

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

THE TRUSTEES OF THE CORCORAN
GALLERY OF ART,

Petitioners,

v.

THE DISTRICT OF COLUMBIA,

Respondent.

Civil Action No. 2014 CA 003745 B

Judge Robert D. Okun

SEBASTIEN ARBONA, ROBIN DAVID
BELL, REUBEN SAMUEL BRESLAR,
CAROLYN CAMPBELL, LORENZO
CARDIM, AVIJIT GUPTA, CAROLINE
LACEY, PATRICK MASTERSON, JAYME
MCLELLAN, NATALIE FULGENCIO
PEREZ, THOMAS ROBERT PULLIN,
ELIZABETH PUNSALAN, LINDA
CROCKER SIMMONS, and SAVE THE
CORCORAN on behalf of all others similarly
situated,

Plaintiffs,

v.

THE TRUSTEES OF THE CORCORAN
GALLERY OF ART,

Defendants.

Civil Action No. 2014 CA 003745 B

Judge Robert D. Okun

COMPLAINT AND PETITION TO INTERVENE IN *CY PRES* PROCEEDINGS

Pursuant to D.C. Superior Court Rule of Civil Procedure 24(a) and (b), SEBASTIEN
ARBONA, ROBIN DAVID BELL, REUBEN SAMUEL BRESLAR, CAROLYN CAMPBELL,

LORENZO CARDIM, AVIJIT GUPTA, CAROLINE LACEY, PATRICK MASTERSON, JAYME MCLELLAN, NATALIE FULGENCIO PEREZ, THOMAS ROBERT PULLIN, ELIZABETH PUNSALAN, LINDA CROCKER SIMMONS, and SAVE THE CORCORAN (“STC members,” collectively “STC”), on behalf of themselves and all others similarly situated, respectfully seek leave of this Court to intervene in the above-entitled matter for the purpose of opposing Petitioners’ Petition for *Cy Près* Determination (“Petition”). STC alleges on knowledge as to the above parties, and on information and belief as to all other matters, as follows:

1. Petitioners have opened and now expedited this *cy pres* proceeding in order to secure the ultimate demise of the Corcoran Trust (“Trust”). Let there be no mistake: Petitioners request the total destruction of the Corcoran, and they seek to dissolve the Corcoran on terms that are mystifying to students, faculty, donors, and the arts community. Rather than chart a course that remains even remotely faithful to the terms of the Trust, the supposed “next best” remedy proposed by Petitioners is no “remedy” at all. It is complete surrender and abdication. The Corcoran will give its highly esteemed school and Flagg Building to George Washington University (“GW”) and receive nothing in return. The Corcoran will provide the very best of its collection of American art to the National Gallery of Art (“NGA”) and receive nothing in return. And the Corcoran will contribute as much as \$50 million in cash to effectuate the GW and NGA takeover—for nothing in return. The Trustees of the Corcoran ask the Court to commit the gravest form of fiduciary breach: to destroy the very institution they are charged with protecting. Petitioners do not come to this Court to save the institution; they come to eradicate it.

2. Students and faculty of the Corcoran College of Art + Design (the “College”), staff and donors involved with the Corcoran Gallery of Art (“Gallery”), and non-profit Save the

Corcoran (collectively, “STC” or “STC members”)—all of whom will be profoundly affected by the result of these proceedings—have therefore brought this Complaint in intervention to prevent the Corcoran’s Board of Trustees (“Trustees” or “Board”) from destroying the institutions established by the Corcoran Trust (collectively, “Corcoran”). STC requests intervention to restore transparency to the Trust’s management, to provide the Court with full information about the historically significant issues that have been placed in its hands, and to ensure that the Trust remains true to its founding documents and purpose.

3. The Corcoran has a long and esteemed history as D.C.’s first and largest private art museum and is one of the oldest museums in the country. In 1869, William W. Corcoran conveyed by deed to a “Board of Trustees” certain property to “establish an institution in Washington City, to be ‘dedicated to Art,’ and used solely for the purpose of encouraging American genius.” The Trust also provides that Trust property must “be held, managed, limited, used and devoted to executing the trusts,” one purpose of which is the “**perpetual** establishment and maintenance of a Public Gallery and Museum for the promotion and encouragement of the arts of painting and sculpture, and the fine arts generally.” (emphasis added).

4. In 1878, Mr. Corcoran donated additional funding to establish the College. Founded in 1890, the College now enrolls over 600 undergraduate and graduate students and is the only college of art and design in Washington, D.C. The Corcoran College of Art + Design stands out among arts schools across the nation: it is one of just two art schools that combine a school setting with a world-class museum and gallery. This extraordinary combination of facilities offers students the unique opportunity to exhibit their work in a major art museum.

5. The collection established through W. W. Corcoran’s own purchases and through the formation of the Gallery is one of the greatest collections of American art ever assembled.

The former head of the Museum of Fine Arts once deemed the Corcoran collection “without precedent in American art history.” As Washington author and art critic Frank Getlein has explained, “the Corcoran’s collection is the best readily available summary of a new country, a new mind, new vision” *It is a piece of history.*

6. With its historic collection and unique school-gallery setting, the Corcoran has been at the heart of the D.C. art world for well over a century. Despite the vagaries of the economy and competition against federally funded institutions that receive public subsidies, it has managed to thrive, at least until relatively recently. Just one decade ago the Corcoran managed to raise the largest amount in annual charitable pledges and donations of any private institution in the District of Columbia—ever—to go towards the building of a new wing. It did so by articulating a distinctive vision of how the Corcoran legacy could define the arts landscape of the District of Columbia. But those fundraising successes are a thing of the past.

7. It is now evident that the Board of Trustees has stopped believing that the Corcoran can or should remain a vibrant, independent institution. The Board has halted fundraising and efforts to reach out to new leadership. In the last several years alone, the Board has engaged in a bewildering, mystifying series of steps that violate its trust obligations and charter and cast its judgment into serious question:

a. The Board first announced that it would sell the historic Flagg Building, what one former Director of the Corcoran considers “without doubt, the single most important artwork in [the Corcoran] collection.” The Board invested considerable sums of money in buy-side and sale-side brokerage requests for proposal in furtherance of this sale. As reasons for the move, the Board cited inflated renovation costs of upwards of \$130 million—costs that the Board now estimates would be only \$70 million. The Board

Chairman said at the time that he believed the plan to sell the historic Flagg building would “reinvigorate[]” fundraising.

b. The Board then spent more than one year—and expended substantial financial resources—pursuing a plan to relocate the Corcoran Gallery to Alexandria, Virginia, while denying to senior management, faculty, and students they were doing so. A move to Virginia would have clearly, expressly, and unambiguously violated the Trust’s explicit requirement that the Corcoran remain a “perpetual” “institution in Washington City.”

c. The Board then spent nearly one year pursuing a deal with the University of Maryland that would have provided a capital injection, ongoing funding, and operational support. Public statements by the Corcoran hailed the University of Maryland merger as “a major step forward [that] can lead to a sustainable future for both the college and the gallery.” David Montgomery, *Corcoran, University of Maryland Agree to Explore Partnership*, Wash. Post, Apr. 3, 2013. The Board issued public statements denying that the agreement with the University of Maryland was a “merger” or a “takeover.” Nevertheless, the Board inexplicably terminated the deal after months of negotiation to pursue an *unmistakable* takeover that the Board had been secretly negotiating with GW and the National Gallery for months.

d. In addition, there have been persistent stories of self-dealing, conflicts of interests with consultants, and other examples of gross mismanagement. For example, the Board recently approved the sale of some of its most valuable real estate at well below market price in a no-bid process. Similarly, while the Board was paying substantial consulting fees to the consulting firm, Real Change Strategies, LLC, it

appointed one of the principals of that firm as Chief Operating Officer of the Corcoran and subsequently paid him an unprecedented salary as Director despite virtually no prior experience in non-profit art galleries or higher education. And just before looking into permanently relocating the Corcoran to Alexandria, the Board appointed a new Chief Operating Officer—again, with virtually no relevant experience—who had been extensively involved in redeveloping the Alexandria waterfront.

