

LIMITED PARTICIPANTS' REBUTTAL TO
THE COLLEGE'S TESTIMONY

April 14, 2014

1. Introduction

The Limited Participants offer this Rebuttal to the Testimony filed by the College in this matter on March 17, 2014. As the following discussion will show, the College has misstated the law, focused on irrelevant issues, and misrepresented many key facts. The College has also asked the wrong question. The issue is not whether the proposed amended Articles of Incorporation, if approved, are lawful (although we argue that they are not); the issue is whether the College has fulfilled its obligations and followed the steps required under Pennsylvania law to make fundamental changes to its mission, and if the Department of Education determines that it has not, what action is required. As our previous filings and this Rebuttal will show, on the uncontested facts and applying the correct reading of the law, the Department has no choice but to deny the College's application in its entirety and to establish conditions to protect the current mission and ongoing operation of the College.

This Rebuttal is divided into several sections. In Section 2, we rebut the College's testimony concerning the role and authority of the Department of Education. In Sections 3 and 4, we rebut the College's testimony concerning the 1970 Charter and show that as a matter of law and fact, that charter is null and void and that while in 1970 the College took the proper steps to authorize a fundamental change in mission (unlike today), that change was never implemented. In Section 5, we rebut the College's interpretation of the 1993 Articles of Incorporation as contrary to all accepted tenets of construction and common sense. Although it is not relevant to the present matter, in Section 5 we also rebut the College's testimony regarding Pennsylvania's cy pres doctrine. In Section 6, we rebut the College's testimony concerning the Department's responsibility to protect the public interest in preserving women's colleges generally and the historic mission of Wilson College specifically. In section 7, we identify the

key factual errors and omissions in the College's testimony. Section 8 contains the conclusion and renews our request for prompt and effective action to protect Wilson College and the public interests of the Commonwealth and her citizens.

The previous Testimony of the Limited Participants, as well as all attachments filed on March 17, 2014, and the protests filed by Wilson College Women and the individual protestors and all attachments thereto, are expressly incorporated herein.

2. The Role and Authority of the Department of Education

Surprisingly, the College begins its testimony by focusing on the role and authority of the Department of Education. That testimony attempts to divert attention from the true focus of the present inquiry: the College's actions and its obligations under Pennsylvania law. The Department knows what its role and authority is. The College, in contrast, has ignored its duties and legal obligations.

When a college or university considers a fundamental change in its mission, Pennsylvania law is clear. Pennsylvania Consolidated Statutes, Title 24, section 6504, which governs "Fundamental Changes," provides:

(a) General rule. - It is unlawful for any institution holding a certificate of authority under this chapter authorizing the conferring of degrees to amend its articles of incorporation, to merge or consolidate with any other corporation or to divide or convert without first securing the approval of the department with respect thereto.

(b) Form of application. - Every application for approval of a fundamental change under this section shall be made to the department in writing and shall be in such form and shall contain such information as the department shall require.

(c) Standards for approval. - The amendment of articles, merger, consolidation, division or conversion shall be approved by order of the department only if and when the department finds and determines that such fundamental change conforms to law, and the standards and qualifications for institutions prescribed by the State board thereunder, and will result in an institution which, under the then current provisions of this chapter and standards and qualifications for institutions of the State board thereunder, would be eligible to receive a certificate of authority as an institution.

(d) Procedure. - The proceedings before the department shall be subject to the provisions of sections 6503(e) (relating to procedure).

Section 6053(e) provides as follows:

(e) Procedure. – For the purpose of enabling the department to make the finding or determination required by subsection (d) [“Standards for issuance of certificate”], the department shall, by publication of notice in the Pennsylvania Bulletin, afford reasonable opportunity for hearing, which shall be public, and, before or after any such hearing, it may make such inquiries, audits and investigations, and may require the submission of such supplemental studies and information, as it may deem necessary or proper to enable it to reach a finding or determination. The department, in issuing a certificate of authority, may impose such conditions as it may deem to be just and reasonable. In every case, the department shall make a finding or determination in writing stating whether or not the application has been approved and, if it has been approved in part only, specifying the part which has been approved and the part which has been denied. Any holder of a certificate of authority exercising the authority conferred thereby shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

Section 6053(d) provides as follows:

(d) Standards for issuance of certificate. – A certificate of authority shall be issued by order of the department only if and when the department finds and determines that:

(1) The application complies with the provisions of this chapter, the regulations of the department thereunder and the standards and qualifications for institutions prescribed by the State Board thereunder.

(2) The courses of instruction, the standards for admissions to the institution and the composition of the faculty appear to be sufficient and to conform to the requirements of this chapter.

(3) The educational needs of the particular locality in which the institution is to be situated and of the Commonwealth at large are likely to be furthered by the granting of the application.

These sections of Title 24 of the Consolidated Statutes must be read in conjunction with the regulations that are codified in Title 22 of the Pennsylvania Code. These regulations provide further detail regarding the process by which a college or university must obtain approval for a fundamental change in mission. Under section 31.71, a postsecondary institution “considering some form of major corporate change, shall notify the Department in writing of its intent immediately after its board or council of trustees or directors has approved ... the major corporate change.”

The statutory and regulatory framework thus imposes very specific obligations on the College. When the Board of Trustees approved the fundamental change in mission to make the undergraduate residential college coeducational, thus dissolving the 145-year old women’s

college, it was required to *immediately* notify the Department in writing. It did not do so.

Instead, the College waited six months and then submitted a wholly inadequate application for a certificate of authority.

As the statutory and regulatory framework makes clear, when a fundamental change in mission is contemplated, the applicant must show that the institution created by the new mission complies with the standards and qualifications established by Title 24 of the Consolidated States and the Department of Education's regulations contained in Title 22 of the Pennsylvania Code. The College's barebones application failed to alert the Department that the application proposed a fundamental change in mission and failed to reveal to the Department that the new mission was already being implemented.

In addition, the application submitted by the College shows that the proposed amended Articles of Incorporation explicitly *removes* language that incorporates the requirements of Title 24, section 6502(b)(1) and (2) of the Consolidated Statutes: "A minimum protective endowment of at least \$500,000," and "A faculty consisting of at least eight regular professors who devote all their time to the instruction of its higher education classes" The Testimony Submitted by Melissa A. Behm on March 17, 2014, describes in detail where the proposed amendments to the College's Articles of Incorporation are at variance with current Pennsylvania law.¹

The College's testimony also fails to address several relevant regulations. Section 40.2 of Chapter 40 describes the crucial state standard with regard to a college's "statement of philosophy, mission and need."

The statement also shall document how the mission fulfills the educational needs of the Commonwealth and **does not duplicate education already provided in the institution's service region** and the Commonwealth. (emphasis added)

¹ The proposed deletion of these provisions creates governance concerns. Most of the members of the College's Board of Trustees are not attorneys. They are not versed in higher education law and therefore rely upon the College's governance documents, including the Articles of Incorporation, for guidance.

Fundamentally changing Wilson College's mission, philosophy and need from that of an undergraduate residential college for women to a coeducational institution undeniably duplicates education already provided by the many coeducational institutions and programs in the College's service area and in the Commonwealth. One need look no further than the University of Pennsylvania Mont Alto campus, Shippensburg University, Gettysburg College, and Dickinson College to find robust institutions with long histories of coeducation. Pennsylvania has just five women's colleges, none of which are in Franklin County or the immediately surrounding counties.

