

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FARTHEST NORTH GIRL SCOUT
COUNCIL, an Alaska nonprofit
corporation, RUSS SHARPTON, and
SUELLEN NELLES,

Appellants,

v.

GIRL SCOUTS OF THE UNITED
STATES OF AMERICA, a District of
Columbia nonprofit corporation,

Appellee.

Supreme Court No.: S-17144

Superior Court Case No.: 4FA-17-01413CI

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS
THE HONORABLE JUDGE BETHANY S. HARBISON

BRIEF OF APPELLEE
GIRL SCOUTS OF THE UNITED STATES OF AMERICA

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AUTHORITIES PRINCIPALLY RELIED UPON

36 U.S.C. § 80301 *et seq.*¹

(CONGRESSIONAL CHARTER OF GIRL SCOUTS OF THE UNITED STATES OF AMERICA,

§ 80301. ORGANIZATION

(a) Federal charter. - Girls Scouts of the United States of America (in this chapter, the “corporation”) is a body corporate and politic of the District of Columbia.

...

§ 80303. GOVERNING BODY

(a) National Council. -

(1) There shall be a National Council of Girl Scouts. The number, qualifications, and term of office of members of the Council are as provided in the constitution of the corporation, except that members of the Council must be citizens of the United States.

(2) The Council may adopt and amend a constitution and bylaws and elect a board of directors, officers, and agents.

(3) The constitution may prescribe the numbers of members of the Council for a quorum. That number may be less than a majority of the entire Council.

(4) Meetings of the Council shall be held as provided in the constitution to hold elections and receive reports of the officers and board of directors. Special meetings may be called as provided in the constitution.

(b) Board of directors. -

(1) To the extent provided in the constitution and bylaws, the board of directors shall have the powers of the Council and manage the activities of the corporation between

¹ The excerpts of the Congressional Charter principally relied upon by GSUSA are reproduced here. A complete copy of the Congressional Charter is available at Exc. 115-16.

meetings of the Council. The number, qualifications, and term of office of directors are as provided in the constitution.

(2) The constitution may prescribe the number of directors necessary for a quorum. That number shall be at least 20 or two-fifths of the entire board.

...

D.C. Code § 29-306.01

§ 29-306.01. Requirement for and functions of board of directors.

(a) Except as otherwise provided in § 29-305.42, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 29-305.42.

...

D.C. Code § 29-401.02

§ 29-401.02. Definitions.

For the purposes of this chapter, the term: . . .

(2) “Bylaws” means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.

...

D.C. Code § 29-403.03

§ 29-403.02. General powers.

Unless its articles of incorporation provide otherwise, every nonprofit corporation shall have perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including the power to: . . .

(14) Impose dues, assessments, admission, and transfer fees on its members;

. . .

D.C. Code § 29-406.01

§ 29-406.01. Requirement for and functions of board of directors.

(a) A nonprofit corporation shall have a board of directors.

(b) Except as otherwise provided in § 29-4016.12, all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors.

STATEMENT OF JURISDICTION

Appellee Girl Scouts of the United States of America (GSUSA) agrees this Court has jurisdiction, pursuant to AS 22.05.010(a), over this appeal brought by appellants Farthest North Girl Scout Council, Russ Sharpton, and Suellen Nelles (collectively “Farthest North”) from the superior court’s final judgment entered on June 6, 2017.

[Appellants’ Brief (App. Br.) 1]

ISSUE PRESENTED FOR REVIEW

Did the superior court correctly conclude that the National Council of GSUSA (National Council) and the National Board of Directors of GSUSA (National Board) share authority to set the amount of membership dues paid by members of the Girl Scout Movement?

STATEMENT OF FACTS

GSUSA is a nonprofit corporation founded in 1912 and incorporated in the District of Columbia three years later. [Exc. 80 at ¶¶ 2-3] In 1950, GSUSA was reincorporated under a Congressional Charter, a federal law outlining the mission, authority, and activities of GSUSA.² [Exc. 81 at ¶ 4] GSUSA has millions of current members and alumnae. [Exc. 81 at ¶ 6] It provides innovative programs for girls in the areas of STEM, entrepreneurship, and outdoor and life skills, and it empowers girls to become leaders and to tackle global issues such as poverty, illiteracy, and pollution.

[Exc. 81 at ¶ 6]

² 36 U.S.C. § 80301, *et seq.* At that time, the prior D.C. corporation merged into the federally chartered organization. [Exc. 81 at ¶ 5]

GSUSA is governed by its Congressional Charter, set forth in 36 U.S.C. § 80301, *et seq.* [Exc. 2 at ¶ 10; Exc. 115-16] The Congressional Charter directed that there shall be a National Council, and authorized it to adopt GSUSA’s Constitution.³ [Exc. 89-97, 115] Consistent with the Congressional Charter, the Constitution sets forth a National Council and National Board. [Exc. 90-94] It also allocates power and responsibility between the two bodies that aligns with their differing composition and manner of acting. [Id.]

The National Council is comprised of up to 1,500 individuals, including “delegates elected by Girl Scout councils who are registered through such local councils.” [Exc. 91 at Art. IX, § 4] It meets in regular session once every three years, at which time it elects the members of GSUSA’s National Board.⁴ [Exc. 92 at Art. V, § 1; Exc. 115]

Under a subsection entitled “POWERS,” GSUSA’s Constitution provides:

The National Council shall have all the powers conferred by the Congressional Charter and by other applicable laws, and shall exercise these powers with due regard for its position as the coordinating head of the Girl Scout Movement in the United States.

[Exc. 91 at Art. IV, § 2] The “RESPONSIBILITIES” of the National Council are that it:

shall hold elections, amend the Constitution, establish requirements for credentials, and shall determine the general lines of policy of the Girl Scout Movement and program by considering and acting upon proposals directed toward the fostering of improvement of Girl Scouting, by receiving and

³ See 36 U.S.C. § 80303(a), (b).

⁴ See 36 U.S.C. § 80303(a), (b).

acting upon reports of its National Board of Directors, and by giving guidance to the National Board upon general lines of direction of the Movement and program.

[Exc. 92 at Art. V, § 2]

Under GSUSA's Constitution, the National Board is a more hands-on governing and operating body. It consists of 30 members: GSUSA's President, two Vice Presidents, Secretary, Treasurer, and 25 members-at-large, each of whom is elected by the National Council. [Exc. 94-95 at Art. X, §§ 2-3, Art. XI, §§ 1-2] The Bylaws require that the National Board meet at least twice a year. [Exc. 98 at Art. 1, § 1] As permitted by the Constitution, the Bylaws further establish an Executive Committee of up to 11 members, which meets on an as-needed basis, that is tasked with "exercis[ing] the authority of the National Board between meetings of the National Board." [Exc. 93 at Art. X, § 1; Exc. 100 at Art. IV, §§ 1-3] The majority of the 11-member Executive Committee are individuals in positions elected, either directly or indirectly, by the National Council. [Exc. 95 at Art. XII, § 3; Exc. 100 at Art. II & IV, § 1]

Given the National Council's size, infrequent meetings, and general mandate, it has granted broad powers to the National Board. The Congressional Charter explicitly authorizes this grant of authority, stating: "To the extent provided in the constitution and bylaws, the board of directors shall have the power of the Council and manage the activities of the corporation between meetings of the Council."⁵ [Exc. 115] The Constitution, in turn, makes a similar broad, general grant of authority to the National

⁵ 36 U.S.C. § 80303(b)(1).

