

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FARTHEST NORTH GIRL SCOUT )  
COUNCIL, RUSS SHARPTON, AND )  
SUELLEN NELLES, )  
Appellants, )

v. )

GIRL SCOUTS OF THE UNITED )  
STATES OF AMERICA, )  
Appellee. )

No. S-17144

Superior court: 4FA-17-01413CI

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

**BRIEF OF APPELLANTS**

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# AUTHORITIES PRINCIPALLY RELIED ON

## CONGRESSIONAL CHARTER OF GIRL SCOUTS OF THE UNITED STATES OF AMERICA<sup>1</sup>

(36 U.S.C. § 80301 et seq.)

### § 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.

...

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

. . .

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<sup>1</sup> A complete copy of the charter is available at Exc. 22–23.

**CONSTITUTION  
OF  
GIRL SCOUTS OF THE UNITED STATES OF AMERICA<sup>2</sup>**

. . .

**RESPONSIBILITY FOR THE MOVEMENT AND THE DEMOCRATIC  
PROCESS**

The ultimate responsibility for the Girl Scout Movement rests with its members. We govern by an efficient and effective democratic process that demonstrates our leadership in a fast-changing world.

. . .

**ARTICLE IV THE NATIONAL COUNCIL**

1. The membership of this corporation shall consist of the members of the National Council of Girl Scouts of the United States of America, and the corporation in meeting assembled shall be known as the National Council.
  
2. 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.

. . .

**ARTICLE V SESSIONS OF THE NATIONAL COUNCIL**

1. There shall be a regular session of the National Council held triennially at such time and place as determined by the National Board of Directors. . . .
  
2. The National Council at its sessions 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

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2 A complete copy of the constitution is available at Exc. 24–32.



considering and acting upon proposals directed toward the fostering and improvement of Girl Scouting, by receiving and 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.

. . .

5. 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.

. . .

#### **ARTICLE VIII CREDENTIALS**

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

2. 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.

. . .

#### **ARTICLE IX MEMBERSHIP DUES**

Every person accepting the principles of the Girl Scout Movement and desiring to be a member of the Girl Scout Movement in the United States of America shall pay annual, lifetime, or other applicable membership dues to Girl Scouts of the United States of America.

## **ARTICLE X NATIONAL BOARD OF DIRECTORS**

**1.** 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.

. . .

**6.** In the event of an emergency which makes it impossible for the National Council to meet, all the powers of the National Council, except the conducting of elections, shall, to the extent permissible by law, be automatically conferred on the National Board of Directors until such time as a session of the National Council can be held. . . .

## **STATEMENT OF JURISDICTION**

Plaintiffs appeal to the Alaska Supreme Court from the final judgment of the superior court entered and distributed on June 6, 2017. [Exc. 154–55] Notice of appeal was timely filed on July 3, 2017. This Court has jurisdiction over this appeal pursuant to AS 22.05.010(a).

## **ISSUE PRESENTED**

The Girl Scouts of the USA (GSUSA) charter establishes 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?

## STATEMENT OF FACTS

### A. The parties and the GSUSA charter.

Girl Scouts of the United States of America, or GSUSA, is a District of Columbia nonprofit corporation. [Exc. 4]<sup>3</sup> It has two governing bodies, the National Council and the Board of Directors.<sup>4</sup> [Exc. 2–3]

The National Council is a 1500-member body composed primarily of delegates elected by local councils from their local members.<sup>5</sup> Sessions of the National Council are held every three years.<sup>6</sup> The Board consists of 25 members elected by the National Council, plus four corporate officers.<sup>7</sup> The Board meets at least twice per year.<sup>8</sup>

The present dispute addresses the respective powers and authority of these two bodies in connection with establishing annual dues for girl and adult members of the Girl Scout Movement. Plaintiffs, collectively, are advancing the interests of the GSUSA National Council. The corporate defendant is advancing the interests of the GSUSA Board of Directors. To avoid confusion, therefore, references to “GSUSA” throughout

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3 With limited exceptions, the facts recited here come from the verified complaint. [Exc. 1–42] No answer was filed to the verified complaint; thus, the allegations of the complaint stand undenied and admitted. *See* Alaska Civ. Proc. R. 8(d) (averments in a pleading are admitted when not denied).

4 Charter at § 80303; Constitution (“Const.”) at Art. IV and X. Pertinent provisions of the charter and constitution are set out *supra* at vi–ix. The complete charter and constitution are available at Exc. 22–23 and 24–32, respectively.

5 Const. at Art. IV, § 4.

6 *Id.* at Art. V, § 1.

7 *Id.* at Art. X, §§ 2, 3.

8 Bylaws at Art. I, § 1 [Exc. 98].

this brief are to the organization as a whole, inclusive of its National Council, Board, and members. When referencing the specific interests, arguments, and behavior of the corporate defendant in this case, this brief refers to the “Board of Directors” or the “Board.”

Farthest North Girl Scout Council (“Farthest North”) is an Alaska nonprofit corporation with its office located in Fairbanks, Alaska. [Exc. 1] It is the officially chartered Girl Scout council responsible for delivering Girl Scouting to its members in Fairbanks and all of Alaska north of the 63<sup>rd</sup> parallel. [Exc. 2] It has approximately 1,200 girl and adult members. [Exc. 2]

Russ Sharpton is the chair of Farthest North’s volunteer board of directors. [Exc. 1] Suellen Nelles is Farthest North’s executive director. [Exc. 2] Sharpton and Nelles are individual members of the Girl Scout Movement. [Exc. 3] As members of the Movement, they each pay annual dues to GSUSA, just like all other girl and adult members. [*Id.*] Sharpton and Nelles are also delegates to the National Council. [*Id.*] As such, they are not just dues paying members of the Girl Scout Movement, they are members of the nonprofit corporation, GSUSA, itself.<sup>9</sup> [*Id.*]

GSUSA was incorporated under D.C. law in 1915. [R. 22] Congress conferred a congressional charter on GSUSA in 1950. [*Id.*] This congressional charter stands as GSUSA’s foundational governance document.