The College's testimony regarding Chapter 32 also omits mention of several relevant provisions. Contrary to the College's suggestion that this Chapter "endorses" (to use the Chapter's language) equal educational opportunity -- which the College erroneously suggests precludes historically women's colleges -- section 32.1(b) contains this important language:

The purpose of this chapter is to encourage and affirm, and when necessary, apply impetus and sanctions to, institutional efforts to provide equal opportunity in admissions and treatment of students, in educational programs for students, in employment opportunities and in governance, **to the end that the educational needs of the diverse citizenry of this Commonwealth are served by the Commonwealth's rich array of higher education institutions in keeping with their individual missions and charters.** (emphasis added)

Additionally, section 32.3(2)(i) of Chapter 32 expressly permits institutions of higher education that are single sex.

(2) Assurances concerning students containing the following:

(i) The institution may not subject students to unlawful discrimination in the admission process on the basis of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, **except as an institution** not listed in section 9 of the Pennsylvania Fair Educational Opportunities Act (24 P.S. sec. 5009) and not a community college **may be required by its charter to admit students of one sex.** (emphasis added)

Far from requiring Wilson to fundamentally change its core mission as an undergraduate residential college for women and become a coeducational institution like virtually every college and university in the Commonwealth, Chapter 32 seeks to affirm and support a "rich array" of

higher educational institutions to serve the educational needs of a diverse citizenry. Even more importantly, Chapter 32 protects historically women's colleges, such as Wilson.

Finally, the College's testimony suggests that section 31.31 of Chapter 31, which addresses admissions standards, also disfavor single-sex institutions. To the contrary. Section 31.31 is not intended to address anything other than the requirement that, in Pennsylvania, colleges and universities must have admissions practices that ensure that students who are admitted will have the ability to succeed at the institution so that the Commonwealth can be assured that the college or university is offered a high-quality program. Furthermore, this is the purpose and scope of Section 31.31:

- (a) This chapter provides protection for students and citizens of this Commonwealth, guides the orderly development of postsecondary education in this Commonwealth and offers direction to those intending to establish new institutions of postsecondary education in this Commonwealth.

The College's application for a fundamental change in mission must be denied because it fails to conform to the requirements of Title 24 of the Consolidated Statutes and Title 22 of the Pennsylvania Code. The College's application for fundamental change in mission must also be denied because the College failed to obtain approval from the Department prior to implementing the changes in mission. This bypassing of the Department's state-mandated oversight and regulatory process is not an innocent mistake or a mere technicality. The Commonwealth of Pennsylvania has made the violation of Title 24, section 6503 of the Consolidated Statutes a summary criminal offense. (see section 6509: "A person who violates this chapter commits a summary offense.") As the testimony submitted by Gretchen Van Ness and Paula Tishok shows, the Board of Trustees was repeatedly advised to obtain independent legal advice and an opinion letter of counsel before the Board voted to approve the fundamental change to coeducation, yet that advice was ignored. In addition, even after receiving the Demand Letter² (see Exh. O to the Protest of Wilson College Women) and the protests filed in this matter, which

² The Demand Letter was served on every member of the Board of Trustees a month *before* the May 2013 Board meeting, not after the meeting as the College erroneously testified.

gave the College extensive notice of the laws and regulations it was violating, the Board of Trustees did not withdraw this application, nor did it cease its unauthorized and illegal conduct. It has continued with the full implementation of coeducation, as the evidence collected in the Notebook filed with our testimony on March 17, 2014, conclusively demonstrates.

The rush to dissolve the undergraduate residential women's college at Wilson and replace it with a coeducational institution can only be viewed as a deliberate effort to circumvent the law and the Department of Education's proper oversight. This intentional and ongoing conduct falls outside the law and is precisely what section 6509 makes a summary offense.

3. Wilson College's Fundamental Mission

The Wilson community, including all living alumnae, current and former College Presidents, Trustees, faculty and staff, would be surprised to learn that Wilson College "crossed the Rubicon" of coeducation as early as the 1940s, as the College so colorfully testified. All of these members of the community recall male students who studied at Wilson, some of whom even resided on campus briefly during their studies, but the College's accommodation of this handful of male students in special circumstances over the decades never made the undergraduate residential college fully coeducational, as the College voted in January 2013 to do. Following WWII, there were not enough seats at the nation's colleges and universities to accommodate all of the returning veterans who wished to attend or return to college. Like other women's colleges, Wilson opened its classrooms but not its residential program for these veterans. They lived and ate separately and did not receive Wilson degrees (see infra Section 7 at pp. 22-23), thus protecting and preserving Wilson's fundamental mission as a women's college.

Similarly, in the late 1960s, Wilson instituted two new programs. It joined a consortium of nearby colleges and it entered into an exchange agreement with Franklin & Marshall College so that students at any of the colleges could take classes at the others that were not available. Some male students lived on campus while taking classes at Wilson, while Wilson students also

took classes at Dickinson and at other consortium schools. None of the male F&M or consortium students obtained degrees from Wilson. The College also made special accommodations for a handful of returning Viet Nam veterans. The benefit that permits children of Wilson employees to attend the College did not permit male students to reside on campus. None of these special accommodations, some of which were very short-lived, changed the women's undergraduate residential program or the College's core mission as a women's college.

From its founding in 1869 until January 2013, the College maintained its status as a women's college and so described itself in all of its reporting to Federal and state agencies, in grant applications, fundraising, advertising, and recruitment. The Middle States Commission on Higher Education has only accredited Wilson as a women's college and never as a coeducational institution. The Middle States Commission and the Department approved coeducational, nonresident adult degree and graduate programs at Wilson, but that is all.

The 1982 creation of the nonresidential coeducational College for Continuing Education, now called the Adult Degree Program (ADP), and the addition of nonresidential coeducational Master's Degrees in the 2000s specifically preserved and protected the undergraduate residential College for Women. This meant that Wilson undergraduates had male students in some, but not all of their classes, that the residence halls were all female, and that student government, clubs, and extracurricular activities were led and dominated by women. This is the quintessential women's college experience: to live among women, to have every leadership position filled by women, and to have women's voices and experiences predominate.

4. The 1970 and 1993 Amendments to the Articles of Incorporation

In its Testimony, the College claims that the 1970 Amendment to the Articles of Incorporation changed the College's mission from a women's college to a coeducational institution. It points to the approval of the 1970 Charter by the Orphans Court and the Secretary of State as proof that the College adopted this fundamental change more than 40 years ago and

remains coeducational today. This reading of the 1970 Charter is wrong as a matter of law and fact.

The 1970 Articles of Incorporation are null and void. When the Board of Trustees approved the amended 1993 Articles of Incorporation and By-Laws of Wilson College, which were subsequently approved by the Secretary of the Commonwealth, all prior Charters ceased to have any legal effect. The form signed by Board Chair Cynthia Grove on November 6, 1993, and subsequently filed with the Department of State and approved by the Secretary, explicitly states, “The restated Articles of Incorporation supercede the original Articles *and all amendments thereto*” (emphasis supplied). Consistent with prevailing law, therefore, the Charter adopted in 1993 replaced and superseded all previous charters, including the 1970 Charter.

While the legal certainty that the 1970 Charter is null and void is sufficient to rebut the College’s testimony concerning that Charter in its entirety, the obfuscations in the College’s testimony compels us to provide the following historical context that the College omitted in its testimony.

On page four of its testimony, the College states, “Thus, for 23 years, at a minimum, Wilson’s mission as set forth in its Charter was to educate both women and men” (emphasis original). The College emphasizes this sentence to obscure the fact that although the phrase “both women and men” was added in 1970, the College did not *act* on the revised language until 12 years later -- and then only in a limited manner that preserved and protected the undergraduate residential program for women. In 1982, Wilson added a nonresidential undergraduate degree program for adult students (i.e., 24 years or older), for both women and men. This program, originally known as the College for Continuing Education (and today called the Adult Degree Program) was differentiated from the College for Women (as the core undergraduate residential college came to be called), and Wilson continued to identify itself to prospective students, to alumnae, employees, and all others as a college for women in its

undergraduate degree, residential program, with a continuing education options for others. This model has proven successful at other women's colleges, such as the Notre Dame University of Maryland (see infra at p. 17). The Commonwealth needs this educational option, too.

