

**Testimony Submitted by Gretchen Van Ness, '80,
in Opposition to Wilson College's
Application for Approval of a Certificate of Authority to
Amend Its Articles of Incorporation**

I. Introduction

This testimony is submitted in opposition to the Application of Wilson College to make fundamental changes to its Articles of Incorporation that would, among other things, dissolve the women's college first chartered by the Commonwealth of Pennsylvania on March 24, 1869. This testimony incorporates all other protests filed in this matter, including the protest filed by Ms. Kendal Hopkins on July 18, 2013, as well as the protest I filed on August 6, 2013, on behalf of Wilson College Women, and all attachments thereto.

In this testimony I will show that the Wilson College Board of Trustees violated its fiduciary duties and duty of due diligence when it made fundamental changes to the mission of the College on January 13, 2013, and to the Articles of Incorporation of the College on May 17, 2013, when it knew that the information and data upon which its decision was based was flawed and misleading. Finally, I will show that the Board of Trustees also violated its fiduciary duties and duty of due diligence when it refused to reconsider its vote to approve the dissolution of the women's college and retaliated against the Trustee who sought reconsideration.

In addition, I will show that the College has violated Pennsylvania law by implementing coeducation prior to seeking approval of this fundamental change in mission by the Pennsylvania Department of Education; the College knew that it was violating Pennsylvania law when it took steps to implement coeducation immediately following a divided vote by the Board of Trustees on January 13, 2013; and that this violation of law continues unabated despite repeated notice to the College. Finally, I will show that the dissolution of one of the last remaining women's colleges in Pennsylvania is contrary to the public interest of the Commonwealth.

Moreover, the public policy of the Commonwealth of Pennsylvania and its strong public interest in compliance with Title 24, section 6504, which governs the process by which fundamental changes may be made in the mission of a college or university, is expressed in the adoption of section 6509, which makes a violation of the law a summary criminal offense punishable by a \$300 fine and 30 days in jail.

In view of Wilson College's deliberate and on-going violation of law, the Pennsylvania Department of Education must deny the Application. If the Department of Education does not deny the Application, it is setting a dangerous precedent that would permit colleges and universities chartered in Pennsylvania to may ignore the law with

impunity.

My testimony focuses primarily on the work of the Commission on Shaping the Future of Wilson College, of which I was a member. It also describes many conversations I had with members of the Board of Trustees, including the Board Chair, during the relevant time periods and the advice I gave them regarding their duty to obtain independent legal advice before making and implementing fundamental changes in the College's mission. In the final section of my testimony, I discuss the violations of the Board's fiduciary duties and duty of due diligence outlined above.

II. Background

When a witness testifies in court to facts that are in dispute, her memory and credibility are often challenged by the opposing party. While preparing this testimony, I have reviewed relevant documents from my tenure on the Board of Trustees as well as every email I sent or received when I served on the Commission for Shaping the Future of Wilson College. At times I was in almost daily contact with the Chair of that Commission as well as the other Trustee members of the Commission. Throughout the process I was also regularly consulted by members of the Board of Trustees and have reviewed my communications with them. Because the College went to the expense to attack my character and credibility in a letter mailed to all alumnae in March 2013, it is awkward but necessary to provide the some background regarding my service to the College and my work as an attorney.

As a junior at Wilson College in 1979, I was president of the student government association when the College's Board of Trustees announced its decision to close the College. When the Save Wilson Committee retained counsel to sue the Board of Trustees, I was the named plaintiff representing the junior class. I was one of the witnesses who testified at the preliminary injunction hearing in Orphans Court. The preliminary injunction was granted and the decision to close was reversed. Of relevance to the present matter, in the 1979 litigation, Judge Keller found that the College's lawyers had improperly advised the College and the College had violated the law by implementing the decision to close the College without filing a cy pres action and seeking prior approval from the Pennsylvania Attorney General.

After graduating in 1980, I was elected to the Board of Directors of the Alumnae Association of Wilson College. I served briefly but left the Board when I was accepted into law school. After graduating from law school, clerking on the U.S. District Court and the U.S. Court of Appeals, I founded a successful solo law practice in Boston, where I was invited to join the attorney referral panels for both the AAUP and the AAUW. In the late 1990s, then Wilson College President Gwen Jensen invited me to join the College's Board

of Trustees. Despite the distance from Boston, MA to Chambersburg, PA, I eventually agreed to serve and joined the Board of Trustees in 2001. During my second year on the Board, I was elected Vice Chair and appointed co-chair of the ad hoc Governance Committee. I served two terms as Vice Chair. On the Governance Committee, I spearheaded the work of updating of the Board's By-Laws, the Faculty By-Laws, and other key College governance documents. I also regularly provided pro bono legal advice to the College and to the Board on a wide range of subjects. During my last three-year term, I chaired the Enrollment Management and Student Life Committee. During nine years on the Board, I never missed a meeting. When I retired from the Board, I joined Limited Participants Paula Tishok and Melissa Behm in receiving the honor of being named Everitt-Pomeroy Trustee.

