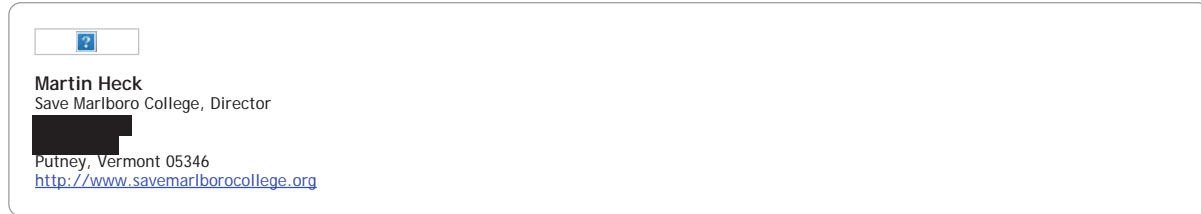


From: [Save Marlboro College](#)
To: [AGO - Info; Renner, Jamie; Curtis, Christopher](#)
Subject: Fw: [MM Comm Committee] Letters to the Editor update
Date: Monday, July 20, 2020 8:40:22 AM
Attachments: [Screen Shot 2020-07-19 at 10.18.51 PM.png](#)
[Outlook-horizontal.png](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.



From: Dario Mazzola
Sent: Monday, July 20, 2020 6:15 AM
To: Save Marlboro College
Subject: Fwd: [MM Comm Committee] Letters to the Editor update

Sent from my iPhone

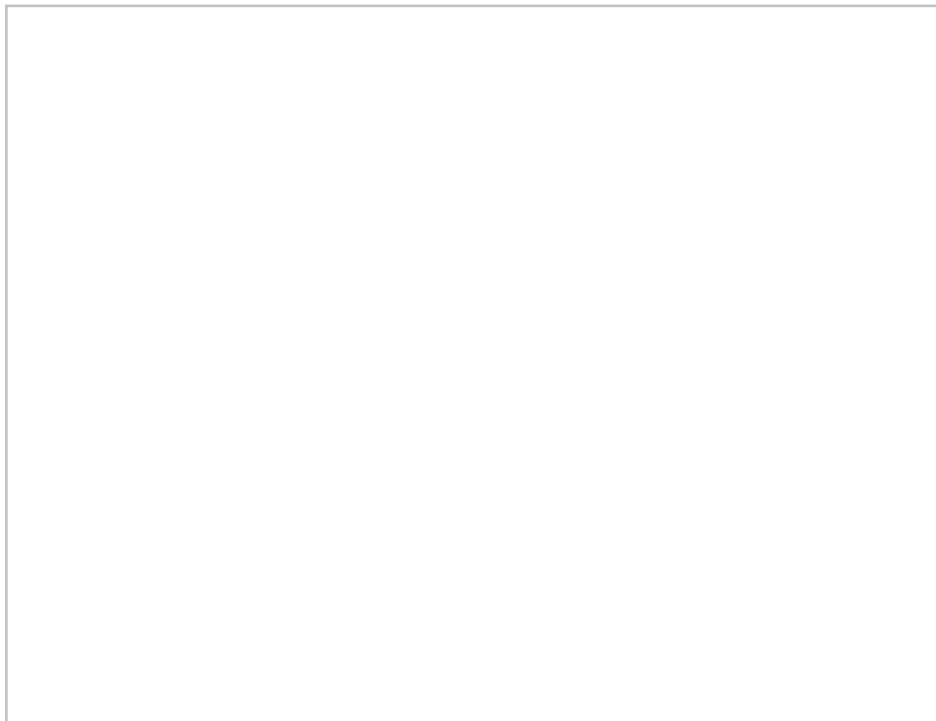
Begin forwarded message:

From: 'Lisa Richardson' via Mobilize Marlboro - Communications <MobilizeCommunications@googlegroups.com>
Date: 20 July 2020 at 04:21:57 BST
To: mobilizecommunications@googlegroups.com
Subject: [MM Comm Committee] Letters to the Editor update
Reply-To: MobilizeCommunications@googlegroups.com

While we still have something to celebrate, I wanted to let you know that we're now up to 27 letters published as a result of the Letters to the Editor project. The first was on July 1, and three more were published today. Currently, the Reformer (which I disparaged) leads with 10 published, followed by 8 at the Deerfield Valley News.

God bless local daily papers.

Sleep well, everyone,
Lisa



# of Writers	# of Letters	Date	Writer	Outlet	Link
1	1	7.1.20	Richardson	Bennington Banner	https://www.benningtonbanner.com/stories/letter-many-losses-in-sale-of-marlboro-college.608402
1	1	7.3.20	Tudor	Rutland Herald	https://www.rutlandherald.com/opinion/letters/marlboro-needs-coverage/article_156e660c-7ada-5530-a530-3a21931ccf2d.html
1	1	7.6.20	Daly	Berkeley Beacon	https://berkeleybeacon.com/letter-closing-of-marlboro-college-breaches-duty-and-trust/
1	1	7.7.20	Gratwick	Bennington Banner	https://www.benningtonbanner.com/stories/letter-appalled-over-plan-for-marlboro-college.608702?fbclid=IwAR0Xozp56iqdCzWzhYUDBLgj4PoBt2iQu_UcseW4C0QRba0VXflHB4mkbSQ
1	1	7.7.20	Williamson	Vermont Digger	https://vtdigger.org/2020/07/07/david-williamson-scrutiny-needed-on-dissolution-of-marlboro-college-%ef%bb%bf/
0	1	7.8.20	Tudor	Seven Days	https://www.sevendaysvt.com/vermont/letters-to-the-editor-7-8-20/Content?oid=30753154
1	1	7.9.20	Marvin	Vermont Digger	https://vtdigger.org/2020/07/09/cate-marvin-not-my-marlboro-college/
0	1	7.9.20	Gratwick	Deerfield Valley	https://www.dvalnews.com/letters-editor/marlboro-college-extraordinary-educational-experience-will-be-destroyed-and-forgotten
1	1	7.9.20	Knaggs	Deerfield Valley	https://www.dvalnews.com/letters-editor/nonexistent-transparency-events-around-marlboro-college
1	1	7.9.20	Hutchinson	Deerfield Valley	https://www.dvalnews.com/letters-editor/investigate-merger-possible-violation-law
0	1	7.11.20	Richardson	Brattleboro Reformer	https://www.reformer.com/stories/letter-what-is-truly-at-stake-in-marlbos-closure.609004
1	1	7.11.20	Mickley	Brattleboro Reformer	https://www.reformer.com/stories/letter-sorrow-and-dismay-at-marlboro-closure.609001
1	1	7.11.20	Bergmann	Brattleboro Reformer	https://www.reformer.com/stories/letter-marlboro-college-is-worth-saving.608998
0	1	7.12.20	Bergmann	Vermont Digger	https://vtdigger.org/2020/07/12/charles-bergmann-in-opposition-to-the-marlboro-college-merger/
1	1	7.13.20	Leach	Brattleboro Reformer	https://www.reformer.com/stories/letter-dont-let-marlboro-college-fade-into-history.609107
1	1	7.14.20	Tucker	Brattleboro Reformer	https://www.reformer.com/stories/letter-marlboro-belongs-on-potash-hill-not-in-downtown-boston.609171
1	1	7.15.20	Clare&Honthum	Brattleboro Reformer	https://www.reformer.com/stories/letter-more-could-have-been-done-to-save-marlboro.609236
1	1	7.15.20	Good	Brattleboro Reformer	https://www.reformer.com/stories/letter-to-save-marlboro-listen-to-alumni-former-faculty-and-staff.609235
1	1	7.16.20	Chantler	Bennington Banner	https://www.benningtonbanner.com/stories/letterspeak-up-marlboro-college-supporters.609366
0	1	7.17.20	Leach	Deerfield Valley	https://www.dvalnews.com/letters-editor/marlboro-college-gem
1	1	7.17.20	Haaland	Deerfield Valley	https://www.dvalnews.com/letters-editor/stop-unnecessary-closure
1	1	7.17.20	McClintock	Deerfield Valley	https://www.dvalnews.com/letters-editor/marlboro-college-merger-was-hasty-lacks-transparency-and-imagination
					https://www.dvalnews.com/letters-editor/if-marlboro-college-does-die-let-it-die

0	1	7.17.20	Tucker	Deerfield Valley	peacefully-potash-hill
0	1	7.17.20	Good	Deerfield Valley	https://www.dvalnews.com/letters-editor/loss-marlboro-college-detrimental
1	1	7.19.20	Iaccarino	Brattleboro Reformer	https://www.reformer.com/stories/letter-stop-the-sell-off-of-marlboro.609558?
0	1	7.19.20	Haaland	Brattleboro Reformer	https://www.reformer.com/stories/letter-stop-the-closure-of-marlboro-college.609559
0	1	7.19.20	Chantler	Brattleboro Reformer	https://www.reformer.com/stories/letter-marlboro-journey-should-continue-in-vermont.609555
18	27				

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You received this message because you are subscribed to the Google Groups "Mobilize Marlboro - Communications" group.

To unsubscribe from this group and stop receiving emails from it, send an email to

MobilizeCommunications+unsubscribe@googlegroups.com.

To view this discussion on the web visit <https://groups.google.com/d/msgid/MobilizeCommunications/2C738EB2-21AB-48E4-92E9-B4E8F43D460A%40mac.com>.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: 11th hour for Marlboro College
Date: Monday, July 20, 2020 2:23:05 PM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Dana Howell [REDACTED]
Sent: Monday, July 20, 2020 2:20 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Fwd: 11th hour for Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Can anyone stop this train wreck?!

----- Forwarded message -----

From: **Emily Long** <ELong@leg.state.vt.us>
Date: Sun, Jul 19, 2020 at 3:10 PM
Subject: Re: 11th hour for Marlboro College
To: Dana Howell <danahowe@marlboro.edu>

Dear Dana,

I completely understand your concerns. I have been hearing from constituents in Marlboro, as well as from students, alumni and faculty. I also understand why you are looking for a pause, especially in light of the recent questions about the organization that has a contract to purchase the property.

However, as I tell everyone who asks lawmakers to step in, we have no role in this process. Marlboro is a private institution and the legislature does not have the authority to step in and

stop the sale.

However, since the Vermont Attorney General's office has to sign off on the sale, you might try there - but I doubt they have much say either, since I believe their scope of oversight is narrow - but at least they do need to sign off...

The Board of Trustees are the body who makes decisions regarding the future of Marlboro College, as well as the campus and property. I know some folks feel that they are being ignored when they reach out to them but that is where the authority to act lies, so you should keep trying with them.

I know this is not what you want to hear, but it is good to know there is still a lot of wonderful passion and support for Marlboro. I hope all those who continue to support Marlboro College will keep fighting for what they believe is right, despite the difficulties, as well as the "11th hour" challenges.

Best,

Emily

Rep. Emily Long

Windham-5

Marlboro, Newfane, Townshend

From: Dana Howell [REDACTED]
Sent: Sunday, July 19, 2020 11:08 AM
To: Emily Long <[REDACTED]>
Subject: 11th hour for Marlboro College

July 19, 2020

To Vermont legislators:

We need you to do the right thing and hit "pause" in the sale of Marlboro College. The proposed agreements and actions need public airing. They are questionable in every way.

The whole process has been a closed one, carried on more like a hostile takeover than a non-profit "merger." The Board of Trustees has been resistant, and dismissive, to alumni and other constituents, while forfeiting its supposed protection of the institution that it supposedly holds in "trust." The President of the College has been deceitful, divisive, manipulative, and acting more like a landowner than a president of a liberal arts college.

From the first mention of possible merger(s), alumni of Marlboro mobilized to improve the financial situation and keep the college open. Former faculty and former staff members have also been active in speaking up and writing letters urging intervention to keep the college.

The beginning of a fundraising campaign was started by an alumna and quickly accumulated many pledges.

Among these engaged alumni are a good number working in higher education, with the credentials, experience, and skills to create a renewal of Marlboro. The current leadership has failed and trustees are telling themselves that it is worth closing a unique institute which has survived 74 years in order to buy 20 faculty jobs. The endowment isn't a bank account to be divvied up among survivors. It is a resource to help support a valued institution.

We need you to act to protect the invested constituencies against the irresponsible giveaways of a Board of Trustees which seems more eager to be divested of its work than to protect the college entrusted to them. It's a shameful picture. It also raises multiple issues of appropriate non-profit and public action.

Stop the sale. Let's have a public review of these agreements before another important institution disappears from its community locally and nationally.

Yours truly,

Dana Howell
Marlboro faculty 1985-2016

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: a matter of public interest regarding the sale of Marlboro College
Date: Friday, July 17, 2020 7:22:31 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Lissa Harris [REDACTED]
Sent: Thursday, July 16, 2020 6:52 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: a matter of public interest regarding the sale of Marlboro College

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The burden of proof is on the victim

In our justice system, the burden of proof is on the accused. Assuming there is enough evidence to make a case, the accused stands trial in defense of the allegations. But outside our court system, the burden of proof is almost always laid upon the shoulders of the victim.

What *The Brattleboro Reformer* and *The Commons Newspaper* failed to do in their recent articles [Anonymous allegations roil Marlboro College sale](#) (Audette, 2020) and [Critics urge opposition to campus sale](#) (Peters and Potter, 2020) is to hold Democracy Builders Fund accountable for the accusations of racism and abuse against their founder Seth Andrew during his time leading Democracy Prep charter schools.

According to a 2008 study in the British medical journal, *The Lancet*, [only 1 in 10](#) instances of child abuse is reported. Reasons for not reporting abuse include fear of retaliation from the abuser, thinking it was a private matter, and fear of not being believed.

It's no wonder that victims who report their abuse often wish to remain anonymous.

Focusing on the anonymity of the abuse testimony from over 350 members of a collective named [Black N Brown at Democracy Prep](#) provides a convenient way for readers to dismiss the allegations, something that the leaders at Democracy Builders were clearly counting on.

"I'm honestly extremely frustrated about being distracted by these anonymous, and ill-intentioned attacks, and the local opposition they've generated," said Jamie McCoy in the recent Commons article. McCoy is an alumna of the founding class at Democracy Prep and was hired as the internal communications liaison for the charter school from 2014 to 2017. Jazel Smith, a board member at Democracy Builders and a former student at Democracy Prep said this in response to one of the anonymous testimonies that mentioned Andrew taunted "get used to it" when a student had to go through a metal detector. Smith said "There are no metal detectors in any of DP's buildings, so only someone with no actual knowledge of DP, but a dangerously mistaken sense of what our schools were like, would write or publish that, even anonymously." Hours after the article was published, Jay Hepburn [came out of anonymity](#) to claim authorship of that testimony and to qualify that the incident with the metal detectors occurred on a school trip, not at the school.

Focusing on anonymity also dismisses the non-anonymous accounts that have been recorded and published. At the [July 9th Marlboro Select Board meeting](#), Zenzile Keith, former staff at Democracy Prep described the abuse she witnessed during her tenure at the school. Her testimony was heartbreaking and impossible to ignore for everyone in attendance. Keith said when students spoke Spanish it was referred to as "street language" and "student's cultures were disrespected." J LeShaé, a former Democracy Prep teacher in Harlem was interviewed by VTDigger in an article titled [Questions raised about Marlboro College buyer in 11th hour](#). She described the school's no-excuses discipline practices as "psychological warfare."

Those of us in the Marlboro community who have raised concerns about the sale of the college campus to Democracy Builders, based on the testimonies from former students and faculty at Democracy Prep, should not be lumped in with "Those who have opposed all change at Marlboro College" as education consultant Basil Smikle insinuated in the Commons article.

We are simply asking Democracy Builders for accountability. Their founder has admitted his role in "perpetuating systemic racism" at Democracy Prep. How will they ensure that those systems of abuse won't continue at Degrees of Freedom?

Our goal is to protect the Black and Brown students who will be attending the Degrees of Freedom program on the former Marlboro College campus.

A letter from the Marlboro Select Board asked for the Marlboro College Board of Trustees to do a thorough investigation of the testimonies made by the collective. But I'm asking Democracy Builders to respond directly to our community about these allegations instead of dismissing our opposition as "cancel culture" and halting further dialogue. The mostly BIPOC design team at Democracy Builders who are quoted in these articles could have introduced themselves to our community at either a select board meeting, school board meeting, or at our community center coffee hour every Saturday, all held via video conference. But instead, they chose to go to the press and creatively paint broad strokes characteristics across our entire community.

We are not interested in saving Marlboro College.

We are saving the dignity and education of Black and Brown students in our community.

I reached out to the Reformer, asking them how they verified that the Degrees of Freedom program will be Black-led. They responded that they were simply quoting Chandell Stone, director of recruitment for Degrees of Freedom and a former Democracy Prep teacher who said that she "hopes the anonymous critics step into the open and engage in an honest conversation about what a Black-led college in Southern Vermont might look like".

I wonder, if one of their students in Degrees of Freedom made an anonymous complaint would they dismiss it as handily?

The leadership team at Democracy Builders should take their own advice, step into the open, and engage in honest conversation with the Marlboro community about how they can assure a safe space for their students. We are ready and willing to engage.

Lissa Harris

Member Coalition for Black and Brown students in Marlboro Vermont

Harris is also a Marlboro School Board director

Lissa Harris



From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: additional concerns re: The Corporation of Marlboro College
Date: Friday, July 17, 2020 1:59:43 PM
Attachments: [vtag16072020.pdf](#)
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

From: Rhett Bowlin [REDACTED]
Sent: Friday, July 17, 2020 1:58 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Fwd: additional concerns re: The Corporation of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon. I did not receive confirmation that the office received this (unlike last time I wrote), so am resending again and hoping that you will confirm receipt. Many thanks. Rhett

----- Forwarded message -----

From: Rhett Bowlin [REDACTED]
Date: Thu, Jul 16, 2020 at 7:52 PM
Subject: additional concerns re: The Corporation of Marlboro College
To: <ago.info@vermont.gov>

Please refer to the attached letter which captures additional concerns that came to light today. Since this is an attachment again, please confirm successful transmission. Thank you for confirming receipt of my letter of last week. Again, no need to redact any of my information in response to FOIA requests.

Rhett Bowlin

Rhett Bowlin

St. Joseph, MO 64506

16 July 2020

The Honorable TJ Donovan
Attorney General of Vermont
109 State Street
Montpelier, VT 05609

Dear Mr. Attorney General:

I already provided you with a longer letter regarding the closure of Marlboro College and my strong views related to Marlboro's failed leadership.

I write now because I have been made aware that some members of the Board of Trustees are in fact troubled by the choice of Democracy Builders as the purchaser of the campus. Others involved in staging the transaction are having second thoughts, too. However, no one will speak out about this publicly for fear of possible legal action on the part of the purchaser. All of this, indeed, is deeply troubling.

I would like to repeat my request to you that the liquidation of the Corporation of Marlboro College be paused until an independent commission is allowed to examine the steps and missteps, the real financial figures related to Marlboro's assets and liabilities, and the unredacted documents related to the transfer of assets to Emerson College and the sale of the Marlboro College campus to Democracy Builders.

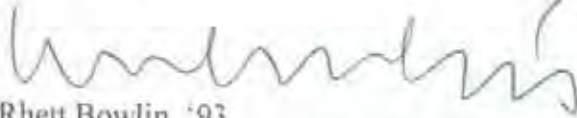
Nothing here makes sense, and not just because documents we have been able to review have been redacted. I have seen redacted letters to Marlboro's major donors in which the College President requests releases on restrictions. At least two passages, one from a donor and one from the President himself, lead me to believe that the administration has misled donors in working to remove restrictions from donations to Marlboro. There is no proposal related to 'navigating the very challenging pathway to the future for Marlboro College,' as one donor wrote. And Marlboro's 'proposed alliance with Emerson College,' as the President wrote, is a misrepresentation of the actual liquidation of Marlboro.

I find it baffling that Marlboro leadership would have entered into a purchase agreement with any buyer without any contingencies and before concluding a final agreement with Emerson regarding the College's significant assets. That alone demonstrates the negligence that Marlboro leadership has demonstrated while supposedly stewarding the College and its assets. The fatal arrogance on top of the sheer incompetence of both the President and the Board of Trustees must

not be excused, and the Corporation should be held to account for the disastrous proposals on the table right now.

Please act in the interest of transparency and accountability that supporters of Marlboro College deserve.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rhett Bowlin', with a long, sweeping line extending upwards and to the right from the end of the signature.

Rhett Bowlin, '93

Director, Higher Education Support Program (Budapest)

Director, Africa Climate Change Adaptation Initiative (Johannesburg)

Open Society Foundations, 1994-2012

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Concern re: Restricted Funds for Marlboro College
Date: Monday, July 20, 2020 8:06:07 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Wendy Montanari [REDACTED]
Sent: Sunday, July 19, 2020 9:11 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Concern re: Restricted Funds for Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. T.J. Donovan, Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

Concerning: Josie Avery Memorial Book Fund, Marlboro College

July 19, 2020

Dear Attorney General Donovan,

Since March, 2003, I have funded and raised funds for the Josie Avery Memorial Book Fund at Marlboro College. The Fund memorializes my Marlboro College classmate Josie Avery, class of 1977, who died on January 15, 2003. Interest from the accumulated principle of this fund is awarded to an incoming freshman who cannot pay for textbooks.

With the help of Teresa Storti, Director of Annual Funds and Alumni Relations of Marlboro

College, I started the Josie Avery Memorial Book Fund. I sent a request for donations on Marlboro College letterhead to her family, our classmates and teachers. In the first few months the campaign raised \$1,820 (March 24, 2003), and over time the amount was augmented to \$7,000 dollars through donations restricted to this fund. My classmates, some teachers and I have continued to contribute yearly.

I have not been contacted by the College about the status of this Scholarship Fund in relation to the College's plans for closing and transferring its assets to Emerson College in Boston. I would like an accounting of the money, as I know that it has continued to be funded through donations. I would also like it to be clear that I **DO NOT** release the Josie Avery Book Fund to be conveyed with any other fund or scholarship, or transferred in any way through the transfer of Marlboro College assets to the Marlboro Institute at Emerson College.

Thank you for your attention to this matter,
Wendy Kilpatrick

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: concerns about the sale of the Marlboro College campus
Date: Monday, July 20, 2020 8:07:04 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Melanie Gifford [REDACTED]
Sent: Monday, July 20, 2020 7:24 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: concerns about the sale of the Marlboro College campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To the Attorney General of Vermont:

I am deeply concerned by the proposed sale of the campus of Marlboro College to Democracy Builders, run by Seth Andrews.

I have concerns about the nature of the proposed college-level institution, based on the serious allegations of discriminatory and abusive practices in Seth Andrews's management of his previous charter school projects (statements by Black N Brown at DP, former staff and alumni, are available at <https://medium.com/@wearetheseeds2020>).

I have concerns for the relationship of the proposed institution with the town of Marlboro and the state of Vermont. I understand that substantial conflicts are already arising—a tragic legacy after Marlboro College's long history of partnership with the community as stewards of the land. I support the town of Marlboro in opposing this sale (their [letter](#)).

The proposed sale of Marlboro College's campus to Democracy Builders is at odds with the values of the Marlboro College community, the town of Marlboro and the state of Vermont.

Sincerely,

Melanie Gifford, Marlboro class of 1973

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Concerns re: decision making and duties of Marlboro College Board of Trustees
Date: Monday, July 20, 2020 10:42:36 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Lisa Richardson [REDACTED]
Sent: Monday, July 20, 2020 10:26 AM
To: AGO - Info <AGO.Info@vermont.gov>
Cc: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: Concerns re: decision making and duties of Marlboro College Board of Trustees

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr. Donovan, Mr. Diamond, and Mr. Curtis,

I know the Attorney General's office is concluding its review of the transactions related to Marlboro College, and I know many have raised concerns re: these transactions. I am writing today about a concern of malfeasance on the part of the Trustees, related to the terms that they established for themselves in the Purchase and Sale Agreement with Democracy Builders Fund and the term sheet which preceded the Asset Transfer Agreement with Emerson College.

My understanding is that the Purchase and Sale Agreement (PSA) leaves no option for Marlboro College to back out of the sale, while the buyer is given that option. I wonder why the Trustees, stewards of the college and responsible for its well-being, would choose those terms. In this particular case, concerns the financial records and IRS status of DBF's founder's previous endeavors have been identified post PSA, as well as questions re: the founder's leadership, management, and pedagogical practices. But irregardless of DBF, why would a Board of Trustees not ensure that they had a stop gap in any contract, in case any type of information came forward that changed the calculation of the benefit of that contract? In this case, the Board justified the sale to DBF over other bidders in the mix by saying that it was "the proposal most consistent with the criteria developed by the CWG [Campus Working Group]..." That criteria was stated in the CWG's charter as: ""Priority will be given to proposals that (1) provide a significant benefit to the Marlboro community, (2) result in a payment consistent with the campus fair market value..." [Both of these quotes are from materials provided by the College to the Attorney General's office and released through the Public Records Act.] When new information would change the calculation of which bidder is the best fit with the CWG charter, it would seem that a Board should be able to adjust and recalculate, and possibly make a different decision. But in this case, it appears that the Board believes the PSA does not provide that option. Since the Board wrote the PSA, wouldn't it have been their responsibility not to create this contractual bind?

In a second example, it is my understanding that the terms set out in the 'term sheet,' which set up the initial agreement with Emerson, influenced the College's response to having a third party complete an independent review of options and alternatives. This independent review was in the form of Will Wootton's offer to work with the College to see if he could come up with a different alternative for the College's viability and potential to remain

operating in Vermont. Mr. Wootton was highly qualified to offer his expertise, having helped to sustain Sterling College in Vermont, and having launched and built Marlboro's own endowment. Again, why would the Board have accepted terms of a contract that restricts their ability to be responsive to new information?

Isn't it negligent for a Board, charged with the care of an organization, to limit its options in these ways?

I am including Mr. Curtis in this, because of the role of the Public Protection Division. In the case of Marlboro College, as very small community is interdependent with the college - Marlboro, VT. Faculty and staff of the College own homes - in many cases building those homes, in that community, and send their children to the public school in Marlboro. The decisions set forth by the Board of Trustees, and the self-limiting restrictions they have built into those decisions - including when parallel restrictions were not set as terms for the other parties - will have lasting impact for the town of Marlboro.

I urge a careful review of the Board's duties in these decisions and their outcomes.

Thank you for your consideration,
Lisa Richardson
Marlboro College class of 1984


West Saint Paul, MN 55118

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Contact Form submitted on Office of the Vermont Attorney General
Date: Monday, July 20, 2020 8:51:48 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Office of the Vermont Attorney General [REDACTED]
Sent: Friday, July 17, 2020 2:34 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Contact Form submitted on Office of the Vermont Attorney General

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Name Peter
Last Hutchinson
Email [REDACTED]
Phone Number [REDACTED]
Subject Marlboro College and Democracy Builders

Message I'd like to add my voice to the chorus opposing the sale of Marlboro College's campus to Democracy Builders. Democracy Builders has recently received significant criticism for racial insensitivity... enough so that the town of Marlboro selectboard opposes the organization's presence in the community. It seems to me that this development, and the circumstances under which the board of trustees of a renowned college intend to give away an endowment of more than \$20 million (including many restricted funds) to a Boston University, make a compelling case for further investigation. I urge the AG's office to throw the brakes on this ill-advised scheme, look more closely at the circumstances of the closure and sale, and review the positive alternatives that have been proposed by alumni and other stakeholders. I'd add that the College's alumni, myself included, have pledged a significant amount of money to support Marlboro College's continued operations. There are many ways Marlboro can be managed to succeed and continue its valuable contributions to Vermont and the country at large... but there's no way to revive this uniquely valuable institution if it dies.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Democracy Builders and Marlboro
Date: Friday, July 17, 2020 10:31:50 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Andra Horton [REDACTED]
Sent: Friday, July 17, 2020 9:31 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Democracy Builders and Marlboro

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

I am writing to you to urge you to look carefully and deeply into the allegations that have been made against Seth Andrew, founder of Democracy Builders, before allowing the sale of Marlboro College to proceed.

As an alumna of the college, of course I have concerns about how the campus will be used. But more urgently, and as a tax paying full time resident in Marlboro, I have greater concerns about the new "owner". Many black and brown people have given voice to their previous experiences with Mr. Andrew, decrying him as a racist. They accuse him of abusive treatment as well as being disrespectful of their culture in favor of creating conforming, middle class citizens. I am sure you have read these allegations.

Is this the kind of institution we want in Vermont? Can this kind of behavior be consistent with the rules governing non-profit organizations? In a time so fraught with racial divide and anger, is this the kind of endeavor Vermont wants to promote?

While Mr. Andrew publicly insists that he has made mistakes he will not repeat again, he has also refused to engage in any kind of conversation with the residents of Marlboro to answer questions

and to put our fears to rest. Does this sound like a person who has nothing to hide, a person who is acting in the interest of a community in which he will live?

I urge you to ask Mr. Andrew to describe his pedagogy, and his methods of education before accepting the sale of Marlboro College to him. I urge you to look deeply and to see whether his philosophy is consistent with the rules for running a non-profit corporation, reaching out to those who have publicly spoken against him to learn more. And finally, I urge you to consider whether the tiny town of Marlboro can sustain 1000 students annually coming through an institution that has no apparent wish to engage with community.

Thank you for listening.

Andra Horton
Marlboro Town resident and Marlboro College alumna

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: I object to the sale of Marlboro College's campus to Democracy Builders
Date: Monday, July 20, 2020 8:00:42 AM
Importance: High

Deb Matthews

Administrative Assistant
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109 State Street, 3rd Floor
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Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Michael Rosenstein [REDACTED]
Sent: Friday, July 17, 2020 5:31 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: I object to the sale of Marlboro College's campus to Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr. Donovan,

I am a Marlboro College alumni from the class of 1979. Details surrounding the sale of Marlboro College's campus to Democracy Builders have recently come to light. I have significant concerns about the intentions of Democracy Builders, specifically a number of racist allegations which have been made against the founder of the organization, Seth Andrew.

This sale is at odds with the values of Marlboro College, the Town of Marlboro, Windham County, and Vermont in general.

I urge you to reject this sale.

Sincerely,

Michael Rosenstein
Marlboro Class of 1979
[REDACTED]

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Letter Opposing Closure of Marlboro College
Date: Friday, July 17, 2020 1:44:22 PM
Attachments: [AG Letter.pdf](#)
[Statement for the President.pdf](#)
[Continuing Challenges, Sept '16.pdf](#)
[Wootton Letter May '18.pdf](#)
[UB Merger Letter.pdf](#)
Importance: High

Deb Matthews

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Phone | 802-828-3689 [802-595-3803](tel:802-595-3803) (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

From: Brian David Mooney [REDACTED]
Sent: Friday, July 17, 2020 1:44 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Fwd: Letter Opposing Closure of Marlboro College
Importance: High

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

I write in support of T. Wilson's letter to you.

Before I add my two cents, I should tell you that I graduated Marlboro College in 1990 (highest honors) and returned in 2003 as a Visiting Professor of Writing. I have also worked there as freelance staff, when I edited the 60th anniversary issue of Potash Hill, the college's alumni magazine, which explored the history of the school. My wife also graduated from Marlboro ('89), and her mother worked at the Marlboro Music Festival, and we have close ties to the Festival family. We live a few miles from campus. I feel that I have a unique, year-round perspective of Marlboro College and the land it sits on. My experiences there have been as a student, faculty member, colleague, staff member, neighbor, family member, and friend.

When people ask me about the "sale" of Marlboro, they are incredulous when I explain that it's not a sale, and that it primarily consists of a giveaway of the campus and endowment. The deal is unique

in its generosity, and I think T. makes many important points about the abdication of fiduciary responsibility on behalf of the board and the president. They have crafted a deal that objective observers have difficulty grasping because it is so desperate, one-sided, obscured, and rushed.

I will refrain from reiterating some of the specific points T. makes in his letter and will instead suggest to you that the current situation at Marlboro College resembles that faced by the New England Center for Circus Arts (NECCA) a couple years ago. As you probably remember, the NECCA board made some decisions that brought the organization perilously close to going under. It took new leadership and a new board to right the ship. It was hard, yes. But there was nothing so inherently flawed in NECCA that it couldn't survive with the right people at the helm. Sadly, I feel that Marlboro College may be in a similar situation as NECCA. Like so many people, I continue to believe that Marlboro College can survive— and not just survive, but thrive. But not under leadership that is determined to make sure that it can't, and that it doesn't.

That is why I urge you to look very closely at this deal and to reject it in favor of new leadership that can retrench, reimagine, and reinvest in the little college on the hill.

Sincerely,

Brian Mooney
Brattleboro

Begin forwarded message:

From: "T. Wilson" [REDACTED]
Subject: Letter Opposing Closure of Marlboro College
Date: July 12, 2020 at 11:23:11 AM EDT
To: undisclosed-recipients: ;

Herewith what is probably my last letter to the AG against closing the college, with supporting documents. Please feel free to share where you think it might do some good.

Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

Dear Attorney General Donovan,

The Marlboro College Board of Trustees has failed dramatically and repeatedly in their fiduciary responsibilities to govern, maintain, and oversee the institution. They have allowed the president to act with demonstrated duplicity. That resulted in the abrupt departure of dedicated active faculty with more than a third of the years of experience at Marlboro. They have accepted without careful analysis a steady erosion of enrollment. They have approved policies that sharply reduced tuition income per student. They have repeatedly set and then ignored deadlines to close money-losing programs originally designed to subsidize the core institution. They have neglected alumni participation and support, allowing alumni-giving to slip from a participation rate in the top 10% nationally to a point where fewer than half of the alumni even have current contact information on college mailing lists.

I write to urge you to do everything possible to prevent the closure of Marlboro College and the transfer of its assets to Emerson College in Boston. At a bare minimum, I urge you to prevent the dissolution of the corporation and the transfer of Marlboro College's good name to Emerson, in the hope that a new board and new leadership might someday revive the institution. I know Marlboro College intimately from many different perspectives, and I believe it is safe to say that I have the respect, confidence, and trust of my colleagues (both faculty and staff), my students, past presidents and deans, as well as of trustees, past and present.¹

¹I taught at Marlboro for forty-seven years and was part of the group that established the core course in the Humanities that ran for more than twenty-five years. I served as Dean of Faculty and Acting Dean of Faculty, twice as Co-Director of the World Studies Program. I was elected by my colleagues as their representative to the Board of Trustees multiple times over those years, as well as to the Committee on Faculty (our hiring and review committee). I served at various times on the Admissions Committee, the Curriculum Committee, the World Studies Program Committee, the English Committee (which administers our writing requirement), and numerous hiring committees for both faculty and staff (including one hiring committee for President). I was elected multiple times as moderator of our college Town Meeting and to our Community Court, where I was frequently chosen as presiding justice. I served twice on Long-Range Planning Committees, one of which I chaired (and wrote the report for) and twice on committees writing self-studies for NEASC, our accrediting agency. I served on and then chaired our Building Committee. I have worked closely with all previous presidents of the college, and I know most of the trustees, several since they were students at the college.

I have also served actively in the Town of Marlboro, on the Planning Commission, the Development Review Board, and the Board of Civil Authority (all of which I have chaired), as well as Justice of the Peace for more than twenty-five years. You may recall my detailed rebuttal of your predecessor's report on the police shooting of Robert Woodward, which I sent to you during your first campaign against Sorrel.

You have received many letters already opposing the closure of the College. Many have described the rarity of this sort of education and community and governance. They have detailed the profound loss the disappearance of the College would represent. Many letters have also identified ways in which the process through which the Board has arrived at this end has been inconsistent with the principles of clarity, transparency, and consultation upon which the college was founded and upon which it has operated for most of its life.

Though I have made such arguments previously myself, I am aware that such process issues do not necessarily provide grounds for you to act. I want to focus attention instead on a pattern of Board decisions that represent a failure of good governance and responsible oversight. Some specifics are so egregious that some faculty and supporters of Marlboro have believed that the Board set out to close the college beginning in 2016. The college has faced grave financial challenges for almost its entire history. Nonetheless, it has always had a dedicated faculty and staff, and by 2016, it had a larger endowment and better facilities than ever. It had a strong and vibrant curriculum. The college community has striven to address problems as they arose and to keep the Board informed, but the Board has repeatedly not heard or has failed to act.

Presidential Search and Effects: Identifiable problems in governance at the Board level arose with the recruitment of the current president. All previous presidential searches, like searches for faculty and for senior staff, had been conducted with broad campus participation, both through membership on the search committee and through public presentations by and meetings with finalist candidates. This time, despite strong advice and pleas from the Faculty and the college Town Meeting, the Board followed advice from a search firm to conduct the search in secrecy. There were still community representatives on the committee, but they were allowed to report almost nothing about the process or the candidates, who, if they visited the campus at all, did so in secret.

We learned nothing about the selected candidate until his resume was posted and he arrived on campus the day before his appointment was official. The resume suggested some elements of a good match with Marlboro, but within the first year, it became clear that the secrecy of the search process had led the new president to understand his role more as CEO, with a hierarchical structure of responsibility and control, than a participant in Marlboro's well established, and formally delegated, distribution of authority, in which faculty, staff, and students all have participatory and consultative roles. This president nominally supported "transparency" and "consultation," but repeatedly acted against both. He told the faculty Delegates to the Board that they could present only a single issue at any Board meeting and "consulted" with faculty committees by telling them his decisions before he told the whole community. (See detailed examples in the Statement for Kevin attachment.)

Phased Retirement Cancellation: In April of 2016, the president abruptly terminated the Board-approved phased retirement policy, without consulting the Board as the policy itself required. He did so without consulting the Committee on the Faculty, the Faculty Finance Committee, or the Curriculum Committee, announcing the decision publicly in the final weeks of the semester. Six longtime members of the faculty nearing retirement were effectively pressured into making immediate decisions to retire within a year. I notified the Board of the president's

action, assuming they had approved it as required and expressing my astonishment that they had done so without timely notice to affected faculty. Shortly after that, the president told me that the Board had never approved the retirement policy in the first place. A quick check of Board minutes showed that his assertion was untrue, yet I later learned that the president had also led the Board to understand that they had never approved the policy. (See details in the Statement for the President and Continuing Challenges, Sept '18, attached). The supposed rationale for this action was to save money, but there was at the time no financial analysis showing how much or how it would save. The effect on the community, both faculty and students, was dispiriting, to say the least. That the Board neither dismissed the president nor reversed his unwonted action was grossly unfair to individuals and destructive to the institution.

The Renaissance Scholar Program: In the spring of 2016, the president proposed to increase enrollment by offering one full-tuition scholarship for each state to candidates with strong academic records and a history of responsible community action. The rationale was that strong students would swell our enrollment without significantly adding to faculty load and that at least their room and board fees would support the budget. As with the retirement termination, there was no fiscal analysis, and it is not even clear whether Ren Scholars received further scholarship aid toward room and board.

Moreover, without consulting the faculty (responsible for admissions standards), the criteria were apparently changed during the summer. Faculty were never told which students were Ren Scholars (though some self-identified) and when some of them turned out to be in academic trouble in following semesters, we could not even get a requested report on the academic performance of the group. The Board celebrates this program as an achievement, without apparent awareness of the effect on the damage to the perceived value of the education and on our disastrous discount rate (over 70%, at least twice what it should be).

Presidential Review: For the previous three administrations, the Board has engaged in a discreet confidential review of the president, talking with several members of the faculty and senior staff. I have been one of those that members of the Board have spoken to in the past, and I have given them a balanced assessment in each case. While it is just possible that they conducted such a review with the current president (and given my vocal role in the retirement fiasco, I wouldn't have expected to be asked for comment), none of those in a position to provide useful analysis appear to have been asked. In any case, no one has observed any correction of attitude or process, such as might follow a thoughtful review. That the Board has evidently voted bonuses approaching the base salary for new faculty in the midst of financial and institutional crisis is further evidence of irresponsibility. (For contrast, it is worth noting that a previous president offered his personal retirement fund as a guarantee in an earlier crisis.)

The Graduate Center: Marlboro's Graduate Center began three presidents ago. It established a program very different from the undergraduate program (nonresidential, a heavy emphasis on technology, mostly adjunct faculty, no community governance) with the avowed purpose of subsidizing the undergraduate program. In about its third year, it produced a theoretical net benefit to the college.

In every other year of its existence, it contributed to the actual deficit, despite peculiar bookkeeping, in which the support from the college Admissions team, the college Librarian, the

college Dean of Faculty, and the college maintenance staff was never counted as part of the Graduate Center budget, making the Grad Center look better than it was and the undergraduate program look worse. Moreover, rental of space in the Grad Center building in Brattleboro counted toward the Grad Center budget, even though the building was purchased using a \$90,000 grant given in support of the undergraduate college.

For at least the last four years, the Dean has assured me, the Board has set one deadline after another for the Grad Center to show a profit or at least break even or it would shut down. Repeatedly, it failed even to break even, and it was never shut down: the last graduates from the Grad Center will finish after the last Commencement for the undergraduate program, having run at a deficit its entire life.

Alumni Relations: The administration and the Board have been woefully negligent in this area, which is the essential base for both fund-raising and recruitment. The alumni organization has been allowed to lapse, and though seven alumni are now regular members of the Board, the rotating alumni positions have lapsed as well. Alumni achievements have been absent from recruiting materials and largely invisible even to current students. Most seriously, the contact lists for alumni have been neglected (for details, see the letter to your office from John Coakley on the board of the new, independent Marlboro College Alumni Association).

Mailings to alumni as recently as April 2019 assured them that although other small colleges in Vermont were closing, "Marlboro [was] not on that path." The consequent shock of the announcement that the college would merge with the University of Bridgeport, and the almost immediate collapse of that deal, spurred alumni into fevered action to help with raising funds and with recruiting new students. Yet the Board signed, without public notice, its first agreements with Emerson to close the college even as they allowed alumni to continue their work to preserve it. Continuing such efforts by alumni and others have been hampered by the lack of communication and cooperation from the Board and hampered further by a series of misleading, disingenuous public statements.

Internal Board Governance: Many discussions of critical issues appear to have taken place informally or in executive sessions, so it is difficult to know all of the details ,but some things are clear. Board membership has been relatively stagnant. The members of the Board "believe" in the college, but they have not used their long association with many members of the college community to build the deep understanding and insight into the long-obvious problems the college faced. Several trustees have resigned, out of concern for the direction and management of the Board itself, yet there has been no system of self-evaluation or even a process of an "exit interview" to inform the whole Board.

The Board have allowed and relied on extravagant (at least by Marlboro standards) outside consultants and advisors, who have rarely understood an institution as unusual as Marlboro. When they invited Will Wootton, a senior staff member for 19 years who went on to serve as president of Sterling College, to attend a meeting in May 2018 and to comment, his suggestions (Wootton Letter May '18 attached) either were not circulated to the full Board or were unread by many.

Their handling of the search for a "partner" has looked like grasping at straws, where even from

the outside, the process has appeared rash and lacking in due diligence. The Board has seemed overly responsive to optimistic appreciations and enthusiasms from college presidents who had an obvious acquisitiveness toward our endowment, while it failed to appreciate obvious dangers in the actual agreements. The proposed "merger" with the University of Bridgeport fell apart for easily foreseen reasons (see my UB Merger Letter, attached, written well before the merger collapsed and withheld from wider circulation at the time at the request of the Board chair). Similar concerns apply to the Emerson deal, and despite the presence of four lawyers on our Board, they have signed without due diligence in their analysis of who they were dealing with a Purchase and Sales agreement with Democracy Builders Fund that even a non-lawyer can see allows DBF to withdraw in certain circumstances without similarly protecting the College.

