

# Lawsuit Filed Against BenU

by Junelly Gonzalez, News Editor, The Candor

Seven monks of St. Procopius Abbey filed suit against Benedictine University's Board of Trustees and former president this summer claiming they were denied their rights to help govern the university their abbey founded.

"If you take the monks of St. Procopius Abbey out of the picture, you are taking away an important contributing factor to the Catholic nature of Benedictine University," stated Abbot Austin Murphy in article posted to the EWTN global Catholic network. "(The Board of Trustees) are surely not the only ones who contribute to the Catholic identity of Benedictine University, but they make an important contribution."

The lawsuit, filed in DuPage county, states that the University's by-laws, allow for both members, being the monks and the trustees, to do among other things, meet the presidential candidates as well as approve of a new president for the University. The monks assert both these rights were denied.

"I certainly did not know this was in the mix when I was nominated for the position," said Dr. Michael S. Brophy, the new President of BenU. "What I came to find is that the Abbey has a deep affection for the University. I was extremely happy when earlier this week the faculty and staff came together and were led in prayer and were blessed by the Abbey. My main concern is more with the day to day interactions we have with the abbey and any traditions, whether educational or cultural, we have with them."

Some students agree with the monks actions because of their significant role in the school.

"The brothers should have every right to have their voices heard and considered just like every other student, faculty, staff and administrator that is a part of the Benedictine community, especially with important decisions such as Benedictine University's new president," said junior Katie Roe.

However, the university, as well as some students, find this matter could have been resolved internally before being taken to the civil courts.

"Benedictine is a family and as such is not immune to disagreements. The University leadership respects the monks and their ecclesiastical position and has a mutual desire to resolve any disagreements internally. As a result, we are disappointed that the Abbey monks have chosen to find resolution of ecclesiastical disputes through the press and to file a civil lawsuit against the individual Trustees instead of continuing internal dialogue with University leadership" stated James L. Melsa, the chairman of the BenU Board of Trustees in a press release.

"I believe the monks do have the right to fight for their rights. However, I feel as though this could have been resolved without officially filling a lawsuit," said sophomore Paulina Piasecki.

“Overall, I think it shows a clear rift between the administrative board and the monks, when they are supposed to be working together as a team.”

Although the University continues to express confusion and disappointment in the monks actions in filing a lawsuit, the monks have made it clear that this is an ongoing issue that originated years before the appointment of president Brophy.

“Although for more than three years, we have tried in good faith to resolve these issues, the present impasse leaves no viable option other than to resolve these ongoing disputes with this legal action,” stated Abbot Murphy.

There is not an objection to the selection of Dr. Brophy as next president. The issue the Monks express is with the process by which Dr. Brophy was chosen.

“The Board of Trustees is trying to portray the problems as originating with new leadership at the abbey,” stated Abbot Murphy. “The trustees are operating contrary to the By-Laws.”

“I do not know when or how it will end,” said Brophy, “but earlier this week I think our campus breathed a sigh of relief when we saw the Monks being on campus and being a part of our opening program and of course things like Convocation during the first week of school will continue. We have to roll along for the students because they need to see the Monks on campus. They need to feel that part of our identity is still there.”

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DU PAGE COUNTY, WHEATON, ILLINOIS**

**2015MR000872**

Abbot Austin (Gregory D.) Murphy, Prior Guy  
Jelinek, Subprior Gregory Perron, Father Thomas  
Chisholm, Brother Kevin Coffey, Father Philip  
Timko, and Father James Flint, as Members of and  
on behalf of Benedictine University, an Illinois  
nonprofit corporation,

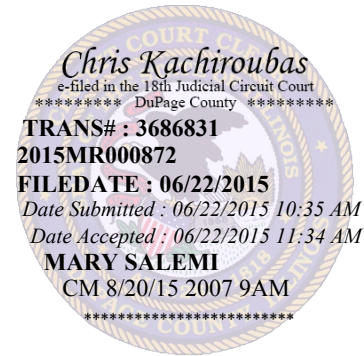
Plaintiffs,

v.

