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The Board of Directors and the Board of Overseers of Sweet Briar College (herein referred to as the Board) wish to put on record the history of the legal action taken by the Board between 1963 and 1967 in regard to the will of Indiana Fletcher Williams, Founder of the College. The purpose of this document is to state the issues involved, the decisions which were made in regard to them, and the manner in which the case moved through the courts during nearly three years of litigation. At its conclusion, the Board was sustained legally in its efforts to carry out what it believed was the essential purpose expressed in the will of the Founder.

* * *

Two wills, rather than one, led to the founding of Sweet Briar College, indicating that much thought had been given to this foundation. The first was that of James Henry Williams, who drew his will in 1885 and died in 1889. It included the following statement:

> *It is my wish that my wife should by deed or by will, secure the ultimate appropriation of my estate, in trust for the foundation and maintenance of a school or seminary . . . as a memorial of our deceased daughter Daisy Williams. This wish however is to be regarded simply as an expression of my desire, and not as a binding direction . . .*

The second will was that of Indiana Fletcher Williams, which was drawn in 1899 and was admitted to probate in November 1900, shortly after her death. It concluded with this summary:

> *This bequest, devise and foundation are made in fulfillment of my own desire, and of the especial request of my late husband, James Henry Williams, solemnly conveyed to me by his last will and testament, for the establishment of a perpetual memorial of our deceased daughter, Daisy Williams.*

Earlier provisions of Mrs. Williams' will stated in part:

> *I give and devise all my plantation and tract of land known as Sweet Briar plantation, situated in said Amherst county, Virginia* . . . and various other tracts of land, to four trustees. *I direct the said trustees forthwith after my decease to procure the incorporation in the state of Virginia of a corporation to be*

called the 'Sweet Briar institute' — The said corporation shall with suitable dispatch establish, and shall maintain and carry on upon the said plantation, a school or seminary to be known as the 'Sweet Briar institute,' for the education of white girls and young women.

The further directive for the "school or seminary" she wished her trustees to create is laid down in Mrs. Williams' will and in Sweet Briar's charter, granted by the Commonwealth of Virginia in February, 1901, in this language:

The general scope and object of the school shall be to impart to its students such education in sound learning, and such physical, moral and religious training as shall, in the judgment of the directors, best fit them to be useful members of society.

It was and is the opinion of the Board and its legal counsel, now validated by court order, that this directive, establishing the purpose of the school and entrusting to the judgment of its directors how that purpose should be achieved, must take precedence over any other language in the will which might become an obstacle to the achievement of the primary objective. In this case only one word in the will — the word "white" in the phrase "for the education of white girls and young women" —had become a major obstacle.

Throughout the recent litigation, in which the specific question at issue was whether Sweet Briar could have an open admission policy or must have a racially restrictive policy, the Board's unceasing effort has been to sustain and abide by the principal directive of the Founder. The controversy hinged on the determination of this Board to discharge fully its trust under the Founder's will and to do so by legal means.

* * *

Increasingly during the years since World War II, the racial restriction expressed in the will, considered in the light of new federal legislation and changing concepts of equality of opportunity, had become a major cause for dissatisfaction. Awareness of this dissatisfaction had been brought with steadily mounting force to the attention of the administration and the Board. On various occasions significant groups from the faculty, the alumnae, and the student body requested the President and the Board to seek legal counsel to discover in what way the restriction remained binding upon the College and its admission policy. In the spring of 1963, a majority of the faculty indicated their concern that such action be taken.

When the Board met in November of that year, there were many indications that the College could not maintain its position of distinction as a liberal arts college for women if it maintained a racially restrictive admission policy. It was evident that under such a policy Sweet Briar College soon would be

—unable to attract and hold able teachers drawn from the universities of this and other lands to form a distinguished faculty;

—unable to attract an adequate number of students of the highest quality if they were selected on any basis other than ability and promise;

—unable to obtain needed financial support from major foundations and private donors as well as from government sources available to almost all other colleges.

Further danger threatened, including the possible loss of academic accreditation and of membership in prominent national organizations such as the College Entrance Examination Board and others which had long recognized Sweet Briar's academic merit.

Unless action were taken, the continued existence of Sweet Briar College was in grave danger. Sweet Briar would shortly stand alone, isolated from the leading colleges of the country and from other Virginia colleges which were rapidly declaring their adoption of open admission policies.