Conclusion: Nothing here should imply that the problems identified by the President and the Board – low enrollment, discounted tuition, demographic challenges – are not real or should be ignored. But neither are they new. Indeed, the imminent demise of Marlboro College has been forecast by outsiders many times over the years. In the past, however, the Board, the administration, the Faculty, the staff, and the alumni have all worked together, sometimes at considerable personal sacrifice, to sustain and reinforce the college. I hope you will do whatever may be in your power to allow this to happen again. The damage that has been done in this process is extreme, and to rebuild from so low a point in the midst of a worldwide pandemic and a multidimensional national crisis will take an extraordinary effort, but there remain a great many associated with the college willing and able to support such an effort.

Sincerely,

T. Hunter Wilson

Marlboro has undertaken this presidential transition under particularly difficult circumstances, with enrollment alarmingly low, staffing high for enrollment, both for faculty and staff, and a physical plant substantially larger than it was when enrollment was this low before and still under construction. At the same time, we have underlying strength, represented by faculty and staff dedication to the academic community and to the success of our students, an endowment immensely greater than when enrollment was at comparable levels, and a Board with more alumni than ever, so with a deeper and more personal understanding of what is at stake here.

You have said a couple of times that you are “new at this” and “still learning.” We are here because we are deeply worried about developing patterns in your new administration. Perhaps obviously, the issue with the greatest consequence is the abrupt termination of the phased retirement policy, but the pattern that emerges when considering that along with other issues has substantially undermined people’s trust. We believe that it is essential to your success, and ours, for you to rebuild that trust. That will take a renewal in action of your commitment to transparency and community engagement. These cannot be slogans invoked as cover for decisions made in isolation for reasons that are neither obvious nor explained. The financial crisis we all recognize requires us to be able to work together, from a shared understanding. You confront the crisis and its dangers daily in a way that most of us do not, but you can no more solve it on your own than a new faculty member could work out how to teach at Marlboro without consulting and listening to colleagues.

We have not formally engaged everyone on the Faculty or members of the staff, but we know that we speak for many more than just ourselves, both faculty and staff. Marlboro is a small and tightly integrated community, unusually so. We have our differences and our pettinesses, of course, and always have had. But we have survived through greater crises than this one because we have engaged the full resources and good faith of the whole community in the face of challenges; we have shared loss and sacrifice largely without recriminations. That some of those who agree with these concerns chose not to join this meeting either because they felt it would do no good or because they feared some form of retaliation is a measure of the depth of the problem we face.

Marlboro is unusual both in its formal structure and its informal structure. In its formal structure, the President and the Faculty are jointly responsible for the academic program, for admissions policy and standards, and, ultimately, the maintenance of good order in campus life, though most of that last responsibility is formally delegated to Town Meeting, in which the whole community participates. Marlboro has an unusual philosophical integration between the academic life and the community within which the teaching and learning occurs. Both the academic structure and the community structure are unusual in the degree to which they presume individual responsibility for and control over the circumstances within which we live and work. Our presumption has always been that the workings of the community are intimately bound to the academic mission of the college.

This may seem a rehearsal of the obvious or perhaps of the merely rhetorical, but these are in fact qualities that have drawn and sustained faculty even when pay is low, they have drawn students from a remarkable range of backgrounds and empowered them both here and in their lives beyond Marlboro, and they have given staff the satisfaction of developing complex roles in an institution without many opportunities for internal advancement. This is also a small community, both the college and the Marlboro/Brattleboro community. We have lots of interlocking friendships and acquaintances outside of formal “channels,” actions in one sphere may have consequences well beyond those directly affected.

You may not be accustomed to or even comfortable with the “leakiness” of small communities with broadly shared interests. Such leakiness, however, is virtually inevitable and in fact is part of what makes communities like this resilient: people know about and respond to issues often before they reach crisis proportions. [The Dean of Faculty] has said that you have a particularly clear line delineating the elements for which you are formally responsible. We recognize that some of the things we are worried about are entirely within your formal charge. Nonetheless, we hope you realize that the whole community has a substantial stake in your success as president. No one disputes your responsibility here, but responsibility does not rule out genuine consultation and reconsideration as more information appears.

Consultation & Community Engagement:

The secrecy of the search process that led to your appointment had the unfortunate effect of insulating you from the community and from our expectation of involvement. You may know that many of us were gravely concerned that such a lack of broad participation, though urged upon us as a necessity by our search firm, was antithetical to our culture. As far as we are aware, you have not had any informal background conversations with any members of the faculty to develop a more intimate and informed sense of the institution. [The Dean of Faculty] has said that you rely on him for relaying faculty opinion, but he serves at the pleasure of the president, which frankly looks a trifle dangerous these days, and he may not himself have the same range of faculty observation that you might get.

You began the year by asking the Faculty and Town Meeting to elect representatives to the Senior Team. Many thought that a promising response to a recently contentious issue. However, those reps never reported and when queried said that they really had nothing to report, that they were never present for discussion of substantive issues, and minutes of the meetings, previously circulated, ceased. Even the already-established structures for broader input into decision-making have been disregarded. The Faculty Finance Committee has said that they have seen less of the budget process than ever before; you have characterized your interaction with that committee and with the Curriculum Committee and the Committee on Faculty as consultation, but all three committees experienced that interaction as a report of decisions already made.

We understand from a variety of those directly and indirectly involved that staff have had similar experiences in PACSE, that when you asked PACSE representatives to suggest changes that would improve efficiency and reduce costs, you treated their three pages of suggestions as trivial and even irritating. When the members of Senior Team who were willing to comment openly on the suggestions supported them, you nonetheless rejected them without explanation, accepting only the suggestion for Summer Fridays, which you then announced without acknowledging PACSE’s role. When two conscientious members of the committee chosen by their staff colleagues to represent them resign because they feel they cannot work with you, that might give you pause; it certainly gives pause to the staff who elected them and to other members of the community who observe their treatment.

As one faculty member wrote before the May 14th meeting between faculty and trustees,

the decision to phase out the current retirement benefit package was, I believe, made without the curriculum committee’s input, without the committee on faculty’s input, without the input of those eligible for retirement, and certainly without consulting the entire faculty. That’s one reason we’re behind. And it is one reason why the scale of the challenge is as big as it is. If you add up the number of years of teaching at Marlboro held

by the seven faculty offered 'last call' on the retirement benefit and add to it the years held by Gloria and Cathy, who had already announced their intentions to retire, you get very nearly 50% of the total. That's a change much bigger than any we've faced in the 16 years I've been here.

We talk about the importance of transparency and collective decision making. We claim to empower the community through these values. We also claim that the faculty holds control over the academic program. These are not claims and values that we can observe only when times are good and decisions are easy. If we abandon them when times are hard, we don't have much to promise a new cohort of Renaissance Scholars where self-governance is concerned.

You have spoken of the decision to end the phased retirement policy on short notice in ways that led us to understand that the Board had been consulted and had approved the deadline. It is a shock to us, and presumably to them, that there was no such approval. When you have been queried on this score (as on the "consultation" with the faculty committees) your response has been only silence and vague suggestions of some flexibility transmitted through Richard.

Transparency:

Although you declare a shared value of transparency in management, you have not seemed to live by that. As noted above, minutes of Senior Team meetings no longer circulate and Faculty and Town Meeting reps seem to have no substantive information. As far as we can gather, even members of the Senior Team are frequently uncertain as to why or how a decision has been reached. Too many consequential decisions appear to arrive from a "black box," without visible input and with an unwillingness to consider alternatives or unanticipated consequences or to reconsider on new evidence.

The presentation of Guillermo Rodriguez as a candidate for an honorary degree was an alarming instance of the lack of transparency. As submitted for faculty consideration, his candidacy was in no way flagged for special notice, and honorary degrees are ordinarily pretty much a pro forma vote. You were prepared for a questions by having [the Development Director] present for explanations, but we had no way of knowing until a question was raised that this candidate was not only unusual in his qualifications, but extraordinary in the way his candidacy had been proposed, by solicitation from the Jimmy Kimmel Show. Only direct questions revealed that this was a PR stunt, that there would be TV cameras on the floor, that we had no control over how we, especially our graduates, might be presented. Even if such a departure from standard practice in granting honorary degrees was going to be considered at all, transparency would mean at a minimum that the departure would be noted and explained. That so many of us were opposed to it on grounds of principle or the potential for ridicule and distraction from the celebration of our students should have invited immediate reconsideration, yet the possibility of a visit to facilitate going ahead persisted for a week and apparently is not yet beyond question.

The discussions of the budget at the two budget hearings and at Town Meeting was presented explicitly as an instance of transparency and community engagement, yet on both those occasions you described the process resulting in the ending of phased retirement in ways that led most of those present to believe that the process had been well considered with the engagement of the appropriate committees for much of the semester. People who had felt that they must not have been paying attention were grateful to learn that in fact the whole process had taken place in about a month, but they were also distressed to find that a

decision with significant threat to the curriculum, to the program of Renaissance Scholars, and conceivably to the college itself was presented as a *fait accompli*, too late for their concerns or alternatives to have any effect.

We have, presumably, some in-house expertise in management, at the graduate center, so perhaps some alternatives to this less than communicative style might be considered.

Management Choices:

This is an area clearly within your formal responsibility, yet we cannot help observing that here too some of your choices seem surprising and a challenge to the community's confidence. If there was a single issue on which the great majority of participants in the "advance" and the "low-hanging fruit" exercise agreed, it was that our web site is abominable: dreary, difficult to navigate both from inside and outside, unclear about our program and offerings, minimal in its presentation of what our graduates accomplish. Yet not only has nothing been done to improve it, the people most capable of doing that work, even of maintaining its present deficient function, have been discouraged until they left. Again, we had in-house expertise in marketing in the person of [the director of the Graduate Center], but we have not used that, either, and now he has been let go.

[The Grad Center director] was brought [up to positions on campus] in September and impressed many of us by the way he engaged with the community, the way he listened but also challenged unexamined assumptions. We understood from the series of additional responsibilities you placed on him, some of them not obviously within his previous experience, that you recognized his competence. Then you announce in March his departure in June, only to make that departure seem leisurely by abruptly telling the community in April that he is leaving that day, with all contact information scrubbed from the college system.

At the same time, we have a Development Director with no experience in Development or Marketing, who un reassuringly seems to have thought the Guillermo Rodriguez proposal was a good idea, who seems to have little responsiveness to constructive suggestions from the community, and who is reportedly outsourcing much of the work at marked expense and to no great effect beyond trustee contributions.

Summary:

This is probably an unwelcome challenge to your management "style" and to the substance of some of your decisions. We see the engagement this community offers as integral to our mission and integral to our survival. The failure to engage in more than form now seems to threaten not only your constructive efforts, notably with the Renaissance Scholars, but also confidence in the survival of the college itself. We do not need our students new and old rattled at abrupt, unplanned changes in the curriculum. We do not need the alumni initiating some form of social media protest campaign, as some of them have suggested. We do not need newer faculty to feel they'd be wise to look for another place, no matter how much they believe in this one. We do not need the local community doubting our future. The president and the faculty and the staff need to work together to make the cuts and the changes that will allow us to survive in the short term and to thrive again in the long term.

Note: the bracketed substitutions clarify for those unfamiliar with the individuals named in the originals

what role those people played in the college. They are added in July 2020. The original document was presented on 23 June 2016 to the president with the Dean of Faculty by four members of the faculty with quite different years of experience at the college.

Continuing Challenges

14 September 2016

1. If policies duly adopted by the Board, published in the College Handbook, and followed for a decade can be abruptly terminated by the President without consulting either the college community or the Board, what is the authority of the Handbook on any issue?
2. After our group meeting with [the president] on 23 June, [the president] asked me to remain as the others left. He upbraided me for saying that the trustees needed to approve the deadline we had been given. I told him that I had not said that on my own authority, that I had simply quoted the College Handbook to that effect. He told me that the trustees had never approved the language in the Handbook and that he was therefore not bound by anything the Faculty might have adopted. He told me that the absence of trustee action on the language “trumped” anything that the Faculty might have done. He said that the only language in the minutes following a discussion of retirement policy was that “the board supports the direction in which this is going.” I said that I was surprised at this, but that it sounded as though he had consulted counsel. [The president] confirmed that he had, and I told him that in that case, I guessed I would be resigning as of the end of the 2016-17 academic year.

The following week, I asked for a copy of the minutes he was quoting from, and I received in my box a copy of that page, from the minutes of the February 2006 meeting. The passage he quoted is there, followed two sentences later by instructions from [the chairman of the Board] for the administration to come back to the Board with a “package.” The agenda for the board meeting for the following July includes the item “Faculty Retirement Package.” The minutes of that meeting record a substantial presentation by the Dean and the Business Manager and a full discussion by the Board, concluded by an apparently unanimous vote “to support and endorse the plan and give the green light to [the president] and [the Dean] to implement the faculty retirement package.”

3. I had lunch with [the president] ten days ago at his invitation. We had a reasonable discussion. Toward the end of it, I said that I wanted to clear something up, and I laid out the facts as described above. I told him that I was troubled that I had little choice between thinking that he had not read the rest of the paragraph from which he quoted to me, which seemed quite incredible, or that he had read further and knew all along that the trustees had in fact approved the policy language in the Handbook. I said that I supposed that he had given the trustees much the same understanding that he had given me, that the Board had never approved the policy in the first place. [The president] confirmed as much and said simply that he did not think the trustees would now revisit the process. I told him that I agreed, that there would be little point as most of the eligible faculty had now made their decisions and were more or less resigned to them, whatever they felt about the process. I said that, moreover, the trustees could not easily revisit their vote without directly challenging [the president’s] authority, which I doubted they were prepared to do. He said, “thank you for that perception.” He made no further comment on what I had presented.
4. The June vote by the trustees has been variously presented as a vote to confirm the termination of the policy (in an e-mail from [the Dean]) and as a vote “to provide eligible faculty an opportunity to participate in the retirement benefit before it was discontinued” in a letter from [the president]. Since there were no faculty delegates present and no minutes yet available, we do not know what the terms of the actual vote were, but even if [the president’s] characterization is correct, the trustees surely could not in fact be deciding to give the faculty an opportunity that had already been established by trustee action in 2006.

5. Because there has been no acknowledgment or apology for the duplicity of this whole process and no acknowledgment of the damage that is likely to flow from the departure so abruptly of so many faculty – indeed the duplicity continues, as [the president’s] letter goes out to the entire community suggesting that the administration and the institution are being generous in granting what is already ours by right – we are virtually required to pretend, for the welfare of the college, that we appreciate what is happening
6. We have seen no assessment of what the change in policy will save or will cost, no estimates of the impact on students and therefore on enrollment, no consideration of the effect on newer faculty. [The previous president] raised \$12 million in endowment to support faculty salaries and retirement benefits specifically, but we have heard no report on how the income from that endowment is currently being allocated.
7. In summary, many of us in many discussions fear that [the president] seems still to have no real understanding or appreciation for what has made and continues to make a Marlboro education distinctive and valuable. Though he has recently begun to meet with faculty members one-on-one, he seems not to understand the intimate connection between a faculty fully dedicated to teaching within the Marlboro model and the curriculum as students experience it. Given his apparent willingness to mislead and to ignore contrary advice, and his quickness to respond aggressively when challenged, few have much confidence that he can change his style and practice in ways that will secure the continuation a remarkable institution.

Note: items in brackets are substitutions of the titles of administrative positions for the names of individuals. These changes are made in July of 2020, to make the document more clear to those unfamiliar with the individuals by name.

Sunday, May 13, 2018

Dear Dick and Peter:

First, thanks for inviting me to the board meeting and the send off for Ted. I was happy to see that Marlboro has not lost its talent for throwing a good party.

I sat down yesterday to write some notes, some impressions, and below is what happened. Rather scattered and reactionary, bits and pieces I guess, but I hope they cast some light on at least my perspective of the College's predicament. I mean no offense to anyone, especially Kevin: I do not walk in his shoes, as they say, and can only offer rough ideas on what I observed on Friday.

I've been wondering what's been going on at Marlboro, and now understand. It should come as no surprise to you that for the past two years the word on the street – my street, which includes all sorts of people in higher education – has been that Marlboro is in trouble, that NEASC "is worried." Frankly, however, I was surprised to learn how immediate and threatening the situation is. Shocked, actually.

Johnathan Smith's report was extremely sobering to me and perhaps to others in the room, although the nature and inevitable end of the process of funds withdrawal has been evident for some years. So push has come to shove, and the real problem is what happens in FY 19/20, when any endowment draw will be comparatively miniscule. I'd start thinking about that right now; it is indeed a singular point of focus.

Keven made a number of references about consulting firms he's working with and as I understand he intends to hire. The report itself is peppered with references to hiring consultants to help work through issues, develop marketing strategies, and make plans and presentations in preparation for action.

Generally, these kinds of contractual agreements come with considerable risk of modest return at high cost. (I don't know the story behind the website, but it sounds similar regarding hiring outside firms. The current site, as most everyone seems to agree, is pretty horrible and quite dysfunctional. It absolutely has to be fixed or redesigned before September).

Over my 30 odd years in the higher education business I've run into many, many top executives who operate almost exclusively by managing a slew of outside consulting/implementation firms. Critically, these sorts of executives really do not know what to do to solve institutional problems other than outsource them. Staff members, of course, then follow through with the implementation, learning little, while the consultants either depart or somehow extract more money. After a period of time, the whole process begins again.

In general, then, regarding branding - Don't do it. Or do it yourself. There was at the meeting a lot of discussion around finding the real Marlboro. The need to identify our core (marketable) elements. To distill, and remix, and somehow concoct a magical elixir of words and images that will cut through the white noise and deliver students to your door. But the result will just be another marketing package. The results will be OK. For a while. Nothing dissimilar to past efforts, that need to be refreshed...by you. My suggestion is to look to your own staff. Hire talent. Hire skill. Don't hire Suits except in extremes.

My suggestion is always to do the work yourself, do your own homework, and stretch your talent and your talented staff as far as possible...then think about outside help, be skeptical about it, brook no drama, and don't be afraid to pull the plug the minute things turn sour. An analysis of consultancy work at Marlboro over the past six or eight years – its costs and effectiveness – might be instructive for the pending future, when you cannot afford them.

Marlboro does not seem to have the sorts of institutional data important to understanding its own programs and administrative directions, at least a “dashboard” of information regularly maintained and presented, covering all the vital organs – admissions, retention, fund-raising, class attendance (try that one – essential to understanding retention, by the way) in an easily understandable format. This sort of data bank is important, and if it does not exist perhaps it should.

I was surprised that student retention was not mentioned. Perhaps it is not a serious problem, but I doubt that. It is one issue that the college can confront immediately at little cost and that could have immediate beneficial impact.

I would be interested in learning more about transfer students. My understanding is Marlboro does not do particularly well because it does not accept various earned credit. What happens is the transfer student needs to tag on an additional semester or two, at great expense. So they don't come to Marlboro but go to some other institution which accepts all earned credit. Whatever it takes, Marlboro has to figure out how to accept and graduate in four semesters junior-level transfer students...then go out and recruit them. Of course, this is a lever for curricular change.

Regarding admissions generally, you might examine the use of independent admissions counsellors, located in areas from where Marlboro draws students. Maybe putting your money there instead of into marketing firms will yield better results. Most certainly Marlboro needs to establish links – meaning people-links, visit-links - with various regional community colleges and independent and public high schools that are designed to be maintained year after year. One could do worse the resort to the old fashioned “road warriors” – very recent Marlboro graduates trained and send afield each fall to schools and school councilors – (independent councilors should be courted by the admissions director).

What is the faculty role in admissions? Don't concentrate on all of them – focus on the ten or twenty percent who want more students for themselves, and create an initiative that trains, motivates, and helps them plan ways of building their student body through early and direct contact with high school sophomores, juniors, and seniors.

Think “bang for the buck.” A hundred thousand spent on marketing analysis might better be spend on ads in relevant magazines – actual marketing.

Concentrate instead on quality of programming and service and on communications– for instance – are you sending Potash Hill to accepted students? Probably should be. Do you have profiles of faculty in the areas that accepted students are interested in? Are you sending them out? Are you providing means by which those energized faculty can communicate directly with accepted students? Do you have programs for those students to engage in prior to college? Could you?

If you must hire outside, at least employ an admissions *systems* firm – one that concentrates on demographics, synchronized mailings, and person to person contact. And buy more names from better lists.

Generally, invest in admissions...and concentrate on retention and student success.

Changing subjects, I would recommend an entirely different approach than the one emerging from the document you shared with me and the discussions and revelations at the meeting.

Instead, I suggest developing a series of *Board* mandated initiatives.

Let me offer some examples: but in reality you would want six, maybe eight, initiatives.

Let me note, as well, that these are top-down initiatives. They are mandated by the board. And the board will be taking an active role, especially through the administration but within the community as well, in implementation.

Initiative: Strengthening and streamlining the curriculum: to provide for junior-level transfer students; that provides for a one-year Plan of Concentration; that reshapes the course of study to the expertise of the faculty as a whole, the resources of the college in the immediate future, and that best exemplifies the breadth of the liberal arts, Marlboro's Plan of Concentration, and tutorial education.

Initiative: Create through Town Meeting the exploratory body that determines steps to be taken beginning January 2019 to become the newest federally recognized *Work-Learning-Service* college.

Initiative: Articulate and create a closer, more comprehensive, longer-term, and economically viable partnership with the Marlboro Music Festival.

Initiative: Establish and initiate a process whereby the College can reduce its student/employ ratio (currently about 2.5 employees for each student) to 4 employees per student. (**Ironically, the Vermont mandated ratio in a certified daycare center *infant room* is one teacher for every four infants. And note, too, at Middlebury with its 2/1 ratio, the same as Marlboro's, includes any number of tenured professors who hardly teach at all, and dozens upon dozens of employees devote to athletics and general cleaning and maintenance.)

Initiative: Shape the current graduate school curriculum to support the strengths of the undergraduate College and provide opportunity in individualized graduate level studies in the humanities. (If you want to get serious, see the Goddard model and the New England Antioch model – very different. Both work).

Other initiatives should address issues in GPS and the CNL/CGV. I learned little about these mysterious entities other than the anxiety and frustration they seem to have stirred among the board members. I agree, intuitively I suppose, about their potential, but I am cautious and would need to know more.

I would look also at particular curricular areas:

* An initiative to expand academically the theater arts at Marlboro I think have considerable potential: a **credit-bearing** full summer semester in acting, production, writing, and dramaturgy. You have an impressive alumni body in the "Industry" as they call it. A theater you can use year-round. A kitchen and dining facilities out on Rt. 9, and summer population in southern Vermont that will pay to attend late

August productions. Not profit making, but giving the students real-life results at the semester's end –an audience.

The idea, of course, is to look for areas of strength and/or potential where further development has the potential to directly affect the *dire situation* in any number of defined ways – it retains students, it attracts students, it's within our academic capabilities, it's exciting, photogenic, and marketable; we can have it up and running in 12 months.

You see my point, but note when I say “marketable” I do not mean we've paid for a marketing analysis...instead, we'll spend the money on marketing the program.

Finally, I would suggest these initiatives be framed in a three year “Transitional Campaign” (sub-theme: The Campaign for Sheer Survival). This is where you come out and say what needs to be said. As an institution, you essentially need to come clean. And to do so in a new publication focusing exclusively on the economic/business aspects of Marlboro during the period of transition.

The attitude is, “Yes, it's bad. But it is also opportunity – perhaps even a blessing - to reshape Marlboro for the future because the path it is on is not unsustainable and is rapidly – literally daily - threatening Marlboro's very existence as an independent college. The College is NOT currently positioned to compete successfully and must change if it is to prosper in the future. We are more than our history, we *must* seize our future.

The fund-raising goal of the campaign should be established in the traditional ways...although a genuine feasibility study may be desirable to preliminarily gauge the views of major gift donor's critical opinions of the of the initiatives and progress to date.

You must state the problems, revealed in the numerous initiatives. Here is the Plan and all its pieces. Here is what we've accomplished already. The campaign, the initiatives and the brutal but elegantly expressed rationale are published in October.

Why initiatives instead of full blown new programs?

They are loose, flexible, and workable.

They individually, collectively, and programmatically address the problems NEASC and you need to address.

Their advance (or retreat) are evident on, at the very least, a biannual basis.

Not all will reach fruition....some will work at about 50 percent of capacity...others may fail entirely.

As a whole, however, they constitute a plan of action that NEASC will be able to follow. As they progress, succeed, or recede and other opportunities arise and are taken advantage of, the college will be strengthened.

Those responsible for various pieces of an initiative are clearly identified and in every case are answerable to the president, but the overall effort is of course team driven.

In general, Marlboro needs to tell its story. To itself. Then let others in on the secret. It's got to take itself less seriously, especially among the faculty and students. And stop explaining. Show me! Demonstrate quality, don't talk about it.

Too much of what I read and see about Marlboro is obscured by the patina of marketing. The higher education marketing industry is of a type, easily recognized by people like me, and, I'm afraid, subliminally acknowledged by the marketing-inured public. It is not helpful to places like Marlboro. It is difficult to stand out, to secure a status, a reputation that is at once unique, confident, flexible, and secure. But that's Marlboro's only chance, really, and it takes participating in and simultaneously distinguishing oneself from the mass marketing that so manipulates the general college-aspiring population.

A note on merger. The report is accurate in describing the complexities of mergers, but not I feel in the results. Whatever the vocabulary employed, the legal documentation will show one entity now owns the other entity in its entirety. And Marlboro will cease to be. It's not a subject I'm particularly interested in. But others are: there are folks at the Registry quite practiced in this miserable activity and if Marlboro were to reach that stage, I'd suggest hiring one of them.

In summary, it's a hard, narrowing road you face. It is survivable. You have already proved to yourselves that money alone will not a college save. You have the pieces, you have some strengths, you have a pocketful of tools and opportunities (the ability to award graduate level degrees; the pending negotiations with the Festival; a huge endowment that will grow if you let it; an obviously committed board and incredibly faithful financial supporters; a good foundation track record; the mysterious potential of CNL/CGV among them). And you have some very hard, even controversial, decisions and choices to make in the short term, and for which there is little or no time to fully understand their ramifications. Thus, some level of boldness will be required.

Again, gentlemen, I much appreciated the invitation.

Will

An Open Letter on Merging

This merger, if you can think of the whale swallowing Jonah as a merger, is certainly better than closing: better for the town and southern Vermont; better for the tenured and tenure-track faculty, at least for the short run; better for the Music School; better for those who depart without a closure on their resumes; better for students in mid-course, as long as they are able to persist with a Marlboro education. I am not at all sure that it is better for Marlboro College and its history in the medium-to-long run. I hope that the Memorandum of Understanding can be drawn with sufficient care to sustain something of the Marlboro that has persisted against long odds for seventy-three years. I have a variety of concerns that I want to share, though I feel certain that others much more closely involved, and with more at stake, are already engaged with most of them. Forgive me if I state the obvious, and forgive me for a backward reference or two.

My first and greatest concern is that the MOU define some sort of path back out for the College, with much of its endowment intact, should UB not live up to the hopes. The only reason we remember Jonah is that he got back out, and his whale receded into the sea of undistinguished whales. I foresee substantial difficulties in making this merger work to sustain Marlboro as a set of educational, cultural, and intellectual values. Not least is the endowment itself, which I presume is the key to Bridgeport's interest, whatever moving testimony Laura Trombley has offered for the more intangible values. Bridgeport in its history absorbed many millions of dollars from the Unification Church, made a substantial number of accommodating changes, but has now reportedly pruned the last of those away. I hold no brief at all for the Moonies – Bridgeport is well quit of them – but we must consider this as at least potentially an instructive precedent.

The integration of these two very different instructional models, with very different educational philosophies, and very different sorts of students, will be tricky indeed. There are real potential strengths too, of course, and those need to be defined clearly with well-defined standards for whether we are achieving them. (The Renaissance Scholar program had neither clearly defined goals nor any standard for assessing whether it achieved anything more than a brief, expensive, boost in enrollment.) Having a substantial number of students visiting for a semester or two, then disappearing, never to re-engage could have a severe diluting effect on Marlboro classes, which tend to rely on students' growing experience with the challenges we present. UB's course descriptions in areas that we teach suggest that even in the areas in which we overlap, what Marlboro is doing is markedly different and significantly more serious. Moreover, it seems quite possible that many UB students, some proportion of whom seem to be older and well embarked upon their lives, could regard a semester or two at Marlboro as an exile to Siberia. We have some problems on that score with our own students.

My second, related, concern is for the governance of Marlboro. The authority formally delegated by the Board to the faculty over Marlboro's academic program and standards and over admissions standards and policies is an essential element of how the college has worked. So is the authority over the college's social and political life delegated to the Faculty and on to the Town Meeting. The integration of students' responsibility for their individual academic program and their

responsibility for their collective social and community welfare is part of what distinguishes a Marlboro education. I expect those provisions, both for the Faculty and for Town Meeting (so both for the academic program and for community life), will necessarily lapse when our Board ceases to exist, as I've heard it will. Our democratic traditions, though acknowledged and admired in the abstract, are fundamentally in conflict with the administrative model of most universities these days, and I see nothing on UB's web site to reassure me. To be frank, our own administration in recent years has not really understood, appreciated, or complied with our governance principles, and I suspect that that is part of what has brought us to this sad juncture. Without those principles and without the experience of responsibility and community they support, I fear that Marlboro will fade dismally away as an embarrassment to its former self.

I have heard that though our tenured faculty will remain tenured, they may also be required to teach in Bridgeport and to meet Bridgeport's workload definitions, presumably as articulated and overseen by Bridgeport's Dean or Provost. I don't assume bad faith, but I fear it, and it would not be hard to prune our faculty and academic program dramatically by requiring transfers to Bridgeport, leaving our endowment to support UB largely or wholly without Marlboro.

Given the critical importance of trustees in negotiating how all of this will work as we proceed, I feel moved to express some frustration with how we have arrived at this juncture. I am well aware of the demographic and cultural changes that challenge Marlboro and a great many other liberal arts institutions. I also believe that the national tendency to undermine faculty authority and independence (hardly any colleges or universities now operate with anywhere near a majority of faculty in tenured or even tenure-track positions) and the associated scorn in our culture and politics for critical thinking and liberal arts disciplines have contributed mightily to the disastrous political conditions that now threaten our very democracy. The values of fair intellectual discourse and civility that are embedded in liberal arts colleges and universities have also sustained our polity, and we see all around us what happens when they disappear, replaced by the exercise of raw power and economic interests apparently prepared to sacrifice our collective future for individual profit in the present. So I do not view Marlboro's problems in isolation.

However, though Marlboro has had years, now, of low enrollment, I remain convinced that there are and always have been at least a hundred students a year who belong at Marlboro and who would come if we presented ourselves in an exciting, challenging, and honest way. The faculty have been arguing since before Ellen left that our web site was a recruiting disaster: confusing, inelegant, incoherent, and difficult to navigate. It was virtually impossible, for instance, for prospective students or their parents to find out what sorts of careers our graduates went on to. Faculty were no longer asked to interview prospective students. The very real challenges and excitement of working to define and carry out your own academic program were almost concealed, rather than featured. In retreat after retreat, outside of term time, the faculty repeatedly identified improvements to the web site and recruiting strategies that were never made. I have not yet had time to explore the new web site, which seems substantially better, but that it appears only as the college itself is absorbed by UB is distressing. The opening page of the new web site leads with a silly video declaring that everyone is welcome here without ever saying anything about why one should want to come (other parts of the page are better, but that's what comes at the top).

We have more endowment; more alumni trustees, with their intimate understanding of the institution and what it can mean in a life and career; a better physical plant; a broader range of resources in the library and in technical facilities than in the many years when the college hovered on the brink of financial disaster. We have a dynamic faculty dedicated to the ideals of the college, to excellent teaching and mentorship and to deep participation in the academic community. Yet we also have an administration that has misled the faculty, Town Meeting, and the Board about critical issues, apparently without serious consequence, except the decay of the very community that has sustained us.

We have a graduate program founded explicitly to subsidize the undergraduate college but which has almost never done so (even in the few years when it produced a nominal surplus, the administrative time from our Dean, our Library, our maintenance staff, etc., were not included in Grad Center budgets). The Grad Center has blurred the Marlboro College identity and despite repeated "deadlines" by which it was supposed to at least break even, it has steadily contributed to our deficit, as far as I can tell, right up to the present.

I list these deficiencies because they have been presented to the Board yet not acted on decisively at a stage when they might have made some (possibly not enough) difference. We are now in a full-blown crisis when only a really hard-nosed and sustained grappling with the structure under which the college might be sustained will do what's necessary. I know that each of you has many other responsibilities, as I do myself, so I understand that it may not be possible at this stage, with the whale's jaws closing around us, to prevent the eventual loss of what has been a genuinely rare and impressive institution. Unlike the Music School, which has shared most of our history, we are not an elite institution, able to accept only the most accomplished Participants. Our mission has always included the acceptance of many students whose past academic records are less than sterling but who seem to have the native intelligence and strength of character to prosper in an atmosphere of respect for them as adults and capable of responsible choice.

The Plan of Concentration has analogs at other institutions in their Honors Programs, but what sets Marlboro apart is that every graduate completes one, at a level of difficulty and accomplishment that varies, of course, but that challenges every student in a way that the more usual separation between Honors candidates and everyone else does not. In that respect, the expectation that every participant demonstrate achievement in a set of skills of their own choosing, as well as in the general atmosphere in which faculty mentors and their students study and learn together, we have much in common with the Music School quite apart from Potash Hill.

The restoration of a genuine practice of consultation and transparency involving the entire college community (trustees, faculty, faculty *emeriti*, students, alumni, and staff) is essential to preserving much that's worth preserving of Marlboro. The decision to carry out our last presidential search in secret (on the advice of our search company, but without any evidence I have been able to find that such confidential searches achieve better results) went against our long practice and set the stage for a series of other actions and decisions in which administrative "efficiency" and "necessity" has undermined community participation in destructive ways. We are now in the midst of a process in which the letter that went out on our behalf is a secret, the

letter of intent is mostly secret, the process of negotiating the Memorandum of Understanding is secret. This secrecy means that when we read a PR release from our administration that is inconsistent with the PR release from our supposed partner, or inconsistent with reporting in the Connecticut paper, we have no way of knowing or of testing what to believe or whom to trust. In this atmosphere, necessarily of distrust or at least uncertainty, it is impossible for all of us to assure our students, our neighbors, even each other, that the outcome is workable or even desirable. We are wasting a great deal of good will from people who love and support this institution, from people who have drawn much from their work here and given much in return. People feel disrespected or ignored and many respond with indignation or anger or disgust.

Higher education will lose something extraordinary if Marlboro disappears (even if remnants persist). Marlboro demands a great deal from those associated with it, but the demands have been matched with the rewards of mutual respect and confidence and satisfaction. The preservation of those demands, rewards, and satisfactions *must* be at the forefront of negotiations if Marlboro is not to be simply digested into the educational pablum of a lesser institution. We have been told repeatedly that economics and demographics are driving this process, which makes this result seem inevitable. I suggest that we must recast the terms in which we examine what has been happening, must look for the areas in which we do have control or may assert control. We need to preserve our assets, whether material, moral, intellectual, or political. We need a vision that inspires us and excites others to join us.

I offer below a possible script for the opening video on the web page. I suggested this several years ago, and many colleagues, quite a few trustees, and even the then Admissions Director thought it was exciting, but it never went anywhere.

Marlboro is hard!

You have to know what you want to do and then do it. Well, you don't have to know when you get here, but you have to figure it out, and figure out who will help you, and the keep at it until you finish!

I wrote a novel

I wrote an opera and took it to New York

I spent six months in Morocco working in women's health

Marlboro is hard!

You may think you can write, but they take it seriously. If you can't write well, you can't even stay.

I wrote about Randall Jarrell and German History

I wrote about grizzlies in Alaska, both for biology and my own stories.

I wrote about a sculptor named Arthur Ganson, who makes wild machines out of wire.)

Marlboro is hard!

It's not a straight path to anything.

I wrote my own poetry and taught in a prison, and now I'm a lawyer.

I studied modern Greek poetry and wrote my own poetry and now I'm an atmospheric chemist.

I studied theater and acting and now I'm an actor (Well sometimes the path is straighter than others, but it's long!)

Marlboro is hard!

It's out on a hillside in southern Vermont and it gets dark at night! The stars are amazing!

Half the time your cell phone won't work.

Sometimes the power goes out in an ice storm
or the road down to town is closed in a blizzard.

We actually have a thing called "mud season."

But sometimes the days are so gorgeous you can't stand to stay inside.

Marlboro is hard!

The classes are tiny – here twenty is huge –
so there's no hiding at the back and reading your mail.

They know who you are and they can see right away if you've done the assignments. No slackers!

Marlboro is hard!

You know all your teachers by first names, and they know you.

If you break up with someone, you'll still see them at meals or in the library.

You have to get on with it.

By the time you're a senior you know the whole college, including the teachers and most of the staff.

Marlboro is hard!

T. Hunter Wilson

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Marlboro alum urging investigation
Date: Wednesday, July 15, 2020 10:21:17 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Gina D [REDACTED]
Sent: Wednesday, July 15, 2020 10:03 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Marlboro alum urging investigation

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello,

I'm writing today to urge an investigation into the proposed sale of the Marlboro College campus to Democracy Builders. I urge you to delay approval of the sale until financial reporting irregularities and widely reported racist and sexist incidents and behavior on an institutional level are thoroughly investigated and found to be false.

This is not the right path for Marlboro, according to the town Select Board, and it is not the right path for Vermont. Please take the time to learn more!

Thank you in advance for your consideration,

Gina DeAngelis

B.A., 1994

Donor from 1994 to 2016

--

Sent from Outlook Email App for Android

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Marlboro College - Proposed Sale of Campus
Date: Monday, July 20, 2020 8:04:14 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Jeffry Glassberg [REDACTED]
Sent: Sunday, July 19, 2020 2:19 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Marlboro College - Proposed Sale of Campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Reader:

I urge the State to use great caution in assessing the promises of any real estate developer and their big plans. This simply doesn't sound plausible.

Sincerely yours,
Jeffry Glassberg
Waltham, Vermont

Sent from my iPad

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Marlboro College Campus Sale
Date: Friday, July 17, 2020 3:29:53 PM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
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From: Luca Fernandez [REDACTED]
Sent: Friday, July 17, 2020 3:27 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Marlboro College Campus Sale

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon,

I am writing to you object to the sale of the Marlboro College Campus to Democracy Builders. First of all, let me express that I understand that your role only encompasses a recommendation, and that I do not presume to interpret the intentions of the donors you are now evaluating. I am a proud bureaucrat in our state government as well and I understand you face complexity and take your job seriously, and that many writing to you may not believe that.

I am a 2011 alumni of Marlboro. I will not waste your time with more of the descriptions of what we loved and are losing, that I am sure you have been inundated with. I am also sure you have read more than enough aspersions towards Seth Andrew and Kevin Quigley to do due diligence on any way that their potential lack of good faith towards the community might make this deal fall short of the intentions of the donors. I also hope, that you have a healthy understanding and suspicion of "no excuses" charter schools.

The reason I am writing to you now despite thus far considering it pointless because the overall closing of Marlboro sounds like a legal crime-if you can forgive the oxymoron; is to leave you with an image of something I have just become aware of.

Seth Andrew and his staff are currently residing on the campus. Old news, sure. Right now though, they have hired guards, have closed the campus to visitors and have been chasing Marlboro town residents off of the grounds.

At least at one point, the sale of the campus was supposed to include guarantees of continued usage of campus grounds, including the miles and miles of hiking trails for locals and alumni. Maybe that did not make it into the final deal. But I hope you understand what it shows that that was a discussion. At the public forums on Democracy Builders purchase of the campus, Seth Andrews repeatedly assured us that they were not looking to close the campus and that Marlboro residents and alumni would be welcome. Right now they are chasing off people taking the same walks they always have.

If there was anything in the donor's intentions that went beyond making sure the money went to an educational institution; if there was anything about maintaining or building the special community we had there; anything about the place Marlboro College had as a community, I implore you to look at this closer.

They are chasing people off of the campus.

-Luca Fernandez

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Marlboro College
Date: Monday, July 20, 2020 8:03:54 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
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Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Ben Lieberson [REDACTED]
Sent: Sunday, July 19, 2020 11:02 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Attorney General Donovan,

I am writing regarding the sale of the Marlboro College campus. As an alumni of Marlboro, I share the concerns that many others have voiced about the transfer of the Marlboro campus to Democracy Builders, an organization whose founder Seth Andrews has been accused of racism by numerous staff and students he has worked with in the past. While the names "Democracy Builders" and "Democracy Prep" make the organizations Andrews created sound as though they might have similar values to Marlboro College, they do not. Based upon the experiences of staff and students at Democracy Prep, it seems that the "no excuses" charter schools have been more focused on generating high test scores and teaching students to follow authority than on fostering intellectual curiosity and democratic engagement.

As a fairly recent alumni (2012) with limited financial means, I have made a handful of small dollar amount contributions to the college since I graduated. But more than that, during the time I was a student, I put an immense amount of volunteer time into improving the campus. During the time I was at Marlboro (2007-2012), we built a new two story building for the outdoor program and a large post and beam greenhouse for the college's farm. While both of these projects had support from some incredible staff members, both projects were completely primarily with volunteer labor from students and faculty members. I cannot begin to quantify the number of volunteer hours that went into these projects or the dollar value that this labor might have. And throughout Marlboro's history,

this sort of volunteering by students has been the norm. Everything from classroom buildings to a wood fired sauna have been constructed with the donated labor of dedicated community members.

Speaking for myself, I freely gave my time and sweat because I believed that Marlboro College was a special place and I wanted to make it better for the students who came after me. I also gave my labor with the understanding that Marlboro College maintained an open campus that I could return to and that could be visited by members of the Marlboro town community. When I was a student, alumni frequently came back to wander the trails on campus and even to borrow books from the library or hiking gear from the outdoor program. Andrews and Democracy Builders have made it clear that this will no longer be the case.

I chose to donate my time and limited financial resources to support Marlboro College and its future students. Had I know that the campus would end up in the hands of an organization with such wildly different values, I would have made very different choices about where to put my energy and resources. Knowing this, I ask that you do anything you can to stop the transfer of the campus to Democracy Builders. Even if Marlboro College is no longer sustainable, there are many uses for its campus that would be more in line with the College's mission and the values of those who have contributed to it over the years.

Thank you,
Ben Lieberson

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Objection to Sale of Marlboro College Campus to Democracy Builders
Date: Monday, July 20, 2020 9:42:24 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: ASJ [REDACTED]
Sent: Monday, July 20, 2020 9:42 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Objection to Sale of Marlboro College Campus to Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To Whom it May Concern:

I understand that the Vermont Attorney General's Office has been asked to review the sale of the Marlboro College campus and the transfer of Marlboro's assets to Emerson College. I am writing to voice my strong objection to the sale of Marlboro's campus to Democracy Builders. As you know, certain assets belonging to Marlboro College must go to entities aligned with the College's mission; Democracy Builders is not such an organization. I'm sure you have heard recent accounts from former students, staff, and faculty of Democracy Prep recounting racist and damaging discipline practices at the school, which was specifically set up to serve students of color and their families (those accounts can be found here: <https://www.instagram.com/blacknbrownatdp/>). Indeed, recent data suggests that these harsh disciplinary practices have continued at Democracy Prep, with suspension rates ranging from 22-31% during the 2011-2012 school year (as reported by the United Federation of Teachers <http://www.uft.org/files/attachments/charter-school-suspensions.pdf>) and 26% during the 2015-2016 school year (according to the US Department of Education <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>). Suspending students at high rates and systematically pushing them out of school is the cornerstone of the school to prison pipeline, and it is a practice that Seth Andrew frequently engaged in during his tenure at Democracy Prep. To allow a school leader with such a track record to run an institution of higher education that is purported to serve historically marginalized populations is nothing short of irresponsible, and is certainly not in line with the mission of Marlboro College. When presented with

all of the facts, I am certain that donors to Marlboro College would choose not to have their name or their money associated with Democracy Prep.

