



## COUNTY OF AMHERST

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March 30, 2015

**By Hand**

Roy C. Mayo, III, Clerk  
Amherst County Circuit Court  
P. O. Box 462  
Amherst, Virginia 24521

Re: **Commonwealth of Virginia, ex rel. Ellen Bowyer, in her  
official capacity as County Attorney for the County of  
Amherst, Virginia, v. Sweet Briar Institute, et al.**

Dear Clerk Mayo:

Please find enclosed a Complaint with regard to the above-referenced matter. I would appreciate your filing this document with the attached exhibits. Also enclosed are four additional copies of the Complaint with exhibits. I would appreciate your file-stamping one for my retention; the remaining three are for service of process as follows:

Sweet Briar Institute, c/o Registered Agent:  
Eric J. Sorenson, Jr.  
Edmunds & Williams PC  
828 Main Street, 19<sup>th</sup> Floor  
Lynchburg, Virginia 24504-0000

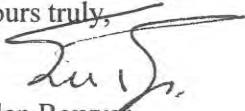
Filed in Clerk's Office  
Amherst Circuit Court

MAR 30 2015

James F. Jones, Jr.,  
Sweet Briar College  
Office of the President  
134 Chapel Road  
Sweet Briar, Virginia 24595

*Roy C. Mayo, III*  
Clerk

I understand Paul G. Rice will be at Sweet Briar College tomorrow, at the Office of the President. I therefore would ask that service on Mr. Rice be effected at the same time as service on Interim President Jones. If this is not possible, I will arrange for service through a private process server later this week. Please contact me if you have any questions. With thanks for your assistance, I am,

Yours truly,  
  
Ellen Bowyer

Enclosures

VIRGINIA:

IN THE CIRCUIT COURT OF AMHERST COUNTY

COMMONWEALTH OF VIRGINIA, *ex rel.*  
ELLEN BOWYER, in her official capacity as  
County Attorney for the County of Amherst,  
Virginia,

Plaintiff,

v.

SWEET BRIAR INSTITUTE,

Case No. CL15 15009373

PAUL G. RICE,

and

JAMES F. JONES, JR.,

Filed in Clerk's Office  
Amherst Circuit Court

MAR 30 2015

Defendants.

**COMPLAINT**

*Roy C. Mayo, III*  
Clerk

Plaintiff, the Commonwealth of Virginia (the "Commonwealth"), by and through Ellen Bowyer, the County Attorney of Amherst County, Virginia ("County Attorney"), for its complaint against Defendants, Sweet Briar Institute (the "College" or "Sweet Briar College"), Paul G. Rice and James F. Jones, Jr., (collectively "Defendants") says as follows:

**Introduction**

1. This case arises from the Defendants' recent announcement that they are closing Sweet Briar College, a highly-successful institution of higher education that has served young women from Virginia, from across the nation and, indeed, from around the world for over a century. The closure attempt is not only precipitous and unwarranted, it is also unlawful.

2. The Commonwealth seeks injunctive relief against the Defendants, pursuant to Title 57, Chapter 5 ("Solicitation of Contributions Act") of the Code of Virginia, and pursuant to Title 64.2, Chapter 7 ("Uniform Trust Code") of the Code of Virginia.

3. Among other relief, the Commonwealth seeks to enjoin the Defendants from (i) taking steps to close the College; and (ii) using funds raised by charitable solicitations for purposes other than the solicited purposes or the general purposes of the College.

4. The Commonwealth also seeks to have Interim President and Board removed from their positions, and a special fiduciary appointed to take possession of the College's assets and administer those assets, and to appoint a new President and Board to continue operations of the College.