8. In short, to the extent the Corcoran faces steep challenges today, it faces them due to the peculiar and egregious mismanagement of the Board. If the Corcoran were a public company, these directors would have been sued long ago for breaches of fiduciary duty and corporate waste and voted out of their position by shareholders.

9. The recently announced deal with GW and the National Gallery of Art is simply the latest step in the Trustees' mismanagement of a historic institution. Under the terms of the proposed deal, the Corcoran collection will be dismantled: the National Gallery will accession what it wants, leaving the rest for distribution (either through accessioning by museums in and out of Washington, D.C., or through some other mechanism). The College will be absorbed by GW completely, and the College's world-renowned faculty could be terminated as soon as next year. The Flagg Building will be handed over to GW. And the Corcoran Gallery will be given away to GW and renamed. Even the proceeds of a recent sale of art from the Corcoran collection will be handed over to fund GW's operations.

10. If approved, this deal will destroy the Corcoran forever.

11. The current Board is unwilling and unfit to solve the Corcoran's problems. Yet the Trustees remain unwilling to step aside for a new Board both willing and fit to lead.

12. The public interest demands a thoughtful solution, one guided by prudence, not a mid-summer rush to judgment. The proposed *cy pres* order represents a betrayal of the Corcoran’s legacy, a dismantling of its key assets and features, and an abdication of the Trustees’ role as stewards of the Trust. The Corcoran name, and the District of Columbia, deserve better.

13. STC’s members, who are integrally involved as students, faculty, staff, and donors at every level of the Corcoran, seek to intervene in the current *cy pres* proceedings to ensure that the proceedings are transparent and reach an outcome that not only is in the best interests of the beneficiaries and potential beneficiaries of the Trust, but also is as close to possible to the original terms and purposes of the Trust. Accordingly, this Court should grant STC’s Motion to Intervene; use its equitable power to order the Trustees to render a complete and verifiable accounting of its financial condition, and appoint a special committee of three respected individuals to review the financial and operational problems at the Corcoran and report to the Court on the viability of alternatives to the complete destruction of the museum and school. The Court, in the alternative, should condition *cy pres* relief on the requirements that all current members of the Board be removed, that the D.C. collection remain together (rather than cherry-picked by the National Gallery), and that local artists be provided space in the Gallery to show their work. Finally, the Court should deny *cy pres* relief if intervenors can demonstrate that the Board’s own fiduciary breach and maladministration has caused the Corcoran Trust to become impossible.

I. PARTIES

Students

14. Sebastien Arbona, Reuben Samuel Breslar, Lorenzo Cardim, Avijit Gupta, Caroline Lacey, Patrick Masterson, Natalie Fulgencio Perez, and Thomas Robert Pullin (“Students”) are current and former students at the College. They represent the sharply defined

and limited class of similarly situated undergraduate and graduate students at the Corcoran. The Students spend tens of thousands of dollars in tuition for a world-class education and a degree from one of the most historically significant art and design schools in the world. Although they had options to study art at other institutions, they chose to enroll with the Corcoran because of its iconic national stature and the promise of studying art in a gallery environment that is unparalleled in the country. The Students' declarations are appended to this Complaint at Exhibits A through H and are incorporated fully into this Complaint by reference.

15. The College advertises itself as the only college of art and design in Washington, D.C., and it is one of only two art schools in the country that is fully integrated with a world-class art museum. According to U.S. News and World Report, "The Corcoran College of Art + Design is special because it is one of America's very few examples of a 'pure' museum art school, maintaining its original relationship to one of Washington's greatest museums. Surrounded by great art and frequently by the contemporary masters whose work is regularly exhibited, the atmosphere of the College is charged by the excitement of direct contact with the world of art." The Students were drawn to the Corcoran largely because of the unique environment of this special relationship. In particular, undergraduate students have the opportunity to exhibit their work in the main galleries of the Corcoran, where visitors from every nation can discover their talents. Graduate students can produce a symposium, publicly defend their theses in the Gallery's historic atrium, and also exhibit in the Gallery. But if the proposed takeover by GW takes place, none of this will be true anymore. The very essence of the College will be lost.

16. The Students chose to affiliate themselves with the Corcoran in part because of its unique location in the heart of the District of Columbia—one of the most vibrant cultural havens

in the country. The value of their association with the Corcoran will be significantly diminished if the Trustees receive the requested *cy pres* determination. Their tuition will rise more than it would have otherwise. They no longer will be guaranteed the opportunity to show their work in the Corcoran Gallery. And they will receive a degree from a fundamentally different institution than the Corcoran, which occupies an incomparably distinct niche in higher education. For these reasons and others, as described in the attached declarations and memorandum of law, Students have an acute and special interest in enforcing the terms and purposes of the Trust.

Faculty

17. Jayme McLellan and Robin David Bell (“Faculty”) represent the sharply defined and limited class of faculty at the College. They have taught numerous classes at the College over the past seven years. Their declarations are appended at Exhibits I through J and are incorporated fully into this Complaint by reference.

18. If the Trustees receive the requested *cy pres* determination, Faculty face curtailed or terminated employment contracts, and Faculty may be precluded from teaching at any future incarnation of the Corcoran ever again.

Staff

19. Carolyn Campbell, Elizabeth Punsalan, and Linda Crocker Simmons (“Staff”) are former staff members who represent the sharply defined and limited class of staff at the Corcoran. They worked at the Gallery for 6, 12, and 26 years, respectively. Their declarations are appended at Exhibits K through L and are incorporated fully into this Complaint by reference.

20. If the Trustees receive the requested *cy pres* determination, Staff face diminished value, both professional and personal, for their long-time former employer will cease to exist.

Donors

21. Carolyn Campbell, Jayme McLellan, and Linda Crocker Simmons (“Donors”) have contributed over ten pieces of artwork that are currently part of the Corcoran collection. They represent the sharply defined and limited class of donors to the Corcoran collection. Their Declarations are appended at Exhibits H, L and M, and they are incorporated fully into this Complaint by reference.

22. If the Trustees receive the requested *cy pres* determination, then Donors’ artwork may be distributed to other museums, in violation of the Donors’ intent. Likewise, even if the National Gallery chooses to accession Donors’ artwork, the fact that the artwork would be accessioned by and potentially displayed in a new gallery—that is no longer the Corcoran Gallery of Art—would violate Donors’ intent. For these reasons, Donors have an acute and special interest in enforcing the Corcoran Trust.

Save The Corcoran

23. Save The Corcoran is an organization of current and former students, faculty, staff, donors, and friends of the Corcoran. Whether through relationships created between individuals and art, or connections made with others within its walls, Save The Corcoran believes that each community member has been impacted by the Corcoran in myriad ways and will be impacted by the *cy pres* determination. The organization’s core standards include a belief that the Corcoran’s problems can be solved short of dissolution; that the Corcoran Trust must be governed properly; and that the Corcoran Gallery and College cannot be decoupled. Its members include all would-be intervenors, as well as similarly situated individuals who have a special interest in enforcing the Corcoran Trust.