I urge you to not approve the sale of the Marlboro College campus to Democracy Builders. I am available to share my expertise as a school psychologist working in the Boston Public Schools regarding the impact of so-called "no excuses" charter schools on students' education and lives. As people of conscience, we must stop schools like this from proliferating and robbing students of color of the very opportunity they allege to provide. Please join me in stating that there is no place in Vermont for an organization like Democracy Builders.

Sincerely,
Alexis St. James, Ed.S.
Marlboro College Class of 2003

[REDACTED]
[REDACTED]

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Objection to the sale of Marlboro College to Democracy Builders
Date: Monday, July 20, 2020 8:01:07 AM
Importance: High

Deb Matthews

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109 State Street, 3rd Floor
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From: Emily Hood Ferrin [REDACTED]
Sent: Friday, July 17, 2020 5:54 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Objection to the sale of Marlboro College to Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Attorney General Donovan,

I am writing to protest the sale of Marlboro College to Democracy Builders. The racist values and history of Democracy Builders and its founder Seth Andrew are completely at odds with the values of Marlboro College, the town of Marlboro, and the State of Vermont. Allowing Democracy Builders to take up residence on the former Marlboro College campus will make the State of Vermont, the Town of Marlboro, and all who allow this sale to go forward, complicit in acts of systemic racism and the oppression of People of Color. I ask the Office of the Attorney General to demonstrate that it takes action against systemic racism by rejecting the presence of Democracy Builders in Vermont.

Thank you for your consideration

Emily Hood Ferrin, PhD
Marlboro College, 2003

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Objections to Sale of Marlboro College Campus to Democracy Builders/Democracy Prep/ Freedom University
Date: Monday, July 20, 2020 8:05:42 AM
Importance: High

Deb Matthews

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From: H M Carter [REDACTED]
Sent: Sunday, July 19, 2020 7:28 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Objections to Sale of Marlboro College Campus to Democracy Builders/Democracy Prep/
Freedom University

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Attorney General Donovan:

I sent a letter to your office urging you to carefully examine the so-called merger of Marlboro College with Emerson University. I am hoping that your office is engaged in that pursuit even as I write this email.

However, I now send an email to your office on the separate issue of the sale of the Marlboro College campus to Seth Andrews and his educational ventures under the names Democracy Prep, Democracy Builders, and perhaps soon, Freedom University.

I served on the Marlboro College Alumni Association committee (MCAA Campus Committee) which polled our alumni to ask them what kind of institution would we want on the campus if Marlboro College could not be saved.

Let me be clear when I say that Seth Andrew's various ventures were the furthest possibility from our minds. We envisioned the possibilities of a community school, a music school, a new college, a graduate program, a low-residency arts school, a training program in new industries. While all of those options would fall short of what Marlboro College has been and could be, they are better than

the reports about Democracy Prep's blatantly abusive pedagogy and racist policies.

As an educator, I am familiar with the "No Excuses" charter school model. I do not agree with it, but I know and respect some educators and administrators who believe it is the most useful choice for some students.

Democracy Prep is not a "No Excuses" charter school. It is a nightmare of a throwback to systematized abuses of power; to institutionalized racism; to classrooms which engender trauma instead of a love of learning. It is far too similar to Success Academy, which is also in the news for discrimination against students with IEPs (sometimes incorrectly labeled "Special Needs" students) and students of color.

Seth Andrews has taken possession of the campus, posting banners and signs all over the campus. And now, this week, he has placed guards on the campus to keep citizens of the Town of Marlboro from entering the campus, though the agreement is not even finalized. He appears to consider his possession of the campus a *fait accompli*, and a small town of 1000 persons who welcomed Marlboro College for 74 years to be a threat to "his" property.

Seth Andrews's education ventures are not the kind of institution that Vermont wants to provide home to. As someone who attended public primary and secondary schools in Alabama and North Carolina, I can say that these overtly authoritarian and racist systems need to be dismantled, not expanded. Whatever name he calls it, his institution will not only hurt students in Vermont, and those who come to Vermont from outside the state, but it will also bring turmoil to the community and unfavorable attention to Vermont.

Sincerely,

Heather Carter,
Marlboro College, Class of 2002
Washington, DC

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: please delay the sale of Marlboro College
Date: Monday, July 20, 2020 8:05:10 AM
Importance: High

Deb Matthews

Administrative Assistant
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109 State Street, 3rd Floor
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E-Mail \ deborah.matthews@vermont.gov

From: Joe Green [REDACTED]
Sent: Sunday, July 19, 2020 4:41 PM
To: Wolf, Deb <Deb.Wolf@vermont.gov>; AGO - Info <AGO.Info@vermont.gov>
Subject: please delay the sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear VT government,

Please delay the sale of Marlboro College until it can be properly reviewed and all voices can be heard. Democracy Builders/Democracy Prep has a poor record of racial equality, and that is not the type of organization that should exist anywhere in the U.S.

Thanks,
Joe

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Please Stop the Sale of the Marlboro College property
Date: Monday, July 20, 2020 8:06:23 AM
Importance: High

Deb Matthews

Administrative Assistant
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109 State Street, 3rd Floor
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Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
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From: Pamela Nye [REDACTED]
Sent: Sunday, July 19, 2020 9:54 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Please Stop the Sale of the Marlboro College property

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr. Donovan,

I just wanted to add my voice to the many you have already heard from in the Marlboro College community. All we have ever asked for is more transparency around all of these transactions, and I think that at the very least, allow for a pause so that all the stakeholders have a clear understanding of what is going on. The Board of Trustees do not seem to have fully vetted the proposed buyer of the property, Democracy Builders, and more time to review this purchase seems to be a logical step to take.

In addition, I read the affidavit of Mr. Hendricks, requesting the return of the property to his family if Marlboro College is no longer to be there. I would absolutely support that action.

While I currently do not live in Vermont, a part of my heart will always be there, along with the family and friends who do still reside in the state.

Sincerely,
Pamela Witte Nye
Marlboro College '93
Duluth, Georgia

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Proposed Sale and Merger of Marlboro College
Date: Thursday, July 16, 2020 12:17:00 PM
Importance: High

Deb Matthews

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From: Townsend, Alison B [REDACTED]
Sent: Thursday, July 16, 2020 12:14 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Proposed Sale and Merger of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

As a honors graduate of Marlboro College (class of 1975), I am deeply concerned about the proposed transaction with Emerson College. It has been conducted with a lack of full transparency and will, I think, be injurious to both students and faculty.

I also strongly urge you to investigate allegations against the campus buyer (Democracy Prep) by Black and Brown and require that the buyer provide documentation explaining financial reporting irregularities. Democracy Prep is not an institution congruent with the Marlboro tradition and legacy, and would not benefit the surrounding community.

Marlboro College is an irreplaceable educational gem, a star in Vermont's crown. It would be tragic to lose it. Please request further information from the buyer and file a lawsuit to delay the merger and sale. There have to be other options for preserving this one-of-a-kind educational institution.

Sincerely,

Alison Townsend, '75

Emerita Professor of English and Women's Studies

University of Wisconsin-Whitewater

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Proposed sale of Marlboro College Campus
Date: Friday, July 17, 2020 1:08:29 PM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
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From: Pillette01 [REDACTED]
Sent: Friday, July 17, 2020 12:42 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Re: Proposed sale of Marlboro College Campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

17 July 2020
Doerverden,
Germany

Charles Pillette
[REDACTED]
Germany

Mr. T. J. Donovan
Attorney General
State of Vermont

Dear Mr. Donovan,

I am an alumnus of Marlboro College, and a former resident of the State of Vermont, presently residing in Germany.

I was just reading about the recent developments in connection with the sale of the Marlboro College campus on Potash Hill, Marlboro, Vermont.

From what I have read, and from the little I have been told about the main issue, the closure of Marlboro

College as it has been, it seems to me that none of this is in the best interests of Marlboro College, the town of Marlboro, Vermont, and the State of Vermont in general.

I think that whatever attention you in your capacity as Attorney General can pay to this affair as a whole would be beneficial to the entities just named. Not least, the end of the college as it was will have a negative impact on the town, when whatever this new owner of the school can bring seems highly suspect in light of all the allegations against him.

It seems very much so that this whole deal, the merger of Marlboro College with Emerson College in Boston, and the sale of the campus to a rather suspect entity, is not just absolutely against all that Marlboro College has stood for over almost 75 years, but also quite unnecessary to have been done in haste with a certain amount of subterfuge.

If there is some way for your office to stop this in time for a reevaluation of whatever it is has been agreed to so far, that would be very welcome to many if not most of the alumni.

Thanking you in advance for whatever attention you can pay to this matter, I am

Respectfully yours,

Charles Pillette
Marlboro College Class of 2013

From: [Matthews, Deborah](#)
To: [Clark, Charity](#); [Diamond, Joshua](#); [Mishaan, Jessica](#); [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Public Records Request
Date: Friday, July 17, 2020 4:48:48 PM
Attachments: [Outlook-horizontal.png](#)
Importance: High

Deb Matthews

Administrative Assistant
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109 State Street, 3rd Floor
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Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Save Marlboro College [REDACTED]
Sent: Friday, July 17, 2020 4:40 PM
To: AGO - Info <AGO.Info@vermont.gov>; Curtis, Christopher <Christopher.Curtis@vermont.gov>; Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr Attorney General Donovan, Mr. Renner and Mr. Curtis,

I have concerns that the AGO is not in compliance with the law regarding my request for public documents. The extended length of time is not justified. Documents should be made public before the AGO makes any decisions regarding the situation with Marlboro College. It is appropriate to being review in secret. The redactions made by the college are not legal. The redactions, if any, made by the AGO, for the most part, are not legal.

I appreciate that some personal information regarding human persons may be withheld under the law. However, the rights of the tax exempt non-profit Corporation for public benefit should be transparent. If the AGO feels information is necessary to evaluate the situation, then that information must be made public. This includes, but is not limited to, the sale price of the campus; the names of individuals that are benefiting financially from this transaction and how much money they benefit; and information regarding the donors and their release or change of endowment restrictions.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Regarding the Marlboro College Campus
Date: Friday, July 17, 2020 10:32:24 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
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E-Mail \ deborah.matthews@vermont.gov

From: Dan Restivo [REDACTED]
Sent: Friday, July 17, 2020 9:18 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Regarding the Marlboro College Campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To Whom It May Concern:

As an alumnus of Marlboro College, I am writing to respectfully record my objection to the sale of the Marlboro College Campus to Democracy Builders. Democracy Builders is a company riddled with philosophical and economic inconsistencies as well as alarming allegations of racial injustice (I will presume you've all the requisite reports and documents to complete your own research and come to your own conclusions where these accusations are concerned).

I thank you for reading my message and hope you will act in good conscience to preserve the land and facilities of Marlboro, a fragile and beloved community worth preserving in these destructive times.

All the best,

--

Dan Restivo

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ennis, Co. Clare,
Ireland V95 K71X

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Regarding the sale of Marlboro College
Date: Monday, July 20, 2020 8:37:58 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
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From: Jodi Nemser-Abrahams [REDACTED]
Sent: Monday, July 20, 2020 8:31 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Regarding the sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To the Attorney General:

I implore you not to sell Marlboro College to Seth Andrews.

I attended Marlboro College from 2000-2004. The values that Seth Andrews represents, and that his actions indicate, are not those of the Marlboro community and are not needed in Vermont. Especially in Vermont, which is already incredibly white to start, it's easy for racism to fly under the radar and appear nonexistent. The perfect environment to flourish. But, this is even more reason that it is important to uphold values of inclusivity and equality. Seth Andrews is not good for Marlboro and is not good for Vermont.

Please listen to the wishes of people of the town of Marlboro and to the Black N Brown collective's experiences. Do not sell the property to Seth Andrews.

Thank you,
Jodi Nemser-Abrahams
Marlboro College class of 2004
[REDACTED]
Somerville, MA 02145

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College campus
Date: Friday, July 17, 2020 3:14:07 PM
Attachments: [image001.jpg](#)
Importance: High

Deb Matthews

Administrative Assistant
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109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Dan Preniszni [REDACTED]
Sent: Friday, July 17, 2020 3:06 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

I am a seventy one-year-old retired professional and have lived in Vermont twice in my life. Once, during my college days, at Marlboro College, an extraordinary place that fosters individuality and independence, two qualities for which Vermont is justifiably famous.

Recently, I read that the Marlboro College campus is currently up for sale to Democracy Builders. I've also read about Democracy Builders and implore you to look into that institution and its history before approving the sale.

Respectfully submitted,
Dan Preniszni
Chappaqua, NY



Virus-free. www.avg.com

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College to Democracy Builders
Date: Monday, July 20, 2020 8:03:34 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Michelle Wruck [REDACTED]
Sent: Saturday, July 18, 2020 2:46 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College to Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To: TJ Donovan, Vermont Attorney General

I realize that you may have received a number of letters concerning the sale of Marlboro College to Seth Andrews and Democracy Builders. I hope you will not mind if I add mine to the pile.

Unfortunately, I do not have a clear decision in my mind of what to advocate. I am writing mostly to work out my own thoughts on the situation.

I think as white people we sometimes find ourselves in positions of power with the opportunity to put an end to some

sort of abuse that black and brown people experience because of their color but we don't use our position or the opportunity it presents because to do so means pushing the limits of our own power and position. Since we, ourselves, are not the ones being abusive, we do not feel the same kind of responsibility that we might if our own words and conduct were under scrutiny.

I guess that's why I'm writing, to urge you to avoid that trap. I don't know what is within your power but it does seem that selling the campus to a known racist would go against Marlboro's mission, so maybe there is something you can do? Maybe it would mean risking a lot to do it.

I do not envy your position. It's a difficult choice to make. If Mr. Andrews has acted in the way these staff members, teachers, and students say he did, if he created a frightening and traumatizing environment under the guise of helping students succeed, I think each of us has to do whatever is in our power to stop that from happening again. For me, right now, that means writing to you. For you, right now, that means something much more drastic.

If you postpone the sale of the campus, it will impact many people and you will have to answer to them - former Marlboro students who can no longer enroll at Emerson, former Marlboro College faculty and maintenance staff who are suddenly without an income, the Marlboro Music Festival. I don't know who else or what other consequences there will be for you personally.

Yet I can't help but imagine what this moment will look like from some future vantage point, where all the pieces have settled. It could be a real turning point in racial relations. The time when a white man stood up for black and brown people, risking the livelihoods of many white people to do so. I think that's what anti-racism looks like. It's not just about having difficult conversations about the past. It's about putting ourselves on the line, physically, financially, socially, and politically to protect black and brown people, especially children, from those who would harm them. If this is one of those moments, then we need to be very mindful of our decisions.

Most of the people who will be out of a job if the Emerson deal falls through are my friends, so it's hard for me to advocate for a postponement of the sale but it does seem like the right thing to do. There is a group of Marlboro Alumni who are working on a way to keep the college going. Maybe this postponement is the pivot point they need to make their vision a reality?

I trust that you have more information about all this than I do, so I won't presume to tell you what I think you should do. I hope you don't mind me sharing these thoughts with you. I wish you all the best. I'm sure this decision weighs heavily in your heart.

Thank you for your time,
Michelle Wruck

About me:

I am a Marlboro College alumna (2005) who also worked at the school in a variety of capacities (maintenance, residential life, administration). I am closely connected with many residents of the Town of Marlboro and I currently live in Brattleboro, VT where I am in respite from work while recovering from chronic Lyme Disease and Rheumatoid Arthritis. I am trained as an educator, with an MA in Eastern Intellectual History.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College
Date: Monday, July 20, 2020 8:02:54 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Brighid Graves [REDACTED]
Sent: Saturday, July 18, 2020 10:53 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

I am writing to request that you stop the sale of Marlboro College is Seth Andrews and Democracy Builders. The shady history of charter schools in general and Mr. Andrews in particular cloud the terms of this sale. The dissolution of Marlboro college, and many other small schools in Vermont, is sad. It does appear that both Marlboro and Emerson have not been forthright with the college community about the terms of this deal. It's bad for education, bad for vermont and bad for marlboro.

--

Brighid
[REDACTED]
Bennington, VT 05201

[REDACTED]

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Statement of Request to Postpose Sale to Seth Andrew/Democracy Builders
Date: Friday, July 17, 2020 7:21:30 AM
Attachments: [2020.07.16 Statement Request for Postponement of Sale for Investigation of Seth Andrew & Democracy Builders.pdf](#)
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

From: J. LeShaé [REDACTED]
Sent: Thursday, July 16, 2020 5:01 PM
To: AGO - Info <AGO.Info@vermont.gov>
Cc: AGO - Civil Rights <AGO.CivilRights@vermont.gov>; AGO - CAP <AGO.CAP@vermont.gov>
Subject: RE: Statement of Request to Postpose Sale to Seth Andrew/Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

The attached letter is the same with grammatical edits. I am also including data notes (below) that I received from the Collective regarding stories submitted to them.

Thank you for your review.

-J

Columns (A/G/H) = Form/ Year/ Handle	133
Social Media Submissions	80
Form/Other Submissions	53
Instances within Submissions	276
Columns C = Instance Themes	276
Discipline & Culture	124
Discipline & Culture (Response to Corrections, Tardiness. Uniforms)	72
Egregious Safety Issues	19

Sexual Harassment	13
Elementary School Specific Discipline	10
Bathroom (Facilities)	8
Food Quality	2
Academic Services	78
Cultural Incompetence	24
Graduation & College Prep Services	18
Mental Health Services	11
IEP/BIP Services	9
Promotion & Summer School	7
Teacher Quality	5
ESL/ENL Services	2
Afterschool Tutoring	2
CMO	72
Hiring & Evaluation Practices	30
Financial Management	17
Cultural Competence	8
Staff Compensation	6
Staff Training	5
Role of BES	4
Involvement in Local Politics	2
Praise for Black n Brown @ DP	2

Column E = Specific School References	
Democracy Prep Charter Total	91
DPCHS	45
DPCMS	35
DPCMS & DPCHS	10
Democracy Prep Harlem Charter Total	35
DPHHS	18
DPHES	10
DPHMS	7
Democracy Prep Endurance Charter Total	26
DPEMS	18
DPEHS	8
Harlem Prep Charter Total	11
HPES	7

	HPMS	1
	HPHS	3
Freedom Prep Charter Total		11
	FPMS	7
	FPES	2
	FP General	2
General Comments on Democracy Prep		23
General Comments on PD at Democracy Prep		4

Column B = Naming Names (37 different name/ combos)			
General Comments	150	Linda Jones Easton	2
Seth Andrew	22	Linda Jones Easton & Lisa Friscia	2
Lisa Friscia	11	Linda Jones Easton & Drew Marsek	1
Seth Andrew/ Katie Duffy/ Lindsay Malanga	8	Linda Jones Easton & Natasha Trivers	1
Lindsay Malanga	5	Natasha Trivers	1
Steve Popper	5	Katy Duffy	1
Elisa DiMauro	5	Tanya Nunez	1
Andre Ankrum	4	Emily Smythe	1
DPU	4	Latoya Pearson	1
Sarah Benko	3	Adam Garnett	1
Brian Serzan	3	Alexi Greg	1
Matthew Rooney	3	Drew Marsek	1
Victoria Del Toro	3	Dan Reiss	1
Ruyle/Ruil	3	Amir Carmel	1
Margaret Marrer	3	Ashlynn Moldanado	1
Mia Backon & Allison Roberts	3	Cassius Gil	1
Pia Dandiya	3	Brittany Long	1
Pia Dandiya & Ferrera	2	Elizabeth Raji	1
Natasha Trivers & Jonathan Howard	2		
Mia Backon	2		
Sarah Schranz	2		
William Cooke	2		
Emmanuel George & General DP	2		
Getting	2		
Alice Lowe	2		

From: J. LeShaé [REDACTED]
Sent: Thursday, July 16, 2020 3:09 PM
To: 'ago.info@vermont.gov' <ago.info@vermont.gov>

Cc: 'ago.civilrights@vermont.gov' <ago.civilrights@vermont.gov>; 'ago.cap@vermont.gov' <ago.cap@vermont.gov>

Subject: Statement of Request to Postpose Sale to Seth Andrew/Democracy Builders

Good afternoon T.J, Julio, and Christopher –

**To: T. J. Donovan, AG Vermont
& the Marlboro & Emerson Communities**

Introduction

I am J LeShaé and I run an activist education initiative called Ms. J's Classroom. For the last four years I've served as the Principal of [Conscious Consulting](#), where I've led social justice education and coaching for several institutions including The Black Teacher Collaborative, The Budd Center at Southern Methodist University, American Baptist College, One Goal, Teach For America, The Commit Partnership, and The Teaching Trust. I also head a youth leadership movement called Building Opportunities & Opening Minds (BOOM), which provides spaces of affirmation, decolonization, organization, and innovation for K-16 Black and Brown visionaries. I am a first-generation high school and college graduate, who received a full scholarship to obtain my B.A. in History from Clark Atlanta University (HBCU).

I was a founding teacher at Democracy Prep Charter High School at the St. Phillips campus in Harlem, New York, during the 2009-2010 academic year. I was recruited by Jonathan Howard and managed by the founding principal Lisa Friscia. Seth Andrew served as the Superintendent at that time. My observations and personal experiences with racial injustice during that year inspires my support of the activism of the Black & Brown at Democracy Prep. I stand in solidarity with them in their demands for restructure at Democracy Prep Public Schools and in their advocacy against the sale of the Marlboro campus to Seth Andrew & Democracy Builders. I have also shared comments of my experiences at Democracy Prep with journalists in Marlboro.

Identity & Lens

Some of my most salient experiences (often misnomer-ed as identities) within our present social condition are racial (Blackness), gendered (Womanhood), cultural (Southern, community rich, capital poor), and spiritual (energetically aware sensitive/sensual). I was given the name Jamie LeShaé Jenkins at birth: Jamie, from my father, "LeShaé" from my mother, and "Jenkins" from British-American Confederates who fought to maintain slavery here in the United States. I participate in this world within a dark-skinned (termed: Black), afro-haired, womb-body (termed: female or woman), and I identify as energy.

I am actively decolonizing from the ever-present violence of Western European colonial social systems. Thus, both as an individual and as an educator, I resist all practices of miseducation and psychological trauma from systems of thought rooted in the legacy of colonial occupation of the Americas, Africa, and South Asia. I also stand against any practices of white-dominance or control over the

bodies/minds/spirits of First Nations (Native American) people, displaced African people, or their descendants, including, but not limited to, that which occurs within schools. Because of this, I am a 13-year [career activist](#) for educational equity, racial justice, and freedom.

Additionally, my truths and lived experiences, which I offer as medicine for human healing, can be experienced by those who benefit from our present social structures, as confusing, conflicting, or even painful. Subsequently, in many cases, my words alone are treated as destructive or dangerous, and have led to threats against my livelihood. These realities influence my life, language, and lens.

Anonymity

I choose to lend my face and name to this movement with keen awareness of the dangers of full disclosure. I have personally experienced the impacts of truth-telling against injustices performed by institutions and/or white people of wealth. From instances of being black-balled in certain corners of the philanthropy and education reform worlds, to being physically threatened with a gun by 2 white men while having lunch on the patio of a Cheesecake Factory in 2014, I know very practically that openly performing as a moral conscience in a racist society is not safe.

I have observed many questions and critiques of the anonymity of the Black & Brown at DP Collective. While this is disappointing to me, I recognize that humans often struggle to conceptualize rationale for conditions that they have not personally experienced. For example, if we have not been reprimanded for speaking up against racism, or if we have not personally experienced harm from racists; empathizing with Black and Brown activists who choose to protect themselves with anonymity may prove difficult. Further research into social justice activism may aid us in our struggle. The Movement for Black Lives offers a model of decentralized leadership and practices of some levels of anonymity. Lessons from our past resistance movements, when participants were assassinated, penalized on jobs and in schools, and/or placed on the FBI's Most Wanted List, help us to be more strategic in our approaches today. In 2020, many collectives have chosen anonymity as an organizing strategy, including several other charter school systems, like Success Academies, and Uncommon Schools; as well as magazines, like [Essence](#). However, even without personal experiences, we still have at least two windows of opportunity to declare our values – via history and our humanity.

Our Schooling Condition

Much of the present US American schooling condition is a legacy of colonialism. In the same way that European settlers planted flags on foreign lands with missions of civilizing indigenous people through occupation and domination; leaders of no-excuses charter systems, including Seth Andrew through Democracy Prep and now Democracy Builders, plant their institutional flags in Black and Brown communities with the same missionary zeal. We do not expect reformers to request the perspectives of Black and Brown experts and educators, nor do we require them to seek permission from the community leaders and parents of the places they are entering. We just join in this 500-year history of white-domination over Black and Brown beings, blindly. Perhaps it is too painful to consider how we have been complicit in continuing this ugly dominance legacy in American history. Perhaps,

because we have endured our own miseducation, studying history from books that erase the terroristic truths of eugenics and Native American boarding schools, or the triumphs of community schools or Black-led universities (HBCUs), we haven't a clue of the atrocities that have happened, and that are still happening. For those of us who core values of equity and justice, we must deeply interrogate the parallels between settler-colonialists and neocolonialists, and question why if we can now name the harm in one, that which resulted in the enslavement of Black bodies, why can't we see the harm in the other, that which shackles Black minds and spirits? Whatever the reason, let us no longer allow ignorance to destroy our humanity.

Over 200 people have submitted stories to the Black & Brown at DP Collective. While not everyone who attended Democracy Prep Public Schools perceive the institution negatively, many do. I do. My experiences at Democracy Prep's Charter High School with racial discrimination and trauma at DPCHS largely inspired my zeal for designing and leading social justice education in large education reform organizations. What I saw there was horrible. I can confirm that several of the anonymous submissions to BNB@DP align to my observations and experiences at the institution between 2009-2010. Regardless of this, the bigger issue is the problematic orientations of DPPS's founder, Seth Andrew, where these conditions of racial harm festered, are still present within that institution even after his exit. At present, he has chosen non-response when invited to reconcile and rectify these issues, to protect his ego. He does not suffer the same critique as the Black and Brown folk who respond, but choose to not to reveal themselves, to protect their psychological and economic safety.

There are students and faculty who had great experiences with DPPS, just as there are others who suffered abuses. What will it take for us to resist the restrictions of "[either/or](#)" thinking and welcome the healing of "both/and"? One truth does not negate the other. When harm is being communicated, at any level and in any way within our schools, we have a legal responsibility to investigate. The onus is not on victims to subject themselves to additional injury for the sake of satisfying public curiosity. It is on us, the citizens of communities where these institutions exist, or are being installed, to ask questions about, and to push against the trends of racial injustice that are being communicated. That said, if we find ourselves hyper-critical of the Black and Brown people sharing truths under the cover of an anonymous collective (just as several other grassroots activists have chosen to), yet we are somehow confident in narratives offered by white people and the institutions they control (along with their access to money, press, powerful partnerships, and racial privileges that Black and Brown activists are not privy to), let us also name and accept that truth as evidence of our affinity to the [culture of white supremacy](#). In that vein, let us then own the limitations of our perspectives and honor that we are yet equipped to interpret or solve this situation equitably. Let us demonstrate justice by inviting racial equity practitioners, Black and Brown education experts, and children and families from our communities to speak and lead in these matters. Let them have the final say.

Investigation

All in all, Black and Brown people are simply demanding that we – individuals and

institutions – be and do better. That’s all. The Movement for Black Lives exploded into a global movement this year, and in turn, demands for racial justice are happening everywhere. The activism of BNB@DP is not unique, but a microcosm of a larger reality. The people of Vermont’s communities have an opportunity to consider its core values and who it wants to be on the other side of history. If anonymity leaves too many unanswered questions for decision makers to move forward concretely, or to dissolve the bill of sale to Seth Andrew, let it also inspire a full independent investigation into the accusations/allegations against Seth Andrew, Democracy Prep and the current Democracy Builders. Seth communicated in his essay on medium.com a realization that he has more work to do and made commitments to anti-racism. Allowing an independent investigation into these allegations is a way for Seth to demonstrate a good-faith effort of his commitments, or on the other end, to prove that these accusations are fallacious. My recommendation to the Marlboro and Emerson communities, as well as to T. J. Donovan, the Attorney General of Vermont, is to call for the halt of the sale until an independent investigation is conducted to determine the severity of crimes communicated by former and current students and staff including: financial mismanagement, illegal transcript and score handling, racial discrimination and HR breeches, policing of Black and Brown bodies, and sexual misconduct with minors.

Let us not allow anymore extraneous minutia to distract us from the larger opportunity in front of us. Let us be diligent in pursuing racial equity and accountability in schooling for all young people and educators in our communities.

Truth, justice, and love.
J LeShaé

To: T. J. Donovan, AG Vermont & the Marlboro & Emerson Communities

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bodies/minds/spirits of First Nations People (Native American), displaced African people (African-Americans, Afro-Latinx), or their descendants (Black, Latinx, Multiracial Persons, etc.) This includes, but is not limited to, that which occurs within schools. Because of this, I am a 13-year [career activist](#) for educational equity, racial justice, and freedom.

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with the same missionary zeal. We do not expect reformers to request the perspectives of community-centric Black and Brown experts and educators, nor do we require them to seek permission from the community's leaders, children, or parents in the places they are entering. We just join in this 500-year history of white-domination over Black and Brown beings, blindly. Perhaps it is too painful to consider how we have been complicit in continuing this ugly legacy of dominance in American history. Perhaps, because we have endured our own miseducation, studying history from books that erase the terroristic truths of eugenics and Native American boarding schools, or the triumphs of community schools and Black-led universities (HBCUs), we haven't a clue of the atrocities that have happened here or of those that are still happening. For those of us who hold core values of equity and justice, we must deeply interrogate the parallels between 16th century settler-colonialists and 21st century neocolonialists. We must question why, if we can now name the harm in one, that which resulted in the theft of indigenous lands and the enslavement of Black bodies, we cannot seem to see the harm in the other, that which shackles Black minds and spirits. Whatever the reason, let us no longer allow ignorance to destroy our humanity.

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Let us not allow anymore extraneous minutia to distract us from the larger opportunity in front of us. Let us be diligent in pursuing racial equity and accountability in schooling for all young people and educators in our communities.

Truth, justice, and love.

J LeShaé

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Stop merger and property sale at Marlboro College
Date: Monday, July 20, 2020 7:59:47 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Richard Stowe [REDACTED]
Sent: Friday, July 17, 2020 5:00 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Stop merger and property sale at Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Richard Stowe
[REDACTED]
Lake Worth FL 33460
[REDACTED]

TJ Donovan
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Phone (802) 828-3171

Dear Attorney General Donovan,

I write as a graduate of the class of 1980 at Marlboro College to ask the Attorney General to not allow either the so-called "merger" with Emerson College, or the pending sale of Marlboro College property to Democracy Builders to take place. I also ask that the Attorney General remove the current President and current members of the Board of Trustees including Trustee president Dick Saudek and replace them with stakeholders interested in keeping Marlboro College in Marlboro, Vermont.

I support a possible relationship between the University of Vermont's Forestry and Environmental Schools with Marlboro College.

The use of the term “merger” in defining Marlboro’s relationship to Emerson is false and misleading. When examining Emerson’s website, you see that Emerson does not use the term: merger; they describe the potential relationship between Marlboro and Emerson as an “alliance.” A more accurate is a “takeover.”

Gifting the endowment to Emerson in exchange for allowing current Marlboro students and faculty to attend or teach at Emerson is a gross misuse of Marlboro College’s endowment.

The disposition of other assets, such as the Plan of Concentration and Rudyard Kipling collection to UVM demonstrates that the State of Vermont has more empathy and concern about the legacy of Marlboro College than does Emerson College.

The sale of the Marlboro College campus to an entity other than the highest bidder demonstrates a breach of fiduciary duty by the Board of Trustees.

Thank you

Richard M. Stowe

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Use of restricted funds at Marlboro College not in line with donor intent
Date: Monday, July 20, 2020 8:06:45 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Re-envisioning Marlboro College [REDACTED]
Sent: Sunday, July 19, 2020 10:38 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Use of restricted funds at Marlboro College not in line with donor intent

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

July 19, 2020

Dear Attorney General Donovan,

Re-envisioning Marlboro College Corporation is a Vermont non-profit organization formed to support alternative education, save Marlboro College, and re-envision in line with values of democracy, radical inclusion, equity, social justice, improved student experience, and cutting edge pedagogy. There are Marlboro College alumni on our board. A video showing our initial vision can be seen at <https://youtu.be/atCU2ILAGg4>

We would like to request that given the many issues recently coming to light that raise serious fiduciary and legal questions, that you extend the review period for one more week and request additional documentation.

We believe Marlboro College should be preserved because its unique combination of connection with place in the Town of Marlboro, Vermont, alternative pedagogy, and form of self-governance, make it a gem in the higher education landscape.

In addition to our interest in launching a re-envisioning process which will be inclusive

of the various stakeholder groups, we have a list of potential board members, faculty, staff, and administration which can step in on short notice if the campus sale and merger fall through, and these positions are not filled.

Our belief is that a financially stable Marlboro College in its current location is the only viable way to ensure the integrity of Marlboro's core mission. Transferring assets to Emerson is not an equivalency of any kind and raises serious legal questions that donors we are speaking with are now looking into.

We are aware of very wealthy alumni donors who haven't been contacted by the college in nearly ten years. There is a brand new dorm for which the college borrowed \$1.5 million dollars according to the college's financial report of summer 2019, which is just being completed this year, and was never used by Marlboro students.

The college has an extraordinarily high ratio of employees to students which can be brought back into line with historic ratios at the college and has overbuilt the campus which allows for co-location opportunities that would bring in revenue. The enrollment problems are solvable and in fact, President Quigley has said that the campus buyer has solved the enrollment problem already! It begs the question, why Marlboro College itself couldn't do the things to become sustainable that it believes Democracy Builders Fund can do, especially since Marlboro already has accreditation, an endowment, an alumni base, an established reputation, and a proven pedagogical approach.

We have seen letters that the college sent donors requesting the un-restricting of funds that they have donated. According to this article, November 7, 2019, Marlboro College was going to give Emerson an estimated \$40 million dollars:

www.insidehighered.com/news/2019/11/07/marlboro-will-become-part-emerson-college

While this article on July 4, 2020, states that only about half that amount will be given: <https://berkeleybeacon.com/newly-publicized-emerson-marlboro-transfer-agreement-reveals-new-details-of-proposed-merger/> so we would like confirmation that money the college told donors was going to be used in a certain way at Emerson wasn't used for operational expenses at Marlboro College rather than cutting expenses.

As the deadline for the completion of your review nears, we have become aware of donors who have donated towards buildings or restricted funds at Marlboro College who have not received a letter from the college asking to un-restrict their donations and believe that the transfer of their funds to Emerson or the sale of the campus is not in line with the original purpose of their donation. We are happy to put you in touch with these donors. We ask that you request documentation from the college showing that restricted donor funds were not used for operational expenses.

We have also come across an affidavit by Nathaniel Hendricks, who indicates that the sale of the Marlboro College campus was not in line with the purpose of the original gift of land to the college by Walter Hendricks, his father and founder of the college. We are happy to send this to you upon request.

We are concerned that Seth Andrew of Democracy Builders Fund has already moved on to campus to conduct work there and host potential donors, and are not clear whether those visiting donors have self-quarantined after entering Vermont.

Additionally, if you would like to hold a public forum to discuss the various issues that have arisen, we would be happy to help put that together.

Sincerely,

Jonathon Podolsky
Director

Re-envisioning Marlboro College Corporation

[REDACTED]

Shelburne, VT 05482

From: [Sudbay, William](#)
To: [Renner, Jamie](#); [Curtis, Christopher](#)
Subject: FW: Vermonters in Solidarity with Black N Brown at DP
Date: Thursday, July 16, 2020 3:25:14 PM
Attachments: [Letter to AG Vermonters in Solidarity with Black N Brown at DP.pdf](#)

FYI

Will Sudbay

Executive Assistant
Office of the Vermont Attorney General
109 State Street
Montpelier, VT

From: AGO - CAP <AGO.CAP@vermont.gov>
Sent: Thursday, July 16, 2020 3:18 PM
To: Sudbay, William <william.sudbay@partner.vermont.gov>; Clark, Charity <Charity.Clark@vermont.gov>
Subject: FW: Vermonters in Solidarity with Black N Brown at DP

For your review and response.

From: Ariel Poster [REDACTED]
Sent: Monday, July 13, 2020 11:45 AM
To: AGO - CAP <AGO.CAP@vermont.gov>; AGO - Info <AGO.Info@vermont.gov>; AGO - Civil Rights <AGO.CivilRights@vermont.gov>
Subject: Vermonters in Solidarity with Black N Brown at DP

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Please find my letter Attorney General Donovan, Julio Thomson, and Christopher Curtis attached. Please confirm receipt.
Thank you,
Ariel Poster

Ariel Poster
[REDACTED]
Marlboro, VT 05344

July 13, 2020

Office of the Attorney General
109 State Street
Montpelier, VT 05609

Dear Attorney General Donovan, Julio Thomson, and Christopher Curtis,

I am writing to you because I am deeply concerned about the sale of the Marlboro College campus to Seth Andrew and his organization, Democracy Builders. I grew up in Marlboro and I am highly alarmed about the type of organization that is moving into the community. I stand in solidarity with Black N Brown at DP, a collective of 200 (and growing) African American, Afro-Latinx, and Latinx alumni, parents, and faculty who were at Democracy Prep during the time that Seth Andrew was in charge there and are now speaking out against the racism they experienced under his leadership. As of this writing there are currently 347 others who stand with me in solidarity with Black N Brown at DP via the petition "[Cancel Sale of Marlboro College campus to Democracy Builders](#)".

In their article, [A Hurt Dog Gon' Holla](#), Black N Brown at DP calls upon the current leadership of Democracy Prep to completely disavow any continued relationship with Seth Andrew. And in a letter they wrote to the Marlboro community titled, [Seth Andrew's Legacy and its Impact on Marlboro College](#), they call upon the Marlboro College Board of Trustees to end all engagement with Seth Andrew in the sale of the campus to his current business, Democracy Prep and the Degrees of Freedom program:

"As survivors of the harm Seth caused, we are incredibly concerned about your decision to allow him to open a college program on the Marlboro grounds. We hope that you read the stories on our page as well as our essays on Medium with an open mind and an open heart. The Seth Andrew that founded Democracy Prep in 2006 is not far from the Seth Andrew of today. While Degrees of Freedom would certainly breathe new life into the campus, create jobs, and help support the local economy; all of these things would happen at the cost of residents' dignity, and humanity. And you would soon feel like many people in Harlem, wishing he would leave."

We want to amplify the voices of this collective because Black and Brown voices have been marginalized for far too long. The allegations of abuse inflicted on these students, parents, and faculty are serious and can not be ignored. Black Lives Matter and we need to do the work to end white supremacy and dismantle systemic racism wherever we see it. We should have been speaking out in defense of these voices when they were kids and the harm was happening. We can't make excuses or go back but now we have an opportunity to stand with them as adults and help insure that this kind of abuse is not perpetuated. Not in Marlboro, Vermont or anywhere else. If we are silent we too are complicit in perpetuating systemic racism and abuse.

Seth Andrew wrote, [Reflections on Race & Democracy Prep](#), which he has since removed from the internet but can be read [here](#). In response the Black N Brown at DP collective wrote a response, [We Ain't Buying It](#), in which they question the sincerity of his words:

"The beginning of Seth's piece offers, what seems to be, true and genuine self reflection and critique, but he later slips back into a white savior narrative, doubling down on his belief that he "did a great thing for Black and Brown people in Harlem...He fails to recognize that these voices have flourished IN SPITE of Democracy Prep, not *because* of it. And his willingness to take credit for Black expression further illustrates how deeply racist this man truly is."

On July 9, 2020 three people from Black N Brown at DP took time out of their lives to share their stories with the town of Marlboro at the Select Board meeting. I am my father's daughter, so listening to these testimonies of abuse against children and staff brought me to tears. Please listen to the entire recording [here](#). This is some of the testimony we heard:

Staff member of Democracy Prep (2012-14):

"The collective was founded to bring voice to the absolute atrocity that occurred at Democracy Prep charter school, that left hundreds of Black and Brown staff, families, kids traumatized and abused in its wake. We thought it particularly important to be present today to bring voice to the voiceless and to dispel any rumors, or Seth's specific charge, that there were just a few stories. Or that there were exaggerations. To date the collective has received over 350 stories that span both Seth's time at Democracy Prep and beyond because of the catastrophic legacy that he left... He's just not prepared to run such a college. He has no experience in running a hire education institution. And the experience that he does have, founding a charter network, as mentioned earlier, has left tons of bodies in their wake... There definitely needs to be some excavating in what he's going to do to both atone and how he's going to change these processes and his practices and quite frankly his heart. Because the way that he spoke to people, adults, children—the way that he ran his organization is not something that you should have in your community. " (This testimony starts at 21:24)

Zenzile Keith, former staff at Democracy Prep:

"I'm a former staff member at Democracy Prep and I witnessed a number of racist and white supremacist acts. Not only committed against students but against myself as an African American woman who worked on the Superintendent level... I find it very disheartening that a person, like Seth, can purchase a university that is supposed to train people to work with other students, or to train students period. To work anywhere, in any field, to educate them, when he has absolute disrespect for Black and Brown people. These are things that I actually witnessed. That I actually witnessed myself...The age that we're in, the way that you show that Black Lives Matter, the way that you show that Brown Lives Matter, right, is that you don't allow somebody like this to come into your community and to spread the type of hate and disdain for Black and Brown bodies like he's done in Harlem. An area that I grew up in." (This testimony starts at 34:55)

An alum from the founding class:

"I was aware that the school was troublesome when I was in it, even when I was in 6th grade and was one of Seth's trophy children, I said that the school wasn't brining up students, that it was brining up robots. But I think once I left I realized the full extent of what a white savior actually is. And what systematic racism is truly within education. And I hope that Seth is never around an environment where he is leading Black and Brown bodies ever again. If anything, if we're going to have a program that's meant for Black and Brown students, it needs to either be run by Black and Brown leadership or by people who are well intentioned and have experience in doing the job. And Seth unfortunately has neither." (This testimony starts at 40:23)

We urge you to read the powerful and heart breaking testimonies on Black N Brown at DP's [facebook](#), [instagram](#), and [twitter](#) accounts. From Black N Brown at DP:

"Seth Andrew has inflicted pain upon hundreds of young people, directly; and upon thousands of young people and their families indirectly through the proliferation of his school model. He has a record of ostracizing and firing faculty and staff of color who spoke out against the injustices that they witnessed and endured while employed at Democracy Prep."

"Racism is traumatic for EVERYONE. It is most traumatic; however, for its victims. It has required great emotional strength for the former students, and former and current staff members involved with this effort to continue this fight each day. We have cried at some of the stories we have received, been enraged at some of the emails we have been sent, and been broken by accounts of how DP's problematic decision making has shifted people's entire futures."

The Peace and Justice Center has signed onto the petition and their Executive Director, Rachel Siegel added these words:

"The Peace & Justice Center stands in solidarity with Black N Brown at Democracy Prep. As an organization that is committed to anti-racism in all of our work, we are deeply concerned with the sale of Marlboro College to Democracy Builders. The behavior of Seth Andrew, and the legacy of trauma he has left, is not something we need in Vermont. It is not something that should be anywhere. If he is to be here, we demand an earnest and meaningful reckoning with and reparations for his actions. If he is unable to take full accountability for the harms he has caused, we do not want him here. White Vermonters have long posited that they are more liberal and less racist than the rest of the country. We find this notion anathema to the blatant, measurable, systemic racism we see (eg, incarceration rates and traffic stop data by race are worse than national numbers, COVID cases by race are disproportionate, etc) and more subtle interpersonal racism (People of Color in Vermont regularly leave Vermont and express that racism here scares them more than in other parts of the country because of how it's couched in "liberalism"). That said, being "less racist" is a wonderful goal to strive for but we would go further and insist that we must become anti-racist. Asking Mr. Andrew to answer the questions posed by Black n Brown at DP is a small, tangible step in that direction."