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9 Const. at Art. IV, § 1 (“The membership of the corporation shall consist of the members of the National Council of [GSUSA] . . .”).

The charter created the National Council.<sup>10</sup> The charter authorizes the National Council to adopt and amend a constitution.<sup>11</sup> The charter also authorizes the National Council to elect a board of directors.<sup>12</sup>

The charter establishes that, between meetings of the National Council, the board of directors shall have the powers of the National Council and manages the activities of the corporation “[t]o the extent provided in the constitution and bylaws.”<sup>13</sup> To what extent the constitution and bylaws provide for the Board to impose membership dues increases on the GSUSA membership is the heart of this matter.

**B. The GSUSA constitution and the history of membership dues increases.**

The GSUSA bylaws [Exc. 98–102] do not address the process of establishing membership requirements. Accordingly, neither the parties nor the superior court relied on the bylaws for guidance in the present dispute. The GSUSA constitution does expressly address dues and other membership requirements.

Initially, Article IX of the constitution mandates that all members of the Girl Scout Movement must pay dues.<sup>14</sup> Several sections of the constitution then expressly address the National Council’s role in the establishment of those dues and other membership requirements:

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10 Charter at § 80303(a)(1).

11 *Id.* at § 80303(a)(2).

12 *Id.*

13 *Id.* at § 80303(b)(1).

14 Const. at Art. IX.

- Article V, Section 2 of the constitution states that “[t]he National Council at its sessions shall . . . establish requirements for credentials[.]”<sup>15</sup>
- Article VIII, Section 1 states that “[t]he National Council shall establish requirements for certificates of membership, local council charters, and all other credentials.”<sup>16</sup>
- Article V, Section 5 of the constitution states that any “[d]ecision on membership dues shall require a majority of votes cast [by the members of the National Council].”<sup>17</sup>

The constitution also expressly addresses the Board’s role with regard to membership requirements. Article VIII, Section 2 states:

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.<sup>18</sup>

Prior to 2012, membership dues requirements were established exclusively by the National Council. [Exc. 4] The National Council established the amount of membership dues on nine separate occasions: in 1941, 1947, 1969, 1978, 1984, 1990, 1996, 2003 and 2009. [*Id.*] For the membership year commencing in 2009, the National Council set annual dues at \$12.00 per girl or adult member. [*Id.*]

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15 Const. at Art. V, § 2.

16 *Id.* at Art. VIII, § 1.

17 *Id.* at Art. V, § 5.

18 *Id.* at Art. VIII, § 2.

At the National Council's 2008 session, the Board sought to amend the constitution by proposing the removal of the provision in Article V that decisions on annual membership dues require a majority of votes cast by the National Council. [Exc. 4] The proposed amendment was rejected by the National Council. [*Id.*] The National Council affirmatively voted to retain the language of Article V, Section 5 that remains today: "Decision on annual membership dues shall require a majority of votes cast." [*Id.*]

In January of 2012, for the first time in the organization's history, the GSUSA Board increased dues on its own. [Exc. 4] It increased membership dues from \$12.00 to \$15.00, effective in the 2014 membership year. [Exc. 4–5] The Board did not present this dues increase to the National Council. [Exc. 4] The dues increase was not voted on by the National Council. [*Id.*]

In January of 2016, the Board increased dues again, this time from \$15.00 to \$25.00, effective in the 2018 membership year. [Exc. 5] The Board did not present this dues increase to the National Council. [*Id.*] The dues increase was not voted on by the National Council. [*Id.*]

### **C. Farthest North reacts to the Board's dues increases.**

Farthest North objected promptly to the Board's first dues increase from \$12.00 to \$15.00. On March 26, 2012, Farthest North's board chair, Russ Sharpton, sent a letter to the Board's chairwoman and copied all members of the Board. [R. 155–59] Sharpton called into question "the arrogance of this national board exerting what it interprets as its constitutional right to make that decision." [R. 158] He continued, "[D]ues increases are the business of the National Council Session and always have been." [*Id.*]



Following the Board's second dues increase from \$15.00 to \$25.00, Farthest North again objected, this time in a string of letters between February and September 2016.

[Exc. 5, 33, 34–38, 39–40] In a letter dated August 12, 2016 [Exc. 34–38], Sharpton laid out the same interpretational position that Plaintiffs assert in this suit: The GSUSA charter and constitution repose dues-setting authority only in the National Council. The Board's conduct, Sharpton warned,

. . . has serious consequences. First, Girl Scouts of the USA is a member-controlled organization; one ultimately under the control of the democratically elected delegates to the National Council. The Board's unilateral increase in membership dues constitutes a gross usurpation of power vested solely in the National Council. The Board needs to recognize this gross error and undo it. The Board needs to make it right. [Exc. 35]

Additionally, Sharpton described the enormous economic impact the Board's actions were having on the organization's members. The second dues increase of \$10.00 alone, he calculated, "will result in an additional \$25,000,000 per year in dues that GSUSA will be extracting from its unsuspecting members without authority." [Exc. 35] If the Board was not willing "to do the right thing for its own sake," Sharpton continued, "we hope the recognition of the financial debacle the Board's unauthorized conduct has created will cause the Board to get to the same place." [Exc. 36]

Finally, Sharpton laid out how Farthest North intended to proceed in the face of the Board's conduct:

We hope for, and expect, the Board to do the right thing. As a small council with limited resources, we do not seek to take on the mantle of the protector of the National Council and all members' abused interests. Yet, if the Board does not make things right after now being alerted to the problem, we will nonetheless give serious thought to taking on that role—alone or joined with sister councils—as a necessary obligation to protect our members and

the organization. At a minimum, however, Farthest North Girl Scouts Council will not collect, and we will not require the members in our council to continue to pay, unauthorized dues. We will not participate in that unauthorized conduct. [*Id.*]

Farthest North's requests for the Board to take corrective action were rejected.

