

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

**RANDOLPH COLLEGE f/k/a)
THE TRUSTEES OF RANDOLPH-MACON)
WOMAN’S COLLEGE, INCORPORATED,)**

Plaintiff,

v.

CL07001745-00

**SUNTRUST BANK, as Trustee of the)
Trust created under the Will of Louise)
Jordan Smith, deceased,)**

And

**ROBERT F. MCDONNELL, not)
personally, but in his capacity as)
Attorney General of Virginia,)**

Defendant.

MOTION FOR LEAVE TO INTERVENE AND SUPPORTING MEMORANDUM

Frances Pendleton Elliott, Eleanor Pendleton Monahan, Margaret Williams, Ellen S. Agnew, Paul Whitehead, Jr., Sandra Whitehead, Roberta Scrivener, Roy Clinton Johns, Anne Adams Robertson Massie, Amanda Sandos and Laura Katzman (hereafter collectively referred to as “Petitioners”) by counsel, pursuant to Rule 3:14 of the Virginia Supreme Court, hereby move the Court for leave to intervene as parties in this proceeding. In support of their Motion, Petitioners state as follows:

INTRODUCTION

In this action, Plaintiff requests that the Court misconstrue the Trust created under the Will of Louise Jordan Smith (the “Trust”) to allow it to sell the “permanent collection of art” bequeathed by Miss Smith to Randolph-Macon Woman’s College to be used by its Art

Department (“Smith Art”). In the alternative, Plaintiff requests that the Court modify the Trust to allow it to sell, in whole or in part, the valuable and important works of Smith Art.

Miss Smith (1868-1928) was the first professor of Art at Randolph-Macon Woman’s College when it opened in 1893. She brought a cosmopolitan background of art instruction learned from contemporary masters in the finest art centers in the world to Lynchburg, Virginia and put this experience to work enriching the lives of students, fellow professors, and the Lynchburg community. At an education conference in 1900, Miss Smith outlined what was then a revolutionary plan for comprehensive art education. Her work at the College until her death was the gradual realization of this plan. She established annual loaner art exhibitions at the College and arranged for the purchase of one painting per year from these exhibitions to form a permanent collection of art at the College for the benefit of students and the Lynchburg community. She assured that her vision would continue after her death by establishing the Trust to provide the Art Department of the College with the funds to augment its permanent collection with high-quality artworks in perpetuity.

Specifically, Miss Smith directed that the remainder of her estate be converted to cash and held in trust by the Lynchburg Trust and Savings Bank (now SunTrust Bank). She devised the Trust fund to Randolph-Macon Woman’s College “to be used from time to time for the Art Department of said College to form a permanent collection of art; the said income shall be used for such purposes only every second year, this provision being made so as to provide enough money before any expenditure to purchase a real work of art.” Will at Item IX (emphasis added). A copy of Miss Smith’s Will dated December 20, 1928, is attached hereto as **Exhibit A**. Miss Smith further directed that experts be involved in the selection of the artwork “to keep a high standard of excellence” in the selections. Id. Her Will provides, “No purchase shall be

made except with the written approval of two well recognized experts. My purpose and object in having all contemplated purchases before they are made first approved in writing by well recognized expert judges of pictures and works of art is to keep a high standard of excellence in the things that go into said collection, and to avoid any and all mistakes in the purchase, so far as possible, and I direct the [Trustee] to rigidly insist upon this requirement.” Id.

In her Will, Miss Smith also bequeathed her own portrait, “not in excess of twenty other pictures, which shall be selected by the College out of [her] own canvasses,” art books and antiques to the Randolph-Macon Woman’s College Library. Will at Item III. She stated in her Will that she desired “these antiques and pictures to be kept together as a unit and held as an art exhibit, and to be always open for inspection by the people of Lynchburg.” Id. (emphasis added).

The terms of Miss Smith’s Trust were modified by Order of this Court on November 29, 1957, after it became clear that the trustee could not purchase art of sufficient quality with only two years of income from the Trust. In modifying the Trust, this Court conclusively stated that the “the intent and purpose of the Testatrix” was to provide “a permanent collection of art for [Randolph-Macon Woman’s College].” Order dated 11/29/57 at 1 (emphasis added), a copy of which is attached hereto as **Exhibit B**. To effectuate this intent and “to make it possible to acquire works of art of the high standard of excellence prescribed by the trust,” the Court authorized the trustee to accumulate the Trust income for a length of time reasonably in excess of the two year period in order to purchase works of art of “high standards of excellence costing in excess of the biennial income” of the Trust. Id. at p. 2. The Court also authorized the trustee to purchase works of art in accordance with Miss Smith’s Will that cost less than the biennial income from the Trust. Id.

The Trust funds have been used to purchase more than 35 high-quality works of art now worth more than \$40,000,000.00. Plaintiff's Complaint at ¶ 7. Many of these works of art, along with the twenty pictures Miss Smith left to Randolph-Macon Woman's College in Item III of her Will, currently are displayed and open to viewing by the public at the Maier Museum of Art ("Maier Museum") at Randolph College, f/k/a Randolph-Macon Woman's College ("the College"). This valuable collection of art is, as intended by Miss Smith, utilized, studied and enjoyed by the Art Department, including art students and faculty, along with other College students, faculty, and alumnae, the citizens of Lynchburg and visitors to the College. The art collection at the Maier Museum is a cultural, educational and aesthetic asset for the College and the citizens of Lynchburg.

Plaintiff seeks to destroy the College's permanent art collection by selling the valuable works of art it obtained through the Trust created in Item IX of Miss Smith's Will.¹ As set forth in detail below, this is yet another example of poor decision making and financial mismanagement by the College Trustees. In September 2006, the Board of Trustees of Randolph-Macon Woman's College voted to change the college from a single-sex liberal arts college for women, which it had been since 1891, to a co-educational institution.² As of July 1, 2007, the Board of Trustees also changed the name of Randolph-Macon Woman's College to Randolph College. The Board of Trustees claimed that the primary reason behind the decision to admit men was financial. Contrary to the Board's assertion, however, the College did not need to change its long-established educational purposes to survive financially.

¹ Apparently, Plaintiff does not intend to sell the twenty pictures or the collection of Miss Smith's antiques that Miss Smith left to the College in Item III of her Will.

² Several students and donors have challenged the propriety of this decision, and their case is pending before the Virginia Supreme Court. Dodge v. The Trustees of Randolph-Macon Woman's College, Case No. 071248 (Va. Sup. Ct. 2007).