Maureen Beal, Paul J. Lehman, Daniel F. Rigby,  
Michael S. Siurek, John P. Calamos, Claudia J.  
Colalillo, Katherine A. Donofrio, Willis M. Gillett,  
Sr. Judith Ann Heble, O.S.B., James L. Melsa,  
Tasneem A. Osmani, Daniel M. Romano,  
Rosemary Macko Wisnosky, Mark C. Gaston,  
Daniel L. Goodwin, Leonard S. Piazza, M.D.,  
Roberto Ramirez, Peter J. Wrenn, Norm Beles,  
Greg Elliot, Chris Birck, Rebecca Meggesin,  
Michael Mikula, and Donna Hrozencik, M.D., each  
not individually but instead as members of  
Benedictine University's Board of Trustees, and  
William J. Carroll, not individually but as President  
of Benedictine University,

Defendants.

Case No.



**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs, by and through their counsel, for their complaint against Defendants, allege as follows:

**INTRODUCTION**

1. This is a dispute concerning the interpretation and application of certain aspects of the By-Laws of Benedictine University (“Benedictine” or “the University”), an Illinois nonprofit corporation organized under the Illinois General Not For Profit Corporation Act, 805 ILCS

105/101.01 *et seq.* The individual Plaintiffs are each Members of Benedictine University, and also are the members of the Board of Directors of St. Procopius Abbey's non-profit corporation, St. Procopius Abbey Corporation. Defendants are Benedictine's current Board of Trustees and the President of the University. Defendants have and are currently denying the Plaintiffs' certain rights which Plaintiffs have pursuant to the By-Laws of Benedictine University.

### **THE PARTIES**

2. Abbot Austin Murphy, Prior Guy Jelinek, Subprior Gregory Perron, Father Thomas Chisholm, Brother Kevin Coffey, Father Philip Timko, and Father James Flint (hereinafter "the Members" or "Plaintiffs") are the members of the Board of Directors of St. Procopius Abbey's nonprofit corporation, St. Procopius Abbey Corporation. As such, each also is a Member of Benedictine University.

3. Each of the Members is a Member ex-officio by reason of his being on the Board of Directors of St. Procopius Abbey Corporation (an Illinois nonprofit corporation).

4. Defendants Maureen Beal, Paul J. Lehman, Daniel F. Rigby, Michael S. Siurek, John P. Calamos, Claudia J. Colalillo, Katherine A. Donofrio, Willis M. Gillett, Sr. Judith Ann Heble, O.S.B., James L. Melsa, Tasneem A. Osmani, Daniel M. Romano, Rosemary Macko Wisnosky, Mark C. Gaston, Daniel L. Goodwin, Leonard S. Piazza, M.D., Roberto Ramirez, Peter J. Wrenn, Norm Beles, Greg Elliot, Chris Birck, Rebecca Meggesin, Michael Mikula, and Donna Hrozencik, M.D. (hereinafter "the Trustees") are members of Benedictine's Board of Trustees. William J. Carroll is the current President of Benedictine University and an ex-officio Trustee.

## **JURISDICTION AND VENUE**

5. The Defendants are subject to jurisdiction for matters arising out of their roles as Trustees and President of Benedictine University, and also because each has sufficient ongoing and systematic contacts with Illinois so as to subject each of them to personal jurisdiction in this State. Accordingly, this Court has general jurisdiction over the Defendants.

6. Venue is proper in this Court because, among other reasons, Benedictine University is located in DuPage County, and the actions and transactions complained of arose and took place, in whole or in part, within DuPage County.

## **BACKGROUND**

7. Benedictine is a nonprofit Illinois corporation. It operates a private, Catholic university with its main campus in Lisle, Illinois, located in DuPage County.