[Exc. 5] GSUSA's Board continued to assert that it has unilateral authority to increase membership dues. [*Id.*]

**D. Farthest North refuses to forward dues not authorized by the National Council.**

Girls are registered for Girl Scouting by their local councils at the start of every new school year. [Exc. 6] GSUSA membership dues are collected from the girls and adults by the local councils at that time. [*Id.*] All of the membership dues collected by Farthest North and the other councils are passed on directly to GSUSA in New York.

[Exc. 4] It is a contractual requirement of a council's charter. [Exc. 4, 19–21]

It is also a contractual requirement of a council's charter that the local council will develop, manage, and maintain Girl Scouting throughout its jurisdiction "in such manner and subject to such limitations as prescribed in the [GSUSA] Constitution" [Exc. 19], and that the council will carry out the terms of its charter "in accordance with the Constitution." [Exc. 20]

Thus, in the fall of 2016, Farthest North registered members for the 2017 membership year. [Exc. 6] As part of that process, Farthest North collected \$15.00 in membership dues from each member, consisting of the \$12.00 portion last approved by the National Council and the \$3.00 portion imposed by the Board. [*Id.*] However, Farthest North only sent the National Council-approved amount—\$12.00—to GSUSA. It

retained the Board-assessed portion—\$3.00—and deposited it in a segregated account set up for the protection of its members. [*Id.*]

**E. GSUSA retaliates with threats of termination of Farthest North’s council charter.**

GSUSA’s executives in New York responded to Farthest North’s refusal to forward the full \$15.00 per member by putting Farthest North on notice that it was in breach of its council charter. [Exc. 6, 41] Further, GSUSA refused to process any of the girls or adults whose \$12.00 dues had been collected and forwarded to GSUSA, refused to enroll them as members of the Girl Scout Movement, refused to allow them to participate in Girl Scout activities, and refused to provide insurance to protect them when participating in Girl Scout activities. [*Id.*] Farthest North was threatened with the loss of its council charter and all its members. [*Id.*]

Faced with these threats to its members and the imminent risk of loss of its charter, Farthest North capitulated. On December 14, 2016, Farthest North sent payment to GSUSA in the full amount of the \$3.00 per member it had previously withheld. [Exc. 7, 42] For the continued protection of its members, however, Farthest North made this payment not with the members’ previously segregated funds but with fresh funds from Farthest North’s own operating account. [Exc. 7] The segregated funds of its members remain segregated for the members’ protection. [*Id.*]

This suit ensued.

## STATEMENT OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

### A. The claims.

Plaintiffs filed a seven-count complaint. [Exc. 1–42] Count I seeks a declaratory judgment on behalf of all Plaintiffs that the Board’s dues increases are unauthorized. [Exc. 8–9] Count I further seeks an injunction barring GSUSA’s enforcement of the unauthorized dues increases, together with a request for restitution of the amounts by which GSUSA has been unjustly enriched through its collection of the unauthorized dues. [Id.]

All of the remaining six counts have as their foundational element the claim that the Board acted without authority when it imposed dues that were not authorized by the National Council.

Count II seeks relief under Section 29-403.04 of the District of Columbia’s Nonprofit Corporation Act.<sup>19</sup> [Exc. 9] That section enables certain members of a D.C. nonprofit to enjoin the nonprofit’s *ultra vires* conduct. Sharpton and Nelles bring this claim as members of the National Council. [Id.]

Count III asserts a claim on behalf of all Plaintiffs under Alaska’s Charitable Solicitation Act, which makes it unlawful for a person during a solicitation for a charitable organization to use a deceptive act.<sup>20</sup> [Exc. 10–11]

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<sup>19</sup> D.C. Stat. § 29-403.04.

<sup>20</sup> AS 45.68.050(1).

Count IV makes a claim on behalf of all Plaintiffs under the Alaska Unfair Trade Practices and Consumer Protection Act.<sup>21</sup> [Exc. 11–12]

In Counts I, III and IV, Farthest North sues not just in its own capacity as a chartered Girl Scout council but in its representative, “associational” capacity on behalf of all the individual members of the Movement within its council jurisdiction.<sup>22</sup> [Exc. 7–8]

Counts V, VI and VII, on the other hand, are brought exclusively by Farthest North on its own behalf. In Count V, Farthest North claims that GSUSA tortiously interfered with Farthest North’s fiduciary duties to its members. [Exc. 12–14] Counts VI and VII allege claims arising from GSUSA’s breach of the council’s charter agreement and the implied duty of good faith and fair dealing. [Exc. 14–16]

**B. The cross-motions for summary judgment.**

In lieu of answering the verified complaint, GSUSA filed a Rule 12(b)(6) motion to dismiss all seven counts. [R. 172–99] Plaintiffs responded to the motion [R. 115–54] and simultaneously presented a motion for partial summary judgment on Count I [Exc. 43–57]. The motion for partial summary judgment recognized that “[t]he fundamental issue arising in this case is whether or not the GSUSA board of directors has the authority to cause increases in membership dues.” [Exc. 44] Since Count I involved only the interpretation of GSUSA’s unambiguous charter and constitution, the claim in

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21 AS 45.50.471(b) (11), (14) and (36).

22 See *Friends of Willow Lake, Inc. v. State, Dep’t of Transp. & Pub. Facilities*, 280 P.3d 542, 546 (Alaska 2012) (recognizing associational standing).

Count I was ripe for resolution as a matter of law on a motion for summary judgment.<sup>23</sup> [Exc. 44–46] GSUSA agreed, and responded with its own cross-motion for partial summary judgment as to Count I “on the legal issue that is the focus of this action.” [Exc. 58]

### **C. The superior court’s decision.**

The superior court heard oral argument on both the 12(b)(6) motion to dismiss and the cross-motions for summary judgment. [Tr. 1–57] The court issued a written decision on May 1, 2018. [Exc. 138–53]

The superior court determined first that the law of the District of Columbia applies to the interpretation of GSUSA’s governance documents.<sup>24</sup> [Exc. 146–47] The court then determined that D.C. law provides that provisions in corporate governance documents are enforced using the law of contracts.<sup>25</sup> [Exc. 147–48] Next, the court determined that the D.C. law of contracts requires “that the court ascertain ‘what a reasonable person in the position of the parties would have thought the disputed language

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23 See *Estate of Polushkin ex rel. Polushkin v. Maw*, 170 P.3d 162, 167 (Alaska 2007) (citing *Burns v. Burns*, 157 P.3d 1037, 1039 (Alaska 2007)) (interpretation of a contract is a question of law).