Board: In Article X, § 1, the Constitution provides that “[t]he affairs of the corporation between sessions of the National Council shall be managed by the National Board of Directors” [Exc. 93 at Art. X, § 1] The term “the affairs of the corporation” is not defined in the Constitution. The law of the District of Columbia, under which GSUSA was chartered, defines the term broadly. It includes the authority to set the amount of membership dues.⁶

In addition to this general grant of authority to the National Board, the Constitution and Bylaws also grant specific authority to the National Board that encompasses the power to set the amount of members’ dues. The Constitution states that the National Board has the authority to

administer the requirements for the credentials established by the National Council, and . . . establish standards and issue standards, procedures, and interpretations regarding such requirements provided such standards, procedures, and interpretations are consistent with the requirements established by the National Council.

[Exc. 93 at Art. VIII, § 2]

One of the “credentials” established by GSUSA’s Constitution is the Girl Scout certificate of membership.⁷ [Exc. 81 at ¶ 10; Exc. 93 at Art. VIII, § 1; Exc. 107] With respect to this credential, the National Council has established several “requirements” girl and adult members must meet to qualify for the membership certificate. [Exc. 108]

These requirements are reflected in the Constitution and collected in GSUSA’s *Blue Book*

⁶ D.C. Code § 29-403.02(14).

⁷ See Exc. 93 at Art. VIII (“Credentials”) § 1 (“The National Council shall establish requirements for certificates of membership, local council charters, and all other credentials.”).

of *Basic Documents* (Blue Book). [Exc. 89, 93 at Art. IX] The Blue Book is part of GSUSA’s governance documents, being explicitly required by GSUSA’s Bylaws,⁸ which provide:

A Blue Book of Basic Documents shall be published and distributed, which shall contain the Congressional Charter, the Constitution and Bylaws, requirements for credentials as established by the National Council, and such other material as the National Board shall direct.

[Exc. 102 at Art. VIII]

The membership requirements are as follows:

Membership as a Girl Scout is granted to any girl who:

- Has made the Girl Scout Promise and accepted the Girl Scout Law;
- Has paid annual or other applicable membership dues;
- Meets applicable membership standards.

Membership as a Girl Scout adult is granted to any person who:

- Accepts the principles and beliefs as stated in the Preamble of the Constitution;
- Has paid annual, lifetime, or other applicable membership dues;

⁸ See Exc. 102 at Art. VIII. “[A]rticles of incorporation, bylaws, and covenants are correlated documents that are construed together when interpreting the governing documents of a corporation.” 7A William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 3640, Westlaw (database updated Sept. 2018); see also, e.g., D.C. Code § 29-401.02(2) (“‘Bylaws’ means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.”).

- Meets applicable membership standards.

[Exc. 107]

Payment of membership dues therefore is a requirement of the membership credential established by the National Council. But the amount of those dues is not. [*See id.*]

Under GSUSA's Constitution, the National Board has the authority to oversee and establish and issue the standards, procedures, and interpretations of the "requirements" regarding the membership credential, such as dates of the membership year, the registration forms to be used, the transferability and refundability of membership dues, and the specific amount of annual membership dues for new and continuing members. [Exc. 107-08] The Blue Book spells all of this out in its Procedures section, which is separate from the Membership Requirements section. [Exc. 107]

In addition to the National Board's broad grant of responsibility and authority to manage the affairs of the corporation between meetings of the National Council, and its express authority to establish standards, procedures, and interpretations related to the requirements set by the National Council, GSUSA's Constitution and Bylaws further authorize the Board to manage the finances of the corporation, of which membership dues are a predominant portion. [Exc. 96 at Art. XIV; Exc. 101 at Art. VI]

In accordance with all of these bases of authority, on January 20, 2012, the Board increased membership dues by \$3.00 per year per member – from \$12.00 to \$15.00 – for the 2014 membership year, effective October 1, 2013. [Exc. 5 at ¶ 25; Exc. 81 at ¶ 8] On January 21, 2016, the National Board increased membership dues by an additional \$10.00

per year per member for the 2018 membership year, effective October 1, 2017, bringing total annual membership dues to \$25.00 per member.⁹ [*Id.*]

Each local Girl Scout council is required to collect and transmit to GSUSA the membership dues of Girl Scout members in its jurisdiction. [Exc. 20] After collecting and transmitting the increased dues in membership years 2014, 2015, and 2016, Farthest North transmitted its membership year 2017 membership dues to GSUSA under protest, contending that only the National Council, not the National Board, has the authority to increase the amount of membership dues. [Exc. 7 at ¶¶ 34-36] Every other Girl Scout council in the nation, including the other Girl Scout council in Alaska, has transmitted its full membership dues during this time and currently. [Exc. 82]

STATEMENT OF PROCEEDINGS

Farthest North filed this action in February 2017. All of its claims against GSUSA flowed from its assertion that the National Board lacks the authority to set the amount of membership dues because, it alleged, only the National Council can do so. [Exc. 1-18] GSUSA moved to dismiss under Alaska Rule of Civil Procedure 12(b)(6). [App. Br. 11] When Farthest North filed its opposition to GSUSA's motion to dismiss, it also filed a motion for partial summary judgment on the question of the National Board's authority to establish the amount of membership dues. [Exc. 58-79] In response, GSUSA filed a

⁹ These increases in membership dues bring GSUSA into alignment with national youth organizations such as the Boy Scouts of America, which charges a \$33.00 annual membership fee. [Exc. 81 at ¶ 9]

cross-motion for summary judgment on that issue. [Exc. 138-53] The superior court considered the three dispositive motions together. [Exc. 152]

On May 1, 2018, the superior court granted GSUSA's cross-motion for summary judgment, denied Farthest North's motion for partial summary judgment, and held that GSUSA's Rule 12(b)(6) motion to dismiss was moot. [*Id.*] The court correctly concluded:

The plaintiffs' arguments rest on the proposition that the National Council has the exclusive authority to set the amount of membership dues. However, the court finds that the governance documents of GSUSA provide the National Board and the National Council shared authority regarding the amount of membership dues. Since the court has determined that the National Board's increase in membership dues was proper, the plaintiffs cannot prevail on any claim raised in their Complaint.