8. The monks of St. Procopius Abbey founded the school in 1887, when it was then known as St. Procopius College. It secured a charter from the state of Illinois in 1890. In 1901, the College moved to Lisle. The College was renamed Illinois Benedictine College in 1971. The College became Benedictine University in 1996. Throughout its history, Benedictine has had a close association with St. Procopius Abbey, and the monks of the Abbey have been integral to the governance of the University.

9. Benedictine's By-Laws provide that it is a membership corporation under Illinois law. According to the By-Laws, there are two classes of participants in the University's affairs: the Members and the Trustees. The rights and obligations of each are set forth in the By-Laws. (A true and correct copy of the current By-Laws is attached hereto as Exhibit A.) The current set of Benedictine's By-Laws was approved on or about May 16, 2002, with one unrelated change thereafter.

## THE DISPUTE

10. As the By-Laws state, the Members (Plaintiffs) are participants in the affairs of Benedictine. The Members have roles in the governance of the University and also responsibilities towards the University. As noted in the By-Laws, there are certain rights and powers reserved to the Members. The Defendants have and are currently denying some of the Members' rights and powers in direct contravention of the By-Laws.

11. Based on the Illinois Not for Profit Corporation Act and the By-Laws, Plaintiffs have significant legal rights and an oversight role with respect to the University and its governance. The By-Laws specifically provide that the Members are to participate in the affairs of the University. Article II provides as follows:

There are two classes of participants in the affairs of the University Corporation: that of the Members of the Corporation; and that of the Trustees of the Corporation. The rights and duties [] of each class are contained in these By-Laws.

*See Ex. A.*

12. Article III sets forth the general role of the Members. Section 2 sets forth certain aspects of the Members' voting rights, and provides that a two-thirds affirmative vote of all Members is required to approve (i) any sale, mortgage or encumbrance of any kind of any or all real estate owned by the University; (ii) the merger, liquidation or dissolution of the University; (iii) changes or amendments to the University's Articles of Incorporation or By-Laws; and (iv) the election of Trustees. (*Id.*)

## ELECTION OF TRUSTEES

13. According to Article III, Sec. 2(iv), the Members have the right to approve the election of the Trustees. This right of approval not only includes the original election of a

Trustee, but also would include (1) any re-election of the Trustee and (2) any election to fill a vacancy on the Board of Trustees.

14. The Defendants have and continue to deny the Plaintiffs their right to approve the re-election of the Trustees and approve the election of someone to fill a vacancy on the Board of Trustees.

15. Trustees are elected for an initial three-year term. Trustees may be re-elected for successive terms. Every year a subset of Trustees is up for re-election. The last re-election of Trustees occurred on April 22, 2015. In advance of that re-election, the Defendants informed the Members that they did not have the right to approve re-election of those Trustees. The next re-election will occur in April 2016, and will continue yearly for the foreseeable future.

#### **AMENDING THE BY-LAWS**

15. The By-Laws provide for two processes with respect to changes to the Articles of Incorporation and By-Laws. In Section 2 of Article III, which provides that the Members must approve changes to the By-Laws, there is the parenthetical “(see Article XVIII).” Article XVIII, Section 1 provides that:

These By-Laws may be altered, amended or repealed, in whole or in part, and new By-Laws may be adopted by Trustees, subject to Article III, Sec. 2, at any regular meeting or any special meeting of the Board of Trustees . . . ; provided, however, that Articles III and IV may be amended only by the Members. . . .

*See Ex. A.*

16. The first portion of the provision provides that the Trustees may revise or adopt new By-Laws, but only with the approval of the Members. The second portion of the provision provides that the Members have the unilateral right to amend Articles III and IV of the By-Laws.

17. Notwithstanding the clear language of Article XVIII, the Trustees have denied the Members their right to amend the By-Laws in accordance with Article XVIII.

## **APPROVAL OF THE PRESIDENT**

18. Pursuant to Article IX of the By-Laws, the President of the University “shall be an ex officio member of the Board of Trustees and all committees of the Board.” *See* Ex. A. The Members have the right under Article III to approve the election of President, like they would with regard to any other Trustee.

