

**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. CL15009373-00

PAUL G. RICE,

and

JAMES F. JONES, JR.,

Defendants.

**COMMONWEALTH'S MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY INJUNCTION**

Plaintiff, the Commonwealth of Virginia (the "Commonwealth" or "Plaintiff"), by and through Ellen Bowyer, the County Attorney of Amherst County, Virginia ("County Attorney"), presents this memorandum in support of its motion for a temporary injunction against the Board of Directors (the "Board") of Sweet Briar Institute (the "College," "Sweet Briar," or "Sweet Briar College"), Paul G. Rice, Chairman of the Board, and James F. Jones, Jr., ostensible Interim President (collectively "Defendants").

**Introduction**

This case arises from the recent announcement and implementation by Defendants of their decision to close 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. As explained by this memorandum, that decision is not only precipitous and unwarranted, it is also unlawful. Unless a temporary injunction is entered, that decision will soon become irreversible.

This memorandum is divided into three parts. In Part I, the Commonwealth restates the factual statements in the Complaint, adding additional supporting evidence (*see infra* pp. 2-14). In Part II, the Commonwealth presents additional salient facts pertinent to its request for injunctive relief (*see infra* pp. 15-18). These facts include an expert report by R. Steven Spitzer, a CPA and Certified Fraud Examiner who is a Principal for Yount, Hyde & Barbour, P.C. Spitzer's report concludes that the College was not in dire financial straits just before the College's Board and Interim President announced their decision to close the College for financial reasons. In fact, contrary to Defendants' assertions, the report concludes that the College is financially stable and quite capable of continuing to operate. In Part III, the Commonwealth presents its legal argument why relief should be granted (*see infra* pp. 18-33). Of particular note is the Wilson College case, a Pennsylvania case in involving facts similar to those presented here, in which the court enjoined the precipitous and ill-conceived closing of a college, thus saving an institution of higher education so it could continue to meet the growing demand for college degrees and fulfill the charitable purposes for which it the college was founded (*see infra* pp. 31-32).

### **PART I: FACTUAL BACKGROUND**

#### **The College was founded by a testamentary gift and legislative Act under the condition that the College continue in perpetuity.**

For over 114 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.

The College was created by an act of the Virginia General Assembly in accordance with the Will. The Will (i) placed Williams’ extensive real and personal property into a trust to establish and maintain a women’s college and (ii) appointed trustees, who were tasked with petitioning the General Assembly to establish a corporation, Sweet Briar Institute, to carry out the purposes of the trust. The College took on the role of trustee under the following provision of 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). A copy of the Will is attached as **Exhibit A**. The procedure by which the College was created and its operation as a trustee carrying out the provisions of the trust created by the Will was described in the Complaint filed by the College in *Sweet Briar Institute v. Button*. (**Exhibit B** at ¶¶ 3-4).<sup>1</sup>

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<sup>1</sup> In that Complaint, the College also stated that the Commonwealth Attorney and Attorney General “are officers of the Commonwealth of Virginia authorized and charged with the responsibility to enforce trusts for educational purposes in Amherst County, Virginia.” *Id.*, at ¶ 5. Of course, the Commonwealth Attorney, County Attorney and Attorney General are all given this authority under Code § 57-59(D) – one of the statutes under which Plaintiff is proceeding in this action.

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, and who is buried on the College's campus. *Id.* (emphasis added).

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).

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 C**.

The legislation chartering Sweet Briar Institute created the corporation "as is suggested in the said will, with power to receive and hold all of the property therein described and 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). The Charter provides further that the College's "central scope and object" is to be the "education" and "training" of its students. *Id.*

Recognizing the restrictions on the College's use of its assets as a result of the restrictions in Williams' Will and the Charter, in 1908, the General Assembly adopted a statute, now codified as part of the Virginia Non-Stock Corporation Act, at Virginia Code § 13.1-901, authorizing the College to sell some portions of its land. Brief for Appellant, *Sweet Briar*

*Institute v. Button*, 387 U.S. 423 (1966) (No. 1106) (**Exhibit D**) (recognizing that this provision was intended to “permit sale of a portion of the real estate thus acquired by Sweet Briar from Mrs. Williams” and a portion was thereafter sold). In the absence of such a legislative act (or the permission of a court) the College could not deviate from the terms of the Will and Charter that created it.

Finally, 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. *See id.*

***Sweet Briar Institute v. Button* confirms that the College is a trustee,  
charged with administering the trust established by  
Williams’ Will and the Charter granted by the General Assembly.**

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

- “[T]he will of Indiana Fletcher Williams ... created the *trust* whereby the institution was established and has been operated since 1906.” *Id.* at 312 (emphasis added).
- “The college [is] now chartered by Virginia as a non-stock, non-profit corporation and as such a testamentary *trustee* ....” *Id.* (emphasis added).
- “The college’s or board’s administration of the trust is always subject to the supervision of the State court.” *Id.* at 313.

- “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.

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

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 their gifts would be used for the same purpose as the original bequest, *i.e.*, to operate and maintain the College as an educational institution in perpetuity.

**Defendants have violated their duties as established by the Will  
and the Act of the General Assembly chartering the College.**

On March 3, 2015, Defendants suddenly and unexpectedly announced that the College would close its doors forever at the end of the 2014-2015 school year and that they would immediately begin to liquidate all of the College’s assets, including its buildings, land, and endowment.

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:

- a. The College began negotiating “teach out” agreements with other schools a few months prior to the closure announcement (Exhibit A to Defendants’ Plea in Bar at 4).
- b. The College retained legal counsel specifically to assist with closure actions in November or December of 2014.