24 The court cited *Palmer G. Lewis Co., Inc. v. ARCO Chemical Co.*, 904 P.2d 1221, 1227 (Alaska 1995), and RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971). The parties do not dispute the choice of D.C. law. See *infra* at 25–28.

25 The court cited *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005). This Court applies the same rule. See *Matanuska Elec. Ass’n, Inc. v. Waterman*, 87 P.3d 820, 823 (Alaska 2004) (applying rule to bylaws); *Storrs v. Lutheran Hospitals*, 609 P.2d 24, 30 (Alaska 1980) (same).

meant.”<sup>26</sup> [Exc. 148] And, in the absence of ambiguity, the court recognized the meaning is derived without reliance on parol evidence. [Exc. 147-48]

The superior court found from its review of the GSUSA governance documents and the record “that the National Council and the National Board share authority to set membership dues for GSUSA.” [Exc. 139] Thus, the court concluded, “the National Board’s increase in membership dues was proper[.]” [Exc. 152] Since all of the claims in the complaint depend on a finding that the Board’s dues increases were without authority, the court concluded that “the plaintiffs cannot prevail on any claim raised in their Complaint.” [*Id.*] Plaintiffs’ motion for summary judgment on Count I was denied. GSUSA’s cross-motion for summary judgment on Count I was granted. And, the court ruled, GSUSA’s Rule 12(b)(6) motion was rendered moot. [*Id.*] Based on these rulings, the court entered final judgment for GSUSA. [Exc. 154]

Plaintiffs filed a timely notice of appeal.

## STANDARD OF REVIEW

The rules of contract interpretation apply to the interpretation of corporate governance documents.<sup>27</sup> Questions of contract interpretation—and, thus, the

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<sup>26</sup> The court quoted *Carlyle Inv. Mgmt., LLC v. Ace Am. Ins. Co.*, 131 A.3d 886, 895 (D.C. 2016) (internal citations omitted by court).

<sup>27</sup> *Matanuska Elec. Ass’n*, 87 P.3d at 823; *Storrs*, 609 P.2d at 30; *Meshel*, 869 A.2d at 361.

interpretation of governance documents—are questions of law which are reviewed *de novo*.<sup>28</sup>

The Court reviews grants of summary judgment *de novo*<sup>29</sup> and will affirm when the evidence in the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>30</sup>

## SUMMARY OF ARGUMENT

The GSUSA constitution provides that the National Council “at its sessions shall . . . establish requirements for credentials[.]”<sup>31</sup> The constitution further provides that the National Council “shall establish requirements for certificates of membership . . . and all other credentials.”<sup>32</sup> Finally, the constitution provides that any “[d]ecision on membership dues shall require a majority of votes cast [by the members of the National Council].”<sup>33</sup>

In contrast, the constitution only authorizes the Board to “administer” the requirements established by the National Council and, further, to establish standards,

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28 *Estate of Polushkin ex rel. Polushkin v. Maw*, 170 P.3d 162, 167 (Alaska 2007) (citing *Burns v. Burns*, 157 P.3d 1037, 1039 (Alaska 2007)) (interpretation of a contract is a question of law); *Monzingo v. Alaska Air Grp., Inc.*, 112 P.3d 655, 658–59 (Alaska 2005) (grant of summary judgment based upon contract interpretation is subject to *de novo* review because interpretation of contract language is a question of law).

29 *Thomas v. Archer*, 384 P.3d 791, 795 (Alaska 2016) (citing *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 516 (Alaska 2014)).

30 *Id.* (citing *Copper River Sch. Dist. v. Traw*, 9 P.3d 280, 283 (Alaska 2000)).

31 Const. at Art. V, § 2.

32 *Id.* at Art. VIII, § 1.

33 *Id.* at Art. V, § 5.



procedures, and interpretations “regarding such requirements provided such standards, procedures, and interpretations are consistent with the requirements established by the National Council.”<sup>34</sup>

Those are the operative words of the GSUSA constitution. They are plain and unambiguous. They grant no authority to the Board to establish membership dues requirements. They grant no authority to the Board to ignore dues requirements established by the National Council.

The Board acted without authority when it ignored the dues established by the National Council and unilaterally imposed new dues requirements on the members of the Girl Scout Movement.

## ARGUMENT

### **A. The GSUSA congressional charter vests no power or authority in the Board of Directors to establish membership dues requirements.**

The GSUSA congressional charter imbues all the powers of the corporation in the National Council.<sup>35</sup> This includes the power to adopt and amend a constitution and bylaws, and to elect a board of directors, officers and other agents.<sup>36</sup>

While the congressional charter anticipates the formation of a board of directors, the charter neither requires a board of directors nor vests any power whatsoever in a

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34 *Id.* at Art. VIII, § 2.

35 Charter at § 80303(a).

36 *Id.*

board of directors. The charter merely provides that the National Council “may” elect a board of directors.<sup>37</sup> With regard to the powers that a prospective board might have, Section 80303(b)(1) of the 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. . . .<sup>38</sup>

Thus, when formed by the National Council, the Board only has the corporate powers of the National Council and only manages the activities of the corporation between meetings of the National Council *to the extent provided in the constitution and bylaws*. If the power is not provided to the Board in the constitution and bylaws, the Board does not possess it. Conversely, all powers of the corporation, unless ceded to the Board via the constitution and bylaws, are reserved in the National Council. The language of the charter could not be more plain or unambiguous.

This fundamental structure of the organization and its governance documents, however, was misinterpreted and misunderstood by the superior court. The court’s misunderstanding is fully articulated in the following excerpt from the court’s Order:

GSUSA’s Congressional Charter awards broad powers to both the National Council and the National Board. However, the Congressional Charter expressly states that the National Board, “shall have the powers of the Council and manage the activities of the corporation between meetings of the Council.” There is no provision of the Congressional Charter which reserves the authority to set membership dues solely to the National Council. [Exc. 145]

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<sup>37</sup> Charter at § 80303(a)(2).