### **The Parties**

5. The Plaintiff in this action is the Commonwealth of Virginia. The County Attorney is empowered by Virginia Code § 57-59(D) to bring an action on behalf of the Commonwealth against a charitable organization and its officers or directors if she has reason to believe that the organization or its officers and directors is operating or is about to operate in violation of Virginia laws relating to the solicitation of charitable contributions. As a public officer, the County Attorney also is empowered to enforce the Uniform Trust Code under Virginia Code § 64.2-700 *et seq.*

6. Defendant Sweet Briar Institute is non-profit corporation created by the General Assembly to administer the trust created by the will of Indiana Fletcher Williams, by operating an educational institution for women in Amherst County, Virginia; as such, Sweet Briar Institute is a testamentary trustee. It is also a charitable organization, as defined by Virginia Code § 57-48, and a trustee as defined by Virginia Code § 64.2-701.

7. Defendant Paul G. Rice is an individual residing in Warrenton, Virginia. Rice is Chairman of the Board of Directors of the College.

8. Defendant James F. Jones, Jr., is an individual residing in Sweet Briar, Virginia, who has served or who has purported to serve as "Interim President" or "President" of the

College since August 15, 2014. Upon information and belief, and as reported by a former Board member, Jones was never properly appointed as Interim President. Instead, on June 28, 2015, Jones' name was presented to the Board as a potential selection for President of the College, but no vote was ever taken. Two days later, it was announced that Jones was the new Interim President. Given that the College's by-laws require that the President of the College, "shall be **elected** by the Board of Directors," and no election took place, Interim President Jones' appointment may be invalid; hence the reference to his "purporting" to serve.

### **Jurisdiction and Venue**

9. This Court has jurisdiction over this case under Virginia Code § 8.01-620, which authorizes the Court to issue injunctions. In addition, Defendants, as trustees of a Virginia trust, have submitted to the jurisdiction of this Court pursuant to Virginia Code § 64.2-711.

10. Venue is proper in this Court under Virginia Code § 8.01-261, because Defendants' acts, which the Commonwealth seeks to enjoin, are taking place in Amherst County, Virginia, which is the County where the College is located.

### **Factual Background**

#### **The College Was Founded by a Testamentary Gift and Legislative Act Under the Condition that the College Continue in Perpetuity.**

11. For over 100 years Sweet Briar College has built a legacy of imparting to its students a strong educational foundation that promotes leadership and service in the greater community. Since 1906, the College has produced actors, engineers, journalists, educators, doctors, lawyers, ambassadors, mayors, and countless more outstanding members of society. The College also has had an immeasurable impact on the local community in which it is located and since its inception has been inextricably intertwined in the fabric of Amherst County.

12. The College was created by an act of the Virginia General Assembly in accordance with the will (“Will”) of Indiana Fletcher Williams (“Williams”).

13. The Will directs that Williams’ extensive real and personal property be placed into a trust, and instructed the trustees to create a corporation that could use the trust property for purposes of establishing and maintaining a women’s college: “I give and devise ...all my real and personal property...unto [four trustees and their survivors] as trustees upon the trusts.....” and “I direct the said trustees forthwith after my decease to procure the incorporation in the State of Virginia of a corporation to be called ‘Sweet Briar Institute,’.....”. Will, ¶ 13.1. A copy of the Will is attached as **Exhibit A**.

14. Once the corporation was formed, the trustees were to grant the real and personal property conveyed in the Will to the corporation, which was to hold such property “forever” upon the conditions and for the purposes declared in the Will: “I hereby give and devise, the said real estate and personal property . . . to the said corporation, to have and to hold the same unto it and its successors *forever, upon the conditions and for the purposes* hereinafter declared, which it shall accept and assume – namely: The said corporation shall with suitable dispatch establish, and *shall maintain and carry on upon the said plantation, a school or seminary to be known as the Sweet Briar Institute*, for the education of [girls and young women].” Will , ¶ 13.2 (emphasis added).

15. The Will explicitly declared Williams’ intent that the school be established as “*a perpetual memorial*” to Williams’ daughter, Daisy, who died at the age of 16 in 1884. *Id.* (emphasis added). (Each year, in honor of Daisy Williams, the College’s students march in unison on Founder’s day to Monument Hill, the place where Daisy Williams is buried.)

16. Williams' bequest included the express conditions that "[n]o part of the [donated land] shall at any time be sold or alienated by the corporation," and that "the personal property herein given shall be *kept inviolate* as an endowment fund, which shall be invested and re-invested by the corporation , and of which the income only shall be used for the support and maintenance of the school . . . ." *Id.* (emphasis added).