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

- a. In 2006, Sweet Briar conducted a capital campaign that succeeded in raising approximately \$110 million, yet the College has not 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 or principal, thus further reducing the current debt load and create additional endowment funds to support the College's financial needs into the future.
- b. Consultants allegedly were hired to "study" the College's condition by surveying about 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 made no mention of the severe need for funds during the interviews. *See* Longino Aff. (**Exhibit E**). The results of the study have not been made available.
- c. The Board cited a lack of students interested in matriculating to the College, yet the facts belie this claim. Enrollment numbers in 2013 actually increased by 12 percent from 2012 to 2013. Nape Decl. (**Exhibit F**). Steven Nape, the former Director of Admissions of Sweet Briar from May 2012 to May 2013, notes that the College had *record enrollment* in three of the last seven years. In 2013 enrollment numbers ranked "third highest among Sweet Briar College first-year classes since at least 1994, and possibly in College history." *Id.* To the extent that enrollment figures may be down this year (because of the secrecy with which the College leadership has been operating, this information is not available), that is easily explained by the fact that

the College has never replaced Mr. Nape with a new Director of Admissions following his departure from that position in May 2013.

- d. The College's claim that it has trouble recruiting is also inconsistent with the College being named by College Choice as one of the top women's colleges in the Country this year (2015). *See* "Embattled Sweet Briar named to list of top colleges," Virginia Business News (April 6, 2015) (**Exhibit G**).
- e. Additionally, the Board apparently 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. The Board apparently also never seriously considered recruiting from preparatory schools focused on equine sports, as had been advocated by the ousted Board members (described just below), even though Sweet Briar College is renowned for its equine program.
- f. Although the Board and Interim President also cited high tuition discounting as a reason for closing the College, the College never attempted to reduce the tuition discount rate or seek other solutions to this problem.

The Board also ignored attempts by certain Board members to provide information in support of a course other than closure. 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. Two of the former Board members provided professional recommendations to advance enrollment and improve the College's finances, which the Board ignored.

- g. One Board member, Jo Ann Soderquist Kramer, resigned under pressure in April 2014, after the Board ignored her recommendations to take action to shore up the College's financials. Kramer Decl. (**Exhibit H**).
- h. Another former Board member, Richard E. Leslie, was asked to resign on June 29, 2014. He did so after disagreeing with numerous Board positions, including financial practices by the Board, secretive governance, 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 I**).

Nor 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.

**Defendants' decision to close the College is unwarranted and unnecessary.**

The College's financial condition does not warrant closure. The College's endowment is currently estimated to be about \$95 million. *See* Spitzer Report (**Exhibit J**) at Exhibit 7. 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. As will be discussed in more detail below, even the funds that the College identifies as "unrestricted" were given with the expectation and promise that they would be used to fund the ongoing operation of the College, not to shut it down.

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.<sup>2</sup>

In March 2015, two officials from Birmingham Southern College and Wilson College, who are experienced in 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 to do so. See Letters by Krulak (**Exhibit K**) and Gibb (**Exhibit L**). Additionally, recent statistics have indicated that applications to the College have significantly increased over the past three years. See Scott Jaschick, "Shocking Decision at Sweet Briar," Inside Higher Education (March 4, 2015), *available at* <https://www.insidehighered.com/news/2015/03/04/sweet-briar-college-will-shut-down>.

**Defendants continued to raise funds to support the College's ongoing educational mission while simultaneously acting to close the College.**

Defendants have in the recent past disregarded the purposes for which funds have been donated to the College. 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, however, Defendants sold it in 2014. Freeman Aff. (**Exhibit M**).
- 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 as a library. Rowe Decl. (**Exhibit N**).

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<sup>2</sup> The College's healthy financial position is also confirmed by the report of Steve Spitzer, CPA, CFE (Exhibit J), discussed in detail *infra* at 16-18.

Defendants have announced plans to shutter the other school buildings and move all administration personnel into the library for use as an office building.

Defendants have pursued fundraising efforts in support of the continuation of College operations, *while at the same time developing plans to close the College*. Those efforts include 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 even though the charitable purpose of the gift cannot be achieved in view of the actions by the College's Board and President to close the College. Bucciero Aff. (**Exhibit O**).
- 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." Clement Decl. (**Exhibit P**).
- c. Mailing letters to alumnae in February 2015, soliciting donations to continue carrying out the College's work.
- d. Sending representatives to meet with previous donors in February 2015, soliciting donations to continue carrying out the College's work.
- 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. Tomlinson Aff. and accompanying letter (**Exhibit Q**). 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, however, the College already had retained legal counsel to assist with closure actions and three weeks later announced that the College would close forever.

- f. Mailing letters in March of 2015, informing donors who had included Sweet Briar College in their wills of the decision to close the College, but not offering any suggestion that such wills could be changed, or gifts could be redirected. (**Exhibit R.**)

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. (**Exhibit S.**)
- b. Employing multiple law firms and consultants to advise Defendants on closure of the College since as early as November 2014.

**Defendants have been taking other actions to effectuate their closure plans.**

The College also has taken actions to dispose of significant assets and has acted to eradicate agreements that hinge on continued operation as a College. Such actions include, for example:

- a. The College has 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 (*See Teach-Out Agreement Between James Madison University and Sweet Briar College, Exhibit T*); and (iii) transfer its records repository to another school (or schools).
- b. Selling or attempting to sell assets including horses, artwork 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. Issuing eviction notices to leaseholders, including faculty and administrators living on campus.