I was on the Board of Trustees when the Leading With Confidence Capital Campaign was approved and launched. The Campaign's central goal was to raise funds to construct a new Science Complex on campus, as more than half of Wilson students took some kind of science course and the existing science building was outdated and in poor repair. The Board approved a plan to seek bond financing to fund construction and retire existing debt. With the guidance of experienced and independent bond counsel, the College obtained a bond from the Borough of Chambersburg in the amount of \$31 million that was secured by a Letter of Credit issued by Bank of America. The College was required to pay interest only on the bond for the first 10 years. By its terms the Bank of America Letter of Credit was scheduled to expire in 2015, but so long as the College complied with the covenants in the Letter of Credit and made timely payments, we were advised that renewal would be automatic.

Despite the economic downturn in 2008, the Capital Campaign succeeded in raising over \$47 million and the new Brooks Science Complex was constructed. As donations to the Capital Campaign were received by the College, a total of \$31 million was transferred into the quasi endowment that the Board of Trustees had created in 2007. This quasi endowment served as the collateral required by the terms of the bond and was set aside to pay interest and principle on the bond.

At the Board of Trustees' retreat in the fall of 2009, I helped lead an in-depth discussion examining the continuing value and relevance of women's colleges. The market collapse of 2008 had damaged Wilson's endowment and negatively impacted recruitment. The expected enrollment "bump" from the opening of the new state-of-the-art Brooks Science Complex had failed to materialize. Other women's colleges were closing or going coed and the Board felt that it was an appropriate time to consider whether a fundamental change to the College's mission was needed.

At this retreat the Trustees unanimously reaffirmed Wilson's historic mission as a college for women. Board Chair Trudi Blair appointed me, along with Trustees Leslie Durgin and Patricia Tracy, to draft a letter to the Wilson community informing them of our

decision and commitment to the strategic planning process that was underway. Our December 10, 2009 letter became known as the “We Believe” letter. It is attached as Exhibit F to the Wilson College Women’s August 6, 2013 filing (hereafter WCW Filing). The Board subsequently approved the 2010-2015 Strategic Plan, which also explicitly reaffirmed Wilson’s core mission as a college for women. WCW Filing, Exhibit G.

III. Presidential Search

In 2010, President Lorna Edmundson announced her retirement. Board Chair Trudi Blair appointed a Presidential Search Committee led by Vice Chair John Gibb. Although I had just gone off the Board, Mr. Gibb asked me to serve on the Presidential Search Committee. I agreed and became an integral part of drafting the search criteria for the next President, as well as the case statement describing the College. Following so closely on the heels of the We Believe letter and the 2010-2015 Strategic Plan, there was never any doubt that the Board was searching for a President to lead Wilson and help her succeed as a women’s college.

IV. The Commission on Shaping the Future of Wilson College

After the Board of Trustees chose Barbara Mistick as Wilson’s next President, Trustee Leslie Durgin traveled to Boston from her home in Boulder, CO to meet with me to discuss her idea for a high-level Commission to support the new President and help bring about the transformational change we had long discussed as trustees. Ms. Durgin wanted me to lead this effort. I was against the idea as Ms. Durgin presented it, as I feared it could work to undermine the new President. In January 2012, however, Ms. Durgin called with the news that the Board of Trustees had approved President Mistick’s proposal for a Commission and had appointed Ms. Durgin to chair it. Ms. Durgin stated that she would not chair the Commission without me on it. As I had heard that President Mistick was already discussing coeducation with Trustees and other members of the Wilson community, I told Ms. Durgin that I would not serve on the Commission if it was just a cover for a decision that had already been made to make Wilson coeducational. Ms. Durgin assured me that while “everything was on the table” for consideration by the Commission, nothing had been decided. I accepted her invitation.