17. On February 9, 1901, following the probate of Williams' will, the College was incorporated as a non-stock, non-profit corporation by an Act of the General Assembly of Virginia, under the name Sweet Briar Institute. The corporation's stated purpose was to carry out Williams' wishes and aims as expressed in the Will. 1901 Va. Acts 125 (the "Charter"), attached as **Exhibit B**.

18. Specifically, the legislation chartering Sweet Briar Institute instructed the corporation to "accept the real and personal property therein devised and bequeathed, *subject to the terms and conditions specifically prescribed in the said will.*" *Id.* (emphasis added).

19. The College's founding Charter provides that the College's "central scope and object" is to "impart to its students such education in sound learning, and such physical, moral and religious training as shall, in the judgment of the directors, best fit them to be useful members of society." *Id.*

20. By resolution adopted November 2, 1963, the Board of the College declared itself "satisfied that we are governed by the will of our Founder benefactor," thereby acknowledging, *inter alia*, its obligation to operate Sweet Briar College *in perpetuity*, as specified by Williams.

21. In 1967, Sweet Briar Institute brought suit against the Commonwealth of Virginia in federal district court seeking a declaration that the Commonwealth could not enforce the racial

restriction in the Will, which limited enrollment in the College to “white girls and young women.” See *Sweet Briar Inst. v. Button*, 280 F. Supp. 312 (W.D. Va. 1967) (three judge panel).

22. In ruling for Sweet Briar – and against the Commonwealth – the federal district court made several rulings now directly pertinent to the case at hand, including the following:

- a. “[T]he will of Indiana Fletcher Williams . . . created the trust whereby the institution was established and has been operated since 1906.” *Id.* at 312.
- b. “The college [is] now chartered by Virginia as a non-stock, non-profit corporation and as such a testamentary trustee . . .” *Id.*
- c. “The college’s or board’s administration of the trust is always subject to the supervision of the State court.” *Id.* at 313.
- d. “The point is that doubt of the legal and moral right of Sweet Briar to deviate from terms of the will can plague the college until an answer is procured from the State courts.” *Id.* at 319.

23. Not only was the federal district court correct on the merits of these conclusions, Sweet Briar Institute is now precluded by *res judicata* and/or estoppel from denying them.

24. The beneficiaries of the trust at issue include (i) those young women who are current students at the College, (ii) young women who have applied for admission in the fall of 2015 and who would be admitted if the College were to be in operation, (iii) young women who would apply for admission in later years and who would be admitted if the College were to be in operation, and (iv) the public at large, which has an abiding interest in the education of young women and in the educational diversity offered by an institution like the College.

25. In the years since 1901, thousands of alumnae and other donors have given hundreds of millions of dollars to the College with the understanding that the funds would



continue to be used for the same purpose as the original bequest, *i.e.*, to maintain the College as an educational institution in perpetuity.

**Defendants Have Violated Their Duties as Established by the Williams Will  
and the Act of the General Assembly Chartering Sweet Briar College.**

26. On March 3, 2015, Defendants suddenly and unexpectedly announced that the College would close its doors forever at the end of the current school year and that they would immediately begin to liquidate all of the College's assets, including its buildings, land, and endowment.

27. Although announced suddenly, it appears that closure was not a last minute decision, but instead was a course of action that had been contemplated and operationalized by the Interim President and the Board over a period of many months. For example, on information and belief:

- a. The College began negotiating "teach out" agreements with other schools a few months prior to the College's announcement.
- b. The College retained legal counsel specifically to assist with closure actions in November or December of 2014.

28. In the course of such planning, the Board has failed to consider other courses of action that could have ensured and/or enhanced the College's ongoing operation consistent with the terms of the Will. For example, on information and belief:

- a. In 2006, Sweet Briar conducted a successful \$110 million capital campaign, yet the College has not even attempted a capital campaign in more recent years, despite the future of the College being at stake. A successful capital campaign could be used to pay bond interest and/or principal, thus further reducing the current debt load.