Likewise, Plaintiff does not need to sell the Smith Art for financial reasons. The College has sufficient financial resources, including an endowment of approximately \$140,400,000.00, to sustain the College if the resources are managed properly.³ Moreover, The Board of Trustees' decision to make the College co-educational only harmed and did not help the College financially.⁴ Plaintiff now attempts to fund its improper decision to become a co-educational institution by selling the Smith Art. This Court should keep Plaintiff from making another short-sighted and ruinous mistake and should deny Plaintiff's request to sell, in whole or in part, the Smith Art. The Smith Art is a very valuable and important asset of the College, which should be preserved so it can continue to educate and inspire College students and the citizens of Lynchburg and to realize Miss Smith's vision for her community – a community that would value and appreciate “real works of art.” Such a community as Miss Smith envisioned would never countenance the sale of such great art. Moreover, this Court should declare that the entire collection of art in the Maier Museum is so interconnected with the purposes of the Trust, and that the involvement of the people of Lynchburg has been so deep and pervasive in the development of the collection of art at the Maier Museum, that the entire collection should be protected from sale to ensure that Miss Smith's intent in creating the collection to which she directed the largess of her estate will be fully protected. For example, if Plaintiff sells the

³ The College has an endowment of \$140,400,000.00. “Randolph College Endowment” at www.rmwc.edu/development/endowment.asp (2007), a copy of which is attached hereto as **Exhibit C**. It is the fifth largest endowment of a private college in Virginia. 2006 National Association of College and University Business Officers Endowment Study ©2007 (“NACUBO Endowment Study”), a copy of which is attached hereto as **Exhibit D**. The College's endowment has increased since June of 2002 when it was \$130,794,771.00. Randolph Macon Woman's College's IRS Form 990, at Part IV, copies of which are attached hereto collectively as **Exhibit E**.

⁴ Enrollment at the College decreased after it became a co-educational institution. Ruff, Jamie C., Randolph Loses Students: Its First Year as a Coed College Begins Tomorrow With Only 665 Enrolled, Richmond Times Disp. (Aug. 26, 2007) (stating that enrollment for the fall of 2007 was “the lowest in at least 25 years and down from 715 students last year”), a copy of which is attached hereto as **Exhibit F**.

important and valuable picture entitled “Men of the Docks” by George Wesley Bellows, the Maier Museum’s entire collection will suffer from the loss of an important representative piece.

ARGUMENT

I. PETITIONERS SHOULD BE GRANTED LEAVE TO INTERVENE IN THIS ACTION TO STOP THE SALE OF THE SMITH ART.

Virginia Supreme Court Rule 3:14 provides that “[a] new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.” A claim or defense is “germane” if it is “relevant to or closely allied to” the subject matter of the pending proceeding. Stephen v. Dickens, 63 Va. Cir. 403, 404 (Cir. Ct. City of Norfolk 2003) (citations omitted). When the new party’s claims are germane to the subject matter of this suit, leave to intervene “should be granted liberally by the trial court in furtherance of the ends of justice.” See Layton v. Seawall Enters., Inc., 231 Va. 402, 406, 344 S.E.2d 896, 899 (1986). To become a party by intervention, the intervener must “assert some right involved in the suit.” Id. (citing Lile’s Equity Pleading and Practice at 91 (3d ed 1952)).

In the present case, Petitioners seek to assert claims and defenses that are germane to the issues raised in Plaintiff’s Complaint. The issues in this case are: (1) how to interpret the Trust established in Miss Smith’s Will, including whether it can be construed to allow Plaintiff to sell, in whole or in part, the Smith Art; and (2) whether the Trust should be modified to allow Plaintiff to sell, in whole or in part, the Smith Art based on circumstances Miss Smith allegedly could not have foreseen when she executed her Will. Petitioners intend to raise defenses that are germane to these issues and oppose Plaintiff’s misconstruction and/or modification of the Trust.

Petitioners have substantial rights and interests in the subject of this litigation, and the existing defendants fail to adequately represent their interests. Counsel for Petitioners has

spoken with defendants SunTrust Bank and Robert F. McDonnell, Attorney General of Virginia. SunTrust Bank, Trustee of the Trust, advises that it will take a neutral position and abide by the Court's rulings in this matter. Upon information and belief, the Attorney General will not undertake an advocacy position because Plaintiff is a private, not public, institution. Without the intervenors, the Court will not have all of the necessary information and will not hear sufficient facts or positions opposing Plaintiff's. The intervenors should be allowed to advocate their positions and properly defend against Plaintiff's claims.

With the Trust she created in her Will, Miss Smith clearly intended to benefit persons such as Petitioners, including students and professors of art in the Art Department of the College, as well as citizens of Lynchburg and students, faculty, alumnae and others who visit the Maier Museum at the College. Petitioners each will be individually and directly harmed if Plaintiff is allowed to sell, in whole or in part, the "permanent collection" of high quality art that Miss Smith bequeathed to the Randolph-Macon Woman's College Art Department. If Plaintiff prevails, Petitioners will suffer harm different from that suffered by the public generally.

Petitioners' unique interests in the outcome of this proceeding are set forth below:

Frances Pendleton Elliott: Frances Elliott believes she and her sister Eleanor Pendleton Monahan (see below) are Miss Smith's only living relatives. Miss Smith was the first cousin of Frances Elliott's mother Eleanor Fletcher Hotchkiss. Frances Elliott is a named beneficiary in Miss Smith's Will. See Exhibit A at Item VIII ("I make the following specific devises and bequests: ... To her [my cousin Eleanor Pendleton's daughter] Frances Pendleton, my linen chest..."). Frances Elliott was born in Lynchburg, Virginia, and grew up with artworks painted by Miss Smith in her home. She and her sister inherited one of Miss Smith's paintings of the Blue Ridge mountains. Frances Elliott and her sister donated a self-portrait of

Miss Smith to the Maier Museum in 1996. Frances Elliott and her sister donated the self-portrait to the Maier Museum so it could be part of the permanent art collection that was so important to Miss Smith. They do not want the Smith self-portrait they donated to be sold. In fact, they would not have donated the self-portrait if they had any idea at the time that Plaintiff could or would sell the painting or any of the Smith Art. They had planned to donate another painting by Miss Smith to the Maier Museum, but will not do so unless and until it is determined that their donation will not be sold but rather will remain at the Maier Museum as part of the permanent art collection bequeathed by Miss Smith. Frances Elliott believes that Miss Smith desired the artworks she bequeathed to the College to be used by the Art Department to form a permanent collection of art to be displayed at the College forever. She also knows that Miss Smith was an expert on art and certainly anticipated that the Smith Art she contributed to the College would appreciate in value over time. Frances Elliott now resides in Winchester, Massachusetts. Frances Elliott does not believe the Trust allows for the sale of the Smith Art and requests that it not be sold, in whole or in part.