After sober reflection and consideration of its duties and responsibilities and after having earnestly discussed and weighed these and other factors, the Board had come to the conviction that in the United States of the 1960's a policy of segregation obstructed what it held to be the primary purpose of the Founder, and that continuation of such a policy would result in the loss of a number of esteemed and competent faculty members, desirable students, and the academic standards which Sweet Briar had achieved.

Accordingly, by resolution adopted November 2, 1963, the Board:

—declared itself desirous of carrying out its obligations under the will of the Founder as well as its obligations to "past, present and future students of Sweet Briar."

—declared itself "satisfied that we are governed by the will of our Founder benefactor."

—declared itself willing to admit to the College qualified applicants regardless of race if the Founder's will could be interpreted as permitting this.

—directed its Executive Committee to "take whatever legal action may be necessary and appropriate to secure a judicial determination as to whether we may, consistently with the charitable purposes of Indiana Fletcher Williams, admit qualified persons to Sweet Briar College, regardless of race.[1]

This had not been an easy decision for the Board to make. But having reached it, the Board never deviated from its commitment or relaxed in its firm purpose, although later in the course of events two members who could not accept the decision of the majority resigned from the Board.

While attorneys for the College were preparing to seek a judicial interpretation of the Founder's will, a special meeting of the faculty took place in March, 1964. A statement written by several of its members was passed unanimously, endorsing the action taken by the Board.

The faculty stated its belief "that the restrictive term (as to white girls and young women) perpetuates particular local conditions of time and place which have so changed that the major emphasis in the foundation of the College can no longer be realized by adhering to that condition."

It asserted further "that 'sound learning' cannot flourish in an atmosphere which denies the reality of the world today . . . the substance of the (Founder's) will has been fulfilled in the formation and development of Sweet Briar College but that the future of the institution now depends on recognizing that the will must be executed in the changed conditions of a world which did not exist in 1900."

The Board's directive that legal action be taken resulted in the following sequence of events.

August 17, 1964. Counsel for the College filed a bill of complaint in the Circuit Court of Amherst County, Virginia, to determine the right of the Board to admit qualified applicants to Sweet Briar College regardless of race, creed, or color. Since the College was chartered as an educational charitable trust by the Commonwealth of Virginia, the respondents named in this bill of complaint were Robert Y. Button, Attorney General for Virginia, and William M. McClenny, Commonwealth's Attorney for Amherst County.

[1] See Appendix A

September 5, 1964. The Attorney General filed an answer to the complaint, in which he urged the Court to uphold the College charter, saying that in his opinion the will of the Founder "is plain and unambiguous" and that it should remain "conclusive and binding." A month later, the Commonwealth's Attorney filed a demurrer, contending that the complaint of Sweet Briar College failed to set forth any changes in "circumstances, conditions, customs and laws" affecting it which might merit a change in its charter.

December 22, 1964. Oral arguments on the demurrer were presented in a hearing before the Honorable C. G. Quesenbery, Judge of the Twenty-ninth Judicial Circuit. At his request, briefs were filed and Judge Quesenbery took the case under advisement.

June 3, 1965. Judge Quesenbery rendered his opinion, sustaining the demurrer filed by the Commonwealth's Attorney, and thus ruled adversely on Sweet Briar's original bill of complaint. The Judge's opinion stated that (1) no actual controversy exists, (2) the will of Mrs. Williams is not ambiguous and therefore needs no further interpretation, and (3) the application of the *cy pres,* or deviation doctrine, as contended by Sweet Briar, would not be proper. (In its brief, Sweet Briar had asked the Court to construe the will *cy pres,* or as nearly as possible in conformity to the primary intention of the Founder).

June 11, 1965. At a special meeting of the Board it was the unanimous opinion of those present that the matter must be carried to its ultimate conclusion. Counsel for the College was authorized to contest and appeal the decision to the extent that it was restrictive on the College's admission policy.

At the same meeting, in an effort to avoid having Sweet Briar students cut off from federal loan programs or the College itself from possible federal financial support, the Board authorized execution by the College of the Department of Health, Education and Welfare Form 441, the "Assurance of Compliance" with Title VI of the Civil Rights Act of 1964. This was done with the direction that all documents relating to the litigation in the Virginia courts be attached to the Certificate, indicating Sweet Briar's readiness to comply and its efforts to obtain legal sanction for compliance from the Virginia courts.