Petitioners

24. The Board of Trustees of the Corcoran Gallery of Art is a District of Columbia nonprofit corporation established by a Special Act of Congress, 16 Stat. 139 (May 24, 1870). The Special Act constituted the Corcoran's Charter, which was authorized by William W. Corcoran in a Deed of Gift recorded May 18, 1869. On November 24, 1997, the Corcoran filed a Certificate of Election to Accept the District of Columbia Nonprofit Corporation Act.

25. The Board governs the Corcoran Museum and the College. Pursuant to the bylaws of the Trustees, the Board is comprised of no more than eighteen voting trustees, and is authorized to exercise all the powers and authority granted to the Corcoran by law. The current Board of Trustees consists of thirteen voting members and one *ex officio* member. The Chairman of the Board is Harry Hopper, III ("Mr. Hopper").

II. JURISDICTION AND VENUE

26. This Court has subject-matter jurisdiction pursuant to D.C. Code § 11-921.

27. The Court has personal jurisdiction over the Trustees pursuant to D.C. Code §§ 13-334(a), 13-422, and 13-423(a)(1), because the allegations and claims for relief herein arise from the Trustees' "transaction of business" and "doing business" in the District of Columbia.

28. Venue is proper in the District of Columbia because certain Intervenors reside in the District of Columbia and this action relates to the Board's activities within the District of Columbia.

III. BACKGROUND

A. The Founding of the Corcoran

29. The Corcoran is D.C.'s oldest private art museum. It was founded on May 10, 1869, by W. W. Corcoran through a deed of trust ("Deed"). Through his Deed, W. W. Corcoran transferred to the Trustees the Corcoran's original building, as well as his private art collection in

trust. The Deed is explicit about the purpose of this Trust: The Trustees are to use the transferred property “to establish an institution in Washington City, to be ‘dedicated to Art,’ and used solely for the purpose of encouraging American genius, in the production and preservation of works pertaining to the ‘Fine Arts,’ and kindred objects.” Memorandum of Law in Support of Cy Pres Determination, *Ex. 1*, at 1 (“Cy Pres Memorandum”). Moreover, any Trust property must “be held, managed, limited, used and devoted to executing the trusts,” one purpose of which is the “**perpetual** establishment and maintenance of a Public Gallery and Museum for the promotion and encouragement of the arts of painting and sculpture, and the fine arts generally.” *Id.* at 6 (emphasis added).

30. The language of the Deed establishes the Corcoran as a “charitable trust” within the meaning of D.C. Code §§ 19-1301.03(3) & 19-1304.05.

31. The Corcoran’s Board of Trustees was incorporated through an Act of Congress on May 24, 1870. *See* 16 Stat. 139 (May 24, 1870). That Act provides that the character of the institution “shall be in execution of the trusts in the [Deed] declared and set forth, and not to any other intent or purpose whatever.” *Id.*

32. The Deed unequivocally requires that the Corcoran be an “institution in Washington City.” The incorporating Act of Congress further mandates that the Deed’s terms be honored. Taken together, these documents forbid the Trustees from fundamentally changing the unique relationship that the Corcoran has with the local arts community, including students and D.C. artists.

B. The Corcoran’s Legacy

33. Since its founding, the Corcoran has played an important role in the D.C. art world. President Ulysses S. Grant attended the Gallery’s opening, on January 19, 1874, at its original location in the Renwick House. Within four years, the Corcoran was welcoming

100,000 visitors each year—more than twice the number of annual visitors to New York’s Metropolitan Museum of Art.

34. In 1878, W. W. Corcoran donated additional funding to establish the College. The College opened in 1890 and, as the only college of art and design in Washington, D.C., now enrolls over 600 undergraduate and graduate students. True to Corcoran’s stated “purpose of encouraging American genius,” the College offers a unique model of education whereby students can learn—and exhibit their work—in a renowned gallery setting.

35. In 1891, the Corcoran commissioned Ernest Flagg to design and build a museum building worthy of the Corcoran’s collection. Flagg’s Beaux-Arts style building at the corner of 17th Avenue NW and New York Avenue NW became the historic home for the Corcoran Gallery of Art. Flagg worked closely with the Trustees to build a structure with the specific purpose of housing the Corcoran’s collection—a building that would become the flagship of the institution. This building sits a mere block from the White House and is steps from the heart of D.C.’s cultural and historical epicenter: the National Mall. The Corcoran moved into its current home in February 1897, where it has remained ever since.

36. Throughout the early 20th century, the Corcoran served as America’s unofficial national art museum. Through his own purchases and the formation of the Corcoran Gallery of Art, W. W. Corcoran established, in the words of Peter C. Marzio, the former head of the Museum of Fine Arts Houston, “one of the great collections of American painting and sculpture without precedent in American art history.” In 1925, the Gallery underwent significant expansion when former Montana Senator William Andrews Clark bequeathed his extensive personal art collection to the Corcoran. The size of the bequest necessitated a new wing, designed by architect Charles Platt, which opened in 1928. To this day, the Corcoran’s historic

collection remains “the best readily available summary of any new country, a new mind, new vision,” as esteemed art critic Frank Getlein described it. “It is all at the Corcoran, and if you are an American, you have to go there to begin to understand yourself.”

37. During the Corcoran’s expansion, the Flagg Building helped cement the Corcoran’s legacy as a venerable institution in the art world of Washington, D.C., and the nation. For example, one of the world’s foremost architects, Frank Lloyd Wright, referred to the Corcoran’s building as “the best example of Beaux Arts architecture” he had ever seen. David Levy, former Director of the Corcoran, recently noted that the Corcoran’s building is “without doubt, the single most important artwork in [the Corcoran’s] collection.” David C. Levy, *The Corcoran at a Crossroads*, Wash. Post, June 8, 2012. The building was added to the D.C. Inventory of Historical Sites in November 1964 and then to the National Registry of Historic Places in May 1971. Congress declared it a National Historic Landmark in April 1992.

38. Over the past 143 years, the Corcoran has taken on an integral role in the D.C. arts community and has come to occupy a unique educational position nationally. Because of this long history, the Corcoran and its collection have become synonymous with its building and with the District of Columbia more generally. D.C. artists and Corcoran students frequently show work at the Gallery. The Corcoran’s collection has been carefully curated to form a cohesive collection, displaying, among others, important American artists alongside local D.C. artists. The Corcoran’s closely connected Gallery and College, moreover, make it a singular asset for the city and the nation—it is one of only two such combined institutions in the entire country.

C. The Corcoran’s Resilience

39. Maintaining the Corcoran’s rich legacy has not always been easy. In 1937, Andrew Mellon donated an enormous collection of art to establish the National Gallery of Art.

Then, in 1946, when the National Gallery accessioned a large collection of contemporary American artwork, its collections began to encroach on the Corcoran's traditional territory. Over the following decades, the Corcoran also came to compete against federally supported institutions—like the Smithsonian, the Hirshhorn Museum, and the National Portrait Gallery—that benefited from taxpayer subsidies that the Corcoran did not receive.

40. Nevertheless, as a private organization, the Corcoran has enjoyed the freedom to define a bolder artistic program than it could have as a public institution. Despite facing a crowded art scene, the Corcoran has always managed to possess a distinct identity. That identity, rooted in the Corcoran's independence and the diversity and cultural energy of the Washington, D.C. arts community, has helped it thrive, turning the Corcoran into “an important crossroads for artists in the area.” See Luke Mullins, *Crisis at the Corcoran*, *The Washingtonian*, Nov. 27, 2012. Indeed, for years the Corcoran's annual ball was an important social event in Washington, D.C., and its exhibits attracted national press.

