at 11-12.

63. Accordingly, on August 3, 2018, Plaintiff Criss selected September 29, 2018 as the date for the meeting and informed the RAA's Board of the same via e-mail, therein requesting that the Secretary provide notice of the meeting to Members. *Id.* at 12. Plaintiff Criss chose September 29, 2018 as the date for the meeting since it coincided with RPI's Alumni Weekend, thereby making it convenient for RAA Members visiting the campus that weekend to attend. *Id.* at 12-13.

64. In violation of § 603, however, the Board did not schedule the meeting on the date Mr. Criss selected. Instead, President Muhammad scheduled the meeting for Monday, October 8, 2018 from 8:30 am to 10:00 am. October 8, 2018 Special Meeting FAQs, annexed hereto as Exhibit "Q", at 2 (printed from https://alumni.rpi.edu/s/1225/alumni/index.aspx?sid=1225&gid=1&pgid=7470&content_id=13053&authkey=y0gyN1yyhPG%2FI9o4zU0zIbk5c1dSWSiH%2B1SSzhkB4trO7XHsMigG1A%3D%3D&authkey=oDcTH4ETy%2bh%2fNo8sKDrICf%2f6YYV4ytJ2NDY06FdjO8Uo12Z1zsbdCg%3d%3d).

65. Although only one member of RPI's Administration is an RAA Member and although the RAA is an organization separate from RPI, Muhammad claimed this date was chosen so that representatives of RPI's Administration could be present. *Id.* at 3;

Exhibit “H” at 13.

66. The RAA Board’s failure to promptly schedule and notice the special meeting in accordance with its own bylaws and the N-PCL, its refusal to hold the meeting on Alumni Weekend, and its decision to hold the meeting on a random Monday morning restricted the ability of Members to voice their concerns about RPI and the RAA itself, violated the RAA’s bylaws and N-PCL, and contravened the purposes of the RAA to engage the larger community of RPI alumni. *See* Exhibit “D” (noting that purposes of the RAA include “serv[ing] and represent[ing] alumni/ae and the Institute, by engaging and empowering all alumni/ae as active and effective partners” in the RPI community).

ii. March 23, 2019 Special Meeting

67. Following the December 2018 Annual Meeting, Members sought to hold another special meeting. The purposes of the meeting was (1) to discuss the Board’s failure to represent the interest of its Members and its failure to abide by the RAA’s governing documents; (2) to contest 2018 Trustee election results and the elections of Trustees held prior to 2018; (3) to fill Board vacancies until another election could be held; and (4) to schedule and notice a special meeting for the proper election of directors. At the time the special meeting was called, the bylaws still allowed for a special meeting to be called upon the written request of 100 Members. This requirement was met and a special meeting was scheduled for March 23, 2019. However, despite the numerous important issues raised in the petition, the Board allotted only one hour for the meeting. Exhibit “N” at Art. III, § 2; Minutes of the March 23, 2019 Special Meeting, annexed hereto as Exhibit “R”, at 1-2; February 28, 2019 posting on the Renew Rensselaer

entitled “Special Meeting and Challenge of the Rensselaer Alumni Association (RAA) Election”, printed and annexed hereto as Exhibit “S”, at 1 (available at: <https://renewrensselaer.org/2019/02/special-meeting-and-challenge-of-the-raa-election/>).

68. The Board’s failure to allot a reasonable amount of time for the special meeting impermissibly restricted Members’ ability to meaningfully exercise their right under the RAA’s bylaws to call special meetings in the first place.

69. On January 26, 2019, four days after the petition for the special meeting was submitted to the RAA’s Secretary, the Board amended the bylaws to state that Members could call a special meeting only upon the written request of 10% of the RAA’s membership. Since there are approximately 100,000 Members worldwide, this means that about 10,000 Members would have to sign a petition calling for a special meeting in order for Members to schedule one. Exhibit “B” at Art. III, § 2; Exhibit “S” at 1.

70. President Muhammad served as Chairman at the March 23, 2019 special meeting. In accordance with N-PCL § 610, Members in attendance at the meeting requested a written report on the results of December 2018 election. Exhibit “R” at 2-3.

