

**IN THE COURT OF COMMON PLEAS OF  
DAUPHIN COUNTY, PENNSYLVANIA**

MILTON PURCELL	:	
1471 Woodhaven Drive	:	
Hummelstown, Pennsylvania 17036	:	
	:	
ETHEL CAMPBELL	:	CIVIL DIVISION
23 Almond Drive	:	
Hershey, Pennsylvania 17033	:	NO. _____
	:	
GRAHAM MCINTYRE	:	<b>CIVIL ACTION</b>
8416 Queen Elizabeth Blvd.	:	<b>COMPLAINT IN EQUITY</b>
Annandale, Virginia 22003	:	
	:	
IVAN DIETRICH	:	COUNSEL OF RECORD FOR PLAINTIFFS
4431 Sleaford Road	:	
Annandale, Virginia 22003	:	
	:	
	:	Allen C. Warshaw
RALPH FINK	:	Pa. I.D. No. 17145
459 Sand Hill Road, Apt. 601	:	
Hershey, Pennsylvania 17033	:	KLETT ROONEY LIEBER & SCHORLING
	:	240 N. Third Street, Suite 700
	:	Harrisburg, PA 17101
HARVEY DEITRICH	:	(717) 231-7700 PHONE
930 Nixon Drive	:	(717) 231-7712 FAX
Mechanicsburg, Pennsylvania 17055:	:	
	:	
GIRARD GAUGHAN	:	
68 Brunswick Lane	:	
Palmyra, Pennsylvania 17078	:	
	:	
HARRY HEATH	:	
51 Leesrden Road	:	
Hershey, Pennsylvania 17033	:	
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	:	
ROBERT PATTON	:	
2279 S. Forge Road	:	
Palmyra, Pennsylvania 17078	:	

GERALD LONG :  
232 Bahia Avenue :  
Hershey, Pennsylvania 17033 :

JUNIOR VIA :  
421 Mount Gretna Road :  
Elizabethtown, Pennsylvania 17022 :

RICHARD MATTIS :  
316 Spring Road :  
Palmyra, Pennsylvania 17078 :

CHRISTINE COOK :  
386 Barnside Drive :  
Palmyra, Pennsylvania 17078 :

ROBERT HEIST :  
777 N. Green Bay Road :  
Lake Forest, Illinois 60045 :

PLAINTIFFS :

vs. :

MILTON HERSHEY SCHOOL :  
ALUMNI ASSOCIATION :  
407 Heritage Circle :  
Hershey, Pennsylvania 17033 :

JOHN RICE :  
604 Shoemaker Avenue :  
Jenkintown, Pennsylvania 19046 :

JERRY WATERS :  
5876 Fox Street :  
Harrisburg, Pennsylvania 17112 :

DEFENDANTS :

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Dauphin County Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536**

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604 Shoemaker Avenue :  
Jenkintown, Pennsylvania 19046 :

JERRY WATERS :  
5876 Fox Street :  
Harrisburg, Pennsylvania 17112 :

DEFENDANTS :

## AVISO

USTED HA SIDO DEMONDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro do los proximos veinte (20) dias despues de la notifacacion de estate. Demanda y Aviso radicando personalmente o por medio de un abogado una comperencia escrite y redicando en la Courte por escrito sus defensas de, y objecciones a, los demandas presentadas aqui en contra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero O propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUOMENTO A SU ABAGADO IMMEDIATE MENTE. SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A UNO, LLAME A VAYA A LA SIGUEINTE OFICINO PARA AVERIGUAR DONDE PUEDE ENCONTRAR ASISTENCIA LEGAL.

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## COMPLAINT

### I. INTRODUCTION

1. Plaintiffs file this action pursuant to 15 Pa.C.S.A. §5793 in order to seek judicial review of certain actions taken by the Officers and Directors of the Milton Hershey School Alumni Association, a Pennsylvania non-profit corporation. Specifically, Plaintiffs seek judicial review of the election of certain Officers and the removal of certain Directors which took place at meetings of the Board of Directors held on November 14, December 19 and December 26, 2004. Plaintiffs also ask this Court to enjoin the Association from implementing a Resolution which was improperly enacted at the meeting of December 26, 2004, which would purport to require removal of certain Directors in the case that litigation such as this case is commenced. Through those improper actions, a minority of the Board has been able illegally to take control of the Association from the majority of properly selected Board members. Plaintiffs ask this Court to reverse those actions and return control of the Association to the majority of the members and the Board.