D. The Board's Misleading Statements about Its Management of Precious Resources

41. Despite the Corcoran's resilient past, the current Trustees have refused to put forth any new vision for the Corcoran. Instead, they point to a number of reasons why *cy pres* relief—or more accurately, dissolution—is now necessary. Pet. ¶¶ 19-21; Cy Pres Mem., at 4-5. But the Board's treatment of key facts—such as the cost of renovating the Flagg Building, fundraising efforts, the parking lot sale, consultant reports, and the investigation of alternatives—omits crucial details that render its narrative incomplete and inconsistent. *This* Board's decisions are at the heart of the financial state the Corcoran is in and why it arrived there. Particularly given its awareness of viable alternatives, the Board's assertions that the Trust has become impossible demand close judicial scrutiny.

The Cost of Renovating the Flagg Building

42. In 2005, just before Mr. Hopper joined the Board, the Trustees announced that the estimated cost of renovating the Flagg Building would be \$35 million to \$40 million over time. See David Montgomery & Jacqueline Trescott, *The High Cost of Change at the Corcoran*, Wash. Post, June 12, 2012. Eight years later, that cost (according to the Trustees) had nearly tripled to \$130 million, *id.*, when some thought that the Board was inflating the figure publicly in order to make a stronger case for relocating to Alexandria. See Kriston Capps, *The Final Failure of the Corcoran Gallery of Art*, Wash. City Paper, Feb. 26, 2014. Indeed, when the Board again cited the higher figure in its public discussion of the current deal, GW's own president made it clear that he "did not trust" the Trustees' estimates. David Montgomery, *Corcoran Gallery of Art and College to Split Apart, Partnering with National Gallery, GWU*, Wash. Post, Feb. 19, 2014. Now the renovation figure *is* a bit lower: in their Petition, the Trustees claimed that the cost of renovating the Corcoran would be "approximately \$80 million to \$100million" [sic]. Pet., ¶ 21. And just one week later that figure lowered again in the Memorandum in Support of Cy Pres Determination, where the estimated cost was "more than \$ \$70 to \$100Million" [sic]. Cy Pres Mem., at 5.

43. As the Board recognizes, the *true* cost of renovating the Flagg Building is crucial to this *cy pres* proceeding. See Pet., ¶ 21; Cy Pres Mem., at 5. Yet the Board does not even mention how it arrives at its two figures—figures that *GW* officials have publicly questioned. And it asserts, further, that those costs would "exceed any reasonable expectations of a capital fund raising campaign." Pet. ¶ 21; Stack Decl. ¶ 7. But ten years ago the Corcoran was able to raise well over \$100 million in a similar capital fundraising campaign. Nor is there any discussion of potential deferred maintenance plans, prioritizing necessary repairs, or how it is

that the Corcoran has managed in very recent years to host world class pieces of art and exhibitions in the face of building impairments that now purportedly require the abandonment of the building to GW.

Gross Mismanagement of Fundraising

44. The Trustees claim that there were “limited financial resources . . . available from contribution campaigns,” Pet. ¶ 20; Stack Decl. ¶ 7, and that “contributions declined,” *Id.* ¶ 22. But in fact, the Trustees have had no credible fundraising plan over the past decade despite recognizing the need for one. In one interview, Mr. Hopper admitted to not soliciting major donations during the recent “quiet period.” David Montgomery, *Corcoran Gallery: Why Don’t Donors Give?* Wash. Post, July 20, 2012. In another, he said that the Trustees suffer from “malaise” caused in part by their refusal to develop a plan to “give donors hope about the Corcoran.” See Jacqueline Trescott, *As Corcoran Reels, Washington’s Other Private Art Museums Hold Their Own*, Wash. Post, June 29, 2012. This “decline” in contributions therefore did not just “happen” to the Corcoran—the Corcoran’s Board actively caused it. It is no surprise that when a Board publicly and repeatedly signals a lack of faith in its own institution, and telegraphs to the world that it has no forward-looking vision, potential donors will be discouraged.

45. At the same time that affirmative fundraising efforts have slowed to a near standstill, donations to the Corcoran have fallen to historical lows in recent years. The following figures represent approximate donation revenue by fiscal year, according to tax records:

- Fiscal year 2002: \$20.4 million
- Fiscal year 2007: \$8.2 million
- Fiscal year 2008: \$6.6 million

- Fiscal year 2009: \$4.4 million
- Fiscal year 2010: \$3.2 million
- Fiscal year 2011: \$3.2 million
- Fiscal year 2012: \$2.1 million
- Fiscal year 2013: \$6.8 million

If not for an unexpected bequest of \$5 million in fiscal year 2013, the past four years of fundraising would have been the lowest on record since before 1995. David Montgomery, *Corcoran Gallery: Why Don't Donors Give?*, Wash. Post, July 20, 2012.

46. The Corcoran's financial struggles are neither insurmountable nor typical. The Trustees allege that "the District of Columbia has lacked a substantial base of local, very wealthy donors dedicated to supporting local arts institutions," Pet. ¶ 19, but other private art galleries in the District of Columbia are "holding their own," see Jacqueline Trescott, *As Corcoran Reels, Washington's Other Private Art Museums Hold Their Own*, Wash. Post, June 29, 2012. For example, the National Gallery of Art recently raised \$30 million from just a handful of D.C.-based philanthropists to help expand its exhibition space by over 12,000 square feet and to create a rooftop sculpture garden overlooking Pennsylvania Avenue. Carol Vogel, *National Gallery of Art's Renovation Plan Envisions Two New Tower Galleries*, N.Y. Times, Mar. 13, 2013. Meanwhile, the Phillips Collection—though substantially smaller than the Corcoran—reportedly drew in more charitable gifts than the Corcoran, and larger gifts, in every year from 2007 to 2012. See Kriston Capps, *The Final Failure of the Corcoran Gallery of Art*, Wash. City Paper, Feb. 26, 2014. During part of that same period, Ford's Theatre managed to raise over \$54 million in a capital giving campaign. And before that, the Corcoran itself had raised over \$110 million for a new wing.

47. Rather than fault a purported lack of wealthy donors in D.C., some insiders have instead blamed the Trustees for establishing at the helm of the Gallery a businessman with no museum experience. *See* Luke Mullins, *Crisis at the Corcoran*, *The Washingtonian*, Nov. 27, 2012. During Mr. Hopper’s tenure, attendance has plummeted to just 69,000 visitors in 2012, down from 324,000 annual visitors a decade earlier. *Id.* That is a loss of more than 250,000 visitors per year.

48. To make matters worse, the Trustees “allocat[ed] amounts from the endowment, *on an expectation that future fundraising or other events would allow continued operations.*” Pet. ¶ 20 (emphasis added). In other words, the Board’s strategy for spending the endowment made fundraising and events *more* necessary even as the Board abandoned fundraising and made it impossible to raise money. This strategy ultimately crippled the Corcoran: as the Trustees admit, they increased the amount of future capital needs, all the while eroding the endowment so that, at some point, those needs might not be met. *Id.*

49. The Trustees do not explain why they pursued both strategies—eliminating fundraising and drawing heavily on endowment funds—simultaneously.