71. Pursuant to N-PCL § 610, the inspector of an election held at a meeting of members “shall receive votes, ballots or consents, hear and determine all challenges, and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all members. On request of the person presiding at the meeting or any members entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them.”

72. President Muhammad, who served as Chairman of the December 1, 2018 Annual Meeting, acted as the inspector of the election held on that date. Exhibit “O” at 3, 5. Therefore, he was required to comply with Members’ request at the special meeting for a written report on the results of the election. In response to this request, however, the Chairman proceeded to read the “final, certified” vote which he claimed to be 28 votes in favor of the slate of candidates and 27 votes against it. Exhibit “Q” at 3. The written report requested has never been provided.

73. Additionally, when Members challenged the Board’s violation of their right to elect the Trustees, the Chairman refused to address their concern, simply stating that the Board believed the election process to be “free and fair.” *Id.*

74. The Chairman also failed to adequately address Members’ concern that votes cast electronically in the December 2018 election were counted in the election results, although the bylaws in place in 2018 did not allow for this. Instead of acknowledging the merits of this point, Muhammad simply indicated that the “Board [had] updated the bylaws to better reflect” what “in person” means for future elections. *Id.*

75. Members at the special meeting also made various motions in accordance with Robert’s Rules of Order. Though the bylaws take precedence over Robert’s Rules of Order in the event of any inconsistency between them, the Chairman refused to recognize numerous successful motions that were made at the meeting in accordance with Robert’s Rules without explaining to Members how such actions were out of order or inconsistent with the bylaws. *Id.* at 3-4.

F. Events following the March 23, 2019 Special Meeting

76. In May 2019, Plaintiffs retained counsel to advise as to the legality of the Board's conduct.

77. By letter dated June 10, 2019, annexed hereto as Exhibit "T", Plaintiffs' counsel contacted counsel for the RAA, detailing the above events and describing the ways in which the Board's conduct violated its Charter, bylaws, and the N-PCL. Plaintiffs' counsel concluded the letter by requesting an opportunity to meet with the RAA's counsel and Board Chairman Muhammad "to see if a resolution of our clients' concerns can be reached without the need for litigation to correct the obvious illegalities documented ... and to prevent their recurrence." *Id.* at 12.

78. On July 16, 2019, representatives of both Plaintiffs and Defendant, as well as their counsel, participated in a conference call in order to try and resolve the issues raised in the June 10, 2019 letter. Board Chairman Muhammad participated as one of RAA's representatives, and Mr. Krob and Mr. Criss were among those participating on behalf of Plaintiffs.

79. During the call, Plaintiffs' counsel explained that the bylaws needed to be amended in order to comply with the RAA's Charter and the N-PCL. He also described a number of specific bylaw amendments that Plaintiffs sought to have the Board adopt.

80. Following the call, Plaintiffs' counsel emailed a set of proposed amended bylaws to counsel for the RAA for the Board to review. Exhibit "U" annexed hereto.

81. The RAA's bylaws currently in place state that amendments to the bylaws can be made "at a meeting of the Board by approval of two-thirds of the Board provided that thirty (30) days' notice of such amendments has been given to each Trustee." Exhibit

“B” at Art. XI, § 1.

82. N-PCL § 602(e) states that “[i]f any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of the members for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.”

83. If the Board were to provide notice of the next Annual Meeting via e-mail or first-class mail, notice would have to be given no less than ten days prior to the meeting, and if the Board planned to provide notice through any other class of mail, notice would to be given no less than thirty days prior to the meeting. N-PCL § 605(a).

84. The RAA’s next Annual Meeting of Members is scheduled for September 27, 2019, at which time an election to fill Board vacancies and expired terms is to be held. In light of the above notice requirements, Plaintiffs’ counsel asked that the Board commit to adopting the proposed bylaw amendments no later than Friday, July 26, 2019. This was to ensure that the proposed changes, if accepted by the Board, would be in effect and applicable to the upcoming September election. Exhibit “U”.

85. By letter dated July 29, 2019, Defendant’s counsel advised Plaintiffs’ counsel that the Board would not amend the RAA’s bylaws. *See* Exhibit “V”, annexed hereto, at 1.

