

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PAULA TISHOK, GRETCHEN VAN NESS, KENDAL HOPKINS, and MELISSA BEHM,	)	
	)	
Petitioners,	)	Docket No.
	)	
vs.	)	
	)	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF EDUCATION,	)	
	)	
Respondents.	)	

PETITION FOR REVIEW

Petitioners Paula Tishok, Gretchen Van Ness, Kendal Hopkins, and Melissa Behm hereby file the within Petition for Review against Respondent Commonwealth of Pennsylvania, Pennsylvania Department of Education. In support thereof, the Petitioners state the following.

INTRODUCTION

1. On January 6, 2015, Respondent Pennsylvania Department of Education issued its adjudication and final order approving the Application for Approval of Certificate of Authority to Amend Articles of Incorporation filed by Wilson College, the historically women’s college founded in 1869 and located in Chambersburg, PA. In this final agency order, the Acting Secretary of Education determined that Wilson College had violated the law by implementing coeducation across all programs prior to amending its Articles of Incorporation and prior to seeking and obtaining approval for this fundamental change from the Department of Education. Despite this finding, however, the Department approved the College’s late-filed and incomplete Application.

2. This is a case of first impression. There are no reported cases or agency decisions addressing the scope of the PDE’s discretion when a college or university has violated the requirement, contained in Title 24, section 6504 of the Pennsylvania Code, that all institutions of higher education obtain prior approval by the PDE of any fundamental changes to the institution’s articles of incorporation. The Pennsylvania legislature has expressed the public policy of the Commonwealth in section 6509 of

Title 24, which makes any violation of section 6504 a summary criminal offense. There are no reported cases or agency decisions interpreting section 6509.

3. The PDE ignored the substantial and uncontested evidence in the record that established that the College's violation of section 6504 was intentional and ongoing. The PDE also ignored the substantial and uncontested evidence in the record that established that the College was under both a general and a special duty to follow the law when making fundamental changes to its Articles of Incorporation.

#### JURISDICTION

4. Jurisdiction of this Petition for Review is proper in the Commonwealth Court of Pennsylvania pursuant to Chapter 15, sections 1501 *et seq.* of the Pennsylvania Code, which gives the Commonwealth Court exclusive jurisdiction of judicial review of a determination of a governmental unit, including the Pennsylvania Department of Education (PDE).

5. This Petition is timely filed within 30 days of the date of the PDE's final ruling granting the Application for Approval of Certificate of Authority to Amend Articles of Incorporation filed by Wilson College ("the Wilson College matter").

6. The final determination issued by the Acting Secretary of Education is attached hereto as Exhibit A, which is comprised of a cover letter from the Acting Secretary of Education, adopting the Proposed Report as the agency's adjudication and final order in the Wilson College matter, and the Proposed Report.

7. The PDE's notice of final determination fails to notify the participants of the mailing date of the decision. Petitioners received the determination by First Class Mail, postmarked January 7, 2015, as late as January 12, 2015. There was no notification by email to the Limited Participants, as had occurred previously during the proceedings.

#### PETITIONERS

8. Petitioner Paula Tishok is a 1971 graduate of Wilson College, a former President of the Alumnae Association of Wilson College, and an Everitt-Pomeroy Trustee. At all times relevant hereto,

Petitioner Tishok was a voting member and Vice Chair of the Wilson College Board of Trustees and Chair of the Board's Committee on Trusteeship. Petitioner Tishok was granted Limited Participant status by the PDE in the Wilson College matter. She resides in Key West, Florida.

9. Petitioner Gretchen Van Ness is a 1980 graduate of Wilson College, former Vice Chair of the Wilson College Board of Trustees, former Co-Chair of the Board's Ad Hoc Governance Committee and Chair of the Enrollment Management and Student Life Committee. Petitioner Van Ness also served on the Commission for Shaping the Future of Wilson College. She was granted Limited Participant status by the PDE on behalf of Wilson College Women and representing all protesters in the Wilson College matter. She resides in Boston, Massachusetts.

10. Petitioner Kendal Hopkins is a 1980 graduate of Wilson College. She currently serves as Vice President of the Alumnae Association of Wilson College. Petitioner Hopkins was granted Limited Participant Status by the PDE in the Wilson College matter. She resides in Aspers, Pennsylvania.

11. Petitioner Melissa Behm is a 1976 graduate of Wilson College. She is a former Alumnae Trustee and an Everitt-Pomeroy Trustee. She currently serves as the President of the Wilson College Club of Baltimore. Petitioner Behm was granted Limited Participant status by the PDE in the Wilson College matter. She resides in Baltimore, Maryland.