19. Recently, a Search Committee, which was formed by the Board of Trustees, identified three finalists for the position of President, as the current President has announced his retirement.

20. The Members asked the Trustees to meet with the three finalists and interview them.

21. The Trustees refused to make the three finalists available for a meeting with the Members.

22. Without allowing the Members to interview or even meet with the three finalists, the Trustees then met on May 28, 2015, and voted to appoint Michael Brophy as the new President of the University.

23. The new President is scheduled to take office in August 2015.

24. Not only did the Trustees deny the Members the right to meet the presidential candidates, but the Trustees continue to deny the Members’ their right to approve the new President of the University.

## **REFUSAL TO DISCLOSE CONFLICTS OF INTERESTS**

25. Article XVI of the By-Laws provides as follows:

All Trustees shall disclose to the Board any possible conflict of interest at the earliest practical time. No Trustee shall vote on any matter under consideration at a Board or committee meeting in which the Trustee has a conflict of interest. The minutes of such meeting shall reflect that a disclosure was made and that the



Trustee having a conflict of interest abstained from voting. Any Trustee who is uncertain whether she/he has a conflict of interest in any matter may request the Board or committee to determine whether a conflict of interest exists, and the Board or committee shall resolve the question by majority vote.

26. On or about November 19, 2013, Plaintiff Abbot Austin requested that the Trustees disclose any possible conflicts of interest. His request was denied. The Trustees have stated that they have no obligation under the By-Laws to disclose any possible conflicts of interest to the Board.

27. As a result of Trustees' refusal to comply with Article XVI, the Members have been unable to participate in the assessment of possible conflicts of interest and participate in the management and affairs of the University based on complete information regarding actual and possible conflicts of interests of Trustees.

**COUNT I**  
**DECLARATORY JUDGMENT**

28. The allegations set forth in Paragraphs 1-27 above are incorporated by reference herein.

29. The Members seek a declaratory judgment against the Board of Trustees under the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701(a), premised upon the actual controversies and conflicting claims existing between the Members and the Trustees.

30. The Members have a tangible, legal interest in the controversies, and seek declaratory relief from uncertainty and insecurity with respect to the rights, powers, obligations and other legal relations in dispute between the Members and the Trustees.

31. There is an actual controversy between the Members and the Trustees regarding the interpretation of certain By-Laws, and the relative authority of the parties to participate in the management and affairs of the University.

29. A declaration by the Court as to the respective rights of the Parties would resolve all, or substantially all, of this dispute.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants as follows:

- (i) find and declare that the Members have the right to approve re-election of any Trustee pursuant to Article III, Section 2 of the By-Laws;
- (ii) find and declare that the Members have the right to approve the election of any Trustee to fill a vacancy on the Board of Trustees pursuant to Article III, Section 2 of the By-Laws;
- (iii) find and declare that the Members have the right to approve the election and appointment of the President of the University pursuant to Article III, Section 2 of the By-Laws;
- (iv) find and declare that the Members have the right to unilaterally amend Articles III and IV of the By-Laws pursuant to Article XVIII, Section 1 of the By-Laws;
- (v) find and declare that the Members have the right to approve any other amendments to the By-Laws initiated and adopted by the Trustees pursuant to Article XVIII, Section 1 of the By-Laws;
- (vi) find and declare that the current Trustees of the University must disclose to the full Board any possible conflicts of interest at the earliest practical time pursuant to Article XVI of the By-Laws; and
- (vii) order the current Trustees to disclose any past or present conflict of interest that were not disclosed to the Board of Trustees pursuant to Article XVI of the By-Laws.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court enter judgment in their favor and against the Defendants as follows:

1. Granting the Plaintiffs the declaratory relief set forth in paragraph 29 above;
2. Awarding the Plaintiffs their costs, expenses, and reasonable attorney's fees expended in pursuing this action; and

3. Awarding the Plaintiffs such other relief that the Court deems just and proper under the circumstances.

Dated: June 22, 2015

Plaintiffs

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