- b. Consultants were hired to “study” the College’s condition by surveying 200 of 20,000 alumnae. The consultants and College staff members interviewed alumnae in person, in their homes, all over the country during February 2015, yet upon information and belief, made no mention of the severe need for funds during the interviews. It is not clear that any final consultant report or survey results have even been completed.
- c. The Board cited a lack of students interested in matriculating to the College, yet, upon information and belief, the Board never seriously considered recruiting additional students through obvious channels. For example, the Board never seriously considered recruiting international students, even though there is a large base of interested students seeking to attend the College from abroad. Additionally, the Board apparently never seriously considered recruiting from preparatory schools focused on equine sports, as had been advocated by the ousted Board members, even though Sweet Briar is renowned for its equine program.
- d. On information and belief, no attempts were made by the Board to reduce tuition discount rates through various means, including but not limited to restructuring the curriculum, targeting more affluent students or other steps to lower tuition costs and/or increase the percentage of education paid by each student.

29. The Board also ignored attempts by certain Board members to provide information in support of a course other than closure. Upon information and belief, between 2013 and 2014, four members of the Board of the College who were vocal in criticizing

Defendants' course of action were forced off the Board, were asked to resign, or were told they would not be reappointed. On information and belief, two of the former Board members provided professional recommendations to advance enrollment and improve the College's finances which the Board ignored.

- a. One Board member, Jo Ann Soderquist Kramer, resigned under pressure in April 2014, after the Board ignored her warnings and calls to take action to shore up the College's financials.
- b. Another former Board member, Richard E. Leslie, was asked to resign on June 29, 2014. He did so after raising numerous areas of disagreement with Board positions, including financial practices by the Board, secretive governance where few people review and make decisions, no presidential accountability, lack of experience by the admissions staff, no marketing plan, and a lack of a strategic plan. Letter of Resignation by Richard E. Leslie, **Exhibit C**.

30. Nor, on information and belief, have Defendants ever sought the guidance or approval of State courts, or otherwise made any attempt to reform the terms of the Charter, created by Act of the General Assembly, and the Will; instead, they have plunged forward into closure in contravention of the specific terms of the Charter and the Will.

#### **The Decision to Close the College Is Not Warranted.**

31. Upon information and belief, the College's financial condition does not warrant closure.

32. The College's endowment is currently estimated to be about \$95 million. On information and belief, the funds in the endowment were raised primarily in response to

charitable solicitations to support the operation of the College in accordance with its educational mission.

33. A review of the College's annual financial statements from 2010 to 2014, shows that annual operating deficits were more than offset by the endowment's investment gains, grants, gifts and alumnae giving. This pattern resulted in an *increase* of the College's net assets (total assets minus total liabilities) over the last five years from \$126 million to \$134 million. During the same period, the College's debt load *decreased* from approximately \$42 million to \$25 million while its endowment *increased* from \$85 million to \$95 million.

34. In March 2015, two officials from Birmingham Southern and Wilson College with experience turning around struggling institutions of higher education opined that Sweet Briar is not in an unsustainable or dire financial position, and that there is no immediate need to close the College. These experts believe Sweet Briar College can be operated successfully and have offered their assistance. Letters attached as **Exhibit D**.

35. Recent statistics have indicated that applications to the College have significantly increased over the past three years.

**Defendants Continued to Raise Funds to Support the College's  
Ongoing Educational Mission, While Simultaneously Acting to Close the College.**

36. Defendants have in the recent past disregarded the purposes for which funds have been donated. This is evidenced, *inter alia*, by the following:

- a. In 2008, the College raised money for the specific purpose of restoring the Tusculum House, a mid-18th-century house belonging to Maria Crawford, the mother of the college founder, Indiana Fletcher Williams. Instead of restoring the house, Defendants sold it in 2014. Affidavit of Sally Mott Freeman, **Exhibit E**.

