

purported Interim Board at any time in the future;

- G. For an award of reasonable attorney's fees and costs;
- H. For such other legal and equitable relief the Honorable Court deems just and proper.

Respectfully submitted,



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**Attorneys for Plaintiffs Dr. Richard Taylor, Dr.
Parker Young, J. David Chesnut, and the Erskine
Alumni Association**

Date: March 15, 2010
Greenville, South Carolina

Report of the Moderator's Commission on Erskine College and Seminary

March 2, 2010

The delegates of the 2009 meeting of the General Synod instructed the Moderator to "form a special commission to investigate whether the oversight exercised by the Board of Trustees and the Administration of Erskine College and Seminary is in faithful accordance with the standards of the ARP Church and the synod's previously issued directives." The commission was further directed "to report back to General Synod no later than the 2010 meeting of General Synod with a report and the Commission's findings and recommendations."

ARP Standards and Previously Issued Directives

The Moderator's Commission finds that over the last thirty-plus years the General Synod has been clear in stating its purposes and objectives for Erskine, has frequently reaffirmed those objectives, and has issued directives to guide the college in adherence to Synod's standards. We offer the following examples of these directives:

Christian higher education offers "... a unique opportunity to present Christ and the Christian viewpoint and to demonstrate in a tangible way the value of a life which is lived in right relation to God and man."¹

"The Board of Trustees, through the Administration, must seek faculty members having professional competence, moral sensitivity and genuine Christian commitment."²

"As a Christian college, the uniqueness of each individual is a basic premise, but the universality of our human dependence on Jesus Christ as the ultimate Word is equally fundamental, the point of reference for all knowledge and all experience being Biblical revelation and authority."³

"The curriculum for Erskine College ... should be broadly based, with the Christian perspective as the positive integrating factor for all of the disciplines."⁴

"In order for the goals and purposes of the Associate Reformed Presbyterian Church in Christian higher education to be realized, Erskine College, through its Board of Trustees, administration and faculty, must be in harmony with the principles and goals of the Associate Reformed Presbyterian Church. Within this context, the College has a responsibility to bring its theological reflections to bear upon the life of the Church."⁵

"Erskine College and Seminary should intentionally aim to disciple their students with a kingdom perspective and a biblically Reformed world and life view. Both the College and the Seminary should encourage students to acknowledge the Lordship of Jesus Christ in all areas of life, and they should model the integration of Christian faith and learning."⁶

¹ Manual of Authorities and Duties, Report of the Special Committee on Christian Education, "Philosophy of Christian Higher Education," (adopted by General Synod, 1977), 2009 p. 37

² Ibid, p. 40

³ Ibid, p. 40

⁴ Ibid, p. 40

⁵ Ibid, p. 40

⁶ Minutes of Synod, Report of the Vision Committee, (adopted by General Synod 2007), 2007 p. 24

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Further, the mission statements of the College and Seminary indicate the Synod's success in clearly communicating these matters.

"The mission of Erskine College is to equip students to flourish by providing an excellent liberal arts education in a Christ-centered environment where learning and biblical truth are integrated to develop the whole person." ("Erskine College Mission Statement")

"...from its inception, Erskine College has been committed to the principle that facts and values-learning and faith-are inseparable." (Mission Statement - "Historical Perspective")

"This environment fosters an educational ethos whose personnel, policies, and teaching are informed and animated by the sovereignty of God over all the created order. Erskine encourages wholesome living and calls the entire community to glorify God and enjoy him forever." (Mission Statement - "Our Commitments")

"At Erskine the integration of learning and biblical truth is an ongoing process of seeking to discern and develop the integral relationships between reason and revelation. In this process human learning informs the development of a Christian worldview, and biblical revelation informs the content and practice of human learning." (Mission Statement - "Our Commitments")

The Board of Trustees

The first hallmark of a well-structured board is that its size and make up are appropriate to effectively safeguard the assets and accomplish the mission with which it has been entrusted. As to size, very large governing boards have a difficult time getting down to business and making decisions. As to make up, successful governing boards include individuals who are knowledgeable (e.g., accounting, business, law, finance, theology, education, ethics), and who are enthusiastically committed to the stated mission of the organization.