Upon information and belief, 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* continue, including 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 Atwill Aff. (Exhibit U)*. This destruction may have continued after the Commonwealth communicated with the College’s counsel, asking that the College impose a “litigation hold,” with respect to its records. *See Motion for Temporary Injunction, filed March 31, 2015.*

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 Thomson Decl. and attachment (**Exhibit V**). 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). Whether or not the College may seek such a change in the purpose of a donation, the letter is troubling. Specifically, as shown by the letter, the College takes the position that funds donated for the *general purpose* of the College can be used to *close down* the College. Such diversion of funds violates Virginia Code § 57-57(N) (as explained further below), because it is contrary to the general purpose of the College (*i.e.*, carrying out its educational mission, as required by the Will and the Charter) for which all general-purpose funds were contributed.

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.<sup>3</sup> Plaintiff has now filed suit against Defendants, seeking, among other

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<sup>3</sup> Additional examples of alumnae, prospective students, community members harmed by the decision to close the College’s are included collectively as **Exhibit W**.

forms of relief, a temporary and permanent injunction that prohibits Defendants from continuing to carry out their unlawful acts.

**PART II: ADDITIONAL FACTS PERTINENT TO REQUEST FOR  
INJUNCTIVE RELIEF**

**Defendants continued soliciting funds for the operation of the College,  
while intending to use those funds for different and contrary purposes.**

While Defendants may claim that, to date, the College has only used “unrestricted” funds to wind down the College’s operations, the fact that the College calls these funds “unrestricted” does not mean that they can use them to shut down the College. In fact, many of the College’s “unrestricted” funds come from the Annual Fund, which the College considers “unrestricted,” but which the Defendant’s raised for purposes different from and, indeed, contrary to – closing down the College. *See* Sweet Briar College, The Annual Fund, <http://www.sbc.edu/giving/annual-fund> (last visited Apr. 2, 2015) (**Exhibit X**).

Defendants solicit potential donors through the College’s Annual Fund web page. *Id.* The webpage provides a link to a document explaining the purposes of the Annual Fund to potential donors. *See* Sweet Briar College, “The Annual Fund at Work,” **Exhibit Y**.<sup>4</sup> That document states:

Unrestricted Annual Fund gifts are crucial to the *success and growth* of the College. The Annual fund supports basic necessities such as salaries for faculty and staff, academic programs, utility bills, office supplies, maintenance, and other less exciting costs associated with the *operations* of the College. In addition, it also makes the planning possible for significant campus priorities and *new initiatives*.

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<sup>4</sup> Although dated “2011,” the document is provided to current visitors to the website as an explanation of how the College intends to use donations to the Annual Fund.

Hopefully this information will help to explain just how important support for the Annual Fund is to the College – to her programs, her students, her faculty and staff, her facilities, *and her future*.

*Id.* (emphasis added).

The document also describes over 20 different other, “less exciting” ways the “gifts to the Annual Fund are applied,” including: “\$2,000 provides a data projector for one classroom,” “\$700 allows one student to present her work at a national conference,” and “\$120 provides a day of peer tutoring in the Academic Resource Center.” *Id.* Every example provided relates to the ongoing operation of the College. There is no hint that donations to the Annual Fund would be used to shut down the College. Instead, having raised funds for the “success and growth,” for “operations,” and for “new initiatives,” the Defendants plan to use those funds to declare the College a *failure*, to *reduce* its size to zero, to *cease* operations, and to make sure there is never again any new initiative at the College. *Id.*

**Contrary to Defendants’ assertions, the College was in a stable financial position at the time of the closure announcement.**

A recent analysis of Sweet Briar College’s finances based on publicly-available information performed by R. Steven Spitzer, a CPA with Yount, Hyde & Barbour, P.C., concludes “[a]ssuming the College’s finances are handled in a prudent and responsible way going forward, [the College] would still remain financially viable.” Spitzer Report at 1. Spitzer reaches this conclusion by using three credible, objective measurements: (1) the United States Department of Education’s Financial Responsibility Composite Scores, (2) *Forbes* magazine’s College Financial Grade, and (3) the Composite Financial Index (“CFI”), endorsed and utilized by the Council on Independent College.

First, Spitzer reviewed the College’s Financial Responsibility Composite Score as reported by the U.S. Department of Education in 2013 (the most recent year available). This is a

score developed and used by the U.S. Department of Education for all for-profit and non-profit institutions annually, as required by the Higher Education Act of 1965.<sup>5</sup> The score is based on a scale from **negative 1.0** to **positive 3.0**, with a score greater than or equal to 1.5 indicating that the institution is considered financially responsible. Spitzer reports that as of June 30, 2013, the U.S. Department of Education composite score for the College was **3.0**, indicating a financially responsible institution. Spitzer concludes that “upon a review of the publicly-available data . . . as of approximately eight months before the closure announcement, the College was financially viable, and there was not an urgent financial reason to close.” Spitzer Report at 3.

Second, Spitzer reviewed the *Forbes*’ study on the financial health of private colleges and universities. This study by a major financial publication measured the financial health of more than 900 private-not-for-profit institutions by analyzing, among other factors, a college’s balance sheet health, operational soundness, and admissions yield. The study awarded Sweet Briar College “a **3.899** grade out of 4.50,” which translates into an “A” rating. The College ranked number 88 out of the over 900 private institutions surveyed and only four institutions in Virginia (Washington & Lee, the University of Richmond, Hollins University, and Randolph College) ranked higher than Sweet Briar College.