[*Id.*]

Specifically, the superior court held that GSUSA's governance documents grant shared authority to the National Board and the National Council to set the amount of membership dues.¹⁰ [Exc. 147-51] The court wrote: "There is no provision of the Congressional Charter or any other provision of law that delegates exclusive authority to the National Council to establish membership dues." [Exc. 148-49] The court further held that, under the Congressional Charter and the Constitution, "the National Board is

¹⁰ While the superior court found that GSUSA's governance documents unambiguously support the conclusion that the National Board has the authority to establish the amount of membership dues, the court also found that, even if it were to look to extrinsic evidence, such evidence only serves to confirm that conclusion. [Exc. 151-52] *See* § II(F), *infra*.

vested with the authority to manage the full range of GSUSA’s activities necessary to carry out its purpose.” [Exc. 150] In addition, the court held that “the National Board is expressly provided with the authority to administer the requirements authorized by the National Board and to create ‘standards, procedures, and interpretations’ regarding those requirements,” including standards, procedures, and interpretations regarding the requirement to pay dues: *i.e.*, the amount of those dues. [Exc. 150-51]

STANDARD OF REVIEW

This Court “review[s] grants of summary judgment *de novo* and ‘will affirm summary judgment if there are no genuine issues of material fact and if the moving party is entitled to judgment as a matter of law.’”¹¹ As this Court has articulated: “When applying the *de novo* standard of review, we apply our ‘independent judgment to questions of law, adopting the rule of law most persuasive in light of precedent, reason, and policy.’”¹²

Because GSUSA was chartered under an act of Congress and is a “body corporate and politic of the District of Columbia,”¹³ the issue of the National Council’s and the National Board’s respective authority to set the amount of membership dues must be

¹¹ *Yost v. State of Alaska, Div. of Corps., Bus. & Prof’l Licensing*, 234 P.3d 1264, 1272 (Alaska 2010) (quoting *Howell v. Ketchikan Pulp Co.*, 943 P.2d 1205, 1207 (Alaska 1997)).

¹² *Hahn v. GEICO Choice Ins. Co.*, 420 P.3d 1160, 1166 (Alaska 2018) (quoting *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.*, 322 P.3d 114, 122 (Alaska 2014)).

¹³ 36 U.S.C. § 80301(a).

resolved under the law of the District of Columbia.¹⁴ Under D.C. law, the Court’s interpretation of corporate governance documents is subject to the same rules applied to the interpretation of contracts.¹⁵ Such an interpretation is a question of law, reviewed by the Court *de novo*.¹⁶

The District of Columbia:

adheres to an objective law of contracts, meaning that the written language embodying the terms of an agreement will govern the rights and liabilities of the parties regardless of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite meaning.^[17]

Where the contract language is not susceptible of a clear and definite meaning – i.e., where the contract is determined by the court to be ambiguous – external evidence may be admitted to explain the surrounding circumstances and the positions and actions of the parties at the time of contracting.^[18]

However, “a contract is not ambiguous merely because the parties do not agree over its meaning,” and courts do not “create ambiguity where none exists.”¹⁹ Under D.C. law,

¹⁴ Restatement (Second) of Conflicts §§ 188, 302 (1971). Farthest North agrees with GSUSA’s and the superior court’s conclusion that the law of the District of Columbia applies to the issue of the interpretation of GSUSA’s governance documents. [See App. Br. 26; Exc. 146-48]

¹⁵ See, e.g., *Steiner v. Am. Friends of Lubavitch (Chabad)*, 177 A.3d 1246, 1254 (D.C. 2018); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005).

¹⁶ *Hahn*, 420 P.3d at 1166 (internal quotation marks and citation omitted).

¹⁷ *Aziken v. Dist. of Columbia*, 70 A.3d 213, 218-19 (D.C. 2013) (internal quotation marks, citation, and brackets omitted).

¹⁸ *Id.* at 219 (internal quotation marks and citation omitted).

¹⁹ *Carlyle Inv. Mgmt., LLC v. Ace Am. Ins. Co.*, 131 A.3d 886, 895 (D.C. 2016) (internal quotation marks and citation omitted).

courts determine “what a reasonable person in the position of the parties would have thought the disputed language meant.”²⁰

SUMMARY OF ARGUMENT

In adopting GSUSA’s Constitution, the National Council allocated responsibilities between itself and the National Board in a manner that allows for the organization to operate effectively and efficiently, but with appropriate accountability to its members. The National Council is a broadly inclusive governing body that ensures local councils across the nation have a voice in the overarching policies and direction of the Girl Scout Movement. But the Council’s size makes it an impractical body for day-to-day governance of the organization. It meets only once every three years. It is not equipped to address the details of GSUSA’s operations. The Constitution therefore allocates to the National Board the responsibility – and the requisite authority – to run the organization between the National Council’s triennial sessions. The National Board is fully accountable to the National Council, because the National Council elects every member of the National Board, the majority of the principal officers, and the National Board Development Committee that is responsible for development of the National Board and sourcing and nominating the next set of directors. This is not an unusual structure; it is instead the standard structure for membership organizations.

Not only does the Constitution include a broad grant of authority to the National Board to manage the corporation’s affairs between sessions of the National Council, it

²⁰ *Id.* (internal quotation marks and citation omitted).

includes an express grant of authority to issue standards, procedures, and interpretations regarding requirements for GSUSA’s credentials, including the amount of membership dues, as well as authority over the corporation’s finances. As the superior court correctly concluded, the National Board acted within its authority in establishing the amount of membership dues.

ARGUMENT

I. GSUSA’s governance documents give both GSUSA’s National Council and National Board authority to establish the amount of membership dues.

A. Under the Congressional Charter, the National Board shares the powers of the National Council to the extent provided in the GSUSA Constitution.

GSUSA’s Congressional Charter, 36 U.S.C. § 80301, *et seq.*, is the starting point in analyzing the authority of the National Council and the National Board. The Charter establishes the “GOVERNING BODY” of GSUSA, expressly divided into a “National Council” and a “Board of Directors” elected by the National Council.²¹ [Exc. 115] The Charter articulates the general authority of the National Council to “adopt and amend a constitution and bylaws and elect a board of directors, officers, and agents.”²² [*Id.*] With respect to the “Board of Directors” (the National Board), the Congressional Charter provides: “To the extent provided in the constitution and bylaws, the board of directors shall have the powers of the Council and manage the activities of the corporation between meetings of the Council.”²³ [*Id.*]

²¹ 36 U.S.C. § 80303(a), (b).

²² 36 U.S.C. § 80303(a)(2).

²³ 36 U.S.C. § 80303(b)(1).

The Congressional Charter does not restrict the National Board’s authority regarding membership dues or reserve such power to the National Council. It makes no mention whatsoever of membership dues. [*Id.*]

B. GSUSA’s Constitution and Bylaws broadly grant the National Board the responsibility and authority to manage the affairs of the corporation between sessions of the National Council, including the power to set the amount of membership dues.