With these limitations, the Certificate was not acceptable to federal authorities and Sweet Briar College was cut off from all federal aid.

The College then sought help from the federal courts.

July 9, 1965. The Commonwealth's Attorney requested immediate dismissal of the Sweet Briar suit in the state Circuit Court. The Court later denied the motion for dismissal.

September 22, 1965. The State Corporation Commission issued a Certificate of Restatement of the charter, as requested by the College.

April 25, 1966. Sweet Briar College filed its complaint in the United States District Court for the Western District of Virginia and on the same day obtained a temporary restraining order from Judge Thomas J. Michie restraining the Attorney General of Virginia and the Commonwealth's Attorney for Amherst County from enforcing racial restrictions in the will of the Founder.

Sweet Briar's complaint, on which the temporary injunction was obtained, contended that the racial restriction in the will was required by Virginia statutes, still in force, permitting the establishment of educational trusts for whites only or for Negroes only, but not for racially integrated schools. Under the statute, the College's attorneys contended, the Founder had no choice but to specify a race, if her educational trust was to be valid in Virginia.

Sweet Briar's counsel pleaded that this racial segregation was unconstitutionally imposed by state statute (more than a century ago) and that it violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Section 202 of the Civil Rights Act of 1964.

The College further contended that if the injunction were not granted "its ability to attract and retain faculty members of high calibre would continue to be impaired," as would its ability to "attract and retain desirable students, and that the College would continue to be ineligible to receive any federal financial assistance" under the restrictions required by the Civil Rights Act of 1964.

May 28, 1966. Sweet Briar's Board was advised by Counsel that, under the injunction granted in United States District Court, the Board was free to exercise its best judgment on the question of admission policy. The choice then, in simplest terms, was whether the College should move forward with an open admission policy or gradually deteriorate as the result of a policy of segregation. After thorough discussion and deliberation, the Board adopted the following resolution:

> WHEREAS this Board being duly mindful of its obligations and responsibilities with respect to the laws and customs of the times and

WHEREAS this Board is desirous of acting in the best interest of Sweet Briar College in carrying out the intent and purpose of its Founder as expressed in her will by offering its students "such education in sound learning . . . as shall, in the judgment of its directors, best fit them to be useful members of society,"

NOW THEREFORE, BE IT RESOLVED, that a policy of admissions for Sweet Briar College, unrestricted as to race, creed or color, be and it hereby is adopted and confirmed (and)

RESOLVED, FURTHER that the administration of the College be and it hereby is authorized, empowered and directed to forthwith implement the policy set forth in the foregoing resolution.

This action was accepted by the Department of Health, Education and Welfare as compliance with provisions of Title VI of the Civil Rights Act of 1964.

July 6, 1966. A three-judge United States Court, sitting in Charlottesville, heard arguments presented by Sweet Briar and by the Commonwealth as to whether or not the temporary restraining order granted by Judge Michie should be made permanent. The three judges were Judge Albert V. Bryan of the United States Fourth Circuit Court of Appeals and District Judges John D. Butzner, Jr., and Thomas J. Michie.

August 31, 1966. Under the Board policy established in May, Sweet Briar College announced the admission of its first Negro student.

December 2, 1966. In a two-to-one decision written by Judge Bryan, the three judges designated to try the case decided to abstain from any decision in the Sweet Briar injunction case "until the plaintiff exhausts the remedies available in the State Courts of Virginia." Judge Michie concurred with Judge Bryan in his decision and Judge Butzner dissented. In his dissenting opinion, Judge Butzner agreed with all major contentions of Sweet Briar's attorneys. His opinion states that the federal questions raised in the litigation "are independent and can be decided without resolution of state issues," and that the "threat of state control over admission policies" in violation of federal law was "real and imminent."[1]

January 4, 1967. Sweet Briar filed a notice of appeal from the District Court decision with the Supreme Court of the United States.

May 29, 1967. The Supreme Court of the United States, with two justices dissenting, reversed the judgment of the United States District Court and ordered the case "remanded (to the District Court) for consideration on the merits."[2] Thus the three-judge panel was required to render an opinion, from which it had previously decided to abstain.

[1] See Appendix B
[2] See Appendix C

July 17, 1967. Without hearing further argument, the three-judge court to which the case had been remanded (Judges Bryan, Michie, and Butzner) by unanimous decision permanently enjoined the Attorney General of Virginia, the Commonwealth's Attorney of Amherst County, and their successors in office, from seeking to enforce the racial restriction on Sweet Briar.[3]

The state of Virginia did not appeal this decision.