Third, Spitzer analyzed the College using the Council of Independent College’s Composite Financial Index. The CFI provides a more complex picture of the financial health of an institution by measuring four factors: (1) the Primary Reserve Ratio (the measure of the level of financial flexibility), (2) the Net Operating Revenues Ratio (the measure of the operating performance), (3) the Return on Net Assets Ratio (a measure of overall asset return and

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<sup>5</sup> The three ratios that make up the Financial Responsibility Composite score are (i) a primary reserve ratio, (ii) an equity ratio, and (iii) a net income ratio.

performance), and (4) the Viability Ratio (a measure of the ability to cover debt with available resources). CFI scores fall along a scale of -4 to 10. A CFI score of 3 is the threshold of institutional financial health. A score of less than 3 indicates a need for serious attention to the institution's financial condition. A score of greater than 3 indicates an opportunity for strategic investment of institutional resources to optimize the achievement of institutional mission. Spitzer calculates the CFI score for Sweet Briar College as 5.09 for the years ended June 30, 2014 (and 4.72 for the previous year).

In short, Sweet Briar College has “hit the trifecta,” receiving high scores from the U.S. Department of Education, from *Forbes*, and from the Composite Financial Index. If Sweet Briar must close despite their high scores, then virtually every private college in America must close. But, obviously, that is not the case. Indeed, Spitzer's analysis, based on objective financial data reported by the College and interpreted using well-respected and generally accepted methods of analysis, concludes that the College is not only in “excellent financial health,” it is in “good and significantly improving financial health.” Spitzer Report at 7.

### **PART III: ARGUMENT**

#### **I. The Commonwealth is entitled to an injunction because Defendants are violating multiple Virginia statutes.**

When the Commonwealth seeks to enjoin the violation of a statute or regulation, it need not make the same showing required when the Court exercises its general equitable powers in a private party dispute. This is especially the case when the statute at issue includes provisions expressly authorizing a court to enter an injunction to prevent violations of that statute. *Ticonderoga Farms, Inc. v. County of Loudon*, 242 Va. 170, 176, 409 S.E.2d 446, 449-50 (1991) (“Although proof of irreparable harm and proof of the lack of an adequate remedy at law are prerequisites to a grant of injunctive relief under a court's traditional equity jurisdiction, neither

showing is required when a statute or ordinance expressly empowers a court to grant injunctive relief against its violation. In that case, all that is required is proof that the statute or regulation has been violated.”) (quotation and alteration omitted); *see also* 10A M.J. Injunctions, § 3. In the case at bar, the Defendants have violated, are violating, and intend to continue violating three state statutes:

- The Act of Assembly organizing the College and requiring 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.*” 1901 Va. Acts 125.
- The Charitable Solicitations Act, Va. Code § 57-57(N), which makes it unlawful to use “funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purpose of the charitable or civic organization on whose behalf the solicitation was made,” and which expressly authorizes an injunction prohibiting violations of that Act, Va. Code § 57-59(D).
- The Uniform Trust Act, which requires a trustee to administer a trust in a manner that complies with the purposes found in the document creating the trust, and which expressly authorizes an injunction prohibiting violations of that Act, Va. Code § 64.2-792.

The statutes authorize the injunctive relief sought; the Commonwealth need show no more to obtain immediate injunctive relief. At the same time, the urgent need for such relief is exacerbated by the facts of this case as shown below.

**II. Alternatively, the Commonwealth is entitled to injunctive relief under the Court’s general equitable power.**

Even if the Commonwealth were required to make the same showing as private parties (which is decidedly not the case here), it plainly would be entitled to injunctive relief. In the past, this Court (along with many other Virginia Circuit Courts) has followed the criteria set

forth by an often cited case, *Blackwelder Furniture Co. v. Seilig Manufacturing Co., Inc.*, 550 F.2d 189 (4th Cir. 1977): (1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is not granted; (2) the likelihood of harm to the defendant if the preliminary injunction is granted; (3) the likelihood that the plaintiff will succeed on the merits; and (4) the public interest. *Hardinge, Inc. v. Buhler*, 72 Va. Cir. 39, 39 (Amherst Cir. Ct. 2006) (citing *Blackwelder*, 550 F.2d at 195-96).

Under the *Blackwelder* approach, the Court uses a sliding scale, and when the balance of harms tips decidedly in the plaintiff's favor, as it does in this case, "a preliminary injunction will be granted if 'the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus more deliberate investigation.'" *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 359, 359 (4th Cir. 1977) (quoting *Blackwelder*, 550 F.2d at 195). As shown by the Complaint and the evidence thus far presented, the Commonwealth has not only made the "serious" showing required in such situations, but has shown that it is likely to succeed on the merits.<sup>6</sup>

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<sup>6</sup> The Fourth Circuit has more recently held that the *Blackwelder* "sliding scale" or "balance of hardships" approach is inconsistent with the U.S. Supreme Court's decision in *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365 (2008), and that it was bound by *Winter* to hold that a party seeking a preliminary injunction must satisfy all four of the traditional *Blackwelder* tests. See *The Real Truth About Obama, Inc. v. Federal Election Commission*, 575 F.3d 342, 346-47 (4th Cir. 2009), *vacated and remanded*, 130 S.Ct. 2371, *reissued in pertinent part*, 607 F.3d 355 (4th Cir. 2010). Regardless whether *Blackwelder* or *Real Truth* standard is applied, both standards are similar and the Commonwealth easily satisfies both. In any event, this discussion involves an *alternative* standard. As explained in Part I, the appropriate standard to use in this case is the one applicable when the Defendant is engaged in conduct violating a state statute.