As noted above, the Congressional Charter provides that “[t]o the extent provided in the constitution and bylaws, the board of directors shall have the powers of the Council and manage the activities of the corporation between meetings of the Council.”²⁴ [Exc. 115] GSUSA’s Constitution and Bylaws, in turn, grant expansive responsibility and authority to the National Board. Specifically, the Constitution states in Article X:

The affairs of the corporation between sessions of the National Council shall be managed by a National Board of Directors, except that the Bylaws may provide for an Executive Committee to exercise the powers of the National Board in the interim between its meetings.

[Exc. 93 at Art. X, § 1]

1. Under D.C. law, “the affairs of the corporation” include the power to determine the amount of membership dues.

“The affairs of the corporation” is not defined in GSUSA’s Constitution. Under the applicable D.C. law, “[i]n construing a contract” or, in this case, governance documents, “the court must determine what a reasonable person in the position of the parties would have thought the disputed language meant.”²⁵ “A court must honor the

²⁴ 36 U.S.C. § 80303(b)(1).

²⁵ *Fort Lincoln Civil Ass’n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1064 (D.C. 2008) (internal quotation marks and citation omitted).

intentions of the parties as reflected in the settled usage of the terms they accepted in the [governance documents]”²⁶

Because GSUSA is a D.C. chartered corporation, its law is a proper source for determining the settled usage of terms in the Constitution. The term “[t]he affairs of the corporation” is defined in the D.C. Nonprofit Corporation Act. The Act, structured after the 2008 Model Nonprofit Corporation Act, states that a nonprofit corporation’s “affairs” include imposing membership dues:

Unless its articles of incorporation provide otherwise, every nonprofit corporation shall have . . . the same powers as an individual to do all things necessary or convenient to carry out **its affairs** including the power to:

....

(14) Impose dues, assessments, admission, and transfer fees on its members[.]^[27]

GSUSA’s Constitution does not provide otherwise or withhold from the National Board the authority to set the amount of membership dues. Accordingly, D.C. law compels the conclusion that the Constitution’s broad delegation in Article X to the National Board to manage the affairs of the corporation includes the shared authority to set the amount of membership dues.

²⁶ *Id.* (internal quotation marks and citation omitted).

²⁷ D.C. Code § 29-403.02(14) (emphasis added); *see also* Model Nonprofit Corporation Act § 3.02(14) (3d ed. 2008).

2. **GSUSA’s interpretation of the plain language of the governance documents is consistent with well-accepted corporate principles regarding the board of directors’ role.**
 - a. **Managing the affairs of the corporation should be construed broadly, with only expressly articulated exceptions removed from the broad grant of authority.**

A broad interpretation of the National Board’s authority to “manage the affairs of the corporation” is consistent with well-accepted principles of corporate governance.

“The phrase ‘business and affairs of every corporation’ has been interpreted to grant extremely broad powers to the board of directors.”²⁸

Under most statutes, the directors are entrusted with the control and management of the business of the corporation. This empowers the directors to do whatever is necessary to manage the ordinary business of the corporation, subject to any express restrictions in the charter, bylaws, or the general law. The directors possess this authority without consulting with or obtaining the consent of the shareholders.^[29]

Unless the governance documents *expressly* restrict the National Board’s authority to act under certain circumstances, the broad grant of responsibility and authority to manage the affairs of the corporation permits the National Board to take action regarding all matters related to the business of the corporation.³⁰ Otherwise, the Constitution and Bylaws would necessarily have to include a list of every single item regarding which the Board is authorized to act. Such a requirement would be wholly impractical given the expansive range of matters necessary to the operation of the corporation. That is precisely why the

²⁸ Steven M. Haas, *Corporate Governance: Law and Practice* § 4.01 (2018).

²⁹ 2 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 505 (database updated Sept. 2018) (footnotes omitted).

³⁰ *See id.*; Haas, *supra*, § 4.01.

Constitution instead includes a broad grant of authority allowing the National Board to act on the corporation's behalf in every respect except those matters expressly reserved to the National Council.

Nowhere do the GSUSA governance documents expressly limit the National Board's authority to establish the amount of membership dues.³¹ To the contrary, the governance documents include a grant of the authority to set the amount of dues, as will be discussed later.³²

b. It is customary for a board of directors to exercise broad authority over the corporation's operations.

The GSUSA governance documents' broad grant of authority to the National Board is not unusual; to the contrary, it is the standard manner in which corporations operate. "It is universally recognized that the board of directors is vested with the ultimate power and duty to manage the business of the corporation."³³

As an example of how common it is for the board of directors to hold broad authority over a corporation's operations, the D.C. Nonprofit Corporation Act, modeled after the Model Nonprofit Corporation Act, mandates that "[a] nonprofit corporation shall have a board of directors" and that

³¹ For further discussion, see §§ I(C)(1), II(B), *infra* (discussing the governance documents' provisions regarding credentials, requirements, and procedures) & § II(E), *infra* (discussing Art. V, § 5 of the Constitution).

³² See § I(C), *infra*.

³³ Haas, *supra*, § 4.01.

[e]xcept as otherwise provided in § 29-406.12,^[34] all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors.^[35]

The general rule that a corporation’s affairs are managed by the board of directors is not unique to nonprofits. As with the D.C. Nonprofit Corporation Act, the D.C. Business Corporation Act, modeled after the Model Business Corporation Act, mandates that “each corporation shall have a board of directors” and that “[a]ll corporate powers” are vested with the board, and all “activities and affairs of the corporation” shall be managed by the board.³⁶

GSUSA’s interpretation of the governance documents is consistent with these fundamental corporate principles. Farthest North’s interpretation, by contrast, would strip the National Board of the authority to fulfill its operational responsibility when the National Council is not in session. Under GSUSA’s interpretation, the National Board could not act unless it could identify in the Constitution a provision that expressly authorized its action. Given the scope of the National Board’s operational responsibility,

³⁴ The referenced Section 29-406.12 provides that “[s]ome, but less than all, of the powers, authority, or functions of the board of directors . . . may be vested by the articles of incorporation or bylaws in a designated body.” D.C. Code § 29-406.12(a) (emphasis added).

³⁵ D.C. Code § 29-406.01(b).

³⁶ D.C. Code § 29-306.01(a), (b); *see also* Model Business Corporation Act § 8.01 (2006); *Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 151 (D.C. 2000) (“The directors of a corporation and not its shareholders manage the business and affairs of the corporation.” (footnote omitted) (quoting *Levine v. Smith*, 591 A.2d 194, 200 (Del. 1991))).

which the National Council cannot functionally perform given its size and infrequent meetings, such an interpretation would eviscerate GSUSA's ability to operate.

3. The National Board's broad authority does not negate the National Council's powers, but instead allows for the corporation to operate effectively between sessions of the National Council, with the National Board remaining accountable to the National Council.