### II. PARTIES

2. Plaintiff Milton Purcell is an individual who resides at 1471 Woodhaven Drive, Hummelstown, Pennsylvania, 17036. Purcell is a member of the 2004 and 2005 Boards of Directors of Milton Hershey School Alumni Association (“MHSAA”).

3. Plaintiff Ethel Campbell is an individual who resides at 23 Almond Drive, Hershey, Pennsylvania, 17033. Campbell is a member of the 2004 and 2005 Boards of Directors of MHSAA.

4. Plaintiff Graham McIntyre is an individual who resides at 8416 Queen Elizabeth Blvd., Annandale, Virginia, 22003. McIntyre is a member of the 2004 and 2005 Boards of Directors of MHSAA.

5. Plaintiff Ivan Dietrich is an individual who resides at 4431 Sleaford Road, Annandale, Virginia, 22003. Dietrich is an Emeritus member of the 2004 and 2005 Boards of Directors of MHSAA.

6. Plaintiff Ralph Fink is an individual who resides at 459 Sand Hill Road, Apt. 601, Hershey, Pennsylvania, 17033. Fink is an Emeritus member of the 2004 and 2005 Boards of Directors of MHSAA.

7. Plaintiff Harvey Deitrich is an individual who resides at 930 Nixon Drive, Mechanicsburg, Pennsylvania, 17055. Deitrich is an Emeritus member of the 2004 and 2005 Boards of Directors of MHSAA.

8. Plaintiff Girard Gaughan is an individual who resides at 68 Brunswick Lane, Palmyra, Pennsylvania, 17078. Gaughan is a member of the 2005 Boards of Directors of MHSAA and was properly elected Secretary of MHSAA for 2005.

9. Plaintiff Harry Heath is an individual who resides at 51 Learden Road, Hershey, Pennsylvania, 17033. Heath was properly elected Treasurer of MHSAA for 2005.

10. Plaintiff Robert Patton is an individual who resides at 2279 S. Forge Road, Palmyra, Pennsylvania, 17078. Patton is a member of the 2005 Board of Directors of MHSAA.

11. Plaintiff Gerald Long is an individual who resides at 232 Bahia Avenue, Hershey, Pennsylvania, 17033. Long is a member of the 2005 Board of Directors of MHSAA.

12. Plaintiff Junior Via is an individual who resides at 421 Mount Gretna Road, Elizabethtown, Pennsylvania, 17022. Via is a member of the 2005 Board of Directors of MHSAA.

13. Plaintiff Richard Mattis is an individual who resides at 316 Spring Road, Palmyra, Pennsylvania, 17078. Mattis is a member of the 2004 and 2005 Boards of Directors of MHSAA.

14. Plaintiff Christine Cook is an individual who resides at 386 Barnside Drive, Palmyra, Pennsylvania, 17078. Cook is a member of the 2004 and 2005 Boards of Directors of MHSAA.

15. Plaintiff Robert Heist is an individual who resides at 777 N. Green Bay Road, Lake Forest, Illinois, 60045. Heist is a member of the 2004 and 2005 Boards of Directors of MHSAA.

16. Defendant Milton Hershey School Alumni Association is a Pennsylvania non-profit corporation with a mailing address of P.O. Box 133, Hershey, Pennsylvania, 17033.

17. Defendant John Rice is an individual who resides at 604 Shoemaker Avenue, Jenkintown, Pennsylvania, 19046. Rice was President of MHSAA in 2004 and, as such, he presided over meetings of the 2004 and 2005 Boards of Directors held on November 14, December 19 and December 26, 2004. As President and Past President, he is a member of the 2004 and 2005 Boards of Directors of MHSAA.

18. Defendant Jerry Waters is an individual who resides at 5876 Fox Street, Harrisburg, Pennsylvania, 17112. Waters was the purported Vice President/President Elect of MHSAA in 2004 and is the purported President of MHSAA in 2005 and, as such, a purported member of the 2004 and 2005 Boards of Directors of MHSAA.

### **III. OTHER BOARD MEMBERS AND PURPORTED OFFICERS**

19. Charles Welsh is a member of the 2004 and 2005 Boards of Directors of MHSAA and purported Vice President/President Elect.