Selling the Parking Lot

50. Until 2011, the Corcoran owned a parking lot next to the Corcoran building on New York Avenue NW.

51. In 2011, the Trustees sold or leased the parking lot for \$20.5 million. According to one media report, Mr. Hopper and the Trustees completed the transaction “to address cash flow needs and give [] time for long-term planning and the resources to implement them.” But despite the Board’s stated needs for more space and as much money as possible, the Trustees executed the deal following a “no-bid” process with the entity Carr Properties. The \$20.5

million price for property adjacent to the White House represents an amount below market value. Indeed, Carr Properties has now built a structure that has 124,000 square feet of space on eight floors and houses offices for, among others, international law firm Sullivan & Cromwell, LLP, and architecture and engineering firm SmithGroupJJR.

52. In effect, the Board sacrificed land and space that were invaluable to the Corcoran's future for virtually nothing, while at the same time publicly complaining that the school needed more space than its current building could provide. Despite their public complaints about space, the Trustees failed to negotiate rights to any space in the new Carr building, and their sale of the land to Carr Properties closed off a potential ongoing source of revenue.

Consulting Fees and Inside Dealing

53. While the Corcoran's efforts at generating revenue have unjustifiably cratered, the Trustees have readily expended substantial sums of money outside of normal operating budgets on consulting advice. The Trustees have made several indefensible, wasteful, and unnecessary expenditures on outside consulting services:

a. Tax records indicate that the Trustees had not hired or authorized the hiring of Real Change Strategies, LLC before 2009. Beginning in 2009, however, records show that the Trustees authorized payments of more than \$600,000 on a "strategic management plan" developed by that consulting company. These expenditures were made, at least in part, to advance the Trustees' plan to move the Corcoran outside of Washington City. Because such a move would have been barred by the Corcoran's foundational documents, such expenditures were made for an improper purpose and constitute corporate waste.

b. In fiscal year 2011, too, the Board spent or authorized expenditures of substantial sums to Real Change Strategies, LLC, and Lord Cultural Resources, Inc. The Board paid nearly \$1 million to commission a report from Lord Cultural Resources, Inc. on strategic directions for the Corcoran collection. That report recommended a number of key ideas to focus and reinvigorate the Corcoran collection, including creating new opportunities for design exhibits to help fill Washington, D.C.'s lack of a permanent design collection; dedicating more resources to a marketing budget to help the Corcoran's popular exhibits achieve the same success they have seen on tour; focusing the Corcoran collection on American ideas and identity to facilitate risk taking with which the Corcoran brand is synonymous; limiting the exhibition of European art to the Salon Doré in order to free gallery space for telling a continuous historical narrative of American art; and deaccessioning works of dubious authenticity or by over-represented artists to raise acquisition and curatorial funds. Few, if any, of these ideas have been followed, and there is little evidence that they have been meaningfully considered, meaning that the investment in Lord Cultural Resources, Inc. has been a waste.

c. The Trustees also authorized expenditures of over \$200,000 on a six-minute promotional video produced by a company called WeaselWorks. The Corcoran faculty has roundly derided this video for its poor quality and exorbitant cost.

54. The Board recently has engaged in a troubling pattern of inside dealing and related-party transactions. These incidents created plain conflicts of interest and violated fiduciary duties of loyalty. They therefore cast significant doubt on the Corcoran's independence and the Board's stated motivations for its plans to achieve financial recovery.

a. While the Corcoran was still paying substantial consulting fees to Real Change, the Board retained one of its principals, Fred Bollerer, as Chief Operating Officer of the Corcoran. The next year, despite virtually no prior experience in non-profit art galleries or higher education, Mr. Bollerer was appointed Director of the Corcoran and paid more than \$320,000 in salary—the highest salary of any director in the Corcoran’s history and a notable increase from the previous President and CEO. After Mr. Bollerer’s arrival, another Real Change principal, Debbie Feinberg, was brought in as interim Vice President of Finance.

b. In 2011, the Board appointed Mr. Hopper’s neighbor, Lauren Garcia—now Lauren Stack—as Chief Operating Officer. Ms. Stack’s background was in homeland-security contracting, not museum operations or organizations involved in the arts. Ms. Stack’s appointment to a venerable D.C. institution like the Corcoran raised some eyebrows, for immediately prior to joining the Corcoran she had been vice chair of the Alexandria Economic Development Partnership, a city-funded organization designed to bring new businesses to Alexandria. In addition, she was a member of the political action committee, “Securing Alexandria’s Future,” focused on improving Alexandria. With Ms. Stack at the helm of Operations, the Board quickly began looking into permanently relocating the Corcoran to Alexandria.

d. The Board then hired Ms. Stack’s personal friend, Mimi Carter, as its new Senior Director of Communications and Marketing. Like Ms. Stack, Ms. Carter was a member of “Securing Alexandria’s Future,” and she served on the Alexandria school board. Although Ms. Carter had little-to-no relevant non-profit fundraising experience, the Trustees gave her a leadership role in fundraising activities. After Ms. Carter joined

the Corcoran, fundraising efforts continued to bottom out as solicited donations reached historical lows. A number of major donors have publicly stated that the Corcoran has not approached them for further contributions.

Investigating Alternatives

55. The Trustees claim that they considered all possibilities, but rejected certain “flaw[ed]” proposals such as deaccessioning art work and using the proceeds for operations, or separating the Gallery and the College. Pet. ¶ 27. But the Petition fails to point out that the current deal is *predicated on* both flaws. The Corcoran will transfer \$35 million in proceeds from the Clark Estate Proceeds to GW to cover the cost of renovations. Ex. 4, Asset Contribution Agreement, at 15. And GW and the National Gallery will split up and take respective control of the College and the Gallery.

E. The Board’s Efforts to Secure a Take-Over in Pursuit of Unlawful Purposes

56. Repeated efforts to engage the Trustees in serious dialogue about the Corcoran’s circumstances have been rebuffed. STC has engaged in a lengthy effort to replace the Chairman or even just to fill *empty* positions, but these requests have been ignored. The Trustees have adopted a “circle the wagons” approach while the financial and strategic crisis at the Gallery and College worsened day by day. Meanwhile, confidence in the Board’s leadership eroded, further impairing the Corcoran’s ability to attract donors.

57. Against this backdrop, the Board through its conduct has demonstrated a stunning disregard for the terms and purposes of the Corcoran Trust. It has effectively suspended fundraising while pursuing three successive plans that contravene the stated purposes of the Corcoran Trust. Even while recognizing that a change of leadership and new fundraising were needed, the Board instead sought an entity into which it could dissolve itself. With each of these aborted plans, the Board has shrouded its actions, intentions, deliberations, and negotiations in

secrecy. Although some of the details of these plans have now come to light, they too merit further judicial scrutiny.

The Aborted Attempt to Relocate Outside of the District of Columbia

58. In the spring of 2011, the Board began exploring potential sites for relocating the Corcoran along the Alexandria waterfront. On June 4, 2012, the Board publicly announced its intention to explore a sale of the Corcoran building and to relocate the Corcoran elsewhere in the D.C. metro area. Behind the scenes, the Chairman of the Board and the Chief Operating Officer had been heavily involved in redeveloping the Alexandria waterfront. Two senior staff members were also part of “Securing Alexandria’s Future,” a political action committee focused on improving Alexandria.

59. The Trustees insisted that they “had no choice” but to relocate in order to “chart a sustainable path forward.” Luke Mullins, *Crisis at the Corcoran*, *The Washingtonian*, Nov. 27, 2012. But it was unclear whether the intended plan could have provided a sustainable path forward at all. One real estate consultant derided the plan as a “chasing-your-own-tail concept” because the stated costs of repairs and the building’s historical zoning likely would have precluded finding a buyer at a price sufficient for the Corcoran to build a new gallery elsewhere. *Id.*

60. The move also would have been unlawful. Because the Corcoran Trust explicitly requires that the Corcoran remain “an institution in Washington City,” any move outside the Washington city limits would have violated the Corcoran’s governing documents, including the Deed and the incorporating Act of Congress.