As Commission Chair, Ms. Durgin invited several distinguished current and former Trustees to serve on the Commission, including Julie Englund, Treasurer of the Board, and Trustee Richard Grove, a retired businessman with extensive experience in administration and finance. Ms. Durgin created two subcommittees for the Commission: one to coordinate communications and publicity, and one to provide legal advice to the Commission. Former Board Chair and Capital Campaign Co-Chair Cynthia Grove and Trustee Pamela Kiehl comprised the communications team; Trustees Susanna Duke and Marsha Sajer, both attorneys, comprised the legal team. Although the communications subcommittee actively participated in the Commission process, in January 2013 Ms. Duke

informed me that the legal team was never asked a single question and never advised the Commission in any way.

Although Ms. Durgin chaired the Commission and intended to create a small and nimble high-level body to engage all members of the College community as well as outside experts, President Mistick retained the consultant to the Commission and executed his contract without informing Ms. Durgin or the Board of Trustees. In addition, President Mistick appointed members of her cabinet, faculty members, administrative staff, and a student to the Commission without notifying Ms. Durgin. Further, the consultant prepared the Charge to the Commission and the Commission meeting schedule without input from Ms. Durgin or members of the Commission. Ms. Durgin viewed these actions as undermining the Commission's effectiveness, creating conflicts of interest, and unnecessarily burdening the out of town Commission members, who were the current and former Trustees Ms. Durgin had chosen. Ms. Durgin's efforts to address these issues were unsuccessful. Although Ms. Durgin and Board Chair John Gibb repeatedly shared with me their fear that the President was unable to manage the Commission process and that the process was "a train wreck," no changes were made in the composition of the Commission, the meeting schedule, the consultant, or the charge. Moreover, neither the President, Mr. Gibb, nor Ms. Durgin presented the Commission's Charge to the Board of Trustees for a vote. The Charge was, in fact, never discussed or approved by the Board of Trustees.

As described in more detail in my Letter to the Editor of *The Chronicle of Higher Education*, (Exhibit H to the WCW filing), despite the extraordinary and even heroic efforts of Commission members, the Commission failed. The Commission was charged with making recommendations for transformative change at the College, but in the end was only able to present a collection of unranked proposals and ideas – all of which required further study -- that might help the College increase enrollment and improve its financial health. The Commission did its work through various subgroups, but none of the subgroups specifically targeted the core functions of the College: recruitment and retention, fundraising, marketing, endowment management, or alumnae relations. No subgroup specifically examined successful women's colleges to determine what might be learned, and the inquiry into coeducation was done by the New Markets subgroup with no explicit notice to the community that a fundamental change in the College's mission was under active consideration. All of the subgroups but one were chaired by male faculty members who had been appointed to the Commission by the President.

The consultant's schedule required that the Commission its final report and recommendations to the President by November 12, 2012. The subgroups convened late in May 2012 and did most of their work over the summer. There was no steering committee or central repository of minutes of meetings; midway through the summer the leaders of the subgroups initiated weekly conference calls in order to update each other, but these calls were frequently cancelled in the crush of work. Commission meetings were dominated by

PowerPoint presentations prepared by the subgroups. There was literally no time for conversation or group brainstorming. Moreover, Commission members had been forced to sign a poorly worded and ill-conceived Confidentiality Agreement that as initially drafted prevented members from discussing any Commission work with anyone, including one's spouse. As this wide-ranging limitation was an unfair burden to place on Commission members and conflicted with the stated goals of the Commission to be open, transparent and inclusive, I insisted on changes to the Agreement. The language was modified so that only the Commission's final deliberations would be confidential, but most members of the Commission did not understand the changes and believed that they were prevented from discussing their work with anyone, even members of other subgroups. This misunderstanding profoundly hampered the Commission's work and created suspicion and mistrust across the Wilson community.

The effectiveness of the Commission was also hampered by its membership. The current Trustees who served on the Commission and its two subcommittees, as well as the chair of the Commission, had hired the President. It was their responsibility to supervise her and evaluate her performance, but also to support her publicly. The faculty members and administrators on the Commission had been hired by and reported to the President and her Cabinet, whose responsibility it was to supervise them and evaluate their performance as employees of the College. The Commission's final report was to be given to the President, not the Board of Trustees, so Trustees were reporting to the President rather than the reverse. Also, the Trustee members of the Commission could not say anything that could be interpreted as criticism of the President. The faculty and staff members of the Commission might have felt constrained for other reasons. Ms. Durgin's initial idea of a small high-level Commission comprised of current and former Trustees would have avoided these problems.