- b. The College recently spent \$8.8 million on an expansion of its library. The nucleus of the funds for that purpose was given by an alumna and her family in the 2000's and was restricted to use for the library. The library opening gala to celebrate the new space was held on November 7, 2014, and the Interim President said it would be around for students to use forever. There was never a mention of a shutdown of the College. Now, Defendants have announced plans to shutter the other school buildings and move all administration personnel into the library for use as an office building.

37. Upon information and belief, Defendants have pursued fundraising efforts in support of the continuation of College operations, while at the same time developing plans to close the College. These various efforts include, *inter alia*, the following:

- a. Helping one alumna establish a memorial scholarship honoring her deceased son by agreement finalized in January 2015. Upon learning of the closure, the alumna requested the money be transferred to St. Jude Children's Hospital. The College has refused to transfer or return the funds. Affidavit of Sarah Longworth Betz Bucciero, **Exhibit F**.
- b. Conducting fundraising in "Spring 2015," by asking previous donors to continue their annual giving to the College, so that the College could continue its mission of "helping young women to realize their dreams," while, at the same time, the Defendants were developing and pursuing secret closure plans. Declaration of Sarah P. Clement, **Exhibit G**.

- c. Mailing letters to alumnae in February, 2015, to solicit donations to continue carrying out the College's work, while, at the same time, the Defendants were developing and pursuing secret closure plans.
- d. Sending representatives to meet with previous donors in February, 2015, to solicit donations to continue carrying out the College's work, while, at the same time, developing and pursuing secret closure plans.
- e. Mailing a letter, dated February 16, 2015, from the President of the College to Ms. Teresa Pike Tomlinson that thanked Ms. Tomlinson for naming Sweet Briar College as a beneficiary of her estate plans. Affidavit of Teresa Pike Tomlinson and accompanying letter, attached as **Exhibit H**. The testamentary gift bequeathed \$1,000,000 (or a percentage of the funds in the estate) to the College. In the letter to Ms. Tomlinson, President Jones wrote, "By including Sweet Briar in your estate plans, you have made a significant commitment to future generations of young women and to all that Sweet Briar can mean in their lives." *Id.* The letter further notes that "[e]state gifts have played, and will continue to play, an important role in ensuring the strength of Sweet Briar College, beginning with Indiana Fletcher Williams' founding bequest." *Id.* President Jones personalized the letter by writing by hand, "What a wonderful thing you have done!" *Id.* At the time President Jones sent the letter, the College already had retained legal counsel to assist with closure actions and three weeks later announced that the College would close forever.

38. Upon information and belief, Defendants have used funds solicited as charitable contributions to support College operations for other purposes, including, *inter alia*, the following:

- a. Paying, in part, the salaries of officers, administrative staff, and other employees who have worked on closure of the College.
- b. Employing multiple law firms and consultants to advise Defendants on closure of the College since as early as November, 2014.

39. On information and belief, the College also has taken action to dispose of significant assets, and has acted to eradicate agreements that hinge on continued operation as a College. For example:

- a. Selling the College's assets and contracting with other colleges to transfer assets. The College has already contracted with Hollins College and other schools to (i) transfer students through "teach out" agreements; (ii) give away the College's junior year abroad program; and (iii) transfer its records repository to another school (or schools).
- b. Selling or attempting to sell assets including horses and the College's radio station.
- c. Establishing a "Working Group" to review proposals from third parties for the acquisition of the College's buildings, lands and other assets.
- d. Advising certain leaseholders, including faculty and administrators living on campus, that they would have to move.

40. The College also has taken action that appears designed to ensure, at a very early point in the closure process, that operation as a College *could not* be continued, specifically, on

information and belief, destroying records, including admissions records related to prospective and accepted students and development office records related to the College's financial status and giving. *See* Affidavit of Amelia Dudman Atwill, **Exhibit I**.