#### BACKGROUND

12. On January 13, 2013, in a divided vote with eight members of the Board dissenting, the Board of Trustees of Wilson College approved the recommendation of the President of the College to make the historically women's college coeducational across all programs. The decision was announced publicly that day and recruiting of male students for the undergraduate college began immediately.

13. The College announced the acceptance of the first undergraduate male student in February 2013.

14. Throughout Spring 2013, the College promoted itself as a coeducational institution. It hired coaches for male sports teams and recruited and admitted both male and female students to the undergraduate program.

15. On May 17, 2013, the Board of Trustees approved amendments to the College's Articles

of Incorporation that in effect dissolved the women's college and replaced it with a coeducational institution. Prior to this vote, only the College's Adult Degree Program and graduate programs were coeducational. Male children of College employees could enroll as undergraduates but were not permitted to live on campus.

16. Also on May 17, 2013, the Board of Trustees approved amendments to the College's Articles of Incorporation that weakened the endowment requirements, removed the requirement for a minimum number of full-time faculty, changed the language regarding the disposal of assets should the College close, and changed the mission of the College. Counsel for the College advised the Board of Trustees that changes in Pennsylvania law necessitated these amendments, but there has been no change in section 6503 of Title 24 since the College's Articles were last amended in 1993, and the language removed from the Articles faithfully tracks section 6503.

17. Following the May 2013 Board of Trustees meeting, four Trustees resigned, including the Vice Chair of the Board, the Chair of the Buildings and Grounds Committee, the Chair of the Investment Subcommittee that oversees management of the College's endowment, and one of the Alumnae Trustees.

18. On May 20, 2013, counsel for the College submitted the proposed changes to the College's Articles of Incorporation to the Pennsylvania Department of Education (PDE). The PDE accepted the submission as the College's Application for Certificate of Approval to Amend Articles of Incorporation.

19. In its May 20, 2013 submission, the College failed to inform the PDE that it had already begun implementing the proposed amended Articles, including marketing itself as a coeducational institution, hiring coaches for male sports teams, and recruiting and enrolling undergraduate male students.

20. On July 13, 2013, the PDE published notice of the College's Application in the *Pennsylvania Bulletin*. 43 Pa.B. 3951, Doc. No. 13- 1253.

21. Within 30 days of this notice, 40 separate written protests were filed, as well as a written request for a public hearing, a petition to intervene, a request for expedited review, and a request for the appointment of a public trustee or guardian filed by Petitioner Van Ness on behalf of Wilson College

Women, an unincorporated association of Wilson College alumnae and friends. In their written protests, numerous individuals stated their support for the relief requested by Petitioner Van Ness on behalf of Wilson College Women. Petitioners Tishok, Behm and Hopkins each timely filed individual protests.

22. No letters in support of the College's Application were filed in response to the *Pennsylvania Bulletin* notice.

23. Among other things, Petitioners argued that the College was under a special duty to comply with the law governing the process for making fundamental changes in the Articles of Incorporation because of the College's unique history. In 1979, the College was sued by alumnae and others after the Board of Trustees voted to close the College and immediately began implementing that decision, without seeking prior approval from the Attorney General. The Attorney General filed a special appearance in that case and, after hearing, the Orphans Court entered a preliminary injunction reversing the decision to close. A consent decree entered that removed the President of the College and replaced the majority of the Board of Trustees.

24. By letter dated November 27, 2013, the PDE notified Petitioner Van Ness that the petition to intervene was denied and that she had been granted "Limited Participation" status and designated the representative of each of the individuals who had filed protests.

25. By letter dated January 6, 2014, the PDE notified Petitioners Tishok, Behm, and Hopkins that their requests to participate as Limited Participants had been granted.

26. During the February 7, 2014 pre-hearing conference call with the College's counsel and the four Limited Participants, Petitioner Van Ness objected to the PDE's denial of the petition to intervene. The objection was denied.

27. The PDE set June 16, 2014 as the date for a public informational hearing in the Wilson College matter. Each of the four Limited Participants timely submitted written testimony and documentary evidence in advance of the public hearing. Counsel for the College submitted testimony and evidence for the College. <http://daisiescantell.com/pages/documents>

28. In the final pre-hearing conference call scheduled by the PDE, Petitioner Van Ness

objected to the PDE's decision to permit individuals to testify at the public hearing on behalf of the College who had not submitted prior written testimony, as each of the Limited Participants had done. The objection was denied.