The essential qualifications of a good board member are that he or she must be competent, engaged and independent. This is especially true for a non-profit institution of higher education, for which many duties under federal and state law must be satisfied, in addition to the requirements of accrediting agencies and other oversight authorities. We find that the Board of Erskine has not historically and uniformly met these standards of competence, engagement and independence. There are perhaps many reasons for this, but the sheer size of the board and the way it carries out its business figures prominently in the equation. The thirty members of the board, plus four ex-officio members and its twenty-three advisory members, cannot function effectively and engage in meaningful deliberation and decision-making. The executive committee is delegated most of the substantive work of the board, rendering a majority of board members less engaged than necessary. The Commission finds that the Board is not uniformly competent, engaged and independent, as a consequence of its unwieldy structure. The Commission finds that the requirement of the bylaws that at least fifty percent of the members must be graduates of Erskine College and/or Seminary further adds to the general lack of independence. The Commission finds that the requirements of the bylaws that the many Advisors to the Board "shall have equal seat and voice in all meetings of the Board and are entitled to receive the same minutes and notice of meetings of the Board to which members are entitled" hinder the effectiveness and independence of the Board. If a governing board tolerates a climate of secrecy or neglect, the charitable assets may be diverted to benefit the private interests of insiders and the mission of the organization may be thwarted by those charged with implementation of the mission.



The second hallmark of a strong and effective board is that it is independent from the administration. The Board is to establish policy and set guidelines for the mission of the institution, and then exercise the proper amount of oversight by asking the hard questions. There must be a healthy tension between the Board and the administration, with the Board able and willing to require the administration to account for its performance. The Commission finds that the Board has not exercised adequate oversight over the administration and faculty. The Commission finds that there have been a number of financial irregularities and administrative failures which underscore the lack of oversight by the Board.

The third hallmark of an effective board is that it ensures that the mission of the institution, as set forth in its mission statements and other governing instruments, is accomplished. In the case of Erskine, the guiding principles of the Philosophy of Christian Higher Education and the similar directives of the Associate Reformed Presbyterian Church, which owns Erskine and appoints its board, constitute its mission. The Commission finds that the ARP's directives have not been satisfied, even though this discussion has taken place regularly over the course of the last thirty years.

The Commission reiterates that any findings related to the views and performance of the administration and faculty are, in the nature of the case, intended to underscore the lack of effective oversight by the Board. The Board sets policy and the administration carries it out; but a consistent and long-term failure to operate in a manner consistent with the mission of the institution ultimately comes back to the Board.

Findings

The Moderator's Commission on Erskine finds that the oversight exercised by the Board of trustees and the Administration of Erskine College and Seminary is not in faithful accordance with the standards of the ARP Church and the synod's previously issued directives.

Recommendations

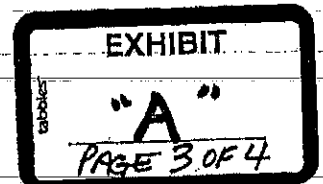
1. Restructuring the Board: The bylaws of the Board of Trustees shall be revised by a committee of five members: [redacted], and [redacted], and [redacted].

These bylaws shall include: that the composition of the board shall be 16 members (five classes of three plus the current Moderator) and more effective policies to prevent further failures regarding financial integrity, conflicts of interest, integration of faith and learning, board training, and other issues identified by the commission. These policies must align with Synod's Philosophy of Christian Higher Education and Erskine's current mission statements. These revised bylaws shall be adopted by the full board at its May 2010 meeting, and subsequently presented to the Synod for adoption at its June 2010 meeting.

2. Replacement Interim Board: The current trustees shall be removed and replaced by the following individuals: [redacted]

[redacted]

The interim board will also include the four ex-officio members per the current bylaws. The moderator of the ARP Church shall convene the interim board.



3. Nominations Process: The revised bylaws shall strike the second sentence of Article II, paragraph 3 of the current bylaws regarding nominations to Synod's committee on nominations. Likewise, the following portions of the "Guidelines For Committee on Nominations" (Manual of Authorities and Duties, 2008, p. 84-85) shall be changed: guideline 5 shall be amended to read, "Prospective nominees are contacted to confirm their willingness to serve."; guideline 8(h) shall be removed. Nominations for Erskine trustees shall be made annually by a special committee consisting of the then-current moderator and the four immediate past moderators, based on the new criteria for trustees. The recommendations of this committee shall annually be presented to the General Synod at its stated meeting.