41. The College is taking action to divert funds donated for the *operation* of the College to other purposes, specifically, *closing* the College. For example, on or about April 9, 1998, the Elkins family established an endowment restricted fund at the College known as the Judith M. Elkins Prize Fund "for the purpose of recognizing outstanding achievement of a senior, majoring in mathematical, physical, or biological sciences, actively participating in the college community, and demonstrating ideals and dedication to learning exemplified by the life of Professor Elkins." *See* Declaration by Rachel Elkins Thompson and proposed agreement received from the College are attached as **Exhibit J**. Recently, the Elkins family received a letter from a College administrator seeking the release of restrictions on the scholarship endowed by the family. *Id.* The letter seeks the "Donor's consent to use the Funds for the *general charitable purposes* of the College, and specifically *including* costs that the Board (or a committee acting on its behalf) determines are necessary and proper to effect the *closure of the College* and winding up of its affairs." *Id.* (emphasis added). Thus, the College administration takes the position that funds donated for the general purposes of the College can be used to close down the College in violation of the conditions of the Will and the Charter.

42. The misuse of funds and assets to close the College will irreparably harm the College's students, prospective students, faculty, and donors, and the surrounding region and the citizens of the Commonwealth.



## COUNT I

### **USE OF CHARITABLE FUNDS FOR IMPERMISSIBLE PURPOSES IN VIOLATION OF VIRGINIA CODE § 57-57(N)**

43. The Commonwealth restates the allegations in the foregoing paragraphs as if set forth fully herein.

44. The College is a charitable institution. Its purpose is to carry out “the expressed wishes and aims of Williams as set forth in said will” by “impart[ing] to its students such education in sound learning, and such physical, moral and religious training as shall, in the judgment of the directors, best fit them to be useful members of society.” 1901 Va. Acts 125, 127.

45. Defendants have solicited and obtained funds from alumnae and the public for the purpose of supporting the College’s educational mission, consistent with the Will, on numerous occasions over the last one hundred years.

46. Upon information and belief, Defendants have engaged in annual fundraising campaigns for many years to solicit funds from alumnae and the general public for general operating expenses of the College, and they have solicited funds for specific facilities and programs used in undertaking the College’s educational mission.

47. Upon information and belief, Defendants have used or have permitted the use of certain funds raised by such charitable solicitations for actions associated with the improper closure of the College, rather than for the purposes for which the funds were donated, and they intend to persist in such usage if not stopped by this Court.

48. If allowed to terminate the College’s educational mission, Defendants will use the remaining funds raised by such charitable contributions for purposes other than the operation of the College as an educational institution.

49. By moving to close the College, Defendants will destroy the purposes for which donations were given, thereby, ensuring that those funds will be directed to some purpose unintended by the donor, in violation of Virginia Code § 57-57.

50. Donors and the public have been and continue to be harmed by Defendants' use of donations for purposes other than the ongoing operation of the College.

51. By such actions, the Defendants have operated, are operating, and are about to operate the College in violation of Virginia Code § 57-57(N), which prohibits the use of funds raised by a charitable solicitation for any purpose other than the solicited purposes or for the general purposes of the charitable organization.

## **COUNT II**

### **VIOLATION OF THE UNIFORM TRUST CODE**

52. The Commonwealth restates the allegations in the foregoing paragraphs as if set forth fully herein.

53. The Uniform Trust Code applies to: “express inter vivos trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.” It also applies to “testamentary trusts.” Va. Code § 64.2-700.

54. This Court may exercise its jurisdiction “over the supervision or administration of trusts,” and it “may determine that application of the policies, procedures, or rules of the Code is appropriate to resolution of particular issues.” Va. Code § 64.2-700.

55. The Defendants are subject to the Uniform Trust Code because (i) the Act of Assembly creating the College requires that the College be administered in the manner of an express or charitable trust, and (ii) the College is a testamentary trustee under the Will, and Act of Assembly, as confirmed by the *Button* case, *see supra* ¶¶ 20-22.

56. Because the College is a charitable corporation, the assets held by Defendants are deemed to be held in trust for the public.

57. As trustees of this charitable trust, Defendants are required to administer the trust “solely in the interests of the beneficiaries.” Va. Code § 64.2-764 (duty of loyalty).

58. As trustees of this charitable trust, Defendants are required to “administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” Va. Code § 64.2-766 (prudent administration).