29. The public hearing took place as scheduled on June 16, 2014. Each of the four Petitioners testified in their capacity as Limited Participants. The PDE allowed the College's counsel, the President of the College, the Chairman of the Wilson College Board of Trustees, and the Chairperson of the Commission on Shaping the Future of Wilson College to testify on behalf of the College.

30. Post-hearing memoranda were timely submitted by the Limited Participants and counsel for the College on August 1, 2014. In their post-hearing memorandum, the Limited Participants specifically reserved their right to appeal the PDE's decision denying the petition to intervene and the PDE's decision to permit individuals who had not submitted written testimony prior to the public hearing to testify on behalf of the College.

31. On January 6, 2015, the PDE issued its adjudication and final order approving the College's Application, despite its finding that the College had failed to follow the requirements of Title 24, section 6504 . Exhibit A. The decision was mailed to the Limited Participants and post-marked January 7, 2015. It was received by Petitioner Van Ness on January 10, 2015, and by Petitioner Behm on January 12, 2015. The notice of final decision failed to include notice of the mailing date. *Schmader v. Cranberry Township Board of Supervisors*, 67 A.3d 881 (PA Commw. Ct. 2013).

#### ISSUES FOR REVIEW

32. In this case of first impression, the PDE abused its discretion in approving the College's application after finding that the College implemented fundamental changes in its Articles of Incorporation and mission before amending the Articles and before seeking and obtaining approval of the proposed amendments from the PDE, all in violation of section 6504 of Title 24 of the PA Code. The PDE's decision to approve the College's late-filed and incomplete Application for Approval of Certificate of Authority to Amend Articles of Incorporation sets a disturbing precedent that permits colleges and

universities to violate the law and mislead the PDE with impunity. The PDE's decision also has the effect of insulating from agency review any unapproved fundamental changes in the charters and missions of institutions of higher education in the Commonwealth, contrary to the express language of section 6504.

33. In view of the explicit language of section 6509 of Title 24, which makes the violation of section 6504 a summary criminal offense without exception, the PDE abused its discretion in failing to sanction the College and/or refer this matter to the appropriate authorities for further action.

34. After the substantial and uncontested evidence established that the Board of Trustees was misled as to need for the amendments, the PDE abused its discretion in approving amendments to the College's charter that significantly weaken the endowment requirements, remove the requirement for a minimum number of full-time faculty, change the disposition of assets should the College close, and alter the College's mission.

35. The PDE abused its discretion in denying Petitioners' petition to intervene. Petitioners have a "substantial interest" in this matter and the approval of the College's Application has a discernible adverse impact on them above and beyond the interest of all citizens in having others comply with the law. *Wm. Penn Park., Inc. v. City of Pittsburgh*, 464 Pa. 168 (1975). Unlike the general public, Petitioners, as well as the Wilson College Women they represent, have generously donated their time and treasure to the College over the decades in order to preserve, protect and promote its historic mission as a college for women. Employers, graduate schools, and others recognize the extra value a women's college graduate brings to the table. The decision to make the College coeducational reduces the value of the Wilson College degree and uses Petitioners' gifts to the College in a manner that was never intended.

36. The PDE abused its discretion in failing to protect the public interest by preserving the historic mission of Wilson College, when the substantial and uncontested evidence established the unique value of women's colleges and only three such colleges remain in the Commonwealth, all of them in the greater Pittsburgh area. There are no women's colleges in south-central Pennsylvania, where Wilson College is located, while there are numerous coeducational institutions. PA Code Title 24, section 6503.

37. The PDE abused its discretion in failing to sanction the College when the substantial and

uncontested evidence established that the College made numerous material misrepresentations and omissions during the proceedings, including refusing to answer questions promulgated by the Hearing Officer at the public informational hearing.

38. The PDE abused its discretion in failing to appoint a public trustee or guardian to oversee the management of the College in view of the substantial evidence establishing mismanagement and intentional and continuing violations of the law by the College, and in view of the College's special duty to comply with the law following the 1979 litigation.

RELIEF REQUESTED

39. The Petitioners request that the January 6, 2015 adjudication and final order of the PDE in the Wilson College matter be vacated and that this matter be remanded to the PDE with appropriate instructions; and

40. All such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Gretchen Van Ness, Pro Se  
for the Petitioners Paula Tishok, Melissa Behm,  
Kendal Hopkins, and Gretchen Van Ness  
21 Cranston Street  
Jamaica Plain, MA 02130  
(857) 273-3066  
[gretchenvanness@earthlink.net](mailto:gretchenvanness@earthlink.net)

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