The decision of the Court gives legal endorsement to Sweet Briar's present policy of admitting students on standards of academic qualification and character, without regard to race, creed or color.

* * *

To the criticism that they have broken the will of Indiana Fletcher Williams, the Board's reply is that they have upheld the purpose of the will rather than adhere to the racial restriction, state-imposed, in the opinion of the Board.

In the future, as in the past, Sweet Briar College will continue to adhere to what, in the judgment of the Directors, is the primary objective expressed in the will of Indiana Fletcher Williams, namely:

> *It shall be the general scope and object of the school to impart to its students such an education in sound learning, and such physical, moral, and religious training as shall, in the judgment of the Directors, best fit them to be useful members of society.*

[3] See Appendix D and Appendix E

Appendix A

At its meeting on November 2, 1963, the Board of Sweet Briar College unanimously adopted the following preambles and resolutions:

WHEREAS Indiana Fletcher Williams of the County of Amherst, Virginia, by her last will and testament dated April 3, 1899, in the fulfillment of her own desire and of the especial request of her late husband, James Henry Williams, did bequeath Sweet Briar Plantation and other property, to certain trustees for the purpose of establishing a duly incorporated school 'for the education of white girls and young women' having 'the general scope and object . . . to impart to its students such education in sound learning, and such physical, moral and religious training as shall in the judgment of the directors best fit them to be useful members of society', as a 'perpetual memorial' to her deceased daughter Daisy Williams,

AND WHEREAS, certain questions have been raised as to the intention of the testatrix since her death in 1900 because of substantial changes in law and customs,

AND WHEREAS, the Board of Overseers of Sweet Briar College are desirous of fulfilling this obligation under the provisions of said will as well as their obligation to past, present and future students of Sweet Briar College,

AND WHEREAS, in administering the affairs of Sweet Briar College we are satisfied that we are governed by the will of our Founder benefactor and there are portions of the will which pertain to our admissions policy,

AND WHEREAS if these portions of the will applicable to the admissions policy may be interpreted to permit us today to admit persons regardless of race, we are willing to do so.

NOW, therefore, BE IT RESOLVED that we hereby authorize and direct the Executive Committee of the Board of Directors to employ counsel and to authorize them, in our name, to take whatever legal action may be necessary and appropriate to secure a judicial determination as to whether we may consistently with the charitable purposes of Indiana Fletcher Williams admit qualified persons to Sweet Briar College, regardless of race.

AND BE IT FURTHER RESOLVED that if the Court determines we may consistently with the will of Indiana Fletcher Williams admit qualified persons to Sweet Briar College regardless of race we hereby authorize the Executive Committee to take the necessary action in our name to have our charter amended to delete the word 'white' from the portion of the charter which refers to carrying on a school or seminary for the education of 'white girls and young women'.

Appendix B

Excerpts from the dissenting opinion of Judge John D. Butzner, United States District Judge. December 2, 1966.

I regret that I cannot join my brothers' view that we should abstain. I believe the federal questions raised in this action are independent and can be decided without resolution of state issues. Even if state law plays a crucial part, the defendants' plea that we abstain overlooks the college's argument that the state law is not ambiguous, that the Supreme Court of Appeals of Virginia has construed Virginia's pivotal statute, and that its decision is binding upon this court. Under these circumstances abstention is not appropriate. Cf. *Griffin* v. *School Board,* 377 U.S. 218, 229 (1964).

The college may prosecute simultaneous *in personam* actions in state and federal courts until one results in a judgment which can be asserted as *res judicata* in the other. *Kline* v. *Burke Const. Co.,* 260 U.S. 226 (1922). Abstention cannot be predicated on the defendants' plea of *res judicata.* Section 8-99, Code of Virginia 1950, provides in part:

> "In civil cases the court on motion of any party thereto shall, or of its own motion may, require the grounds of demurrer relied on to be stated specifically in the demurrer; and no grounds shall be considered other than those so stated, but either party may amend his demurrer by stating additional grounds, or otherwise, at any time before trial."

The statute applies when the demurrant states his grounds voluntarily. *Virginia & S.W. Ry. Co.* v. *Hollingsworth,* 107 Va. 359, 58 S.E. 572 (1907).

