

Nation's Higher Education Community Supports Tulane in Lawsuit

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mstreck@tulane.edu
504-865-5210

The most prestigious higher education associations in the country have sided with Tulane University in the ongoing litigation over its 2005 post-Katrina decision to merge its seven undergraduate schools and colleges, including Newcomb College, into a single, unified undergraduate unit known as Newcomb-Tulane College.

Eight different governing bodies, including the Association of Governing Boards of Universities and Colleges, the American Council on Education, the Association of American Universities, and the Louisiana Association of Independent Colleges (with Loyola University in New Orleans) have filed amicus briefs in support of Tulane's position. The associations are not a party to the litigation but conveyed their positions in amicus or "friend of the court" briefs, which courts allow to be submitted by outside parties concerned with the outcome of a case.

The academic associations "uniformly considered the voice of higher education - are troubled by numerous issues raised in the appeal. Their briefs cite longstanding precedent regarding the proper interpretation of wills which America's colleges and universities rely upon to administer their own endowments. The supposed heirs of Mrs. Newcomb argue that Mrs. Newcomb's will restricts Tulane from doing anything other than preserving a "degree-granting college" for women, even though that term appears nowhere in her will or letters to Tulane.

The higher education community vehemently opposes an extraordinary proposal by the plaintiffs to seize control of the Newcomb endowment and assign it to a committee of overseers chosen by the plaintiffs to be managed outside of the university's normal and longstanding governance model.

The Association of Governing Boards of Universities and Colleges argued such a remedy would set a "very dangerous precedent" by asking the courts to substitute their judgment for that of university administrators. Courts would be required "to

revisit complex education decisions whenever a university governing board's decision dissatisfied some university constituency." (*Amicus Brief filed by the Association of Governing Boards of Universities and Colleges, p.7.*)

The American Council on Education agreed, writing: "These suggested remedies are antithetical to academic freedom and the strong tradition of judicial deference to university decision making. [We] are not aware of any case where a court has mandated such a thorough evisceration of academic discretion as proposed to this Court by Applicants and their supporting amicus." (*Amicus Brief filed by American Council on Education, et al, p. 6.*)

The higher education community conveyed its extreme alarm at the thought of empowering distant heirs with the right to revoke a will centuries later. "The notion that a university must account to descendants of a donor in perpetuity, subject to potential revocation, for a condition inferred decades or centuries after the gift will have a devastating impact on higher education in Louisiana and throughout the United States." (*Amicus Brief filed by American Council on Education, et al, p. 2.*)