20. Donald Chappell is a member of the 2004 and 2005 Boards of Directors of MHSAA.

21. John Long is a member of the 2004 and 2005 Boards of Directors of MHSAA.

22. Sonny Jenkins is a member of the 2004 and 2005 Boards of Directors of MHSAA

23. Alan Greer is a member of the 2004 and 2005 Boards of Directors of MHSAA.

24. George Russ is a member of the 2004 and 2005 Boards of Directors of MHSAA.

25. Chuck Hill is a member of the 2004 and 2005 Boards of Directors of MHSAA.

26. Robert Chalmers is a member of the 2004 and 2005 Boards of Directors of MHSAA.

27. Ruben Rodriguez is a member of the 2004 and 2005 Boards of Directors of MHSAA.

28. Brian Russell is a member of the 2004 and 2005 Boards of Directors of MHSAA.

29. Francine Serafin is a member of the 2004 and 2005 Boards of Directors of MHSAA.

30. Christopher Ortiz is the purported Secretary of MHSAA for 2005.

31. James Behrens is the purported Treasurer of MHSAA for 2005 and was a purported member of the 2004 Board of Directors of MHSAA.

#### **IV. BACKGROUND**

32. Defendant Milton Hershey School Alumni Association (“MHSAA”) is a non-profit corporation with over 6,000 members, including Alumni of the Milton Hershey School, as well as honorary and associate members who are not alumni of the school.

33. Under its By-Laws (the “By-Laws”), not less than one-half of the members of the Board of Directors are to be elected by the membership at annual meetings. Article III, Section 2. A true and correct copy of the By-Laws are attached hereto as Exhibit “A.”

34. At present and at all relevant times, there were twelve (12) members of the Board of Directors elected by the membership.

35. The members of the Board of Directors, elected by the members, include Robert Patton, Robert Heist, Girard Gaughan, Junior Via, Jerry Long, Richard Mattis, Christine Cook, Francine Serafin, Donald Chappell, John Long, Sonny Jenkins and Charles Welsh.

36. Under the By-Laws, members of the Association may, with the approval of the Board of Directors, form Chapters which are then to elect a Representative to serve on the Board of Directors. Article X, Section 1.

37. There are presently eight (8) approved Chapters: Homestead, Honorary, Lancaster, Delaware Valley, Harrisburg, New York, Philadelphia and Washington D.C.

38. The Representatives of those Chapters include Milton Purcell, Ethel Campbell, Brian Russell, Graham McIntyre, Al Greer, George Russ, Robert Chalmers and Charles Hill.

39. The Board of Directors also includes three Emeritus Directors who have the right to vote on all matters. Article V, Section 2.

40. The Emeritus members of the Board of Directors are Plaintiffs Ivan Dietrich, Ralph Fink and Harvey Deitrich.

41. The Board of Directors also includes the Officers of the Association, including the President, the Past-President, the Vice-President/President Elect, Treasurer, Secretary and Assistant Secretary/General Counsel.

42. Under the By-Laws:

Each member of the Board of Directors shall serve for a period of three (3) years, or until his/her successor shall be elected and qualified, except as otherwise provided by these By-Laws and provided further, that the President and past President shall be members of the Board without regard to the term for Directors provided in these By-Laws.

Article IV, Section 4.

43. The By-Laws also provide that:

Any active member of the Association shall be eligible to be a member of the Board of Directors, provided however, that no member of the Association shall be eligible for re-election or appointment to the Board of Directors, except the Secretary, the Assistant Secretary and Counsel, a Chapter Representative and the Treasurer, until after the lapse of one (1) year from his/her term as a Director unless he/she has served less than thirteen (13) months.

Article IV, Section 3.

44. The By-Laws also provide:

Members of the Board of Directors whose terms of office commence after the then current fiscal year shall be entitled to attend the organizational meeting of the Board of Directors occurring between the Annual Meeting at which the new Directors were elected, and the commencement of their terms of office, which meeting shall be held not later than November 30 of that fiscal year. The Board of Directors shall elect Officers of the Association at the organizational meeting, with only the new Board voting for the Officers to be installed after the then current fiscal year.

Article V, Section 7(a).

#### **IV. MEETING OF NOVEMBER 14, 2004**

45. The 2004 organizational meeting of the MHSAA Board of Directors was held on November 14, 2004.

46. Attending that meeting were twenty-six (26) 2004 Board members.

47. Also attending the organizational meeting were the four (4) members elected by the membership to serve on the Board beginning in 2005. Those members were Plaintiffs Robert Patton, Jerry Long, Junior Via and Girard Gaughan.