The National Council carefully crafted the Constitution to balance the desirable qualities of broad input and participation from across the Girl Scout Movement with the necessary agility to timely address operational issues. First, the Constitution provides for a National Council consisting of up to 1,500 members, ensuring broad representation. [Exc. 91 at Art. IV, §§ 4-5] The Constitution provides that the Council's regular meetings occur once every three years, as is practical when up to 1,500 members must gather for each such meeting. [Exc. 92 at Art. V, § 2] The National Council has broad powers, including the powers at its triennial sessions, to hold elections, amend the Constitution, and establish requirements for credentials. It also determines "the general lines of policy of the Girl Scout Movement and program" and addresses whatever other matters are brought before it. [Exc. 92 at Art. V, § 2]

The Constitution does not charge the National Council with operational responsibilities. While the National Council retains complete control over the composition of the National Board, it is the National Board that is charged with managing the affairs of the corporation between sessions of the National Council. [Exc. 93 at Art. X, § 1] In contrast to the 1,500-member National Council, the Constitution structured the National Board to be relatively small and nimble, consisting of 30

members. [Exc. 94 at Art. X, § 2] The Bylaws require that the National Board meet at least twice a year, though in reality it meets more frequently. [Exc. 98 at Art. 1, § 1] As permitted by the Constitution, the Bylaws further establish an Executive Committee of up to 11 members, which meets on an as-needed basis, and is tasked with “exercis[ing] the authority of the National Board between meetings of the National Board.” [Exc. 93 at Art. X, § 1; Exc. 100 at Art. IV, §§ 1-3] The Constitution and Bylaws demonstrate a recognition of the necessity of allocating authority to a smaller, active board to ensure the organization could operate on a daily basis.

While the National Board is authorized to manage the affairs of the corporation between sessions of the National Council, the National Council clearly retains control of GSUSA. All 30 National Board members are elected by the National Council. [Exc. 94-95 at Art. X, §§ 2-3, Art. XI, §§ 1-2] Thus, all National Board members are directly accountable to the National Council. [Exc. 91 at Art. IV, § 4] In addition, the majority of the 11-member Executive Committee is comprised of individuals in positions elected, either directly or indirectly, by the National Council: the GSUSA President, the two Vice Presidents, the Secretary, the Treasurer, the Chair of the National Board Development Committee, and the International Commissioner. [Exc. 95 at Art. XII, § 3; Exc. 100 at Art. III & IV, § 1] Finally, the National Council elects every member of the National Board Development Committee, the committee responsible for development of the National Board and sourcing and nominating the next set of directors. [Exc. 95 at Art. XII, § 3] This ensures that the National Board will continue to carry out the “general lines of policy of the Girl Scout Movement” as it directs. [Exc. 92 at Art. V, § 2]

Correctly interpreting the National Council's grant of authority to the National Board to manage all the affairs of the corporation, except those specifically withheld by the National Council, between sessions of the National Council, does not negate the National Council's powers. Rather, it allows the corporation to function between the National Council's triennial meetings, with the full assurance that the National Board remains accountable to the National Council.

C. GSUSA's governance documents also expressly grant authority to the National Board to set the amount of membership dues.

1. The Constitution expressly grants authority to the National Board to establish and issue procedures, interpretations, and standards regarding membership requirements.

In addition to the broad grant of authority to the National Board to manage the affairs of the corporation between sessions of the National Council, Article VIII of the Constitution, which pertains to credentials, contains an express grant of authority to the National Board to set the amount of membership dues. [Exc. 93 at Art. VIII]

“Credentials” of the organization include the Girl Scout council charter, the Girl Scout license, the federal certificate (not presently in use), and, of relevance here, the certificate of membership. [Exc. 81 at ¶ 10; Exc. 93 at Art. VIII, § 1; Exc. 107] Article VIII provides:

The National Council shall establish requirements for certificates of membership, local council charters, and all other credentials.

The National Board of Directors shall administer the requirements for the credentials established by the National Council, and may establish standards and issue standards, procedures, and interpretations regarding such requirements provided such standards, procedures, and interpretations are

consistent with the requirements established by the National Council.

[Exc. 93 at Art. VIII, §§ 2-3] In short, the National Council has the authority to establish “requirements” for “credentials” of the organization, including the certificate of membership. The National Board, in turn, has the express authority to establish and issue “standards, procedures and interpretations” regarding those “requirements.”³⁷ [*Id.*]

The National Council’s requirements regarding the credential of the certificate of membership (Membership Requirements) are reflected in the Constitution and collected in the “CREDENTIALS” section of the Blue Book in a subsection entitled “MEMBERSHIP REQUIREMENTS.” [Exc. 89 at Preamble; Exc. 93 at Art. IX, 107] The Membership Requirements include having paid annual or other applicable membership dues.³⁸ [Exc. 107] Importantly, they do not include an obligation to pay a

³⁷ Farthest North inappropriately focuses solely on the National Board’s authority to “administer the requirements established by the National Council,” ignoring the Board’s additional express authority to “establish standards and issue standards, procedures, and interpretations regarding such requirements[.]” [Exc. 93 at Art. VIII, §§ 2-3; *see* App. Br. 18-20]

³⁸ The Membership Requirements, in full, are as follows:

Membership as a Girl Scout is granted to any girl who:

- Has made the Girl Scout Promise and accepted the Girl Scout Law;
- Has paid annual, or other applicable membership dues;
- Meets applicable membership standards.

Membership as a Girl Scout adult is granted to any person who:

- Accepts the principles and beliefs as stated in the Preamble of the Constitution;
- Has paid annual, lifetime, or other applicable membership dues;
- Meets applicable membership standards.

[Exc. 107 (emphases in original)]

specific amount of dues. [*Id.*] The specific amount of dues falls within the National Board’s authority to “establish standards and issue standards, procedures, and interpretations regarding such requirements provided such standards, procedures, and interpretations are consistent with the requirements established by the National Council.” [Exc. 93 at Art. VIII, § 2] Establishing the specific amount of dues is wholly consistent with the Membership Requirement that a girl or adult member “pa[y] annual, or other applicable membership dues.” [Exc. 107]

Nothing in the GSUSA governance documents indicates that the amount of membership dues is a Membership Requirement. To the contrary, the Credentials Section of the Blue Book³⁹ confirms that it is not. As delineated above, the Membership Requirements are expressly set forth in the Blue Book and do not include the amount of membership dues. The actual dollar amount of membership dues, along with other standards and procedures for the general requirement to pay membership dues (such as timing for dues, process for dues, and the like) is separately stated in another section of

³⁹ The Blue Book is part of the corporation’s governance documents, adopted in accordance with the Bylaws, which expressly require that it be published. [Exc. 102 at Art. VIII; *see also* Exc. 116 at § 80304(1) (Congressional Charter providing that “[t]he corporation may . . . adopt and amend a constitution, bylaws, and regulations[.]”)] It consists of the Congressional Charter, Constitution, Bylaws, and Policies of GSUSA, Credentials, and Criteria and Standards for an Effective Girl Scout Council. [Exc. 85-116] “[A]rticles of incorporation, bylaws, and covenants are correlated documents that are construed together when interpreting the governing the documents of a corporation.” 7A Fletcher, *supra*, § 3640; *see also, e.g.*, D.C. Code § 29-401.02(2) (“‘Bylaws’ means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.”).

the Blue Book labeled “MEMBERSHIP DUES AND PROCEDURES FOR REGISTRATION.” [*Id.*] Therefore, the National Board is expressly granted authority to establish and issue these items, including the amount of dues.