Please do not approve the sale of the Marlboro College campus to Seth Andrew. These are serious allegations and they need to be taken seriously. No sale should be finalized until a thorough investigation has taken place.

Thank you,

A handwritten signature in cursive script that reads "Ariel Poster". The signature is written in black ink and is positioned above the printed name.

Ariel Poster

From: [Donovan, Thomas](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Clark, Charity](#); [Jandl, Lauren](#)
Subject: Fwd: Marlboro College
Date: Wednesday, July 15, 2020 2:12:40 PM

Get [Outlook for iOS](#)

From: Thomas Donovan [REDACTED]
Sent: Wednesday, July 15, 2020 12:45:20 PM
To: Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: Fwd: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Sent from my iPhone

Begin forwarded message:

From: Jay Craven [REDACTED]
Date: July 15, 2020 at 12:26:22 PM EDT
To: [REDACTED]
Subject: Marlboro College

Dear T. J.,

I hope all is well, under the circumstances. We're glad to be Vermonters, given everything else that's going on in 3/4 of the U.S. right now. Let's hope we can maintain our relative stability.

I'm simply writing to say that the loss of Marlboro College will be significant to Vermont. It has been a one-of-a-kind learning community - and, despite unsuccessful efforts by the current administration, I believe that a newly constituted leadership could draw on collective imagination and support - to restore the colleges potent vision and resolve the college's enrollment and fiscal problems.

I also feel confident that New England accreditors would work cooperatively with a newly constituted group, to support their progress.

I know that it's late in the game - but this will be a very sad moment, if the college closes permanently and sends its assets to Emerson College. I think about the college's long history in southern Vermont, starting with its founders and early trustees, including Robert Frost. I taught there for 20 fabulous years - that I will always cherish.

I would be happy to organize a working group - to quickly develop plans for a path forward. If even we could just retain the campus, I know we could progress, working with people like longtime ally, alumnus and former Marlboro VP and former Sterling College President, Will Wootton. An active alumni group is also prepared to mobilize.

Let me know if you have any questions or suggestions.

All the best,

Jay

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College Campus
Date: Friday, July 17, 2020 10:15:07 AM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Rory Goff [REDACTED]
Sent: Friday, July 17, 2020 9:46 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College Campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Attn: Attorney General, TJ Donovan

I am a graduate of Marlboro College (1976), and served the College on the Admissions Committee, as Head Selectman of the Student Body, President of the Alumni Council (12 years), and was a representative to the Board of Trustees.

In the interest of keeping the spirit of Marlboro College alive, I have a concern that an institution such as Democracy Builders is at odds with the values of Marlboro College, the Town of Marlboro, Windham County, and Vermont in general.

It is my understanding that a collective – Black N Brown at DP – of former staff and alumni of color at Seth Andrew’s charter schools has collected hundreds of testimonials of manipulative, punitive, abusive behavior aimed at people of color, all in the name of “education.” This is not the kind of environment the College or the community of Marlboro VT fostered over the years.

My personal opinion is that the "sale" and "transformation" of the College should not have occurred, but the sale to Democracy Builders is simply appalling. My understanding is that Seth Andrew and members of his staff have reportedly already taken up residence on Marlboro’s campus on Potash Hill. They have stationed guards on campus. They drive Marlboro College vehicles and have chased

away town residents. This is beginning to look like a cult enclave, not an educational institution.

I don't know if you can do anything to stop this sale, but I implore you to take what action you can to stop this sale for the good of Vermont and the town of Marlboro.

Rory Goff '76

[REDACTED]

Sharon, NH 03458

[REDACTED]

[REDACTED]

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College to Democracy Builders
Date: Friday, July 17, 2020 11:11:55 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Alice Grossman [REDACTED]
Sent: Friday, July 17, 2020 11:09 AM
To: AGO - Info <AGO.Info@vermont.gov>
Cc: [REDACTED]
Subject: Sale of Marlboro College to Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To the Attorney General of Vermont,

I am a 1973 alum of Marlboro College. Marlboro College's mission respected the individual. This seems to be the opposite of Democracy Builders. They have run their charter schools like prisons. Their philosophy seems to be based on compliance and punishment. An untucked shirt does not deserve being "sent out" to solitary confinement for "reflection". From the personal testimony I have read from its students and faculty alike, I have come to the conclusion that this chain of charter schools is not a proper legacy for Marlboro College.

Please do NOT allow this inherently racist institution to take over Marlboro College! Marlboro was a school that encouraged participatory democracy and allowed students to express themselves and think for themselves. Democracy Builders and Democracy Prep seem to be the opposite.

I am not happy that Marlboro College is being sold to Emerson College, but I would hope that whoever takes over that special campus would be a force for inclusivity, respect, kindness, and justice, not a place that stifles human rights! They won't be good for their students or for the Marlboro larger community!

Thank you for your consideration,

Alice Grossman
[REDACTED]
Somerville, Ma. 02145

From: [Martin Heck](#)
To: [AGO - Info](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); sandrew@democracybuilders.org; jmcmahan@dinse.com
Subject: Re: Marlboro College contract with Democracy Builders Fund, Inc.
Date: Monday, July 20, 2020 2:21:46 PM
Attachments: [DEMOCRACY BUILDERS FUND I INC-DE \(2\).pdf](#)
[DEMOCRACY BUILDERS FUND I INC-DE 2 \(2\).pdf](#)
[DEMOCRACY BUILDERS FUND I INC-DE 3 \(2\).pdf](#)
[20200716_184617.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. Attorney General Donovan,

I feel that the attached documents shed some light on the situation with the entity called Democracy Builders Fund, Inc, the present entity that entered into a purchase and sale agreements with The Corporation of Marlboro College for the College campus .

As you can see by the attached documents, the entity once known as Democracy Builders Fund, Inc. no longer exists in its home state of Delaware. According to the NY SOS, once it was terminated in DE it should have been terminated also in NY: Mr. Andrew appears to have restarted its charter DE but had to do it under a very slightly different name know as Democracy Builders Fund I, Inc. I also sent my request to Seth Andrew via email :

[REDACTED]

The very slight change appears to have gone unnoticed or written off as a typo error by the IRS and the State of NY.

However the result is that Democracy Builders Fund, Inc, can no longer legally exist in NY in its current status as a foreign entity if its domestic entity in DE no longer exists. Additionally, it seems when the IRS catches up with this they will once again revoke the 501c3 status of Democracy Builders Fund, Inc, if they haven't already.

Under the law, Democracy Builders Fund should provide 990s and other documents requested by the public. I attach a copy of my letter to their official address sent by certified mail, along with the USPS tracking information. The address listed by Democracy Builders Fund as their place of business no longer exists, however they still list it as their place of business. They do not seem to be legally established in NY, DE or VT at this point and as such cannot engage in this transaction for this reason and many others.

I feel the AGO has an obligation to stop the purchase and sale agreement between Marlboro college and Democracy Builders Fund, inc or whatever else they might be calling themselves today.

Martin Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "DEMOCRACY BUILDERS FUND I, INC.", WAS RECEIVED AND FILED IN THIS OFFICE THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION REMAINS A DOMESTIC CORPORATION ON OUR RECORDS BUT HAS FAILED TO FILE THE ANNUAL FRANCHISE TAX REPORT AND PAY THE FRANCHISE TAXES CURRENTLY DUE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DEMOCRACY BUILDERS FUND I, INC." WAS INCORPORATED ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.




Jeffrey W. Bullock, Secretary of State

5485426 8300U

SR# 20206270908

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203297089

Date: 07-16-20

State of Delaware

Annual Franchise Tax Report

CORPORATION NAME			TAX YR.
DEMOCRACY BUILDERS FUND I, INC.			2018
FILE NUMBER	INCORPORATION DATE	RENEWAL/REUOCATION DATE	
5485426	2014/02/20		
PRINCIPAL PLACE OF BUSINESS			PHONE NUMBER
2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK, NY 10027			(646) 470-8136
REGISTERED AGENT			AGENT NUMBER
CAPITOL SERVICES, INC. 1675 S STATE ST STE B DOVER DE 19901			9220915
AUTHORIZED STOCK BEGIN DATE	END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
OFFICER	NAME	STREET/CITY/STATE/ZIP	TITLE
SETH ANDREW		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	PRESIDENT
DIRECTORS	NAME	STREET/CITY/STATE/ZIP	
PRINCESS LYLES		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
	STACY BIRDSELL	2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
	MARCELLINA BLOW-CUMMINGS	2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
	SETH ANDREWS	2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR)		DATE	TITLE
SETH ANDREW		2020/01/31	PRESIDENT
2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027 US			

CERTIFICATE OF INCORPORATION

OF

ALUMNI REVOLUTION, INC.

**A NONSTOCK CORPORATION ORGANIZED UNDER
THE DELAWARE GENERAL CORPORATION LAW**

ARTICLE I

The name of the corporation is **Alumni Revolution, Inc.**

ARTICLE II

The corporation's registered office in the State of Delaware is 615 South Dupont Highway, City of Dover, County of Kent, State of Delaware 19901. The registered agent of the corporation at such address is National Corporate Research, Ltd.

ARTICLE III

The corporation is a nonprofit corporation organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any subsequent federal tax law, including, but not limited to, the following:

- (1) to equip scholars to succeed in the college of their choice and a life of active citizenship through mentoring, social counseling, academic support, financial literacy and advocacy training;
- (2) to solicit, raise, receive, hold, invest and expend funds for the advancement and furtherance of such purpose(s); and
- (3) to engage, in furtherance of the foregoing, in any and all lawful activities for which a corporation may be organized under the General Corporation Law of Delaware ("DGCL"), except as restricted herein or in the bylaws of the corporation.

Notwithstanding any provision of this Certificate or any provisions of applicable state law to the contrary, the corporation is not authorized (a) to make any payments or distributions, or otherwise carry on any activities, which would cause it to fail to qualify, or to continue to qualify, as (i) an organization exempt from federal income tax under section 501(c)(3) of the Code, or (ii) an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code or (b) to accept gifts or contributions for other than the charitable purposes stated above.

ARTICLE IV

The corporation is not organized for pecuniary profit or financial gain, and no part of the earnings or assets of the corporation shall ever inure to the benefit of or be distributable to any individual having a personal or private interest in the activities of the corporation. No member, director or employee of the corporation is entitled or permitted to receive any pecuniary profit from the operations and activities of the corporation, except reimbursement of out-of-pocket expenditures and reasonable compensation for services actually rendered to or on behalf of the corporation.

ARTICLE V

Under no circumstances may the corporation (a) carry on propaganda or otherwise attempt to influence legislation in a manner that would subject the corporation to any tax imposed by section 4911 of the Code, or (b) participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office or engage in any activities which would characterize it as an "action organization" as defined in Treasury Regulation section 1.501(c)(3)-1(c)(3). No substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, whether pursuant to an election under section 501(h) or otherwise.

ARTICLE VI

The corporation is a nonstock corporation and has no authority to issue capital stock.

ARTICLE VII

Unless otherwise specified in the bylaws, the only members of the corporation shall be the persons who at the time of determination are members of the board of directors. The members shall have no right to vote on any matter other than the election of directors, except as otherwise required by law.

ARTICLE VIII

The corporation shall have a board of directors (the "Board"), which shall be the governing body of the corporation for all purposes of the DGCL. Except as otherwise provided by the DGCL, the business and affairs of the corporation shall be managed by or under the direction of the Board.

The corporation shall initially have three (3) directors. The number of directors may be altered from time to time in the manner provided in the bylaws. The election of directors shall be conducted in the manner provided for in the bylaws. Any vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the bylaws.

The following persons shall serve as the directors of the corporation until the first meeting of members or until their respective successors are duly elected and qualify:

<u>Name</u>	<u>Address</u>
Seth Andrew	300 West 135 th Street, Apt. 7S New York, NY 10030
Stacy Birdsell	11 Whitman Road Medford, MA 02155
Ravi Gupta	1300 56 th Ave. North Nashville, TN 37209

ARTICLE IX

No director of the corporation has any liability to the corporation or its members for monetary damages for breach of such director's fiduciary duty as a director. The preceding sentence does not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived an improper personal benefit.

ARTICLE X

The Board shall have the power without the assent or vote of the members to adopt, amend, alter or repeal the bylaws.

ARTICLE XI

If there is a liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary, involuntary or by operation of law, the Board shall, except as may be otherwise provided by applicable law, distribute all of the assets of the corporation in such manner as the Board may determine so long as the distribution is (a) solely in furtherance of the objectives and purposes set forth in Article III of this Certificate and (b) is made to one or more organizations that are exempt from taxation as organizations described in section 501(c)(3) of the Code.

ARTICLE XII

This Certificate may not be amended to authorize the Board to manage or conduct the operations or affairs of the corporation in any manner or for any purpose that would cause the corporation to fail to qualify or continue to qualify as an organization exempt from federal income tax under section 501(c)(3) of the Code or an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code.

ARTICLE XIII

This Certificate shall be effective on the date it is filed with the office of the Secretary of State of the State of Delaware.

ARTICLE XIV

The name and mailing address of the incorporator are as follows:

Andrew J. Fadale, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

The powers of the incorporator shall terminate upon the filing of this Certificate with the office of the Secretary of State of the State of Delaware.

I, THE UNDERSIGNED, for the purpose of forming a nonstock, nonprofit corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and have accordingly hereunto set my hand this 20 day of February, 2014.


Incorporator

Andrew J. Fadale, Esq.

Name (type or print)

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Alumni Revolution, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 1
The name of the corporation is Democracy Builders Fund, Inc."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be
signed this 24th day of July, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Democracy Builders Fund, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 3

The corporation is a nonprofit corporation organized exclusively for
charitable purposes within the meaning of section 501(c)(3) of the
Internal Revenue Code of 1986, as amended (the "Code"), or the
corresponding provision of any subsequent federal tax law, including,
but not limited to, the following:

- (1) to increase access to parent choice in
public schools through active grassroots engagement;
- (2) to increase the rate at which students
from traditionally disadvantaged backgrounds obtain college
degrees; and
- (3) to engage, in furtherance of the foregoing,
in any and all lawful activities for which a corporation may be
organized under the General Corporation Law of Delaware
("DGCL"), except as restricted herein or in the bylaws of the
corporation.

Notwithstanding any provision of this Certificate or any provisions of
applicable state law to the contrary, the corporation is not authorized (a)
to make any payments or distributions, or otherwise carry on any
activities, which would cause it to fail to qualify, or to continue to
qualify, as (i) an organization exempt from federal income tax under
section 501(c)(3) of the Code, or (ii) an organization contributions to
which are deductible under sections 170, 2055 and 2522 of the Code or
(b) to accept gifts or contributions for other than the charitable purposes
stated above."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 21 day of October, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

CERTIFICATE OF RESIGNATION
OF
DEMOCRACY BUILDERS FUND, INC.

PURSUANT TO SECTION 136(a) OF THE GENERAL CORPORATION LAW

Written Notice of Resignation was given to

DEMOCRACY BUILDERS FUND, INC.

at least thirty (30) days prior to the filing of this certificate by mail to the corporation at its address last known to National Corporate Research, Ltd. Such notice was dated and mailed on the 11th day of August, 2015. National Corporate Research, Ltd. hereby resigns as the registered agent of the corporation pursuant to Section 136(a) of the General Corporation Law.

National Corporate Research, Ltd. has caused this Certificate to be executed by its Vice-President this 30th day of October, 2015.

National Corporate Research, Ltd.

/s/ Andrew Lundgren
Andrew Lundgren, Vice-President

STATE OF DELAWARE
CERTIFICATE FOR REVIVAL OF CHARTER

The corporation organized under the laws of the State of Delaware, the charter of which was forfeited for failure to obtain a registered agent, now desires to procure a revival of its charter pursuant to Section 312 of the General Corporation Law of the State of Delaware, and hereby certifies as follows:

1. The name of the corporation is DEMOCRACY BUILDERS FUND I, INC.
formerly known as DEMOCRACY BUILDERS FUND, INC.
and, if different, the name under which the corporation was originally incorporated
Alumni Revolution, Inc.

2. The Registered Office of the corporation in the State of Delaware is located at
1675 S. State Street, Suite B (street),
in the City of DOVER, DE, County of Kent
Zip Code 19901. The name of the Registered Agent at such address upon
whom process against this Corporation may be served is Capital Services, Inc.

3. The date of filing of the Corporation's original Certificate of Incorporation in
Delaware was 2/20/2014.

4. The corporation desiring to be revived and so reviving its certificate of
incorporation was organized under the laws of this State.

5. The corporation was duly organized and carried on the business authorized by its
charter until the 29th day of November A.D. 2015, at which time its
charter became inoperative and forfeited for failure to obtain a registered agent and the
certificate for revival is filed by authority of the duly elected directors of the corporation
in accordance with the laws of the State of Delaware.

By: P. Lyles
Authorized Officer

Name: Princess V. Lyles
Print or Type

CERTIFICATE OF INCORPORATION

OF

ALUMNI REVOLUTION, INC.

**A NONSTOCK CORPORATION ORGANIZED UNDER
THE DELAWARE GENERAL CORPORATION LAW**

ARTICLE I

The name of the corporation is **Alumni Revolution, Inc.**

ARTICLE II

The corporation's registered office in the State of Delaware is 615 South Dupont Highway, City of Dover, County of Kent, State of Delaware 19901. The registered agent of the corporation at such address is National Corporate Research, Ltd.

ARTICLE III

The corporation is a nonprofit corporation organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any subsequent federal tax law, including, but not limited to, the following:

- (1) to equip scholars to succeed in the college of their choice and a life of active citizenship through mentoring, social counseling, academic support, financial literacy and advocacy training;
- (2) to solicit, raise, receive, hold, invest and expend funds for the advancement and furtherance of such purpose(s); and
- (3) to engage, in furtherance of the foregoing, in any and all lawful activities for which a corporation may be organized under the General Corporation Law of Delaware ("DGCL"), except as restricted herein or in the bylaws of the corporation.

Notwithstanding any provision of this Certificate or any provisions of applicable state law to the contrary, the corporation is not authorized (a) to make any payments or distributions, or otherwise carry on any activities, which would cause it to fail to qualify, or to continue to qualify, as (i) an organization exempt from federal income tax under section 501(c)(3) of the Code, or (ii) an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code or (b) to accept gifts or contributions for other than the charitable purposes stated above.

ARTICLE IV

The corporation is not organized for pecuniary profit or financial gain, and no part of the earnings or assets of the corporation shall ever inure to the benefit of or be distributable to any individual having a personal or private interest in the activities of the corporation. No member, director or employee of the corporation is entitled or permitted to receive any pecuniary profit from the operations and activities of the corporation, except reimbursement of out-of-pocket expenditures and reasonable compensation for services actually rendered to or on behalf of the corporation.

ARTICLE V

Under no circumstances may the corporation (a) carry on propaganda or otherwise attempt to influence legislation in a manner that would subject the corporation to any tax imposed by section 4911 of the Code, or (b) participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office or engage in any activities which would characterize it as an "action organization" as defined in Treasury Regulation section 1.501(c)(3)-1(c)(3). No substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, whether pursuant to an election under section 501(h) or otherwise.

ARTICLE VI

The corporation is a nonstock corporation and has no authority to issue capital stock.

ARTICLE VII

Unless otherwise specified in the bylaws, the only members of the corporation shall be the persons who at the time of determination are members of the board of directors. The members shall have no right to vote on any matter other than the election of directors, except as otherwise required by law.

ARTICLE VIII

The corporation shall have a board of directors (the "Board"), which shall be the governing body of the corporation for all purposes of the DGCL. Except as otherwise provided by the DGCL, the business and affairs of the corporation shall be managed by or under the direction of the Board.

The corporation shall initially have three (3) directors. The number of directors may be altered from time to time in the manner provided in the bylaws. The election of directors shall be conducted in the manner provided for in the bylaws. Any vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the bylaws.

The following persons shall serve as the directors of the corporation until the first meeting of members or until their respective successors are duly elected and qualify:

<u>Name</u>	<u>Address</u>
Seth Andrew	300 West 135 th Street, Apt. 7S New York, NY 10030
Stacy Birdsell	11 Whitman Road Medford, MA 02155
Ravi Gupta	1300 56 th Ave. North Nashville, TN 37209

ARTICLE IX

No director of the corporation has any liability to the corporation or its members for monetary damages for breach of such director's fiduciary duty as a director. The preceding sentence does not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived an improper personal benefit.

ARTICLE X

The Board shall have the power without the assent or vote of the members to adopt, amend, alter or repeal the bylaws.

ARTICLE XI

If there is a liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary, involuntary or by operation of law, the Board shall, except as may be otherwise provided by applicable law, distribute all of the assets of the corporation in such manner as the Board may determine so long as the distribution is (a) solely in furtherance of the objectives and purposes set forth in Article III of this Certificate and (b) is made to one or more organizations that are exempt from taxation as organizations described in section 501(c)(3) of the Code.

ARTICLE XII

This Certificate may not be amended to authorize the Board to manage or conduct the operations or affairs of the corporation in any manner or for any purpose that would cause the corporation to fail to qualify or continue to qualify as an organization exempt from federal income tax under section 501(c)(3) of the Code or an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code.

ARTICLE XIII

This Certificate shall be effective on the date it is filed with the office of the Secretary of State of the State of Delaware.

ARTICLE XIV

The name and mailing address of the incorporator are as follows:

Andrew J. Fadale, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

The powers of the incorporator shall terminate upon the filing of this Certificate with the office of the Secretary of State of the State of Delaware.

I, THE UNDERSIGNED, for the purpose of forming a nonstock, nonprofit corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and have accordingly hereunto set my hand this 20 day of February, 2014.



Incorporator

Andrew J. Fadale, Esq.

Name (type or print)

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Alumni Revolution, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 1
The name of the corporation is Democracy Builders Fund, Inc."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be
signed this 24th day of July, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Democracy Builders Fund, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 3

The corporation is a nonprofit corporation organized exclusively for
charitable purposes within the meaning of section 501(c)(3) of the
Internal Revenue Code of 1986, as amended (the "Code"), or the
corresponding provision of any subsequent federal tax law, including,
but not limited to, the following:

- (1) to increase access to parent choice in
public schools through active grassroots engagement;
- (2) to increase the rate at which students
from traditionally disadvantaged backgrounds obtain college
degrees; and
- (3) to engage, in furtherance of the foregoing,
in any and all lawful activities for which a corporation may be
organized under the General Corporation Law of Delaware
("DGCL"), except as restricted herein or in the bylaws of the
corporation.

Notwithstanding any provision of this Certificate or any provisions of
applicable state law to the contrary, the corporation is not authorized (a)
to make any payments or distributions, or otherwise carry on any
activities, which would cause it to fail to qualify, or to continue to
qualify, as (i) an organization exempt from federal income tax under
section 501(c)(3) of the Code, or (ii) an organization contributions to
which are deductible under sections 170, 2055 and 2522 of the Code or
(b) to accept gifts or contributions for other than the charitable purposes
stated above."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 21 day of October, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

CERTIFICATE OF RESIGNATION
OF
DEMOCRACY BUILDERS FUND, INC.

PURSUANT TO SECTION 136(a) OF THE GENERAL CORPORATION LAW

Written Notice of Resignation was given to

DEMOCRACY BUILDERS FUND, INC.

at least thirty (30) days prior to the filing of this certificate by mail to the corporation at its address last known to National Corporate Research, Ltd. Such notice was dated and mailed on the 11th day of August, 2015. National Corporate Research, Ltd. hereby resigns as the registered agent of the corporation pursuant to Section 136(a) of the General Corporation Law.

National Corporate Research, Ltd. has caused this Certificate to be executed by its Vice-President this 30th day of October, 2015.

National Corporate Research, Ltd.

/s/ Andrew Lundgren
Andrew Lundgren, Vice-President

STATE OF DELAWARE
CERTIFICATE FOR REVIVAL OF CHARTER

The corporation organized under the laws of the State of Delaware, the charter of which was forfeited for failure to obtain a registered agent, now desires to procure a revival of its charter pursuant to Section 312 of the General Corporation Law of the State of Delaware, and hereby certifies as follows:

1. The name of the corporation is DEMOCRACY BUILDERS FUND I, INC.
formerly known as DEMOCRACY BUILDERS FUND, INC.
and, if different, the name under which the corporation was originally incorporated
Alumni Revolution, Inc.
2. The Registered Office of the corporation in the State of Delaware is located at
1675 S. State Street, Suite B (street),
in the City of DOVER, DE, County of Kent
Zip Code 19901. The name of the Registered Agent at such address upon
whom process against this Corporation may be served is Capital Services, Inc.
3. The date of filing of the Corporation's original Certificate of Incorporation in
Delaware was 2/20/2014.
4. The corporation desiring to be revived and so reviving its certificate of
incorporation was organized under the laws of this State.
5. The corporation was duly organized and carried on the business authorized by its
charter until the 29th day of November A.D. 2015, at which time its
charter became inoperative and forfeited for failure to obtain a registered agent and the
certificate for revival is filed by authority of the duly elected directors of the corporation
in accordance with the laws of the State of Delaware.

By: P. Lyles
Authorized Officer

Name: Princess V. Lyles
Print or Type

Save Marlboro College Corporation

Putney, VT 05346

Tel:

July 8, 2020

7019 2280 0000 5187 4730

USPS CERTIFIED MAIL 7019 2280 0000 5187 4730
Democracy Builders Fund, Inc.
2130 Adam Clayton Powell Jr. Blvd.
New York, NY 10027

RE: Request for information from Democracy Builders Fund, Inc, EIN No. 46-489722

I am requesting public information regarding Democracy Builders Fund, Inc. EIN. No. 46-4897222, under Title 26 IRC § 6104.

Directing your attention to Democracy Builders Fund, Inc, EIN NO. 46-4897222, the last year that I have found a 990 or equivalent filed is 2016 representing tax year beginning 07-01-2016 , and ending 06-30-2017.

On the same form and same year for DBF, INC please refer to:

990 Schedule O, Supplemental Information

Return Reference Form 990, Part VI, Section C, line 19

"The Organisation makes its form 990 available for public inspection as required under section 6104 of the Internal Revenue Code. The return is posted on guidestar.org and other similar types of websites. In addition, the financial statements, conflict of interest policy, articles of incorporation and by-laws are also available upon written request at 2130 Adam Clayton Powell, Jr. Blvd, New York, NY 10027, or by calling the organisation directly at (347) 931- 8120.

I have call (347) 931-8120 on three (3) occasions, left messages, but no return calls or replies.

I made a request today in writing under regarding Democracy Builders Fund, Inc. EIN. No. 46-4897222, under Title 26 IRC § 6104.

I am requesting:

- Latest financial statements including form 990 or equivalent for 2017 representing tax year beginning 07-01-2017 , and ending 06-30-2018. The extended due date for this document to be filed with the IRS was May 15, 2020.
- Statement of Conflict of Interest Policy
- Articles of Incorporation and by-laws
- Recent Certificate of Good Standing (or equivalent) from your home state
- Proof of Certificate of Authority from the Vermont Secretary of State of State in order to operate in Vermont as a foreign corporation.
- Any notice of proposed refusal to recognise such organisation as an organisation described in section 501(c)(3) or a notice of proposed revocation of such organisation's

recognition as an organisation exempt from taxation.

The documents available are not widely available. The current requested documents are not available on sites like guidestar.org and similar sites. Under Title 26 IRC § 6104 I am requesting the above listed documents.

Documents may be mailed to:

Save Marlboro College Corporation

P.O. 75

Putney, VT 05346

Or emailed to:

info@savemarlborocollege.org

Please bill for any copy costs at the standard IRS allowable rates.

Time is of the essence as this may relate to the proposed sale and purchase proposal submitted to the Vermont AGO from Marlboro College Corporation. (3)

Thank you in advance for your anticipated cooperation.


Please call or write immediately with any questions or problems with this request.

Very truly yours,



Martin Heck

Save Marlboro College, Director


Putney, Vermont 05346

<http://www.savemarlborocollege.org>

CC: 

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Accounts](#)

July 16, 2020

USPS Tracking Intranet Tracking Number Result



Price Change 1/26/2020:

USPS Premium Tracking: USPS will offer a fee-based service to extend the availability of tracking data on domestic competitive products for an additional 6 months up to 10 years. In addition, customers can also request a Premium Tracking Statement via email.

The Manual Entry Acceptance screen will be modified to use the Pricing Engine for all rates calculations. Users will no longer enter fees for Collect on Delivery (COD) and Additional Insurance; instead, users will enter the dollar amount to be collected for COD or the insured value for insurance.

Result for Domestic Tracking Number 7019 2280 0000 5187 4730

Tracking Expires On
July 9, 2022

Destination and Origin

Destination

ZIP Code	City	State
100273744	NEW YORK	NY

Origin

ZIP Code	City	State
053469998	PUTNEY	VT

Tracking Number Classification

Class/Service

Class/Service: Priority Mail Certified Mail
 Class of Mail Code/Description: PM / Priority Mail®

Destination Address Information

Address: 2130 ADAM CLAYTON POWELL JR BLVD
 City: NEW YORK
 State: NY
 5-Digit ZIP Code: 10027
 4-Digit ZIP Code add on: 3744
 Delivery Point Code: 99
 Record Type Code: Building/Apartment

Origin / Return / Pickup Address Information

Address:
 City:
 State:
 5-Digit ZIP Code: 05346
 4-Digit ZIP Code add on: 9998

Service Delivery Information

Service Performance Date: Expected Delivery by: Saturday, 07/11/2020
 Delivery Option Indicator: 1 - Normal Delivery
 Zone: 03
 PO Box: N
 Other Information: [Service Calculator information](#)

Payment

Payment Type: Other Postage
 Payment Account Number: 0000000000
 Postage: \$7.75
 Weight: 0 lbs(s); 2 oz(s)
 Rate Indicator: Flat Rate Envelope

Agent Information

[Request Internal Premium Tracking Statement](#)

Extra Services	
Extra Services Details	
Description	Amount
Cerified Mail	\$3.55
Up to \$50 Insurance Included	\$0.00

Events									
Event	Event Code	Event Date	Event Time	Location	Input Method	Scanner ID	Carrier Route	Posting Date / Time (Central Time)	Other Information
VACANT	26	07/10/2020	15:39	NEW YORK, NY 10027	Scanned	MDD 74254D8053 (interface type - wireless)	Scanned by route 0027C-014	07/10/2020 19:42:15	GEO Location Data Available Request Delivery Record
ARRIVAL AT UNIT	07	07/10/2020	04:49	NEW YORK, NY 10036	Scanned	DSS-045-00	Destined to route C014	07/10/2020 04:01:14	Assignment Type: Missent/Misshipped OFD Same Day FC/DF Reason Code
ENROUTE/PROCESSED	10	07/09/2020	16:51	NEW YORK, NY 10198	Scanned	AFFS-045-1		07/09/2020 16:07:12	
ENROUTE/PROCESSED	10	07/09/2020	16:50	NEW YORK, NY 10198	Scanned	AFFS-045-1		07/09/2020 21:02:29	
ENROUTE/PROCESSED	10	07/09/2020	02:03	NASHUA, NH 03063	Scanned	AFFS-079-1		07/09/2020 01:59:17	
DEPART POST OFFICE	5F	07/08/2020	17:01	PUTNEY, VT 05346	System Generated			07/08/2020 16:16:07	Closeout Label ID: C213 7857 1000 2007 0616 0446 000
ACCEPT OR PICKUP	03	07/08/2020	14:06	PUTNEY, VT 053469998	Scanned	POS	Destined to route C014	07/08/2020 13:30:02	Facility Finance Number: 506216

Enter up to 35 items separated by commas

Select Search Type:

Product Tracking & Reporting, All Rights Reserved
Version: 20.3.3.0.92

From: [Save Marlboro College](#)
To: [AGO - Info](#); [Curtis, Christopher](#); [Renner, Jamie](#)
Subject: Public Records Request
Date: Friday, July 17, 2020 4:39:44 PM
Attachments: [Outlook-horizontal.png](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr Attorney General Donovan, Mr. Renner and Mr. Curtis,

I have concerns that the AGO is not in compliance with the law regarding my request for public documents. The extended length of time is not justified. Documents should be made public before the AGO makes any decisions regarding the situation with Marlboro College. It is appropriate to being review in secret. The redactions made by the college are not legal. The redactions, if any, made by the AGO, for the most part, are not legal.

I appreciate that some personal information regarding human persons may be withheld under the law. However, the rights of the tax exempt non-profit Corporation for public benefit should be transparent. If the AGO feels information is necessary to evaluate the situation, then that information must be made public. This includes, but is not limited to, the sale price of the campus; the names of individuals that are benefiting financially from this transaction and how much money they benefit; and information regarding the donors and their release or change of endowment restrictions.

I will to received the unredacted versions not later than Monday by 10 AM.

Please consider this to be an official complaint and appeal.

I am also concerned about the 20 day time frame. The AGO has not extended this to match the dates that later documents, originally withheld by the College, were later submitted. The 20 day clock should not start until the AGO has all the documents required. The effect of the AGO's decision on this was to excluded the public from information the AGO was basing its decision on, then making the decision, and still not releasing any of the pertinent information to the public. It deprived the public of the information being considered by the AGO, and compromised the public's ability to voice concern over the evidence advanced by the college, and offer evidence that might contradict the evidence provided by the College. As of today, the AGO is basing its opinion on information not made available to the public. Public scrutiny and transparency has been denied.

Sincerely,

Martin Heck



Martin Heck

Save Marlboro College, Director



Putney, Vermont 05346

<http://www.savemarlborocollege.org>



State of Delaware

SECRETARY OF STATE
 DIVISION OF CORPORATIONS
 P.O. BOX 898
 DOVER, DELAWARE 19903

8407757
 DEMOCRACY BUILDERS FUND, INC.
 2582 SOUTH ROAD
 MARLBORO, VT 05344

07-20-2020


ATTN: SETH ANDREW

DESCRIPTION	AMOUNT
5485426 - DEMOCRACY BUILDERS FUND I, INC. Entity Status - Short Form	
Certification Fee	\$50.00
Expedite Fee, Two Hour	\$500.00
TOTAL CHARGES	\$550.00
TOTAL PAYMENTS	\$550.00
BALANCE	\$0.00

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College
Date: Friday, July 17, 2020 10:56:18 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: parrish.knight@
Sent: Friday, July 17, 2020 10:09 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning:

My understanding is that you've already received a number of letters of concern regarding the closure and sale of Marlboro College in Marlboro, Vermont. That being the case, I'll simply add a brief "Me, Too" to the concerns expressed about the character of the proposed buyer, Seth Andrew, and whether that's the kind of person whose values we want to bring into Vermont. However, apart from the allegations of racism, which seem to me to be at the very least credible, a more recent development has also become a cause of concern for me.

It appears that Seth Andrew has already taken up residence on the Marlboro campus and has started posting guards, preventing anybody else from entering the campus. This is worrisome for two reasons. First of all, and probably most importantly, the sale hasn't even been completed yet, which means that he is living on, and excluding other people from, land that doesn't belong to him. I am not a lawyer myself, but to me, this sounds like trespassing.

More seriously, though, Marlboro College has always had an open and welcoming atmosphere. When I was a student there (1992-1995), for example, nearly all of the buildings were open and unlocked twenty-four hours a day, the only real exceptions being the financial aid office and the administration building. Anyone was welcome to borrow books from the library, lounge in the science building, or even borrow the theater for impromptu musical gatherings. I have fond memories of groups of students getting together on weekends and using pretty much the entire campus for large-scale LARPs (live-action role-playing games). All of this applied to anyone who cared to come by the campus, whether it was current students, alumni, nearby town residents, or even visitors from out of state. And it appears that Seth Andrew is so anxious to put a stop to this that he can't even wait until he's the legal landowner.

I want to live in a world where my college still exists, where I know that I am welcome, as an alumnus, to stop by to say hello, to visit my old dorm room and wonder whether anyone ever broke my record of living in it for five consecutive semesters, where I can stop by the library, even at 3 AM, and browse the stacks. Gated communities such as the one that Seth Andrew envisions have no place anywhere in Vermont at all, but especially not one with the values so long held by Marlboro College.

I do not believe that this sale is in the best interests of Marlboro's current community, its alumni who love the college so much, or with Vermont itself. I urge you to look into this matter more thoroughly to address the grave concerns held by so many.

Best regards,
Parrish S. Knight

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Contact Form submitted on Office of the Vermont Attorney General
Date: Wednesday, July 15, 2020 4:26:11 PM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Office of the Vermont Attorney General [REDACTED]
Sent: Wednesday, July 15, 2020 10:29 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Contact Form submitted on Office of the Vermont Attorney General

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Name Ruth
Last Kurle
Email [REDACTED]
Phone Number [REDACTED]
Subject Marlboro College
Message Mr. Donovan,

I have just learned about the Marlboro College fire sale. I simply ask you to put a stop to it.

It is beyond clear that the Marlboro College President and Trustees have and are acting in bad faith. No question colleges, like Marlboro, are having trouble financially. The President has failed to right the ship and should be the one leaving alone not taking the college down with him. Unable to understand the secret dealings that have gone on, questions about a possibly racist buyer with a very dubious track record of education and no real plan to support the Marlboro Community - college, town etc., how can the possibly be the best deal for anyone but a college in Boston.

Why not simply give all the assets to the State of Vermont or the Town of Marlboro, or the Marlboro Music Festival, or the Marlboro Morris Dance Ale - 45 years at the College. Or give the assets to Middlebury College, Yale, Princeton, Julliard? Emerson has no connection to Vermont, Marlboro College nor does the prospective buyer offer anything to really anyone.

Stop the SALE. Appoint a new set of trustees made up of Marlboro College alums, Marlboro Town Residents, Marlboro Music Festival members and anyone else you like who will be handle the future of Marlboro with the due care it deserves.

Peace.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Marlboro College
Date: Thursday, July 16, 2020 4:38:32 PM
Attachments: [Letter to Attorney General.pdf](#)
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Timothy Little [REDACTED]
Sent: Thursday, July 16, 2020 4:37 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Please see attached letter.

Timothy Little

The Honorable T. J. Donovan
Attorney General, State of Vermont

July 15, 2020

Dear Attorney General Donovan:

I have been associated with Marlboro College for a very long time. I was a student there from 1962-1965 and returned to be Director of Admissions 1967-1969. Then, from 1970 until my retirement in 2010, I was professor of history, while serving on most of Marlboro's committees, being Dean of Students, being again Director of Admissions, frequently Town Meeting Moderator, representative to the Board of Trustees and so on. I know the college from many different directions in many different eras.

I think it is a mistake to close the college. Though enrollment figures are cited as the primary reason for closing, I can attest to the fact that Marlboro has recovered from admissions crises many times over. Marlboro is designed to be a small college, and various campaigns to extend its enrollment to particular levels have in fact produced problems rather than solutions. Marlboro can function well with small numbers and with the right leadership.

Academically, Marlboro has always been noteworthy. Attempts to make it more mainstream have created difficulties. The faculty and staff have remained committed and engaged, but over time there seems to have developed some confusion about the model and mission of Marlboro. Unfortunately this seems to underlie the current leadership's sense that the college is not viable. I believe that they are mistaken.

For a small institution, Marlboro has an extremely active, engaged, and accomplished body of alumni whose continued support of the college is not to be doubted. Over the course of this year, Marlboro alumni have stepped forward to work on student recruitment, fundraising, public relations, and consideration of reconfigurations that could keep the college operational. They have been, for the most part, rebuffed. One has to wonder why.

I urge you not to support the action of the current president and Board of Trustees. The process this year has failed to engage alumni, former faculty, former staff, Marlboro town community members, and apparently many of the people currently on campus. The decision will have an impact on all of these groups, as well as close the door to future students. A process like this cannot produce the right solution.

We need new leadership. Marlboro College can thrive.

Sincerely,

Timothy F. Little
Class of 1965
Professor Emeritus of History, Marlboro 1970-2010

Re: Your Public Records Request

Save Marlboro College [REDACTED]

Mon 7/20/2020 8:43 AM

To: Renner, Jamie <Jamie.Renner@vermont.gov>

Jamie:

When did you receive the most recent set of documents from Marlboro College?

Is the AGO going to reset the 20 day clock in its response to the College regarding the sale of campus and transfer of assets to Emerson College in Boston, Massachusetts.

Martin

Martin Heck

Save Marlboro College, Director

[REDACTED]
Putney, Vermont 05346

<http://www.savemarlborocollege.org>

From: Renner, Jamie <Jamie.Renner@vermont.gov>

Sent: Sunday, July 19, 2020 10:39 PM

To: Save Marlboro College [REDACTED]

Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

Subject: Your Public Records Request

Martin:

Attached are additional records responsive to your public records request regarding Marlboro College. These records have been redacted pursuant to 1 V.S.A. 317(c)(7) . To the extent you feel that these records have been wrongfully redacted, you may appeal to Deputy Attorney General Josh Diamond.

Additionally, further documents from Marlboro College have been received. Pursuant to 1 V.S.A 318(a) (5)(B), we invoke our right to additional time to respond to your Request due to the need to appropriately examine the records in question. We will further respond within ten business days of receipt of said records.

-Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

Your Public Records Request

Renner, Jamie <Jamie.Renner@vermont.gov>

Wed 7/15/2020 4:13 PM

To: Save Marlboro College [REDACTED]

Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

Dear Mr. Heck:

On July 10, 2020, our Office received additional documents from Marlboro College potentially responsive to your Request regarding Marlboro College under the Public Records Act. Pursuant to 1 V.S.A 318(a)(5) (B), we invoke our right to additional time to respond to your Request due to the need to appropriately examine the records in question. We will further respond within ten business days of receipt of your request (which we consider to have been made on July 10, 2020).

If you feel information has been withheld or redacted in error, you may appeal to Deputy Attorney General Josh Diamond. Thank you for reaching out to our Office.

Regards,
Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

From: [Save Marlboro College](#)
To: [AGO - Info](#); [Curtis, Christopher](#); [Renner, Jamie](#)
Subject: Marlboro College / Democracy Builders Fund, Inc / Democracy Builders Fund I, Inc.
Date: Friday, July 17, 2020 5:01:43 PM
Attachments: [Outlook-horizontal.png](#)
[DEMOCRACY BUILDERS FUND I INC-DE.pdf](#)
[DEMOCRACY BUILDERS FUND I INC-DE 2.pdf](#)
[DEMOCRACY BUILDERS FUND I INC-DE 3.pdf](#)
[Search Results Democracy Builders Fund.pdf](#)
[Entity Information Democracy Builders Fund...pdf](#)
[Division of Corporations - Filing DBF .pdf](#)
[About — Alumni Revolution..pdf](#)
[Internal Revenue Service alumni revolution.pdf](#)
[Entity Information DEMOCRACY BUILDERS FUND, INC..pdf](#)
[20200716_184617.PDF](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Mr. Attorney General Donovan, Mr. Curtis and Mr. Renner,

Please note that there are two separate entities with similar names. The Domestic Corporation called Democracy Builders Fund in DE was terminated but the State of NY was not notified and the foreign entity in NY called Democracy Builders Fund continues to survive and do business, without the requisiet domestic nonprofit to have it established in its home state. A new entity called Democracy Builders Fund I was reestablished in DE but not in NY.

The proposed buyer Democracy Builders Fund, Inc represents an office in NY and is listed as a foriend NY business, but has not a Domestic counterpart register in DE.

The entity, Democracy Builders Fund I in DE is not in good standing with that state.

The entity, Democracy Builders Fund in NY appears also to not have good standing, but I await the documents.