48. Under the By-Laws, only 2005 Board members are permitted to vote for Officers. Article VI, Section 7(a).

49. During the meeting, a question was raised as to whether three Chapters had held proper elections to elect their Chapter Representatives and, for that reason, the 2004 Board members voted fifteen (15) to ten (10) to disallow the votes of those three Representatives: Plaintiff Milton Purcell of the Homestead Chapter; Plaintiff Ethel Campbell of the Honorary Chapter; and Plaintiff Graham McIntyre of the Washington D.C. Chapter.

50. Francine Serafin, an elected member of the 2004 and 2005 Boards, was unable to attend the meeting in person, but requested in writing to the 2004 President, Defendant John Rice, that she be allowed to participate by telephone. Rice, who presided over the meeting, made no effort to allow her to participate by telephone and excluded her from the meeting. When questioned, Rice denied that Ms. Serafin had ever made a request to participate by telephone.

51. Jerry Waters had served a three-year term on the Board, which ended December 31, 2003, when he was replaced by a newly-elected Board member. Waters continued to serve on the 2004 Board as Vice President/President Elect.

52. At the organizational meeting, the 2005 Board purported to elect Officers.

53. Chuck Welsh was purportedly elected Vice President/President Elect by a vote of eleven (11) to ten (10). Waters voted in favor of Welsh. Directors Russell, Chappell, Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill also voted in favor of Welsh. Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Welsh. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Welsh.

54. Plaintiff Girard Gaughan was apparently elected Secretary by a vote of eleven (11) to ten (10). Waters voted against Plaintiff Gaughan, Chappell, Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill also voted against Gaughan. Plaintiffs Russell, Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted in favor of Plaintiff Gaughan. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Gaughan.

55. Plaintiff Harry Heath was apparently elected Treasurer by a vote of eleven (11) to ten (10). Waters voted against Plaintiff Heath. Chappell, Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill also voted against Heath. Directors Russell, Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted in favor of Plaintiff Heath.

Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Heath.

56. Prior to electing Plaintiff Gaughan as Secretary, the Board rejected a motion to elect Chris Ortiz as Secretary. Waters voted in favor of Ortiz. Chappell, Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill also voted in favor of Ortiz. Directors Brian Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Ortiz. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Ortiz.

57. Prior to electing Plaintiff Heath as Treasurer, the Board rejected a motion to elect James Behrens as Treasurer. Waters voted in favor of Behrens. Chappell, Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill also voted in favor of Behrens. Director Brian Russell and Plaintiffs Patton, Long, Via, Gaughan, Mattis, Cook, Heist, Dietrich, Fink and Deitrich voted against Behrens. Plaintiffs Purcell, Campbell and McIntyre were not permitted to vote and Serafin was excluded from the vote. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Behrens.

## **V. MEETING OF DECEMBER 19, 2004**

58. On December 19, 2004, the Board of Directors held a special meeting.

59. Attending that meeting in person or by telephone were twenty-five (25) members of the Board of Directors. In addition, two (2) other members who were not present had given their proxies to members who were present.

60. During the meeting, Defendant John Rice announced that the votes cast by the Emeritus members of the Board of Directors at the November 14, 2004, organizational meeting were void ab initio because those three members served terms of only one year and their terms had expired. There was no vote on that issue.

61. As a result of that ruling, Plaintiff Gaughan was purportedly replaced by Chris Ortiz as Secretary on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Ortiz and ten (10) to eight (8) against Gaughan.

62. As a result of that ruling, Plaintiff Heath was purportedly replaced by James Behrens as Treasurer on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Behrens and ten (10) to eight (8) against Heath.

63. By vote of thirteen (13) to thirteen (13), the Board failed to pass a motion that Francine Serafin be given the right to vote on all issues of the November 14th meeting. Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

64. By a vote of fifteen (15) to ten (10) in favor of the motion, the Board failed to pass a motion to overturn the action of the MHSAA Board to disallow the Homestead Chapter representative to vote on 2005 Officer elections held on November 14<sup>th</sup>. According to the President, the motion required a 2/3 majority to pass. Plaintiffs Purcell, Campbell, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If

permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

65. By a vote of fifteen (15) to nine (9), in favor of the motion, the Board failed to pass a motion that the MHSAA action disallowing the Honorary Chapter's Representative from voting in the MHSAA Board of Directors Officers election held on November 14, 2004, should be overturned. According to the President, the motion required a 2/3 majority to pass. Plaintiffs Campbell, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

66. By a unanimous vote, the Board adopted motions permitting the Homestead and Honorary Chapter Representatives to vote in the future on the apparent ground that the Chapters adequately answered the questions raised about the election of those Representatives.