If Wilson had changed its mission and become coeducational in 1970, for example, it would never have qualified to receive funds to support NeXXt scholars, a program initiated by Hillary Rodham Clinton in December 2011 with the Department of State, in partnership with the New York Academy of Sciences, EducationUSA, the U.S. Agency for International Development, and 38 *women's colleges* in the United States to provide opportunities for female students from Muslim-majority countries to pursue their interests in STEM (science, technology, engineering, and math) careers at institutions of higher education in the United States (<http://www.wilson.edu/news/spotlight/index.aspx?pageaction=ViewSinglePublic&LinkID=1390&ModuleID=19>)? In the Fall 2012, Wilson College had the distinction and honor of enrolling two students in this prestigious and innovative program.

(<http://www.wilson.edu/news/spotlight/index.aspx?pageaction=ViewSinglePublic&LinkID=1390&ModuleID=19>). If Wilson can no longer participate in this program, the Commonwealth will lose one of few remaining Pennsylvania colleges qualified to participate in this program.

A small but important change made in the 1970 Charter casts additional insight into the reasons for the amendment. When the College revised the Charter in 1970 to state “The object and purpose of said corporation are hereby declared to be, to promote the education of both women and men in literature, science and the arts,” it deleted the word “young.” This section had stated, “The object and purpose of said corporation are hereby declared to be to promote the **education of young women** in literature, science and the arts.” (emphasis added) The removal of the word “young” from the Charter permitted the College to offer a nonresidential continuing education program for female and male students over the age of 24. This change did nothing to alter the College's historic mission to provide undergraduate, residential education to women.

Rather, it added educational programs for students of both sexes beyond the traditional age of undergraduate students, who remained female.

The following timeline recounts pertinent events that preceding and following the adoption of the 1970 Charter.

January–June 1968: During this period, administrative notes were preserved in files maintained by the office of President Paul Swain Havens. A report now housed in the College’s archives entitled “Co-education for Wilson?” sets forth questions that would need to be addressed if Wilson were to seriously consider the admission of male students. It concludes with the following statement: “Whatever solutions co-education may hold for the problems of the College in future years, it holds none in the years immediately ahead. Any change to a co-educational pattern would require intensive study and preparation and the writing of a ‘blueprint’ which could be followed over a period of time. A ‘crash’ program might be fatal.”

November 1969: Dr. Pauline Tompkins, President of Cedar Crest College, was invited to speak at Wilson’s 99th annual Founders’ Day Convocation. Her topic: the continuing need for women’s colleges (“Educator Sees Continuing Need for Women’s Colleges,” *Wilson College Bulletin*, November, 1969, p. 6).

Additionally, in the same 1969 issue of the *Wilson College Bulletin*, President Havens noted that “Wilson was entering an era of increased cooperation among colleges (Central Pennsylvania Consortium, Middle Atlantic Educational and Research Center—time-sharing network, Area College Library Cooperative Program, Student Exchange with Franklin and Marshall) and hoped that through joint action it would be able to strengthen and expand its existing programs to develop innovative endeavors” (Longacre, *The History of Wilson College*, p. 178). The November 1969 issue reported that nine students were participating in the Franklin & Marshall exchange. In January 1969, F&M’s Board of Trustees voted to admit female students beginning that fall. The student exchange program between Wilson and F&M was thus initiated as soon as F&M began accepting women students.

February 1970: On February 14, 1970, the College’s Board of Trustees passed a resolution to amend Section 2 of the College’s Charter to read, “The object and purpose of said corporation are hereby declared to be, to promote the education of both women and men in literature, science and the arts.” This change was not announced to Wilson community.

April 1970: Paul Swain Havens retired after 34 years (1936–1970) as Wilson College’s president.

May 1970: The Pennsylvania Court of Common Pleas approved the Board of Trustees’ proposed Amendments to the Charter.

July 1970: Charles Chester Cole became president of Wilson College.

August 1970: The *Alumnae Quarterly* reproduced the complete speech of retiring President Havens, “A Year in Transition,” delivered on Alumnae Day. The transition to which President Havens referred was the change in the office of the President. There is no mention of the 1970 Amendment to the Charter or of fundamental changes to the College’s mission.

October 1970: President Cole delivered his inaugural address on October 10, 1970. Entitled “The Meeting of Tradition and Change,” he did not mention coeducation but spoke at length about the education of women and the value of women’s colleges.

December 1970: Near the end of this calendar year, the Board of Trustees approved the incorporation of the Central Pennsylvania Consortium and its participation. *Wilson College Bulletin*, December 1970, p. 2. The Central Pennsylvania Consortium’s website lists the consortium’s bylaws (<http://centralpennsylvaniaconsortium.org/cpc-by-laws/>) with charter members Dickinson College, Franklin & Marshall, and Gettysburg College.

March 1971: An article by Fred M. Hechinger (© New York Times) on women’s colleges appeared in papers across the country, including the *Palm Beach Report* (March 18, 1971, <http://news.google.com/newspapers?nid=1964&dat=19710317&id=2IlyAAAAIBAJ&sjid=i7cFAAAAIBAJ&pg=958,579009>), which included the following news about Wilson:

“Last month two long-established women’s colleges, after much soul-searching, announced why they would remain ‘single-sex.’ Chatham College, in Pittsburgh, Pa. and Wilson College, in Chambersburg, Pa., reached the decision with overwhelming support from their students.”

Spring 1971: The Spring issue of the *Wilson College Alumnae Quarterly* printed an article on the back cover to ensure all alumnae and other College community members would see. It begins with this sentence: “President Cole has announced that, by unanimous endorsement, the Board of Trustees declared their intention to maintain Wilson as a college for women. The move was supported by faculty and students” (“Wilson Will Remain a Women’s College,” *Alumnae Quarterly*, Spring 1971, back cover).

A similar article appeared in the Spring 1971 *Wilson College Bulletin*. The following is an excerpt is from “Wilson Rejects Coeducation, Declares Intention of Remaining A College for Women”:

“Wilson College’s trustees have declared their intention to maintain the institution as a college for women.

“This decision was announced at a March 1 press conference in Harrisburg. Appearing at the press conference to answer questions from the press were Dr. Charles C. Cole, Jr., president of the college; Edward M. Green, board chairman of the Dauphin Deposit Trust Company and a Wilson trustee; Dr. Eve L. MacDonald, assistant professor of biology; and Miss Alice S. Thompson, then president of the Wilson College Government Association.

“At the conference, Dr. Cole said the action received the unanimous endorsement of the board of trustees. The move was also supported by the faculty.

“This means that we will preserve the basic character of Wilson,” Dr. Cole emphasized. “We are reaffirming our commitment to the education of women. ...”

“Wilson,” he said, “is taking a positive, clear-cut, and unambiguous stand. We are determined to provide an option for those young women who prefer an alternative to coeducation.”

December 1971: The *Wilson College Bulletin* published several articles that address Wilson's interest in attracting additional students: "High School Students Invited to Take Wilson Courses," "New Program Announced for Adult Women," and "Area Women Study at Wilson." There was also an article about the Consortium: "11 Students Enroll in Consortium Programs during First Semester."

May 1979: Judge Keller described Wilson as a women's college in the Franklin County Orphans Court decision reversing the Board of Trustees' decision to close the College,

1982: A posting by the College to the *Wilson Today* blog on November 23, 2013 reproduces an article from the Chambersburg's *Public Opinion* and includes at the end a timeline of some significant events in Wilson's history, including this note: "1982—Men can earn degrees for the first time through Wilson's continuing education program" (<http://wilsontoday.org/page/7/>). Men could not matriculate at Wilson until the introduction of the Continuing Education program.