61. Nevertheless, the Trustees authorized significant expenditures of precious resources to explore a sale and relocation. In addition to the consulting fees detailed above,

supra ¶ 53, the Trustees issued expensive sale-side and buy-side brokerage requests for proposal (“RFPs”) on June 15, 2012. The deadline for proposals under the RFPs was July 6, 2012. On September 12, 2012, the Trustees announced that the Corcoran had selected CBRE as its real estate advisor.

62. Then, in December 2012, the Trustees reversed course and announced their intention to keep the Corcoran in its current home. This too-little-too-late announcement—after expending substantial time and resources on an unlawful move—epitomizes the Trustees’ mismanagement.

Recognition that New Management Was Necessary

63. As the move to Alexandria soured, the Board recognized its dire need for strong leadership and began to seek out an acquisition. The Board made at least one overture to seek out new leadership in Wayne Reynolds, who as chairman had helped to raise more than \$50 million to turn around Ford’s Theatre. In November, 2012, the Board contacted Mr. Reynolds and conceded that the Corcoran needed “vision, resources, and leadership.” The Board recognized that the two keys missing from the Corcoran were “visionary and disciplined leadership” and “fundraising, both from Trustee and Development efforts.” The Board then invited Mr. Reynolds to be its Chairman.

64. Despite recognizing these needs, the Board refused to put forth a vision of its own, and it refused even to try to raise money. Instead, the Board vowed that without “an identified source or group of substantial leadership and financial support,” it would choose to seek out “some sort of acquisition(s).” Far from prudent administration, this plan constituted utter capitulation of the Trustees’ fiduciary duties to preserve and manage the Trust.

65. Nevertheless, Mr. Reynolds attempted to provide leadership for the Trust by proposing a Corcoran Center for Creativity that would have showcased a new paradigm for arts innovation and education. At first, the Board was receptive to Mr. Reynolds' ideas. But the Board quickly balked when Mr. Reynolds made clear that he would replace Mr. Hopper and that certain other Board members would also be replaced. Rather than attempt to address the two core needs *that it had already identified as necessary for the Corcoran's success*, the Trustees preferred to retain their positions of power and disinvited Mr. Reynolds from the Board.

66. Recently hired Corcoran communications personnel Mimi Carter publicly attacked Mr. Reynolds in March, 2013, expressing the Corcoran's "outrage" and asserting that the Trustees would "focus[] on finishing the diligent work that is currently underway—without outside distractions—to lead the institution to a sustainable model for its future." David Montgomery, *Wayne Reynolds's Unprecedented Public Play to Chair the Corcoran Gallery*, Wash. Post, Mar. 22, 2013. What Ms. Carter apparently meant by "sustainable model" was dissolution. The Board's failure to address the ongoing lack of leadership and fundraising constituted gross mismanagement of the Corcoran Trust.

The Aborted Deal with the University of Maryland

67. Having refused to pursue what the Board knew was needed, the Board set its sights, instead, on new ownership by a large University. After tentative talks with a number of colleges across the country, the Board settled on a deal with the University of Maryland in April 2013.

68. The Trustees spent the next seven months working exclusively with the University of Maryland to finalize a deal behind closed doors. The University reportedly committed to providing \$46 million, including operating cash to ease the Corcoran's annual

deficits and a capital injection to help renovate the Gallery. David Montgomery, *When Corcoran's Partnership Didn't Work out as Hoped, Thoughts Turned to a Takeover*, Wash. Post, Mar. 1, 2014. The University also reportedly pledged to share responsibility for operating the Corcoran College and planned to use its alumni giving fundraising machine to help revitalize the Corcoran's own fundraising efforts. *Id.*

69. On information and belief, the University of Maryland conducted a forensic audit of the Corcoran's financials as part of its due diligence on the proposed partnership. Although that audit uncovered devastating mismanagement by Mr. Hopper and the Trustees, the University remained committed to helping the Corcoran through its dark time.

70. In February 2014, two weeks after meeting with the University of Maryland to hammer out final details, the Trustees pulled out of the partnership to pursue, instead, a veritable takeover that had been secretly negotiated for months. *Id.* The about-face came as a shock to Dr. Wallace Loh, President of the University of Maryland—who was notified mere hours before the announcement—particularly after both parties had spent nearly one year and significant resources in pursuit of the deal.

71. The Trustees now claim that they wanted a takeover all along, under which the University of Maryland would “tak[e] full financial and operating responsibility for the College.” Pet., ¶ 31. But at the time, the Trustees asserted: “It’s not a merger, nor is it a takeover.” According to one Maryland official, the Corcoran’s tone had shifted throughout the negotiations: “they [the Corcoran] wanted a partnership in the beginning, and in the end, they wanted a takeover.” David Montgomery, *When Corcoran's Partnership Didn't Work out as Hoped, Thoughts Turned to a Takeover*, Wash. Post, Mar. 1, 2014. This discrepancy raises serious questions about what drove the Trustees’ actions in this and other deals. STC has reason to

believe that Dr. Loh and other Regents of the University of Maryland will tell their side of the failed Corcoran deal if asked to do so.

The Takeover by George Washington University and the National Gallery of Art

72. In December 2013, as the Trustees were approaching a final deal with the University of Maryland, they began secret talks with GW and the National Gallery of Art about a possible takeover. *Id.* A tentative agreement was announced in February 2014 and was finalized, less than three months later, on May 15, 2014. As one reporter described it, no museum has so “consciously willed itself into oblivion” as the Board has done here with this takeover. Eric Gibson, *Clueless at the Corcoran*, Wall St. J., Feb. 24, 2014.

73. According to the agreement papers filed with the Trustees’ motion, GW will take over the Corcoran College of Art + Design. Although the Corcoran’s classroom space will continue to be used, the Corcoran name will virtually disappear from the school.

a. GW will take over responsibility for the historic Flagg Building, including its renovations. GW will receive from the Corcoran \$35 million in proceeds from the sale of a Persian rug to help pay for those renovations.

b. GW will operate the College and award all degrees going forward, including for students who applied to matriculate in the fall of 2014. Although the Corcoran name will appear somewhere on the diplomas of currently enrolled Corcoran students, GW will be the degree-granting institution.

c. To make up for the sizeable gap in tuition prices between the College and GW, GW will be able to increase tuition for currently enrolled Corcoran students at “modest annual increases.” Despite a tuition freeze at the Corcoran in recent years, GW has already announced a 3% increase in tuition for the 2014-15 academic year.

d. Non-faculty employees will be guaranteed employment for only six months, while nearly all other College staff already have received their three-months' notice of termination. Some current College faculty will be transferred to GW, but their contracts are guaranteed for only one year, through August 2015.

e. One of the most distinctive features of the College is the opportunity for students to show their artwork in the Corcoran Gallery. The deal papers make no mention of whether this unique tradition will continue. When asked about this, Corcoran officials have repeatedly stated that there are "no details."