<sup>38</sup> *Id.* at § 80303(b)(1).

Breaking down these several conclusions is illustrative.

First, the conclusion that “GSUSA’s Congressional Charter awards broad powers to both the National Council and the National Board” is incorrect. The charter itself awards no powers to the Board, let alone “broad powers.” The Board only has whatever powers the National Council may provide it in the constitution and bylaws; *i.e.* “[t]o the extent provided in the constitution and bylaws.”<sup>39</sup>

Second, the court’s statement that “the Congressional Charter expressly states that the National Board, ‘shall have the powers of the Council and manage the activities of the corporation between meetings of the Council’” omits from its quotation the critical and dispositive prefatory clause (“To the extent provided in the constitution and bylaws”) and thereby completely misstates—indeed, upends—the meaning of the sentence. Per the charter’s plain and *complete* terms, the Board has the powers of the National Council only “[t]o the extent provided” in the constitution and bylaws.

Third, the conclusion that “[t]here is no provision in the Congressional Charter which reserves the authority to set membership dues solely to the National Council” is erroneous. The fundamental structure of the charter is that *all* powers are reserved in the National Council. There is no need to itemize particular powers. Unless the power or authority is expressly handed off to the Board in the constitution or bylaws, all power and authority are reserved in the National Council.

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<sup>39</sup> Charter at §80303(b)(1).

The superior court's Order is premised on these fundamental misinterpretations of the charter and, as a result, its misunderstanding of the relationship between the National Council and the Board.

**B. The GSUSA constitution expressly reserves in the National Council, not the Board, the powers of the corporation and the exclusive authority to establish membership dues requirements.**

**1. The constitution reserves in the National Council the powers of the corporation.**

The National Council adopted a constitution. The constitution confirms that the corporation's powers rest with the National Council:

The National Council shall have 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.<sup>40</sup>

The constitution further establishes that "the membership of this corporation shall consist of the members of the National Council," and that "the corporation in meeting assembled shall be known as the National Council."<sup>41</sup>

**2. The National Council alone is authorized to establish dues and all other requirements of membership. The Board merely administers those requirements.**

Beyond the broad stroke provisions addressing the powers of the National Council in general, the constitution addresses the National Council's specific powers and

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40 Const. at Art. IV, § 2.

41 *Id.* at Art. IV, § 1.

responsibilities related to establishing membership dues and other requirements for membership credentials. The respective roles of the National Council and the Board are also plainly laid out.

Initially, Article IX mandates that “[e]very person accepting the principles of the Girl Scout Movement and desiring to be a member of the Girl Scout Movement in the United States of America shall pay annual, lifetime, or other applicable membership dues to [GSUSA].”<sup>42</sup> The task of establishing the amount of those mandatory dues is assigned to the National Council at its sessions.

Specifically, Article V, Section 2 mandates that “[t]he National Council at its sessions shall . . . establish requirements for credentials[.]”<sup>43</sup> Section 1 of Article VIII—entitled “Credentials”—confirms that “[t]he National Council shall establish requirements for certificates of membership, local council charters, and all other credentials.”<sup>44</sup> These constitutional provisions make clear which body establishes requirements for certificates of membership: It is the National Council.

The constitution also expressly regulates the Board’s role regarding the requirements for certificates of membership that are established by the National Council. The role is subordinate and administrative. Article VIII (“Credentials”), Section 2 articulates the Board’s strictly administrative and subordinate function:

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42 Const. at Art. IX.

43 *Id.* at Art. V, § 2.

44 *Id.* at Art. VIII, § 1.

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.<sup>45</sup>

Finally, as if to stamp an exclamation mark on the National Council's principal role in establishing membership dues requirements, the constitution mandates that a "[d]ecision on membership dues shall require a majority of votes cast [by the members of the National Council]."<sup>46</sup>

These pertinent provisions of the GSUSA constitution are clear and unambiguous. The National Council *shall* establish the dues and other requirements for membership credentials and *shall* affirmatively vote on all decisions relating to membership dues. The Board *administers* those requirements and only so long as its administration is *consistent with* the requirements established by the National Council. The Board is granted no independent authority to establish dues or any other requirements for membership credentials.

**3. The Board identified no constitutional provision or rule of law that negates the constitutional mandate that the Board's role is solely administrative and subordinate.**

To circumvent these constitutional mandates, the Board argued in the court below that Article X, Section 1 of the constitution authorizes its independent assessment of membership dues. It does not.

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<sup>45</sup> *Id.* at Art. VIII, § 2.

<sup>46</sup> Const. at Art. V, § 5.

Article X, Section 1 provides that “[t]he affairs of the corporation between sessions of the National Council shall be managed by a National Board of Directors[.]”<sup>47</sup> The Board argued that this general grant of authority to manage between sessions of the National Council trumps both the specific constitutional provisions addressing membership requirements and fundamental concepts of corporate hierarchy.

Article X, Section 1 is a general, non-specific grant of authority to manage the business between sessions of the National Council. That is what boards do, just as that is what corporate officers do between sessions of their boards. That is how corporations function. But these general grants of authority to each of the lower rungs along the corporate ladder are not licenses to usurp the powers of the higher authorities to whom the lower rungs report and to whom they are subordinate.

Article X, Section 1 is non-specific. It does not direct the Board’s behavior regarding any particular topic or action. In sharp contrast, the constitution’s membership-credentialing provisions discussed above are very specific. They explicitly direct and limit the scope of the Board’s authority on the topic. Well-worn rules of construction establish that specific provisions control over more general, non-specific provisions. D.C. courts regularly apply the “familiar principle of contract interpretation, that ‘specific terms and exact terms are given greater weight than general language.’”<sup>48</sup>

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47 Const. at Art. X, § 1.