67. By a vote of thirteen (13) to ten (10) against the motion, the Board failed to pass a motion to reverse the MHSAA action disallowing the DC Chapter's Representative from voting in the MHSAA Board of Directors Officers election held on November 14, 2004. Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich were not permitted to vote on that motion. Waters voted against the motion. If permitted to vote, Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich would have voted for the motion.

## **VI. MEETING OF DECEMBER 26, 2004**

68. On December 26, 2004, the Board of Directors of MHSAA held another special meeting by telephone conference call. They did not have a quorum of 2005 Directors present at that meeting.

69. At that meeting, the 2004 Board passed the following resolution:

*Whereas*, the MHSAA alumni mailing database was used in an apparently unauthorized manner during the course of the Homecoming 2004 MHSAA Board of Director elections on behalf of certain candidates;

*Whereas*, the MHSAA Board of Directors (the “Board”) believes that certain Chapter Representative elections had not been adequately conducted;

*Whereas*, the MHSAA Board has examined these matters in good faith and taken action where it felt appropriate, while showing restraint in others;

*Whereas*, the MHSAA Board has learned that some persons have suggested litigation against the Board, or certain individual Directors, or the Association, because of dissatisfaction with the manner in which the Board has addressed these matters, even though the Board has acted in good faith to resolve these matters with due regard for fairness, public decorum, due process, application of MHSAA rules and By-Laws to difficult and novel problems, amicable relations among members, and the goals and best interests of the Association;

Now, therefore, be it resolved, that:

In the event of any action or proceeding of any kind whatsoever against MHSAA, its Board, any current Director (whether or not still a Director at the time of such action or proceeding), any person now believed to be a Director or listed on the current Director roster, arising from or related in any way to the matters described above;

The Board of Directors shall:

- a) Immediately commence all steps necessary to conduct new elections for the four Director positions selected at the 2004 Homecoming Election, if and as permitted by applicable law, with all candidates who ran before running again should they so choose, but with all candidates having equal access to the alumni mailing database, and with the winners of the new election to replace and complete the terms of the Directors elected in 2004, whoever the winners may be;
- b) Take any appropriate legal measures seeking damages, if cause for such exists, against any persons or organizations who may have harmed the Association in regard to the above-described matters; and,

- c) Take any other legal measures necessary to protect the interests of the Association, with implementation of all of the actions described herein to be carried out by an Election Dispute Resolution Committee consisting of five Directors to be selected by Jerry Waters at his sole Discretion.

## **VII. HARM**

70. But for the improper actions described below, Serafin, the Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters, Purcell, Campbell and McIntyre, the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich all would have voted at the November 14, 2005 meeting

71. If MHSAA had properly allowed Francine Serafin to vote at the meeting of November 14, 2004, she would have voted:

- (a) Against the motion which disallowed the votes of the Homestead, Honorary and Washington D.C. Chapter Representatives.
- (b) Against the election of Chuck Welsh as Vice President/President Elect.
- (c) In favor of the election of Girard Gaughan as Secretary.
- (d) In favor of the election of Harry Heath as Treasurer.
- (e) Against the election of Christopher Ortiz as Secretary.
- (f) Against the election of James Behrens as Treasurer.

72. If MHSAA had allowed the Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters, Purcell, Campbell and McIntyre, to vote, they would have voted:

- (a) Against the election of Chuck Welsh as Vice President/President Elect.
- (b) In favor of the election of Girard Gaughan as Secretary.
- (c) In favor of the election of Harry Heath as Treasurer.
- (d) Against the election of Christopher Ortiz as Secretary.