86. Defendant justified its refusal to amend the election procedure, set forth in the bylaws, by stating “[i]t is the position of the RAA that its current voting procedure, in effect since at least 2001, is valid. In particular, Section 613(a) of the NFPCL provides that ‘except as otherwise provided in the by-laws’, directors shall be elected by a plurality

of votes. Furthermore, Section 602(e) of the NFPCL contemplates that the Board may adopt by-laws which regulate the election of directors.” *Id.*

87. Defendant further stated that the RAA’s Charter “specifically and solely vests the ability to adopt bylaws with the Board of the RAA. The Board of Regents has specifically imposed this limitation on the RAA in granting the approval of its Absolute Charter.” *Id.* at 2. Neither the bylaws, nor the RAA’s Charter, however, prohibit Members from amending the bylaws, nor do they vest the right to do so solely with the Board. *See* Exhibit “A”; Exhibit “B” at XI, § 1.

88. Additionally, N-PCL § 602 specifically states that subject to an exception not applicable hereto, “by-laws may be adopted, amended or repealed by the members at the time entitled to vote in the election of directors and, unless otherwise provided in the certificate of incorporation or the by-laws *adopted by the members*, by the board.” *Id.* at (b). Section 602 further allows members to amend or repeal any bylaw adopted by the Board, “and, unless otherwise provided in the certificate of incorporation or the by-laws *adopted by the members*, any by-law adopted by the members may be amended or repealed by the board.” *Id.* at (c). Therefore, even if bylaws adopted by the Board gave it the sole power to adopt, amend or repeal the RAA’s bylaws, it would be invalid since N-PCL § 602 gives Members the right to do so as well, and more importantly, gives Members the right to prevent the Board from amending or repealing any bylaw adopted by Members—not the other way around.

**AS AND FOR A FIRST, SEPARATE AND
COMPLETE CAUSE OF ACTION, PLAINTIFFS
ALLEGE AS FOLLOWS:**

89. Plaintiffs repeat and reallege all the foregoing paragraphs of this Complaint as if fully set forth herein.

90. The bylaws of the RAA violate its Charter, the Education Law and the N-PCL in that:

- Article III, § 2, stating that Members can only call a special meeting upon the written request of 10% of the RAA's membership, was designed to prevent Members from exercising their right to call special meetings by making it virtually impossible for them to do so;
- Article III, § 4, purporting to define a quorum as 100 Members, violates N-PCL § 608 in that it was not approved in accordance with subdivision (c) thereof "at a special meeting of members at which the quorum requirements applicable to the corporation immediately prior to the effective date" of the N-PCL or by the Supreme Court through intervention sought in accordance with subdivision (e).
- Article IV § 1, purporting to allow a minimum of 3 Trustees, violates Education Law § 226(1) and the RAA's Charter, both which require a minimum of 5 Trustees, and violates Education Law § 226(10) and N-PCL § 602(f) since it contravenes the RAA's Charter;

- Article III, §1, Article IV § 3, Article V, § (1)(c), and Article VI, § 2 give the Board the sole power to elect Trustees and Officers and fill Board vacancies arising between Annual Meetings, thereby divesting Members of their rights under the RAA’s Charter to elect Trustees and fill vacancies arising between annual elections and violating Education Law § 226(10) and N-PCL §§ 602(f) and 712(a)(b),(f);
- Article XI, § 1, to the extent it purports to give the Board the sole power to adopt, amend, or repeal the RAA’s bylaws, violates N-PCL § 602, which gives Members the right to do so as well, and gives Members the power to limit the Board’s ability to exercise this right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- Enter a judgment declaring Article III, §§1, 2, 4; Article IV, §§ 1, 3; Article V, § (1)(c), Article VI, §2; and Article XI, § 1 of the RAA’s bylaws null and void insofar as they violate the RAA’s Charter, the N-PCL, and the Education Law;
- Permanently enjoin Defendant, its agents, and others working under or pursuant to its direction and control from implementing any provision of the bylaws which violates the RAA’s Charter, the N-PCL, or the Education Law;
- Issue an order directing that within 14 days thereof, the RAA Board amend the corporation’s bylaws to conform to its Charter and the N-PCL by:
 - (a) Deleting Article III, § 1 (“Annual Meeting of Members”) insofar as it only gives Members the right to vote on the slate of candidates selected by the Nominating Committee, and (b) amending it to ensure that Members are given the opportunity to meaningfully exercise their right to elect Trustees and Officers in accordance with the RAA’s Charter;