One defendant demurred on three specific state — not federal — grounds. The state judge wrote two opinions, which he incorporated in his order by reference. *Sweet Briar Institute* v. *McClenny,* No. 1383, June 3, 1965, April 6, 1966 (opinions); May 25, 1966 (order). He scrupulously observed the statutory restrictions limiting the scope of the demurrer and sustained it on state — not federal — grounds. He did not adjudicate the federal questions which the college asserts here.

The state court order sustaining the demurrer allowed the college to amend and continue the cause. The college amended, reserving for federal decision the federal questions. The order is interlocutory. §8-462, Code of Virginia 1950; *Commercial Bank* v. *Rucker,* 2 Va. Dec. 350, 24 S.E. 388 (1896). Its lack of finality renders it insufficient to sustain the defendants' plea of *res judicata.* ". . . it is familiar law that only a final judgment is *res judicata* as between the parties." *G. & C. Merriam Co.* v. *Saalfield,* 241 U.S. 22, 28 (1916).

The doctrine that a decree sustaining a demurrer decides every question which the parties might have litigated and had determined is not controlling. A federal court need not abstain from deciding a federal

question when the demurrer and the interlocutory decree sustaining it are drawn to dispose of the case on state grounds only. The rule expressed in *England* v. *Medical Examiners,* 375 U.S. 411 (1964) does not encompass this situation.

The federal questions which must be decided are: Do the Fourteenth Amendment and the Civil Rights Act of 1964 prohibit the state from enforcing the racially restrictive provisions of a will founding a private college? By enforcing the will, can the state compel the college officials, against their judgment, to exclude students on the basis of race?

The parties accept the premise that in the absence of state action the Constitution and laws of the United States do not prohibit a person from establishing by will a private college for the benefit of one race. But when the state — and not the college — enforces racial restrictions found in a will, the impact of state action must be examined in light of the Fourteenth Amendment and the Civil Rights Act of 1964. The pivotal issue is whether the discrimination is the product of state action. *Griffin* v. *Maryland,* 378 U.S. 130, 138 (1964) (Harlan, J., dissenting).

Consideration of the stance of the parties places the state and federal questions in perspective.

The college acknowledges that the defendants are authorized by §55-29, Code of Virginia 1950, to enforce the testamentary trust creating Sweet Briar. The college, however, asserts that the defendants, under the authority conferred by §55-29, cannot constitutionally enforce the racially restrictive language of the will. The college insists that the state is so involved with its origin and operation that a racially restrictive admission policy is the product of state action contravening Sweet Briar's rights under the Fourteenth Amendment.

The college's primary thrust is against §55-26, Code of Virginia 1950, which it contends validates bequests and devises for racially segregated schools only and leaves invalid bequests and devises for racially integrated schools.

A brief sketch of the history of charitable trusts in Virginia illustrates the college's position. *Gallego's Ex'rs* v. *Attorney General,* 30 Va. (3 Leigh) 450, 462 (1832) held that an Act of the General Assembly (Acts of Va., ch. 79, Dec. 27, 1792) repealed, in Virginia, England's Statute of Charitable Uses (1601), 43 Eliz. 1, c. 4, which permitted such devises for educational purposes. The common law of Virginia did not recognize the validity of charitable trusts in the absence of statute. Consequently, in *Literary Fund* v. *Dawson,* 37 Va. (10 Leigh) 147 (1839), a devise for educational purposes was held invalid.

In 1839 a statute, validating devises for the education of white persons, was enacted. Acts of Va., ch. 12, April 2, 1839. Not until 1873 were devises for the education of Negroes valid. Acts of Va., ch. 263, Mar. 28, 1873. These statutes have been codified in §55-26.

In April 1899 when the will benefiting the college was written and in 1900 when the testatrix died, the statute, for all purposes pertinent to this case, was similar to §55-26.

The college relies upon *Triplett* v. *Trotter,* 169 Va. 440, 193 S.E. 514 (1937), as a definitive interpretation of the statute. There a will establishing an educational trust without racially restrictive language was attacked by heirs on the ground that it did not meet the requirements of the statute. . . .

* * *

Bluntly stated, the college's position is that §55-26, as construed in *Triplett,* prevents a Virginia citizen from leaving his property to establish an educational institution as he sees fit. He must leave it for the education of white students or Negro students. Regardless of his wishes, he cannot provide that his estate shall educate both white and Negro students in the same institution. Even if his will states no preference, his trustees must elect whether the beneficiaries are to be white or Negro.