None of these entities have registered in the State of Vermont as a foreign business, and both would likely fail not having a certificate of good standing with their home states. I imagine that the entity, Democracy Builders Fund in NY is not able to register as a foreign entity in VT as its a foreign entity in NY. It seems it would have to be the DE corporation to register.

The purchase and sale agreement references the NY entity only.

I requested by certified mail certain documents from Democracy Builders Fund in NY at their legal address. The mail has been returned and the documents have not been provided. As of today, neither Democracy Builders Fund or Fund I have a business address in NY or DE or Vermont, or at least have not registered such an address with the authorities.

Sincerely,

Martin Heck



Martin Heck

Save Marlboro College, Director



Putney, Vermont 05346

<http://www.savemarlborocollege.org>

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "DEMOCRACY BUILDERS FUND I, INC.", WAS RECEIVED AND FILED IN THIS OFFICE THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION REMAINS A DOMESTIC CORPORATION ON OUR RECORDS BUT HAS FAILED TO FILE THE ANNUAL FRANCHISE TAX REPORT AND PAY THE FRANCHISE TAXES CURRENTLY DUE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DEMOCRACY BUILDERS FUND I, INC." WAS INCORPORATED ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.



A handwritten signature in black ink, appearing to read "JBULLOCK". Below the signature is a horizontal line, and underneath the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

5485426 8300U

SR# 20206270908

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203297089

Date: 07-16-20

State of Delaware

Annual Franchise Tax Report

CORPORATION NAME			TAX YR.
DEMOCRACY BUILDERS FUND I, INC.			2018
FILE NUMBER	INCORPORATION DATE	RENEWAL/REUOCATION DATE	
5485426	2014/02/20		
PRINCIPAL PLACE OF BUSINESS			PHONE NUMBER
2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK, NY 10027			(646) 470-8136
REGISTERED AGENT			AGENT NUMBER
CAPITOL SERVICES, INC. 1675 S STATE ST STE B DOVER DE 19901			9220915
AUTHORIZED STOCK BEGIN DATE	END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
OFFICER	NAME	STREET/CITY/STATE/ZIP	TITLE
SETH ANDREW		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	PRESIDENT
DIRECTORS	NAME	STREET/CITY/STATE/ZIP	
PRINCESS LYLES		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
STACY BIRDSELL		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
MARCELLINA BLOW-CUMMINGS		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
SETH ANDREWS		2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR)		DATE	TITLE
SETH ANDREW		2020/01/31	PRESIDENT
2130 ADAM CLAYTON POWELL JR. BLVD. NEW YORK , NY 10027 US			

CERTIFICATE OF INCORPORATION

OF

ALUMNI REVOLUTION, INC.

**A NONSTOCK CORPORATION ORGANIZED UNDER
THE DELAWARE GENERAL CORPORATION LAW**

ARTICLE I

The name of the corporation is **Alumni Revolution, Inc.**

ARTICLE II

The corporation's registered office in the State of Delaware is 615 South Dupont Highway, City of Dover, County of Kent, State of Delaware 19901. The registered agent of the corporation at such address is National Corporate Research, Ltd.

ARTICLE III

The corporation is a nonprofit corporation organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any subsequent federal tax law, including, but not limited to, the following:

- (1) to equip scholars to succeed in the college of their choice and a life of active citizenship through mentoring, social counseling, academic support, financial literacy and advocacy training;
- (2) to solicit, raise, receive, hold, invest and expend funds for the advancement and furtherance of such purpose(s); and
- (3) to engage, in furtherance of the foregoing, in any and all lawful activities for which a corporation may be organized under the General Corporation Law of Delaware ("DGCL"), except as restricted herein or in the bylaws of the corporation.

Notwithstanding any provision of this Certificate or any provisions of applicable state law to the contrary, the corporation is not authorized (a) to make any payments or distributions, or otherwise carry on any activities, which would cause it to fail to qualify, or to continue to qualify, as (i) an organization exempt from federal income tax under section 501(c)(3) of the Code, or (ii) an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code or (b) to accept gifts or contributions for other than the charitable purposes stated above.

ARTICLE IV

The corporation is not organized for pecuniary profit or financial gain, and no part of the earnings or assets of the corporation shall ever inure to the benefit of or be distributable to any individual having a personal or private interest in the activities of the corporation. No member, director or employee of the corporation is entitled or permitted to receive any pecuniary profit from the operations and activities of the corporation, except reimbursement of out-of-pocket expenditures and reasonable compensation for services actually rendered to or on behalf of the corporation.

ARTICLE V

Under no circumstances may the corporation (a) carry on propaganda or otherwise attempt to influence legislation in a manner that would subject the corporation to any tax imposed by section 4911 of the Code, or (b) participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office or engage in any activities which would characterize it as an "action organization" as defined in Treasury Regulation section 1.501(c)(3)-1(c)(3). No substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, whether pursuant to an election under section 501(h) or otherwise.

ARTICLE VI

The corporation is a nonstock corporation and has no authority to issue capital stock.

ARTICLE VII

Unless otherwise specified in the bylaws, the only members of the corporation shall be the persons who at the time of determination are members of the board of directors. The members shall have no right to vote on any matter other than the election of directors, except as otherwise required by law.

ARTICLE VIII

The corporation shall have a board of directors (the "Board"), which shall be the governing body of the corporation for all purposes of the DGCL. Except as otherwise provided by the DGCL, the business and affairs of the corporation shall be managed by or under the direction of the Board.

The corporation shall initially have three (3) directors. The number of directors may be altered from time to time in the manner provided in the bylaws. The election of directors shall be conducted in the manner provided for in the bylaws. Any vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the bylaws.

The following persons shall serve as the directors of the corporation until the first meeting of members or until their respective successors are duly elected and qualify:

<u>Name</u>	<u>Address</u>
Seth Andrew	300 West 135 th Street, Apt. 7S New York, NY 10030
Stacy Birdsell	11 Whitman Road Medford, MA 02155
Ravi Gupta	1300 56 th Ave. North Nashville, TN 37209

ARTICLE IX

No director of the corporation has any liability to the corporation or its members for monetary damages for breach of such director's fiduciary duty as a director. The preceding sentence does not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived an improper personal benefit.

ARTICLE X

The Board shall have the power without the assent or vote of the members to adopt, amend, alter or repeal the bylaws.

ARTICLE XI

If there is a liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary, involuntary or by operation of law, the Board shall, except as may be otherwise provided by applicable law, distribute all of the assets of the corporation in such manner as the Board may determine so long as the distribution is (a) solely in furtherance of the objectives and purposes set forth in Article III of this Certificate and (b) is made to one or more organizations that are exempt from taxation as organizations described in section 501(c)(3) of the Code.

ARTICLE XII

This Certificate may not be amended to authorize the Board to manage or conduct the operations or affairs of the corporation in any manner or for any purpose that would cause the corporation to fail to qualify or continue to qualify as an organization exempt from federal income tax under section 501(c)(3) of the Code or an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code.

ARTICLE XIII

This Certificate shall be effective on the date it is filed with the office of the Secretary of State of the State of Delaware.

ARTICLE XIV

The name and mailing address of the incorporator are as follows:

Andrew J. Fadale, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

The powers of the incorporator shall terminate upon the filing of this Certificate with the office of the Secretary of State of the State of Delaware.

I, THE UNDERSIGNED, for the purpose of forming a nonstock, nonprofit corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and have accordingly hereunto set my hand this 20 day of February, 2014.


Incorporator

Andrew J. Fadale, Esq.

Name (type or print)

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Alumni Revolution, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 1
The name of the corporation is Democracy Builders Fund, Inc."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be
signed this 24th day of July, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
(A CORPORATION WITHOUT CAPITAL STOCK)**

The corporation, Democracy Builders Fund, Inc.,
organized and existing under the laws of the State of Delaware, hereby certifies as
follows:

(1) That at a meeting a vote of the members of the governing body was taken
for and against the amendment to the Certificate of Incorporation, said Amendment being
as follows:

"ARTICLE 3

The corporation is a nonprofit corporation organized exclusively for
charitable purposes within the meaning of section 501(c)(3) of the
Internal Revenue Code of 1986, as amended (the "Code"), or the
corresponding provision of any subsequent federal tax law, including,
but not limited to, the following:

- (1) to increase access to parent choice in
public schools through active grassroots engagement;
- (2) to increase the rate at which students
from traditionally disadvantaged backgrounds obtain college
degrees; and
- (3) to engage, in furtherance of the foregoing,
in any and all lawful activities for which a corporation may be
organized under the General Corporation Law of Delaware
("DGCL"), except as restricted herein or in the bylaws of the
corporation.

Notwithstanding any provision of this Certificate or any provisions of
applicable state law to the contrary, the corporation is not authorized (a)
to make any payments or distributions, or otherwise carry on any
activities, which would cause it to fail to qualify, or to continue to
qualify, as (i) an organization exempt from federal income tax under
section 501(c)(3) of the Code, or (ii) an organization contributions to
which are deductible under sections 170, 2055 and 2522 of the Code or
(b) to accept gifts or contributions for other than the charitable purposes
stated above."

(2) That said amendment was duly adopted in accordance with the provisions of
Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 21 day of October, A.D. 2015.

By: 
Authorized Officer

Name: Seth Andrew
Print or Type

CERTIFICATE OF RESIGNATION
OF
DEMOCRACY BUILDERS FUND, INC.

PURSUANT TO SECTION 136(a) OF THE GENERAL CORPORATION LAW

Written Notice of Resignation was given to

DEMOCRACY BUILDERS FUND, INC.

at least thirty (30) days prior to the filing of this certificate by mail to the corporation at its address last known to National Corporate Research, Ltd. Such notice was dated and mailed on the 11th day of August, 2015. National Corporate Research, Ltd. hereby resigns as the registered agent of the corporation pursuant to Section 136(a) of the General Corporation Law.

National Corporate Research, Ltd. has caused this Certificate to be executed by its Vice-President this 30th day of October, 2015.

National Corporate Research, Ltd.

/s/ Andrew Lundgren
Andrew Lundgren, Vice-President

STATE OF DELAWARE
CERTIFICATE FOR REVIVAL OF CHARTER

The corporation organized under the laws of the State of Delaware, the charter of which was forfeited for failure to obtain a registered agent, now desires to procure a revival of its charter pursuant to Section 312 of the General Corporation Law of the State of Delaware, and hereby certifies as follows:

1. The name of the corporation is DEMOCRACY BUILDERS FUND I, INC.
formerly known as DEMOCRACY BUILDERS FUND, INC.
and, if different, the name under which the corporation was originally incorporated
Alumni Revolution, Inc.

2. The Registered Office of the corporation in the State of Delaware is located at
1675 S. State Street, Suite B (street),
in the City of DOVER, DE, County of Kent
Zip Code 19901. The name of the Registered Agent at such address upon
whom process against this Corporation may be served is Capital Services, Inc.

3. The date of filing of the Corporation's original Certificate of Incorporation in
Delaware was 2/20/2014.

4. The corporation desiring to be revived and so reviving its certificate of
incorporation was organized under the laws of this State.

5. The corporation was duly organized and carried on the business authorized by its
charter until the 29th day of November A.D. 2015, at which time its
charter became inoperative and forfeited for failure to obtain a registered agent and the
certificate for revival is filed by authority of the duly elected directors of the corporation
in accordance with the laws of the State of Delaware.

By: P. Lyles
Authorized Officer

Name: Princess V. Lyles
Print or Type

NYS Department of State

Division of Corporations

Search Results

The information contained in this database is current through July 15, 2020.

Only one entity was found.

Entity Name

[DEMOCRACY BUILDERS FUND, INC.](#)

The Entity Name column contains the entity names that were found based on your search criteria. To display information for an entity, tab to the entity name and press the enter key or click on the entity name. To revise your search criteria, tab to Revise Search Criteria and press the enter key or click on Revise Search Criteria. To start a new search, tab to New Search and press the enter key or click on New Search.

[Revise Search Criteria](#) [New Search](#)

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through July 15, 2020.

Selected Entity Name: DEMOCRACY BUILDERS FUND, INC.

Selected Entity Status Information

Current Entity Name: DEMOCRACY BUILDERS FUND, INC.

DOS ID #: 4558564

Initial DOS Filing Date: APRIL 08, 2014

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN NOT-FOR-PROFIT CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

REVOLUTION SCHOOLS

C/O SETH ANDREW

300 W. 135TH STREET

NEW YORK, NEW YORK, 10030

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUL 27, 2015	Actual	DEMOCRACY BUILDERS FUND, INC.
APR 08, 2014	Actual	ALUMNI REVOLUTION, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

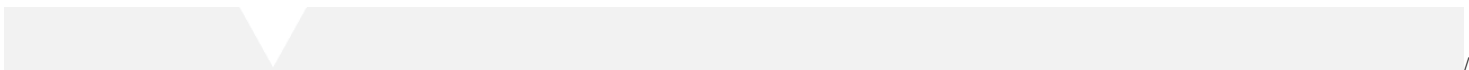
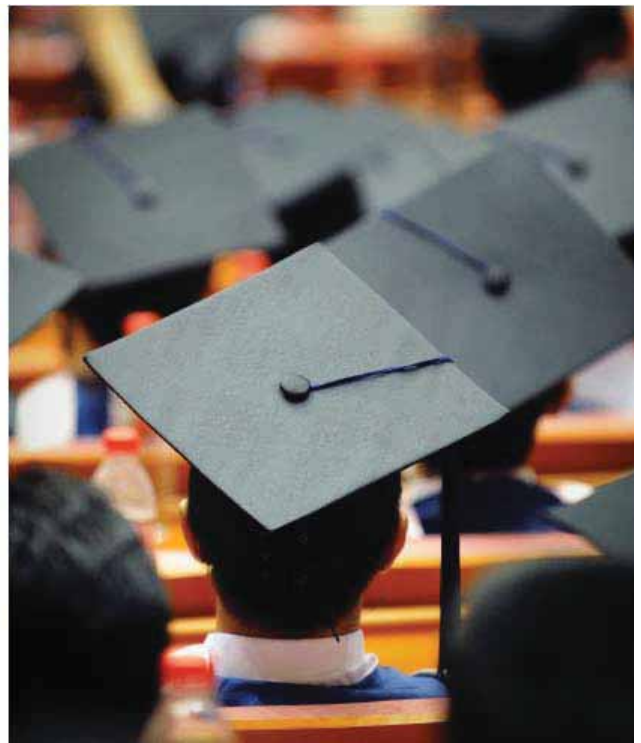
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MEMBER (/MEMBER)
MENTOR (/MENTOR)
PARTNER (/PARTNER)

Alumni Revolution's mission is to equip scholars for success in the college of their choice and a life of active citizenship.



Why We're Here

9%

If you earned a bachelor's degree, you're earning nearly **double the salary** as someone with only a high school diploma

If you come from a low-income family, you've got a **9% chance** of earning a bachelor's degree

Alumni Revolution aims to change the odds.
Higher Education should be a fundamental right, not a rare privilege.



In 2006 Seth Andrew founded Democracy Prep Public Schools in Central Harlem. DP scholars proved that all students can perform at extremely high levels, and in the fall of 2013 the first graduating class started their revolution: all 36 DP graduates currently attend four-year colleges and have formed the inaugural membership of the college success organization, Alumni Revolution. Their authentic voices will find others and together, they will fuel this revolution.



What We Do

We provide tools and opportunities for individual Revolutionaries to thrive academically, financially, and socially. Through our campus chapters, our partnerships, and MentorMatch, Revolutionaries become advocates carving out spaces where they and where others can thrive.

Who We Support

Alumni Revolution is proud to say that we support all college students with an emphasis on those who are first-generation and low-income. AR also supports the mentors who share our goals and who work with our Revolutionaries to change the odds.

How We're Different From Other College Success Organizations





We support all college students— no application is required.



Our Revolutionaries support AR's growth through building their own campus chapters.



We support our Revolutionaries' growth through MentorMatch, a safe and enriching space where Revolutionaries are sophisticatedly matched with with mentors who hold at least a bachelor's degree.



We explicitly promote advocacy and civic engagement, giving Revolutionaries opportunities to fight for themselves and for others.



We offer an authentic voice, as our team members are primarily first-generation college graduates who have lived the struggle of attaining higher education.



Our data-collection is rich, enabling individualized coaching, programming, and analysis.

Who We Are



Seth Andrew

Founder



Lawrence Smith

Financial Coach

Founder Seth Andrew is the Superintendent in Residence and Senior Advisor to US Secretary of Education Arne Duncan in the Office of Education Technology. Before joining the Department, Seth founded Democracy Prep Public Schools (DPPS), where he "graduated" with his first group of citizen-scholars in June 2013. Since then, he's focused on civic education, parent advocacy, and college persistence for low-income families. Seth attended NYC public schools from K-12, earned his B.A. from Brown University and his Ed.M. from the Harvard Graduate School of Education.

Financial Coach Lawrence Smith was an inaugural recipient of the prestigious Gates Millennium Scholarship and the first GMS Alumnus to join the Gates staff, serving as Outreach Coordinator for the Alumni Relations Team engaging over 9,300 Scholars.

He can be reached at lsmith@alumnirevolution.org (<mailto:lsmith@alumnirevolution.org>).



Stephanie Fiorelli

Academic Coach

Academic Coach Stephanie Fiorelli has worked in higher education for twelve years. She taught college writing and literature and served as writing specialist and academic advisor for the TRiO Student Support Service Program.

She can be reached at sfiorelli@alumnirevolution.org (<mailto:sfiorelli@alumnirevolution.org>).



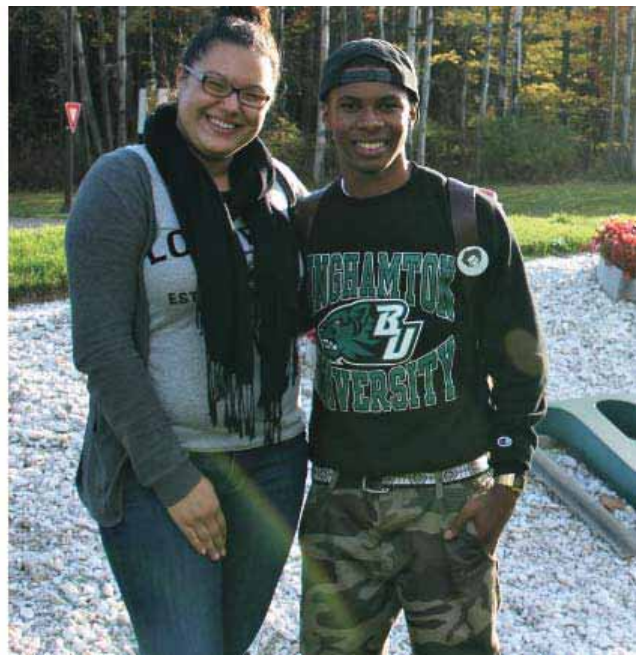
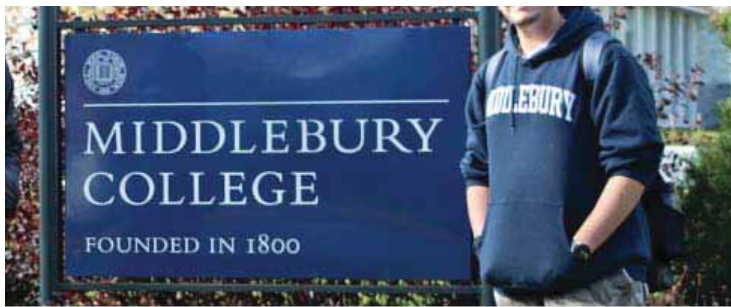
Amier Carmel

Social Counselor

Social Counselor Amier Carmel, LCMSW was a founding-year staff member of Democracy Prep Charter School. For the last seven years he has been working as a senior clinician at DPPS and is a Doctoral Candidate at the Boston Graduate School for Psychoanalysis.

He can be reached at acarmel@alumnirevolution.org (<mailto:acarmel@alumnirevolution.org>).





WANT MORE INFORMATION ON THE REVOLUTION? SHOOT US AN EMAIL
(MAILTO:INFO@ALUMNIREVOLUTION.ORG).

The mission of Alumni Revolution is to equip scholars for success in the college of their choice and a life of active citizenship.

[About Us \(/about\)](#) [Campus Chapters \(/campus\)](#)





Results for Tax Exempt Organization Search

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Search By

Organization Name



Search Term

alumni revolution

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Enter City

State

All States



Country

United States



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Your search did not return any results. Please try again.

Need Help? See [Search Tips](#) for guidance on effective searching, search criteria and logic, and selecting search terms.

Additional information

- [Frequently asked questions - Exempt Organizations Select Check](#)
- [Revocations of 501\(c\)\(3\) Determinations](#)

- [Suspensions Pursuant to Code Section 501\(p\)](#).
- [Exempt Organizations Business Master File Extract \(EO BMF\)](#): a list of organizations recognized as exempt by the IRS
- [Tax Exempt Organization Search: Bulk Data Downloads](#)

Page Last Reviewed or Updated: 6-Sept-2019

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Tax Stats, Facts & Figures	Freedom of Information Act	Tax Fraud & Abuse	Ti?ng Vi?t	
	No Fear Act			
	Privacy Policy			

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through July 15, 2020.

Selected Entity Name: DEMOCRACY BUILDERS FUND, INC.

Selected Entity Status Information

Current Entity Name: DEMOCRACY BUILDERS FUND, INC.

DOS ID #: 4558564

Initial DOS Filing Date: APRIL 08, 2014

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN NOT-FOR-PROFIT CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

REVOLUTION SCHOOLS

C/O SETH ANDREW

300 W. 135TH STREET

NEW YORK, NEW YORK, 10030

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUL 27, 2015	Actual	DEMOCRACY BUILDERS FUND, INC.
APR 08, 2014	Actual	ALUMNI REVOLUTION, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Save Marlboro College Corporation
P.O. Box 75
Putney, VT 05346

Tel: 802-689-2999

July 8, 2020

7019 2280 0000 5187 4730

USPS CERTIFIED MAIL 7019 2280 0000 5187 4730
Democracy Builders Fund, Inc.
2130 Adam Clayton Powell Jr. Blvd.
New York, NY 10027

RE: Request for information from Democracy Builders Fund, Inc, EIN No. 46-489722

I am requesting public information regarding Democracy Builders Fund, Inc. EIN. No. 46-4897222, under Title 26 IRC § 6104.

Directing your attention to Democracy Builders Fund, Inc, EIN NO. 46-4897222, the last year that I have found a 990 or equivalent filed is 2016 representing tax year beginning 07-01-2016 , and ending 06-30-2017.

On the same form and same year for DBF, INC please refer to:

990 Schedule O, Supplemental Information

Return Reference Form 990, Part VI, Section C, line 19

"The Organisation makes its form 990 available for public inspection as required under section 6104 of the Internal Revenue Code. The return is posted on guidestar.org and other similar types of websites. In addition, the financial statements, conflict of interest policy, articles of incorporation and by-laws are also available upon written request at 2130 Adam Clayton Powell, Jr. Blvd, New York, NY 10027, or by calling the organisation directly at (347) 931- 8120.

I have call (347) 931-8120 on three (3) occasions, left messages, but no return calls or replies.

I made a request today in writing under regarding Democracy Builders Fund, Inc. EIN. No. 46-4897222, under Title 26 IRC § 6104.

I am requesting:

- Latest financial statements including form 990 or equivalent for 2017 representing tax year beginning 07-01-2017 , and ending 06-30-2018. The extended due date for this document to be filed with the IRS was May 15, 2020.
- Statement of Conflict of Interest Policy
- Articles of Incorporation and by-laws
- Recent Certificate of Good Standing (or equivalent) from your home state
- Proof of Certificate of Authority from the Vermont Secretary of State of State in order to operate in Vermont as a foreign corporation.
- Any notice of proposed refusal to recognise such organisation as an organisation described in section 501(c)(3) or a notice of proposed revocation of such organisation's

recognition as an organisation exempt from taxation.

The documents available are not widely available. The current requested documents are not available on sites like guidestar.org and similar sites. Under Title 26 IRC § 6104 I am requesting the above listed documents.

Documents may be mailed to:

Save Marlboro College Corporation

P.O. 75

Putney, VT 05346

Or emailed to:

info@savemarlborocollege.org

Please bill for any copy costs at the standard IRS allowable rates.

Time is of the essence as this may relate to the proposed sale and purchase proposal submitted to the Vermont AGO from Marlboro College Corporation. (3)

Thank you in advance for your anticipated cooperation.

Please call or write immediately with any questions or problems with this request.

Very truly yours,



Martin Heck

Save Marlboro College, Director


Putney, Vermont 05346

<http://www.savemarlborocollege.org>

CC: 

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July 16, 2020

USPS Tracking Intranet Tracking Number Result



Price Change 1/26/2020:

USPS Premium Tracking: USPS will offer a fee-based service to extend the availability of tracking data on domestic competitive products for an additional 6 months up to 10 years. In addition, customers can also request a Premium Tracking Statement via email.

The Manual Entry Acceptance screen will be modified to use the Pricing Engine for all rates calculations. Users will no longer enter fees for Collect on Delivery (COD) and Additional Insurance; instead, users will enter the dollar amount to be collected for COD or the insured value for insurance.

Result for Domestic Tracking Number 7019 2280 0000 5187 4730

Tracking Expires On
July 9, 2022

Destination and Origin

Destination

ZIP Code	City	State
100273744	NEW YORK	NY

Origin

ZIP Code	City	State
053469998	PUTNEY	VT

Tracking Number Classification

Class/Service

Class/Service: Priority Mail Certified Mail
 Class of Mail Code/Description: PM / Priority Mail®

Destination Address Information

Address: 2130 ADAM CLAYTON POWELL JR BLVD
 City: NEW YORK
 State: NY
 5-Digit ZIP Code: 10027
 4-Digit ZIP Code add on: 3744
 Delivery Point Code: 99
 Record Type Code: Building/Apartment

Origin / Return / Pickup Address Information

Address:
 City:
 State:
 5-Digit ZIP Code: 05346
 4-Digit ZIP Code add on: 9998

Service Delivery Information

Service Performance Date: Expected Delivery by: Saturday, 07/11/2020
 Delivery Option Indicator: 1 - Normal Delivery
 Zone: 03
 PO Box: N
 Other Information: [Service Calculator information](#)

Payment

Payment Type: Other Postage
 Payment Account Number: 0000000000
 Postage: \$7.75
 Weight: 0 lbs(s); 2 oz(s)
 Rate Indicator: Flat Rate Envelope

Agent Information

[Request Internal Premium Tracking Statement](#)

Extra Services	
Extra Services Details	
Description	Amount
Cerified Mail	\$3.55
Up to \$50 Insurance Included	\$0.00

Events									
Event	Event Code	Event Date	Event Time	Location	Input Method	Scanner ID	Carrier Route	Posting Date / Time (Central Time)	Other Information
VACANT	26	07/10/2020	15:39	NEW YORK, NY 10027	Scanned	MDD 74254D8053 (interface type - wireless)	Scanned by route 0027C-014	07/10/2020 19:42:15	GEO Location Data Available Request Delivery Record
ARRIVAL AT UNIT	07	07/10/2020	04:49	NEW YORK, NY 10036	Scanned	DSS-045-00	Destined to route C014	07/10/2020 04:01:14	Assignment Type: Missent/Misshipped OFD Same Day FC/DF Reason Code
ENROUTE/PROCESSED	10	07/09/2020	16:51	NEW YORK, NY 10198	Scanned	AFFS-045-1		07/09/2020 16:07:12	
ENROUTE/PROCESSED	10	07/09/2020	16:50	NEW YORK, NY 10198	Scanned	AFFS-045-1		07/09/2020 21:02:29	
ENROUTE/PROCESSED	10	07/09/2020	02:03	NASHUA, NH 03063	Scanned	AFFS-079-1		07/09/2020 01:59:17	
DEPART POST OFFICE	5F	07/08/2020	17:01	PUTNEY, VT 05346	System Generated			07/08/2020 16:16:07	Closeout Label ID: C213 7857 1000 2007 0616 0446 000
ACCEPT OR PICKUP	03	07/08/2020	14:06	PUTNEY, VT 053469998	Scanned	POS	Destined to route C014	07/08/2020 13:30:02	Facility Finance Number: 506216

Enter up to 35 items separated by commas

Select Search Type:

From: [Martin Heck](#)
To: [AGO - Info](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); jmcmahan@dinse.com
Subject: Marlboro College: Donor intention Gift of Deed by Walter and Flora Hendricks
Date: Monday, July 20, 2020 12:49:10 PM
Attachments: [0002594111 \(5\).pdf](#)
[20200703_162229.pdf](#)
[20200718_125922 \(1\).pdf](#)
[85643236 \(6\) \(1\).pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. Attorney General Donovan , et al:

Attached to this email is a copy of the original Gift of Deed to The Corporation of Marlboro College from Walter and Flora Hendricks.

As you can see from the Gift of Deed, The land and building was sold for one dollar (\$1.00) and other valuable consideration.

I feel that this other valuable consideration was that the land and buildings was to be used as a small Vermont College as described by Mr. Hendricks in various documents and as can be attested to some extent by witnesses.

Additionally, to date the Board of Trustees have advanced no evidence that Mr. Hendricks would consent to having his Gift of Deed sold and the proceeds given to an out of state college to purchase a job for about 20 teachers. The College appears to have not addressed this, at least in the few documents I have had access to and that have not been redacted.

I attache to this email the following evidence:

- General Affidavit of Nathaniel Morgan Hendricks
- Original Marlboro College Brochure with statements from Walter Hendricks
- New York Times article from June 13, 1949 with statements from Walter Hendricks
- Original Articles of Association and Petition of The Corporation of Marlboro College, and the Findings and Certificate of the State Board of Education from December 18,1946

I maintain that the college campus cannot be sold and the assets used to purchase jobs for 20 private individuals at a different college. If the College were to permanently close, the assets would have to transfer under the Cy-Pres Doctrine. I believe this excludes anything that is not an active college as similar to Marlboro College as possible. One thing I have noticed about Emerson is that it is located in Boston. And one thing I have noticed about Boston is that its not located in Vermont. Perhaps you have noticed this too. The Corporation of Marlboro College Corporation is a Vermont nonprofit Corporation for Public Benefit. It is not a private company nor is it a nonprofit for mutual benefit. The IRS rules indicate that the entity to receive assets from a 501c3 must be in existence for not less than 60 months. This excludes the Degrees of Freedom or Freedom College proposed by Seth Andrews. It also excluded the so called "Marlboro Institute" based as a separate program through Emerson.

If the College no longer is wants the campus Nathan Hendricks has indicated he wants it back to donate a Vermont entity so it can continue to benefit the State of Vermont. I didn't get it in writing, but I asked him if he was willing to give the dollar back and he agreed.

A more appropriate transfer of the property would be to a small college within Vermont or to UVM, but not a quid pro quo for 20 of the current Marlboro teachers to have a job. If they can only get a teaching job from a college

willing to take a bribe or provide a kick-back in the form of a job, perhaps they are not qualified for teaching in the first place.

I maintain the AGO has a legal obligation to prohibit the current purchase and sale agreement from taking place based on the restrictions the donor placed on the gift instrument.

Martin Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

	<p>IN RE ARTICLES OF ASSOCIATION and PETITION OF THE CORPORATION OF MALLINGO COLLEGE</p>	<p>FINDINGS and CERTIFICATE of STATE BOARD OF EDUCATION</p>	<p>STATE OF VERMONT Secretary of State's Office</p>	<p>Filed <u>Dec. 19, 1976</u></p>	<p>and duly recorded in Vol. <u>18</u></p>	<p>P. <u>246</u> of <u>Annexation of Corporation</u> <u>Rawson S. Smyruch</u> SECRETARY OF STATE</p>	
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File No. 6245

NO1014-0

NOTICE OF RECORDING

1945

FILE NO. 4245

THE INCORPORATORS OF MARLBORO COLLEGE

ARTICLES OF ASSOCIATION

of the

THE INCORPORATORS OF MARLBORO COLLEGE

File No. 4245

ARTICLES OF ASSOCIATION

of the

THE INCORPORATORS OF MARLBORO COLLEGE

\$3.00 recording fee paid.

STATE OF VERMONT

Secretary of State's Office

Filed and Recorded Dec. 18 1945

in Vol. 18 P. 25 of Notarization

Ransom S. Merrill Secretary of State

Secretary of State

ARTICLES OF ASSOCIATION

of the

CORPORATION OF MARLBORO COLLEGE

We, the Subscribers, of full age, hereby associate ourselves together as a Corporation under the Laws of the State of Vermont, to be known by the name of

+

THE CORPORATION OF MARLBORO COLLEGE

for the purpose of maintaining an educational institution offering instruction in courses of college grade, and awarding to the students satisfactorily completing the same the degree of bachelor of arts or bachelor of science or such other equivalent degree as shall be voted by the Trustees;

Here set out purposes clearly and briefly, using separate paragraphs to cover each separate purpose, and avoiding generalized or covering clauses and phrases which might be interpreted to extend the purposes beyond those specifically stated.

A. The Corporation shall also have the following powers:

1. To award suitable academic degrees to persons other than students who, in the judgment of the Trustees, have earned and become worthy of the same through outstanding leadership or achievement in any of the fields of humanities, letters, liberal arts, the sciences, government, education, administration, philanthropy, or other worthy endeavor.

2. To acquire by gift, grant, devise or purchase real or personal property located within or without the State of Vermont; to buy, sell, encumber, mortgage, pledge, lease, invest, compromise, settle, or otherwise procure, hold, manage, or dispose of property and rights therein and to borrow money.

3. To enter into contracts and agreements, and to engage, employ, retain or procure services necessary and proper to carry on and conduct its educational, financial, and business affairs.

4. To solicit for and accept subscriptions, gifts, devises and bequests of funds or other property necessary or proper for the accomplishment of its purpose.

5. It shall have a corporate seal, may sue and be sued, appoint agents, and perform any lawful act which is necessary or proper to accomplish its purpose.

B. The affairs of the Corporation shall be conducted by Trustees who shall ~~be~~ be the members of the Corporation.

1. There shall be such number of Trustees, not less than nine (9), of whom at least one-third shall reside in the State of Vermont, as shall be determined as to the number and identity of the first Trustees by the Incorporators, and thereafter the number and identity of the Trustees shall be determined by the Members at their Annual Meeting to be held the second Tuesday in June of each year.

2. The Officers shall consist of a President, a Chairman, of the Board of Trustees, a Treasurer, a Clerk, and such other Officers as the Trustees shall from time to time determine proper. The first Officers may be elected by the Incorporators at their first meeting, to hold office until their successors are chosen. The Clerk shall be a resident of Vermont and be chosen by the Members of the Corporation. Except as aforesaid the Trustees and Officers of the Corporation shall be elected at the Annual Meeting of the Trustees, and shall hold office until the next Annual Meeting, and until their respective successors are elected and qualified unless sooner removed by the Trustees. Vacancies in any office may be filled by the Trustees at any regular or specially-called meeting. The President and Chairman of the Board shall always be Trustees, and the other Officers may be

3. All other matters concerning the conduct of the Corporation for the accomplishment of its purpose shall be managed by or under the direction of the Trustees, who shall adopt By-Laws for the government of themselves, their faculty, administration, and students, and may delegate all or part of their powers, rights, and privileges to an Executive Committee, consisting of not less than three (3) of their number, in the interim between Annual Meetings.

The principal office shall be located at Marlboro, in the County of Windham in the State of Vermont.

The capital stock shall consist of

..... shares of preferred stock of the par value of dollars per share;

..... shares of common stock of the par value of dollars per share;

..... shares of preferred stock having no par value;

..... shares of common stock having no par value.

If preferred stock of either class is provided for state here briefly and clearly the terms of preference as to dividends, liquidation, voting rights, etc.

The Corporation shall exist forever or until its existence is terminated according to law.

The Corporation shall be a non-profit Corporation without capital stock, and no Corporator, Member, Trustee, or Officer shall ever participate in any of the profits thereof; but compensation for services rendered may be contracted for and awarded by the Trustees. This Corporation is not organized for profit.

Dated at Brattleboro, in the County of Windham, this 30th day of November, 1946.

SUBSCRIBERS

POST OFFICE ADDRESS

Walter Hendricks
Ernest W. Gibson
Henry J. Pines
John S. Hooper
F. Willard Keebe
G. W. Mason

Marlboro, Vermont
Brattleboro, VT.
Brattleboro VT.
Brattleboro, VT
Brattleboro, VT.
Brattleboro, VT.

Subscribers

Post office Address

W. Nelson Bond

R.F.D. #4 West Brattleboro, Vt.

William H. Baldwin

R.F.D. #4 West Brattleboro, Vt.

Conrad H. George

P.O. Brattleboro, Vt.

W. James T. Shelton

Brattleboro, Vt.

W. Arthur Cole

W. Brattleboro, Vt.

Mrs. Mason Nixon Pinducco - R. I.

George F. Whicher

Amherst, Mass.

Arthur E. Whittier

Hingham, Mass

Oscar C. Fitz

Brattleboro, Vermont

F. J. Nash

Brattleboro Vt.

WHEREAS, in accordance with the provisions of No. 139 of the Acts of 1941, there have been submitted to the State Board of Education, hereinafter called the Board, the original Articles of Association of a proposed corporation to be called The Corporation of Marlboro College, seeking among other things the power to confer such degrees as are therein specified, and a petition signed by a group of the incorporators of said proposed corporation, in behalf of themselves and the other incorporators thereof, praying for findings and a certificate by the Board in accordance with Section 3 of said Act, and

WHEREAS said petitioners were by said Board given an opportunity to be heard, and submitted data to show the qualifications of such proposed corporation to provide instruction and that it is capable of maintaining the educational standards necessary to warrant it in conferring such degrees as are sought to be conferred by said Articles,

AND, THEREFORE, after consideration of the data submitted and of the result of such other inquiry as said Board in its opinion deemed necessary to make findings,

THE BOARD FINDS AND CERTIFIES: that in its opinion such proposed corporation is qualified to provide instruction and is financially capable of maintaining the educational standards necessary to warrant it in conferring such degrees.

IT IS HEREBY ORDERED: said Board has caused these findings and this certificate to be signed in its behalf by Ralph E. Noble, its Secretary, this 16th day of December, 1946.

STATE BOARD OF EDUCATION

By Ralph E. Noble
Its Secretary.

Marlboro College



A NEW COLLEGE IN SOUTHERN VERMONT

Announcing

MARLBORO COLLEGE

A STATEMENT BY ITS TRUSTEES

Marlboro College is being founded at a time when the survival power and value of democracy are challenged. Its first aim, therefore, is to develop citizens who will be effective in the task of making American democracy succeed. On these pages President Hendricks tells how the college plans to help its students become men who understand democracy, who cherish its freedom and dignity, who seek its responsibilities, and who know something of what it must do to meet the problems of a science-based and socially conscious age.

Marlboro believes that there is a direct obligation of the college to the community in which it is located, which has helped in establishing it, and whose friendly interest and support will contribute to its growth and success. It will so provide, therefore, that the thought and technical skills of its faculty will be available to assist in solving local problems.



One of the needs of the region is knowledge of the best care and utilization of the large forests which extend throughout southern Vermont. Work in this field will be a particular concern of the college.

Marlboro is being established at a time of great demand for additional educational facilities. It believes that as a small, new college it has an unusual opportunity to do its task well. It believes that simple structures and modest means can be made helpful factors in affording opportunities for students to join in planning and building the college.

In Vermont there is the tradition and practice of freedom, self-reliance, and individual responsibility. There are here, also, high standards of integrity and good citizenship. Marlboro will seek to reflect these characteristics.



A STATEMENT BY ITS PRESIDENT

Marlboro will be a small college in the country. It is being established in the several buildings of two adjacent, operating farms. The quarters will be simple, but the students will be warmly housed and well fed, and the college will be adequately provided with classrooms and equipment.

Marlboro town is included in the diversified community centering on Brattleboro. Residents of this area have had a part in establishing the college, and the college looks forward to sharing in their intellectual, economic, social, and spiritual life.

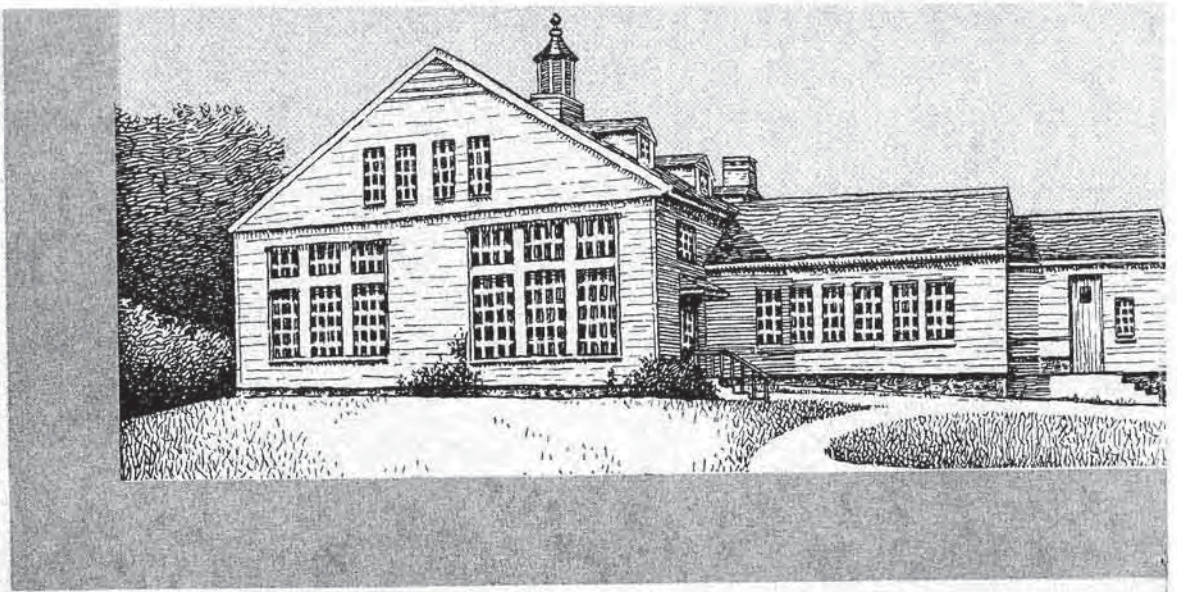
Teachers and Students Working Together

The college itself will be a functioning community. Students will help in the operation of the college farm and in the construction of new buildings. They will join with the faculty in planning certain courses, in arranging for lectures, exhibits, and concerts, and in working with the visiting associates-in-teaching. They will help to create and administer a college government. They will cooperate in Marlboro's projects carried on with local groups.

The country location will permit the students to learn first-hand something about the soil and the forests. Felling a tree or making maple syrup will be a rich new experience for many. These activities will not be extra-curricular; they will be features of an integrated program of study and work.

Learning to Live Wisely

Marlboro's courses are planned to help its students fit themselves for living fully and wisely among their fellow men and for taking an active part in public affairs. The courses of the first two years will be prescribed. The college will seek to learn the vocational bent and plans of each student and to relate his general learning to his probable career.