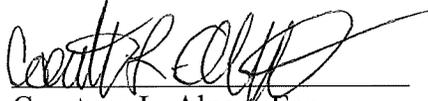
- Amending Article III, § 2 (“Special Meetings of Members”) to provide, *inter alia*, that the Secretary shall call a special meeting of Members upon written request of the President, a majority of Trustees, or 100 Members;
- (a) Deleting the first sentence of Article IV, § 1 (“Composition”) insofar as it allows for a minimum of three (3) Trustees (in violation of the RAA’s Charter and Education Law § 226(1)), and (b) amending it to state, *inter alia*, that the Board shall be composed of not less than five (5) Trustees;
- (a) Deleting Article IV, § 3 (“Vacancy”) insofar as it allows the Board or any committee thereof to fill Board vacancies arising between Annual Meetings of Members and elections held thereat, and (b) amending § 3 to ensure Members have the ability to exercise this right in accordance with the RAA’s Charter;
 - (a) Deleting Article V, § 1(c) insofar as it allows the Executive Committee to fill vacant Officer seats arising between Annual Meetings of Members and elections held thereat; and (b) amending §(1)(c) to ensure Members have the ability to fill all Board vacancies arising between Annual Meetings of Members and elections held thereat, in accordance with the RAA’s Charter;
- Amending Article VI, § 2, to ensure that:
 - For each position to be filled, Members may submit names to Nominating Committee for consideration in selecting its slate of candidates;
 - The proposed slate selected by the Nominating Committee and approved by the Board will list one or more candidates for each position to be filled and be available for a reasonably sufficient time for Members review it prior to the Annual Meeting;
 - In addition to the slate approved by the Board, any Member may be nominated for any position to be filled upon: (a) the written petition of a reasonable number of members not to exceed ten (10) or (b) a nomination made from the floor at the Annual Meeting of Members. The ballot shall list each Trustee or officer position to be filled and list the name(s) of any such person(s) so nominated;
 - The election shall be conducted for each position separately, rather than for the ‘slate’ as a whole, and each candidate shall be elected based on a plurality of the votes from the Members present. To the extent that a position remains unfilled, the Trustee(s) then in office shall remain in office until their successor(s) are duly elected at a special meeting of Members called in accordance with New York State Not-For-Profit Corporation Law § 604.

- (a) Deleting Article XI, § 1 insofar as it purports to give the Board the sole power to adopt, amend, or repeal the RAA's bylaws, and (b) amending Article XI, § 1 to ensure that:
 - Any proposed amendments to the bylaws may be made at a meeting of the Board by approval of two-thirds of the Board, provided that: (a) such proposals are made at least forty-five (45) days before an Annual or Special Meeting of the Members, and (b) any such proposed amendment(s) shall go into effect only after approval by a majority vote of Members in attendance at such meeting and only if written notice of the amendment(s) was provided to Members at least thirty (30) days prior to that Annual or special meeting;
 - Proposed amendments to these Bylaws may be initiated by the written petition of a reasonable number of Members not to exceed twenty (25) provided that: (a) such petition is made at least thirty (30) days before an Annual or special meeting of the Members and (b) any such proposed amendment(s) shall go into effect only after approval by a majority vote of Members in attendance at such meeting. The Secretary shall provide notice to Members of any proposed amendment at least twenty (20) days prior to such Annual or special meeting;
- Enjoin the Defendant from holding any election of Trustees or Officers until such time as the bylaws are so amended, approved, adopted and implemented;
- (a) Issue an order directing that within 14 days thereof, the Board call a special meeting of Members for the purpose of allowing Members to approve an amendment to the bylaws, pursuant to N-PCL § 608(b)-(c), that defines a quorum at any Annual Meeting or special meeting of the Association as one-hundred Members; and (b) direct that the Board, if and when Members approve of such amendment, revise the bylaws accordingly; and
- Award such other further and different relief as it deems warranted, including, but not limited to, legal fees to Plaintiffs and/or their counsel, along with the costs and disbursements associated with this action.

DATED: August 10, 2019

Yours, etc.

O'CONNELL AND ARONOWITZ

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