**A. The Commonwealth is likely to suffer irreparable harm in the absence of preliminary relief.**

“Irreparable” injury means that the “injury would be a grievous one, or at least a material one, and not adequately reparable in damages.” *Callaway v. Webster*, 98 Va. 790, 37 S.E 276, 277 (1900). The lack of an adequate remedy at law constitutes irreparable harm. *See* John L. Costello, *Virginia Remedies* § 13.05[3] (3d ed. 2005) (“If one is threatened with irreparable injury it is because there is no adequate remedy elsewhere, and if one has no adequate remedy, he will surely suffer irreparable harm.”). The Commonwealth will be harmed in two respects:

First, the Commonwealth as a whole will be irreparably harmed through any instance of court-sanctioned approval of charitable trusts operating in violation of state law. Defendants are required by state law to operate the College for the purpose of educating women until such time as this Court modifies the terms of the governing trust. Defendants’ stated intentions to cease such operation and their actions supporting those intentions – all done without applying to this Court for modification of the terms of the governing trust – violate multiple state laws. If this Court permits those actions to continue, it would announce a new and unworkable standard for charitable trustees in Virginia that trusts are not bound by the terms of their trust or by state law. This invitation to lawlessness harms not just existing institutions, but makes it less likely that such institutions will be established in the future, as no testator will be able to rely on performance of his or her instructions for any period after the trust’s formation.

Second, the impacts of the unnecessary destruction of an institution of higher education, and the resulting injury to students, faculty, staff and the community within which they study, work, learn and share are immeasurable. The College’s closure is not happening in a vacuum. Faculty and staff will lose their jobs. Many will lose their homes. In light of the timing of the announcement – coming at the end of the annual academic recruitment period – faculty likely

will not recover academic employment for another year. Students and alumnae will lose their educational experience and history. Amherst County will lose an important contributor to its economic well-being and a central cultural institution of long-standing vitality. These are injuries that resonate on an individual and community basis and that inevitably will have serious repercussions which cannot now be clearly or fully determined.

The injuries noted are compounded by the manner in which the College is operating. Indeed, the College appears to have hesitated very little in its “sudden” closure process; instead, it appears to have taken action that seems designed to ensure, at a very early point in the closure process, that operation as a College *could not* be continued. As noted previously, Plaintiff has received a number of reports that the College has been 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* Atwill Aff. (**Exhibit U**). If Defendants are not immediately enjoined from their continued closure activities, there will be no College left.

**B. Defendants will not be injured by an injunction.**

Defendants face no harm from an injunction. Continuing the College for another year while this lawsuit is pending will, at worst, simply use resources of the College for the education of women, which is precisely the objective for which the College was established. Defendants can show no injury from such operation, for three reasons.

First, as established in the expert report of Steve Spitzer, there is absolutely no reason to conclude that the College’s financial situation is so dire that *immediate* closure is necessary and unavoidable.

Second, as a charitable organization, Defendants have a duty to spend money in a manner consistent with the general purposes for which those funds were solicited. Va. Code § 57-57(N).

A charitable organization cannot claim that it will be injured by being required to comply with Virginia law.

Third, as trustees, Defendants have a duty to their beneficiaries. *See Button*, 280 F. Supp. at 312 (the Williams Will created a trust whereby the institution was established, and it is “chartered by Virginia as a non-stock, nonprofit corporation and as such a testamentary trustee”). The beneficiaries 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, or who would apply and be admitted, 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.

Granting the requested injunction will maintain the status quo *pendente lite*, avoiding irreparable harm to the Commonwealth and the beneficiaries of the trust during the course of the litigation; and maintenance of the status quo pending litigation is the traditional office of a temporary injunction. *See, e.g., Iron City Bank v. Isaacsen*, 158 Va. 609, 624-25, 164 S.E. 520, 525 (1932) (quoted with approval in *Henderson v. Ayres*, 285 Va. 556, 563-64, 740 S.E.2d 518, 521 (2013)).

**C. The Commonwealth is likely to prevail on the merits.**

The Commonwealth not only meets the “serious showing” standard of *Blackwelder*, it is likely to succeed on the merits of its claims. Defendants have used charitable funds for impermissible purposes in violation of the Virginia Code and violated the Uniform Trust Code by announcing and taking steps to effectuate the closure of the College.

**1. The Commonwealth is likely to succeed in demonstrating a violation of Virginia's Charitable Solicitation Act (Count I of the Complaint).**

The Commonwealth is likely to succeed on Count I because Defendants have used and continue to use funds solicited for specific purposes, and for the general purpose of the College, for the improper purpose of closing down the College, in violation of Code § 57-57(N).

Under Virginia's Charitable Solicitation Act, Title 57 of the Code of Virginia, a County Attorney (among others) is empowered to bring an action in the name of the Commonwealth against a charitable organization and its officers or directors, if the County Attorney 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 solicitation of charitable contributions. Va. Code § 57-59(D).<sup>7</sup> Thus, to demonstrate a likelihood of success, the Commonwealth must show (i) that the College is a charitable organization and (ii) that the Defendants are operating or are about to operate the College in violation of Virginia's charitable solicitation laws. In this instance, both requirements are easily satisfied.