The Commission's schedule provided for several Open Forums to solicit feedback on the Commission's work. These so-called "feedback loops" were a key feature of the purportedly open, transparent and inclusive nature of the Commission. In good faith, hundreds of alumnae and members of the Wilson community attended these forums, where they asked questions and offered ideas. In addition, hundreds took the time to send ideas and suggestions to the Commission's special email address at the College. Many also wrote directly to Commission members, members of the Board of Trustees, and to the President of the College. This is an astonishing level of interest and engagement for a small college, especially in view of the fact that my repeated request that a snail mail letter be sent to alumnae informing them of the Commission's work was denied. Many alumnae letters offered substantive and valuable ideas, such as the letters from former Board Chair Jeanne Beck, who offered a detailed proposal for developing a cutting-edge program in Big Data. An employee of the College managed the Commission's email account and forwarded emails to the working group leaders at irregular intervals. There was no time and no mechanism for considering Ms. Beck's letter or any of the many substantive and thoughtful letters or emails the Commission received. Moreover, there was no note taker at the Open

Forums and no follow-up on the ideas and suggestions presented there unless an individual Commission member wished to pursue an idea. The Commission received extraordinary input from the Wilson community in an extremely short time period, but the feedback loop never functioned as presented to the community. Letters and emails that were sent directly to the President or Board of Trustees were not shared with the Commission; letters and emails sent to the Commission were not shared with the Board of Trustees; and across the Commission there was no time and no mechanism for incorporating new ideas and suggestions into our work. Several times I asked that all letters and emails received by the Commission be collected in an appendix to the final report, but my requests were ignored.

Financial models prepared by Stevens Strategy before the Commission's work began showed that the College needed to increase enrollment to 1,325 by 2020 in order to be financially sustainable. As the subgroups winnowed down their lists of ideas and focused on the most promising proposals over the summer, it became clear in early October 2012 that the enrollment goal of 1,325 could be reached without coeducation. At a meeting of the Commission on October 16, 2012, however, President Mistick announced that additional work had been done over the past several days and it was determined that the actual enrollment needed for a financial sustainability was 1,500. With less than a month left in which to complete our work, the enrollment goal had suddenly increased by almost 300 students – more than the entire current undergraduate enrollment of the College. I was the only non-Wilson employee at that meeting, and I was participating by telephone from Boston. I immediately emailed Ms. Durgin, the Commission chair, and my fellow Trustee Commission members. None of them had been informed of this dramatic change. In later public statements, President Mistick said that 1,700 or even 2,000 students were needed; numbers that she has not repeated since the January 13, 2013 vote. Since coeducation was approved, in fact, President Mistick has stated publicly that the enrollment goal is 1,000 students: exactly the goal set by the 2010-2015 Strategic Plan that retains the women's college. President Mistick continues to use higher numbers when addressing the Board of Trustees, however.

One number that Stevens Strategy presented to the Commission is the often-repeated claim that only 1% to 2% of high school girls will consider a women's college. No source was ever presented for the claim, but Commission members accepted it as an unfortunate fact of life. Stevens Strategy never informed the Commission that its own surveys of high school students, which are reported on its website, disproves this claim. A section titled "Nuggets from Stevens Strategy's Market Research," dated October 2012, includes the following nugget:

Single-Sex Education

Less than 1% of high school students prefer to attend a single-sex college. But more than half of respondents are open to the idea of single-sex education, if the school offered other desirable features.

....

When considering single-sex colleges, respondents were most interested in schools that offered the major they want to pursue and had a strong career services program that would help them get a good job after graduation. Having a safe campus community, internship opportunities in business and professional areas, and competitive tuition and financial aid were also important factors.

Respondents were not concerned about attending a single-sex college with students whose sexual orientation may differ from their own. Parents were not concerned about this factor either.

HYPERLINK "<http://www.stevensstrategy.com/higher-education-policy-practice/nuggets-stevens-strategys-market-research/>" <http://www.stevensstrategy.com/higher-education-policy-practice/nuggets-stevens-strategys-market-research/> (emphasis supplied).

Stevens Strategy never shared with the Commission or the Wilson community at the Open Forums its market research that found that **over half** of the high school students they surveyed in market research apparently conducted in 2012 at the exact moment the Commission was conducting its work, would consider a single-sex college.

The Stevens Strategy nugget quoted above supports a sentiment shared by Commission member Mary Ann Naso, the College's Vice President for Enrollment, that students today choose programs, not colleges. With Stevens Strategy's market research showing that over half of high school students are willing to consider a women's college if it has the right programs, a safe campus community, strong career services, internship opportunities, and competitive tuition and financial aid – many things that the College already had in place – and instead relying on the 1% to 2% claim, the Commission did not know how well-positioned the College is to grow and thrive as a women's college.

