

## Sweet Briar College: Saved – At Least For Now

06.22.15 | Linda J. Rosenthal, JD



Deciding to shut down a long-standing nonprofit institution is perhaps the most gut-wrenching decision a board of directors may face.

But – once made – is the board’s decision final and irrevocable? Can important stakeholders object to, or formally challenge, the closure vote? Who has the last word?

### *The Sweet Briar Case*

On March 3, 2015, when interim President Jeffrey Jones emailed the faculty and staff of Virginia’s Sweet Briar College to gather at noon, they had no idea what to expect. He stunned them by announcing that a unanimous board of directors had just voted to permanently – and immediately – shut down the 101-year-old educational institution.

The spring 2015 semester would be the last, he explained, and operations would terminate by August. In a written statement issued later that day, the official reason cited was “insurmountable financial challenges.”

For the next 3-½ months, a coalition of interested groups (students, faculty, staff, alumnae, and community members) worked furiously to challenge – and stop – this action. The case went all the way up to the Virginia Supreme Court for an expedited ruling. Fast forward to June 20, 2015. A mediated settlement was reached, with the closure vote being tossed out entirely.

This is more than a news story about a nonprofit college. It’s a dramatic example of how a board of directors acted precipitously, in secret, and without any apparent consideration of the interests of many categories of legitimate stakeholders. The closure decision caused an immediate furor, and erupted into an ugly battle that captured media attention not just in Virginia but around the nation, particularly in nonprofit and higher education circles.

## *Background*

Sweet Briar College, known for its “elite equestrian program” and “idyllic” campus in the rolling foothills of the Blue Ridge Mountains, had graduated generations of loyal, successful alumnae. It all started with a bequest from Indiana Fletcher Williams. Her memorial to her young daughter was a liberal arts college for women on the grounds of her family’s antebellum plantation.

In recent years, the school’s enrollment had declined somewhat; this reflected a trend faced by other small, rural, women-only colleges. But there was little hint of severe financial troubles. There were multi-million-dollar building projects and renovations. Interim President Jones had, just two weeks before the closure vote, gratefully acknowledged a letter of intent from a major alumna for a \$1-million bequest, and confirmed that everyone was excited to have her as the May commencement speaker.

## *Outrage and Opposition*

Opposition to the sudden closure decision came immediately: from students, alumnae, community members, and – of course – the employees blindsided at that impromptu March 3rd meeting. They profoundly disagreed with the board’s action, and felt betrayed.

These groups were skeptical of the Board’s account in the March 3rd written statement that, a year earlier, it had begun “a strategic planning initiative to examine opportunities for Sweet Briar to attract and retain a larger number of qualified students and determine if any fundraising possibilities might exist to support these opportunities.”

They had seen no emergency fundraising appeals to alumnae and other supporters. They pointed, as well, to Sweet Briar’s endowment of over \$84 million. (A significant amount of that endowment, however, is restricted.)

Critics also disagreed with the decision to close immediately. The Board explained its reasoning to shut down right away instead of waiting until it ran out of funds: “We have moral and legal obligations to our students and faculties and to our staff and to our alumnae,” adding that the administration planned to offer “severance and other support” for employees and help to students in transferring to other institutions.

## *Lawsuits and More*

And that was that – or so the board members thought. There was nothing that the concerned constituencies could do to reverse the directors’ lawful and valid exercise of their powers.

They were wrong.

Immediately following the surprise announcement, there was an avalanche of activity that rocked this placid community as well as the larger philanthropic world. Amid lawsuits and recriminations, the highest officials in Virginia government entered the fray.

Some key events included:

- Bypassing the protocols of its own bylaws, the faculty immediately passed a resolution of opposition. They asked for a discussion with the board: “[P]eople across the nation are coming up with plans to save this remarkable institution ...” Weeks later, a group of faculty members filed suit against the College for \$40 million, alleging breach of contract and other claims.
- Several groups joined forces, spearheaded by alumnae, to form the nonprofit Save Sweet Briar, Inc. They demanded the resignations of the president and the board; later, they filed a lawsuit seeking injunctive relief.
- The Roanoke Times ran an editorial wondering “why legal action against the president and board ... has been so slow to be filed.”
- Amherst County Attorney Ellen Bowyer, jumped in, apparently coordinating and consulting with Save Sweet Briar, Inc. On behalf of the Commonwealth of Virginia, she petitioned for injunctive relief “to block the closing and force the removal of the president and board of directors” and for “a special fiduciary to be appointed to take control of Sweet Briar to prevent the board from using charitable contributions for other than the intended purpose.” She characterized the decision to close the school as “not only precipitous and unwarranted (but) also unlawful” and in violation “of the terms of the will under which the college was founded.” Initially, a trial judge granted partial relief, but not the full injunction against closing the school. She appealed to the Virginia Supreme Court, which, in early June, ordered the trial court to reconsider the matter.
- Virginia Attorney General Mark Hering challenged the County Attorney’s authority and standing to act. The lower court judge agreed in part with the Attorney General that Ms. Bowyer lacked standing to pursue violations of Virginia’s trust law, but allowed her to proceed to make a case alleging that charitable funds have been misused.
- The Attorney General wrote to counsel for all sides inviting them to meet with him to find a way to resolve the matter. They have been meeting behind closed doors.
- A bipartisan group of Virginia legislators asked the Attorney General to investigate state tuition grants that were “allocated to 250 students when discussions about closing were already in progress.”
- Governor Terry McAuliffe offered his assistance.
- The alumna who made the \$1-million pledge appeared as the commencement speaker, and blasted the board for its decision to close the school.
- From the beginning, there were biting critiques, recriminations, innuendo, and speculation about the motives and actions of the board and administration – despite the fact that all but 3 of the board members are Sweet Briar alumnae, and interim President Jones has alumnae relatives.
- The Virginia Supreme Court fast-tracked the appeal, and ruled on June 9. Without making a full ruling on the merits of the case, the justices overturned the trial judge on one key legal

issue, and remanded it back to him for reconsideration of the request for injunctive relief.

- With a looming reconsideration hearing date set for Monday June 22nd, the parties reached a settlement agreement late on Saturday, June 20th, after “hundreds of hours” of negotiation refereed by the Virginia Attorney General. Under the terms of this settlement, a majority of the board will be replaced with people nominated by the Save Sweet Briar coalition, the college will operate at least through the next academic year, over \$20 million in emergency pledges will be used to keep the College afloat, and \$16 million of the endowment’s restricted funds have been released by the Attorney General for this purpose.

### *It’s Happened Before*

It’s not the first time that a board of directors’ decision about the future of an all women’s college has been questioned.

For instance, in 1979, Wilson College in rural Pennsylvania was a 100-year-old institution in financial jeopardy. Wilson’s enrollment drop was much sharper, however, than Sweet Briar’s. It had an endowment that was declining too. There, the stakeholders – students, faculty, and alumnae – joined together, filed suit, and won. A judge ruled that the board had not done enough to save the school, writing: “The fiduciary responsibility of the Board of Trustees required that Board to use those assets of the College to continue it as an institution of higher learning and as a teaching institution until its charter purposes became impossible or impractical of fulfillment.”

The judge “‘did not find any malfeasance among trustees and administration, only ineptness and inaction.’ The college only stopped operating because the board of trustees decided to shut it down.” But he did find that the College’s president’s actions “‘constituted a gross abuse of authority and discretion’ and ordered her removed from the board. Then, the entire board resigned, and a new group of directors took its place. Wilson College still operates today, although recently it has had to consider major changes including the admission of male students.

### *Tantalizing Issues*

The Sweet Briar drama has reached an apparent, tentative conclusion.

Advocates for saving Sweet Briar College have reason to cheer. But this win for the “Saving Sweet Briar” faction may be a pyrrhic victory: There is no freshman class, and most of the current students have – albeit reluctantly – transferred to other colleges. Many faculty members have secured employment at other institutions.

What’s clear, though, is that this case has presented serious, provocative legal questions, including, for example:

- Should the board of directors of an important community institution take into account the interests and opinions of a broad range of stakeholders in that community?
- Who, if anyone, has legal standing to challenge a board’s decision?

- When can state officials properly intervene to protect charitable assets and to represent the public interest? Which agencies or individuals have this authority?
- Does the court have authority to enjoin closure of a nonprofit?
- Does the board have legal power to extinguish the charitable trust created by a bequest, and use or dispose of the real and personal property – including an endowment with restricted funds – in violation of the express terms of the bequest? (Here, the charitable gift was for a clear and restricted purpose: establishment and operation of a women’s college – apparently, in perpetuity.)
- Did the board, here, exercise due care in making the closure decision?
- Was there fraud or misuse of charitable funds? (The administration continued accepting gifts without disclosing the imminent vote on shutting down.)
- Which funds could have been used to accomplish the winding down and closure, if that course of action had been upheld?

### *Conclusion*

Some of these legal issues are unique under Virginia law and specific to the Sweet Briar case, but this sad and ugly story is a cautionary tale for other organizations.

Stay tuned for more discussion.

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