

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK  
STATE EDUCATION DEPARTMENT

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In the Matter of the Application for Removal  
of the Trustees of the Rhinebeck Aerodrome  
Museum by:

CARLE J. KOPECKY, JOELLYN A. KOPECKY,  
STEVE J. SWEENEY, PARKER ACKLEY,  
GWEN ACKLEY, CHARLES L. DAY,  
SANDY RHODES, MICHAEL O'NEAL, and  
MARTHA ESCH,

File No.

Petitioners,

-against-

RHINEBECK AERODROME MUSEUM,  
DEAN RYDER, JAMES KICK, TERRANCE  
MCCLINCH, BILL SEGALLA, PAUL HEIMBACH  
and STANLEY SEGALLA, and John and/or Jane Doe  
1-10 being any other trustees whose names and addresses  
are presently not known,

Respondents.

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**REPLY TO AFFIRMATIVE DEFENSES  
AND OTHER RELIEF SOUGHT BY PETITIONERS**

Petitioners Carle J. Kopecky, Joellyn A. Kopecky, Steve J. Sweeney, Parker  
Ackley, Gwen Ackley, Charles L. Day, Sandy Rhodes, Michael O'Neal and Martha Esch  
for their reply to respondents' affirmative defenses and other relief allege as follows upon  
information and belief unless otherwise indicated:

1. With respect to the first affirmative defense, petitioners have standing to so  
request the Board of Regents to act pursuant to *Adelphi University et al. v. Board of  
Regents of State of New York et al.*, 170 Misc. 2d 135 (Albany County 1996) and the

State Education Law §226(4) and the regulations thereunder. In *Adelphi*, it was specifically determined that: “Nor is it necessary to the validity of such a proceeding that the petitioner should have some interest in the proceeding which gives him standing in court.” The court went on to find: “The Regents in such matter may take action of their own motion, however the information is brought to their attention.” In *Adelphi*, the court concluded that there was nothing contained in the Education Law barring the filing of a petition by a private individual in a proceeding brought pursuant to Education Law §226 (4) as in this matter. Petitioners have brought to the attention of the Board of Regents the continuing threat to the integrity of the collection of artifacts and the educational programs of the Rhinebeck Aerodrome Museum.

Further, petitioners have brought to the attention of the Board of Regents numerous acts of misconduct supporting the request for the removal of the current board of trustees and the request that the Board of Regents supervise the installation of a new board of trustees and reorganization of the museum.

In addition, petitioners have all, at one time or another during the relevant time period, been dues-paying members and contributors of money, goods and/or services to the Museum and affiliated Air Show. Gwen and Parker Ackley, Steve Sweeney, and Sandy Rhodes remain members in good standing. Carle Kopecky and Charles Day formerly served on one or both boards of trustees. All petitioners have specifically contributed funds to the Spirit of St. Louis project. The fact that this project remains unfinished while other, new initiatives have gone forward, is a direct financial injury and

grievance. Thus, the first affirmative defense fails to raise a cognizable defense as a matter of law.

2. With respect to the second affirmative defense, the removal of trustees of Adelphi University in 1997 by the Board of Regents acting upon application by private citizens confirmed the powers and authority of the New York State Board of Regents over institutions chartered by the New York State Education Department and the Board of Regents. The Museum is so chartered by the Board of Regents. Thus, the second affirmative defense fails to raise a cognizable defense as a matter of law.

3. With respect to the third affirmative defense, petitioners deny the allegation of personal animus and self-interest. Petitioners have consistently acted, in the best interests of the museum, its collections of artifacts and its public educational programs, through a variety of methods and appeals for reform which have fallen on the deaf ears of respondents. Petitioners also deny the allegation of an attempt to unlawfully usurp control as being without foundation, since the petition process specified by the New York State Education Law is being followed and the remedy sought is to establish election of trustees by the members of the organization at large under the supervision of the Board of Regents. Petitioners have acted lawfully by following the petition process of the Board of Regents. The outcome of the election or appointment process is neither intended nor known to pre-select new trustees. Thus the third affirmative defense fails to raise a cognizable defense as a matter of law. The responses to the first and second affirmative defense are incorporated herein by reference.