48 *Washington Auto. Co. v. 1828 L St. Assocs.*, 906 A.2d 869, 880 (D.C. 2006) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (1981)). *Cf. NOW v. Mut. of Omaha Ins. Co.*, 531 A.2d 274, 279 (D.C. 1987) (applying same principle to statutory

Whatever broad authority to “manage” that the Board may have under Article X, Section 1, its authority is expressly circumscribed by Article V, Sections 2 and 5 (requiring the National Council to establish membership requirements at its sessions and to vote on all dues decisions) and Article VIII, Sections 1 and 2 (requiring the National Council to establish membership requirements, while limiting the Board to the administration of those requirements in a manner consistent with the National Council’s requirements). These provisions are clear and unequivocal: The National Council establishes the requirements; the Board administers them. Article X, Section 1 does not alter these roles.

The Board’s boundless interpretation of its authority under Article X, Section 1 renders the constitution’s specific credentialing provisions a nullity. Applying the Board’s interpretation, 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.

The law does not abide interpretations that render provisions meaningless or a nullity. D.C. courts “strive to give reasonable effect to all [of a contract’s] parts and

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construction, noting that a “statute should be construed so that general language does not apply to matters covered by more specific language”). *Accord. Herring v. Herring*, 373 P.3d 521, 529 (Alaska 2016) (applying “contract interpretation principle that a specific provision takes precedence over a more general provision”).



eschew an interpretation that would render part of it meaningless or incompatible with the contract as a whole.”<sup>49</sup> Nor does the law abide interpretations that yield absurd results.<sup>50</sup> The Board’s interpretation, enabling it to immediately undo any dues or other membership requirement established by the National Council at its session, is absurd.

The Board’s argument also ignores basic concepts of agency. The congressional charter and constitution establish the Board as the agent of the National Council, which is the principal of the organization. The RESTATEMENT (THIRD) OF AGENCY articulates the settled law that “[a]n agent has a duty to comply with all lawful instructions received from the principal concerning the agent’s actions on behalf of the principal.”<sup>51</sup> This is so

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49 *Abdelrhman v. Ackerman*, 76 A.3d 883, 891 (D.C. 2013) (quoting *District of Columbia v. Young*, 39 A.3d 36, 40 (D.C. 2012)); *Bannum, Inc. v. 2210 Adams Place, N.E., LLC*, 4 A.3d 431, 435 (D.C. 2010) (refusing interpretation that would render clause a nullity). *Accord. Estate of Polushkin ex rel. Polushkin v. Maw*, 170 P.3d 162, 172 (Alaska 2007):

One important guide to the meaning of a contract is that interpretations that give a reasonable meaning to a contract are preferred to those that impart an unreasonable meaning. As section 203(a) of the Restatement (Second) of Contracts provides: “[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”

50 *Sears v. Catholic Archdiocese of Washington*, 5 A.3d 653, 660 (D.C. 2010) (deeds, like contracts, will not be interpreted to reach absurd results). *Cf. Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 65 (D.C. 1980) (interpreting statute to avoid an absurd result). *See also United States v. Winstar Corp.*, 518 U.S. 839, 907 (1996) (avoiding interpretation of contract that “would be absurd”); *Hussein-Scott v. Scott*, 298 P.3d 179, 182 (Alaska 2013) (“basic contract principles” include avoiding absurd results).

51 RESTATEMENT (THIRD) OF AGENCY § 8.09(2) (2006).

even if the agent believes doing something else would be better for the principal.<sup>52</sup> And regardless of the discretion that an agent exercises or the agent’s relative status within an organizational hierarchy, “an agent has a duty to comply with the lawful instructions provided by the principal or the agent’s superior within the organization.”<sup>53</sup>

The National Council, the coordinating head of GSUSA, clearly and unequivocally spoke when it established by affirmative vote of a majority of its members the membership dues requirement of \$12.00 per member per year. The Board ignored that directive and established dues of its own choosing at more than double that amount. That conduct of the Board cannot be excused or explained as the *administration* or *management* of the National Council’s \$12.00 membership dues requirement. Nor can it be excused or explained as the issuance of a standard, procedure, or interpretation “consistent with the requirements established by the National Council.” Imposing \$15.00 and then \$25.00 annual dues is entirely inconsistent with the membership dues requirement of \$12.00 established by the National Council.

Finally, the Board argued to the superior court that the constitutional directive at Article V, Section 5, requiring the affirmative vote of a majority of the votes cast in the National Council on all decisions affecting membership dues, can safely be ignored because it is simply procedural. [Exc. 75–76] Of course it is procedural. That is the point. It is a constitutionally mandated procedure that has not been met. This voting requirement

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52 *Id.* at cmt. c.

53 *Id.*

can no more be swept aside than can the requirement in the United States Constitution that constitutional amendments receive the affirmative vote of three-fourths of the states.<sup>54</sup> That too is *just* a procedural provision. Describing something as procedural does not make it any less important or mandatory. Raising dues from \$12.00 to \$15.00 and then to \$25.00 is a “decision on membership dues.”<sup>55</sup> It requires a majority of votes cast by the National Council.<sup>56</sup> The National Council never voted on these dues increases. The increases are without authority.

The Board’s conduct was, and continues to be, without authority. The plain, unambiguous terms of the charter and constitution make that clear. Plaintiffs are entitled, as a matter of law, to summary judgment declaring the Board’s dues increases to be without authority.

**C. The superior court erroneously relied on parol evidence to inform its interpretation of the governance documents.**

If the parties agreed on nothing else, they agreed that the introduction of parol evidence is not appropriate and that the superior court had before it the same strictly legal issue now before this Court: Which GSUSA body—the National Council or Board—is authorized under the express terms of the charter and constitution to establish membership dues requirements?

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54 U.S. CONST. art. V.

55 Const. at Art. V, § 5.

56 *Id.*

The parties submitted cross-motions for summary judgment on this legal issue. No one suggested the charter or constitution is ambiguous. Both sides acknowledged that the interpretation of the unambiguous GSUSA governance documents presents a pure question of law. Indeed, the Board devoted a four-page section of its opposition to an exposition of District of Columbia law that prohibits reliance on extrinsic evidence when interpreting unambiguous corporate governance documents. [Exc. 64–67] Plaintiffs concurred and cited the same controlling principles of law under this Court’s precedent. [Exc. 45]

The superior court, too, expressly found no ambiguity in the governance documents and cited D.C. authority for the rule prohibiting the use of parol evidence in interpreting unambiguous governance documents. [Exc. 147–48] Yet, the court’s interpretation of the charter and constitution was heavily influenced by—indeed, appears to turn on—materials lying outside of those unambiguous documents. The court’s reliance on parol evidence was error.