First, Sweet Briar is a charitable organization under Virginia law. Va. Code § 57-48 defines a charitable organization as "any person that is or holds itself out to be organized or operated for any charitable purpose, or any person that solicits or obtains contributions solicited

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<sup>7</sup> Code § 57-59(D) states: "Whenever the Attorney General, or any attorney for the Commonwealth or the attorney for any city, county or town has reason to believe that any charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor has operated, is operating or is about to operate in violation of the provisions of this chapter, the Attorney General, attorney for the Commonwealth or the attorney for any city, county or town, in addition to all other actions authorized by law, may bring an action in the name of the Commonwealth against such charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor, or their officers, directors, or other agents to enjoin the continuation of such violation, solicitation or collection, or the engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate."

from the public.”<sup>8</sup> The College is a nonstock corporation registered with the State Corporation Commission that actively solicits contributions from the public and was founded upon money and land donated by Williams. *See* Clement Decl. (**Exhibit P**); Will ¶ 13 (**Exhibit A**).

Moreover, Code § 57-60 *specifically includes educational institutions* within the Commonwealth’s laws regarding charitable solicitation. It states, that while educational institutions are “exempt from the registration requirements of § 57-49,” they “shall otherwise be subject to the provisions of this chapter.” Va. Code § 57-60(A).

Second, the Commonwealth is likely to succeed in its claim that Defendants are operating or are about to operate the College in violation of Virginia’s solicitation laws. Va. Code § 57-57(N) makes it unlawful to use “funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purpose of the charitable of civic organization on whose behalf the solicitation was made.”

As a matter of law, the College’s purpose is to carry out “the expressed wishes and aims of Williams as set forth in [her] 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. The Will explicitly declared that Williams’ intent was for the school to be “*a perpetual memorial*” to Williams’ daughter. Will, ¶ 13.2 (emphasis added). Consistent with the Act of Assembly, the College’s own Articles of Incorporation make clear that the College must “*at all times* be operated exclusively for educational purposes.” Sweet Briar Articles of Incorporation, Article II

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<sup>8</sup> “Person” means any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit. Va. Code § 57-48.

(**Exhibit Z**) (emphasis added). Thus, any closing of the College would be contrary to the general purpose of the institution for which funds have been solicited.

In the years since 1901, the College has actively solicited funds for the general purpose of operating the College in perpetuity. In response, thousands of alumnae and other donors have given 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. The College's endowment is currently estimated to be between about \$95 million. Funds in the endowment were raised primarily in response to charitable solicitations.

Defendants also have pursued fundraising efforts in support of continued College operations, while at the same time developing plans to close the College. *See supra* at 10. Such fundraising efforts include, but are not limited to, Annual Fund solicitations, which the College says are meant to fund the ongoing operation of the College, including by paying "faculty salaries" and funding "academic programs" to ensure the "success and growth" of the College and support "her future." *See* Exhibit X. The stated purposes for which these funds were solicited are completely inconsistent with closing the College, and yet the College considers funds raised through Annual Fund solicitations "unrestricted," and is using them to close the College.

Rather than use the funds raised through these fundraising efforts for their intended purpose, Defendants have been using them to close the College, by, *inter alia*, (i) paying officers, staff and employees to take steps to close the College, including by destroying records, (ii) employing law firms and consultants to assist in closing the College, and (iii) supporting efforts to sell and transfer the College's assets. The use of the College's funds, which were raised

through solicitations, to carry out these closure actions is contrary to the College's general purpose and plainly violates Code § 57-57(N). Accordingly, the Commonwealth is likely to succeed in Count I of the Complaint.

**2. The Commonwealth is likely to succeed in demonstrating a violation of Virginia's Uniform Trust Code (Count II of the Complaint).**

As an initial matter, the Commonwealth, by the Amherst County Attorney, may maintain a proceeding to enforce the trust under Virginia Code § 64.2-723. Under the Uniform Trust Code, “[t]he settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.” *Id.* (emphasis added). The Restatement (Second) of Trusts makes clear that the “others” who can enforce a charitable trust include the Attorney General and other public officers acting on behalf of the Commonwealth. Restatement (Second) of Trusts § 391 (“a suit can be maintained for the enforcement of a charitable trust by the Attorney General *or other public officer*”). In this case, the General Assembly has made clear that, with respect to solicitations by charitable entities, the County Attorney is given the same authority as the Attorney General to protect the interests of the Commonwealth. Va. Code § 57-59(D). Accordingly, the County Attorney, may bring this action under the Uniform Trust Code, as a public official acting on behalf of the Commonwealth.

By taking action to close the College and sell the College's assets, Defendants are and will be breaching their duties as trustees set forth in Code § 64.2-764 (duty of loyalty), Code § 64.2-766 (prudent administration), and Code § 64.2-792 (breach of trust). The County Attorney, on behalf of the Commonwealth, is entitled to an injunction to prevent these violations.