59. By their actions as alleged herein – including but not limited to moving to close the College forever and selling its assets – Defendants are and will be breaching their duties as trustees by using assets of the charitable trust in a manner inconsistent with the governing documents of the trust, including the Will and the Act of the General Assembly by which the College was chartered.

60. By their actions as alleged herein – including but not limited to moving to close the College forever and selling its assets – Defendants are and will be breaching their duties as trustees as set forth in Virginia Code § 64.2-764 (duty of loyalty), Virginia Code § 64.2-766 (prudent administration), and Virginia Code § 64.2-792 (breach of trust).

61. Because of the foregoing, the beneficiaries of the trust – and the Commonwealth – are suffering and will continue to suffer irreparable harm.

62. The Commonwealth, by the Amherst County Attorney, may maintain a proceeding to enforce the trust under Virginia Code § 64.2-723.

63. The Commonwealth, by the Amherst County Attorney, therefore seeks to enforce the terms of the trust pursuant to its authority under Virginia Code § 64.2-723 and otherwise.

### **Grounds for Temporary and Preliminary Relief**

64. The Court has authority under its general equitable powers, and/or Virginia Code § 57-59(D), and/or Virginia Code § 64.2-792, to grant the temporary restraining order and preliminary injunction sought herein.

65. The Commonwealth is likely to succeed on the merits.

66. In the alternative, the Commonwealth “has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation.” *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977).

67. The Commonwealth will suffer irreparable harm in the absence of a temporary restraining order or preliminary injunction. Time is of the essence. Defendants appear to be moving with great speed to contract for the sale of assets, destroy documents, and obliterate contractual relationships governing tenancies and endowments. If the Defendants are not halted, there not only will be no College left to operate; instead, there may be left in its shattered wake litigation that will entangle the proper handling of the trust corpus for years to come.

68. Little or no harm will be suffered by the Defendants if the Court grants the temporary and preliminary relief sought by the Commonwealth.

69. The balance of harm and balance of equities both tip decidedly in the Commonwealth’s favor.

70. The public has a vital interest in preserving the College and avoiding protracted litigation around the question of operation of the College and proper handling of its assets should this Court ultimately approve closure.

### **Prayer for Relief**

WHEREFORE, the Commonwealth requests that the Court enter orders granting the following relief:

71. A temporary restraining order and preliminary injunction restraining the Defendants from using any funds raised by charitable solicitations of the College (including funds received for annual operating expenses and for the endowment) in connection with any action relating to the closure of the College and the sale or other disposition of its assets;

72. A temporary restraining order and preliminary injunction restraining the Defendants from taking any further steps to close the College, and requiring the Defendants to continue operating the College in the normal course of business pending a final decision in this case;

73. An order removing the Interim President and Board from their positions and appointing a special fiduciary to take possession of the College assets and to administer those assets, including the appointment of new President and Board to continue operations of the College;

74. An order appointing a special fiduciary to take an accounting of the College's finances, including all funds raised by charitable solicitations for a specific purpose of the College, all funds raised by charitable solicitations for general purposes of the College, the uses made of all such funds, and all actions taken by the College to cease its operations and to dispose of its assets;

75. A permanent injunction restraining the Defendants from using any funds raised by charitable solicitations of the College (including funds received for annual operating expenses and for the endowment) in connection with any action relating to the closure of the College and the sale or other disposition of its assets;

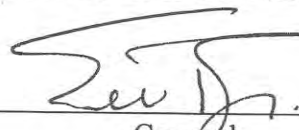
76. A permanent injunction restraining the Defendants from taking any further steps to close the College, and requiring the Defendants to continue operating the College in the normal course of business;

77. An award against the individual Defendants of reasonable attorney fees and expenses incurred by the County Attorney in connection with this action, pursuant to Virginia Code § 57-59(E); and

78. Such other relief as the Court deems just and proper.

COMMONWEALTH OF VIRGINIA

By: \_\_\_\_\_



Counsel

Ellen Bowyer (VSB # 43869)  
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*Counsel for the Commonwealth of Virginia*