The Commission's work was based on the financial models prepared by Stevens Strategy. I worked diligently with Ms. Durgin and the other Trustee members of the Commission to understand the models, which predicted that financial sustainability would be achieved only if the College were made coeducational. The financial models were provided to the Commission and the Board of Trustees with little or no explanation. Repeated questioning finally revealed that incorporated into the financial model for coeducation was the assumption that the College would borrow \$26 million to build a new residence hall. Stevens Strategy never explained why it believed such borrowing was possible, given that the College had already taken on \$31 million in capital debt to construct the new Brooks Science Complex.

According to the schedule, the Commission's final report to the President was due on November 12, 2012, just five months after the Commission's work began. We had

learned from other colleges that the process of making successful transformative change takes much longer, and that coeducation planning and implementation required 18 months to two years. Despite the enormous amount of work that was being done, I was concerned about whether the Commission could fulfill its mandate in such a short time period. Other Commission members also had concerns. Commission member James Hay, Assistant Professor of Accounting, repeatedly expressed his deep concern that the Commission's work would fail, just as prior initiatives had, if we did not answer the question "What are we going to do differently?" Commission member Dana Harriger, Professor of Biology, expressed the same misgivings and asked that the schedule be extended to give the Commission more time to complete its work. Commission member Philip Lindsey, Associate Professor of Fine Arts, spoke for many Commission members when he stated on November 2, 2012,

[T]he full Commission has yet to have any meaningful discussion about the final draft recommendations and the calendar lists no more opportunities for us to engage in that sort of dialog. Will we have the opportunity to talk about these recommendations? I know that the drafting committee does not have consensus over all items being recommended, and my guess is that the full Commission is not at consensus either. The process has driven us to a conclusion, which is different than consensus. Maybe consensus isn't the goal. At any rate, I don't think everyone is on the same page yet.

Ms. Durgin pleaded with the Board of Trustees to extend the schedule so that the Commission would have time to deliberate and make final recommendations, but the schedule never changed. Ms. Durgin was able to add one more meeting of the Commission just days before the November 12, 2012 deadline for the final report. At that meeting, we acknowledged that we had not had time to deliberate as a whole and could not, therefore, in good faith make any recommendations based on our work. As a result, the Commission's final report contains only a collection of unranked "strategic ideas," among them the idea to extend coeducation across all programs at the College. In her Preface to the final report, Ms. Durgin explicitly stated that the compressed process prevented the Commission from doing its "finest and most complete work" and making recommendations and that further work was needed before any of the Commission's ideas were implemented:

We thus transmit this report to the President so that she may proceed to develop the comprehensive, evidence-based and rigorous analysis for each strategic idea or proposal based upon a common analytic model for fully describing the assumptions and investment returns upon which the evidence and data are based.

WCW Filing, Exh. I. One of the strategic ideas most in need of rigorous, evidence-based analysis and further study was the coeducation proposal. Commission member Michael Cornelius, Associate Professor of English, led the New Markets subgroup that developed the coeducation proposal. At the Commission meeting where Professional Cornelius first

presented the proposal, he stated that changing to a coeducational college “costs nothing.” I immediately challenged that assertion and explained that the legal process was actually complicated and the College would need advice about how to implement this fundamental change, including how to use restricted gifts and the endowment. Although I had extensive higher education experience in my law practice and Ms. Durgin’s legal subcommittee was standing by to assist the Commission, neither I nor the members of the legal subcommittee were consulted as the coeducation proposal was developed. In the Commission’s final report, Professor Cornelius repeats his wildly inaccurate claim that the transition to coeducation across all programs at Wilson would cost just \$300,000.

Finally, Professor Cornelius, the main author of the final report, wrote an appendix in which he stated that because the Commission had not been charged with the crucial work of examining the College’s mission and as many of the Commission’s strategic ideas impacted the mission and identity of the College, he urged the President to lead a community-wide process in the Spring of 2013 to do that important work. Professor Cornelius’s suggestion has been ignored.