4. With respect to the fourth affirmative defense, the petition sets forth known examples of misconduct, neglect of duty, and failure to carry into effect the educational purpose of the Museum by current trustees such that a new election of trustees under the Board of Regents supervision is fully appropriate and authorized. The basis for this relief is supported by a substantial body of evidence attached to the Petition as exhibits as well as by nine verifications and three affidavits upon personal knowledge. Respondents have failed to deliver affidavits, exhibits or other supporting materials to refute the petition in any evidentiary manner. Thus the fourth affirmative defense fails to raise a cognizable defense as a matter of law.
5. With respect to the fifth affirmative defense, no supporting documentation for this defense was provided. Based upon information and belief, the petitioners assert that the Museum has not published the names of its board of trustees since 2005. The names of Jim [sic] Kick and Billy [sic] Segalla appear on the IRS Form 990 returns for 2003, 2004, and 2005. The 2006 Form 990 for the Museum has not yet been made available. Thus, the fifth affirmative defense fails to raise a cognizable defense as a matter of law.
6. With respect to the sixth affirmative defense, petitioners were unable to locate any publicly filed or accessible document listing with certainty the names of all trustees in the relevant time periods. Upon information and belief respondents have failed to make such information accessible. In view of the foregoing, and in order to raise this point for the Board of Regents, the caption was configured to indicate the names and address of other trustees presently not known. Even now, the answering respondents

have failed to provide any documentation sufficient to establish precisely who were the officers and trustees of the Rhinebeck Aerodrome Museum in the relevant time period. It is acceptable practice to allow for amendment of new respondents in the event other individuals are in fact trustees but their names have been withheld or not provided. It will be for the Board of Regents to determine this process. In these circumstances, the naming of John and Jane Does as possible respondents is appropriate. Thus the sixth affirmative defense fails to raise a cognizable defense as a matter of law.

7. With respect to the seventh affirmative defense, the majority of the Respondent Trustees have been on the Board for most, if not all of the time period at issue. Those who have become members of the board at a later date were elected by, and presumably hold their position due to those who preceded them, and continued the predecessors' policies and did not rectify their failures. In light of the fact that many of the allegations are from 2006 and 2007, the current Trustees share continuing responsibility for those acts. Likewise, there has been no undue delay or prejudicial delay in the bringing of the petition. The refusal and/or failure of the board of trustees to disclose what should have been matters of public record made it difficult to obtain the information set forth in the petition. There can be no showing of undue delay here since Respondents know what took place but failed to disclose what was occurring at the Museum. Such lack of disclosure is part of the trustee's failures -- not a defense. Thus the seventh affirmative defense fails to raise a cognizable defense as a matter of law.

8. With respect to the eighth affirmative defense, it is impossible for respondents to have been prejudiced by any delay in bringing these matters to the attention to the Board of Regents. Presumably respondents know of the omissions and commissions that have occurred while all the while attempting to keep them from public knowledge. Essentially, respondents are seeking to shield wrongful conduct by claiming that their failure to make the actions of the board of trustees public and easily known should prevent examination into these very failures. In these circumstances, the doctrine of laches is inapplicable. Thus the eighth affirmative defense fails to raise a congestive defense as a matter of law.

9. With respect to the ninth affirmative defense, see the response to the eighth affirmative defense which is incorporated herein. The State Education Department and Board of Regents have in no way knowingly and intentionally waived its right to examine into the conduct of the respondent trustees. Indeed the failure of respondent trustees to make the finances and management of the Museum and its artifacts publicly known, among other reasons, confirms that the doctrine of waiver does not apply here. The Board of Regents cannot be deemed to have waived its rights to inquire into this matter. Thus the ninth affirmative defense fails to raise a cognizable defense as a matter of law.

10. With respect to the tenth affirmative defense, respondent Trustees failed to provide “all of respondent’s affidavits, exhibits and other supporting papers” as required by the Rules of the Board of Regents, section 3.31, paragraph (k), which governs the answer to a petition. Therefore, there is no evidence to support this

claimed tenth affirmative defense, the eleventh affirmative defense or any other part of the answer. Thus the tenth affirmative defense fails to raise a cognizable defense as a matter of law.

11. With respect to the eleventh affirmative defense, the replies to all prior affirmative defenses are incorporated by reference. The eleventh affirmative defense fails to raise a cognizable defense as a matter of law.

12. With respect to the respondents' wherefore clause:

- a. There is no basis in the rules of the Regents to assess cost, disbursements and attorneys fees against petitioners;
- b. Petitioners request that a conference with the Board of Regents be held prior to conducting a hearing to determine the nature and scope of discovery, if any, as well as the timing and procedure for any hearing;
- c. With respect to the request that the New York State Administrative Procedure Act be deemed applicable to this proceeding, the *Adelphi* case specifically determined that the New York State Administrative Procedure Act does not apply to proceedings for the removal of trustees before the Board of Regents under §226(4) and this request should also be denied as a matter of law.

WHEREFORE, Petitioners respectfully request the Board of Regents to remove respondent Trustees for misconduct, incapacity, neglect of duty and failure or refusal of the Museum to carry into effect its educational purposes, to supervise the installation of a new board of trustees and reorganization of the Museum through by-laws

amendments including election of trustees by the membership, to dismiss the affirmative defenses, and to accept this petition for determination in order, to assist in the preservation and safekeeping of the Museum's collection and the furtherance of the Museum's educational purposes.

Dated: January 17, 2008

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