Eleanor Pendleton Monahan: Eleanor Pendleton Monahan believes she and her sister are Miss Smith's only living relatives. She currently resides in Winchester, Virginia. As stated above, Eleanor Pendleton Monahan and her sister donated a self-portrait of Miss Smith to the Maier Museum in 1996 to be part of the Art Department's permanent art collection. She does not want this painting to be sold. She would not have donated the self-portrait if she knew that Plaintiff could or would sell the painting or any of the Smith Art. She and her sister had planned to donate another painting by Miss Smith to the Maier Museum, but will not do so unless and until it is determined that their donation will not be sold but rather will remain at the Maier Museum as part of the permanent art collection bequeathed by Miss Smith. Eleanor

Pendleton Monahan was a docent at the National Gallery in Washington, so she has a true appreciation of the unusual collection the Maier Museum represents and how perceptive Miss Smith was in her selections for the permanent collection. She and her sister believe that the College will lose a special treasure if the College does not keep the Smith Art where so many alumnae have learned and grown in their appreciation of the art work by exposure to such a collection. Like her sister, Eleanor Pendleton Monahan believes that it was Miss Smith's intent to form a permanent collection of art for the benefit of art education and for the benefit of students, faculty, alumnae and visitors of the College and for the citizens of Lynchburg. She was aware of Miss Smith's concern for the arts as part of a liberal education. She does not believe that Miss Smith ever intended that the Smith Art, or other valuable works collected and displayed at the College, would be sold. Eleanor Pendleton Monahan also knows that Miss Smith was an expert on art and surely anticipated that the Smith Art she contributed to the College and the other works she was instrumental in obtaining for the College, would appreciate in value over time. Eleanor Pendleton Monahan requests that this Court uphold Miss Smith's Trust and keep the Smith Art at the College indefinitely.

Margaret Williams: Margaret Williams is a senior at Randolph-Macon Woman's College. She is majoring in Art History and Museum Studies. She decided to attend Randolph-Macon Woman's College, in part, because of its strong art history and museum studies programs and because of the impressive collection of important pieces of art at the College. At the College, she has taken numerous art history and museum studies classes and currently is enrolled in such classes this year. A critical part of her coursework has been and continues to be studying the Smith Art and the other important artworks displayed in the Maier Museum. Margaret Williams also has worked in the Maier Museum for several years through the work-

study program at the College. Part of her work-study program involved a comprehensive inventory of the College's art collection. She also is active in the student docent group at the Maier Museum called FRAME and has served as President and co-President of that organization. She believes that her involvement with the Maier Museum has and continues to be the most rewarding aspect of her experience at the College. Her art education will be irreparably harmed if Plaintiff is permitted to sell the Smith Art or the other important and valuable pieces in the Maier Museum.

Ellen S. Agnew: Ellen Agnew is an alumna of Randolph-Macon Woman's College. She worked at the Maier Museum for 23 years, including serving as Curator from 1984 to 1988, Director from 1988 to 1995, Associate Director from 1995 to 1998, Interim Director 1998 to 1999, and Associate Director 1999 to 2007. She resigned from her position in protest in August 2007 when it became clear the College was going to try to sell works from the permanent art collection as a source of revenue and ignore the educational value of the collection, the intent of Miss Smith and the thousands of donors to the collection, and the ethical standards of museum and curatorial associations. Over those 23 years, her responsibilities included oversight of the Maier Museum's collections, programs, exhibitions and educational outreach. In addition, Ellen Agnew was the administrator for the College's Museum Studies Program Summer Internship Program, supervised museum practicum students and taught courses in the art department. While she was Director of the Maier Museum, she had non-voting faculty status. As Curator and Director of the Maier Museum, Ellen Agnew was involved in the oversight and administrative aspects of the Trust account. As Director, she received Trust account statements and then requested and obtained the letters of recommendation for artworks to purchase by art experts as specified in Item IX of Miss Smith's Will. The recommendations were made in consultation

with other members of the Art Department. She submitted the recommendations to the Trustee, and then arranged for the purchase of the art to become part of the permanent collection of art at the College. Ellen Agnew is well aware of Miss Smith's intent to form a permanent collection of art for the benefit of the students and faculty of the College and for the citizens of Lynchburg. She believes and understands that Miss Smith specified that experts be involved in the purchases of art for the permanent collection to ensure that only distinguished, high quality and excellent works were obtained for the collection. She helped carry out Miss Smith's intent that the works purchased with Trust funds be of high artistic quality by securing the experts' recommendations for purchases as Miss Smith directed in her Will. Ellen Agnew also is a donor of and visitor to the Maier Museum.

Paul Whitehead, Jr.: Paul Whitehead, Jr. and his wife Sandra Whitehead (see below) are donors of and frequent visitors to the Maier Museum. Paul Whitehead, Jr. has been a citizen of Lynchburg, Virginia for over 61 years. In 1997, he donated significant funds to the Maier Museum for it to purchase an Andrew Wyeth painting in honor of his wife. If he had ever conceived the possibility that the painting he donated could or would be sold, he would not have made the donation or would have made the donation in a different way so as to ensure that the Maier Museum could not dispose of the painting. He does not want Plaintiff to sell the Andrew Wyeth painting he donated in honor of his wife. Paul Whitehead, Jr. also has made other monetary donations to the Maier Museum over the years, and again would not have made the donations had he known that the College would seek to sell the important and valuable artworks in the Museum. He had planned to make additional donations to the Maier Museum, but in light of this suit and Plaintiff's desire to sell off the artwork therein, he will not make additional donations until this litigation is resolved favorably. In addition, Paul Whitehead, Jr. is and has

been a docent at the Maier Museum guiding tours for Virginia school children since 2001. The Smith Art and other pieces of art at the Maier Museum are important to his work as a docent and important to the school children he takes through the Museum. Like Miss Smith, he supports art education. He wishes to oppose Plaintiff's effort to break the Trust and sell the Smith Art and other art from the Maier Museum.

