

## **“Donor Intent and the Future of Higher Education Philanthropy”**

### *Panel I: “Broken Covenants: Three Stories, Several Lawsuits”*

Remarks from Anne Yastremski, Executive Director, Preserve Educational Choice,  
on Randolph-Macon Woman’s College

I would like to thank Dr. Frederic Fransen of the Center for Excellence in Higher Education for organizing this conference that has brought all of us together to discuss the important issue of donor intent. I would also like to thank Mr. Ronald Malone for serving as moderator of this panel.

Many of you may have not heard of Randolph-Macon Woman’s College (R-MWC) – or perhaps only have become aware of my alma mater recently, as news articles about the ongoing donor intent lawsuits and the recent attempt to sell art from the College’s museum have been covered by the national media.

So I would like to take a moment to tell you a little bit about my college. From its founding in 1891, R-MWC has been exceptional for its focus on academics. Not simply a “finishing school,” until 1903 R-MWC was the only southern woman’s college that offered four years of study. It was also the first southern woman’s college to be granted a Phi Beta Kappa charter (1916) and to be accredited by the American Chemical Society and the Southern Association of Colleges and Schools.

R-MWC’s most well-known alumna is the Nobel and Pulitzer Prize-winning author Pearl S. Buck (Class of 1914). Her work as an activist clearly embodied the College’s motto the “Life More Abundant” (*Vita Abundantior*), but she is only the most famous woman in several generations of thousands of R-MWC women that have left Lynchburg, Virginia to return to their communities and serve the world.

To borrow shamelessly from Daniel Webster’s 1818 closing argument to the U.S. Supreme Court about his alma mater Dartmouth: Randolph-Macon Woman’s College is a small college – yet there are those who love it. With less than 13,000 living alumnae, the College ranks consistently in the top one percent of alumnae participation in giving, placing it among the top 30 institutions nationwide.

Which begs the obvious question – why am I here today to talk to you about four lawsuits that have been brought against the College and funded by these very same people that love their alma mater? Our story differs a bit from those of the other panelists – our lawsuits are not based upon one magnificent gift or the intent of a single generous family but rather upon thousands of gifts given by both large and more modest donors over more than one hundred years to a specific charitable purpose – educating women in the liberal arts.

In 2003, the Board of Trustees of R-MWC created a Strategic Planning Steering Committee with a mission to “develop strategic initiatives that will ensure the future of R-MWC as an

academically excellent woman's college.” Less than three years later, on September 9, 2006, the College’s Board of Trustees voted on the Committee’s recommendation to take the college coeducational at the beginning of the next academic year. I think we can all agree that the Committee failed to meet its mission.

The trustees argued that the College could not survive as a woman’s college, basing their argument on research that they commissioned from a marketing firm as well as the College’s own internal financial models. They declined to share the details of the research or the models with anyone outside of the Board.

The decision to go coed came as a surprise to alumnae. The College completed a successful \$104 million capital campaign in June 2006 (two months before the coed announcement) – a campaign that had met its original goal of \$75 million and then been expanded. One of the five initiatives in the campaign was “providing for the College’s future financial stability,” and this initiative had been fully funded early in the campaign. The College’s endowment (\$142 million in 2006 – today it stands at \$153 million) was the largest of any of the Virginia women’s colleges and, in fact, the fifth largest of any private college in Virginia. The endowment had grown each year over the past five years, increasing from \$107 million to \$142 million at the time of the coed decision. Enrollment had been steady: in 1982 the College had 767 students - two decades later (2002) there were 764 students – virtually no change at all.

The coed decision and the reasons given for it simply did not make sense to the supporters of the College. Although students, alumnae, and friends of R-MWC rallied to ask the trustees to reconsider the vote – to postpone it for a year to conduct additional research, evaluate other options, and involve the alumnae in the process – the trustees refused, saying that the decision had to be made immediately.

As you may have already guessed, it is at this point that the lawsuits began. Preserve Educational Choice (PEC) was founded in September 2006. Our first action was to raise donations from concerned alumnae to fund a letter from a law firm to the trustees. We advised them that the decision was more controversial than they may have thought, even potentially illegal, and that it would be in everyone’s best interests to take a step back and work together on a strategic plan that was in alignment with the College’s historic charitable purpose and that alumnae could support. Unfortunately, the trustees declined to meet with anyone or delay their decision and instead proceeded with the coeducation vote. Our initial non-litigious approach was not productive.

In early October 2006, a group of current students brought the first lawsuit against the college for breach of contract saying that they had been promised four years of single-sex education. After the student contract suit was filed, PEC submitted more than fifty pages of additional research to the trustees demonstrating how the college could continue as a woman’s college. The trustees again declined to meet with us or review our research, and the lawsuits continued.