74. At the same time, the National Gallery will take over the Corcoran Gallery exhibition space and collection.

a. The National Gallery will use the Corcoran Gallery exhibition space to showcase temporary exhibitions of modern and contemporary works. Although the name of the Gallery will continue to include "Corcoran," the Gallery will be renamed, and the "Corcoran Gallery of Art" will cease to exist. Only a selection of current Corcoran works, identified historically with the 17th Street landmark structure, will be set off in a "Corcoran Legacy Gallery" within the building.

b. The Corcoran collection will be transferred to the care, custody, and possession of the National Gallery of Art. The National Gallery can choose how much, if at all, it will accession these works. Any accessioned work will bear the credit line "Corcoran Collection" alongside the historic donor credit line. Works not accessioned by the National Gallery will be distributed to other art museums with no requirement that the collection be preserved, and no requirement that the collection remain in Washington, D.C.

c. The National Gallery has not committed to hiring any of the staff, including the curators, at the Corcoran museum. Many staff members have already received their 90-day notice of termination and all faculty members have received their 60-day notice of termination.

d. The Corcoran historically has maintained space for local artists—including students—to show their work. The current plans, however, give the National Gallery full editorial discretion and do not mention anything about local artists or their work.

75. The Corcoran organization itself will fade into oblivion. Some of its members will serve on joint advisory committees that will consult on programs and activities in the 17th Street building. But the Corcoran organization will be permanently divorced from its historic roles in overseeing the College and the artistic program of the Gallery's collections.

76. Acknowledging that this proposed takeover departs from the stated purposes of the Corcoran Trust, the Board has opened this *cy pres* proceeding to amend the core purposes of the Trust. But the Board's current request for *cy pres* relief comes at a time when the Corcoran's finances may actually be starting to look up. Thanks to an unexpected bequest of \$5 million, fundraising for fiscal year 2013 was at its highest since before the market crash. The endowment recently has ballooned \$10 million in proceeds from the Clark estate. The sale of the parking lot—though inexplicably below market value—added \$20.5 million more to the endowment. And although the recent sale of a Persian rug for nearly \$40 million can be used only for further accessioning of art, that could significantly help the Corcoran acquire pieces about which donors could get excited again. But none of this matters, the Trustees claim: the only viable option is dissolution, surrender, hopelessness, and dereliction of responsibility.

Factual Misrepresentations in the Trustees' Petition

77. In light of the above factual inconsistencies, the Board's Petition cannot be taken at face value. Many of its assertions are not substantiated, and some are misleading.

78. On information and belief, the Board has provided inaccurate, inconsistent, and incomplete information on the nature of its fundraising efforts; the cost of renovating the Flag Building, and the deaccessioning of art in order to fund the Corcoran's operations. If permitted to intervene, STC will address these factual deficiencies.

Honoring the Terms of the Original Corcoran Trust

79. Before this Court grants permission to the Board to dissolve the Corcoran, it should take several steps:

a. First, the Court should order procedures that ensure that the Trustees provide a complete and verifiable accounting of their financial condition. The Court also should appoint a committee of three respected individuals to review the financial and operational problems at the Corcoran and report to the Court within a reasonable timeframe on the alternatives to the current proposal to effectuate the complete destruction of the museum and school.

b. Second, the Corcoran legacy not only has long maintained strong ties with local artists, including students and artists from the D.C. community, but also has housed works in the museum's permanent collection by internationally acclaimed artists from Washington, D.C. Consistent with that legacy, the amended Trust should include a term requiring the National Gallery to exhibit the artwork of local artists—whether in a special show or in a designated area of the Gallery.

c. Third, given its rich historical legacy, the Corcoran collection should not be broken up, but should remain intact and within the borders of the District of Columbia. The amended Trust should therefore require the National Gallery to accession all of the D.C. collection.

d. Fourth, because of its long history of mismanagement, self-dealing, conflicts of interest, hiring unqualified management, and profligate spending on consultants whose advice was ultimately ignored, the entire Board should be replaced, and there should be no future role at all for current Board members. There is no other way to ensure that what remains of the Corcoran Trust will be properly managed.

e. Fifth and finally, the Board's intentional willing of the Corcoran Trust into oblivion is unconscionable. This Court and the District of Columbia deserve to know whether the recent crisis stems from the Board's breaches of fiduciary duty. If so, then *cy pres* relief should not be awarded at all. The public interest demands an equitable resolution—and no trustees should ever benefit from intentionally destroying the very institution they were entrusted to protect.

FIRST CLAIM FOR RELIEF
PETITION TO INTERVENE

80. STC re-alleges paragraphs 1-79 as if fully set out herein.

81. The Corcoran Trust is a “charitable trust” within the meaning of D.C. Code §§ 19-1301.03(3) & 19-1304.05.

82. Under D.C. Code § 19-1304.05, “[t]he settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.” The “others” who may enforce the trust include persons with a “special interest in the enforcement of a charitable trust.” *YMCA of the City of Wash. v. Covington*, 484 A.2d 589, 591 (D.C. 1984).

83. As more fully explained in the accompanying memorandum of law, STC's members have a "special interest" in enforcing the Corcoran Trust because they benefit from the Trust in a different way from the general public, they represent a class that is "sharply defined" and "limited in number," and they seek to intervene in order to save the Trust as a whole. *See Hooker v. Edes Home*, 579 A.2d 608, 611-12 (D.C. 1990). If the *cy pres* relief the Board seeks is granted, Students will be deprived of the educational experience that they signed up for, including education in an institution that includes a world-class art museum and a gallery for students to display their art. Students will also face higher tuition, and the reputation of their degrees will be diminished. Similarly, Faculty and Staff will face diminished employment opportunities and see the value of their work experience at the Corcoran diminish, because that institution will no longer exist. Donors will also face acute harm, as pieces they have donated will likely go to other museums, in violation of their donor agreements and in contravention of their expectations at the time they decided to make a gift to the Corcoran. Because each group is limited and sharply defined, there is no threat that permitting these Plaintiffs to intervene would give rise to vexatious litigation.

84. STC members satisfy the criteria for intervention of right under Rule 24(a)(2) because their special interest in enforcing the original terms of the trust could be substantially impaired if the Board obtains its proposed *cy pres* relief, and no other party adequately represents that interest. The "only practical way" for STC members to raise and protect their claims is "in this suit." *Calvin-Humphrey v. Dist. of Columbia*, 340 A.2d 795, 800 (D.C. 1975).

85. STC members also satisfy the criteria for permissive intervention under Rule 24(b)(2) because their opposition to *cy pres* relief raises common questions about the nature and

cause of the Corcoran's current financial status, and intervention at such an early stage would neither unduly delay nor prejudice the adjudication.

86. Plaintiffs are therefore entitled to intervene and enforce the Trust pursuant to D.C. common law. *See YMCA*, 484 A.2d at 591; *Hooker*, 579 A.2d at 615-17.

SECOND CLAIM FOR RELIEF
BREACH OF TRUST UNDER D.C. CODE § 19-1310

87. Plaintiffs re-allege paragraphs 1-79 as if fully set out herein.

88. The D.C. Code provides that, “[t]o remedy a breach of trust that has occurred or may occur, the court may . . . Order a trustee to account.” § 19-1310.01(b), (b)(4). The statute defines a breach of a trust as a “violation by a trustee of a duty the trustee owes to a beneficiary.” *Id.* § 19-1310.01(a).

89. None of the Trustees' main plans for relocating or dismantling the Corcoran have been lawful. Relocating the Corcoran to Virginia would have breached the terms of the Deed and implementing statute by removing the Corcoran from “Washington City.” The pursued partnership with the University Maryland also would have impermissibly transformed the nature of the Corcoran as an “institution in Washington City.” And the current proposed takeover by GW and the National Gallery contravenes the terms and purposes of the Corcoran Trust by ensuring that institutions *other* than the Corcoran will maintain the Corcoran collection, Gallery, and College. Indeed, if this plan were not contrary to the charitable purposes of the Corcoran Trust, the Trustees would not need a *cypres* determination.