**1. D.C. law of contracts prohibits considering parol evidence when a contract is unambiguous.**

The superior court correctly identified D.C. law as the law governing interpretation of the GSUSA charter and constitution. [Exc. 146–48] The court failed to recognize, however, just how strict that law is in not allowing consideration of parol

evidence. The D.C. decision relied on by the superior court, *Carlyle Investment Management L.L.C. v. Ace American Insurance Company*,<sup>57</sup> states the applicable rule:

This court “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 the contract, unless the written language is not susceptible of a clear and definite meaning.”<sup>58</sup>

The writing must be interpreted “as a whole, giving a reasonable, lawful, and effective meaning to all its terms.”<sup>59</sup> Only if 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 . . . .”<sup>60</sup>

A contract is not ambiguous merely because the parties do not agree on its meaning, and “courts are enjoined not to create ambiguity where none exists.”<sup>61</sup> The court’s role is to determine what a reasonable person in the position of the parties would have thought the disputed language meant.<sup>62</sup>

This strict, “objective” approach and its eschewing of extrinsic evidence in the process of interpreting the plain words used in a contract differs from the rule applied in Alaska. This Court’s approach is summed up in *Ashley v. Baker*:

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57 131 A.3d 886, 894–95 (D.C. 2016).

58 *Id.* (quoting *Aziken v. District of Columbia*, 70 A.3d 213, 218–19 (D.C. 2013)).

59 *Id.* at 895 (quoting *Debnam v. Crane Co.*, 976 A.2d 193, 197 (D.C. 2009)).

60 *Id.* (quoting *Aziken*, 70 A.3d at 219).

61 *Id.* (quoting *Tillery v. District of Columbia Contract Appeals Bd.*, 912 A.2d 1169, 1177 (D.C. 2006)).

62 *Id.* (quoting *Travelers Indem. Co. v. United Food & Commercial Workers Int’l Union*, 770 A.2d 978, 986 (D.C. 2001)).

While we generally find an unambiguous contract term to be dispositive of the parties' intended meaning, *see Klosterman v. Hickel Investment Co.*, 821 P.2d 118, 124 (Alaska 1991) . . . , we do not require a threshold finding of ambiguity before considering extrinsic evidence of the parties' expectations. Rather, our analysis is more fluid:

When interpreting contracts, the goal is to "give effect to the reasonable expectations of the parties." *Mitford v. de Lasala*, 666 P.2d 1000, 1005 (Alaska 1983). In pursuit of this goal, the court must "look first to the written agreement itself *and also to extrinsic evidence regarding the parties' intent at the time the contract was made.*" *Norton v. Herron*, 677 P.2d 877, 880 (Alaska 1984).<sup>63</sup>

Though the superior court correctly identified D.C.'s "objective" law as controlling, its actual analysis slipped into Alaska's "fluid" approach. As a result, it relied heavily upon extrinsic evidence when it interpreted the terms of the governance documents. That was error. No plain reading of the constitution and charter supports the court's ultimate conclusions.<sup>64</sup>

**2. Not only should the superior court not have relied on extrinsic evidence, the evidence it did rely on does not support the court's interpretation.**

Even applying this Court's more fluid approach, one gets to the same place:

Neither the charter nor the constitution authorizes the Board's unilateral imposition of membership dues requirements.

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63 867 P.2d 792, 794 n.1 (Alaska 1994) (emphasis in original).

64 In the arguments to the court below, Plaintiffs cited and urged application of the line of this Court's decisions which hews closely to applicable D.C. law: "Where a contract provision is unambiguous, we will ascertain the parties' intention from the instrument itself." *Klosterman v. Hickel Inv. Co.*, 821 P.2d 118, 124 (Alaska 1991). *See discussion supra* at 25–26. Plaintiffs failed at that time to recognize this Court's more fluid approach. Thus, Plaintiffs always pressed for a standard of contract interpretation (even under Alaska law) that is consistent with applicable D.C. law.

The superior court’s interpretation that the National Council and the Board share authority to establish membership dues requirements rests upon three observations derived from extrinsic evidence: (1) Farthest North is the only council to have sued the Board over this dues issue [Exc. 151–53], (2) it would be inconvenient to wait three years between votes on dues by the National Council<sup>65</sup> [Exc. 150], and (3) the National Council has not voted to reverse the Board’s dues increases [Exc. 142, 152]. The court’s reliance on these matters was wrong, and the court’s interpretation of their significance was wrong.

The first observation is irrelevant to an interpretation of the charter documents. The absence of other litigation sheds no light on the meaning of a single word or phrase used in the documents. Further, the superior court’s apparent conclusion that other councils’ silence somehow reveals solidarity with the Board’s interpretation is not a reasonable one. Rather, the logical conclusion to be drawn from other councils’ silence is that they have no need to file separate suits. What council would sue the Board—thereby incurring the extraordinary expense of litigation and assuming the risk of the loss of their council charter—when Farthest North has already taken up the fight? The answer is, *no council would*.

The second observation—that waiting three years between National Council sessions is inconvenient—is a flat-out attempt to rewrite, not interpret, the GSUSA constitution. The constitution expressly provides that the National Council will meet

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65 The court referred to the three years between sessions as a “crucial fact.” [Exc. 150]

every three years.<sup>66</sup> There is nothing inconvenient about that. That is the stated and preferred schedule established by this organization. The same constitution that establishes the triennial sessions for the National Council also establishes the National Council as the body that shall establish membership requirements and shall vote on all membership dues decisions at those sessions. Whether the Board believes the Girl Scout organization could be a more efficiently run organization if the National Council—or the Board itself—met and voted on dues more frequently than triennially is not an issue for the courts. That is a governance issue for the organization, and it already has been resolved and engrafted into the GSUSA constitution. It is not for the court to rewrite it with the Board’s preferred schedule of meetings.