Sandra Whitehead: As stated, Sandra Whitehead is a donor of and frequent visitor to the Maier Museum. She has lived in Lynchburg, Virginia for over 60 years. She and her husband Paul Whitehead, Jr. have made significant donations to the Museum over the years. She does not want the Andrew Wyeth painting that her husband donated in her honor to be sold. She and her husband would not have made donations of money or art to the Museum if she had known that Plaintiff could or would sell the Smith Art and other works of art from the Museum. In addition, Sandra Whitehead has served on the Maier Museum Advisory Board for the past three to four years since its inception. She served as a docent at the Maier Museum for twelve years (1991-2003), guiding tours for adults and school children. She has taken post-graduate art classes through the Art Department at the College and also taken Studio Art classes in the community. While enrolled in these classes, she used the Maier Museum for education and inspiration. She does not believe that the sale of the Smith Art or other pieces of art at the Maier Museum is in the museum's, the College's or the City of Lynchburg's best interests. She believes that the Smith Art and other pieces of art at the Maier Museum are important to citizens of Lynchburg like herself, to the school children who visit the Museum, to visitors of Lynchburg and to members of Lynchburg's art community. She is opposed to the sale of the Smith Art and to breaking the Trust.

Roberta Scrivener: Roberta Scrivener is a teacher in Lynchburg, Virginia. For the past ten years, she has taught at a variety of local schools and in a variety of settings. She has taken and continues to take her students to the Maier Museum to view and study the art therein. She brings her students to the Museum for a variety of purposes, including to study the brushwork, color choices, style and content of such revered painters as Bellows, Cole, Durand, Kensett, Cassatt, O'Keeffe, Wyeth and other grand American artists, to attempt to sketch from the paintings, to use art to help students place literature in context and to use art to inspire poetry and writing. Her ability to teach the children of Lynchburg would be irreparably harmed if the Smith Art was sold and the fine collection at the Maier Museum broken up. In addition, as an alumna of Randolph-Macon Woman's College, she believes that the College's mission, identity and distinction from other private liberal arts colleges is intertwined with the presence and growth of its outstanding art collection. All of those will be lost if the Smith Art is sold.

Roy Clinton "Bud" Johns: Roy Clinton "Bud" Johns' wife is an alumna of Randolph-Macon Woman's College. He has made substantial bequests to the College of funds and of art. His late wife Judith Clancy was an artist, and after her death in 1990, he donated one of her drawings called "Layers of Memory: Portrait of Etienne Decroux" to the Maier Museum. This drawing had been included in Ms. Clancy's Paris Alive exhibition at the Musee Carnavalet, which he believes is the prestigious museum's only solo exhibition by an American or by a woman. Later, after marrying Francis Moreland (College Class of 1953) in 1992 and meeting the Director of the Maier Museum who told him the remarkable story of Miss Smith, he decided to contribute cash and five additional Clancy drawings (three of which were in the Carnavalet exhibition and had been exhibited elsewhere). He then entered into discussions with the Maier Museum regarding future gifts of art by other artists guided by a "wish list" prepared by the

Director of the Maier Museum after surveying his collection. At that point, he and his wife were members and regular donors of the Maier Museum. He would not have made any of the aforementioned donations had he thought the College could or would sell the Judith Clancy works he donated, the Smith Art or other great art works in the Maier Museum. In 2006, after the College decided to become a co-educational institution and upon learning of the problems with the College's administration and their "strategic plan" for the future of the College, Roy Clinton Johns and his wife stopped contributing to the College's annual fund and Mr. Johns removed the College from his estate plan. But for the College's poor decisions and ill-advised plans for the future, he would have made a significant bequest of funds and additional donations of art. He will not make any additional donations of art unless and until, among other things, the College agrees to pledge not to sell the Maier Museum art collection. In addition, Roy Clinton Johns has researched Miss Smith and understands that she was a talented artist and art educator who believed in the importance of art in the lives of all people. He believes that Miss Smith would not support deaccessioning art from the permanent collection. He believes the sale of the Smith Art, or of any other of the important works in the Maier, including "Men of the Docks" by George Bellows, would destroy a major cultural and educational resource in Virginia, deprive the people of Lynchburg of a treasure, and send a message to Virginians that trusts they establish in their Wills or estate plans are not trustworthy. Roy Clinton Johns is a plaintiff in the charitable trust case against the College that is currently on appeal to the Virginia Supreme Court (#071248).

Anne Adams Robertson Massie: Anne Massie is a native of Lynchburg, Virginia, a Randolph-Macon Woman's College alumna, member of the Maier Museum Advisory Board, regular and substantial donor to the Maier Museum, former Maier Museum docent,

Fellow and Trustee for the Virginia Center for the Creative Arts and a distinguished painter. She has donated funds to the Maier Museum and also donated two of her original paintings. The opportunity to study original artwork by the best American artists has strengthened and inspired art students at the College as well as local artists. In fact, her year as a docent at the Maier Museum inspired her to try painting again, and the Smith Art and other great works of art at the Maier Museum have frequently inspired her as a painter. This inspiration to her craft will be lost should Plaintiff prevail in this case. In addition, Anne Massie is aware of the instructions in Miss Smith's Will regarding the permanent art collection. She understands that Miss Smith's vision was to ensure a permanent collection of art for the College and the Lynchburg community. She has researched the 1920's purchase of George Bellows' "Men of the Docks" and understands it was to be for a permanent collection of art at the College to which other great pictures were to be added. Anne Massie does not want Miss Smith's vision for the College and community to be destroyed. She requests that this Court prohibit Plaintiff from selling one of the finest collections of American Art in the United States. She would be personally harmed by any sale, as donations of funds and art to the Maier Museum were predicated upon the understanding that the collection was a permanent one that would be available to inspire and educate future generations and as she continues to benefit in her own artistic endeavors from exposure to such a comprehensive and carefully planned collection of American Art.

Amanda Sandos: Amanda Sandos is a student in her senior year at the College. She is double majoring in studio art and creative writing. She currently is working on an extended internship at the Maier Museum. As with Margaret Williams, Amanda Sandos decided to attend Randolph-Macon Woman's College, in part, because of the Museum on campus and the strong liberal arts base and art offerings at the College. At the College, she has taken numerous

studio art classes and some art history classes and currently is enrolled in such classes this year. A critical part of her coursework has been and continues to be studying the Smith Art and the other important artworks displayed in the Maier Museum. Her art education and internship will be irreparably harmed if Plaintiff is permitted to sell the Smith Art or the other important and valuable pieces in the Maier Museum.