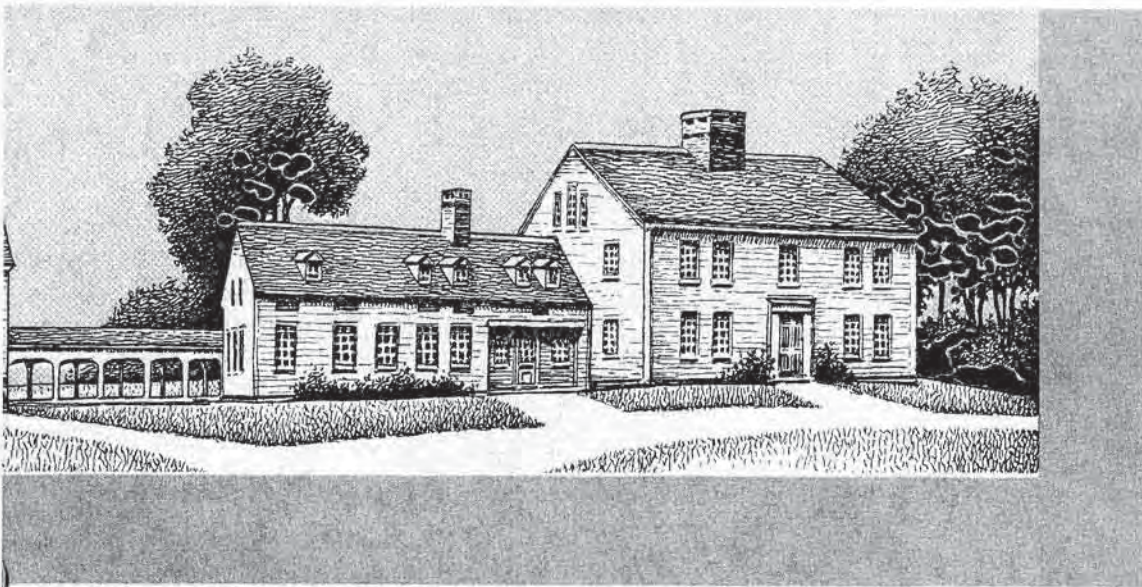
Courses in science will give each student a knowledge of the basis of modern thought and technology and an awareness of the need of adjusting to both, all man's social, political, and economic forms. Whenever possible, these courses will be related to industrial and economic practice.

Courses in music, painting, and literature will help to give an understanding of the ideals and spirit of the peoples who have expressed their best selves in their art. They will also help Marlboro students express their own ideals and will teach them to find joy in creative activity throughout their lives.

Discovering the Meaning of Democracy

Marlboro will lay particular stress on its courses in the field of social, political, and historical studies.

It will offer as a first course one called "Introduction to America," in which the students will become familiar with the history and development of their country. They will seek out its ideas and ideals, studying not only its political aspects, but its social, economic, and aesthetic as well. Students and teachers will seek to discover how it may adapt itself to the complexities of the modern era without loss of its essential freedoms.



In connection with this course, students will observe and study local, municipal, and state governments in operation.

Developing Effective Citizens

Marlboro aims to make its students vividly aware of what it means to be a citizen in a democracy, one deserving of its privileges and taking the full part which it requires. Only as men keep making democracy by living it will it survive. Marlboro believes that training its students to take a responsible part in all its affairs will instill in them not only the habit of participation but also an appreciation of the enrichment of personality and experience which such conduct entails. It confidently expects that its courses and its practices, together, will teach its students the meaning of citizenship.

Understanding Other Nations and Peoples

The ideas and faiths, and the social, economic, and political systems of other nations will be considered in a required course of the second year. One aim of this course will be to develop that understanding which is the first step toward successful cooperation and to discover the common aspects of thought and practice on which efforts for lasting world peace and order must build.

Developing Individuals

One of the privileges of our way of life is the opportunity it affords each individual to develop and to express himself. Marlboro intends to know its students one by one, as individuals, as personalities, as human souls. The college aims not only to help each student to discover his own capacities and interests, but also to inspire him to make the most of himself, whatever his chosen field.

Classes will be small and intimate, and the traditional platform and classroom ritual will give way to friendly informality. The instructors will aim to lead the way, encouraging the student to depend upon himself and to test his own strength. Thus, as the student fuses the knowledge and precepts imparted to him with his own thinking and doing and living, he may become, truly, an educated man.

Assisted by Visiting Associates-in-Teaching

In addition to the regular staff of instructors, there will be associated with the college a group of men and women distinguished in one or another of the arts, in business, industry, education, religion, or government, who will reside for brief intervals at the college, live among the students, talk with them informally, and join in their classroom discussions.

Enjoying Vermont

The program will include ample provision for outdoor activity, not only in the work of the college community, but also in recreation and sports. Particularly stressed will be the winter sports, the opportunities for which are ideal.

Since the college itself will be the center of interest, there will be no fraternities or other organizations tending to compete with it as a living unit in whose life all members will share.

Ministering to Spiritual Needs

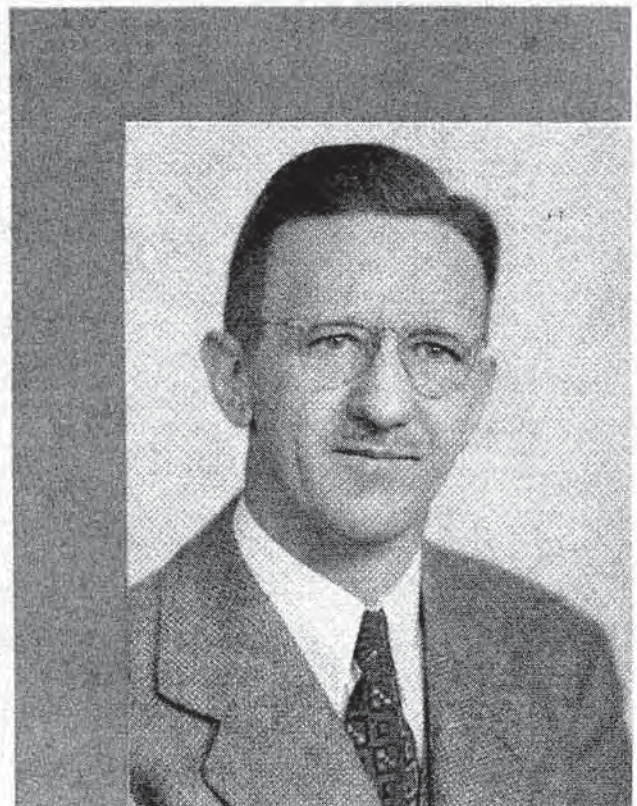
Marlboro College places great value on a spiritual life and will encourage its students to deeper devotion to those ideals in which they believe. The college is non-sectarian, its environment simple and democratic, and the atmosphere spiritual, enlightened, and tolerant.

Building a Living College

Marlboro College will strive to keep itself vigorous and alive. It will hold fast to a tradition, not because it is hallowed, but because it has significance for us today. It will be experimental and flexible in seeking to discover with its students the new forms which our society must assume and the new efforts which it must make to survive in a world of violent change and deep conflict. It will aim to be a place where lifelong friendships are formed and such a place that the recollection of it will be a constant inspiration to the student to live nobly and to act his part well. Marlboro's education, it is hoped, will be a process of democratic living, the practice of which its graduates will pursue throughout their lives.

Marlboro's First President

Dr. Walter Hendricks, Amherst, A.B., University of Chicago, A.M., and Northwestern University, Ph.D., has been Director of Humanities at Illinois Institute of Technology for a number of years and recently Head of the Department of English at Biarritz American University in France. Dr. Hendricks is a publisher of books under the imprint of Packard and Company (Hendricks House) and General Editor of University Classics.



INFORMATION FOR STUDENTS

Location. The college is situated in Marlboro, Windham County, Vermont, in the southeastern corner of the state, twelve miles west of Brattleboro, thirty miles east of Bennington, and eight miles north of the Massachusetts boundary. The town, which lies in the foothills of the Green Mountains, is reached by automobile, from the east or west, over the Molly Stark Trail (Route 9). Bus service is maintained from Albany and Bennington on the west and from Brattleboro, the nearest railroad town, on the east.

Calendar. The college will open on September 2, 1947. An eight weeks' mid-winter vacation, to be used for activity related to the college courses, will begin December 20th. The second semester will extend from February 16 to June 11, 1948. The first commencement will be held on June 13, 1948.

Enrollment. One hundred young men, who have graduated from high school or preparatory school with a creditable record, will be accepted, if possible, the first year. Preference will be given to residents of the State of Vermont. Some qualified students will be admitted with advanced standing. The enrollment of the college will be limited to an average of one hundred students each year for four years.

Veterans. The requirements governing the admission of service men are the same as for non-service applicants. Marlboro College has been accredited for the training of veterans under the G.I. Bill of Rights. Appropriate credit will be given for academic work completed in the Army or Navy.

Fees. The fees for the year 1947-48 are: tuition, \$500; room and board and health service, \$725; or a total of \$1225.

For further information or for a copy of the bulletin containing details of requirements, fees, and courses, write to the Director of Admissions, Marlboro College, Marlboro, Vermont.

TRUSTEES

<p>Arthur H. Baldwin, <i>Secretary</i> <i>Vocational Consultant</i></p>	<p><i>Brattleboro, Vt.</i></p>
<p>W. Nelson Bump, S.B. <i>Vice President, American Airlines</i></p>	<p><i>Boston, Mass.</i></p>
<p>Ellsworth Bunker, A.B. <i>President, National Sugar Refining Company</i></p>	<p><i>New York, N.Y.</i></p>
<p>W. Arthur Cole <i>Managing Director, Photo-Engravers Board of Trade</i></p>	<p><i>West Brattleboro, Vt.</i></p>
<p>Dorothy Canfield Fisher, Ph.B., Ph.D., Litt.D. <i>Author</i></p>	<p><i>Arlington, Vt.</i></p>
<p>Robert Frost, A.M., L.H.D., Litt.D. <i>Poet</i></p>	<p><i>Ripton, Vt.</i></p>
<p>Walter Hendricks, Ph.D. <i>President, Marlboro College</i></p>	<p><i>Marlboro, Vt.</i></p>
<p>Leslie Talbot Pennington, A.B., S.T.B., L.H.D. <i>Minister, First Unitarian Church</i></p>	<p><i>Chicago, Ill.</i></p>
<p>Henry Z. Persons, <i>Treasurer</i> <i>President, Brattleboro Trust Company</i></p>	<p><i>Brattleboro, Vt.</i></p>
<p>Daniel Catton Rich, Ph.B. <i>Director of the Art Institute of Chicago</i></p>	<p><i>Chicago, Ill.</i></p>
<p>C. Rufus Rorem, Ph.D., C.P.A., LL.D. <i>Executive Secretary, Hospital Council of Philadelphia</i></p>	<p><i>Philadelphia, Pa.</i></p>
<p>Dorothy Thompson, A.B., LL.D. <i>Author and Publicist</i></p>	<p><i>New York, N.Y.</i></p>
<p>Roger Browne Tyler, A.B., LL.B. <i>Attorney, Rackemann, Sawyer & Brewster</i></p>	<p><i>Boston, Mass.</i></p>
<p>George F. Whicher, Ph.D. <i>Professor of English, Amherst College</i></p>	<p><i>Amherst, Mass.</i></p>
<p>Arthur E. Whittmore, S.B., LL.B., <i>Chairman</i> <i>Attorney, Nutter, McClennen & Fish</i></p>	<p><i>Boston, Mass.</i></p>
<p>William Mason Wilson <i>Vice President, Cooley, Incorporated</i></p>	<p><i>Pawtucket, R.I.</i></p>



MC

GENERAL AFFIDAVIT

STATE OF PENNSYLVANIA
COUNTY OF TIOGA

PERSONALLY came and appeared before me, the undersigned Notary, the within named NATHANIEL MORGAN HENDRICKS, who is a resident of WINDHAM COUNTY, STATE OF VERMONT, and makes this his statement and GENERAL AFFIDAVIT upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

I, Nathaniel Morgan Hendricks, son of now deceased Flora B. Hendricks, my mother, and Walter Hendricks, my father. I make this declaration in support of the motion to stay the sale of the Marlboro college campus to Democracy Builders Fund, Inc, to stop the "merger" or "exchange of assets" between Marlboro College and Emerson College, and the end of operation of Marlboro College as an existing institution of higher learning and its dissolution. I know it is not the wishes of my parents that their Gift of Deed to the Corporation of Marlboro College, signed August 26, 1947, be sold and the proceeds gifted to a college outside of Vermont and that Marlboro College cease to exist. My belief is based on statements of my father since he founded Marlboro College.

Near the end of World War II, my father had helped to establish the Biarritz American University in France and served as chairman of the English department of the, school. That school had been established by the Army as an interim school for American troops overseas to prepare them for college when they returned to the United States. school. That experience prompted him to establish Marlboro College in 1946. I heard him say " if I could start a college in France I should be able to start a college in Vermont". When he founded Marlboro College he wanted the school to be viable and without a huge debt. It was for this reason that he and my

mother, who agreed with him, gave the college the 600 acre family farm. The gift was so the college would not have a huge indebtedness.

The valuable consideration recited in the Gift of Deed, received by my parents as consideration for the land and buildings, was that Marlboro College, an institution that he became the President of, be established and operated on Potash Hill, the family farm. I am and have been, a strong supporter of Marlboro College. The college's land abuts property still owned by the Hendricks family and they have been a good neighbour since its inception. As it is part of my parent's legacy and I am a strong supporter of a liberal arts education, I want Marlboro to continue to operate on Potash hill in Marlboro, Vermont and not have its assets liquidated to support the establishment of some brand new institute in Boston affiliated with Emerson College. When my parents gifted the the farm they made it clear to me that it would be a College and would continue to be a College even when we no longer lived there.

I believe that the Board of Trustees of Marlboro College, in saying Marlboro College will continue to exist is being disingenuous. This can be seen from Section 1B of the AGREEMENT FOR ASSET EXCHANGE IN SUPPORT OF MARLBORO INSTITUTE. That document states:

The parties acknowledge that after the closing date (as hereinafter defined) Marlboro will remain a legally separate entity unaffiliated with Emerson, in order in order to fully conclude its affairs, including the granting of Marlboro degrees through August 2020.

If the Gift of Deed is no longer used by Marlboro College, the consideration given to my parents has failed and the deed is no longer valid. While I strongly hope that Marlboro College will continue to operate on Potash hill, in the Town of Marlboro, State of Vermont, if it fails to

do so, that consideration no longer exists, and I would like the property formerly my parents farm, returned to me and I will gift it to another Vermont nonprofit Educational entity.

To the extent that I have legal standing to do so, I object to the sale or transfer of the Marlboro College campus, land and buildings, gifted by my parents, and I ask for the proposed sale of said property to be stopped or for its return to me should Marlboro College no longer exist or wants this property.

STATE OF DATED this the 15th day of JULY, 2020

Nathaniel Hendricks
Nathaniel Morgan Hendricks, AFFIANT

2020 SWORN to subscribed before me, this 15th day of JULY, 2020

Linda S. Macensky
NOTARY PUBLIC

My Commission Expires:

April 16, 2023

Commonwealth of Pennsylvania - Notary Seal
Linda S. Macensky, Notary Public
Tioga County
My commission expires April 16, 2023
Commission number 1198503
Member, Pennsylvania Association of Notaries

OLD FARM CHANGED INTO ARTS COLLEGE

Marlboro Campus, in Vermont, Was Group of Abandoned Barns Only 2 Years Ago

By BENJAMIN FINE
Special to THE NEW YORK TIMES.

MARLBORO, Vt., June 12—An old New England farm on a wooded hilltop in Southern Vermont has been transformed, in the space of two years, into a flourishing liberal arts college.

With the aid of the 100 students and thirteen faculty members, the century-old buildings have been remodeled, making them attractive college quarters. The abandoned cow barn is now a comfortable dining hall, the old tool shed has become the creative arts building, the horse barn is now an up-to-date library, and the 150-year-old farmhouse itself is an attractive dormitory with lounge room and infirmary.

When this writer visited the Marlboro College campus—a broad tract of spruce pine and maple through which deer roam unafraid—the students were hard at work renovating an old barn. Before classes start in September the barn will have become an adequate science hall. It will contain three chemistry laboratories and a dozen or so classrooms.

The Project Sets a Mark

It is doubtful if anything as novel as this project has taken place in higher education in recent years.

The origin and development of Marlboro College is the result of the dream of one man—Dr. Walter Hendricks, the president of this unusual institution. Because he felt that there was a place in America for a small, intimate college that was not shackled by time-honored traditions, he gave up prestige and security in the academic world to pioneer in higher education.

Three years ago Dr. Hendricks, chairman of the humanities department at Illinois Institute of Technology, returned from Europe, where he had helped the Army set up the American University at Biarritz, France. What he had seen there convinced him that it was possible to establish a college without huge financial backing or a slavish adherence to formalized educational practices.

He visited his friend, Robert Frost, the poet, who has a farm near Marlboro, and discussed the plans he had for a new college. Mr. Frost agreed to become a member of the board of trustees.

Started on \$3,000 Cash

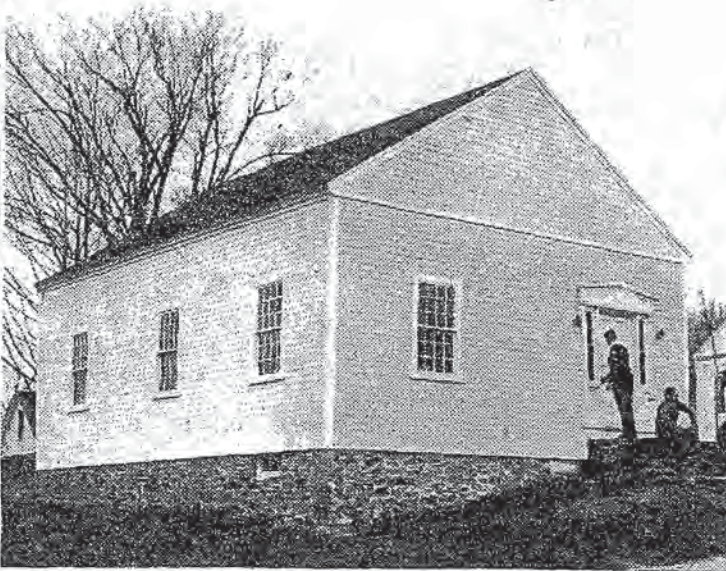
After some dickerings, Dr. Hendricks bought a 400-acre farm on top of Potash Hill, so named because the early Vermont settlers burned trees to extract potash. He paid \$11,000 for the century-and-a-half old place—\$3,000 in cash and the rest a Brattleboro bank took over as a mortgage.

The college opened two years

A FARM TRANSFORMED INTO A COLLEGE



The old horse barn at Marlboro, Vt., as it looked before the students and faculty members went to work making changes.



The same building as it now appears and which is being used as the college library.

ago with fifty students. Last June one senior was in the graduating class.

Yesterday, 100 students sat on improvised chairs and lolled on the grass as five of their classmates received bachelor-of-arts degrees after listening to Senator Flanders of Vermont give the commencement address.

Will Keep It a Small College

Marlboro will always remain a small college; reaching, at most, an enrollment of 200 students, according to Dr. Hendricks. Only through small classes and individual instruction, he feels, can a student get the most out of college. But he goes beyond that. He is convinced that the community, too, should become a definite part of the campus.

Most of the support for the college to date has come from the

community. A square dance, under the auspices of the Ladies Aid Society, garnered \$100. A near-by school presented a play, giving the \$300 proceeds to the college. Several days ago a chorus from Bennington College, near by, joined with the Marlboro boys in a concert that netted \$1,000. This money will be used to buy a badly needed piano. During the first year the total income amounted to \$55,000—most of it came from the \$600 yearly tuition charged the students. Board and room bring in an additional \$600 yearly from each student. Marlboro intends to live within its budget—a net operating profit of \$1,500 was registered this last year. Next year, with an income of \$100,000, the budget again will be balanced, despite vastly increased expenses.

Perhaps the college is "out of

the red" because Dr. Hendricks, faculty members and the students work together. Dr. Hendricks as president gets \$5,000 yearly—and this is cut considerably by necessary professional expenses connected with his job. His faculty members get \$3,600 for a nine-month period, or, on a yearly basis, just about what their chief receives. The students "pitch in" generally, and help in the building job without thought of payment.

Even the local townspeople have caught the spirit and cooperate in making the "farmstead" into a college.

The philosophy that guides Dr. Hendrick is easy to understand. He feels that a college can help bring a better, more democratic life to the community and thus to the nation. At Marlboro the "caste system" of education—such as places the teaching staff into competing categories of "professor," "associate professor," "assistant professor" and "instructor" is taboo. Everyone is of equal rank. All are called "mister."

Nor are there departments within the college, only courses of instruction. Much of the departmentalization of knowledge, Dr. Hendricks believes, is a "tragic error." Marlboro has become a "community of learners." Since it is not divided into administration or faculty, everyone is a member of the "college community"—the president, carpenter, teacher, dean, cook or student.

Citizenship Is Stressed

Education for citizenship is the underlying motif of the college. A "community government" has been established, modeled after the New England town meeting.

The students say they like the intimacy of the college—"just like a fraternity," as one of the boys put it, and added "but without any kind of discrimination."

"I've pounded nails for the last year and I've sure learned a lot," George Richards of Philadelphia said. He went to Temple University for a year, but last fall transferred to Marlboro. He calls the school "spontaneous."

"I like to be able to walk into the library—it was an old horse shed—and pick up a book without red tape," he observed to make his point.

Christopher Brown of Concord, Mass., a freshman agrees. He is majoring in history and is not quite certain just what he will do when he finishes—"anything but teach."

"I've laid flooring, hammered nails, put up boards and have done just about everything, I guess. It's wonderful to help build a college," he declared.

To Richard Doyle of Short Hills, N. J., this farm campus provides just the solitude he needs to do good scholastic work. He was in the Army for three and one-half years—in North Africa, Italy and France—and now the beautiful, quiet Vermont setting is a welcome contrast.

David Herzbrun of New Rochelle, N. Y., is now ending his second year here. In that time he has put in many hours on the barns, cowshed, former blacksmith shop and the other tumbled-down buildings that have taken on the amazing new collegiate look.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College campus
Date: Friday, July 17, 2020 11:52:10 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Sue McClintock [REDACTED]
Sent: Friday, July 17, 2020 11:50 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College campus

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

I'm writing to you about the proposed sale of the Marlboro College campus in Marlboro, Vermont, and the merger between Marlboro College and Emerson College. I am deeply concerned that this proposal has been hasty, lacking both transparency and imagination. Worst yet, new and deeply troubling information has come to light about the practices of Democracy Builders, the organization slated to purchase the campus and founder Seth Andrew, including fiscal instability, financial reporting irregularities, and, most alarming, racist and oppressive attitudes and practices. It is bad enough to see my academic home being destroyed with such haste; the thought that our campus would be given into the hands of a person and organization so opposed to core Marlboro values is completely disheartening. I believe the College should have the opportunity to withdraw from the sale in light of the new information. Were the sale to go through, it would damage the local community in Marlboro Vermont, and harm students at the proposed Degrees of Freedom institution.

I'm also concerned that apparently the current Marlboro College trustees have exceeded their term limits; it is clearly past time for new leadership, and it ought to negate their ability to make decisions on behalf of the college, including authorizing the sale of the campus and merger with Emerson in the first place.

I urge the Attorney General to halt the sale of the campus to Democracy Builders. Marlboro College alumni are ready to step forward and find new paths forward for our college; please allow us the opportunity.

Sincerely,
Sue McClintock,
BA with Highest Honors, class of 2005

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This email has been checked for viruses by Avast antivirus software.
<https://www.avast.com/antivirus>

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "DEMOCRACY BUILDERS FUND I, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF JULY, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS AN EXEMPT CORPORATION.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DEMOCRACY BUILDERS FUND I, INC." WAS INCORPORATED ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.




Jeffrey W. Bullock, Secretary of State

5485426 8300C

SR# 20206308536

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203312238

Date: 07-20-20

State of Delaware - Division of Corporations

CERTIFICATION SHEET



Priority 1
(One Hr)



Priority 2
(Two Hr)



Priority 3
(Same Day)



Priority 4
(24 Hour)



Priority 7
(Reg. Work)

SUBMITTER'S INFORMATION

Company/Firm Or Individual's DEMOCRACY BUILDERS FUND, INC.

Name Attention SETH ANDREW

Mailing Address 1 2582 SOUTH ROAD

Mailing Address 2 _____

Mailing Address 3 _____

City MARLBORO

State VERMONT

Zip 05344

Country UNITED STATES

Phone (347) 818 - 0180

Fax# _____

Email Address TKENNEDY@DEMOCRACYBUILDERS.ORG

Account Number 0

CERTIFICATION REQUEST INFORMATION

Name of Company/Entity DEMOCRACY BUILDERS FUND, INC.

File Number _____

TYPE OF CERTIFICATE REQUEST

Certified Plain Copy

All Charter Documents

Restated Forward

Specific Document(s) Filed On

Annual Report Years

Short Form Good Standing
(Check if additional language required)

Incorporation Date

Taxes Paid

Annual Reports Filed

Long Form Good Standing

Certificate in RE:

Apostille/Gold Seal Country

(type of Cert.)

METHOD OF RETURN

(Fax or E-Mail is not available)

Messenger/Pick Up

Fed Ex UPS

Acct# 706830154

Regular Mail

COMMENTS/FILING INSTRUCTIONS

I UNDERSTAND THAT 2-HOUR
PROCESSING IS AN ADDITIONAL
\$500.00.

I UNDERSTAND THERE IS A
COURTESY FAX, BUT WE DON'T HAVE
A FAX MACHINE. IS IT POSSIBLE TO
RECEIVE IT VIA EMAIL?

PAYMENT INFORMATION

Depository Account

Wallet

None

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: PHONE CALL - MARLBORO COLLEGE
Date: Friday, July 17, 2020 11:50:23 AM
Importance: High

DATE: 7-17-2020

TIME: 11:44am

FROM: Martin Heck

PHONE: [REDACTED]

MESSAGE: Would like to speak with Chris, Jamie or TJ. He's trying to understand this last day of the 20-day process re Marlboro College. He's struggling to figure out the timeline. Today? Saturday? Concerned that Jamie delayed the deadline due to getting information. If TJ is not going to Court, he (Mr. Heck) is anxious to go to Court. Please call.

Deb Matthews

Administrative Assistant

Office of the Attorney General | GCAL

109 State Street, 3rd Floor

Montpelier, VT 05609

Phone | 802-828-3689 **802-595-3803 (AGO remote number)**

E-Mail | deborah.matthews@vermont.gov

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: PHONE CALL - TIME SENSITIVE 3:15/3:30
Date: Friday, July 17, 2020 2:58:45 PM
Importance: High

DATE: 7-17-2020

TIME: 2:55pm

FROM: Martin Heck

PHONE: [REDACTED]

MESSAGE: Concerned about release of documents through public records request. Has a 3:15 – 3:30pm deadline. PLEASE CALL (Marlboro College)

Deb Matthews

Administrative Assistant

Office of the Attorney General | GCAL

109 State Street, 3rd Floor

Montpelier, VT 05609

Phone | 802-828-3689 **802-595-3803 (AGO remote number)**

E-Mail \ deborah.matthews@vermont.gov

From: [Matthews, Deborah](#)
To: [Clark, Charity](#); [Diamond, Joshua](#); [Jandl, Lauren](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: PRESS CALL - CB Hall - Vermont Business Magazine - 802-287-5267
Date: Monday, July 20, 2020 1:31:59 PM
Importance: High

RE: Marlboro College – He wants to know about the status of the Attorney General’s review of the transactions between Marlboro College and Democracy Builders, and between Marlboro College and Emerson College (2 separate reviews). The deadlines when the reviews were supposed to have been done were yesterday, but maybe those got changed. He has been receiving document dumps from Jamie Renner, and while Vt. Bus. Magazine’s deadline is this coming Friday, everything is moving fast, and he’d like to speak to somebody about the two reviews ASAP.

DEADLINE: This coming Friday, 7-24-2020

REC'D: 7-20-2020 at 1:23pm

Deb Matthews

Administrative Assistant

Office of the Attorney General | GCAL

109 State Street, 3rd Floor

Montpelier, VT 05609

Phone | 802-828-3689 **802-595-3803 (AGO remote number)**

E-Mail \ deborah.matthews@vermont.gov

From: [Matthews, Deborah](#)
To: [Clark, Charity](#); [Diamond, Joshua](#); [Jandl, Lauren](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: PRESS CALL (AGO Voicemail) - Chris - Brattleboro Reformer - 551-200-1473
Date: Monday, July 20, 2020 1:43:01 PM
Importance: High

RE: Marlboro College
DEADLINE: Not Given
REC'D: 7-20-2020 at 12:50pm

DATE: 7-20-2020

TIME: 12:50pm

FROM: Chris _____

PHONE: [REDACTED]

MESSAGE: Hi, my name is Chris _____, I'm a reporter at the Brattleboro Reformer, and I'm looking for a report that the AG's office is supposed to release today regarding the sale of Marlboro College. My number is [REDACTED]. Thanks. Bye.

Deb Matthews

Administrative Assistant

Office of the Attorney General | GCAL

109 State Street, 3rd Floor

Montpelier, VT 05609

Phone | 802-828-3689 [802-595-3803](tel:802-595-3803) (AGO remote number)

E-Mail \ deborah.matthews@vermont.gov

From: [Martin Heck](#)
To: [AGO - Info](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#)
Subject: Public Records Request
Date: Monday, July 20, 2020 1:23:00 PM
Attachments: [Mail - Save Marlboro College - Outlook.pdf](#)
[Mail - Save Marlboro College ..- Outlook.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. Attorney General Donovan,

It is my position that you are not complying with law.

Please consider an appeal to be made regarding your decision to deny timely access to public documents.

I believe it is not the first time that your office has had a problem in this area.

I appears from the most recent email from Mr. Renner, that you received recently, perhaps today, yet more documents from Marlboro College. Although the documents were just received, Mr. Renner previously indicated that the 20 day clock the AGO has to evaluate the situation will not be reset. So the AGO is saying that the documents cannot be provided to be without implement this 10 day extension rule, however the AGO feels confident it can make its decision on the documents with in a day or two.

I read the law on this a little and there appears to be circumstances that indicate your option to delay the documents does not apply to an urgent situation, which I believe this to be.

I feel that you have failed in your obligations to protect the interests Vermont nonprofit colleges, specifically Marlboro College. I feel that you had an obligation a long time ago to take actions to remove this board of trustees for their breach of fiduciary responsibility to The Corporation of Marlboro College.

I seek today a commitment from you that you reset the 20 day timeframe your office has to evaluate the situation, consistent with the dates that you received the additional required information.

I also wish unredacted copies of everything immediately or with an explanation of who redacted what and why. I find it remarkable that lawyers for Marlboro College feel that they have the right to redact information from the AGO that is relevant to the review. Equally remarkable is that your office feels it can deny or hinder public documents. I am also concerned with the conversations by phone conducted between your office and the various Marlboro college lawyers. These communications should be recorded and on the record.

I intent to ask the court today for help to get documents from your office as well as stop the progress until such documents are produced and given to the public without illegal redactions. Once that occurs, your 20 day review clock can begin perhaps, however, I feel there is enough evidence in front of your today to begin the process of removing the current board of trustees of The Corporation of Marlboro College.

Martin Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

Re: Your Public Records Request

Save Marlboro College [REDACTED]

Mon 7/20/2020 8:43 AM

To: Renner, Jamie <Jamie.Renner@vermont.gov>

Jamie:

When did you receive the most recent set of documents from Marlboro College?

Is the AGO going to reset the 20 day clock in its response to the College regarding the sale of campus and transfer of assets to Emerson College in Boston, Massachusetts.

Martin

Martin Heck

Save Marlboro College, Director

[REDACTED]
Putney, Vermont 05346

<http://www.savemarlborocollege.org>

From: Renner, Jamie <Jamie.Renner@vermont.gov>

Sent: Sunday, July 19, 2020 10:39 PM

To: Save Marlboro College [REDACTED]

Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

Subject: Your Public Records Request

Martin:

Attached are additional records responsive to your public records request regarding Marlboro College. These records have been redacted pursuant to 1 V.S.A. 317(c)(7) . To the extent you feel that these records have been wrongfully redacted, you may appeal to Deputy Attorney General Josh Diamond.

Additionally, further documents from Marlboro College have been received. Pursuant to 1 V.S.A 318(a) (5)(B), we invoke our right to additional time to respond to your Request due to the need to appropriately examine the records in question. We will further respond within ten business days of receipt of said records.

-Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

Your Public Records Request

Renner, Jamie <Jamie.Renner@vermont.gov>

Wed 7/15/2020 4:13 PM

To: Save Marlboro College [REDACTED]

Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

Dear Mr. Heck:

On July 10, 2020, our Office received additional documents from Marlboro College potentially responsive to your Request regarding Marlboro College under the Public Records Act. Pursuant to 1 V.S.A 318(a)(5) (B), we invoke our right to additional time to respond to your Request due to the need to appropriately examine the records in question. We will further respond within ten business days of receipt of your request (which we consider to have been made on July 10, 2020).

If you feel information has been withheld or redacted in error, you may appeal to Deputy Attorney General Josh Diamond. Thank you for reaching out to our Office.

Regards,
Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Contact Form submitted on Office of the Vermont Attorney General
Date: Monday, July 20, 2020 8:51:19 AM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Office of the Vermont Attorney General [REDACTED]
Sent: Friday, July 17, 2020 4:23 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Contact Form submitted on Office of the Vermont Attorney General

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Name Jennifer
Last Ramstetter
Email [REDACTED]
Phone Number [REDACTED]
Mailing Address (required for a response) [REDACTED]
Brattleboro, Vermont 05301

Subject Sale of Marlboro College to Democracy Builders Foundation

Message Dear Attorney General Donovan:

I am writing to inquire what role the VT AG's office can play in investigating descriptions of racist behavior and practices at Democracy Prep? The founder of Democracy Prep is also the founder of Democracy Builders Foundation, the organization that has a purchase and sale agreement with Marlboro College. This article from The Commons describes allegations http://www.commonnews.org/site/sitenext/story.php?articleno=32660&fbclid=IwAR3tvheyQ_I4sVVpjN8oSWpnvvfT6jItCf844eFaEKI-PMgvs5__sgtaBwM.

Thank you for any information.

Sincerely,

Jennifer Ramstetter

From: [Curtis, Christopher](#)
To: [Daniel Richardson](#); [Renner, Jamie](#)
Subject: RE: Democracy Builders Fund, Inc. Documents
Date: Saturday, July 18, 2020 9:53:00 AM

Dear Attorney Richardson,

Thank you for providing these materials. They are received. We will contact you with any questions.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: Daniel Richardson [REDACTED]
Sent: Saturday, July 18, 2020 12:02 AM
To: Renner, Jamie <Jamie.Renner@vermont.gov>; Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: Democracy Builders Fund, Inc. Documents

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Chris and Jamie,

Attached please find the following documents from my client, Democracy Builder Fund, Inc.:

1. A packet containing the bylaws, articles of incorporation, and associated incorporation documents for Democracy Builder Fund, Inc. and its predecessor entity.
2. An IRS exemption letter confirming Democracy Builder Fund, Inc.'s 501(c)(3) status.
3. An excerpt from the Town of Marlboro zoning regulations showing that the Marlboro College campus is located within a EDU district that requires the property be owned by an institution and run primarily as an educational facility for compliance with zoning standards.

This packet does not include a current certificate of good standing for Democracy Builder Fund, Inc.. I anticipate that I will have a copy for you by Monday.

I can represent on behalf of my client that following closing, it is their intent to file the requisite paperwork with the Vermont Secretary of State as a foreign non-profit corporation doing business and charitable work in Vermont. The Marlboro campus will likely be listed as the primary place of business.

My client has further authorized me to state that if and when Democracy Builder Fund, Inc. or more likely, its educational entity, begins the process of obtaining certification and approval from the Vermont Agency of Education, it shall cause a courtesy copy of its application materials to be filed with the Attorney General's Office. It is our understanding that this copy would simply be to confirm that Democracy Builder Fund, Inc. is acting in compliance with Vermont educational law and in a manner consistent with its stated educational mission.

If you have any questions or require additional information, please feel free to contact me.

Best,

Dan

Daniel P. Richardson | *Attorney*

Tarrant | Gillies

Richardson | Shems **LLP**

Attorneys at Law

[REDACTED]

[REDACTED]

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From: [Daniel Richardson](#)
To: [Curtis, Christopher](#)
Subject: RE: Follow-Up
Date: Tuesday, July 21, 2020 9:47:10 AM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney Curtis,

Thank you for the corrected letter. Both copies seem to be missing footnote 3. Was this footnote deleted?

Thank you for your assistance with this matter.

Best,

Dan

Daniel P. Richardson | *Attorney*
Tarrant | Gillies
Richardson | Shems **LLP**
Attorneys at Law

[REDACTED]

[REDACTED]

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From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 9:41 AM
To: Daniel Richardson [REDACTED]
Subject: Follow-Up

Dear Attorney Richardson,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: [Christine Hughes](#)
To: [Curtis, Christopher](#)
Cc: [Renner, Jamie](#)
Subject: Re: In re: Marlboro College
Date: Monday, July 20, 2020 5:29:49 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Christopher, Thank you for your thorough, thoughtful, and timely analysis of these transactions.

Best,

Christine

On Mon, Jul 20, 2020 at 4:07 PM Curtis, Christopher <Christopher.Curtis@vermont.gov> wrote:

Dear Attorney Hughes,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

Christopher J. Curtis

Chief, Public Protection Division

Office of the Attorney General

State of Vermont

109 State Street

Montpelier, VT 05609

802-828-5586

PRIVILEGED & CONFIDENTIAL COMMUNICATION: This communication may contain information that is privileged, confidential, and exempt from disclosure under

applicable law. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you are not the intended recipient (or have received this E-mail in error) please notify the sender immediately and destroy this E-mail. Please consider the environment before printing this e-mail.

--

Christine Hughes
Vice President and General Counsel
Emerson College
[REDACTED]
Boston, MA 02116

[REDACTED]

From: [Seth Andrew](#)
To: [AGO - Info](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); jmcmahan@dinse.com; [Neil Lefkowitz](#); [Tara Gorman](#); [Daniel Richardson](#); [Kevin Ellis](#)
Subject: Re: Marlboro College contract with Democracy Builders Fund, Inc.
Date: Monday, July 20, 2020 3:05:21 PM
Attachments: [Screen Shot 2020-07-20 at 2.54.45 PM.png](#)
[Screen Shot 2020-07-20 at 2.54.29 PM.png](#)
[Invoice.pdf](#)
[Package.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To Whom it May Concern.

The email below is incorrect, as has been almost every assertion and correspondence to your office about Democracy Builders since we arrived in Vermont. I have attached our Certificate of Good Standing from February, when we last received one, and again from today, which we requested Delaware to prepare for what we hope will be a closing this week.

Once we own the campus, we intend to begin any regulatory processes in Vermont.

Seth

On Mon, Jul 20, 2020 at 2:21 PM Martin Heck [REDACTED] wrote:

Mr. Attorney General Donovan,

I feel that the attached documents shed some light on the situation with the entity called Democracy Builders Fund, Inc, the present entity that entered into a purchase and sale agreements with The Corporation of Marlboro College for the College campus .

As you can see by the attached documents, the entity once known as Democracy Builders Fund, Inc. no longer exists in its home state of Delaware. According to the NY SOS, once it was terminated in DE it should have been terminated also in NY: Mr. Andrew appears to have restarted its charter DE but had to do it under a very slightly different name know as Democracy Builders Fund I, Inc. I also sent my request to Seth Andrew via email :
[REDACTED]

The very slight change appears to have gone unnoticed or written off as a typo error by the IRS and the State of NY. However the result is that Democracy Builders Fund, Inc, can no longer legally exist in NY in its current status as a foreign entity if its domestic entity in DE no longer exists. Additionally, it seems when the IRS catches up with this they will once again revoke the 501c3 status of Democracy Builders Fund, Inc, if they haven't already.

Under the law, Democracy Builders Fund should provide 990s and other documents requested by the public. I attach a copy of my letter to their official address sent by certified mail, along with the USPS tracking information. The address listed by Democracy Builders Fund as their place of business no longer exists, however they still list it as their place of business. They do not seem to be legally established in NY, DE or VT at this point and as such cannot engage in this transaction for this reason and many others.

I feel the AGO has an obligation to stop the purchase and sale agreement between Marlboro college and

Democracy Builders Fund, inc or whatever else they might be calling themselves today.

Martin Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "DEMOCRACY BUILDERS FUND I, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTH DAY OF FEBRUARY, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS AN EXEMPT CORPORATION.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DEMOCRACY BUILDERS FUND I, INC." WAS INCORPORATED ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.




Jeffrey W. Bullock, Secretary of State

5485426 8300C

SR# 20200783095

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202349068

Date: 02-08-20

Delaware

Page 1

The First State

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Jeffrey W. Bullock, Secretary of State

4886997 8300C

SR# 20200730232

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202323256

Date: 02-05-20



State of Delaware

SECRETARY OF STATE
 DIVISION OF CORPORATIONS
 P.O. BOX 898
 DOVER, DELAWARE 19903

8407757
 DEMOCRACY BUILDERS FUND, INC.
 2582 SOUTH ROAD
 MARLBORO, VT 05344

07-20-2020

ATTN: SETH ANDREW

DESCRIPTION	AMOUNT
5485426 - DEMOCRACY BUILDERS FUND I, INC. Entity Status - Short Form	
Certification Fee	\$50.00
Expedite Fee, Two Hour	\$500.00
TOTAL CHARGES	\$550.00
TOTAL PAYMENTS	\$550.00
BALANCE	\$0.00

Delaware

Page 1

The First State

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AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS AN EXEMPT CORPORATION.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DEMOCRACY BUILDERS FUND I, INC." WAS INCORPORATED ON THE TWENTIETH DAY OF FEBRUARY, A.D. 2014.




Jeffrey W. Bullock, Secretary of State

5485426 8300C

SR# 20206308536

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Authentication: 203312238

Date: 07-20-20

State of Delaware - Division of Corporations

CERTIFICATION SHEET



Priority 1
(One Hr)



Priority 2
(Two Hr)



Priority 3
(Same Day)



Priority 4
(24 Hour)



Priority 7
(Reg. Work)

SUBMITTER'S INFORMATION

Company/Firm Or Individual's DEMOCRACY BUILDERS FUND, INC.

Name Attention SETH ANDREW

Mailing Address 1 2582 SOUTH ROAD

Mailing Address 2 _____

Mailing Address 3 _____

City MARLBORO

State VERMONT

Zip 05344

Country UNITED STATES

Phone (347) 818 - 0180

Fax# _____

Email Address TKENNEDY@DEMOCRACYBUILDERS.ORG

Account Number 0

CERTIFICATION REQUEST INFORMATION

Name of Company/Entity DEMOCRACY BUILDERS FUND, INC.

File Number _____

TYPE OF CERTIFICATE REQUEST

Certified Plain Copy

All Charter Documents

Restated Forward

Specific Document(s) Filed On

Annual Report Years

Short Form Good Standing
(Check if additional language required)

Incorporation Date

Taxes Paid

Annual Reports Filed

Long Form Good Standing

Certificate in RE:

Apostille/Gold Seal Country

(type of Cert.)

METHOD OF RETURN

(Fax or E-Mail is not available)

Messenger/Pick Up

Fed Ex UPS

Acct# 706830154

Regular Mail

COMMENTS/FILING INSTRUCTIONS

I UNDERSTAND THAT 2-HOUR PROCESSING IS AN ADDITIONAL \$500.00.

I UNDERSTAND THERE IS A COURTESY FAX, BUT WE DON'T HAVE A FAX MACHINE. IS IT POSSIBLE TO RECEIVE IT VIA EMAIL?

PAYMENT INFORMATION

Depository Account

Wallet

None

Delaware

Page 1

The First State

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Jeffrey W. Bullock, Secretary of State

4886997 8300C

SR# 20200730232

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Delaware

Page 1

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Jeffrey W. Bullock, Secretary of State

5485426 8300C

SR# 20200783095

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202349068

Date: 02-08-20

NYS Department of State

Division of Corporations

Search Results

The information contained in this database is current through July 15, 2020.

Only one entity was found.