V. The Board of Trustees

As the Commission’s work concluded, I was in regular communication with members of the Board of Trustees with whom I had served. After the President gave her report to the Board of Trustees recommending that the College institute coeducation across all programs, I had a telephone conversation with Ms. Durgin in which I advised her, in the strongest language I could find, that the Board needed to retain experienced counsel in Pennsylvania to provide an opinion letter assessing the risks and benefits of going coed and detailing the steps required for such a fundamental change in mission under Pennsylvania law. I also suggested that the Board consult the bond counsel we had used in negotiating with Bank of America for the Letter of Credit and get her advice about the College’s options should the Letter of Credit not be renewed. Finally, I suggested that bankruptcy counsel be consulted. If the College was, in fact, teetering on a fiscal cliff as President Mistick publicly claimed, examining the risks and benefits of bankruptcy reorganization was the responsible thing to do. In a telephone conversation with Board Chair John Gibb before the January 2013 vote, I repeated these recommendations, particularly after Mr. Gibb advised me that if coeducation was not adopted, the College faced the very real possibility that Bank of America would not renew the Letter of Credit. I told every Trustee I spoke with that I did not want the College to repeat the same mistakes it had made in 1979.

In numerous conversations and email exchanges with Trustees, including Julie Englund, Treasurer of the Board, Attorney Marsha Sajer, Chair of the Buildings & Grounds Committee and former Chair of the Audit Committee, Paula Tishok, Vice Chair of the Board and Chair of the Trusteeship Committee, Amy Boyce, Alumnae Trustee, Tracy Leskey, Attorney Susanna Duke, Pamela Kiehl, Ted Howells, and Sheldon Goettel, I

repeatedly urged that the Board retain its own counsel to advise it regarding the President's recommendations. I met with a group of Trustees before the January 13, 2013 Board meeting and at their request, prepared a list of motions for them to use, if needed, at the meeting. Three of the draft motions I prepared for them propose retaining expert independent counsel to advise the Board. None of the motions were offered and the Board approved coeducation and the President's other recommendations without obtaining independent legal advice. In addition, Trustee Marsha Sajer's suggestion that the Board obtain independent financial advice was never acted on.

In my conversations with Trustees before the January 2013 vote, I also raised the question of the impact of Title IX on any decision to extend coeducation across all programs at Wilson. My reading of Title IX's exception for historically women's colleges and Justice Scalia's dissenting opinion in the Virginia Military Institute decision led me to conclude that once a women's college is dissolved, it cannot be resurrected. I had heard members of the Wilson community express their view that if coeducation did not work, the College could "always" return to being a women's college. I felt strongly that the Board of Trustees needed to understand whether Title IX made coeducation an irreversible decision and address any misunderstandings in the community. The Board never obtained legal advice on this question before approving coeducation and has never publicly addressed the issue.

Implementation of coeducation began immediately after the January 13, 2013 vote. Submitted with our testimony is a notebook that compiles all of the examples of the College's public statements concerning coeducation and the steps taken to implement coeducation that we have been able to find.

On April 23, 2013, highly respected local Attorney Eileen Finucane served a demand letter on the Board of Trustees demanding that the January 13, 2013 vote be reconsidered. WCW Filing, Exh. O. The letter speaks for itself, but it is important to note that the demand letter clearly and in detail explained to the Board of Trustees how it had failed to meet its fiduciary duties and duty of due diligence. It asked that implementation of coeducation and the vote to amend the Articles of Incorporation be delayed until appropriate feasibility studies and implementation planning – neither of which had been done by the Commission – could be completed on all of the President's recommendations, including coeducation. The Board of Trustees ignored Attorney Finucane's letter.

At the May 2013 Board meeting, four Trustees resigned in protest of the Board's approval of the President's request to divert millions of dollars from the quasi endowment to finance other projects, including implementing coeducation. The Trustees who resigned were among the most trusted finance and governance experts on the Board. Hopkins Filing (Yellow Folder).

VI. The Legal Significance of The Facts

Under Pennsylvania law, the governing body of a nonprofit charitable organization, such as a college or university, has a fiduciary duty toward the organization to exercise its informed and independent judgment regarding all matters that come before it. No governing body is expected to be expert in every field, so the law permits a Board of Trustees to rely on the advice of outside experts – but with an important caveat. Reliance on outside experts is a breach of a Board’s fiduciary duties when the Board has reason to doubt that quality and veracity of the information provided by such experts. As the testimony of Paula Tishok and my testimony has shown, Wilson’s Board of Trustees had received information from several different credible sources that showed that the financial models underlying the coeducation recommendation were inaccurate and had been manipulated to make it appear that coeducation was the only way to increase enrollment and achieve financial sustainability.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it approved President Mistick’s recommendations and fundamentally changed the mission of the College when it knew that the information it relied on was inaccurate, incomplete, and misleading.