Laura Katzman: Laura Katzman was a Professor of Art and the Director of the Museum Studies Program at the College from 1995-2007. She was the College's Americanist, and she carried on a 100-year-old tradition of collecting and teaching American art at the College. She came to Randolph-Macon Woman's College to teach because of the Maier Museum's exceptional art collection. In her capacities, she designed courses and programs around the Maier Museum's art collection. She trained student and community docents, conducted research on the collection of art at the Maier Museum, organized symposia and visiting artist/scholar series. As a member of the Maier Museum Advisory Committee, she participated in and rendered advice regarding the loan, acquisition, and conservation of artworks. She served as Guest Curator of the Maier Museum and organized numerous exhibitions of American art and photography, independently and with students. She designed and supervised student internships at the Maier Museum. She also donated books and research materials to the Maier Museum to support research on the permanent collection. In her capacities, she cultivated many donors around the United States to the Museum and advised and facilitated their gifts to the collection. Thus, her interest and investment in the Maier Museum is great and deep. She wants to ensure that the permanent collection remains intact and at its current location on the campus of the College so that faculty and staff can respect the intentions of the collection's founders and donors, which was to educate and inspire students and the people of Lynchburg, for

generations. Laura Katzman believes that using funds from deaccessioning an institution's art works for that institution's operating budget is unethical pursuant to the Code of Ethics set by the Association of American Museums, to which the Maier Museum belongs and which reputable museums follow. Those ethical standards require that a deaccessioning decision come from trained museum professionals and only permit the sale of works in the collection for the purposes of replenishing and/or preserving a museum's art collection, never to augment the general fund of a college. She believes that to dismantle the art collection destroys the comprehensive nature of the collection, which currently makes it ideal for teaching and exhibition. Moreover, because the Maier Museum usually owns only one great painting by any given artist, to lose one representative work would leave a significant gap in the collection and hinder the teaching of major periods in American art history. She believes that once sold, a collection such as that at the Maier Museum could never be rebuilt. Laura Katzman further believes that the Smith Art, which is only part of the larger whole that is the impressive American art collection at the Maier Museum, distinguishes the College from other private liberal arts colleges. Because of the College's plan to sell or partially sell via partnership works of art from the unique and world-class collection at the Maier Museum, she resigned from her position at the College on April 27, 2007, in protest. She remained on the faculty at the College until June 30, 2007. Now, she is an Associate Professor of Art History at James Madison University and a Senior Lecturer in American Studies and Museum Studies at Smith College.

All of the above Petitioners have asserted interests germane to this suit, and these interests are different from any general interest of the public. In addition, neither Plaintiff nor Defendants will be prejudiced by Petitioners' intervention in this matter. Accordingly, this Court

should determine that Petitioners have the right to participate in this case and grant Petitioners' Motion to Intervene.

II. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED, AND THE SMITH ART SHOULD REMAIN AS A PERMANENT COLLECTION AT THE COLLEGE.

If allowed to intervene, Petitioners plan to assert several highly relevant and valid defenses to Plaintiff's Complaint. Petitioners will argue that Plaintiff's Complaint must fail, and the Smith Art should remain as a permanent collection at the College for the following reasons:

A. Plaintiff's Complaint is Not Ripe for Adjudication.

If allowed to intervene in this action, Petitioners plan to argue that Plaintiff's Complaint is not ripe for adjudication and should be dismissed.

Justiciability requirements mandate that courts refuse to consider cases that are not yet ripe for adjudication. Renne v. Geary, 501 U.S. 312, 320-21 (1991). "[R]ipeness is peculiarly a question of timing." Regional Rail Reorganization Act Cases, 419 U.S. 102, 140 (1974). The rationale for the ripeness doctrine is "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements" Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 105 (1977); see also Donnangelo v. Myers, Case No. 98-1730, 1999 U.S. App. LEXIS 18210, at *7 (4th Cir. August 2, 1999) (doctrine is "intended to deter courts from issuing advisory opinions in abstract disagreements"). Hypothetical claims are not ripe for adjudication. Gasner v. Board of Supervisors of Dinwiddie County, 103 F.3d 351, 361 (4th Cir. 1996). In determining whether a case is ripe for adjudication, courts are to consider (1) whether the issue is fit for judicial review, and (2) if hardship will befall the parties by withholding judicial review. Abbott Labs, 387 U.S. at 149. An issue is not fit for judicial review if the "injury alleged has yet to occur and may never materialize." Donnangelo, 1999 U.S. App. LEXIS 10210 at *8. As for the

second factor, the harm must be “immediate, direct, and significant.” West Virginia Highlands Conservancy, Inc. v. Babbitt, 161 F.3d 797, 801 (4th Cir. 1998) (citations omitted).

In the present case, the issues raised by Plaintiff in its Complaint are not yet fit for judicial review. By its own admission, the sale of the Smith Art may never materialize. Plaintiff has not decided whether to sell, in whole or in part, the Smith Art, and moreover has not decided whether such a sale is necessary to improve the College’s financial position. Complaint at ¶¶ 10, 11. Plaintiff states that “[t]he College is currently considering several options under which the College could generate the funds necessary to augment its endowment. Some of the options the College is considering include a partnership or joint ownership of some of the Smith Art with another charitable organization, such as a museum, or a sale of select items of the Smith Art.” Complaint at ¶ 10. “[T]he College has not decided on a final plan at this time. Once the College has a final plan, the College will submit that plan to the Court for approval. At this time, the college is unsure whether its final plan will be consistent with the terms of the Trust or require a modification.” Complaint at ¶ 11. Thus, the issues raised in Plaintiff’s Complaint are merely hypothetical.

Moreover, if Plaintiff does not receive the relief requested, it will not suffer any immediate, direct or significant harm. First, Petitioners dispute that the financial position of the College is as dire as Plaintiff claims. As set forth in detail below, the College’s endowment is large and more than sufficient to support the college if properly managed. Second, Plaintiff concedes it has “several options” to “generate sufficient funds to augment its endowment” other than the partial or whole sale of the Smith Art. Complaint at ¶ 10. Without the requested relief from the Court, Plaintiff simply will have to pursue these several other options. On the other

hand, if the valuable works of Smith Art are sold, they will never be replaced, and part of the heritage of the College and the City of Lynchburg will be lost forever.

Until Plaintiff has decided on a final plan and/or decided whether to attempt to sell some of the Smith Art, Plaintiff's Complaint is premature and not ripe for adjudication. Thus, Plaintiff's Complaint should be dismissed.

B. The Trust Does Not Contemplate or Allow the Sale of the Smith Art; Therefore, Plaintiff's Attempt to Have the Court Construe the Trust Must Fail.