90. On information and belief, the Trustees have expended resources in pursuit of these unlawful purposes, including but not limited to, funds in support of the buy-side RFP process and the sale-side RFP process, and over \$1 million in consulting fees. The Trustees also

have engaged in extensive inside dealing, conflicts of interest, and mismanagement of Trust resources by stalling fundraising and failing to obtain a competitive sale price for the parking lot. Plaintiffs suspect the Trustees have mismanaged other resources in ways as yet unknown that must be developed through discovery.

91. These expenditures in support of unlawful aims violated numerous fiduciary duties, including the Trustees' duties of loyalty and prudent administration. Accordingly, they constitute a breach of trust under D.C. Code § 19-1310.01(a). *See Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 730 (D.C. 2011). They also cast significant doubt on the Trustees' claims that the Corcoran Trust has become impracticable.

92. Plaintiffs therefore request an accounting pursuant to D.C. Code § 19-1310.01(b)(4). An accounting would bring much-needed transparency to this process and ensure that the Board's proposal has the best interests of the Corcoran at heart. In addition, Plaintiffs ask the Court to appoint a special committee of three respected individuals to review the financial and operational problems at the Corcoran and report to the Court on alternatives to the complete destruction of the museum and school.

THIRD CLAIM FOR RELIEF
CONDITIONAL OPPOSITION TO *CY PRES* RELIEF

93. Plaintiffs re-allege paragraphs 1-79 as if fully set out herein.

94. *Cy pres* is available only "to modify . . . the trust . . . in a manner consistent with the settlor's charitable purposes." D.C. Code § 19-1304.13(c).

95. The Board of Trustees claims that administering the charitable purpose of the Corcoran Trust has become impracticable. This claim is hard to believe, however, given the recent financial windfalls the Trust has received—including proceeds from the Clark estate, the

sale of a Persian rug, the sale of a parking lot, and unsolicited donations. The recent financial audit performed by the University of Maryland should reveal the true state of the Corcoran's condition. The charitable purpose of the Trust may yet be practicable, if properly managed. In order to exercise its equitable powers in the public interest, then, this Court should scrutinize the Corcoran's finances to ensure that the charitable purpose of the Trust has become impracticable. Plaintiffs oppose *cy pres* relief unless the Board publishes any audit or review of the Trust's finances conducted by the University of Maryland to help inform the Court's decision-making.

96. The Deed established the Corcoran Trust as a charitable trust intended to benefit the public. Despite its duty to pursue the Deed's charitable purposes in the interests of the public, the current Board of Trustees has engaged in extensive self-dealing, financial mismanagement, and actions fraught with conflicts of interest. Even if all of these actions were the result of incompetence rather than intentional wrongdoing, they demonstrate a serious failure of prudent administration. Because the current Board is not fit to manage the Corcoran Trust, and because its members have consistently refused to step down or accept new leadership, Plaintiffs oppose *cy pres* relief unless the current Board is removed. That is the only way to ensure that, in the future, the Trust can be soundly administered and any amended charitable purpose can be fulfilled.

97. The Deed unequivocally requires that Trust property "be held, managed, limited, used and devoted to executing the trusts" in "a Public Gallery and Museum" that is "in Washington City." *See Cy Pres Mem., Ex. 1* at 1, 6 (emphasis added). The current plan inexplicably envisions that the National Gallery of Art will accession whichever pieces it wants, and distribute the remaining works to other museums, including potentially museums outside of Washington, D.C. The Board has offered no justification for why it must break up the Corcoran

collection, even though breaking up the collection and moving some pieces outside of Washington, D.C. would violate the express terms of the Trust. Accordingly, Plaintiffs oppose *cy pres* relief unless the Corcoran collection remains together and intact.

98. As an “institution in Washington City,” the Corcoran Gallery has been at the heart of the D.C. art world. Part of what makes the Corcoran’s historical legacy unique is that it has traditionally fostered strong ties to local artists, including students and artists in the D.C. community. Undergraduate students can exhibit their work in the Gallery, and graduate students can exhibit and organize symposia at the Gallery. The Gallery also frequently shows D.C.-based artists. The proposed deal, however, is silent on continuing these important traditions that help define the Corcoran as an “institution in Washington City.” Because ending these traditions would be inconsistent with the charitable purpose that the Corcoran be an “institution in Washington City,” and because continuing these traditions would be reasonable and not financially burdensome, Plaintiffs oppose *cy pres* relief unless the amended Trust will continue to provide Gallery space for students and other local artists to show their work.

99. Plaintiffs therefore conditionally oppose *cy pres* relief unless it includes publication of any audit or review of the Trust’s finances by the University of Maryland, so that the Court can ensure that *cy pres* relief is necessary; removal of the current Board of Trustees; a requirement that the Corcoran collection remain together and intact; and continued provision of Gallery space for students and other local artists to show their work.

FOURTH CLAIM FOR RELIEF
**OPPOSITION TO *CY PRES* RELIEF ON ACCOUNT OF UNCLEAN HANDS AND
BREACH OF FIDUCIARY DUTY**

100. Plaintiffs re-allege paragraphs 1-79 as if fully set out herein.

101. *Cy pres* is an equitable doctrine designed to benefit the Trust’s beneficiaries—STC, the D.C. community, and the public—and override the settlor’s stated purpose only if absolutely necessary.

102. “He who comes into equity must come with clean hands.” *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 241 (1933). Accordingly, “whenever a party who . . . seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, . . . then the doors of the court will be shut against him *in limine*; the court will refuse . . . to award him any remedy.” *Id.* at 245.

103. The current Board’s extensive history of mismanagement raises serious questions about whether it has purposely driven the Corcoran Trust into the ground in order to make these *cy pres* proceedings possible. Mr. Hopper admitted to stalling major fundraising efforts, and the Trustees have spent years pursuing unlawful and ultimately aborted plans, all while hiring their friends and paying them unprecedented salaries and fees despite virtually no relevant experience or qualifications. Although the Trustees consistently claim that the Corcoran’s financial troubles are insurmountable, they ignore recent windfalls, the Corcoran’s long history of resilience, and even a viable alternative proposed by a consulting firm they commissioned. Throughout the entire process, the Chairman has refused to step down, fill empty positions on the Board, or articulate a new vision for the Corcoran.

104. Because the Board has requested equitable relief in potentially bad faith, this Court should determine whether the Board’s hands are truly clean and deny equitable relief if they are unclean. *See id.*

105. Plaintiffs therefore oppose *cy pres* relief absolutely to the extent that the Trustees have deliberately caused the Corcoran’s demise.

* * *

WHEREFORE, as a result of the foregoing, Plaintiffs pray that this Court:

- A. Order the Corcoran Trustees to provide a complete and verifiable accounting of the Corcoran's financial condition and financial performance over the last decade;
- B. Appoint a special committee of respected individuals to review this and other information available to the Board and direct that committee to report to the Court on whether there are viable alternatives to the complete dissolution of the Trust;
- C. Direct the Trustees to produce any audit or review of the Trust's finances conducted by the University of Maryland;
- D. Issue an order removing the current Board; directing that the Corcoran collection remain intact; and requiring the Gallery to continue to provide space for local artists, including students and D.C. artists, to exhibit their work;
- E. In the alternative, if the Trustees' financial mismanagement has caused the Trust to become impracticable, issue an order denying *cy pres* relief altogether;
- F. Retain jurisdiction over this matter as appropriate; and
- G. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: July 2, 2014
Oral Hearing Requested

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