Before the special meetings on November 30 and December 1, 2012, Trustee Julie Englund, Treasurer of the Board, Commission Chair Leslie Durgin, and Commission member and Trustee Richard Grove worked tirelessly together at Ms. Durgin’s request to develop a decisionmaking model for the Board to use in assessing the President’s recommendations. This work was necessitated by the fact that the customary deliberation and decisionmaking process was suspended in the Board’s special meetings in November/December 2012 and January 2013. Despite the extensive work done by these Trustees to develop a framework for analyzing, understanding (several Trustees confessed that they did not understand the financial models), and discussing the President’s recommendations, the model was never used. Similarly, Trustee Tracy Leskey suggested that the Board employ the method she used at the Food and Drug Administration to evaluate grant proposals. Although Dr. Leskey provided information about that model, it also was never used.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it approved President Mistick’s recommendations and fundamentally changed the mission of the College without a deliberative process that answered questions, analyzed data, and addressed concerns.

The nitty gritty, nuts and bolts work of the Board of Trustees is done in Board Committees, where a small group of Trustees with expertise in the subject area is gathered and works closely with the appropriate Cabinet member. Thus, for example, proposals concerning capital campaigns are first presented and vetted in the Advancement Committee and other standing committees that oversee areas that the proposed campaign may impact,

such as the Building and Grounds Committee if new construction is proposed, or Academic Affairs if new programs are included. If the subject matter is outside of the expertise of a standing committee or requires significant additional work, the Board will create a special ad-hoc committee to perform this work and advise the Board. This is how the ad hoc Governance Committee that I co-chaired came into existence. Only after the Board's committees are satisfied they have sufficient information to make a recommendation does the matter then get placed on the Board's agenda as an action item. It is not unusual for the Board, after discussion, to refer difficult issues back to the appropriate committee or committees for additional work before a final decision is made.

The President's recommendations were never considered in committee. The Academic Affairs Committee did not meet to analyze the proposed curricular and program changes contained in the President's recommendations. The Finance Committee never met to review the proposed reduction in tuition or the proposed loan buy-back program, or to provide an independent cost/benefit analysis of any of the recommendations. The Investment Subcommittee never met to review the impact of the various recommendations on the endowment, the quasi endowment, and the covenants in the Bank of America Letter of Credit. The Enrollment Management and Student Life Committee never met to assess the impact of coeducation on recruitment and retention. The Buildings and Grounds Committee never met to plan for a new student center, new athletic facilities, and residences for male students. The Advancement Committee never met to determine whether the fundraising goals built into the Stevens Strategy financial models were achievable, or to examine the impact fundamental changes to the College's mission would have on alumnae and foundation support of the College. None of the standing committees were given an opportunity to review and comment on the President's recommendations, and no special ad hoc committee was appointed to evaluate the Commission's work and the President's recommendations. Instead, the President's recommendations were presented to the Board as a whole, which struggled to assess them without a deliberation and decisionmaking process.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it abandoned its customary process for making decisions and failed to replace it with a process that permitted Trustees to exercise their legal obligations.

As described in more detail in Paula Tishok's testimony, this confused process prevented substantive analysis of the President's recommendations. Questions were asked but there was no effective mechanism for getting answers, as none of the recommendations had been examined in committee and could not, therefore, be referred back to committee for additional analysis. Individual Trustees presented information, including information that showed that the financial models were flawed (see Paula Tishok's testimony) and that the widely-quoted statistics concerning the percentage of high school girls who will consider a women's college were wrong by several orders of magnitude (see Kendal Hopkin's testimony), but there was no mechanism for resolving the serious discrepancies between

the information and data the College presented to the Board and conflicting information and data that individual Trustees had discovered. Many red flags were raised yet the Board failed to address any of the problems before approving all of the President's recommendations.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it approved President Mistick's recommendations and fundamentally changed the mission of the College based on flawed, incomplete and misleading data that it knew was flawed, incomplete and misleading.

The Board's failure to utilize its established decisionmaking process and its undue reliance on data it knew was flawed and misleading constitutes an intentional breach of its fiduciary duties and duty of due diligence under Pennsylvania law. At the regular Board meeting in February 2013, a month after the January 2013 special meeting in which the Board approved the President's recommendations, Vice Chair Paula Tishok sought to introduce a motion to reconsider the Board vote approving the President's coeducation recommendation. Board Chair John Gibb angrily rebuked Ms. Tishok, refused to allow discussion of the motion in Executive Committee, refused to permit the motion to be presented to the full Board, stripped Ms. Tishok of her committee chairmanship, and attempted to remove her as Vice Chair of the Board. These intentional, retaliatory actions against a Trustee who was exercising the exact independent and informed judgment required by Pennsylvania law on behalf of the College violated the Board's fiduciary duties and duties of due diligence.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it refused to reconsider the decision to fundamentally change the mission of the College and retaliated against the Trustee who sought reconsideration.