Under the applicable D.C. law, in construing GSUSA’s governance documents, “the court must determine what a reasonable person in the position of the parties would have thought the disputed language meant.”⁴⁰ Here, “a reasonable person in the position of the parties”⁴¹ would be familiar with the GSUSA governance documents, including the contents of the Blue Book required by the corporation’s Bylaws. “A court must honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the [governance documents]”⁴² The Blue Book reflects the settled usage of the relevant terms, as understood by the parties, including the distinction between “requirements” and “standards, interpretations and procedures.” Its usage should therefore be applied as GSUSA has done. Even were the Blue Book not part of GSUSA’s governance documents, under D.C. law, the Court can ascertain the meaning of an undefined term by using a definition that is “reasonable under the circumstances,” without rendering the documents ambiguous.⁴³ Here, it is reasonable to consider the Blue Book’s Credentials section to ascertain the meaning of the terms at issue.

⁴⁰ *Fort Lincoln Civil Ass’n, Inc.*, 944 A.2d at 1064 (internal quotation marks and citation omitted).

⁴¹ *Id.* (internal quotation marks and citation omitted).

⁴² *Id.* (internal quotation marks and citation omitted).

⁴³ *Aziken*, 70 A.3d at 223.

In sum, the general obligation to pay membership dues is a Membership Requirement established by the National Council. But the issuance of any “standards, procedures, and interpretations” regarding the general Membership Requirement to pay membership dues, as well as the administration of that Requirement, are expressly within the authority of the National Board under Article VIII. Therefore, the National Board has the shared authority to set the specific amount of dues.

2. The Constitution and Bylaws provide express grants of authority to the National Board to manage the finances of the corporation, including collection of contributions.

In addition to the National Board’s general grant of responsibility and authority to manage the affairs of the corporation between meetings of the National Council, and its express authority to establish standards, procedures, and interpretations related to the requirements set by the National Council, GSUSA’s Constitution and Bylaws authorize the Board to manage the finances of the corporation. [Exc. 96 at Art. XIV; Exc. 101 at Art. VI] The GSUSA Treasurer, who serves as a member of the National Board, is tasked with “provid[ing] effective stewardship, control, and oversight of the corporation’s finances,” and “execut[ing] directives of the National Board in connection with all financial issues including but not limited to . . . the receipt, custody, disbursement, and borrowing of money[.]” [Exc. 95 at Art. XI, § 2; Exc. 99 at Art. II, § 1(E)(i)-(ii)]

The National Board’s broad authority over the finances of the corporation includes the specific shared authority to authorize financial contributions. Article XIV of the Constitution, entitled “FINANCES,” provides:

Contributions for the purposes of this corporation shall be collected only as authorized by the National Council or the National Board of Directors.

Debts of the corporation shall be incurred only as directed by resolution of the National Council or the National Board of Directors.

[Exc. 96 at Art. XIV, §§ 1-2]

Financial contributions to the corporation necessarily include the dues contributed by its members. Nothing in the governance documents provides otherwise, and the language of Article XIV is consistent with this interpretation. Article XIV, § 1 discusses “collect[ion]” of “contributions,” a term in accord with GSUSA’s collection of membership dues as amounts owed to the corporation. [Exc. 96 at Art. XIV, § 1]

Contributions in this context are not limited to, for example, charitable donations. This is a general article regarding the finances of the organization. The inclusion of a section in Article XIV involving “contributions,” in juxtaposition with the following section in Article XIV involving “debts,” confirms that Article XIV encompasses the two opposing components of the corporation’s finances as a whole: (1) all accounts receivable, credits, and funds received by the corporation (contributions); and (2) all accounts payable or financial obligations of the corporation (debts). [Exc. 96 at Art. XIV, §§ 1-2]

Membership dues are a substantial portion of the financial contributions collected by

GSUSA.⁴⁴ Article XIV of the Constitution empowers the National Board to authorize their collection.

The National Board's responsibility and authority to manage the finances of the corporation – including the authority to establish the amount of membership dues – is also consistent with the general fiduciary duties boards have to manage the affairs of the corporation.⁴⁵ Membership dues are a substantial portion of GSUSA's budget, and the ability to make decisions regarding revenues in order to sustain the organization's operations is necessary to the National Board's ability to carry out its fiduciary responsibilities.

The Constitution makes a broad grant of authority and responsibility to the National Board to manage the affairs of the corporation between sessions of the National Council and a specific grant of authority to the National Board to establish procedures, standards, and interpretations regarding Membership Requirements and to authorize the collection of financial contributions. The Constitution and Bylaws, therefore, clearly endowed the National Board with shared authority to establish the amount of membership dues.

⁴⁴ [See Exc. 81 at ¶ 6 (“Membership fees help GSUSA sustain and develop exceptional programs for girls and implement innovations to enhance the girl and volunteer experiences nationwide.”)]

⁴⁵ 3 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 837.50, Westlaw (database updated Sept. 2018) (“Directors and officers stand in a fiduciary relationship to the corporation . . .”).

II. None of Farthest North’s arguments undermine the superior court’s decision.

A. Farthest North attacked the superior court’s decision by misrepresenting its holding.

Tellingly, Farthest North attacks the superior court’s decision by mischaracterizing it. Focusing solely on the superior court’s discussion of GSUSA’s Congressional Charter, Farthest North argues that “[t]h[e] fundamental structure of the organization and its governance documents . . . was misinterpreted and misunderstood by the superior court.” [App. Br. 16 (quoting Exc. 145)] Farthest North asserts that “[t]he superior court’s Order is premised on . . . fundamental misinterpretations of the charter and, as a result, its misunderstanding of the relationship between the National Council and the Board.” [App. Br. 17]

But Farthest North misstates the superior court’s holding. The court’s holding is not premised on interpreting just the Congressional Charter. The superior court in fact analyzed and discussed all of GSUSA’s governance documents. And it did so correctly. In addition to examining the Congressional Charter (regarding which the superior court was entirely correct in its conclusion that “[t]here is no provision of the Congressional Charter which reserves the authority to set membership dues solely to the National Council”), the superior court considered at length GSUSA’s governance documents as a whole, including its Constitution, Bylaws, and Blue Book. [Exc. 143-51] Following its in-depth analysis of those documents, the superior court reached the correct conclusion that “the plain meaning of GSUSA’s governance documents provide the National Board **and** the National Council with the authority to set membership dues.” [Exc. 151 (emphasis added)]