In early November 2006, the second lawsuit was filed by a group of current students and donors. Based on charitable trust grounds, this lawsuit argues that the College should have to go to a court to prove that it cannot continue as a woman's college before it uses the assets donated under the original charitable purpose (to "educate women in the liberal arts") for the benefit of the coed college. Please note that these charitable assets include not only the campus facilities and the \$153 million endowment, but also an American art collection worth approximately \$100 million. You will hear more about that collection in the third and fourth lawsuits.

Three months after the coed decision, the trustees announced that the College would change its name to Randolph College. A few days later (December 15), they announced that the College had received a warning from its accreditor, the Southern Association of Colleges and Schools (SACS) for not complying with a financial "core requirement." Specifically, SACS identified the college's operating deficit, deferred maintenance, and high tuition-discount rate as areas of concern.

The SACS announcement came as another surprise to alumnae, who had been inundated for years with College publications touting annual budget surpluses, endowment gains, and successful capital building projects. The coeducation decision began to look less like a strategic (albeit misguided) effort to secure the future of the College and more like a cover-up of financial mismanagement with single-sex education as the scapegoat for poor Board oversight.

In January 2007, both the student contract suit and the charitable trust suit were dismissed before a hearing in the Lynchburg Circuit Court. This was a blow to all of us working to preserve R-MWC, as we had expected to at least get a full hearing and the chance to review the market research and financial records of the College as part of the proceeding. We decided to immediately appeal both suits to the Supreme Court of Virginia.

Bolstered by their "win" in the Lynchburg Court, throughout the spring semester, the Board trumpeted the success of coeducation – citing an increase in the number of applications and predicting that this would lead to a large and strong first coed class and increased overall enrollment. However, the focus on coeducation and "moving forward with Randolph College" did not deter alumnae from our pursuit of additional evidence of financial mismanagement at the College.

In May, a report was released to the college's faculty from Campus Strategies, a financial consulting firm hired by the College. The report outlined several financial problems – a staff that was too large by approximately one-third (78 positions), a heavy reliance on endowment income and alumnae gifts instead of tuition revenue, and astronomical tuition discounting of more than 60 percent. The consultant praised the college for seeking to sell "the art assets" to generate a large amount of immediate funds for the endowment. As you can imagine, such a sale would allow the trustees to decrease the endowment spending rate without actually decreasing spending. The consultant also warned the College to postpone the \$30 million

athletic complex that it was slated to break ground on until after the December 2007 SACS meeting.

In July, the College announced that the Annual Fund had missed its goal by about one-third for the year and that alumnae participation in the fund had dropped by 50 percent. At the end of the month, the Supreme Court of Virginia declined to hear the student contract appeal. Things were clearly not looking good – for the College or for those of us working to restore it.

In August 2007, the first coed year began at Randolph College and it was not the success the Board anticipated. The College's current coed enrollment is 660 students -- the smallest enrollment since before 1965. The incoming class of 185 students still has a tuition discount rate of 55.1 percent, well above national norms for coed or single-sex colleges. Coeducation did not raise enrollment, lower tuition discounting to the national average, nor result in a greater retention of students – although it did drive up marketing costs, athletic program costs to meet Title IX requirements, and other expenses.

At the same time new students were arriving on campus, Randolph College filed with the Lynchburg Circuit Court to break the will of Louise Jordan Smith, the College's first art professor, in order to sell art from the college's permanent collection to add funds to the College's endowment. The College wanted to quickly lower its endowment spending rate before the December SACS review by increasing the endowment instead of decreasing spending.

Miss Smith's 1928 will established a trust upon her death to establish a permanent art collection at R-MWC. The art purchased through the trust includes works like Thomas Hart Benton's "Preparing the Bill," Edward Hopper's "Mrs. Scott's House," and Georgia O'Keeffe's "Yellow Cactus." According to the College, the 35 works purchased with funds from the Smith Trust are valued today at more than \$40 million. The College insists that it has been forced into considering the sale of art because of the SACS warning – a warning that, if you recall, did not include an instruction to increase the endowment or sell art.

This brings us to the third lawsuit. In early September, students, donors, Lynchburg citizens, relatives of Louise Jordan Smith, and former R-MWC art faculty and museum staff brought suit to intervene in the College's attempt to sell art protected by the Smith Trust.

Then, on September 19, we received excellent news on the legal front. The Supreme Court of Virginia announced that it would hear the appeals in both the charitable trust suit and in the student contract suit (reversing the decision of its panel earlier in the year). In an email issued in response to the Supreme Court's announcement, Randolph College President John Klein (in office less than one month) touched upon the controversy raised by the move to sell art from the Smith Trust, stating such sales were necessary even though "neither the College's operating deficit nor the SACS financial warning is an immediate threat to our existence as an

accredited college” and that the College “has an endowment of \$153 million, which is large for a college of its size...”

