

Virginia Viewpoint

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The James Monroe Memorial Foundation: A Trust Betrayed by the Commonwealth

By G. William Thomas, Jr.

Summary

If the Commonwealth of Virginia starts ignoring conditions that donors place on gifts to the state, what philanthropist in his right mind would give anything to the Ol' Dominion?

Main text word count: 805

If a major donor gives funds to a Virginia public university to construct and provide operating endowments for an art museum named for the donor, is the university free to cancel plans for the museum and transfer the funds to the athletic department?

Litigation now pending in the Circuit Court of the City of Richmond by the James Monroe Memorial Foundation against Governor Warner is the latest installment in a sad story of the Commonwealth of Virginia's treatment of a major donor.

The James Monroe Law Office Museum and Memorial Library in Fredericksburg was established in 1927 by Laurence Gouverneur Hoes, the great-great-grandson of James Monroe, to honor President Monroe's accomplishments. Artifacts related to the president were collected from family members or purchased, and a museum and library were established at the site of President Monroe's former law office in Fredericksburg.

In 1947, the James Monroe Memorial Foundation was established by Laurence Gouverneur Hoes to own and operate the museum and to provide for educational and preservation programs related to President Monroe.

The museum was given to the commonwealth in 1964 by the foundation, subject to a number of conditions. One of the conditions in the 1964 deed of gift from the foundation to the commonwealth was that the state agency created to operate the museum, the Board of Regents of the James Monroe Law Office Museum and Memorial Library, would have half its members nominated by the foundation and half nominated by the University of Virginia. The General Assembly passed legislation expressly to accept the terms of the deed of gift. The foundation has continued to be actively involved with the museum since 1964, providing the museum with artifacts and financial support.

With the creation of Mary Washington College in 1972, the assets of the University of Virginia in Fredericksburg were transferred to Mary Washington, with sweeping language in the transfer statute as to the powers of the college. The foundation reluctantly agreed to this transfer on the basis of verbal promises from the then-president of Mary Washington that nothing would change in the relationship.

In 1981 the college successfully sued the foundation, claiming that the language in the 1972 transfer statute had given Mary Washington control over the museum and that the role of the Board of Regents was merely advisory.

In 2002, another round of betrayal began. Senator John Chichester, at
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the request of the college, put language in the budget bill allowing the governor to name whomever he desired to the Board of Regents, as opposed to accepting half the nominees from the foundation and the other half from Mary Washington.

In November 2002, at the urging of the college, the governor ignored the foundation's nominees and appointed a Board of Regents composed only of Mary Washington's nominees. Since most of these members are now Mary Washington employees, the governor has created an advisory board in which the college is essentially advising itself. Shortly after their appointment, the members of the new board voted to abolish it; however, the Joint Legislative Audit and Review Committee rejected this violation of the original deed of gift.

The attorney general's office advised the governor's counsel that the governor's fall 2002 appointments violated the deed of gift, and the foundation would prevail if it sued the commonwealth on this issue. In the 2003 General Assembly, both the House and Senate Privileges and Elections Committees unanimously rejected the governor's nominees. Senator Chichester worked behind the scenes to persuade both the House and the Senate to ignore the committee reports and to approve the nominees. The governor has refused to make new appointments consistent with the deed of gift.

In March 2003 the foundation sued Governor Warner to nullify his appointments to the Board of Regents, to make new appointments consistent with the deed of gift, and to affirm the terms of that agreement. The illegally constituted Board of Regents has elected new officers and amended its bylaws in ways that violate the terms of the deed of gift.

The commonwealth's defenses against the current litigation include claims that, because the Board of Regents is now merely an advisory board, the commonwealth is free to ignore all legal requirements with respect to that board, including presumably the Freedom of Information Act, conflict of interest, and other legal requirements normally applicable to state advisory boards.

A hearing that is likely to determine the outcome of the case has been set for June 23, 2003.

Issues posed for the commonwealth by this case include the following:

- Will the commonwealth honor restrictions on gifts by major donors? If a major donor gives funds to a Virginia public university to construct and provide operating endowments for an art museum named for the donor, is the university free to cancel plans for the museum and transfer the funds to the athletic department?
- Is the 2002–2003 budget provision an impairment of contract by the legislature in violation of the U.S. and Virginia Constitutions?
- Can the commonwealth ignore all legal requirements for advisory boards?
- Is the commonwealth's word no longer its bond?

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(G. William Thomas, Jr., is the president of the James Monroe Memorial Foundation. **Permission to reprint in whole or in part is hereby granted, provided the author and his affiliations are cited.**)

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