- (e) Against the election of James Behrens as Treasurer.
73. Jerry Waters, who was not eligible to vote, improperly cast his vote:
- (a) In favor of the election of Chuck Welsh as Vice President/President Elect.
  - (b) Against the election of Girard Gaughan as Secretary.
  - (c) Against the election of Harry Heath as Treasurer.
  - (d) In favor of the election of Christopher Ortiz as Secretary.
  - (e) In favor of the election of James Behrens as Treasurer.
74. If the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich had been allowed to vote, they would have voted:
- (a) Against the motion which disallowed the votes of the Homestead, Honorary and Washington D.C. Chapter Representatives.
  - (b) Against the election of Chuck Welsh as Vice President/President Elect.
  - (c) In favor of the election of Girard Gaughan as Secretary.
  - (d) In favor of the election of Harry Heath as Treasurer.
  - (e) Against the election of Christopher Ortiz as Secretary.
  - (f) Against the election of James Behrens as Treasurer.
75. But for the improper actions, described below:
- (a) Jerry Waters would not be the purported President of MHSAA.
  - (b) Chuck Welsh would not be the purported Vice President/President Elect of MHSAA.
  - (c) Christopher Ortiz would not be the purported Secretary of MHSAA.
  - (d) James Behrens would not be the purported Treasurer of MHSAA.

76. Under the By-Laws, in the interim between meetings of the Board, the Executive Committee shall have charge of the routine business of the Association.

77. Under the By-Laws, the Executive Committee shall be composed of the Officers of the Board and the Immediate Past President.

78. But for the improper actions described below, the Executive Committee would consist only of the Past President, John Rice.

### COUNT I

#### **Francine Serafin was Wrongfully Deprived of Her Right to Participate in the November 14, 2004 Meeting by Conference Telephone**

79. Plaintiffs incorporate Paragraphs One (1) through Seventy-Eight (78) above as if set forth fully herein.

80. Francine Serafin requested to be allowed to participate by conference telephone in the November 14, 2004 meeting of the 2004 and 2005 Boards of Directors.

81. Under Pennsylvania Law, 15 Pa.C.S.A. §5708, Serafin had the right to participate by conference telephone in the November 14, 2004 meeting.

82. Members of the MHSAA had in the past been permitted to participate in meetings by telephone conference.

83. The person presiding over the November 14, 2004 meeting had a duty to make a good faith effort to allow Serafin to participate in that meeting by conference telephone.

84. Defendant John Rice, who presided over that meeting, and who knew that Serafin wished to participate in that meeting by conference telephone, made no effort to allow Serafin to participate in that meeting by conference telephone. When questioned at the meeting about

whether Francine Serafin had provided notice of her intent to participate in the meeting by phone conference, Rice falsely denied that she had given him any such notice.

85. Francine Serafin was wrongfully denied her lawful right to participate in the meeting of November 14, 2004, and to vote at that meeting.

86. The other Director Plaintiffs were wrongfully denied their right to have all eligible members of the Board participate in the meeting of December 19, 2004.

87. Heath and Gaughan were wrongfully deprived of their right to serve as duly-elected Officers of the Association.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order preliminarily and thereafter permanently enjoining MHSAA to reconvene the meeting of November 14, 2004, and allow Francine Serafin to participate in that meeting either in person, by proxy or by conference telephone.

## **COUNT II**

### **The Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters Were Improperly Excluded From Voting at the November 14, 2004 Meeting**

88. The allegations contained in Paragraphs One (1) through Eighty-Seven (87) are incorporated herein as if set forth herein in full.

89. At the organizational meeting held on November 14, 2004, the Board of Directors of MHSAA purported to disallow the votes of the Chapter Representatives of the Homestead, Honorary and Washington D.C. Chapters.

90. According to the By-Laws, the Chapters are authorized to elect their Chapter Representatives.

91. Nothing in the By-Laws or the relevant statute gives the Board of Directors of MHSAA the power to review, reverse or reject the election of a Chapter Representative by an approved Chapter.

92. Nothing in the By-Laws or the relevant statute gives the Board of Directors of MHSAA the power to remove or eliminate the vote of a Chapter Representative.

93. Plaintiffs Milton Purcell, Ethel Campbell and Graham McIntyre were wrongfully denied their lawful right to participate in the meeting of November 14, 2004, and to vote at that meeting.

94. The other Director Plaintiffs were wrongfully denied their right to have all eligible members of the Board participate in the meeting of December 19, 2004.

95. Heath and Gaughan were wrongfully deprived of their right to serve as duly-elected Officers of the Association.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order preliminarily and thereafter permanently enjoining MHSAA to reconvene the meeting of November 14, 2004, and allow Milton Purcell, Ethel Campbell and Graham McIntyre to participate in the meeting of November 14, 2004, and to vote at that meeting.