Now we have come to the part of the R-MWC story that you may be familiar with. In spite of the Supreme Court’s decision that calls into question the ability of Randolph College to use R-MWC’s charitable assets for purposes other than the education of women (the charitable purpose at the time the assets were donated and purchased with donations), on October 1, while Lynchburg police told passersby that there was a bomb threat and after phone service and email access were disabled for museum personnel, the president of the college and other college staffers removed four paintings from the Maier Museum and shipped them to Christie’s in New York for auction. The paintings in question -- George Bellows' "Men of the Docks," Edward Hicks' "A Peaceable Kingdom," Ernest Hennings' "Through the Arroyo" and Rufino Tamayo's "Troubador" – are valued at more than \$40 million.

Again, the College attempted to excuse its actions citing the SACS warning. In an email issued to the College community after the paintings were removed, Lucy Hooper, President of the Randolph College Board of Trustees, stated that the sale was necessary to provide “an infusion into the endowment” – an endowment that at \$153 million continues to grow annually. Compare our endowment to the endowment of Fisk University, another college in the news recently because of its attempts to sell its art collection. Fisk’s endowment? Less than \$7 million.

The proposed sale of art for general fund purposes has met with criticism from arts groups across the nation including the Association of Art Museum Curators, the Association of Art Museum Directors, the Association of College and University Museums and Galleries, the College Art Association, and the Virginia Association of Museums. Perhaps the Association of Art Museum Directors said it best when they reminded Randolph College that “the prohibition against the sale [of art]...for general operating purposes is a fundamental covenant between museums and donors...a promise that exists across generations, to prevent the financial challenges of a given time – no matter how pressing or how valid they may be – from depriving future beneficiaries of such gifts.”

This brings us to the fourth lawsuit. On October 23, all of the plaintiffs in the two Supreme Court appeals and the intervenors in the Louise Jordan Smith case filed a complaint to prevent the sale of the four paintings and requested an injunction to stay the sale until the Supreme Court and the trial court reach decisions in the other outstanding lawsuits.

I hope you have been able to follow the brief overview of the lawsuits and the events that led to their filing – it can be complicated even for those of us immersed in them daily. As of today, the student contract and charitable trust appeals are before the Supreme Court of Virginia and they will hopefully be heard in early 2008. The two art lawsuits are proceeding at the Circuit

Court level and we hope they will conclude before May 2008, when the temporary injunction expires.

In the past month, those of us fighting to restore R-MWC have had our share of victories – the tide appears to be turning.

At the end of October, the Attorney General's office of the Commonwealth of Virginia filed a brief in the charitable trust appeal regarding standing with respect to enforcing charitable trusts. While the Attorney General's office took no position as to whether or not the plaintiffs in our charitable trust suit have standing, citing among other issues a limited staff and a large number of charities in the Commonwealth, the Office stated that "although the Attorney General plays a significant role in the enforcement of charitable trusts, the Attorney General's role is not exclusive." That is good news for charitable donors in the Commonwealth.

On November 8, the Circuit Court in Lynchburg refused the College's request to dismiss the art lawsuit and issued a temporary injunction on the sale of the four paintings at Christie's. A week later, on November 16, the Supreme Court of Virginia upheld the injunction and lowered the injunction bond requirement by 90 percent, to \$1 million. The Court also set the deadline for the bond funding to be December 3, several days after the scheduled auctions at Christie's, thus preventing the auction of the works last month even without a bond. The Court also heard our plea last week to extend the deadline for raising the \$1 million for the injunction and accepted the \$500,000 that we had raised from students, alumnae, and the Lynchburg community over the past two weeks, granting us until February 15 to raise the remaining \$500,000.

Finally, last week the College announced that it was dropping its attempt to break the Louise Jordan Smith Trust. Stating that it now wants to focus resources on the other art lawsuit, the College has said that it may seek to break the Trust again in the future, but for now it is abandoning its efforts to overturn Miss Smith's will.

While those of us fighting to restore Randolph-Macon Woman's College are united by our belief that the College's future lies in its historic strengths – its academic excellence, stellar American art collection, and single-sex mission – I am here today because our fight addresses larger issues of donor intent that affect all of us. Can the Board of a charitable organization, in our case a college, simply change its Articles of Incorporation and use the donations it received for one purpose for another of the Board's choosing? Two months after the completion of a \$104 million capital campaign, can a college suddenly announce it has radically changed its mission – the mission all of the funds were donated to support – without any repercussions? If so, other charities may find themselves in the same position as Randolph College, where donors have stopped giving, changed their wills, and asked for money back because the trustees did not just ignore donor intent – they clearly never even considered it an issue to begin with.