At the May 2013 Board meeting, the Trustees approved amendments to the College's articles of incorporation that had been prepared by counsel retained by the College. Despite my repeated advice, the Board never consulted independent legal counsel or obtained an opinion letter of counsel advising the Board of the steps necessary to dissolve the women's college and replace it with a coeducational institution. Despite the admonishment the College and the Board of Trustees received in Orphans Court in 1979 when the Board failed to follow the proper legal steps to close the College, the Board did not seek advice about whether a cy pres action should be filed to repurpose gifts and donations to the women's college for a coeducational institution. These actions rise to the level of willful blindness of the law.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it approved President Mistick's recommendations and fundamentally changed the mission of the College without seeking independent legal advice.

In addition to violating its fiduciary duties and duty of due diligence, the Board's decision to dissolve the women's college and refusal to reconsider that decision violate the Commonwealth's public interest in preserving one of the few remaining women's colleges in Pennsylvania and in the country. As discussed in more detail in the WCW Filing, few women's colleges remain in Pennsylvania, and of those that remain, Wilson College is the only one that offers a residential program for single mothers with children. Women's college graduate success in their chosen fields and communities in greater proportions than do the women's graduates of coeducational institutions. Today, more and more young women are realizing the value of women's colleges and as a result, as Kendal Hopkins shows in her testimony, more and more women's colleges are seeing increases in applications and growing enrollments.

The Board of Trustees of Wilson College violated the public interest of the Commonwealth of Pennsylvania when it dissolved one of the last remaining women's colleges and replaced it with a coeducational institution.

Despite the fact that the Department of Education has yet to act on the College's application, the College advertises itself as fully coeducational, recruits, admits and enrolls male students, has hired coaches for men's sports, and has made changes to facilities to accommodate male residential students.

The Board of Trustees of Wilson College has violated and continues to violate Pennsylvania law implementing coeducation institution without legal authority to make this fundamental change in the mission of the College.

The Department of Education must deny the College's application because the record shows that Wilson will fail as a coeducational institution. The cost of implementing coeducation at Wilson exceeds the benefit of the modest enrollment gains that President Mistick now predicts. Approving coeducation did not prevent Bank of America from deciding not to renew the Letter of Credit, which means the College faces the significant additional costs of securing a Substitute Letter of Credit. If a Substitute Letter of Credit cannot be secured, the Borough of Chambersburg could demand immediate repayment of the \$31 million bond. The continuing diversion of the quasi endowment to fund the President's recommendations means that it may no longer be available to pay off the bond, should that become necessary.

The Board of Trustees of Wilson College violated its fiduciary duties and duty of due diligence when it approved a fundamental change in the mission of the College that threatens the College's survival.

But this is the very real potential damage that the College faces if the Department of Education does not reject the application. The record shows that the data which the Board of Trustees relied upon in approving coeducation is demonstrably wrong. The business

case for coeducation was never made, despite the Board's request, and no feasibility studies or implementation planning has ever been done. The Board's approval of coeducation was based on the absurd assertion that the cost would not exceed \$300,000. When the President subsequently requested almost \$6 million to implement her recommendations, the Board never revisited its vote to determine whether it had made the right decision. When Bank of America informed the Board that the Letter of Credit would not be renewed, the Board failed to revisit its vote to determine whether it had made the right decision and whether a more modest approach focusing on improved marketing the women's college and expanded recruitment staff to reach out to the tens of thousands of high school students who will consider a single-sex institution would better fulfill their duties as trustees and stewards of one of the country's oldest surviving women's colleges.

VII. Conclusion

The College's actions have put the Department of Education in a terrible position. The College has admitted male students and advertises as a coeducational institution. No doubt the College will argue that whatever mistakes were made, it is too late to change course. But this is not true. The handful of enrolled male students can be accommodated, if necessary. Advertising and marketing can be updated. All of the other changes the College has made will benefit it as a women's colleges.

The Department of Education must deny the Application because to grant it would nullify Title 24, section 6504, and establish a dangerous precedent. The Department of Education has a critical role to play in reviewing fundamental changes to the mission of a college or university. Upholding section 6504 is the only way to ensure that the Department can continue to exercise its oversight authority and protect the public.

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