### **COUNT III**

#### **Jerry Waters Was Not Qualified to Participate in the Meetings of November 14, December 19 or December 26, 2004**

96. The allegations contained in Paragraphs One (1) through Ninety-Five (95) are incorporated herein as if set forth herein in full.

97. Jerry Waters had served a three-year term on the Board, which ended December 31, 2003.

98. On December 31, 2003, Waters was replaced by a newly-elected Board member.

99. After that date, Waters continued to serve on the Board as Vice President/

President Elect without any authority to do so.

100. Under the MHSAA By-Laws:

Each member of the Board of Directors shall serve for a period of three (3) years, or until his/her successor shall be elected and qualified, except as otherwise provided by these By-Laws and provided further, that the President and past President shall be members of the Board without regard to the term for Directors provided in these By-Laws.

Article IV, Section 4.

101. The MHSAA By-Laws also provide that:

Any active member of the Association shall be eligible to be a member of the Board of Directors, provided however, that no member of the Association shall be eligible for re-election or appointment to the Board of Directors, except the Secretary, the Assistant Secretary and Counsel, a Chapter Representative and the Treasurer, until after the lapse of one (1) year from his/her term as a Director unless he/she has served less than thirteen (13) months.

102. Waters was not eligible to serve on the Board or to serve as Vice President/

President Elect in 2004 because there had not been a lapse of one (1) year from the expiration of his previous three-year term as a Director.

103. Because Waters was not eligible to serve as Vice President/President Elect in 2004, he cannot serve as President in 2005 without being separately elected to that position.

104. Waters has not been elected to the position of President.

105. The other Director Plaintiffs were wrongfully denied their right to have only eligible members of the Board participate in the meeting of November 14, December 19, and December 26, 2004.

106. The other Director Plaintiffs were wrongfully denied their right to have only eligible members of the Board serve on the Board in 2005.

107. Heath and Gaughan were wrongfully deprived of their right to serve as duly-elected Officers of the Association.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order preliminarily and thereafter permanently enjoining MHSAA to reconvene the meetings of November 14, December 19, and December 26, 2004 and disallow Jerry Waters from participating in those meetings and further disallow Waters from serving on the Board in 2005.

#### **COUNT IV**

##### **The Votes of the Emeritus Directors Were Improperly Disallowed**

108. The allegations contained in Paragraphs One (1) through One Hundred Seven (107) are incorporated herein as if set forth herein in full.

109. During the meeting held on December 19, 2004, Defendant John Rice announced that the votes cast by the Emeritus members of the Board of Directors at the November 14, 2004 organizational meeting were void ab initio because those three members served terms of only one year and their terms had expired.

110. Those Directors were not allowed to vote at the December 19, 2004 meeting.

111. As a result of that ruling, Plaintiff Gaughan was purportedly replaced by Chris Ortiz as Secretary on the ground that the actual vote on November 14, 2004, after disallowing the votes of the Emeritus Directors, was ten (10) to eight (8) in favor of Ortiz and ten (10) to eight (8) against Gaughan.

112. As a result of that ruling, Plaintiff Heath was purportedly replaced by James Behrens as Treasurer on the ground that the actual vote on November 14, 2004, after disallowing the votes of the Emeritus Directors, was ten (10) to eight (8) in favor of Behrens and ten (10) to eight (8) against Heath.

113. Under statute, 15 Pa.C.S.A. §5724:

Each director shall hold office until the expiration of the term for which he was selected and until his successor has been selected and qualified or until his earlier death, resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided in the Bylaws. In the absence of a provision fixing the term, it shall be one year.

114. Plaintiffs Deitrich, Fink and Dietrich continue to serve in their positions as Emeritus Directors with full voting rights until a successor has been selected and qualified.

115. There has been no successor selected or qualified for the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich.

116. The Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich were wrongfully denied their right to vote at the November 14, December 19 and December 26, 2004 meetings.

117. The other Director Plaintiffs were wrongfully denied their right to have all eligible members of the Board participate in the meeting of December 19, 2004.

118. Heath and Gaughan were deprived of their right to serve as duly-elected Officers of the Association.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order preliminarily and thereafter permanently enjoining MHSAA to reconvene the meetings of November 14

and December 19, and December 26, 2004 and allow the Emeritus Directors, Plaintiffs Harvey Deitrich, Ralph Fink and Ivan Dietrich to vote and participate in those meetings.