As the preceding timeline shows, Wilson's intent in 1970 was *not* to become fully coeducational. Rather, as the doors to formerly men's colleges opened to women, the College sought to offer attractive new opportunities and programs. In addition, the College sought to serve the surrounding community by establishing a continuing education program for adult men and women. Throughout this period, however, Wilson preserved, protected and promoted the undergraduate residential women's college.

In 1993, the College amended the Charter to reflect the reality that there had been no fundamental change in mission in 1970 or at any time since then. Because the undergraduate residential women's college had never been replaced with a coeducational institution and the College's mission had never changed, the 1993 amendments had no substantive effect on the College's mission. Instead, the amended Articles merely brought the Charter back into harmony with the unchanged historic mission. It was not necessary, therefore, to return to the Orphans Court for approval of the Amended Articles of Incorporation. The 1993 Amendments were entirely unremarkable, which is consistent with former Board Chair Cynthia Grove's hazy memory of the matter.

Although the 1993 Charter was not approved by the Orphans Court, it was lawfully enacted and remains in full force and effect today. And although the College has testified forcefully to this body that it is not seeking to make a fundamental change in its mission, on

September 13, 2013, it filed a still-pending “substantive change” request with the Middle States Commission on Higher Education for approval of its new mission as a coeducational undergraduate residential college.³ The College cannot have it both ways.

5. ”Without Limitation”

There is one final piece of testimony about the 1993 Charter that must be rebutted. In its testimony about the 1993 Charter, the College twists accepted principles of construction beyond recognition to argue that the language of the 1993 Charter authorizes the creation of a coeducational institution in place of the women’s residential undergraduate college. At the outset, it must be noted that if the College truly believes that the 1993 Charter authorizes the dissolution of the women’s college, there would be no reason for the present application. The College’s present actions in seeking the Department’s approval of its proposed amended Articles of Incorporation, as well as Middle States’ approval of a substantive change in mission, indicate that it knows full well that the 1993 Charter authorizes a residential undergraduate program for women only. That is the plain meaning of section 3(a), which provides that “in furtherance of its purpose set forth in the original charter, to operate a College for Women, which offers residential opportunity, and, in addition, to operate a co-educational College for Continuing Education ...”

The College’s interpretation of the phrase “without limitation” in the paragraph preceding section 3(a) simply makes no sense. “Without limitation” does not mean that the College can operate any kind of college it wishes. Rather, paragraph 3 in its entirety is limited to “the following purposes” specifically delineated in the subsequent subsections. Thus, the College’s charitable, educational and scientific purposes that give it safe harbor under 501(c)(3) of the

³ Based on the information posted to Wilson’s Statement of Accreditation Status on the Middle States Commission on Higher Education website, Wilson submitted “a substantive change request ... [for] “a change in mission” (http://www.msche.org/institutions_directory.asp; click on ‘W’ and scroll down to Wilson’s entry). It reads in full: “September 3, 2013: To acknowledge receipt of the substantive change request and to include the change in mission within the scope of the institution’s accreditation effective upon receipt of State approval. The Periodic Review Report is due June 1, 2015.”

Internal Revenue Code are limited to: the operation of a residential College for Women, a coeducational College of Continuing Education (subsection (a)); the offering of studies in literature, science and the arts in a liberal arts program and preparation for specific careers as well as for graduate and professional school (subsection (b)); and the granting of honors, degrees, and diplomas (subsection (c)). The phrase “without limitation” means that there is no limitation on these specific activities – in other words, that the College has the authority to do all things necessary and proper for the operation of a residential undergraduate women’s college, a coeducational adult degree program, the offering of a liberal arts program, career and graduate school preparation, and the conferring of honors, degrees, and diplomas.

If the College’s argument were correct, there would be no reason to include subsections (a), (b), and (c) in paragraph 3 of the 1993 Charter. Every word in a charter must be given effect if at all possible. The 1993 Charter authorizes the College to operate a residential undergraduate college for women. It does not authorize the College to dissolve that college and replace it with a coeducational institution.⁴

6. Protecting the Remaining Women’s Colleges in Pennsylvania is in the Public Interest

Upon examination of the proposed fundamental changes to Wilson College’s Articles of Incorporation, one is struck by the cavalier nature of the comments in the College’s testimony:

“Wilson will continue to educate women and offer residential opportunities to women; these educational opportunities are not changing. Wilson will now offer this outstanding liberal arts education opportunity to undergraduate men, thereby benefiting more

⁴ Although it is not relevant to the present matter, the College’s testimony concerning the cy pres doctrine in Pennsylvania is also incorrect. The Pennsylvania Attorney General continues to recommend that nonprofit charitable corporations contemplating fundamental changes obtain approval from the Orphans Court (see “Review Protocol for Fundamental Change Transactions,” Exh. N to Wilson College Women Protest). This is the process the College followed in 1970 and it has not changed. In fact, Senior Deputy Attorney General John Downing informed Gretchen Van Ness that he had recommended to the College that it seek approval of the Orphans Court for coeducation, as donors to the College over the decades had no reason to restrict their gifts to the women’s college while only the women’s college existed and while the College solicited support solely as a women’s college. The Orphans Court is uniquely qualified to determine the legal effect of the implied restriction on all such gifts, the endowment, and the campus facilities – all of which are currently being repurposed for a coeducational institution.

Commonwealth citizens. The core educational mission of the College, however, is not changing.”

We strongly disagree. The core educational mission of Wilson College has been and should continue to remain the education of women in both a living and learning environment. If men are permitted to enroll as *residential*, undergraduate students, the educational environment at Wilson as a living community to foster personal growth, intellectual rigor, and leadership experience will be fundamentally and forever changed.

As explained below, a fundamental change to Wilson’s Articles of Incorporation to make its programs fully coeducational will not benefit the Commonwealth or serve its long-term best interests. The Commonwealth does not need another small, private, liberal arts, coeducational college. Rather, the Commonwealth should preserve the heritage and traditions of its remaining women’s colleges, not because of sentimentality, but because it makes as much good sense in the 21st century as it did in the 19th and 20th centuries.

In March 2008, the Women’s College Coalition commissioned a Comparative Alumnae Research Study through Hardwick~Day with the primary objective “to collect, interpret, and disseminate – on an on-going basis – relevant and irrefutable data to make the case for the distinctive characteristics and effectiveness of a women’s college education.”

The results of the study appear on the website for the Women’s College Coalition and identify four key findings, which make the case for the effectiveness of a women’s college education:

- Creates leaders, communicators, and persuaders.
- Develops critical skills for life and career.
- Enables students to engage with top faculty and resources.
- Proves its value over a lifetime.

In spring 2012, Stevens Strategy spent many hours gathering industry and marketing information, compiling and analyzing institutional data, and surveying alumnae, administration, faculty, students, and staff at Wilson College. The results of this comprehensive data collection

included an analysis of the strategic environment for Wilson, as part of the *Presentation of Institutional Data to the Commission on Shaping the Future of Wilson College*, dated May 16, 2012. (See Attachment) Moreover, this comprehensive data collection and analysis by Stevens Strategy was the foundation of the work of the Commission and its subcommittees.