Petitioners also plan to oppose plaintiff's request pursuant to Virginia Code Section 55-542.01 for an Order construing the Trust to allow it to "share ownership or sell certain items of Smith Art."⁵ Miss Smith's Trust cannot be so construed. Item IX of the Trust clearly states that the Trust is intended to enable "the Art Department of said College to form a permanent collection of art." Will at Item IX (emphasis added). The word "permanent" is defined as "existing perpetually; everlasting, esp. without significant change" and "intended to exist or function for a long, indefinite period without regard to unforeseeable conditions" Random House Unabridged Dictionary (2d ed. 1993); see also Webster's Third New International Dictionary (2002) (permanent defined as "continuing or enduring (as in the same state, status, place) without fundamental or marked change: not subject to fluctuation or alternation; fixed or intended to be fixed: lasting, stable..."). The only interpretation of Item IX is that Miss Smith intended that the Smith Art remain perpetually and without change at the College, regardless of any changing conditions. Nothing about the word permanent or Item IX of the Trust allows the College to convey ownership of the Smith Art to anyone. Allowing the sale of the Smith Art to augment the College's endowment fund would be a gross

⁵ Virginia Code Section 55-542.01 provides for judicial proceedings relating to the administration of a trust, including a request for instructions and an action to declare rights.

misinterpretation of the Trust. It would convert Miss Smith's clear, specific and restricted bequest into a gift to the general endowment to be used for general purposes. Plaintiff essentially concedes that interpreting the Trust to allow the sale of the permanent art collection is incorrect, as plaintiff also seeks to modify the Trust in order to allow the sale of the artwork. Thus, this Court should refuse Plaintiff's request for a declaration of the terms of the Trust permitting it to sell, in whole or in part, the Smith Art.

C. **Plaintiff Cannot Meet the Statutory Requirements for a Modification of the Trust.**

Petitioners plan to assert that plaintiff's request for this Court to modify the Trust pursuant to Virginia Code Section 55-544.12(A) likewise should fail. This Code provision allows the Court to modify the administrative or dispositive terms of the Trust "if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention." Plaintiff cannot meet the requirements of Va. Code Section 55-44.12(A).

1. **Miss Smith surely anticipated the changed circumstances alleged by Plaintiff.**

Plaintiff cannot prove that modification of the Trust is necessary because of circumstances not anticipated by Miss Smith when she signed her Will in 1928. Plaintiff claims Miss Smith did not anticipate "the financial problems facing the College in 2007, the warning placed on the College by SACS, and the significant increase in the monetary value of the Smith Art in recent years." Complaint at ¶ 12. To the contrary, Miss Smith fully expected that the value of the Smith Art would increase substantially over the years. The concept of art appreciating in value was well-known to Miss Smith, as she saw certain paintings increase

substantially in value during her lifetime. For example, painting and prints by George Bellows soared in price after his death. Nottingham, Elizabeth, “Silhouette of Miss Louise,” Randolph-Macon Woman’s College Alumnae Bulletin (Nov. 1938), a copy of which is attached hereto as **Exhibit G**. Being so aware, Miss Smith, specifically set forth in her Will that she wanted the Trust to accumulate income “so as to provide enough money before any expenditure to purchase a real work of art.” Will at Item IX. Miss Smith further directed that experts be involved in the selection of the artwork “to keep a high standard of excellence” in the selections. *Id.* She also directed the Trustee “to rigidly insist upon this requirement.” *Id.* Certainly, with those criteria, Miss Smith expected that funds from the Trust be used to purchase only high quality and important artworks that would appreciate in value.

Similarly, Miss Smith could have foreseen that the College could face financial problems.⁶ Every endowed institution is constantly faced with financial challenges. In fact, the College had faced financial problems during her lifetime. During her tenure at the College, many fundraising efforts were undertaken, including a multi-year campaign to raise funds for a student center building. Although the College clearly needed funds, Miss Smith during this same period continued to promote and raise funds for the purchase of art for a permanent collection. See Lawson, Karol, “The Maier Museum of Art Randolph-Macon Woman’s College Historical Note and Frequently Asked Questions” (Dec. 5, 2006) at 6-7; “Founder’s Day,” *The [Lynchburg] News*, March 8, 1920, which are attached hereto and collectively referred to as **Exhibit H**. Thus, this Court should find that Miss Smith anticipated times when the College would face financial problems and/or would need to raise additional funds yet did not specify in her Will that the College’s permanent collection of art could be sold in such event.

⁶ As stated herein, Petitioners dispute that the College is, in fact, facing serious financial challenges as Plaintiff claims.

2. Miss Smith's Primary Purpose Was To Create A Permanent Collection of Art, Not to Benefit Randolph-Macon Woman's College Generally. Thus, Modification of the Trust will not further Ms. Smith's purposes.

Miss Smith's express purpose was to create "a permanent collection of art" for the Art Department at Randolph-Macon Woman's College. Will at Item IX. Thus, Miss Smith had the specific and primary intent to benefit the Art Department, so that art students and faculty at the College would have an art collection for art education. In her Will she also clearly expressed her intent that the permanent collection of art be displayed for the benefit of those associated with the College and the people of Lynchburg. See Will at Item IX; Will at Item III (donating twenty works of her art "to be kept together as a unit and held as an art exhibit, and to be always open for inspection by the people of Lynchburg"); Order of this Court dated 11/29/57 (holding that the "the intent and purpose of the Testatrix" was to provide "a permanent collection of art for the respondent college"); see also Randolph-Macon Art Association of Lynchburg brochure 1924-25 (a copy of which is attached hereto as **Exhibit I**) (stating that the "Permanent Art Collection will be open at all times to the Lynchburg public and there will be no charge for admission").⁷

Miss Smith went to great lengths in her Will to ensure that the art acquired would be of high quality and therefore inspiring and worthy of viewing and study. Will at Item IX. This Court has already interpreted the Trust and concluded that Miss Smith's intent and purpose was to provide "a permanent collection of art for the respondent college" that included "works of art of the high standard of excellence" she describes in her Will. Order of this Court dated

⁷ Miss Smith "vigorously protested artists' payment of admission fees at any museum and art exhibitions as an infringement of the principle that artists are entitled to free enjoyment of their birthright." Exhibit G. Thus, depending on the details of such an arrangement, including whether the organization or museum would charge admission to view the Smith Art, Miss Smith would oppose Plaintiff's proposed option of a partnership or joint ownership of some of the Smith Art with another organization or museum. Plaintiff's Complaint at ¶ 10.