This *inconvenience* argument—adopted by the superior court but urged by the Board—reveals perhaps most clearly the Board’s extraconstitutional power grab. The Board wants to exercise powers that it finds convenient for itself, not what the charter and constitution mandate.

The third observation—that the National Council has not addressed the dues increases established by the Board—once more sheds no light on the interpretation to be given the plain words used in the charter and constitution. The superior court again seems to be interpreting silence—here, silence by the National Council—as an affirmation of solidarity with the Board’s interpretation of “shared” authority to establish membership dues. But there are at least three flaws in this analysis:

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66 Const. at Art. V, § 1 (“There shall be a regular session of the National Council held triennially . . .”).



- (1) The meaning of the governance documents is what the court finds they mean as a matter of law. The Board’s interpretation, and whether or not the National Council—or anyone else—agrees with the Board’s interpretation, is immaterial. It is for the court to decide, not the Board, from the plain language used.<sup>67</sup>
- (2) Even if it were appropriate to look beyond the four corners of the charter and constitution—which it is not—the meaning to be given the National Council’s silence is anything but clear or obvious. Numerous other, reasonable conclusions arise from the National Council’s non-vote: (i) The Board succeeded in misleading the National Council as to its authority, just as it tried to mislead Plaintiffs. (ii) No member of the National Council is willing to stick out the neck of his or her home council and risk the loss of its charter as Farthest North has risked it here. (iii) The members of the National Council are asleep at the wheel and insensitive to the power grab that is taking place.

The superior court ignored these, and likely any number of other, “meanings” to be speculatively gleaned on the present record from the National Council’s absence of a vote. None of these speculations—or those articulated by the court—is proven. And most importantly, none of

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<sup>67</sup> See *Matanuska Elec. Ass’n, Inc. v. Waterman*, 87 P.3d 820, 823 (Alaska 2004) (recognizing that a board’s interpretation of a corporate bylaw is not conclusive).

these speculations shines a light on the meaning of the plain, unambiguous words used in the GSUSA governance documents. It is those words that control.

Further, even if there is an ambiguity—which there isn’t—and gaining insight into the National Council’s motivations as expressed through its inaction would be useful to an interpretation, no true insight can be gained without a full exploration of the facts. An actor’s intent is a question of fact, not law.<sup>68</sup> Attempting to resolve these issues of fact on a motion for summary judgment, as the superior court did, is improper.<sup>69</sup>

- (3) In fact, the only way a 1500-person governing body can express its motive or intent on a topic is for the body to vote on it. Any other means of knowing what the body is purportedly *thinking* is speculative and not reasonable. Further, looking at anything other than an actual vote ignores the express provisions of the GSUSA constitution. As discussed, only the National Council has the express authority to establish membership requirements, and all dues requirements must receive the vote of a majority of the members of the National Council. When these constitutionally mandated activities have not taken place, it is evidence of

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68 *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 712 (Alaska 2003) (citing *Sykes v. Melba Creek Mining, Inc.*, 952 P.2d 1164, 1167 (Alaska 1998)).

69 *K & K Recycling*, 80 P.3d at 712 (summary judgment is improper when the evidence before the superior court establishes a factual dispute as to the intent of the contracting parties).

only one thing: The National Council has *not* voted on, and has *not* authorized, the dues increases. The superior court's contrary interpretation of the National Council's non-vote turns the import of these constitutional voting requirements on their head.

Compounding the superior court's erroneous use and misapplication of extrinsic evidence is its failure to recognize that the extrinsic evidence that is in the record is conflicted. The 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:

- Prior to the unauthorized conduct by the Board in 2012 that is the subject of this suit, the National Council alone established membership dues requirements. Between 1941 and 2009, the National Council alone established new dues amounts on nine occasions. [Exc. 4]
- At the National Council's 2008 session, the Board proposed an amendment to the constitution that would have removed the mandate of Article V, Section 5 that all decisions on dues require a majority of the votes cast by the members of the National Council. The National Council rejected the amendment and affirmatively voted to retain the voting requirement on all decisions affecting membership dues. [*Id.*]

Yet, the superior court concluded that the only extrinsic evidence in the record supports the Board's interpretation that it has dues-setting authority. [Exc. 151] That is simply not accurate. If it were appropriate for the superior court to consider extrinsic evidence in this

case, the court would have had to conclude that the evidence is conflicting, so summary judgment could not be granted.

In sum, the superior court should not have considered any extrinsic evidence, and this Court should resolve the legal issues based on the documents alone. If the Court considers the extrinsic evidence, it should recognize that it is—at best—conflicting and does not support a conclusion that the Board and National Council share authority to establish membership dues. That conclusion has no support in the documents’ words themselves.

## CONCLUSION

The National Council “shall establish requirements for certificates of membership . . . and all other credentials.”<sup>70</sup> The Board may “administer” those requirements and may establish standards, procedures, and interpretations “regarding such requirements provided such standards, procedures, and interpretations are consistent with the requirements established by the National Council.”<sup>71</sup> Those are the plain and operative words. They grant no authority to the Board to establish membership dues requirements on its own. They grant no authority to the Board to ignore dues requirements established by the National Council. The Board acted without authority when it unilaterally imposed new dues requirements on the members of the Girl Scout Movement.

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<sup>70</sup> Const. at Art. VIII, § 1. *See also* Art. V, § 2 (“The National Council at its sessions shall . . . establish requirements for credentials[.]”).

<sup>71</sup> *Id.* at Art. VIII, § 2.


Accordingly, the Court should reverse the order of the superior court and remand the case to the superior court with instructions to enter judgment in favor of Plaintiffs and against Defendant GSUSA on the parties' cross-motions for partial summary judgment as to Count I of the verified complaint. Further, this Court should direct that, on remand, the superior court should conduct further proceedings as appropriate on all of Plaintiffs' remaining claims.

Respectfully submitted, this 17 day of October, 2018.

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