B. Farthest North misuses the central terms “credentials,” requirements,” “standards,” and “procedures.”

Farthest North uses the terms “credentials,” “requirements,” “standards,” and “procedures,” all of which are terms with specific meaning in the context of GSUSA’s governance documents, without regard for the way those terms are specifically set forth in the governing documents. Under D.C. law “[a] court must honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the contract,” or, in this case, the governance documents.⁴⁶

Nowhere is Farthest North’s mischaracterization of those terms more apparent than in its statement of the issue presented for this Court’s review. Farthest North asserted that the issue presented is:

The Girl Scouts of the USA (GSUSA) charter established that the Board of Directors has only those powers “provided in the constitution and bylaws.” The GSUSA constitution provides that the National Council “shall establish requirements for certificates of membership.” It further provides that the Board shall “administer” those requirements and may “establish standards, procedures, and interpretations” for those requirements provided they are “consistent with the requirements established by the National Council.” Did the superior court err in holding that the Board can establish membership requirements?

[App. Br. 1] But the superior court did not “hold[] that the Board can establish membership requirements.” [*Id.*] Rather, the superior court correctly concluded that “the National Council has the ability to establish the requirement that Girl Scouts pay a membership fee,” and that “the National Board is vested with the authority to ‘issue

⁴⁶ *Fort Lincoln Civil Ass’n, Inc.*, 944 A.2d at 1064 (internal quotation marks and citation omitted).

standards, procedures, and interpretations’ regarding the requirement for Girl Scout members to pay membership dues,” which includes the amount of such dues. [Exc. 150-51]

While it serves Farthest North’s purpose to obfuscate and conflate these terms, they have very specific meanings for GSUSA and in its governance documents. This is spelled out in the Constitution and elsewhere in the Bylaw-required Blue Book. The Constitution states that a certificate of membership is a “credential.” [Art. VIII, § 1] The National Council has established general “requirements” for that credential (Membership Requirements). One of those general Membership Requirements is the obligation to pay membership dues. None of the general Membership Requirements involve the specific amount of those membership dues.⁴⁷

C. Farthest North mischaracterizes GSUSA’s argument regarding the National Board’s role.

Just like it mischaracterized the superior court’s decision before attacking the strawman it created, so Farthest North mischaracterizes GSUSA’s position regarding the National Board’s role. Farthest North asserts:

Applying the Board’s interpretation,^[48] the day after the National Council establishes definitive membership requirements (or establishes any other policy of the organization for that matter), the Board could reverse it and take whatever action it wants so long as it is acting “between sessions of the National Council.” Under this theory, the National Council becomes all show, a sham, and its actions are rendered meaningless and toothless.

⁴⁷ See also § I(C)(1), *supra*.

⁴⁸ It is not “**the Board’s** interpretation,” but GSUSA’s interpretation. See § II(F), *infra*.

[App. Br. 22]

First, GSUSA is not arguing that the National Board has the authority to “reverse” a “definitive membership requirement[]” established by the National Council. [*Id.*] It is not arguing the National Board has any authority over Membership Requirements of any kind, “definitive” or otherwise. But unlike the requirement to pay membership dues, the amount of the dues is not a Membership Requirement. The National Board’s setting of the amount of dues is entirely consistent with the National Council-established Membership Requirement of the obligation to pay dues.⁴⁹

Second, the National Board is accountable to the National Council in that the National Council elects the National Board and the majority of its principal officers. Thus, it always retains the power to determine who will sit on the National Board.

Third, as stated previously, the National Council has shared authority to set the amount of membership dues. Therefore, if it disagreed with the amount of dues that were set by the National Board between sessions, it would have the power to vote to change those amounts at its next National Council session. It has not done so.

D. Article V, § 5 of the Constitution does not support Farthest North’s position.

Farthest North relies on the language of Article V, § 5 of the Constitution in arguing that the National Council has the exclusive authority to establish the amount of membership dues, asserting that it “stamp[s] an exclamation mark on the National

⁴⁹ See § I(C)(1), *supra*.

Council’s principal role in establishing membership dues requirements[.]”⁵⁰ [App. Br. 20] Farthest North’s reliance on Section 5 is misplaced.

Article V is the article governing “Sessions of the National Council.” [Exc. 92 at Art. V] Section 5, entitled “Voting,” provides:

Each member present in person at the National Council shall be entitled to one (1) vote. Decision on membership dues shall require a majority of votes cast. All matters shall be determined by a majority vote of the members present and voting, unless otherwise provided by this Constitution.

[Exc. 92 at Art. V, § 5]

GSUSA wholeheartedly agrees that the National Council can, and has, increased dues during its regular sessions. Article V, § 5 simply states that a simple majority vote is all that is needed when the National Council does so. This is a lesser requirement than, for instance, amending the Constitution, which requires a two-thirds vote. [Exc. 93 at Art. IX]

Nowhere in Article V, § 5 is there an exclusive grant of authority to the National Council to set the amount of membership dues. If the National Council wanted to create an exclusive grant of authority to set membership dues, it could have done so. It did not, and this Court should not add words to the Constitution that the National Council has not included. Reasonably read, in the context where it appears, Article V, § 5 means no more than what it plainly says: a “[d]ecision on membership dues [made by the National

⁵⁰ Once again, Farthest North plays fast and loose with the term “requirements.” It is uncontested that the National Council plays the principal role in establishing Membership Requirements, but the **amount** of dues paid is not a Membership Requirement. *See* §§ I(C)(1), II(B), *supra*.

Council during sessions of the National Council] shall require a majority of votes cast.”

[Exc. 92 at Art. V, § 5]

E. Farthest North’s argument that the National Board is the National Council’s “agent” is inconsistent with the corporate structure established by the governance documents.

Farthest North asserts that “[t]he Board’s argument^[51] . . . ignores basic concepts of agency,” contending that “[t]he congressional charter and constitution establish the Board as the agent of the National Council[.]” [App. Br. 23] But the Congressional Charter actually explicitly distinguishes the National Board and “agents.” In § 80303(a)(2), the Congressional Charter provides that the “Council may adopt and amend a constitution and bylaws and elect *a board of directors, officers, and agents.*”⁵² [Exc. 115 (emphasis added)] Rather than establishing the National Board as the agent of the National Council, the Congressional Charter identifies it as something separate from the corporation’s agents.