First, Defendants are trustees governed by the duties and obligations of Virginia's Uniform Trust Code. The Uniform Trust Code “applies to express inter vivos trusts, charitable or non-charitable, and *trusts created pursuant to a statute, judgment or decree that requires the*

*trust to be administered in the manner of an express trust.*” Va. Code § 64.2-700 (emphases added). The Uniform Trust Code also applies to “*testamentary trusts.*” *Id.* (emphasis added). In this instance, the Defendants are subject to the Uniform Trust Code because (i) the Act of Assembly creating the College requires that the College, as trustee, administer the trust in the manner of an express and/or charitable trust, and/or (ii) both the Will and the Act of Assembly require that the College carry out its duties as trustee of a testamentary trust, as confirmed by the *Button* case. *See supra* at 5.<sup>9</sup>

The Act of Assembly creating the College requires that the College carry out its duties as trustee of an express or charitable trust. Defendants therefore are subject to the Uniform Trust Code. 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.*” 1901 Va. Acts 125 (emphasis added). According to its founding charter, 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.* When the General Assembly created the College, it gave the College the “power to receive and hold all of the property therein described ... subject to the terms and conditions specifically prescribed in the said will.” *Id.* The General Assembly further authorized the corporation to accept and hold the trust’s property “subject to the powers and duties conferred and prescribed by this charter, and

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<sup>9</sup> In the years since the *Button* case, the courts have continued to recognize that there is nothing that prevents a non-stock charitable corporation from acting as a trustee and the College has continued to appear as such. *See, e.g., Sweet Briar College, Trustee of the Jean G. Taylor Charitable Remainder Unitrust w/a dated January 3, 1995, and Jean G. Taylor, Petitioner, Petition for Modification of Trust (Exhibit AA).*

subject especially to the terms, conditions, and restrictions specially set forth in said will and for the purposes therein described.” *Id.*

Defendants also are subject to the Uniform Trust Code because the College is charged as a trustee administering a testamentary trust under the Will. Williams gave the gift “upon the conditions and for the purposes ... [that] said corporation ... shall maintain and carry on upon the said plantation a school or seminary.” Will, ¶ 13.2. Va. Code § 55-26.1 validates bequests and devises for educational institutions.<sup>10</sup> Defendants have previously recognized this fact by resolution adopted November 2, 1963. (Exhibit D.) In that resolution, the Board of the College declared itself “satisfied that we are governed by the will of our Founder benefactor,” thereby acknowledging that its status as trustee of a testamentary trust. *Id.*

*Sweet Briar Institute v. Button* is instructive on this point. In that case, the College brought an action “as a testamentary trustee” against the Attorney General of the Commonwealth, seeking to eliminate the racial restriction in the Will and the College’s Charter. 280 F. Supp. at 316. A three-judge federal court agreed that the College was “chartered by Virginia as a non-stock, non-profit corporation and as such a *testamentary trustee*.” *Id.* at 312 (emphasis added). Ultimately, the court concluded that “the State cannot require compliance with the [racial] restriction because that would constitute State action barred by the Fourteenth Amendment.” *Id.*<sup>11</sup> There is, however, no constitutional ban against the broader educational

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<sup>10</sup> The statute states: “Every gift, grant, devise or bequest which, since April 2, 1839, has been or at any time hereafter shall be made for literary purposes or for education, and every gift, grant, devise or bequest made hereafter for charitable purposes, whether made in any case to a body corporate or unincorporated, or to a natural person, shall be . . . valid. . . . Every gift, grant, devise or bequest made for literary, educational or charitable purposes before April 6, 1976, is hereby validated.” Va. Code § 55-26.1.

<sup>11</sup> The court also determined that the “college’s or board’s administration of the trust is always subject to the supervision of the State court.” *Id.* at 313.

purpose of the institution, and the College is bound by that purpose. Given the *Button* case, the College is precluded by *res judicata*, collateral estoppel and/or judicial estoppel from taking the position in this litigation that it is not a testamentary trustee under the Virginia Uniform Trust Code.<sup>12</sup>

As trustees, Defendants have a number of duties. First, they are required to administer the trust “solely in the interests of the beneficiaries.” Va. Code § 64.2-764 (duty of loyalty). Second, they are required to administer the trust in a manner that complies with the purposes stated in the document creating the trust. *See, e.g., Pracht & Co. v. Lange*, 81 Va. 711, 722 (1886) (“The power of a trustee is limited by the instrument creating the trust.”); 19 M.J., Trusts and Trustees, § 87 (a trustee “can only do with the trust property what the instrument either in express terms or by necessary implication authorizes him to do”). Third, 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). By their actions described above – 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.

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<sup>12</sup> The College may seek to rely on *Dodge v. Trs. of Randolph-Macon Woman's Coll.*, 276 Va. 10, 661 S.E.2d 805 (2008), which held that Randolph-Macon Woman's College is a non-stock charitable corporation but not a trust. As will be explained in the Commonwealth's Memorandum in Opposition to Defendants' Demurrer and Motion to Dismiss Count II, that case is not only readily distinguishable; it is entirely inapposite. In this case, the Will, the Act of the Assembly chartering the College, the College's Articles of Incorporation, and the *Button* decision all make clear that *this* College is a trustee.

**3. The Wilson College case, involving nearly identical facts, should be looked to as precedent in this case.**

Defendants' actions are similar to those of the defendants in a Pennsylvania case involving Wilson College, *Zehner v. Alexander*, 3 Franklin County Legal J. 27 (Pa. Orphans' Ct. 1979) (the “*Wilson*” case) (**Exhibit BB**). In *Wilson*, the board of directors “panicked” (in the words of the court) when it saw decreased enrollment numbers and thereafter decided to close the college. A coalition of alumnae and students under the name “Save Wilson Committee” brought suit against Wilson College to reverse the board of trustee’s decision to close. The court reversed the board of trustee’s decision, noting that “[t]he college is not bankrupt or near that fiscal disaster point. The assets far exceed the established or presently known potential liabilities.” *Id.*