11/29/57. In deciding to modify the Trust to allow purchases costing more or less than the biennial income from the Trust and to allow the Trustee to accumulate income before purchasing works of art, the court considered deposition testimony from two witnesses: Harriet Fitzgerald, an alumna of the College, Board of Trustees member and artist who was one of the experts who advised the Art Department at the College regarding works of art to purchase with Trust funds; and Mary F. Williams, the Chairman of the Art Department of the College who was involved in the selection and purchase of works of art with Trust funds. A copy of the deposition transcripts of the depositions dated October 25, 1957, is attached hereto as **Exhibit J**. In recommending that the Court not allow purchases to be made at greater intervals than two years, Harriet Fitzgerald testified that “Miss Smith had a serious educational purpose in her desire for our students not only to live with good art but to participate in the experience of acquiring new work.” *Id.* at 4 (emphasis added) (testifying that she knew and worked with Miss Smith at the College). Likewise, Mary Williams testified regarding Miss Smith’s intent that the Trust be used to purchase works of high quality. *Id.* at 7.

Plaintiff attempts to argue that Miss Smith’s primary objective was to benefit Randolph-Macon Woman’s College, and that her secondary purpose was to create the art collection. This clearly is not the case. While Miss Smith wanted to create a permanent collection of art at the College, Miss Smith’s intent was at all times focused on ensuring that quality works of art were available for viewing by both the students of the College and the community of Lynchburg. Her primary motivation was to provide the means to develop in both the College and the larger community an understanding of and an appreciation for great works of art.

Ms. Smith's intent to benefit art education and appreciation is clear from articles and other literature written during Miss Smith's lifetime and from Miss Smith's own words. In 1900, Miss Smith gave a speech to the Third Capon Springs Conference for Education in the South on the importance of art education. During her speech, she set forth her plan to promote art and art education and create a permanent collection of art for the College:

I have a plan for accomplishing something in this direction ... I should like to see the walls of the public school and academy filled with good reproductions of master-pieces; and in college I want an annual loan exhibition. This exhibition must contain only the best work that is done anywhere ... As an inducement to these artists to lend their pictures it should be understood that each year the best pictures should be bought for a permanent collection which will belong to the [College]. ... This has never been tried in any school or country, as far as I know, but I have spoken of it privately to many educators whose hearty appreciation has strengthened me in my purpose to see this executed.

Smith, Louise J., "Art in Education," Proceedings of the Third Capon Springs Conference for Education in the South (1900). A copy of the speech is attached hereto as **Exhibit K**. Miss Smith then implemented her plan. She arranged art exhibitions, including an exhibition of George Bellows' "Men of the Docks" at the College before it was purchased for the College to become the foundation of the permanent art collection. See Fitzgerald, Harriet, "The R-MWC Collection of Art: Recollections," R-MWC Alumnae Bulletin (Spring 1983), a copy of which is attached hereto as **Exhibit L**. She organized the Randolph-Macon Art Association of Lynchburg to "foster the love of art and awakening the creative talent of the young people of the community". Exhibit I. She created the Fine Art Fund, funded by student fees and matching gifts from the Board, to fund annual art exhibitions and to buy works of art for the collection. Exhibit L at 9-10. Miss Smith was the driving force behind the establishment of a permanent collection of art at the College. Id. (encouraging "the gradual increasing of the Permanent Art

Collection already so well begun at the College,” appropriating funds to help the College with this plan, and stating that the “Permanent Art Collection will be open at all times to the Lynchburg public and there will be no charge for admission”). Upon her death, she left her own paintings to the College to be viewed and enjoyed by the people of Lynchburg. Will at Item III. She further provided for the fulfillment of her plan and her vision in Item IX of her Will, which established the Trust to fund the purchase of additional art works for the permanent collection in perpetuity.

Petitioners have compiled numerous articles and primary source materials that clearly explain Miss Smith’s passion for educating the community – both within the College and without – about art and the qualities that make great art special. Some of these articles are attached hereto collectively as **Exhibit M**. Modification of the Trust to allow those great works of art to be sold not only would be inconsistent with the express purposes of the Trust, but would defeat that purpose.

Miss Smith also clearly set forth her primary intent to create a permanent art collection to promote art education and art appreciation and not primarily to benefit the College when she dictated in her Will that the Trust fund be turned over to the Trustees of Randolph-Macon Woman’s College only if the Trustee bank “shall liquidate or go out of business, or shall desire to surrender this trust.” Will at Item IX. If that were to occur, which it has not, then the Trustees would “hold the fund as a permanent endowment fund to be invested and reinvested from time to time as other endowment funds of said College are invested, the income therefrom to be used from time to time as above provided.” *Id.* (emphasis added). “As above provided” clearly means that the Trustees would be required to buy art in accordance with the instructions she set forth the previous paragraph of Item IX. Miss Smith did not intend that the Trust or the

permanent art collection acquired by virtue of the Trust be used for general operating expenses of the College or to bolster the College's endowment, as she could have placed the Trust as part of the general endowment fund if she so desired.

Miss Smith's purpose to promote art education would be defeated if Plaintiff is allowed to sell any of the Smith Art, or in fact, any of the important (and, therefore, valuable) works that comprise the heart of the Maier Museum collection to which Miss Smith's Trust was directed. To keep the Smith Art, but sell the works that have been lovingly and carefully collected around it, both before and after Miss Smith's death would cheapen and decimate Miss Smith's life's work, as well as the Trust that she created in her Will. To sell any portion of the Maier collection, or even a few works of the Smith Art, would destroy the nature of the collection and therefore diminish its teaching and exhibition value. "Since the Maier typically owns only one great painting by any given artist, losing one representative work leaves a huge gap in the collection, which in turn hinders our teaching of the major periods in American art history." Letter to Jolley B. Christman, President, Randolph-Macon Woman's College Board of Trustees from Laura Katzman, Chair, Associate Professor of Art and Director of the Museum Studies Program, dated October 28, 2005 ("Katzman Letter") (a copy of which is attached hereto as **Exhibit N**). Thus, this Court should deny Plaintiff's request to modify the Trust.

D. Plaintiff's Claim that the Sale of the Smith Art is Necessary is Without Merit.

If allowed to intervene in this action, Petitioners plan to assert that Plaintiff's claim that the College must sell the artwork bequeathed by Miss Smith to "regain a solid financial footing" (Complaint at ¶ 9) is without merit.

First, the College has sufficient funds, if managed properly, to avoid negative repercussions to the College. As stated, the College has an endowment worth approximately

\$140,400,000.00, and the endowment has increased since June of 2002 when it was \$130,794,771.00. In fact, the College's endowment increased 7.1% from 2005 to 2006. Exhibit D. The College's endowment is substantially larger than the endowments of other comparable schools in Virginia. For example, Hollins University's endowment is approximately \$109,435,000.00, Sweet Briar College's endowment is \$93,685,000.00, Mary Baldwin College's endowment is \$38,030,000.00, Hampton-Sydney College's endowment is \$125,919,000.00, and Randolph-Macon College's endowment is \$112,225,000.00. Id.