Entity Name

[DEMOCRACY BUILDERS FUND, INC.](#)

The Entity Name column contains the entity names that were found based on your search criteria. To display information for an entity, tab to the entity name and press the enter key or click on the entity name. To revise your search criteria, tab to Revise Search Criteria and press the enter key or click on Revise Search Criteria. To start a new search, tab to New Search and press the enter key or click on New Search.

[Revise Search Criteria](#) [New Search](#)

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Marlboro has undertaken this presidential transition under particularly difficult circumstances, with enrollment alarmingly low, staffing high for enrollment, both for faculty and staff, and a physical plant substantially larger than it was when enrollment was this low before and still under construction. At the same time, we have underlying strength, represented by faculty and staff dedication to the academic community and to the success of our students, an endowment immensely greater than when enrollment was at comparable levels, and a Board with more alumni than ever, so with a deeper and more personal understanding of what is at stake here.

You have said a couple of times that you are “new at this” and “still learning.” We are here because we are deeply worried about developing patterns in your new administration. Perhaps obviously, the issue with the greatest consequence is the abrupt termination of the phased retirement policy, but the pattern that emerges when considering that along with other issues has substantially undermined people’s trust. We believe that it is essential to your success, and ours, for you to rebuild that trust. That will take a renewal in action of your commitment to transparency and community engagement. These cannot be slogans invoked as cover for decisions made in isolation for reasons that are neither obvious nor explained. The financial crisis we all recognize requires us to be able to work together, from a shared understanding. You confront the crisis and its dangers daily in a way that most of us do not, but you can no more solve it on your own than a new faculty member could work out how to teach at Marlboro without consulting and listening to colleagues.

We have not formally engaged everyone on the Faculty or members of the staff, but we know that we speak for many more than just ourselves, both faculty and staff. Marlboro is a small and tightly integrated community, unusually so. We have our differences and our pettinesses, of course, and always have had. But we have survived through greater crises than this one because we have engaged the full resources and good faith of the whole community in the face of challenges; we have shared loss and sacrifice largely without recriminations. That some of those who agree with these concerns chose not to join this meeting either because they felt it would do no good or because they feared some form of retaliation is a measure of the depth of the problem we face.

Marlboro is unusual both in its formal structure and its informal structure. In its formal structure, the President and the Faculty are jointly responsible for the academic program, for admissions policy and standards, and, ultimately, the maintenance of good order in campus life, though most of that last responsibility is formally delegated to Town Meeting, in which the whole community participates. Marlboro has an unusual philosophical integration between the academic life and the community within which the teaching and learning occurs. Both the academic structure and the community structure are unusual in the degree to which they presume individual responsibility for and control over the circumstances within which we live and work. Our presumption has always been that the workings of the community are intimately bound to the academic mission of the college.

This may seem a rehearsal of the obvious or perhaps of the merely rhetorical, but these are in fact qualities that have drawn and sustained faculty even when pay is low, they have drawn students from a remarkable range of backgrounds and empowered them both here and in their lives beyond Marlboro, and they have given staff the satisfaction of developing complex roles in an institution without many opportunities for internal advancement. This is also a small community, both the college and the Marlboro/Brattleboro community. We have lots of interlocking friendships and acquaintances outside of formal “channels,” actions in one sphere may have consequences well beyond those directly affected.

You may not be accustomed to or even comfortable with the “leakiness” of small communities with broadly shared interests. Such leakiness, however, is virtually inevitable and in fact is part of what makes communities like this resilient: people know about and respond to issues often before they reach crisis proportions. [The Dean of Faculty] has said that you have a particularly clear line delineating the elements for which you are formally responsible. We recognize that some of the things we are worried about are entirely within your formal charge. Nonetheless, we hope you realize that the whole community has a substantial stake in your success as president. No one disputes your responsibility here, but responsibility does not rule out genuine consultation and reconsideration as more information appears.

Consultation & Community Engagement:

The secrecy of the search process that led to your appointment had the unfortunate effect of insulating you from the community and from our expectation of involvement. You may know that many of us were gravely concerned that such a lack of broad participation, though urged upon us as a necessity by our search firm, was antithetical to our culture. As far as we are aware, you have not had any informal background conversations with any members of the faculty to develop a more intimate and informed sense of the institution. [The Dean of Faculty] has said that you rely on him for relaying faculty opinion, but he serves at the pleasure of the president, which frankly looks a trifle dangerous these days, and he may not himself have the same range of faculty observation that you might get.

You began the year by asking the Faculty and Town Meeting to elect representatives to the Senior Team. Many thought that a promising response to a recently contentious issue. However, those reps never reported and when queried said that they really had nothing to report, that they were never present for discussion of substantive issues, and minutes of the meetings, previously circulated, ceased. Even the already-established structures for broader input into decision-making have been disregarded. The Faculty Finance Committee has said that they have seen less of the budget process than ever before; you have characterized your interaction with that committee and with the Curriculum Committee and the Committee on Faculty as consultation, but all three committees experienced that interaction as a report of decisions already made.

We understand from a variety of those directly and indirectly involved that staff have had similar experiences in PACSE, that when you asked PACSE representatives to suggest changes that would improve efficiency and reduce costs, you treated their three pages of suggestions as trivial and even irritating. When the members of Senior Team who were willing to comment openly on the suggestions supported them, you nonetheless rejected them without explanation, accepting only the suggestion for Summer Fridays, which you then announced without acknowledging PACSE’s role. When two conscientious members of the committee chosen by their staff colleagues to represent them resign because they feel they cannot work with you, that might give you pause; it certainly gives pause to the staff who elected them and to other members of the community who observe their treatment.

As one faculty member wrote before the May 14th meeting between faculty and trustees,

the decision to phase out the current retirement benefit package was, I believe, made without the curriculum committee’s input, without the committee on faculty’s input, without the input of those eligible for retirement, and certainly without consulting the entire faculty. That’s one reason we’re behind. And it is one reason why the scale of the challenge is as big as it is. If you add up the number of years of teaching at Marlboro held

by the seven faculty offered 'last call' on the retirement benefit and add to it the years held by Gloria and Cathy, who had already announced their intentions to retire, you get very nearly 50% of the total. That's a change much bigger than any we've faced in the 16 years I've been here.

We talk about the importance of transparency and collective decision making. We claim to empower the community through these values. We also claim that the faculty holds control over the academic program. These are not claims and values that we can observe only when times are good and decisions are easy. If we abandon them when times are hard, we don't have much to promise a new cohort of Renaissance Scholars where self-governance is concerned.

You have spoken of the decision to end the phased retirement policy on short notice in ways that led us to understand that the Board had been consulted and had approved the deadline. It is a shock to us, and presumably to them, that there was no such approval. When you have been queried on this score (as on the "consultation" with the faculty committees) your response has been only silence and vague suggestions of some flexibility transmitted through Richard.

Transparency:

Although you declare a shared value of transparency in management, you have not seemed to live by that. As noted above, minutes of Senior Team meetings no longer circulate and Faculty and Town Meeting reps seem to have no substantive information. As far as we can gather, even members of the Senior Team are frequently uncertain as to why or how a decision has been reached. Too many consequential decisions appear to arrive from a "black box," without visible input and with an unwillingness to consider alternatives or unanticipated consequences or to reconsider on new evidence.

The presentation of Guillermo Rodriguez as a candidate for an honorary degree was an alarming instance of the lack of transparency. As submitted for faculty consideration, his candidacy was in no way flagged for special notice, and honorary degrees are ordinarily pretty much a pro forma vote. You were prepared for a questions by having [the Development Director] present for explanations, but we had no way of knowing until a question was raised that this candidate was not only unusual in his qualifications, but extraordinary in the way his candidacy had been proposed, by solicitation from the Jimmy Kimmel Show. Only direct questions revealed that this was a PR stunt, that there would be TV cameras on the floor, that we had no control over how we, especially our graduates, might be presented. Even if such a departure from standard practice in granting honorary degrees was going to be considered at all, transparency would mean at a minimum that the departure would be noted and explained. That so many of us were opposed to it on grounds of principle or the potential for ridicule and distraction from the celebration of our students should have invited immediate reconsideration, yet the possibility of a visit to facilitate going ahead persisted for a week and apparently is not yet beyond question.

The discussions of the budget at the two budget hearings and at Town Meeting was presented explicitly as an instance of transparency and community engagement, yet on both those occasions you described the process resulting in the ending of phased retirement in ways that led most of those present to believe that the process had been well considered with the engagement of the appropriate committees for much of the semester. People who had felt that they must not have been paying attention were grateful to learn that in fact the whole process had taken place in about a month, but they were also distressed to find that a

decision with significant threat to the curriculum, to the program of Renaissance Scholars, and conceivably to the college itself was presented as a *fait accompli*, too late for their concerns or alternatives to have any effect.

We have, presumably, some in-house expertise in management, at the graduate center, so perhaps some alternatives to this less than communicative style might be considered.

Management Choices:

This is an area clearly within your formal responsibility, yet we cannot help observing that here too some of your choices seem surprising and a challenge to the community's confidence. If there was a single issue on which the great majority of participants in the "advance" and the "low-hanging fruit" exercise agreed, it was that our web site is abominable: dreary, difficult to navigate both from inside and outside, unclear about our program and offerings, minimal in its presentation of what our graduates accomplish. Yet not only has nothing been done to improve it, the people most capable of doing that work, even of maintaining its present deficient function, have been discouraged until they left. Again, we had in-house expertise in marketing in the person of [the director of the Graduate Center], but we have not used that, either, and now he has been let go.

[The Grad Center director] was brought [up to positions on campus] in September and impressed many of us by the way he engaged with the community, the way he listened but also challenged unexamined assumptions. We understood from the series of additional responsibilities you placed on him, some of them not obviously within his previous experience, that you recognized his competence. Then you announce in March his departure in June, only to make that departure seem leisurely by abruptly telling the community in April that he is leaving that day, with all contact information scrubbed from the college system.

At the same time, we have a Development Director with no experience in Development or Marketing, who un reassuringly seems to have thought the Guillermo Rodriguez proposal was a good idea, who seems to have little responsiveness to constructive suggestions from the community, and who is reportedly outsourcing much of the work at marked expense and to no great effect beyond trustee contributions.

Summary:

This is probably an unwelcome challenge to your management "style" and to the substance of some of your decisions. We see the engagement this community offers as integral to our mission and integral to our survival. The failure to engage in more than form now seems to threaten not only your constructive efforts, notably with the Renaissance Scholars, but also confidence in the survival of the college itself. We do not need our students new and old rattled at abrupt, unplanned changes in the curriculum. We do not need the alumni initiating some form of social media protest campaign, as some of them have suggested. We do not need newer faculty to feel they'd be wise to look for another place, no matter how much they believe in this one. We do not need the local community doubting our future. The president and the faculty and the staff need to work together to make the cuts and the changes that will allow us to survive in the short term and to thrive again in the long term.

Note: the bracketed substitutions clarify for those unfamiliar with the individuals named in the originals

what role those people played in the college. They are added in July 2020. The original document was presented on 23 June 2016 to the president with the Dean of Faculty by four members of the faculty with quite different years of experience at the college.

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Statement of Request to Postpose Sale to Seth Andrew/Democracy Builders
Date: Thursday, July 16, 2020 4:26:49 PM
Attachments: [2020.07.16 Statement Request for Postponement of Sale for Investigation of Seth Andrew & Democracy Builders.pdf](#)
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: J. LeShaé [REDACTED]
Sent: Thursday, July 16, 2020 4:09 PM
To: AGO - Info <AGO.Info@vermont.gov>
Cc: AGO - Civil Rights <AGO.CivilRights@vermont.gov>; AGO - CAP <AGO.CAP@vermont.gov>
Subject: Statement of Request to Postpose Sale to Seth Andrew/Democracy Builders

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon T.J, Julio, and Christopher –

**To: T. J. Donovan, AG Vermont
& the Marlboro & Emerson Communities**

Introduction

I am J LeShaé and I run an activist education initiative called Ms. J's Classroom. For the last four years I've served as the Principal of [Conscious Consulting](#), where I've led social justice education and coaching for several institutions including The Black Teacher Collaborative, The Budd Center at Southern Methodist University, American Baptist College, One Goal, Teach For America, The Commit Partnership, and The Teaching Trust. I also head a youth leadership movement called Building Opportunities & Opening Minds (BOOM), which provides spaces of affirmation, decolonization, organization, and innovation for K-16 Black and Brown visionaries. I am a first-generation high school and college graduate, who received a full scholarship to obtain my B.A. in History from Clark Atlanta University (HBCU).

I was a founding teacher at Democracy Prep Charter High School at the St. Phillips

campus in Harlem, New York, during the 2009-2010 academic year. I was recruited by Jonathan Howard and managed by the founding principal Lisa Friscia. Seth Andrew served as the Superintendent at that time. My observations and personal experiences with racial injustice during that year inspires my support of the activism of the Black & Brown at Democracy Prep. I stand in solidarity with them in their demands for restructure at Democracy Prep Public Schools and in their advocacy against the sale of the Marlboro campus to Seth Andrew & Democracy Builders. I have also shared comments of my experiences at Democracy Prep with journalists in Marlboro.

Identity & Lens

Some of my most salient experiences (often misnomer-ed as identities) within our present social condition are racial (Blackness), gendered (Womanhood), cultural (Southern, community rich, capital poor), and spiritual (energetically aware sensitive/sensual). I was given the name Jamie LeShaé Jenkins at birth: Jamie, from my father, “LeShaé” from my mother, and “Jenkins” from British-American Confederates who fought to maintain slavery here in the United States. I participate in this world within a dark-skinned (termed: Black), afro-haired, womb-body (termed: female or woman), and I identify as energy.

I am actively decolonizing from the ever-present violence of Western European colonial social systems. Thus, both as an individual and as an educator, I resist all practices of miseducation and psychological trauma from systems of thought rooted in the legacy of colonial occupation of the Americas, Africa, and South Asia. I also stand against any practices of white-dominance or control over the bodies/minds/spirits of First Nations (Native American) people, displaced African people, or their descendants, including, but not limited to, that which occurs within schools. Because of this, I am a 13-year [career activist](#) for educational equity, racial justice, and freedom.

Additionally, my truths and lived experiences, which I offer as medicine for human healing, can be experienced by those who benefit from our present social structures, as confusing, conflicting, or even painful. Subsequently, in many cases, my words alone are treated as destructive or dangerous, and have led to threats against my livelihood. These realities influence my life, language, and lens.

Anonymity

I choose to lend my face and name to this movement with keen awareness of the dangers of full disclosure. I have personally experienced the impacts of truth-telling against injustices performed by institutions and/or white people of wealth. From instances of being black-balled in certain corners of the philanthropy and education reform worlds, to being physically threatened with a gun by 2 white men while having lunch on the patio of a Cheesecake Factory in 2014, I know very practically that openly performing as a moral conscience in a racist society is not safe.

I have observed many questions and critiques of the anonymity of the Black & Brown at DP Collective. While this is disappointing to me, I recognize that humans often struggle to conceptualize rationale for conditions that they have not personally experienced. For example, if we have not been reprimanded for speaking up against

racism, or if we have not personally experienced harm from racists; empathizing with Black and Brown activists who choose to protect themselves with anonymity may prove difficult. Further research into social justice activism may aid us in our struggle. The Movement for Black Lives offers a model of decentralized leadership and practices of some levels of anonymity. Lessons from our past resistance movements, when participants were assassinated, penalized on jobs and in schools, and/or placed on the FBI's Most Wanted List, help us to be more strategic in our approaches today. In 2020, many collectives have chosen anonymity as an organizing strategy, including several other charter school systems, like Success Academies, and Uncommon Schools; as well as magazines, like [Essence](#). However, even without personal experiences, we still have at least two windows of opportunity to declare our values – via history and our humanity.

Our Schooling Condition

Much of the present US American schooling condition is a legacy of colonialism. In the same way that European settlers planted flags on foreign lands with missions of civilizing indigenous people through occupation and domination; leaders of no-excuses charter systems, including Seth Andrew through Democracy Prep and now Democracy Builders, plant their institutional flags in Black and Brown communities with the same missionary zeal. We do not expect reformers to request the perspectives of Black and Brown experts and educators, nor do we require them to seek permission from the community leaders and parents of the places they are entering. We just join in this 500-year history of white-domination over Black and Brown beings, blindly. Perhaps it is too painful to consider how we have been complicit in continuing this ugly dominance legacy in American history. Perhaps, because we have endured our own miseducation, studying history from books that erase the terroristic truths of eugenics and Native American boarding schools, or the triumphs of community schools or Black-led universities (HBCUs), we haven't a clue of the atrocities that have happened, and that are still happening. For those of us who core values of equity and justice, we must deeply interrogate the parallels between settler-colonialists and neocolonialists, and question why if we can now name the harm in one, that which resulted in the enslavement of Black bodies, why can't we see the harm in the other, that which shackles Black minds and spirits? Whatever the reason, let us no longer allow ignorance to destroy our humanity.

Over 200 people have submitted stories to the Black & Brown at DP Collective. While not everyone who attended Democracy Prep Public Schools perceive the institution negatively, many do. I do. My experiences at Democracy Prep's Charter High School with racial discrimination and trauma at DPCHS largely inspired my zeal for designing and leading social justice education in large education reform organizations. What I saw there was horrible. I can confirm that several of the anonymous submissions to BNB@DP align to my observations and experiences at the institution between 2009-2010. Regardless of this, the bigger issue is the problematic orientations of DPPS's founder, Seth Andrew, where these conditions of racial harm festered, are still present within that institution even after his exit. At present, he has chosen non-response when invited to reconcile and rectify these issues, to protect his ego. He does not suffer the same critique as the Black and Brown folk who respond, but choose to not to reveal themselves, to protect their

psychological and economic safety.

There are students and faculty who had great experiences with DPPS, just as there are others who suffered abuses. What will it take for us to resist the restrictions of “[either/or](#)” thinking and welcome the healing of “both/and”? One truth does not negate the other. When harm is being communicated, at any level and in any way within our schools, we have a legal responsibility to investigate. The onus is not on victims to subject themselves to additional injury for the sake of satisfying public curiosity. It is on us, the citizens of communities where these institutions exist, or are being installed, to ask questions about, and to push against the trends of racial injustice that are being communicated. That said, if we find ourselves hyper-critical of the Black and Brown people sharing truths under the cover of an anonymous collective (just as several other grassroots activists have chosen to), yet we are somehow confident in narratives offered by white people and the institutions they control (along with their access to money, press, powerful partnerships, and racial privileges that Black and Brown activists are not privy to), let us also name and accept that truth as evidence of our affinity to the [culture of white supremacy](#). In that vein, let us then own the limitations of our perspectives and honor that we are yet equipped to interpret or solve this situation equitably. Let us demonstrate justice by inviting racial equity practitioners, Black and Brown education experts, and children and families from our communities to speak and lead in these matters. Let them have the final say.

Investigation

All in all, Black and Brown people are simply demanding that we – individuals and institutions – be and do better. That’s all. The Movement for Black Lives exploded into a global movement this year, and in turn, demands for racial justice are happening everywhere. The activism of BNB@DP is not unique, but a microcosm of a larger reality. The people of Vermont’s communities have an opportunity to consider its core values and who it wants to be on the other side of history. If anonymity leaves too many unanswered questions for decision makers to move forward concretely, or to dissolve the bill of sale to Seth Andrew, let it also inspire a full independent investigation into the accusations/allegations against Seth Andrew, Democracy Prep and the current Democracy Builders. Seth communicated in his essay on medium.com a realization that he has more work to do and made commitments to anti-racism. Allowing an independent investigation into these allegations is a way for Seth to demonstrate a good-faith effort of his commitments, or on the other end, to prove that these accusations are fallacious. My recommendation to the Marlboro and Emerson communities, as well as to T. J. Donovan, the Attorney General of Vermont, is to call for the halt of the sale until an independent investigation is conducted to determine the severity of crimes communicated by former and current students and staff including: financial mismanagement, illegal transcript and score handling, racial discrimination and HR breeches, policing of Black and Brown bodies, and sexual misconduct with minors.

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An Open Letter on Merging

This merger, if you can think of the whale swallowing Jonah as a merger, is certainly better than closing: better for the town and southern Vermont; better for the tenured and tenure-track faculty, at least for the short run; better for the Music School; better for those who depart without a closure on their resumes; better for students in mid-course, as long as they are able to persist with a Marlboro education. I am not at all sure that it is better for Marlboro College and its history in the medium-to-long run. I hope that the Memorandum of Understanding can be drawn with sufficient care to sustain something of the Marlboro that has persisted against long odds for seventy-three years. I have a variety of concerns that I want to share, though I feel certain that others much more closely involved, and with more at stake, are already engaged with most of them. Forgive me if I state the obvious, and forgive me for a backward reference or two.

My first and greatest concern is that the MOU define some sort of path back out for the College, with much of its endowment intact, should UB not live up to the hopes. The only reason we remember Jonah is that he got back out, and his whale receded into the sea of undistinguished whales. I foresee substantial difficulties in making this merger work to sustain Marlboro as a set of educational, cultural, and intellectual values. Not least is the endowment itself, which I presume is the key to Bridgeport's interest, whatever moving testimony Laura Trombley has offered for the more intangible values. Bridgeport in its history absorbed many millions of dollars from the Unification Church, made a substantial number of accommodating changes, but has now reportedly pruned the last of those away. I hold no brief at all for the Moonies – Bridgeport is well quit of them – but we must consider this as at least potentially an instructive precedent.

The integration of these two very different instructional models, with very different educational philosophies, and very different sorts of students, will be tricky indeed. There are real potential strengths too, of course, and those need to be defined clearly with well-defined standards for whether we are achieving them. (The Renaissance Scholar program had neither clearly defined goals nor any standard for assessing whether it achieved anything more than a brief, expensive, boost in enrollment.) Having a substantial number of students visiting for a semester or two, then disappearing, never to re-engage could have a severe diluting effect on Marlboro classes, which tend to rely on students' growing experience with the challenges we present. UB's course descriptions in areas that we teach suggest that even in the areas in which we overlap, what Marlboro is doing is markedly different and significantly more serious. Moreover, it seems quite possible that many UB students, some proportion of whom seem to be older and well embarked upon their lives, could regard a semester or two at Marlboro as an exile to Siberia. We have some problems on that score with our own students.

My second, related, concern is for the governance of Marlboro. The authority formally delegated by the Board to the faculty over Marlboro's academic program and standards and over admissions standards and policies is an essential element of how the college has worked. So is the authority over the college's social and political life delegated to the Faculty and on to the Town Meeting. The integration of students' responsibility for their individual academic program and their

responsibility for their collective social and community welfare is part of what distinguishes a Marlboro education. I expect those provisions, both for the Faculty and for Town Meeting (so both for the academic program and for community life), will necessarily lapse when our Board ceases to exist, as I've heard it will. Our democratic traditions, though acknowledged and admired in the abstract, are fundamentally in conflict with the administrative model of most universities these days, and I see nothing on UB's web site to reassure me. To be frank, our own administration in recent years has not really understood, appreciated, or complied with our governance principles, and I suspect that that is part of what has brought us to this sad juncture. Without those principles and without the experience of responsibility and community they support, I fear that Marlboro will fade dismally away as an embarrassment to its former self.

I have heard that though our tenured faculty will remain tenured, they may also be required to teach in Bridgeport and to meet Bridgeport's workload definitions, presumably as articulated and overseen by Bridgeport's Dean or Provost. I don't assume bad faith, but I fear it, and it would not be hard to prune our faculty and academic program dramatically by requiring transfers to Bridgeport, leaving our endowment to support UB largely or wholly without Marlboro.

Given the critical importance of trustees in negotiating how all of this will work as we proceed, I feel moved to express some frustration with how we have arrived at this juncture. I am well aware of the demographic and cultural changes that challenge Marlboro and a great many other liberal arts institutions. I also believe that the national tendency to undermine faculty authority and independence (hardly any colleges or universities now operate with anywhere near a majority of faculty in tenured or even tenure-track positions) and the associated scorn in our culture and politics for critical thinking and liberal arts disciplines have contributed mightily to the disastrous political conditions that now threaten our very democracy. The values of fair intellectual discourse and civility that are embedded in liberal arts colleges and universities have also sustained our polity, and we see all around us what happens when they disappear, replaced by the exercise of raw power and economic interests apparently prepared to sacrifice our collective future for individual profit in the present. So I do not view Marlboro's problems in isolation.

However, though Marlboro has had years, now, of low enrollment, I remain convinced that there are and always have been at least a hundred students a year who belong at Marlboro and who would come if we presented ourselves in an exciting, challenging, and honest way. The faculty have been arguing since before Ellen left that our web site was a recruiting disaster: confusing, inelegant, incoherent, and difficult to navigate. It was virtually impossible, for instance, for prospective students or their parents to find out what sorts of careers our graduates went on to. Faculty were no longer asked to interview prospective students. The very real challenges and excitement of working to define and carry out your own academic program were almost concealed, rather than featured. In retreat after retreat, outside of term time, the faculty repeatedly identified improvements to the web site and recruiting strategies that were never made. I have not yet had time to explore the new web site, which seems substantially better, but that it appears only as the college itself is absorbed by UB is distressing. The opening page of the new web site leads with a silly video declaring that everyone is welcome here without ever saying anything about why one should want to come (other parts of the page are better, but that's what comes at the top).

We have more endowment; more alumni trustees, with their intimate understanding of the institution and what it can mean in a life and career; a better physical plant; a broader range of resources in the library and in technical facilities than in the many years when the college hovered on the brink of financial disaster. We have a dynamic faculty dedicated to the ideals of the college, to excellent teaching and mentorship and to deep participation in the academic community. Yet we also have an administration that has misled the faculty, Town Meeting, and the Board about critical issues, apparently without serious consequence, except the decay of the very community that has sustained us.

We have a graduate program founded explicitly to subsidize the undergraduate college but which has almost never done so (even in the few years when it produced a nominal surplus, the administrative time from our Dean, our Library, our maintenance staff, etc., were not included in Grad Center budgets). The Grad Center has blurred the Marlboro College identity and despite repeated "deadlines" by which it was supposed to at least break even, it has steadily contributed to our deficit, as far as I can tell, right up to the present.

I list these deficiencies because they have been presented to the Board yet not acted on decisively at a stage when they might have made some (possibly not enough) difference. We are now in a full-blown crisis when only a really hard-nosed and sustained grappling with the structure under which the college might be sustained will do what's necessary. I know that each of you has many other responsibilities, as I do myself, so I understand that it may not be possible at this stage, with the whale's jaws closing around us, to prevent the eventual loss of what has been a genuinely rare and impressive institution. Unlike the Music School, which has shared most of our history, we are not an elite institution, able to accept only the most accomplished Participants. Our mission has always included the acceptance of many students whose past academic records are less than sterling but who seem to have the native intelligence and strength of character to prosper in an atmosphere of respect for them as adults and capable of responsible choice.

The Plan of Concentration has analogs at other institutions in their Honors Programs, but what sets Marlboro apart is that every graduate completes one, at a level of difficulty and accomplishment that varies, of course, but that challenges every student in a way that the more usual separation between Honors candidates and everyone else does not. In that respect, the expectation that every participant demonstrate achievement in a set of skills of their own choosing, as well as in the general atmosphere in which faculty mentors and their students study and learn together, we have much in common with the Music School quite apart from Potash Hill.

The restoration of a genuine practice of consultation and transparency involving the entire college community (trustees, faculty, faculty *emeriti*, students, alumni, and staff) is essential to preserving much that's worth preserving of Marlboro. The decision to carry out our last presidential search in secret (on the advice of our search company, but without any evidence I have been able to find that such confidential searches achieve better results) went against our long practice and set the stage for a series of other actions and decisions in which administrative "efficiency" and "necessity" has undermined community participation in destructive ways. We are now in the midst of a process in which the letter that went out on our behalf is a secret, the

letter of intent is mostly secret, the process of negotiating the Memorandum of Understanding is secret. This secrecy means that when we read a PR release from our administration that is inconsistent with the PR release from our supposed partner, or inconsistent with reporting in the Connecticut paper, we have no way of knowing or of testing what to believe or whom to trust. In this atmosphere, necessarily of distrust or at least uncertainty, it is impossible for all of us to assure our students, our neighbors, even each other, that the outcome is workable or even desirable. We are wasting a great deal of good will from people who love and support this institution, from people who have drawn much from their work here and given much in return. People feel disrespected or ignored and many respond with indignation or anger or disgust.

Higher education will lose something extraordinary if Marlboro disappears (even if remnants persist). Marlboro demands a great deal from those associated with it, but the demands have been matched with the rewards of mutual respect and confidence and satisfaction. The preservation of those demands, rewards, and satisfactions *must* be at the forefront of negotiations if Marlboro is not to be simply digested into the educational pablum of a lesser institution. We have been told repeatedly that economics and demographics are driving this process, which makes this result seem inevitable. I suggest that we must recast the terms in which we examine what has been happening, must look for the areas in which we do have control or may assert control. We need to preserve our assets, whether material, moral, intellectual, or political. We need a vision that inspires us and excites others to join us.

I offer below a possible script for the opening video on the web page. I suggested this several years ago, and many colleagues, quite a few trustees, and even the then Admissions Director thought it was exciting, but it never went anywhere.

Marlboro is hard!

You have to know what you want to do and then do it. Well, you don't have to know when you get here, but you have to figure it out, and figure out who will help you, and the keep at it until you finish!

I wrote a novel

I wrote an opera and took it to New York

I spent six months in Morocco working in women's health

Marlboro is hard!

You may think you can write, but they take it seriously. If you can't write well, you can't even stay.

I wrote about Randall Jarrell and German History

I wrote about grizzlies in Alaska, both for biology and my own stories.

I wrote about a sculptor named Arthur Ganson, who makes wild machines out of wire.)

Marlboro is hard!

It's not a straight path to anything.

I wrote my own poetry and taught in a prison, and now I'm a lawyer.

I studied modern Greek poetry and wrote my own poetry and now I'm an atmospheric chemist.

I studied theater and acting and now I'm an actor (Well sometimes the path is straighter than others, but it's long!)

Marlboro is hard!

It's out on a hillside in southern Vermont and it gets dark at night! The stars are amazing!

Half the time your cell phone won't work.

Sometimes the power goes out in an ice storm
or the road down to town is closed in a blizzard.

We actually have a thing called "mud season."

But sometimes the days are so gorgeous you can't stand to stay inside.

Marlboro is hard!

The classes are tiny – here twenty is huge –
so there's no hiding at the back and reading your mail.

They know who you are and they can see right away if you've done the assignments. No slackers!

Marlboro is hard!

You know all your teachers by first names, and they know you.

If you break up with someone, you'll still see them at meals or in the library.

You have to get on with it.

By the time you're a senior you know the whole college, including the teachers and most of the staff.

Marlboro is hard!

T. Hunter Wilson

Sunday, May 13, 2018

Dear Dick and Peter:

First, thanks for inviting me to the board meeting and the send off for Ted. I was happy to see that Marlboro has not lost its talent for throwing a good party.

I sat down yesterday to write some notes, some impressions, and below is what happened. Rather scattered and reactionary, bits and pieces I guess, but I hope they cast some light on at least my perspective of the College's predicament. I mean no offense to anyone, especially Kevin: I do not walk in his shoes, as they say, and can only offer rough ideas on what I observed on Friday.

I've been wondering what's been going on at Marlboro, and now understand. It should come as no surprise to you that for the past two years the word on the street – my street, which includes all sorts of people in higher education – has been that Marlboro is in trouble, that NEASC "is worried." Frankly, however, I was surprised to learn how immediate and threatening the situation is. Shocked, actually.

Johnathan Smith's report was extremely sobering to me and perhaps to others in the room, although the nature and inevitable end of the process of funds withdrawal has been evident for some years. So push has come to shove, and the real problem is what happens in FY 19/20, when any endowment draw will be comparatively miniscule. I'd start thinking about that right now; it is indeed a singular point of focus.

Keven made a number of references about consulting firms he's working with and as I understand he intends to hire. The report itself is peppered with references to hiring consultants to help work through issues, develop marketing strategies, and make plans and presentations in preparation for action.

Generally, these kinds of contractual agreements come with considerable risk of modest return at high cost. (I don't know the story behind the website, but it sounds similar regarding hiring outside firms. The current site, as most everyone seems to agree, is pretty horrible and quite dysfunctional. It absolutely has to be fixed or redesigned before September).

Over my 30 odd years in the higher education business I've run into many, many top executives who operate almost exclusively by managing a slew of outside consulting/implementation firms. Critically, these sorts of executives really do not know what to do to solve institutional problems other than outsource them. Staff members, of course, then follow through with the implementation, learning little, while the consultants either depart or somehow extract more money. After a period of time, the whole process begins again.

In general, then, regarding branding - Don't do it. Or do it yourself. There was at the meeting a lot of discussion around finding the real Marlboro. The need to identify our core (marketable) elements. To distill, and remix, and somehow concoct a magical elixir of words and images that will cut through the white noise and deliver students to your door. But the result will just be another marketing package. The results will be OK. For a while. Nothing dissimilar to past efforts, that need to be refreshed...by you. My suggestion is to look to your own staff. Hire talent. Hire skill. Don't hire Suits except in extremes.

My suggestion is always to do the work yourself, do your own homework, and stretch your talent and your talented staff as far as possible...then think about outside help, be skeptical about it, brook no drama, and don't be afraid to pull the plug the minute things turn sour. An analysis of consultancy work at Marlboro over the past six or eight years – its costs and effectiveness – might be instructive for the pending future, when you cannot afford them.

Marlboro does not seem to have the sorts of institutional data important to understanding its own programs and administrative directions, at least a “dashboard” of information regularly maintained and presented, covering all the vital organs – admissions, retention, fund-raising, class attendance (try that one – essential to understanding retention, by the way) in an easily understandable format. This sort of data bank is important, and if it does not exist perhaps it should.

I was surprised that student retention was not mentioned. Perhaps it is not a serious problem, but I doubt that. It is one issue that the college can confront immediately at little cost and that could have immediate beneficial impact.

I would be interested in learning more about transfer students. My understanding is Marlboro does not do particularly well because it does not accept various earned credit. What happens is the transfer student needs to tag on an additional semester or two, at great expense. So they don't come to Marlboro but go to some other institution which accepts all earned credit. Whatever it takes, Marlboro has to figure out how to accept and graduate in four semesters junior-level transfer students...then go out and recruit them. Of course, this is a lever for curricular change.

Regarding admissions generally, you might examine the use of independent admissions counsellors, located in areas from where Marlboro draws students. Maybe putting your money there instead of into marketing firms will yield better results. Most certainly Marlboro needs to establish links – meaning people-links, visit-links - with various regional community colleges and independent and public high schools that are designed to be maintained year after year. One could do worse the resort to the old fashioned “road warriors” – very recent Marlboro graduates trained and send afield each fall to schools and school councilors – (independent councilors should be courted by the admissions director).

What is the faculty role in admissions? Don't concentrate on all of them – focus on the ten or twenty percent who want more students for themselves, and create an initiative that trains, motivates, and helps them plan ways of building their student body through early and direct contact with high school sophomores, juniors, and seniors.

Think “bang for the buck.” A hundred thousand spent on marketing analysis might better be spend on ads in relevant magazines – actual marketing.

Concentrate instead on quality of programming and service and on communications– for instance – are you sending Potash Hill to accepted students? Probably should be. Do you have profiles of faculty in the areas that accepted students are interested in? Are you sending them out? Are you providing means by which those energized faculty can communicate directly with accepted students? Do you have programs for those students to engage in prior to college? Could you?

If you must hire outside, at least employ an admissions *systems* firm – one that concentrates on demographics, synchronized mailings, and person to person contact. And buy more names from better lists.

Generally, invest in admissions...and concentrate on retention and student success.

Changing subjects, I would recommend an entirely different approach than the one emerging from the document you shared with me and the discussions and revelations at the meeting.

Instead, I suggest developing a series of *Board* mandated initiatives.

Let me offer some examples: but in reality you would want six, maybe eight, initiatives.

Let me note, as well, that these are top-down initiatives. They are mandated by the board. And the board will be taking an active role, especially through the administration but within the community as well, in implementation.

Initiative: Strengthening and streamlining the curriculum: to provide for junior-level transfer students; that provides for a one-year Plan of Concentration; that reshapes the course of study to the expertise of the faculty as a whole, the resources of the college in the immediate future, and that best exemplifies the breadth of the liberal arts, Marlboro's Plan of Concentration, and tutorial education.

Initiative: Create through Town Meeting the exploratory body that determines steps to be taken beginning January 2019 to become the newest federally recognized *Work-Learning-Service* college.

Initiative: Articulate and create a closer, more comprehensive, longer-term, and economically viable partnership with the Marlboro Music Festival.

Initiative: Establish and initiate a process whereby the College can reduce its student/employ ratio (currently about 2.5 employees for each student) to 4 employees per student. (**Ironically, the Vermont mandated ratio in a certified daycare center *infant room* is one teacher for every four infants. And note, too, at Middlebury with its 2/1 ratio, the same as Marlboro's, includes any number of tenured professors who hardly teach at all, and dozens upon dozens of employees devote to athletics and general cleaning and maintenance.)

Initiative: Shape the current graduate school curriculum to support the strengths of the undergraduate College and provide opportunity in individualized graduate level studies in the humanities. (If you want to get serious, see the Goddard model and the New England Antioch model – very different. Both work).

Other initiatives should address issues in GPS and the CNL/CGV. I learned little about these mysterious entities other than the anxiety and frustration they seem to have stirred among the board members. I agree, intuitively I suppose, about their potential, but I am cautious and would need to know more.

I would look also at particular curricular areas:

* An initiative to expand academically the theater arts at Marlboro I think have considerable potential: a **credit-bearing** full summer semester in acting, production, writing, and dramaturgy. You have an impressive alumni body in the "Industry" as they call it. A theater you can use year-round. A kitchen and dining facilities out on Rt. 9, and summer population in southern Vermont that will pay to attend late

August productions. Not profit making, but giving the students real-life results at the semester's end –an audience.

The idea, of course, is to look for areas of strength and/or potential where further development has the potential to directly affect the *dire situation* in any number of defined ways – it retains students, it attracts students, it's within our academic capabilities, it's exciting, photogenic, and marketable; we can have it up and running in 12 months.

You see my point, but note when I say “marketable” I do not mean we've paid for a marketing analysis...instead, we'll spend the money on marketing the program.

Finally, I would suggest these initiatives be framed in a three year “Transitional Campaign” (sub-theme: The Campaign for Sheer Survival). This is where you come out and say what needs to be said. As an institution, you essentially need to come clean. And to do so in a new publication focusing exclusively on the economic/business aspects of Marlboro during the period of transition.

The attitude is, “Yes, it's bad. But it is also opportunity – perhaps even a blessing - to reshape Marlboro for the future because the path it is on is not unsustainable and is rapidly – literally daily - threatening Marlboro's very existence as an independent college. The College is NOT currently positioned to compete successfully and must change if it is to prosper in the future. We are more than our history, we *must* seize our future.

The fund-raising goal of the campaign should be established in the traditional ways...although a genuine feasibility study may be desirable to preliminarily gauge the views of major gift donor's critical opinions of the of the initiatives and progress to date.

You must state the problems, revealed in the numerous initiatives. Here is the Plan and all its pieces. Here is what we've accomplished already. The campaign, the initiatives and the brutal but elegantly expressed rationale are published in October.

Why initiatives instead of full blown new programs?

They are loose, flexible, and workable.

They individually, collectively, and programmatically address the problems NEASC and you need to address.

Their advance (or retreat) are evident on, at the very least, a biannual basis.

Not all will reach fruition....some will work at about 50 percent of capacity...others may fail entirely.

As a whole, however, they constitute a plan of action that NEASC will be able to follow. As they progress, succeed, or recede and other opportunities arise and are taken advantage of, the college will be strengthened.

Those responsible for various pieces of an initiative are clearly identified and in every case are answerable to the president, but the overall effort is of course team driven.

In general, Marlboro needs to tell its story. To itself. Then let others in on the secret. It's got to take itself less seriously, especially among the faculty and students. And stop explaining. Show me! Demonstrate quality, don't talk about it.

Too much of what I read and see about Marlboro is obscured by the patina of marketing. The higher education marketing industry is of a type, easily recognized by people like me, and, I'm afraid, subliminally acknowledged by the marketing-inured public. It is not helpful to places like Marlboro. It is difficult to stand out, to secure a status, a reputation that is at once unique, confident, flexible, and secure. But that's Marlboro's only chance, really, and it takes participating in and simultaneously distinguishing oneself from the mass marketing that so manipulates the general college-aspiring population.

A note on merger. The report is accurate in describing the complexities of mergers, but not I feel in the results. Whatever the vocabulary employed, the legal documentation will show one entity now owns the other entity in its entirety. And Marlboro will cease to be. It's not a subject I'm particularly interested in. But others are: there are folks at the Registry quite practiced in this miserable activity and if Marlboro were to reach that stage, I'd suggest hiring one of them.

In summary, it's a hard, narrowing road you face. It is survivable. You have already proved to yourselves that money alone will not a college save. You have the pieces, you have some strengths, you have a pocketful of tools and opportunities (the ability to award graduate level degrees; the pending negotiations with the Festival; a huge endowment that will grow if you let it; an obviously committed board and incredibly faithful financial supporters; a good foundation track record; the mysterious potential of CNL/CGV among them). And you have some very hard, even controversial, decisions and choices to make in the short term, and for which there is little or no time to fully understand their ramifications. Thus, some level of boldness will be required.

Again, gentlemen, I much appreciated the invitation.

Will

ZONING REGULATIONS TOWN OF MARLBORO, VERMONT

Adopted March 1974
Revised May 1997
Revised March 2000
Revised March 2003
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Revised March 2007

March 6, 2018

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ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

Section 300 - Purpose of Zoning Districts

The purpose of establishing zoning districts in the Town of Marlboro is to further the public health, safety, and welfare of the Town. Specifically, the districts seek to provide an orderly, attractive, compatible, and logical growth pattern by allocating various functional uses to land areas best suited for them.

Section 301 - Establishment of Zoning Districts

The Town of Marlboro is hereby divided into the following Zoning Districts as shown on the official Zoning Map:

<u>Zoning Districts:</u>	<u>Abbreviation:</u>
Rural Residential	RUR
Village	VIL
Agricultural / Forest Production	AGR/F
Conservation Priority	CONS
Commercial	COM-W and COM-E
Educational	EDU
 <u>Overlay Districts:</u>	
Wildlife Habitat Overlay District	WH
Shoreland Overlay District	SL
Surface Water Buffer Overlay District	SWB
Flood and Fluvial Erosion Hazard Area Overlay District	FFEHA

Permitted Uses, Conditional Uses, and Area, Dimensional, and Coverage Requirements for all Zoning Districts, in addition to being listed under each Zoning District, are also illustrated in the Use Table, Section 311.

Section 302 - Design Review District

As provided for in the Act, provision is hereby made for establishment of design review districts, subject to an affirmative vote by Town Meeting. Within any design review district no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without design approval of plans by the Development Review Board.

Section 305 - Rural Residential (RUR)

District Description and Purpose: The Rural Residential District is defined as all land in the Town that is zoned Rural Residential (RUR). Its purpose is to provide for agriculture, forestry, residential, and other compatible uses at densities appropriate to the physical capability of the land and the rural character of the Town.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Accessory Dwelling Unit.
See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.
 2. Accessory Uses and Buildings to Permitted Use
 3. Agriculture and Forestry*
 4. Primitive Camp*
 5. Family Child Care Home serving no more than six children
 6. Home Enterprise (See Sec. 450)
 7. Photovoltaic System - Individual, on existing or new structure
 8. Single or Two-Family Dwelling
- * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road.