According to the data collected by Stevens Strategy, Women's College Students are More Likely than Women at ALL OTHER Colleges to:

- Have Served in Leadership roles at their College
- Say Their Classroom Experience Included Presentations in Class
- Be Involved in Campus Publications or Student Government
- Complete a Graduate Degree
- Say they Learned to Solve Problems and Make Effective Decisions
- Say they Developed Self-Confidence and Initiative
- Say they Developed Moral Principles That Guide Their Actions
- Sat they Benefited from a High Quality Teaching-Oriented Faculty

Based on these findings and numerous other studies, women who attend women's colleges are more likely to be confident leaders in their career and community, highly educated and articulate problem-solvers, and guided by strong, moral values. These attributes greatly benefit businesses and communities throughout the Commonwealth. For these reasons, women's colleges prove their value over the lifetimes of their graduates.

In January 2013, the President of Notre Dame of Maryland University, James F. Conneely, wrote a letter to *The Chronicle of Higher Education* entitled: "There Remains a Place for Women's Colleges." In this article, Dr. Conneely states:

"Today Notre Dame of Maryland University is purposeful in its mission to remain a women's institution with the Women's College our full-time, single gender undergraduate program, and women comprising 80 percent of our total enrollment in all undergraduate and graduate programs. We will not waiver in our belief in the value of single-sex education for young women, because we know that women's colleges produce confident, capable leaders at disproportionate levels."

In January 2014, the presidents of five women's colleges attended a White House Higher Education Summit whose focus was to improve access to higher education for lower-income and first generation students. According to an article appearing on the website for the Women's

College Coalition entitled *Women's Colleges Ahead in Educating First Gen, Lower Income Students*, "Women's colleges have educated a higher percentage of low-income racially diverse and first generation students than traditional co-ed colleges and universities, public or private, for more than a decade." (<http://www.womenscolleges.org/story/index>.) And this is certainly true for Wilson College, which has been a leader in providing access to lower-income and first generation students for many years.

For decades, women's colleges have been purposeful in providing access to a liberal arts education to underserved women by offering comprehensive and innovative programming. At Wilson, women who are single mothers can attend an undergraduate, residential program, called the Women With Children program, whereby women can attend classes full-time while their children are being cared for in a childcare setting on campus. And Wilson is one of only six institutions *nationwide* that offer this type of program to single mothers. This safe, nurturing environment for single mothers is likely to be negatively affected if male students are permitted to reside on campus. According to **Exhibit P** in the College's testimony, "A 2002 study by the Duke University Women's Initiative revealed that at least some coeducational institutions are less than ideal environments for women. Duke students describe the campus's social environment as one demanding that women be "smart, accomplished, fit, beautiful, and popular," and reported fears of assaults by male students (*Chronicle*)" (PowerPoint slide 21). Additionally, a recent study posted at CollegeStats.org reports the following:

"Safety may propel some female students to pursue educational opportunities at women's colleges. Although many of these institutions now controversially accept a few men, their curricula and main goals still revolve around meeting the unique needs of their female enrollees. [An average of one rape per day happens on campus at traditionally and explicitly co-ed facilities](#), and 13% of female students are stalked at some point during the school year. Since 90% of incidents are perpetuated by people they know — most of them men — it isn't as if they fear the stereotypical random boogeyman jumping out of the bushes. It makes sense that some women

would gravitate towards environments that significantly lessen (though, sadly, not entirely eliminate) their risk of physical assault. [Seventy-two percent of women's college alumni report feeling safe on campus](#), compared with 64% at private and co-ed liberal arts institutions and only 37% at flagship state schools.” (<http://collegestats.org/2013/02/is-there-still-a-need-for-womens-colleges/>)

In September 2011, *The Chronicle of Higher Education* published an article entitled “Women’s Colleges Try New Strategies for Success.” Wilson College is prominently noted in this article with its innovative programming in equestrian studies, veterinary-medicine technology, and equine facilitated therapeutics. These Signature programs, defined at Wilson as a source of potential significant enrollment growth, are predominantly gender specific to women, providing a niche market for admission to the College for Women. These Signature programs are science-based and integrated with a liberal arts curriculum that allows students to thrive in an environment that encourages the pursuit of graduate degrees and meaningful careers. Also, Wilson has begun implementation of new academic programs in Health Sciences that are predominantly gender specific to women, according to a feasibility study conducted for the College by Dr. Guy Nehrenz.

Susan E. Lennon, president of the Women’s College Coalition, explains that the point of women’s colleges is not to exclude men but to focus on the education and success of women. Ms. Lennon was quoted in the above-mentioned article: “It’s about helping young women think about their future selves in ways that might go against what their peers and the culture is telling them.” Ms. Lennon also noted that women are still underrepresented in the sciences, in business, and in government.

As mentioned previously, Stevens Strategy spent many hours gathering information, compiling and analyzing data, and surveying alumnae, administration, faculty, students, and staff at Wilson College. In their analysis of the “Strategic Environment” for Wilson, Stevens Strategy utilized the following planning assumptions:

- Families will have great difficulty paying for college
- The market for college will include more first generation students, students of color, and financially needy students
- Women’s colleges compete for a small fraction of the student market
- **Indistinguishable small private co-educational colleges clutter the competition** (emphasis added)

Based on these comprehensive studies and planning assumptions, Stevens Strategy presented the following conclusions to the Board of Trustees and the College community-at-large in spring 2012:

Wilson should:

- **Preserve its core undergraduate, residential women’s college** (emphasis added)
- Strengthen and expand undergraduate degree programs
- Establish additional graduate programs
- Establish graduate and undergraduate articulation programs
- Develop on-line and hybrid programs for adults
- Consider new marketable program areas such as healthcare

We strongly agree with Stevens Strategy that Wilson College should not become an *indistinguishable* small private coeducational college, but rather should preserve its core undergraduate, residential women’s college.

Moreover, Stevens Strategy’s conclusions were clearly in keeping with Wilson’s Strategic Plan 2010–2015, which included Wilson’s mission statement that begins with the sentence: “Wilson is an independent college with proud history of educating women since 1869 through rigorous study of the liberal arts and sciences.”

Since Stevens Strategy was engaged by President Mistick for the purpose of providing Wilson College with comprehensive data collection and analysis to be used exclusively in the Commission process, it is incomprehensible that the President then ignored Steven Strategy’s data-driven, fact-based recommendations and pursued co-education for Wilson, irrespective of the evidence against such an agenda.

Throughout its history, Wilson College has been purposeful in upholding its mission to educate women in the liberal arts and sciences. Today, Wilson offers unique opportunities for women in four science-based Signature programs, and encourages women to pursue graduate

degrees in underrepresented disciplines that men have traditionally dominated. And Wilson College, like other women's colleges, educates a higher percentage of low-income racially diverse and first-generation students than traditional coed colleges and universities. Since its inception, Wilson College has provided outstanding leadership opportunities to women by establishing an environment where women hold all leadership positions in student government, athletics and club activities. According to a study entitled "Single-Sex versus Coeducational Environments: A Comparison of Women Students' Experiences at Four Colleges," by Leslie Miller-Bernal, "women's college students were more likely than the coeducational colleges' students to have women faculty as role models, to be active in college activities, and to experience their colleges as supportive" (*American Journal of Education* (November, 1993, Vol. 102, No. 1, pp. 23–54).

Numerous other studies have concluded that women who attend women's colleges are more likely to be confident leaders in their career and community, highly educated and articulate problem-solvers, and guided by strong, moral values. These attributes greatly benefit businesses and communities throughout the Commonwealth. For these reasons, women's colleges prove their value over the lifetimes of their graduates. As reported at CollegeStats.org, "There are still plenty of reasons to explore women's colleges as an option, particularly when it comes to honoring the objectives around which they were founded — lessening the gender gaps and ensuring the safest, healthiest, most supportive spaces where women can learn" (<http://collegestats.org/2013/02/is-there-still-a-need-for-womens-colleges/>).