## COUNT V

### **The Board Was Without Authority to Enact the Resolution Which was Purportedly Enacted at the December 26, 2004 Meeting**

119. The allegations contained in Paragraphs One (1) through One Hundred Eighteen (118) are incorporated herein as if set forth herein in full.

120. At the meeting of December 26, 2004, the Board passed the following resolution:

*Whereas*, the MHSAA alumni mailing database was used in an apparently unauthorized manner during the course of the Homecoming 2004 MHSAA Board of Director elections on behalf of certain candidates;

*Whereas*, the MHSAA Board of Directors (the “Board”) believes that certain Chapter Representative elections had not been adequately conducted;

*Whereas*, the MHSAA Board has examined these matters in good faith and taken action where it felt appropriate, while showing restraint in others;

*Whereas*, the MHSAA Board has learned that some persons have suggested litigation against the Board, or certain individual Directors, or the Association, because of dissatisfaction with the manner in which the Board has addressed these matters, even though the Board has acted in good faith to resolve these matters with due regard for fairness, public decorum, due process, application of MHSAA rules and By-Laws to difficult and novel problems, amicable relations among members, and the goals and best interests of the Association;

Now, therefore, be it resolved, that:

In the event of any action or proceeding of any kind whatsoever against MHSAA, its Board, any current Director (whether or not still a Director at the time of such action or proceeding), any person now believed to be a Director or listed on the current Director roster, arising from or related in any way to the matters described above;

The Board of Directors shall:

- a) Immediately commence all steps necessary to conduct new elections for the four Director positions selected at the 2004 Homecoming Election, if and as permitted by applicable law, with all candidates who ran before running again should they so choose, but with all candidates having equal access to the alumni mailing database, and with the winners of the new election to replace and complete the terms of the Directors elected in 2004, whoever the winners may be;
- b) Take any appropriate legal measures seeking damages, if cause for such exists, against any persons or organizations who may have harmed the Association in regard to the above-described matters; and,
- c) Take any other legal measures necessary to protect the interests of the Association, with implementation of all of the actions described herein to be carried out by an Election Dispute Resolution Committee consisting of five Directors to be selected by Jerry Waters at his sole Discretion.

121. The Board is without power to remove certain Directors solely as a result of those Directors and other Directors exercising their legal right to challenge actions of the Association.

122. The Board improperly excluded certain Board members from voting at the December 26 meeting.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- (a) Preliminarily and thereafter permanently enjoining MHSAA from commencing any steps to conduct new elections for the four Director positions selected at the 2004 Homecoming Election and from: (1) taking any legal measures seeking damages against any persons or organizations who may allegedly have harmed the Association in regard to 2004 elections; or (2) taking any actions on behalf of MHSAA unless and until such actions have been approved by a vote in which all members of the 2005 Board of Directors are permitted to participate, including Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich, and any other

- properly elected Officers; and (c) to disallow the votes of all persons not eligible to serve on the Board in 2004 and/or 2005;
- (b) Requiring Defendants to reimburse Plaintiffs for any and all expenses related to bringing this action, including, but not limited to attorneys fees and costs; and
  - (c) Granting such other relief as this Court deems appropriate.

#### **COUNT VI**

123. The allegations contained in Paragraphs One (1) through One Hundred Twenty-Two (122) are incorporated herein as if set forth herein in full.

124. Under the By-Laws, in the interim between meetings of the Board, the Executive Committee shall have charge of the routine business of the Association.

125. Under the By-Laws, the Executive Committee shall be composed of the Officers of the Board and the Immediate Past President.

126. But for the improper actions described above, the Executive Committee would consist only of the Past President, John Rice.

127. It would violate the letter and the spirit of the By-Laws of MHSAA to allow one person to conduct the business of the Association.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order preliminarily and thereafter permanently enjoining MHSAA from allowing the Executive Committee of the Board of Directors to take any actions on behalf of MHSAA unless and until the Officers have properly been selected by a vote of the Board of Directors in which all members of the 2005

Board of Directors are permitted to participate, including Plaintiffs Purcell, Campbell, McIntyre, Dietrich, Fink and Deitrich, and any other properly elected Officers.

Respectfully submitted,

KLETT ROONEY LIEBER & SCHORLING  
A Professional Corporation

Dated: February 1, 2005

BY:

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Allen C. Warshaw, Esquire  
240 North Third Street, Suite 700  
Harrisburg, PA 17101-1503  
(717) 231-7700  
Counsel for Plaintiffs