4. Criteria for Trustees: The special committee for the nomination of Erskine trustees will adopt the following criteria for potential trustees: The Board must consist of individuals who are competent, engaged, and independent. Trustees shall include individuals who are knowledgeable in different areas such as accounting, business, education, ethics, finance, law, ministry and theology, and who subscribe to the mission of Erskine College and Seminary as set forth in its mission statements. Such individuals should be able and willing to be adequately engaged in the life of the institution to guide and monitor its achievement of the stated mission. Such individuals must be sufficiently independent of the administration and faculty to bring a healthy balance of support and oversight. All trustees must subscribe to Synod's definition of an evangelical Christian.

Respectfully Submitted,

George S. Robinson
Chairman
Moderator's Commission on Erskine



Subject: Re: Called Meeting of the Erskine Trustees

From: [Redacted]

Date: Sat, 6 Mar 2010 16:08:56 -0500

To: [Redacted]

I will attend the Board of Trustees meeting scheduled for March 17, 2010.

On Sat, Mar 6, 2010 at 2:42 PM, [Redacted] wrote:

March 6, 2010

Dear [Redacted],

For the Moderator's Commission I write now to thank you for agreeing to serve as a trustee of Erskine College and Seminary during this critically important period in the long and noble history of our church's educational ministry. I believe that the future for these institutions is bright and full of promise.

As you know, the General Synod appointed me to convene the new Board of Trustees. It is essential that we meet as soon as possible to elect a chairman and other officers as well as to authorize the continuing presidential search. I am calling a meeting of the Board of Trustees for Wednesday, March 17, at 11:00 a.m. on the Erskine campus. You will be receiving more specific information next week, but I hope and expect that we shall be able to complete our business in three or four hours. I apologize in advance for the time and expense necessarily involved, but the current Bylaws make no provision for a long-distance meeting by telephone. It is my expectation that only one additional meeting will be required in May to discuss and adopt the changes in the Bylaws as directed by our synod on March 3.

The Board of Trustees will meet in executive session to elect officers and take other initial steps to organize itself and to fulfill the mandates by its Bylaws and the General Synod. Following the executive session, the board will then meet with its advisory members.

Please respond to [Redacted] with a confirmation that you will be able to attend this important meeting. She can be reached by telephone [Redacted] or by e-mail ([Redacted]). If you have questions about Erskine, the board, and the work in hand on March 17, you may contact me at my e-mail address [Redacted] or by telephone ([Redacted]).

With much gratitude for your service to the Lord, his church, and Erskine, I am,

Very truly yours,

Dick (John R.) de Witt
Moderator of the General Synod

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THE STATE OF SOUTH CAROLINA

EXECUTIVE DEPARTMENT

By the Secretary of State

No. 4807

Whereas, E. D. Sloan, Jr., C. R. Beard, Dwight L. Pearson, N. S. Bell, B. D. Wyse, Jr., Jean Galloway Bissell, Clyde Tate McCants, and Davis

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A majority of the Board of Directors of

TRUSTEES OF ERSKINE COLLEGE

AN ACT dated
a corporation created under and pursuant to the laws of South Carolina, by ~~CONFIDENTIAL~~
~~XXXXXXXXXXXXXXXXXX~~ the 20th day of December, A.D. 1850.

HAVE CERTIFIED, over their signatures, Resolutions authorizing in behalf of the aforesaid Corporation

RESOLVED that we desire that the Charter of the Trustees of Erskine College be amended and restated in its entirety so that it shall read:

"FIRST: The name of the corporation, chartered by Act Number 4014 of the A. D. 1850 General Assembly of South Carolina, shall be Erskine College:

"SECOND: The principal office of the said corporation shall be in Due West, S. C.

"THIRD: The purpose of the said corporation shall be to own, maintain, and operate without profit, as a charitable or eleemosynary corporation of the type described by Title 12-751 et seq. of the Code of Laws of South Carolina 1962, a college, which might include from time to time professional and graduate schools, which educational institution shall have the authority to confer and award all such distinctions, honors, licenses, and degrees as are usually conferred and awarded by colleges and universities of the State of South Carolina and of these United States of America.