The Pennsylvania court held that “[t]he trustees of Wilson College have a fiduciary responsibility to the College to fulfill the mandate of its charter, viz. that it be a teaching institution.” *Id.* “The fiduciary responsibility of the Board of Trustees required that Board to use those assets of the College to continue it as an institution of higher learning and as a teaching institution until its charter purposes became impossible or impractical.” *Id.* In ruling against the Board of Wilson College, the court held that that the evidence did “not establish either the impossibility or the impracticability of Wilson College continuing as a teaching college.” *Id.*

Similarly, in this case, Defendants have failed to uphold their duties as trustees to fulfill the mandate of the Charter and the Will. Just as in the Wilson College case, continued operation of the College is neither impossible nor impractical – the College’s assets far exceed the presently known potential liabilities, as previously noted. Indeed, at least three experts have opined that the College 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. One of these experts is the former Chairman of the Board of Trustees of Wilson College, John W. Gibb. In a letter to the Board of Directors of Saving Sweet Briar, Inc., Gibb noted that “[w]e at Wilson College have had our struggles and have persevered through transformation and reliance on our resources, to include devout alumnae. My thought is that Sweet Briar may be down but not out.” Letter from John W. Gibb to Board of Directors of Saving Sweet Briar, Inc. (Mar. 16, 2015) (**Exhibit L**). Mr. Gibb concluded his letter by writing, “I genuinely believe you have a real opportunity to successfully reorganize this fine 114-year institution.” *Id.*

Accordingly, the Commonwealth is likely to succeed in Count II of the Complaint.

**D. The requested injunction is in the public interest.**

The public has a vital interest in preserving the College and, just as importantly, preserving the fair and consistent application of state law. The College has built a legacy of imparting to its students a strong educational foundation that promotes leadership and service in the greater community for over 100 years. 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. According to Congressman Bob Goodlatte, who is well-positioned to speak to the public interest: “[T]he decision by the Board of Directors has far-reaching economic and personal impacts on students, faculty, staff, alumnae, and the community as a whole.” Press Release, Rep. Bob Goodlatte, “Goodlatte Urges Transparency in Sweet Briar Decision Making” (Mar. 31, 2015) (**Exhibit CC**).<sup>13</sup> Allowing that legacy to be eviscerated at the

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<sup>13</sup> Contrary to Congressman Goodlatte’s request for transparency, Defendants have continued their secretive behavior. When asked about the secrecy with which the Board and President made their decision and their refusal to even release the minutes of the meeting at which the

*(footnote continued)*

direction of a Board and an ostensible Interim President, rather than by a court which is properly entrusted with determining the course of a charitable trust, will erode public trust in the rule of law and will open up avenues to other institutions which prefer “self-help” to judicial determinations.

The public has an abiding interest in the education of young women and in the educational diversity offered by an institution like the College. Allowing the College to close without a proper inquiry by this Court will significantly harm the public interest.

### CONCLUSION

For the foregoing reasons, the Commonwealth, by and through the County Attorney, respectfully requests that this Court grant its Motion for Temporary Injunction, providing relief as follows:

1. A temporary 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;

2. A temporary 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;

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closure vote was taken, Interim President Jones responded that they were not releasing the minutes, “[b]ecause we do not have to release the minutes and because an enormous amount of what went on was done in executive session where there are no minutes.” Jessie Pounds, *Part 2: Q&A with Sweet Briar College President James Jones*, News and Advance, Mar. 21, 2015, [http://www.newsadvance.com/news/local/part-q-a-with-sweet-briar-college-president-james-jones/article\\_955b2786-cf83-11e4-b0f8-b3c822f2ba88.html](http://www.newsadvance.com/news/local/part-q-a-with-sweet-briar-college-president-james-jones/article_955b2786-cf83-11e4-b0f8-b3c822f2ba88.html) (**Exhibit DD**). Such a response illustrates a profound lack of understanding by the leadership of the College of the College’s role as trustee of an educational trust for the benefit of the public.

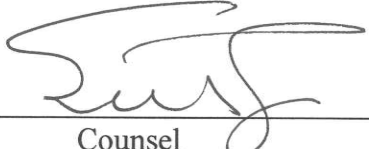
3. An order removing the Interim President and Board from their positions and appointing a special fiduciary to take possession of the College assets and to administer those assets, including the appointment of new President and Board to continue operations of the College;

4. 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; and

5. such other and further relief as the Court deems just and proper.

Respectfully submitted,

**COMMONWEALTH OF VIRGINIA**

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

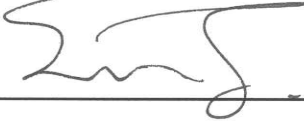
Ellen Bowyer (VSB # 43869)  
Amherst County Attorney  
Amherst County, Virginia  
P.O. Box 390  
Amherst, Virginia 24521  
Telephone: 434-946-3431  
Facsimile: 434-946-9370  
Email: [eebowyer@countyofamherst.com](mailto:eebowyer@countyofamherst.com)  
*Counsel for the Commonwealth of Virginia*

**CERTIFICATE OF SERVICE**

I certify that on April 7, 2015, I mailed and e-mailed a copy of the foregoing to the following counsel of record for Defendant in this matter at the following addresses:

Calvin W. Fowler Jr., Esq.  
Williams Mullen  
200 South 10th Street, Suite 1600  
P.O. Box 1320 (23218-1320)  
Richmond, Virginia 23219  
wfowler@williamsmullen.com

N. Thomas Connally, Esq.  
Hogan Lovells US LLP  
Park Place II, Ninth Floor  
7930 Jones Branch Drive  
McLean, Virginia 22102-3302  
tom.connally@hoganlovells.com



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