Buttressed by the interpretation placed upon §55-26 in *Triplett,* the college relies upon *Peterson* v. *City of Greenville,* 373 U.S. 244 (1963) and Mr. Justice White's concurring opinion in *Evans* v. *Newton,* 382 U.S. 296, 302 (1966), to sustain its contention that the restrictive language in the will must be deemed the product of Virginia law in effect at the testatrix's death.

As a further evidence of state action, the college points to §140 of the Virginia Constitution prohibiting integrated schools, the Sweet Briar charter granted by Act of the General Assembly imposing racial restrictions in accordance with the language of the will, and miscellaneous statutes pertaining to colleges in general.

Finally, the college relies upon §§202, 203, 204 and 207 of the Civil Rights Act of 1964.

The defendants deny that §55-26 compelled the testatrix to insert the racially restrictive provision in her will. They point out that *Triplett* v. *Trotter,* 169 Va. 440, 193 S.E. 514 (1937), was not decided until more than a third of a century after the will was written.

The defendants deny that they seek to enforce §55-26, which they characterize as merely a declaratory statute validating charitable trusts.

The defendants assert that §140 of the Constitution refers to public, not private, schools. They deny that the Act of the Assembly chartering the college and the miscellaneous statutes pertaining to colleges significantly involve the state in the affairs of the college.

The defendants characterize the will as private action founding a private college by a private individual for the members of a particular race. In urging that such a will violates no constitutional provision they cite Mr. Justice Douglas' statement in *Evans* v. *Newton,* 382 U.S. 296, 300 (1966):

"If a testator wanted to leave a school or center for the use of one race only and in no way implicated the State in the supervision, control, or management of that facility, we assume *arguendo* that no constitutional difficulty would be encountered."

Although the defendants do not rely on §140 of the Virginia Constitution or §55-26, Code of Virginia 1950, the threat of state control over the admission policies of the college is real and imminent. After the college officials expressed their determination to admit Negroes, the Commonwealth's Attorney for Amherst County moved a state court to cite the Board of the College for contempt. In April 1966 the state court denied the motion. The state judge's opinion indicates, however, that the motion was denied because the college had not yet put into effect its proposed change in admission policy.

A state court has ruled that the language of the will is clear and unambiguous. For the purpose of this action, neither party alleges any ambiguity in the will. Both plaintiff and defendants are in agreement that the defendants are state officials charged by statute, §55-29, with the responsibility of enforcing the trust creating the college.

The defendants, by claiming authority under §55-29 to enforce the racial restrictions in the will without reliance upon §140 of the Virginia Constitution and §55-26, eliminate questions concerning the validity and application of these constitutional and statutory provisions. The defendants' position places in stark relief the federal questions that must be decided. Only if the state by enforcing the racially restrictive provisions of the will is empowered to compel the college officials against their judgment to exclude students on the basis of race need this court pursue the allegations that the racial restrictions found in the will originated in state action repugnant to the Fourteenth Amendment. . . .

* * *

Referring at some length to the decision by the Supreme Court of the United States in the case, *Pennsylvania* v. *Board of Trusts* (Girard College) 353 U.S. 230 (1957), Judge Butzner continued:

The Supreme Court held in *Board of Trusts* that agents of the state, serving as trustees, could not constitutionally enforce the racially restrictive provisions of the will establishing Girard College. The case provides precedent for holding that state officials cannot enforce the racially restrictive provisions of the will establishing Sweet Briar College by compelling the Board, through threat of contempt, or otherwise, to admit only white students. Racial exclusion achieved by these means is the product of state action and is forbidden. Section 55-29 is not unconstitutional upon its face. However, the Fourteenth Amendment renders impermissible the use of this section to enforce racial segregation at the college.

The court must also consider the college's alternative ground for relief under the Civil Rights Act of 1964. . . .

The legislative history indicates that Section 202 of the Act covers any establishment or place where discrimination is state imposed. Section 202 is not limited to places of public accommodation. This limitation is found only in Section 201.

H.R. Rep. No. 914, 88th Cong., 2d Sess. 2391, 2396 (1964) states:

> "Section 202 requires nondiscrimination in all establishments and places whether or not within the categories described in section 201, if segregation or discrimination therein is required or purports to be required by any State law or ordinance."