For all of these reasons mentioned above, Wilson College's application to amend its Articles of Incorporation should be denied. We close this section of our Rebuttal with the words from CollegeStats.org, whose information is culled from data collected by the U.S. Department of Education (most data currently posted is collected from The National Center of Education Statistics in the 2006–2007 reporting years):

“Even beyond these obvious perks, graduates from traditionally women’s colleges have plenty of other reasons to consider them wholly viable options. Eighty-seven percent of graduates from these institutions complete their degrees in four or fewer years; compared with 79% of their counterparts at private, co-ed liberal arts schools and just 54% in flagship public universities. When it comes to broadening their perspectives and skill sets, they also maintain a significant lead, with 69% of all graduates participating in extracurricular activities and 74% involved with volunteer initiatives. Eighty-one percent leave feeling fully prepared for the work force. Perhaps most significantly, 72% declare themselves “completely satisfied” when it comes to the overall quality of their educational experiences – once again, more than their counterparts at other colleges and universities.

“Those numbers cannot go ignored. Women’s colleges yield some incredibly successful results when it comes to producing happy, thriving, and well-rounded students. Former Secretary of State Hilary Clinton is a Wellesley alum, for example. To de-emphasize these schools in favor of traditionally co-educational campuses would be to deny female students opportunities that might work best for their personal and professional needs. Students autonomously decide which environment suits them snuggest, not vice-versa. If women’s colleges and female-majority co-ed schools were in fact interchangeable, the statistics would reflect this. Reality shows that the higher education sector possesses room for both female-majority schools and women’s colleges. ...

“Female students may make up the majority of degree recipients these days, but that doesn’t women’s colleges should be dismissed as obsolete. Their objectives regarding equal footing for a traditionally marginalized demographic remain relevant, particularly when it comes to the STEM fields. But even for aspirant enrollees, these schools provide other excellent perks, like more engaged environments, increased safety, volunteer opportunities, and more. Different students require different things, so the relevance of women’s colleges remains the same as it ever was.”

[\(http://collegestats.org/2013/02/is-there-still-a-need-for-womens-colleges/](http://collegestats.org/2013/02/is-there-still-a-need-for-womens-colleges/)

From the footnote on CollegeStats.org’s website: “CollegeStats is an informational website, which aggregates publicly available information provided by the U.S. Department of Education (<http://nces.ed.gov>) from the 2011 school year.”)

7. Rebuttal to Section III. THE WILSON COLLEGE PROCESS THAT RESULTED IN THE AMENDED ARTICLES OF INCORPORATION UNDER CONSIDERATION, in the Written Testimony of Wilson College dated March 17, 2014

The purpose of this section is to provide a rebuttal to specific incorrect and misleading testimony presented by the College on March 17, 2014. This rebuttal was written by Paula Tishok ’71, who was serving as Vice-chair of the Board of Trustees at all relevant times and therefore has first-hand knowledge of these events.

A. The College stated the following:

“Initially, the Department should understand that men are not new to the Wilson College campus. As early as the 1940’s, Wilson heeded the Government’s call to educate returning WWII veterans by admitting men to Wilson’s programs.”

Mary Stillman, an alumna of Wilson College who attended college during that era, wrote the following clarifying statement, which serves to refute the assertions made by the College's counsel:

"I would like to get some background on the record concerning the admission of males at Wilson in SY 1946-7. In no way should the current Administration be allowed to portray that as anything except an anomaly.

My freshman year at Wilson, 1946-7, was the year that Wilson provided a one-year college-level education program for men. These are my personal observations and information gleaned from the Public Opinion, the local newspaper.

High school graduates planning to enter college in Fall 1946 found it extremely difficult to obtain admission due to the massive influx of war veterans funded by the Servicemen's Readjustment Act of 1944 (P.L. 78-346, 58 Stat. 284m), known informally as the G.I. Bill. To accommodate local veterans and local male high school graduates, Wilson established a separate program to enable those males to acquire one year of college-level education. Female veterans were admitted to the College—not the program. All students, both male and female, had to meet established admissions requirements. The purpose of the program was to provide an interim solution to the overcrowding problem.

Dr. Wren Jones Grinstead, Chair of the Education Department, was designated as Dean of Men and was the Program Director. Students enrolled in the program were offered a fixed program of four courses for each of two semesters. All instruction was conducted separately. A clubhouse along the Conococheague was assigned as their day room. They were not assigned seating in Thompson Hall for chapel or other required assemblies.

I do not know the exact number of male students enrolled in the program, but I believe that the number was capped at 25. I do not believe that it ever reached that number and from what I recall the enrollees were about one half veterans and the remainder direct entry from high school. Few were from outside the immediate geographic area and I think those from outside the area had alumnae connections.

I never recall seeing any of them on campus—not in the Library, Warfield, Lortz, Thompson or other student-frequented venues. All lived off-campus either with their family or roomed in homes near campus.

At the end of the year most had been placed in other institutions. Wilson provided assistance for that and a decent academic record from Wilson would have given them a leg up. Several switched to technical schools related to their military duties. Their clubhouse was immediately demolished for the construction of Laird.

The program was definitely an interim measure—an accommodation. That was made crystal clear from day one. It could not have been made any more segregated. Separate and unequal. Every effort was made to assure that the education of women was not disrupted."

B. The College stated the following:

“For many years, Wilson College has struggled with its enrollment levels, particularly in its undergraduate programming. Although emphasis since 1970’s has been on undergraduate growth, other programs compensated for the lack of growth in undergraduate enrollment. The College has had statistically stagnant enrollment since 1996–1997. There was a nearly 25% reduction in enrollment in the three year period of FY2010 to FY2012 – 838 across all programs in FY2012 compared to 695 in FY2012.”

While the College has been experiencing reductions in enrollment since 2011, it is misleading to infer that the reductions have occurred in the College for Women. According to **Exhibit P** in the College’s Testimony, the lowest undergraduate enrollment from the 1970’s to the present was in 1979, the year that Wilson College nearly closed. At that time only 146 students were enrolled. Since that time, enrollment in the College for Women steadily increased over the next 20-year period to a post–1979 peak, in FY1999, of 338 students. From FY1999 to FY2012, enrollment has been stable averaging 315 students in the College of Women. In FY2012, there were 316 students in the College for Women, representing an increase in enrollment of 116% over its lowest rate in 1979.

In 1983, the College developed adult degree undergraduate, co-educational programs that are separate from the undergraduate, residential College for Women. In recent years, the adult degree programs have suffered significant losses in enrollment, even though these programs are fully co-educational. Therefore, it is disingenuous to assert that there has been a reduction in the total enrollment across all programs, when, in fact, the only reductions in enrollment are occurring in the co-educational adult degree programs. Enrollment for the College for Women is steady and enrollment for the graduate programs is increasing, due to the implementation of new graduate degree offerings. The objectives of the Strategic Plan 2010–2015 have solid support throughout the Wilson community. For this reason, many believe that the enrollment goal of 400 undergraduate students can be achieved through innovative programming that builds on the strengths of the College for Women.

C. The College stated the following:

“The Commission was to include representatives of a wide variety of Wilson constituencies, including trustees, alumnae, cabinet members, faculty members, staff and students.”

According to **Exhibit J** – October Board Minutes, dated October 21-22, 2011, page 7, the Board of Trustees authorized the establishment of a commission to study and recommend opportunities to sustain Wilson’s future. The commission was to be chaired by a Trustee, appointed by Board Chair John Gibb. For this reason the Board believed, at that time, that the commission would be designated as a relatively small, nimble ad hoc committee of the Board, similar to the Presidential Search Committee of 2011. These minutes state:

“all campus constituencies participated in the presidential search, and, in that process, built an *esprit de corps*. Using a similar process will lead to consensus; so that when the work is completed, the institution will have a solid case to support the outcome.”