"FOURTH: In the event that this corporation or its successors should ever be dissolved, the net assets remaining shall pass to the General Synod of the Associate Reformed Presbyterian Church or its successors. Any change in this section of this Charter must have prior approval of both the General Synod of the Associate Reformed Presbyterian Church and the Board of Trustees of the College.

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|-----------------|------------------------|--------------------|--------------------|
| J. C. Barker | Columbia, S. C. | J. T. Mitchell | Macon, Ga. |
| C. R. Beard | Columbia, S. C. | T. G. Morris | Pottsville, Ark. |
| J. M. Bell | Spottwood, Va. | J. R. Moss | York, S. C. |
| M. S. Bell | Dur West, S. C. | B. R. Nowak | Flat Rock, N. C. |
| J. G. Bissell | Columbia, S. C. | E. B. Parkinson | Greenville, S. C. |
| R. L. Bradford | Statesville, N. C. | J. H. Patrick | Greenwood, S. C. |
| W. Branch | Signal Mountain, Tenn. | D. L. Pearson | Chester, S. C. |
| L. I. Davis | Greenwood, S. C. | R. J. Robinson | Rock Hill, S. C. |
| S. B. Gambrell | New York, N. Y. | H. E. Prossly, Jr. | Charlotte, N. C. |
| T. S. Gettys | Rock Hill, S. C. | W. H. Stuart, Jr. | Bartow, Fla. |
| Carl Horn, Jr. | Charlotte, N. C. | E. D. Sloan, Jr. | Greenville, S. C. |
| F. M. Hunt | Lake Wales, Fla. | S. H. Sullivan | Williamston, S. C. |
| I. T. Kennedy | Charlotte, N. C. | J. R. Wolff | Clover, S. C. |
| C. T. McCants | Greenville, S. C. | B. D. Wyse, Jr. | Chattanooga, Tenn. |
| O. N. McCarter | Covington, Tenn. | C. R. Younts | Atlanta, Ga. |
| R. J. Marshburn | Doraville, Ga. | | |

The Membership of the Board of Trustees and voting rights shall be as set forth in the Bylaws of this Corporation. The Trustees currently serving shall constitute the initial Board of Trustees under this amended and restated Certificate of Incorporation.

"SIXTH: That the Corporation is incorporated in perpetuity."

WHEREFORE, your Petitioners pray that the Secretary of State do issue to the aforesaid Erskine College an amended and restated Certificate of Incorporation, with all the rights, limitations and liabilities conferred by Chapter 13, Title 12, 1962 and Acts amendatory thereto, to provide for the incorporation of religious, national, social, fraternal or charitable churches, lodges, societies, associations, or companies, and for amending the charters of those already formed and to be formed, and

Be it further resolved that a majority of the members of the Executive Committee of the Board of Trustees is authorized to execute all documents necessary to obtain a restated Charter in conformance with the above.

(authorized and set forth in the certificate aforesaid), which Resolutions were adopted pursuant to law, at a meeting of the members of the aforesaid Corporation, of which five days' notice was given, which notice stated the purpose of the aforesaid meeting, and further, that said Resolutions were adopted by a majority vote, and that in all respects there has been complied with the provisions of Title 12, Chapter 13, Code of Laws of South Carolina, 1962, and all amendments thereto.

NOW, THEREFORE, I, O. Frank Thornton, Secretary of State, by virtue of the authority in me vested by Chapter aforesaid, of the Code of Laws of South Carolina, 1962, and amendments thereto, do hereby certify that the requirements of law for said amendment have been complied with, and for good and sufficient reasons to me appearing, do hereby certify that the charter of the aforesaid Company has been so amended.

GIVEN under my hand and the seal of the State at Columbia, this 3rd day of February in the year of our Lord One Thousand nine hundred and 77 and in the ~~20th~~ 201st year of the Independence of the United States of America.

O. Frank Thornton

O. FRANK THORNTON,

Secretary of State

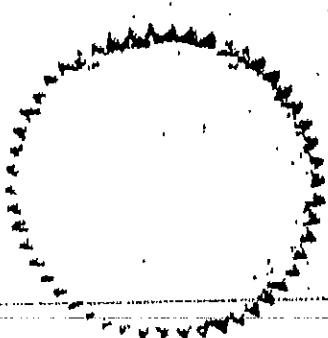


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