The breadth of Section 202 was recognized in the *Minority Report upon Proposed Civil Rights Act of 1963, Committee on Judiciary Substitute for H.R. 7152,* 88th Cong., 2d Sess., 2431, 2444 (1964):

> "3. There was added in the reported bill Section 202 which did not appear in any previous version of the bill. This section would make unlawful 'discrimination or segregation of any kind on the ground of race, color, religion, or national origin' *'at any establishment or place,'* if either purports to be required by any rule, order, etc., of any State or any agency or political subdivision thereof. This section is not limited to public places or facilities. As hereinafter pointed out, under the penal provisions of section 203, this amounts to an unconstitutional abridgement of freedom of speech, freedom of the press, and attempted Federal control of State and municipal judges and law enforcement officers."

The hallmark of Section 202 is the source of the discrimination, not the kind of establishment. The Bureau of National Affairs commented upon Section 202 in *The Civil Rights Act of 1964: Text, Analysis, Legislative History (1964),* 85:

> "When segregation or discrimination 'is or purports to be required' by state or local law or by order of state or local officials, then Title II's prohibition comes into play regardless of the public or private character of the facility involved and regardless of the type of service it renders or the type of clientele it serves. Section 202 prohibits discrimination in 'any establishment or place' where it is required by state law. Here seems to be implementation of the Fourteenth Amendment in its fullest scope. There is no requirement that the 'place' be one of 'public accommodation,' that it be a place of business, or even that it not be a private club."

Section 202 of the Act frees the college and its students from state imposed discrimination. Section 203 forbids the defendants' attempt to punish by contempt the college officials for exercising the rights granted by Section 202. Section 204 authorizes injunctive relief. This court must exercise the jurisdiction conferred upon it even though the plaintiff may have other remedies. Section 207 expresses a Congressional command that prohibits abstention.

Appendix C

Decision of the United States Supreme Court, May 29, 1967

Per Curiam.

The judgment of the United States District Court for the Western District of Virginia is reversed. *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411 (1964). The case is remanded for consideration on the merits. Section 202 of the Civil Rights Act of 1964, 78 Stat. 244, 42 U.S.C. §2000a-1. *Kline* v. *Burke Construction Co.,* 260 U.S. 226.

Mr. Justice Harlan and Mr. Justice Stewart would affirm the judgment.

Appendix D

Decision of the United States District Court for the Western District of Virginia, at Charlottesville. Civil Action No. 66-C-10-L (Argued July 6, 1966; Decided July 14, 1967).

Albert V. Bryan, Circuit Judge:

On the appeal of Sweet Briar Institute, our order of abstention was reversed by the Supreme Court with directions for consideration of the case on its merits. The present posture of the suit is, then, that it stands *sub judice* for decision on the original submission. Because our first opinion recited the history of the litigation, the material facts and the adversary contentions, we go immediately to the issue at hand: whether the State of Virginia may enforce the provision in the will of the founder of the college restricting enrollment to "white girls and young women."

We conclude it cannot. The State cannot require compliance with the testamentary restriction because that would constitute State action barred by the Fourteenth Amendment. This was the express holding in the Girard case, *Pennsylvania* v. *Board of Trusts,* 353 U.S. 230 (1957).

A permanent injunction will be issued accordingly.

Appendix E

Final Order of the United States District Court for the Western District of Virginia, at Charlottesville. Civil Action No. 66-C-10-L. July 17, 1967.

FINAL ORDER

In accordance with the opinion and mandate of the Supreme Court of the United States, it is ordered that the order of this court entered in this cause on December 7, 1966, as amended on December 29, 1966 be, and it is hereby vacated.

Upon consideration of the merits of the cause in accordance with the directions of the said opinion and mandate, it is ordered that, for the reasons set forth in the opinion of this court filed herewith, the defendants and their successors in office be, and each of them is hereby, permanently enjoined and restrained from enforcing against the plaintiff the provision in the will of the late Indiana Fletcher Williams, dated April 3, 1899, admitted to probate in the County Court of Amherst County, Virginia and recorded in Will Book 23 page 493, limiting the education in Sweet Briar Institute of only such girls and young women as are of the white race.

It is also ordered that the plaintiff recover of the defendants its costs in this action and that this case be stricken from the docket.

And this decree is final.

s/ Albert V. Bryan
United States Circuit Judge

s/ Thomas J. Michie
United States District Judge

s/ John D. Butzner, Jr.
United States District Judge