It is important to note that the Board knew and understood that the Presidential Search Committee reported directly to the Board and was comprised of ten members – six trustees, three of whom were alumnae, two faculty members, one staff, and one student. Ad hoc committees of the Board report directly to the Board and are comprised of a majority of Trustees, one of whom serves as Chair. In contrast, institutional committees report directly to the President and are comprised of cabinet members, faculty members, staff, students and alumnae. It is highly unusual for a Trustee to chair a committee that reports to the President and for other Trustees to serve on that committee, also reporting to the President.

The minutes clearly reflect that the Commission was to be chaired by a Trustee, and therefore, would be an ad hoc committee of the Board. It was with this understanding that the Board authorized the Commission.

D. The College stated the following:

“The Commission was authorized to study and recommend opportunities to sustain Wilson’s future. Nothing was off the table as far as possible alternatives, and **from the outset** (emphasis added), development and elimination of programs, creative marketing efforts and recruiting men in the traditional undergraduate program were just some of the options to be explored.”

We disagree with the timing reference noted above. The recruitment of men in the undergraduate program was not identified as a potential opportunity in **Exhibit J** – October Board Minutes, dated October 21–22, 2011, page 7 and 8, or in Stevens Strategy’s *Presentation of Institutional Data*, dated May 16, 2012. Therefore, it is false to state that **from the outset**

(emphasis added) the Board of Trustees or the Wilson community-at-large were aware that recruiting men in the undergraduate programs was an option to be explored.

E. The College stated the following:

“The Commission first met in February 2012. This was just the beginning of an exhaustive and comprehensive review by, and more that 14 formal meetings and numerous sub-committee meetings of, the Commission over a 10-month period.”

The actual facts are, as follows:

In February 2012, the Board learned that Trustee Leslie Durgin had been named Chair of the *Commission on Shaping the Future of Wilson College*. Trustee Durgin appointed several Trustees and Everitt-Pomeroy Trustees as members of the Commission; President Mistick appointed the remaining members, all of whom reported to her. The Commission held a brief organizational meeting, and the Board was advised that President Mistick had engaged a consulting firm, Stevens Strategy, to assist in gathering data for the Commission process. The Board then sought clarification on how the Commission process would function in the context of the Strategic Plan. The minutes of the Board meeting of February 24–25, 2012, shown as

Exhibit K in the College’s testimony document the following questions:

- Q. How is the Commission’s work different from or the same as the strategic planning process? A. The strategic plan calls for 1,000 students. The Commission’s charge is to determine how to get to that number and the resulting increased revenue.
- Q. Is the enrollment goal of 1,000 open to question? A. No. The present structural deficit will grow over time. The College needs not only more revenue, but also more students so that there’s an increase in the College’s intellectual life, the size of the faculty, and the overall vitality.
- Q. Will the Commission come to the Board incrementally to request steps be taken? A. Yes, the Commission will ask for discussion and decisions repeatedly.

According to **Exhibit L** - Focused Strategic Review Timeline, the first meeting of the Commission was held on May 16, 2012. Moreover, the “14 formal meetings” were not meetings in the traditional sense; instead they were conducted as PowerPoint presentations, lacking any handouts or documentation, to various constituencies of the Wilson community. Therefore, the Commission members did not meet over a 10-month period, but instead, over a shortened and rushed period of less than 6 months with limited interaction with the Board of Trustees.

F. The College stated the following:

“Stevens Strategy prepared an analysis of the survey results and issued its report on May 16, 2012. **Exhibit M – Analysis of Market Research for the Commission on Shaping the Future of Wilson College.** Pages 11-23 set forth a specific analysis relating to co-educational issues.”

The College’s counsel omitted the fact that Stevens Strategy prepared two reports both dated May 16, 2012, as a result of its review and analysis. One report, the *Analysis of Market Research*, was shown as **Exhibit M** of the College’s testimony. The Board of Trustees was given a very brief PowerPoint overview of some, but not all, pages of this presentation. This report was not disseminated to the Wilson community-at-large, contrary to what was stated in the College’s testimony.

However, Stevens Strategy prepared a second report, *Presentation of Institutional Data*, dated May 16, 2012, which was presented to the Board of Trustees and to the Wilson community-at-large. Portions of this second report, comprised of a section on “Strategic Environment” (pp. 6-13) are particularly relevant to the need for women’s colleges.

Therefore, we believe it is disingenuous and misleading for the College to include only one of Stevens Strategy’s reports, *Analysis of Market Research*, as an exhibit to the College’s testimony that included pages 11-23 as setting forth a specific analysis relating to coeducational issues, and state that this information was provided to the Board and the Wilson community, when, in fact, Stevens Strategy presented an entirely different report to the Wilson community. After having analyzed all information compiled from many various sources, Stevens Strategy presented one of its conclusions to the Board and the Wilson community-at-large that **Wilson College should preserve its core undergraduate, residential women’s college** (emphasis added). Moreover, Stevens Strategy utilized planning assumptions that included the following statement: **Indistinguishable small private co-educational colleges clutter the competition** (emphasis added).

G. The College stated the following:

“In February 2012, President Mistick appointed the remaining members of the Commission.”

In February 2012, the total number of Commission members was fifteen (15), including President Mistick and Board Chair Gibb, *ex officio*. Trustee Durgin appointed several members of the Commission; President Mistick appointed other members. By May 2012, President Mistick appointed even more members to the Commission, which now totaled twenty-three (23) members, 2/3 of whom directly reported to the President. Some members of the Board recognized the inherent conflict of interest in a Commission populated primarily with cabinet members, faculty and administrative staff under the President's direct supervision, but were unable to convince Board Chair Gibb to take action to remedy this serious conflict of interest. The composition of the Commission had radically changed, thereby reinforcing the Trustees' understanding that the Commission's work, similar to the work of any institutional committee, would be developed in conformance with the College's vision, mission and strategic direction as stated in the Strategic Plan 2010–2015.

Moreover, the College's testimony omits the fact that the charge to the Commission was provided to the Board of Trustees during the May 2012 Board meeting, but not discussed, debated or approved by the Board. It is once again important to note that the Commission's charge was "to conduct a focused strategic review of Wilson College to determine the optimum scenario for the College to position itself to achieve our enrollment goals as identified in our strategic plan."

In presentations and in Board meetings, the Board of Trustees was led to believe that the Commission would be tasked with recommending programs for achieving an enrollment goal of 1,000 students according to the Strategic Plan 2010–2015. And, most importantly, Wilson College's mission of educating women was an integral part of that Strategic Plan.

H. Omissions from the College's testimony:

In Summer 2012, President Mistick gave a new mandate to the Commission of an enrollment goal of 1,325 students, not 1,000 students as had been presented and discussed in May 2012 and previously approved by the Board. At no time did the Board approve any changes

to the Strategic Plan 2010–2015 or specifically increase the enrollment goal to 1,325 students. This new mandate was in direct contravention to the Board’s request for review and approval of incremental decisions throughout the Commission’s process. The Executive Committee of the Board met in July 2012; no actions or decisions were made with respect to the Commission. There were no meetings of the Board of Trustees or the Executive Committee of the Board in August 2012 contrary to what was stated in the College’s testimony, and therefore the Commission could not have met with members of the Board at that time. For these reasons, the Board of Trustees was not yet aware that the Commission was operating under a new enrollment goal and was evaluating co-education at the traditional undergraduate level.

I. The College stated the following:

“In September 2012, the first open campus meeting, to which all constituencies were invited, occurred.” And further in the text: “The second open campus meeting – to which, again, all constituencies were invited – occurred on October 17, 2012.”