Moreover, Farthest North cites no authority in support of its novel and nonsensical argument. The relationship spelled out in GSUSA’s governance documents includes a general grant of authority to the National Board consistent with the broad powers boards generally hold. As such, like other boards, the National Board has its own governing power and authority. There is no basis for treating it as an agent of the National Council.⁵³

⁵¹ It is not “the Board’s argument,” but GSUSA’s argument. *See* § II(F), *infra*.

⁵² 36 U.S.C. § 80303(a)(2) (emphasis added).

⁵³ While general principles of the law of agency govern the authority of agents of corporations, such principles generally apply to the individual agents – such as the

(continued . . .)

Regardless, even if the National Board were the National Council’s “agent,” the National Board has not acted in disregard of “lawful instructions provided by the principal[.]” [App. Br. 24] The mere fact that the National Council previously voted to set membership dues at \$12.00, as was its right under the shared authority structure, did not translate into “instructions” that such membership dues could never be increased or decreased at any later date, but were required to remain at \$12.00 in perpetuity. Increasing the amount of membership dues to address changing financial needs of the organization was well within the National Board’s shared authority.

(. . . continued)

corporate officers – authorized by the corporation to act on its behalf in relation to third parties, not to the actions of the governing bodies of the corporation in relation to each other. *See, e.g.,* 2 William Meade Fletcher, *Fletcher Cyclopaedia of the Law of Corporations* §§ 434, 437, 466, Westlaw (database updated Sept. 2018). This has been the law of corporate agency for more than a century. *See Russell v. Wash. Sav. Bank*, 23 App. D.C. 398, 407 (D.C. 1904) (“A corporation can only act by agents, and its duly elected officers are within the scope of their respective duties, its agents to deal with third parties. Their duties may be prescribed or limited by the charter of the incorporation or by by-laws and regulations of the body corporate; but in the absence of specific limitations brought home to the knowledge of those who deal with them, or of which those who deal with them are bound to take notice, the officers of a corporation, as its agents, are authorized to bind the corporation to third parties so long as they act within the ordinary scope of their duties. While the board of directors or trustees, or by whatever name it may be called, is the usual governing body of all private corporations and entitled to direct and control all its business, great or small, and to give direction to its other officers, yet the president and other officers, and not the board of directors, are those who are usually brought into contact with third parties in the conduct of the business of the organization; and custom and usage, and the necessities of the social order, demand that these executive officers should be regarded as entitled to bind the organization in all matters which such organizations are accustomed to transact through such officers.”).

F. Extrinsic evidence need not be considered, but if it is considered, it supports GSUSA's position.

Farthest North makes much of the fact that the superior court considered extrinsic evidence. But the superior court only did so in the alternative, taking a “belt and suspenders” approach to its decision. The superior court correctly held that the governance documents clearly and unambiguously support GSUSA’s interpretation, stating: “The court hereby finds that the plain meaning of GSUSA’s governance documents provide the National Board **and** the National Council with the authority to set membership dues.” [Exc. 151 (emphasis added)] But the superior court added one more layer to its decision, finding that even if extrinsic evidence were considered, that evidence also confirms GSUSA’s interpretation of the governance documents. [Exc. 151-52]

The National Council met in 2014 (after the National Board’s 2012 decision to increase membership) and in 2017 (after both of the National Board’s decisions to increase membership dues), but it did not act to lower the amount of membership dues established by the National Board. [See Exc. 4 at ¶ 21 (noting that 2008 was a year in which the National Council met); Exc. 92 at Art. V § 1 (providing that the National Council meets triennially); Exc. 152] As the superior court correctly found:

It is an uncontested fact that the National Council has the express authority to set the amount of membership dues. In addition, it is similarly uncontested that the National Council has met at least twice since the National Board first increased membership dues in 2012. Despite their express authority regarding this issue, the National Council has not addressed the issue of whether the National Board has such authority to increase membership dues or voted to restore membership

dues to the previously accepted \$12.00 rate. Accordingly, the record indicates that the National Council accepts that the National Board has shared authority to set membership dues.

[Exc. 152]

Significantly, it is *not* the National Council that has brought this suit challenging the National Board’s authority. Rather, it is a single local council and that single local council’s leadership (who are only two of the up to 1,500 members of the National Council). It is no accident that Farthest North repeatedly – and erroneously – refers to Appellee as “the Board” throughout its brief.⁵⁴ The Defendant/Appellee in this lawsuit is **not** the National Board. It is the Girl Scouts of the United States of America, a corporation governed by the National Council and the National Board. Farthest North has elected to label the Defendant/Appellee as “the Board” because it is antithetical to Farthest North’s position in this litigation to acknowledge that its claims inherently run against all of GSUSA, including the National Council.

In its own extrinsic evidence argument, Farthest North asserts that “[t]he verified complaint contains undenied allegations of fact that can only be understood as confirming the National Council’s exclusive role in establishing membership dues requirements.”

[App. Br. 33] “Undenied” is different, however, from “admitted” or “uncontested.”

Farthest North argues: “No answer was filed to the verified complaint; thus, the allegations of the complaint stand undenied and admitted.” [App. Br. 2 n.3] In so

⁵⁴ [See, e.g., App. Br. 20 (“[T]he Board argued in the court below that Article X, Section 1 of the constitution authorizes its independent assessment of membership dues.”); *id.* at 22 (“The Board’s boundless interpretation . . .”); *id.* at 23 (“The Board’s argument . . .”)]

arguing, Farthest North relies on Alaska Rule of Civil Procedure 8(d), which provides: “Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading.”⁵⁵ GSUSA has not yet filed its responsive pleading – its Answer. Instead, it filed a timely Rule 12(b)(6) motion to dismiss. [App. Br. 11]

The Alaska Rules of Civil Procedure require that a Rule 12(b)(6) motion to dismiss “shall be made before pleading if a further pleading is permitted.”⁵⁶ The superior court did not rule on the Rule 12(b)(6) motion to dismiss until the same date it granted GSUSA’s cross-motion for summary judgment; thus, GSUSA’s requirement to file its responsive pleading was never triggered. [Exc. 138, 153] GSUSA has not admitted allegations set forth in the Complaint in response to which it filed a timely motion to dismiss. Farthest North’s argument to the contrary is meritless.

Regardless, even if Farthest North’s averments were considered, they do not change the analysis. The averment that the National Council previously established dues amounts merely confirms that the National Board and the National Council share the authority to do so. [See App. Br. 33] GSUSA so stipulates. And Farthest North’s invocation of the voting history of Article V is incomplete and inaccurate, but most of all irrelevant given that the final language that was ultimately approved in Article V is simply that if the National Council votes on the amount of membership dues, a simple majority is sufficient.

⁵⁵ Alaska R. Civ. P. 8(d).

⁵⁶ Alaska R. Civ. P. 12(b).

CONCLUSION

GSUSA's governance documents establish that the National Board shares with the National Council the authority to set the amount of membership dues. Accordingly, GSUSA asks this Court to affirm the superior court's dismissal of Farthest North's claims.

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Respectfully submitted,

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