Second, Plaintiff has not and cannot allege that the Southern Association of Colleges and Schools ("SACS") has directed the College to sell the Smith Art to avoid receiving a warning or probation. SACS has never required or encouraged the sale of the valuable and irreplaceable art collection to augment the College's endowment. Letter from Belle S. Wheelen, Ph.D., President, Southern Association of Colleges and Schools, Commission on Colleges, to Theodore J. Craddock dated June 14, 2007 ("SACS Letter") (a copy of which is attached hereto as **Exhibit O**) ("At no time would I, any member of my staff, or the Commission members who make decisions relative to institutions suggest, let alone require, that the College sell its art collection. That decision would be the decision of College officials and/or the Board of Trustees. I would imagine that there are numerous ways that the college can work to demonstrate financial health and stability."). In fact, SACS has not given the College any specific instructions regarding how to improve its financial position.⁸ In any event, Plaintiff

⁸ According to a press release issued by the College at the time the warning was issued in December 2006, "SACS pointed to the College's operating deficit, deferred maintenance, and high tuition-discount rate as areas of concern". "SACS Issues Report on R-MWC", at www.randolphcollege.edu/newsevents/pressreleases/news_details.asp (12/15/06) (a copy of which is attached hereto as **Exhibit P**). Nowhere does the College refer to the size of the endowment or the endowment spending rate. Id. Interestingly, however, in the Complaint, Plaintiff claims that the sale of the Smith Art is necessary because of SACS's warning that "the College was spending its endowment at

raised the possibility of selling paintings in the Maier Museum to raise money before the 2006 SACS report was issued. See Exhibit N (“It is [the Art Department’s] understanding from the September faculty meeting that the Board has been having discussions about the paintings in the Maier Museum as *financial assets* of the college.”).⁹

Third, as Plaintiff admits, it is considering “several options” to “generate sufficient funds to augment its endowment” (whether or not such funds are truly required). The sale of the Smith Art is only one such option. Thus, with other viable options available, the sale or partial sale of the artwork bequeathed by Miss Smith, or any of the works in the Maier Collection, is not necessary. SACS indicated that “there are numerous ways that the college can work to demonstrate financial health and stability” other than selling the art collection. Exhibit O at 1. Petitioners assert that the College should reduce tuition discounting to acceptable levels for private liberal arts colleges, pursue cost-cutting methods, including staff reductions and decreased capital spending, and implement a more careful, responsible and efficient budget and budget management process. As a last resort, the College has substantial other assets¹⁰ that it could draw upon before violating Miss Smith’s Trust and selling the permanent art collection to augment its general funds.

Fourth, the Board of Trustees of Randolph-Macon Woman’s College previously argued that its decision to convert Randolph-Macon Woman’s College from a single-sex institution for women into a co-educational school was to improve the College’s financial

an unsustainable rate” (Complaint at ¶ 8) and because the College has been advised that it “must add a substantial amount of capital to its endowment” (Complaint at ¶ 9).

⁹ Professor Katzman also pointed out to the College’s Board of Trustees that “using funds from de-accessioning an institution’s art works for that institution’s operating budget is highly unethical, according to the Code of Ethics set by the Association of American Museums, to which we belong, and which all reputable members follow. These funds are to be used solely for replenishing and/or preserving a museum’s collection.” Exhibit N at 1.

¹⁰ The College owns substantial real estate in Lynchburg, Virginia and Reading, England.

position. The conversion was not necessary to improve the College's financial position since the College had sufficient financial resources, including a large endowment. Moreover, as evidenced by Plaintiff's Complaint, The Board of Trustees' decision to make the College co-educational only harmed and did not help the College financially. See Exhibit F (enrollment for the fall of 2007 was "the lowest in at least 25 years and down from 715 students last year"); Letter to Annual Fund Donors from Jaime Penney, Director of the College's Annual Fund, dated July 27, 2007, a copy of which is attached hereto as **Exhibit Q** ("Overall percent of participation among alumnae dropped from 36% to 18%."); Email to College Alumnae from Heather A. Garnett, Alumnae Director dated February 2, 2007 (a copy of which is attached hereto as **Exhibit R**) ("Total attrition from the fall to spring semesters was 66 students, compared with an average of 39 at midyear over the past five years."). Plaintiff is now requesting permission to sell the Smith Art to try to correct its poor decision making and past financial mismanagement. See Campus Strategies Financial Review of Randolph-Macon Woman's College (May 7, 2007) (pointing out that the College discounts tuition at a significantly greater rate than other institutions thereby reducing net tuition revenue, finances its operating expenses from quasi-endowment spending at a "staggering" percentage, employs 30 percent more employees on average than its peers despite its smaller enrollment, and has unwisely continued salary raises, filling vacant positions and failing to reduce the size of its workforce) (a copy of this is attached hereto as **Exhibit S**). There would be no question about the College's continued ownership of the Smith Art had Plaintiff properly managed the College's financial assets and not decided to become a co-educational institution in the first place.

E. Allowing Plaintiff to Plunder Miss Smith's Trust Would Have an Adverse Impact on Charitable Giving in the Commonwealth of Virginia.

As stated above, Virginia law does not support Plaintiff's claims and does not allow Plaintiff to violate Miss Smith's Trust as Plaintiff requests. Petitioners submit that if this Court holds otherwise, it will deter people from making charitable contributions. Charities across the Commonwealth will suffer if courts do not protect bequests such as Miss Smith's.

CONCLUSION

WHEREFORE, your Petitioners Frances Pendleton Elliott, Eleanor Pendleton Monahan, Margaret Williams, Ellen S. Agnew, Paul Whitehead, Jr., Sandra Whitehead, Roberta Scrivener, Roy Clinton Johns, Anne Adams Robertson Massie, Amanda Sandos and Laura Katzman, by counsel, request that the Court grant it leave to intervene in this action as a Defendant and to file the Answer to Plaintiff's Complaint attached hereto as **Exhibit T**. Petitioners further request a hearing on this Motion. Petitioners further request that this Court deny Plaintiff's request to sell and/or enter into a joint ownership or partnership arrangement regarding the valuable artwork bequeathed by Miss Smith, or any of the other works in the Maier Collection, to augment the general fund of the Plaintiff.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2007, a true and correct copy
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