We agree that open campus meetings and Town Hall meetings were held with all constituencies invited to share the work of the Commission. It was most egregious that these meetings presented information examining the potential role of male students in the future of Wilson College, and that all of these meetings were conducted **PRIOR** to the October Board of Trustees Meeting, held October 18–20, 2012. Public announcements were made about the role of male students at Wilson without consultation with the Board, again in direct contravention to the Board’s request for review and approval of incremental decision throughout the Commission’s process.

Moreover, *The Chronicle of Higher Education* published an article in September 2012 about the Commission process in which President Mistick is quoted as saying that “everything’s on the table.” This article was the first of many news media articles that depicted Wilson College’s “dire financial straits,” tarnishing Wilson’s brand and reputation. These articles falsely depicted Wilson’s financial situation as dire irrespective of the fact that Wilson received the highest ranking for financial stability from both *Forbes Magazine* and *The Chronicle of Higher*

Education for the period ending in 2011. These public announcements and news articles placed the Board in an untenable situation. In an Executive Session held during the October Board meeting, many Trustees voiced serious concerns about governance matters including the lack of oversight for the Commission process and the numerous public announcements of Wilson's financial situation.

At the October Board Meeting, the vast majority of Trustees learned for the first time that the Commission was considering a recommendation for undergraduate, residential co-education. But even then, the Board was told that "nothing was set in stone" and to be patient until the Commission had completed its work.

J. Omissions from the College's testimony:

In October 2012, President Mistick gave the Commission a new mandate of an enrollment goal of 1,500 students. It's important to note once again that at no time did the Board approve any changes to the Strategic Plan 2010-2015 or specifically increase the enrollment goal of 1,000 students to 1,325 students and, then, even further to 1,500 students. The impact of enrolling 1,500 students was not reviewed or analyzed by the Board even though it would have far reaching effects on every aspect of campus life, including the number of faculty employed, additional instructional classrooms and administrative office spaces, construction of residential student housing, enhanced campus security, and upgraded athletic and dining facilities, to name a few.

K. The College stated the following:

"Also in November 2012, the Commission met as a whole to review, discuss, and approve a final report."

In November 2012, the Commission did not meet as a whole to review, discuss and approve a final report, contrary to what was stated in the College's testimony, and therefore, made no recommendations to the President. In fact, the Commission specifically requested more time in order to review, discuss and deliberate its findings. For this reason, when the Commission issued its final report, "Positioning Wilson to Thrive," that was comprised of a list

of Strategic Ideas, the Commission acknowledged that these ideas needed more rigorous review and analysis. Contrary to what was implied or stated in the College's testimony, neither Stevens Strategy nor the Commission recommended coeducation for Wilson College. Instead, in its final report, the Commission did recommend that the Board address the vision and mission of the College separately from all other strategic ideas for the College since redefining the mission of the College was not part of the Commission's work.

L. The College stated the following:

"The strategic idea regarding male students was summarized as: "Wilson should open enrollment to make (sic) students across all constituencies and ages and permit male student to reside on campus."

The College's testimony refers to pp. 32–33 of the Commission's report regarding Male Students. It is disingenuous to suggest that a proposal of the Marketing Subcommittee, which was developed and written under the President's illusory enrollment mandate, includes the following statement: "goal of this proposal is to assist in achieving an enrollment goal of 1,500 students by 2020." This proposal also stated that the estimated costs of implementing co-education were \$300,000. We now know that in the first year of the implementation plan, the renovation of a residential dormitory, including the installation of bathrooms for men and extra-long twin beds is projected to cost \$2.6 million – a far cry from \$300,000. If the Strategic Plan's enrollment goal of 1,000 students had been adhered to, the Marketing Subcommittee would not have proposed co-education for the undergraduate, residential program at Wilson.

On November 30, 2012 President Mistick presented her plan to the Board of Trustees, which included a recommendation for co-education, with blatant disregard for Wilson College's mission and the enrollment goals set forth in Strategic Plan 2010–2015, for Stevens Strategy's market analysis of Wilson's Strategic Environment, and for the Commission's final report recommending that the Board address the mission of the College separately from all other strategic ideas. It is, therefore, disingenuous to suggest that the President adhered to the

Strategic Plan and the work of the Commission when developing her recommendations to the Board.

It is important to note that on November 30, 2012, the vast majority of the Board was seeing a significant portion of the President's presentation for the first time, and yet was expected to vote on the entire plan as a package the next day. President Mistick continued to make public statements about the Commission process to various news outlets, which served to further tarnish Wilson's reputation. At this time, news articles depicted the Board as incompetent, indecisive and unwilling to face tough choices in the best interests of the College. The Board was being railroaded into making a rushed and uninformed decision under an arbitrary deadline set by the President. Once again, the Board was placed in an untenable situation, primarily due to public announcements made by the President and the Commission.

M. The College stated the following:

“After two days of meetings and discussions, the Board voted to defer decision on the Plan presented by the President and also requested realignment of some data for clarity.”

The College's counsel provided redacted minutes of the Special Meeting held on November 30 – December 1, 2012 as **Exhibit S** in the College's testimony; however, these redacted minutes reveal a small glimpse of the situation faced by the Board. The complete minutes are listed in Appendix A, Attachment 3, of Paula Tishok's testimony of March 17, 2014.

Although the Board met during these two days, many hours were expended during the first day on a business session, President Mistick's presentation, lunch, and campus tours with only two hours remaining to begin deliberations about the President's recommendations. Day Two of the meeting included deliberations of the Board as a whole, with many questions arising about the Predictive Financial Models, the revised enrollment goals, financing deferred maintenance and depreciation, the Bank of America Letter of Credit agreement, and, of course, coeducation across all programs. During the session on Day Two, fourteen Trustees indicated that they were not ready to vote and needed more data.

The Board made specific requests for re-synthesis of information and for additional information, as shown in the minutes. One such request was, as follows: “Provide a summary that shows the data including charts and narrative. What are the proposed investments, capital expenses, markets served, reward (*i.e.* enrollment results) and net revenue. These pieces are in different documents – Trustees would like them to be synthesized.” Because this information was never provided to the Board, Trustees were unable to accurately assess the viability of each of the proposed initiatives.

A summary of the Board’s actions and decisions with respect to the President’s Plan are fully discussed in Paula Tishok’s testimony of March 17, 2014.

Given the scope and breadth of the false and misleading statements contained in the testimony submitted by Wilson College’s counsel, as well as the numerous relevant and important omissions, that testimony should be disregarded as unreliable. Unfortunately, the College’s testimony attempts to create the same guise of smoke and mirrors that was cast over the Board of Trustees and the College community throughout the flawed process leading up to the decision to fundamentally change Wilson’s mission and Charter. As a matter of law, principle and precedent, such tactics should not sway the Department.

8. Conclusion

In our August 6, 2013 Request for Public Hearing and Petition to Intervene, we requested that the Department deny the College’s application and appoint a public trustee or receiver to manage the College. We renew those requests based on the fuller, more detailed and more disturbing record that has been compiled in these proceedings. In the face of intentional and continuing violation of the law, the Department must act – not just to uphold the law and protect the public interest in the proper governance and management of nonprofit institutions of higher education, but also to protect a small college in Chambersburg that has been sorely tested and now faces an uncertain and perilous future.

Chapter 32 recognizes that “the educational needs of the diverse citizenry of this Commonwealth are served by the Commonwealth’s rich array of higher education institutions in keeping with their individual missions and charters.” It is in this spirit that we ask the Department of Education to deny this application in its entirety and impose appropriate conditions that will protect Wilson’s fundamental mission as a college for women.

Respectfully submitted,

Gretchen Van Ness for the Limited Participants
and Wilson College Women