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

Front Yard Minimum Setback:	30 feet
Side and Rear Yard Minimum Setbacks:	30 feet each (50 feet each where abutting a residential use.)
Structure Height Maximum:	Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System
Accessory Use Height Maximum	25 feet. No height limit for agricultural uses.
Building Floor Area Maximum	8,000 sf
Building Footprint Maximum	8,000 sf
Building Coverage Maximum:	20 percent

Additional Standards:

Building Design - Commercial Building design to be compatible with the architecture of the neighborhood.

Building Materials - Siding to be wood, brick, stone, or aluminum or vinyl clapboard- style siding.

Exterior Lighting - Designed so as to illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property; so that the light source (lamp) is not directly visible from public roads, adjacent residences, or distant vantage points; and so that the source light does not project above the lamp. All lighting fixtures serving parking areas shall be cut-off fixtures (shielded, with down light only).

Parking - To be located in the side and rear yards when possible. Front yard parking shall be single-row only. Shared access drives and parking areas are encouraged. Side and rear setbacks may be waived for shared access and parking.

Site Design - PUDs with buildings grouped together in a village design with shared parking, open space, and integrated street, tree, and landscape design are encouraged. See Section 500.

Section 310 - Educational (EDU)

District Description and Purpose: The Educational District includes the contiguous Marlboro College Campus. Its purpose is to provide adequate lands for the reasonable location and expansion of institutional facilities in relation to the present campus. Site Plan review and approval by the Development Review Board is required for zoning permit applications within the Educational District, and a Conditional Use Permit is required for all facilities which deviate from the Area, Dimensional, and Coverage Requirements for Permitted Uses.

Only land which is in fact owned by Marlboro College shall be included within the Educational District, but not all such land will be necessarily so zoned. Should land in the Educational District be subsequently transferred to non-institutional ownership or management, said land shall thereafter be considered to be in the Rural Residential District.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Agricultural and Forestry* or new structure
2. Assisted Living Facility * Also a permitted use beyond 500 feet of a State
3. Educational Facilities (see also Section 403) Highway or Class 2, or 3 town road.
4. Photovoltaic System - Individual, on existing

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Community Building on new structure
2. Conference Center/Retreat Facility
3. Micro Hydro-electric Systems
4. Photovoltaic System - Small, on existing structure
5. Photovoltaic System - Small,
6. Wind Energy System - Individual.
7. Wind Energy System - Small.
8. Education Facilities which deviate from the Area, Dimensional, and Coverage Requirements.

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

1. Educational Facilities (see also Section 403)
2. Photovoltaic System - Individual, on existing or new structure
3. Wind Energy System - Individual.

Area, Dimensional, and Coverage Requirements:

Structure Height Maximum:	35 feet No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System
Building Coverage Maximum:	10 percent
Building Setbacks:	Not less than 50 feet from property lines or 10 feet from public rights-of-way.
Yard & Courts:	Not less than 50 feet between structures. For this purpose, buildings connected by an enclosed passageway shall be considered separate buildings, and the distance shall be measured from the main structure in each case.

Section 311 - Use Table

"Permitted Uses," "Conditional Uses," and "Area, Dimensional, and Coverage Requirements" for all Zoning Districts are illustrated in the following Use Table. If there is any conflict between the Use Table and the information contained in the previous Sections 305 through 310, or in any other Sections of these Regulations, the information in Sections 305 through 310 or in other Sections of these Regulations shall govern.

USE TABLE							
Section 311							
KEY: P = Permitted Use C = Conditional Use (blank) = Use is not allowed N/A = Not Applicable							
USES	ZONING DISTRICTS						
	RUR Rural Residential	VIL Village	AGR/F Agricultural/ Forest Production	CONS Conservation Priority	COM-W Commercial West	COM-E Commercial East	EDU Educational
Accessory Dwelling Unit	P,C ¹	P,C ¹	P,C ¹	C ¹	P,C ¹	P,C ¹	
Accessory Uses and Buildings to Permitted Use	P	P	P	P	P	P	
Accessory Uses and Buildings to Conditional Use	C	C	C	C	C	C	
Agriculture and Forestry	P	P	P	P	P	P	P
Assisted Living Facility		P				P	P
Bed & Breakfast	C ²	P	C ²	C ²	C	P	
Business Office		P				P	
Primitive Camp	P		P	C			
Campground					C	C	
Cemetery	C	C	C	C		C	
Community Building	C	P			P	P	C
Conference Center/Retreat Facility		C				C	C
Dormitory/Hostel	C	C				C	
Educational Facility ³	C	C			C	C	P,C

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

	RUR Rural Residential	VIL Village	AGR/F Agricultural/ Forest Production	CONS Conservation Priority	COM-W Commercial West	COM-E Commercial East	EDU Educational
Extraction of Soil, Sand, or Gravel (See Section 405)			C				
Family Child Care Home serving no more than six children	P	P	P	C	P	P	
Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations	C	C	C	C		C	
Child Care Facility serving more than six full-time and four part-time children, which shall be subject to all applicable municipal bylaws		C				P	
Gasoline or Motor Vehicle Service Station (See Sec. 430)						C	
Health Care Facility ³		C				P	
Home Enterprise (See Sec. 450)	P,C ⁴	P,C ⁴	P,C ⁴	P,C ⁴	P,C ⁴	P,C ⁴	
Hotel/Motel	C ²					C	
Kennel			C			C	
Light Industry						C	
Multi-unit Dwelling		C				C	
Municipal or Fire Co. Facility		C				C	
Museum/Gallery		P			P	P	
Planned Unit Development	C	C				C	
Professional Residence-Office	C	P	C	C	P	P	
Recreation - Active	C				C	C	
Religious Institution ³		C				C	
Vehicle Services						C	
Wind Energy System - Individual	C	C	C	C	C	C	C
Wind Energy System - Small	C	C	C	C	C	C	C
Wind Energy System - Large						C	
Photovoltaic System - Individual, on existing structure	P	P	P	P	P	P	P
Photovoltaic System - Individual, on new structure	P	P	P	P	P	P	P
Photovoltaic System - Small, on existing structure	C	C	C	C	C	C	C
Photovoltaic System - Small, on new structure	C	C	C	C	C	C	C
Photovoltaic System - Large, on existing structure						C	
Photovoltaic System - Large, on new structure						C	
Photovoltaic System - Producer, on existing structure							

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

	RUR Rural Residential	VIL Village	AGR/F Agricultural/ Forest Production	CONS Conservation Priority	COM-W Commercial West	COM-E Commercial East	EDU Educational
Photovoltaic System - Producer, on new structure							
Micro Hydro-electric System	C	C	C	C	C	C	C
Residential Care Home or Group Home ⁵	C	C	C	C	C	C	
Restaurant and/or Bar		C			C	C	
Retail Store - Less than 1,600 sf retail area ⁶		C			C	C	
Retail Store - More than 1,600 sf retail area ⁶					C	C	
Single or Two-Family Dwelling	P	P	P	C	P	P	
State Facility ³		C			C	C	
Telecommunications Facility ⁷	C	C ⁷			C	C	
Veterinary Clinic						P	
Waste Management Facility ³						C	
Hazardous Waste Facility ³						C	
DIMENSIONAL STANDARDS	RUR Rural Residential	VIL Village	AGR/F Agricultural/ Forest Production	CONS Conservation Priority	COM-W Commercial West	COM-E Commercial East	EDU Educational
Lot Area Minimum	2 acres	¼ acre	10 acres	27 acres	2 acres	2 acres	N/A
Lot Frontage Minimum	200 ft.	50 ft.	200 ft.	200 ft.	100 ft.	100 ft.	N/A
Front Yard minimum	30 ft.	10 ft.	30 ft.	30 ft.	30 ft.	30 ft.	N/A
Side and Rear Yards Minimum	50 ft.	10 ft.	50 ft.	50 ft.	30 ft.(50 ft. abut RUR)	30 ft.(50 ft. abut RUR)	50/10 ft.
Structure Height Max.(None for Ag)	35 ft./3 st.	35 ft./3 st.	35 ft./3 st.	35 ft./3 st.	35 ft./3 st.	35 ft./3 st.	35 ft.
Accessory Use Height Maximum	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	N/A
Building Floor Area Maximum	None	None	10,000 sf	3,500 sf	6,000 sf	8,000	6,000
Building Footprint Maximum	None	None	10,000 sf	3,500 sf	4,000 sf	8,000	6,000
Building Coverage Maximum	10%	25%	3%	1%	20%	20%	10%

¹ See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.

² Allowed only if change of use in an existing structure.

³ See Section 403.

⁴ See Section 450 (Home Enterprises) for requirement for Conditional Use Permit.

⁵ See Definition (Residential Care Home or Group Home) for detailed explanation of applicability.

⁶ Retail Area is defined as the gross floor area of all spaces associated with and required for the retail use, including but not limited to selling areas, service areas, storage areas, support and employee areas, and rest rooms, all measured to the outside face of the exterior walls.

⁷ See Article VI - Telecommunications Facilities. In the Village District, a Telecommunication Facility is only allowed if it is concealed within an existing building.

Section 320 - Official Zoning Map

The location and boundaries of Zoning Districts are established as shown on the attached Official Zoning Map. The Official Zoning Map consists of four maps: Map 1 of 4, Zoning Districts; Map 2 of 4; Wildlife Habitat Overlay; Map 3 of 4; Flood and Fluvial Erosion Hazard Area Overlays; Map 4 of 4: Shoreland and Surface Water Buffer Overlays. The Official Zoning Map is hereby made a part of these Regulations together with all future amendments.

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

No amendment to these Regulations which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map, signed by the legislative body, and attested to by the Town Clerk. Regardless of the existence of copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which shall be located in the office of the Town Clerk shall be the final authority as to the current zoning status of land and water areas.

Section 330 - Interpretation of District Boundaries

The locations of zoning district boundaries are established as shown on the official Zoning Map. Where due to scale, lack of detail or illegibility by the zoning map there is any uncertainty, contradiction, or conflict as to the intended location of any zoning district boundary shown thereon, the Development Review Board shall make an interpretation, upon request, by any aggrieved party. Any additional expense such as surveying shall be borne by the applicant.

Section 331 - Overlay Districts

General Description: Overlay districts are superimposed over the existing zoning map. Without altering the underlying zoning, a superimposed, additional district or zone is created. Special zoning regulations apply within the area covered by the overlay district. The regulations of the overlay district are in addition to the regulations of the underlying zoning scheme. The overlay district may completely cover certain existing zones, while partially intruding or avoiding other zones. It may overlap with the majority of the land within the municipality's borders; or cover only a very small portion.

Section 340 - Unused

Section 350 - Wildlife Habitat Overlay District (WH)

District Description, Authority, and Purpose: Pursuant to Section 4414(2) of the Act, there is hereby established a Wildlife Habitat Overlay District for the Town of Marlboro. The purpose of establishing a Wildlife Habitat Overlay District is to encourage landowners to locate structures and development near roads rather than extending development into core forest blocks, to guide development in a manner that preserves large tracts of undeveloped interior land across property lines, and to thus accommodate the life requirements and movement of wildlife across a broad landscape. The ecological value of maintaining large areas of connected habitat is to reduce the harmful effects of habitat fragmentation and population isolation and to reduce the risk of local population extinctions by enabling migration, reproduction, and exchange of genes for many plant and animal species. The prevention of forest fragmentation is particularly important for wide-ranging animals, such as bobcats, moose, and black bears, or for animals that require a great deal of space to meet their daily life needs, including food and mating needs.

Section 351 - Establishment of District Boundaries

The Wildlife Habitat Overlay District includes all areas more than 500 feet from a State Highway or Class 2, or 3 town road. Areas within the Wildlife Habitat Overlay District are shown as Wildlife Habitat Overlay on the Zoning Map - 2 of 4, Wildlife Habitat Overlay. It is not the Town's intention to prevent development in these areas but rather to require that any such development will avoid or minimize impacts on sensitive wildlife resources and habitat.

Where the boundary of the Wildlife Habitat Overlay District divides a lot of record such that part of the lot falls within the Wildlife Habitat Overlay District and part of the lot falls outside of it, the provisions of this Article shall apply to only that portion of the lot that falls within the Wildlife Habitat Overlay District. This supersedes Section 411 of these Regulations.

According to the Vermont Fish and Wildlife Department, land included in Marlboro's proposed Wildlife Habitat Overlay District falls within an eco-regional significant habitat connectivity area connecting the Southern Green

State of Delaware

Annual Franchise Tax Report

CORPORATION NAME DEMOCRACY BUILDERS FUND I, INC.			TAX YR. 2019
FILE NUMBER 5485426	INCORPORATION DATE 2014/02/20	RENEWAL/REUOCATION DATE	
PRINCIPAL PLACE OF BUSINESS 2582 SOUTH ROAD MARLBORO, VT 05344			PHONE NUMBER (646) 470-8136
REGISTERED AGENT CAPITOL SERVICES, INC. 1675 S STATE ST STE B DOVER DE 19901			AGENT NUMBER 9220915
AUTHORIZED STOCK BEGIN DATE	END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
OFFICER SETH ANDREW	NAME	STREET/CITY/STATE/ZIP 2582 SOUTH ROAD MARLBORO, VT 05344	TITLE CHAIR
DIRECTORS PRINCESS LYLES	NAME	STREET/CITY/STATE/ZIP 2582 SOUTH ROAD MARLBORO, VT 05344	TITLE
STACY BIRDSELL	NAME	2582 SOUTH ROAD MARLBORO, VT 05344	TITLE
MARCELLINA BLOW-CUMMINGS	NAME	2582 SOUTH ROAD MARLBORO, VT 05344	TITLE
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR) SETH ANDREW 2582 SOUTH ROAD MARLBORO, VT 05344 US		DATE 2020/07/20	TITLE PRESIDENT

From: [Aladro, Courtney \(AGO\)](#)
To: [Curtis, Christopher](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 9:46:59 AM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Christopher,

Thank you for sending, and for the follow up – perfect timing, I’m reading through it now. We’ll reach out with any questions.

I hope you are well.

Kind regards,

Courtney

From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 9:45 AM
To: Aladro, Courtney (AGO) [REDACTED]
Subject: RE: In re: Marlboro College

Dear Director Aladro,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

PRIVILEGED & CONFIDENTIAL COMMUNICATION: This communication may contain information that is privileged, confidential, and exempt from disclosure under applicable law. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you are not the intended recipient (or have received this E-mail in error) please notify the sender immediately and destroy this E-mail. Please consider the environment before printing this e-mail.

From: Curtis, Christopher
Sent: Monday, July 20, 2020 4:10 PM
To: [REDACTED]
Cc: Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: In re: Marlboro College

Dear Director Aladro,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

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From: [Curtis, Christopher](#)
To: [Aladro, Courtney \(AGO\)](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 9:50:00 AM

Thank you.

From: Aladro, Courtney (AGO) <courtney.aladro@state.ma.us>
Sent: Tuesday, July 21, 2020 9:47 AM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: In re: Marlboro College

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From: [Curtis, Christopher](#)
To: [Aladro, Courtney \(AGO\)](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 10:58:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Aladro, Courtney (AGO) [REDACTED]
Sent: Tuesday, July 21, 2020 9:47 AM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: In re: Marlboro College

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THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College (“Marlboro College”) provided the Office of the Vermont Attorney General (“AGO”) with written notice of its intent to dispose of “all, or substantially all, of its property” through an “Asset Exchange Agreement” with Emerson College, a Massachusetts public benefit corporation located in Boston (“Emerson College”).¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. (“Democracy Builders”), a Delaware nonprofit corporation based in New York.

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO’s findings regarding the proposed dispositions referenced above.

As to the AGO’s findings: ultimately, while the AGO recognizes that Marlboro College’s impending closure is an occasion of significant and challenging import for many of the College’s students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College’s notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.³

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

³ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and

particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁴ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁵ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁴ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁵ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁶

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act, or "UPMIFA"*) or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁶ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁷ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁸ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁷ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁸ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;⁹
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹⁰
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹¹

⁹ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹⁰ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹¹ Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹² and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹³ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

¹² Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹³ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁴ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁵

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these funds, each of their respective restrictions,¹⁶ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and

¹⁴ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁵ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

¹⁶ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁷

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent such a sale produces proceeds, it is within the AGO’s purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson

¹⁷ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁸

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.¹⁹ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

¹⁸ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

¹⁹ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College's application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.*

From: [Aladro, Courtney \(AGO\)](#)
To: [Curtis, Christopher](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 4:17:13 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Will do. Are you posting this on your website, or otherwise making it public? We have a higher ed conference at the bar association here tomorrow, and I may want to mention it if it is public.

-Courtney

From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 10:58 AM
To: Aladro, Courtney (AGO) [REDACTED]
Subject: RE: In re: Marlboro College

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Aladro, Courtney (AGO) [REDACTED]
Sent: Tuesday, July 21, 2020 9:47 AM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: In re: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Christopher,

Thank you for sending, and for the follow up – perfect timing, I’m reading through it now. We’ll reach out with any questions.

I hope you are well.

Kind regards,
Courtney

From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 9:45 AM
To: Aladro, Courtney (AGO) [REDACTED]
Subject: RE: In re: Marlboro College

Dear Director Aladro,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: Curtis, Christopher
Sent: Monday, July 20, 2020 4:10 PM
To: [REDACTED]
Cc: Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: In re: Marlboro College

Dear Director Aladro,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

802-828-5586

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From: [Curtis, Christopher](#)
To: [REDACTED]
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 9:44:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Dear Director Aladro,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

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From: Curtis, Christopher
Sent: Monday, July 20, 2020 4:10 PM
To: [REDACTED]
Cc: Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: In re: Marlboro College

Dear Director Aladro,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

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THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.³

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.⁴

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

⁴ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro

College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁵ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁶ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁵ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁶ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁷

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁷ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁸ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁹ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁸ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁹ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;¹⁰
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹¹
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹²

¹⁰ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹¹ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹² Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹³ and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹⁴ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly

¹³ Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹⁴ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁵ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁶

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these

¹⁵ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁶ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

funds, each of their respective restrictions,¹⁷ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁸

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent

¹⁷ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

¹⁸ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

such a sale produces proceeds, it is within the AGO's purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁹

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.²⁰ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a

¹⁹ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

²⁰ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College’s application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.

From: [Martin Heck](#)
To: [AGO - Info](#)
Cc: [Renner, Jamie](#); [Curtis, Christopher](#)
Subject: Democracy Builders Fund I, Inc / Democracy Builders Fund, Inc. / Marlboro College
Date: Thursday, July 23, 2020 4:18:50 PM
Attachments: [10143809-9478244CFLP81LSC0MV9IMO7G \(1\).pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

Attached to this email is a copy I was able to get today from State of Delaware. It is a Annual Franchise Tax Report from Democracy Builders Fund I, Inc. It indicates the current address of its Officers and Directors at 2582 South Road, Marlboro, VT. The document was filed late, but signed by Seth Andrew on July 20, 2020.

I have submitted to your office before information that the business address of Democracy Builders Fund, Inc at 2130 Adam Clayton Powell, Jr. Blvd, New York, NY, was no longer valid. Certified mail that I sent to that address is being returned as the address is closed and no forwarding address was submitted to the post office. Additionally, that address is a luxury residential apartment that was used as a person residence by Seth Andrew and his family. He listed it on the 990's as his personal residence. The rent appears to have been paid by Democracy Builders Fund, again, according to the 990's.

Now, the directors and officers are using the campus of Marlboro College as their personal residences. The wife of Seth Andrews posted a picture and comment on her twitter account regarding the view from their new home.

The contract when signed listed his business address as
2130 Adam Clayton Powell, Jr. Blvd, New York, NY,
this was not a valid address at the time he entered the contract.

Democracy Builders Fund, Inc. and Democracy Builders Fund I, Inc. are not registered in the State of VT as a domestic corporation or a foreign corporation. It does not have a valid registration in NY as the place of business is no longer valid and appears not valid at the time the contract was signed. The place of business is still listed in Delaware at the old address.

The corporation named Democracy Builders Fund has been doing business now for some time in Vermont without domestic or foreign business registration with the Vermont Secretary of State.

I suggest that the transaction entered and approved by the AGO is not legal or valid.

If the AGO does not revoke its non objection by tomorrow morning by 9am, I will do the best that I can to ask the court for an injunction.

Sincerely,

Martin

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]

Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

State of Delaware

Annual Franchise Tax Report

CORPORATION NAME DEMOCRACY BUILDERS FUND I, INC.			TAX YR. 2019
FILE NUMBER 5485426	INCORPORATION DATE 2014/02/20	RENEWAL/REUOCATION DATE	
PRINCIPAL PLACE OF BUSINESS 2582 SOUTH ROAD MARLBORO, VT 05344			PHONE NUMBER (646) 470-8136
REGISTERED AGENT CAPITOL SERVICES, INC. 1675 S STATE ST STE B DOVER DE 19901			AGENT NUMBER 9220915
AUTHORIZED STOCK BEGIN DATE	END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
OFFICER SETH ANDREW	NAME	STREET/CITY/STATE/ZIP 2582 SOUTH ROAD MARLBORO, VT 05344	TITLE CHAIR
DIRECTORS PRINCESS LYLES	NAME	STREET/CITY/STATE/ZIP 2582 SOUTH ROAD MARLBORO, VT 05344	
STACY BIRDSELL		2582 SOUTH ROAD MARLBORO, VT 05344	
MARCELLINA BLOW-CUMMINGS		2582 SOUTH ROAD MARLBORO, VT 05344	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR) SETH ANDREW 2582 SOUTH ROAD MARLBORO, VT 05344 US		DATE 2020/07/20	TITLE PRESIDENT

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Concerning Marlboro College
Date: Monday, July 27, 2020 8:51:46 AM
Attachments: [Kevin Nov 10th.png](#)
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: David Williamson [REDACTED]
Sent: Saturday, July 25, 2020 1:18 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Concerning Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan,

The recent allowance by your office for the sale of Marlboro College to Democracy Builders Fund, and the transfer of assets to Emerson College, has brought details of the sale to light, and there are important issues stemming from what is being learned.

As you know, I wrote to you on the twenty first of last month regarding what I consider to be violations of The Uniform Prudent Management of Institutional Funds Act inherent in the deal that was constructed by the leadership of the Corporation of Marlboro College (The College). Given that the deal was allowed to proceed it seems that you did not share my opinion.

New details outline further obvious issues that I wish to bring to your attention:

1. The deal, as reported by VTDigger consists of Democracy Builders Fund assuming a \$1.5MM loan between The College and The Marlboro Music Festival, and additional payment of \$225,000, for a total valuation of \$1.725MM.
 - a. This amount is far below fair market value for the assets exchanged as any reasonable person would agree.

2. Point one begs the question of how much information The College disclosed to your office in assessing the fairness of the deal. To wit, the following points:

3. I offered to buy The College for significantly more money and considerations:
 - a. On, or about, November 10th, I wrote to the president of The College, Kevin Quigley, and offered to purchase The College, its assets, and intellectual property, for \$4.9MM.

 - b. My offer also indicated that I would maintain all faculty and staff jobs at The College and would also maintain all contracts with the exception of food service. (I have a background in managed food services, a master's degree in Hospitality and Tourism Management with a focus on food service, and a doctorate in management, and believe that I could more efficiently deliver food to The College. I am also the former Food Service Director of Marlboro College.)

 - c. Dr. Quigley responded to acknowledge his receipt of my offer but indicated that he was unable to give it consideration due to "to a binding exclusivity term in our agreement with Emerson." He further indicated that my offer of \$4.9MM was too low and was, "unlikely to generate serious consideration," with the Music Festival due to their ongoing \$13MM building project. (See attached)

 - d. I also wrote a prospectus for the revitalization of Marlboro College, which was widely circulated and was seen by the Board, The Campus Working Group, and the original task force which had advocated for the dissolution of The College.

 - e. While not included in my offer, it was documented in the Prospectus, I had secured pledges of over \$20MM towards endowment, which Dr. Quigley and The Board either knew about, or should have known about.

 - f. All of this is to say that my offer was widely known, and the veracity of my interest was understood, and yet The College decided to proceed with the acceptance of a paltry offer, far below what a reasonable person would consider fair market value.

- g. Surely this demonstrates a breach of fiduciary duty, and is a violation of the duty of care defined by the UMPIFA?
4. An established Vermont non-profit was also in possession of pledges and cash of substantially more than Democracy Builders Fund brought to offer.
- a. This group was well known to Dr. Quigley and The Board of Trustees as they had communicated their desire to save The College from liquidation and had communicated this aspiration both directly and indirectly through, letters, email distribution, public posts on social media, and numerous letters to various print media outlets.
 - b. This group, comprised of alumni, former faculty members, parents of alumni, and interested members of the community of Marlboro, is certainly more closely aligned with the mission of The College, and as such would better serve the UMPIFA's expectation of maintaining the Trust in alignment with the wishes of donors and the mission of The College.

There were also several other entities that had made it clear that they wished to do whatever they could to prevent the dissolution of The College, however with Dr. Quigley and members of the Board indicating a valuation in excess of \$10MM certainly many were driven away by cost prohibition. Still, given the fast pace of the sale, and the requirement between The College and Emerson College that the sale of the campus be completed by July 30th, 2020, it seems suspicious that Dr. Quigley and The Board did not make attempts to secure a more favorable agreement.

Further, I have reviewed the documents that The College has sent to your office that include letters from donors discharging restriction on their past contributions, however one is given to ask if they were in full possession of the required information to make those decisions. Which is to say: did Dr. Quigley and The Board communicate in good faith by letting these patrons know that there were other options put forward, or did they seek to obfuscate the position of The College for the sake of convenient expediency? I would think that the answer to this question would be important to your office, as the later would not only be a breach of fiduciary responsibility; duty of care under UMPIFA; but would also rise to the level of a crime, as I understand the legal definition of fraud.

Indeed, in the process of disclosure, did Dr. Quigley and The Board make known to your office that there had been more favorable offers proffered? If they withheld that information from you in your consideration of this disposition of assets, surely that is unacceptable.

Attorney General Donovan, while it would appear that this matter is settled, the recent information was kept from those of us with interest in the matter, and changes the entire landscape of our understanding of Dr. Quigley's and The Board's motivations, duty, and overall behavior throughout all that has transpired over these last several months. I urge to you

take a close look at this matter. If people have been misinformed or intentionally kept from the truth, in the process of making their decisions – particularly with regard to the releasing of restricted funds – that is surely not in keeping with the values of the good State of Vermont, and may even rise to the level of criminality. The latter, of course, would be more in your purview, but at the least any reasonable person must see that there are serious issues of ethics involved in this process.



As always, I am at your service, should you have any questions of me.


Most Sincerely,

Dr. David C. F. Williamson

--

David Williamson, DBA

Your offer  Inbox 

Kevin Quigley
to me, ratcliff 

David,

I acknowledge receipt of your offer to purchase the campus, Marlboro's brand and intellectual property for \$4.9m.

Marlboro is not in a position to consider it due to a binding exclusivity term in our agreement with Emerson.

You may also know that the Festival has a right of first refusal on the sale of the campus. Since the Festival is in the midst of financing a \$13m building project, it is unlikely that your offer of \$4.9m would generate serious consideration.

Nov 10, 2019, 5:02 PM

From: [Matthews, Deborah](#)
To: [Clark, Charity](#); [Diamond, Joshua](#); [Mishaan, Jessica](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Public information request
Date: Monday, July 27, 2020 3:45:10 PM
Importance: High

Sorry this is so late in getting to you. I sent two emails to Chris et al regarding Marlboro and I saw this was from "Chris" and thought it was his second acknowledgement of the emails I had sent.

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Chris Mays [REDACTED]
Sent: Monday, July 27, 2020 12:13 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Public information request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi,

I would like to request a copy of Democracy Builder's contract to purchase the Marlboro College campus. My number is [REDACTED]

Thanks,
Chris

From: [Matthews, Deborah](#)
To: [Clark, Charity](#); [Diamond, Joshua](#); [Mishaan, Jessica](#)
Cc: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Public Records Request
Date: Thursday, July 30, 2020 1:37:18 PM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 [802-595-3803](tel:802-595-3803) (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

From: Martin Heck [REDACTED]
Sent: Thursday, July 30, 2020 1:35 PM
To: AGO - Info <AGO.Info@vermont.gov>; Renner, Jamie <Jamie.Renner@vermont.gov>;
chris.curtis@vermont.gov
Subject: Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan, Mr. Renner, and Mr. Curis,

Now that the AGO has signed off on the agreement and transfers between Democracy Builders Fund, Inc, Marlboro College, and Emerson College, might it be possible not to get full, complete and **unredacted** copies of all documents submitted to the AGO?

This included most especially the complete and unredacted documents from EY Parthenon and well as the complete and unredacted Purchase and Sale Agreement between Marlboro College and Democracy Builders Fund, Inc.

Sincerely,

Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Sale of Marlboro College
Date: Thursday, July 23, 2020 1:01:53 PM
Importance: High

Deb Matthews

Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 **802-595-3803 (AGO remote number)**
E-Mail \ deborah.matthews@vermont.gov

From: Bob [REDACTED]
Sent: Thursday, July 23, 2020 11:44 AM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good Morning,

As an Alum, I'm concerned that Marlboro College may be sold to an institution or individual that may support discrimination and White Supremist doctrine. If this is true all that Marlboro College's name & what it stood for would be sullied. That's unacceptable.

Thank you,
Bob B. Little Tree '95

Sent from [Mail](#) for Windows 10

From: [Matthews, Deborah](#)
To: [Curtis, Christopher](#); [Renner, Jamie](#); [Sudbay, William](#)
Subject: FW: Stop to sale of Marlboro College
Date: Tuesday, July 21, 2020 3:22:31 PM
Importance: High

Deb Matthews
Administrative Assistant
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689 802-595-3803 (AGO remote number)
E-Mail \ deborah.matthews@vermont.gov

-----Original Message-----

From: Greg Wirtz <[REDACTED]>
Sent: Tuesday, July 21, 2020 3:19 PM
To: AGO - Info <AGO.Info@vermont.gov>
Subject: Stop to sale of Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To the Attorney General:

Please stop the sale of the Marlboro College campus to Democracy Builders. The demeanor, values, and philosophies of Democracy Builders is contrary to the values and legacy of Marlboro College, the Town of Marlboro, Windham County, and Vermont in general. Democracy Builders will only taint the legacy of Marlboro College and of the Town of Marlboro.

Respectfully yours,

Greg Wirtz, Marlboro College Class of 1976
Quakertown, PA 18951
Telephone: [REDACTED]
E-mail: [REDACTED]

From: [Curtis, Christopher](#)
To: [Christine Hughes](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 10:59:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Curtis, Christopher
Sent: Tuesday, July 21, 2020 9:40 AM
To: Christine Hughes [REDACTED]
Subject: RE: In re: Marlboro College

Dear Ms. Hughes,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy. Please accept my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

PRIVILEGED & CONFIDENTIAL COMMUNICATION: This communication may contain information that is privileged, confidential, and exempt from disclosure under applicable law. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you are not the intended recipient (or have received this E-mail in error) please notify the sender immediately and destroy this E-mail. Please consider the environment before printing this e-mail.

From: Christine Hughes [REDACTED]
Sent: Monday, July 20, 2020 5:29 PM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>

Cc: Renner, Jamie <Jamie.Renner@vermont.gov>

Subject: Re: In re: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Christopher, Thank you for your thorough, thoughtful, and timely analysis of these transactions.

Best,

Christine

On Mon, Jul 20, 2020 at 4:07 PM Curtis, Christopher <Christopher.Curtis@vermont.gov> wrote:

Dear Attorney Hughes,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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--

Christine Hughes
Vice President and General Counsel
Emerson College
[REDACTED]
Boston, MA 02116

[REDACTED]



THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.³

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

³ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. **Review Process**

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and

particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation's board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College's enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College's enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁴ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁵ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁴ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁵ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁶

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁶ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁷ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁸ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁷ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁸ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;⁹
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹⁰
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹¹

⁹ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹⁰ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹¹ Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹² and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹³ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

¹² Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹³ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁴ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁵

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these funds, each of their respective restrictions,¹⁶ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and

¹⁴ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁵ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

¹⁶ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁷

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent such a sale produces proceeds, it is within the AGO’s purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson

¹⁷ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁸

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.¹⁹ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

¹⁸ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

¹⁹ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College's application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.*

*This is a corrected version of the Notice of Non-Objection. It corrects a footnote on page 1 and reference to Democracy Builders on page 12.

From: [Curtis, Christopher](#)
To: [Christine Hughes](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 9:39:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Dear Ms. Hughes,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy. Please accept my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: Christine Hughes [REDACTED]
Sent: Monday, July 20, 2020 5:29 PM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Cc: Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: Re: In re: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Christopher, Thank you for your thorough, thoughtful, and timely analysis of these transactions.

Best,

Christine

On Mon, Jul 20, 2020 at 4:07 PM Curtis, Christopher <Christopher.Curtis@vermont.gov> wrote:

Dear Attorney Hughes,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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Christine Hughes
Vice President and General Counsel
Emerson College
[REDACTED]
Boston, MA 02116

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.³

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.⁴

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

⁴ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro

College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

- i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.**

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁵ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁶ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁵ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁶ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁷

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁷ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁸ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁹ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁸ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁹ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;¹⁰
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹¹
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹²

¹⁰ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹¹ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹² Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹³ and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹⁴ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly

¹³ Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹⁴ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁵ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁶

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these

¹⁵ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁶ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

funds, each of their respective restrictions,¹⁷ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁸

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent

¹⁷ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

¹⁸ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

such a sale produces proceeds, it is within the AGO's purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁹

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.²⁰ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a

¹⁹ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

²⁰ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.



reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College’s application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.

Your offer  Inbox 

Kevin Quigley 
to me, ratcliff 

David,

I acknowledge receipt of your offer to purchase the campus, Marlboro's brand and intellectual property for \$4.9m.

Marlboro is not in a position to consider it due to a binding exclusivity term in our agreement with Emerson.

You may also know that the Festival has a right of first refusal on the sale of the campus. Since the Festival is in the midst of financing a \$13m building project, it is unlikely that your offer of \$4.9m would generate serious consideration.

Nov 10, 2019, 5:02 PM



From: [Martin Heck](#)
To: [AGO - Info](#); [Renner, Jamie](#); [Curtis, Christopher](#); [REDACTED]
Cc: [REDACTED]
Subject: Marlboro College :/: Democracy Builders Fund, Inc. :/: real estate transfer
Date: Thursday, July 30, 2020 1:23:39 PM
Attachments: [IMG_7506.JPG.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Attorney General Donovan and attorneys for Democracy Builders Fund, Inc, and Attorneys for Marlboro College Corporation, Seth Andrew

Attached to this email is a copy of the Certified/Priority Mail sent to Democracy Builders Fund, Inc. 2130 Adam Clayton Powell Jr. Blvd, New York, NY 10027, that was returned to me this morning July 30, 2020.

The postmaster informs me that generally an item will be marked "vacant" after 6 months. It is most likely that the address of
2130 Adam Clayton Powell Jr. Blvd, New York, NY 10027
has not been used as a principal place of business for Democracy Builders Fund, Inc. for at least 6 months.

If there is any any evidence that Democracy Builders Fund, Inc. had a valid place or business at
2130 Adam Clayton Powell Jr. Blvd, New York, NY 10027 when the Purchase and Sale Agreement between Democracy Builders Fund, Inc. and Marlboro College Corporation was entered, I wish it to be provided. If it is not immediately provided or otherwise explained, I will represent that is it a fact not in dispute that Democracy Builders Fund, Inc did not have a legal place of business at 2130 Adam Clayton Powell Jr. Blvd, New York, NY 10027 at the time that it entered the purchase and sale agreement with Marlboro College Corporation.

This appears to be a fraudulent representation on the part of Democracy Builders Fund, Inc and negligent on the part of the Marlboro College Board of Trustees and the Vermont AGO to not qualify that Democracy Builders Fund has a principal place of business located in New York as represented.

Sincerely

Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

From: [Curtis, Christopher](#)
To: ["Jeff McMahan"](#)
Subject: RE: Follow-Up
Date: Tuesday, July 21, 2020 10:56:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Curtis, Christopher
Sent: Tuesday, July 21, 2020 9:40 AM
To: Jeff McMahan [REDACTED]
Subject: Follow-Up

Dear Attorney McMahan,

After circulation and publication yesterday we discovered two small typos (a missing "d" at the end of a word, and a reference to "Democracy Builders" that was supposed to be a reference to "Emerson College"). They do not substantively affect the notice issued. Please accept this corrected copy. Please accept my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.³

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

³ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and

particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁴ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁵ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁴ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁵ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁶

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁶ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁷ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁸ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁷ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁸ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;⁹
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹⁰
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹¹

⁹ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹⁰ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹¹ Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹² and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹³ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

¹² Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹³ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁴ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁵

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these funds, each of their respective restrictions,¹⁶ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and

¹⁴ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁵ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

¹⁶ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁷

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent such a sale produces proceeds, it is within the AGO’s purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson

¹⁷ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁸

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.¹⁹ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

¹⁸ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

¹⁹ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College's application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.*

From: [Curtis, Christopher](#)
To: [Jeff McMahan](#)
Subject: Follow-Up
Date: Tuesday, July 21, 2020 9:39:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Dear Attorney McMahan,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy. Please accept my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
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Office of the Attorney General
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109 State Street
Montpelier, VT 05609
802-828-5586

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July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.³

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.⁴

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

⁴ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro

College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁵ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁶ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁵ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁶ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁷

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁷ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁸ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁹ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁸ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁹ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;¹⁰
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹¹
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹²

¹⁰ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹¹ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹² Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹³ and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹⁴ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly

¹³ Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹⁴ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁵ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁶

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these

¹⁵ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁶ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

funds, each of their respective restrictions,¹⁷ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁸

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent

¹⁷ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

¹⁸ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

such a sale produces proceeds, it is within the AGO's purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁹

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.²⁰ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a

¹⁹ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

²⁰ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College’s application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.

From: [Renner, Jamie](#)
To: [Jeff McMahan](#)
Cc: [Curtis, Christopher](#)
Subject: Public Records Act appeal
Date: Friday, July 24, 2020 4:58:27 PM

Jeff:

To confirm what I relayed in our phone call just now (and add one point reflected in bullet #3 below):

As part of addressing an administrative appeal under the Public Records Act relating to our Office's redaction of certain correspondences/documents transmitted to us by Marlboro College in connection with its transactions with Emerson College and Democracy Builders, we wanted to confirm that we have not redacted any information from the public that should be disclosed. To that end, we would ask that by close of business on Tuesday or as soon as possible otherwise, Marlboro College:

- 1) Re-review all correspondences/documents sent to our Office regarding restricted endowment funds;
- 2) Confirm (through proposed redactions) where information within those correspondences/documents reflects:
 - The name of a donor **and**
 - The college has personal knowledge that the name (in connection with the donation) has NOT been publicized.
 - If the college does not have personal knowledge of whether the donor's name (in connection with the donation) has been publicized, but has a written record from the donor requesting that the donor's donation remain discrete, the College should redact the donor's name.
- 3) Finally, whether or not a donor's name has been held in confidence or publicized (or the college lacks personal knowledge either way), the College should confirm (through proposed redactions) where information in correspondences/documents reflect a donor's **personal** (vs. business):
 - Home address (**except that the town & state must remain unredacted**)
 - Telephone number;
 - Email address; and
 - Other personal identifiers (except, of course, the donor's name, unless redaction on that front is supportable per the criteria above).

Please confirm receipt of this email. Please again note #3 above, which we didn't discuss by phone. And please let me know if you have any questions regarding the above.

Regards,
Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

From: [Curtis, Christopher](#)
To: [Aladro, Courtney \(AGO\)](#)
Subject: RE: In re: Marlboro College
Date: Tuesday, July 21, 2020 4:43:00 PM

Hi Courtney,

Yes, it is posted to our website and both the notice and a press release went out yesterday. The notice posted on the web has been updated with the corrected copy.

Thanks.

Best, Christopher

From: Aladro, Courtney (AGO) [REDACTED]
Sent: Tuesday, July 21, 2020 4:17 PM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: In re: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Will do. Are you posting this on your website, or otherwise making it public? We have a higher ed conference at the bar association here tomorrow, and I may want to mention it if it is public.

-Courtney

From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 10:58 AM
To: Aladro, Courtney (AGO) [REDACTED]
Subject: RE: In re: Marlboro College

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Aladro, Courtney (AGO) [REDACTED]
Sent: Tuesday, July 21, 2020 9:47 AM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: In re: Marlboro College

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Christopher,

Thank you for sending, and for the follow up – perfect timing, I’m reading through it now. We’ll reach out with any questions.

I hope you are well.

Kind regards,

Courtney

From: Curtis, Christopher <Christopher.Curtis@vermont.gov>

Sent: Tuesday, July 21, 2020 9:45 AM

To: Aladro, Courtney (AGO) [REDACTED]

Subject: RE: In re: Marlboro College

Dear Director Aladro,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”. They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: Curtis, Christopher

Sent: Monday, July 20, 2020 4:10 PM

To: [REDACTED]

Cc: Renner, Jamie <Jamie.Renner@vermont.gov>

Subject: In re: Marlboro College

Dear Director Aladro,

Attached please find a notice of non-objection to proposed transaction(s) of Marlboro College subsequent to our review of the same.

Thank you for your time and consideration.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: [Curtis, Christopher](#)
To: [Martin Heck](#)
Cc: [Renner, Jamie](#)
Subject: RE: Public Records Request
Date: Tuesday, July 21, 2020 4:42:00 PM

Dear Mr. Heck,

Thank you for calling me today to confirm and clarify your request.

You requested an appeal of any documents produced to date from Marlboro College, Emerson College, or Democracy Builders Fund, Inc., that have been withheld or redacted in response to your original public records request – with the exception of citizen correspondence that has been redacted of personally identifiable information (like personal phone, email, mailing address or place of residence).

You also asked that I relay your concern that other documents received that have been responded to in the form of a notice of additional time for review you wish to have produced immediately.

And, you asked that I relay your concern that the time for review of documents should have been extended beyond 20 days of the original notice date.

Per your request, I am notifying Chief Deputy Joshua Diamond of your appeal for the aforementioned documents and your related concerns.

Thank you for your time and consideration.

Best, Christopher

From: Curtis, Christopher
Sent: Monday, July 20, 2020 3:33 PM
To: Martin Heck <martin@savevermontcolleges.org>
Cc: Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: RE: Public Records Request

Dear Mr. Heck,

Thank you for your message. You write below: "I also wish unredacted copies of everything immediately or with an explanation of who redacted what and why."

You have a right to appeal any information that may have been withheld or redacted to the head of agency (in this case Chief Deputy Joshua Diamond), who then must respond within five (5) business days. See 1 V.S.A. § 318(c)(1) ("(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal.").

To be clear: if you wish to appeal a production or withholding of this office, please identify which document(s) you believe has/have been withheld (or redacted) in error or by exception so that we may identify and review it/them.

For example, in the past you seemed to accept that personally identifying information of a citizen may properly be withheld (personal telephone numbers, email addresses, and specific mailing or home address to protect the privacy of those individuals) (with the exception of name and general location (town) of the correspondent). Are you now requesting production of, or appealing redaction of personally identifying information? Please confirm. This is why I am asking for clarification of the above.

Please confirm whether the above constitutes a formal appeal, and if so, which redacted documents you are appealing – after which I will forward your request to Mr. Diamond. Thank you.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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From: Martin Heck [REDACTED]
Sent: Monday, July 20, 2020 1:23 PM
To: AGO - Info <AGO.Info@vermont.gov>
Cc: Curtis, Christopher <Christopher.Curtis@vermont.gov>; Renner, Jamie <Jamie.Renner@vermont.gov>
Subject: Public Records Request

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Mr. Attorney General Donovan,

It is my position that you are not complying with law.

Please consider an appeal to be made regarding your decision to deny timely access to public documents.

I believe it is not the first time that your office has had a problem in this area.

I appears from the most recent email from Mr. Renner, that you received recently, perhaps today, yet more

documents from Marlboro College. Although the documents were just received, Mr. Renner previously indicated that the 20 day clock the AGO has to evaluate the situation will not be reset. So the AGO is saying that the documents cannot be provided to be without implement this 10 day extension rule, however the AGO feels confident it can make its decision on the documents with in a day or two.

I read the law on this a little and there appears to be circumstances that indicate your option to delay the documents does not apply to an urgent situation, which I believe this to be.

I feel that you have failed in your obligations to protect the interests Vermont nonprofit colleges, specifically Marlboro College. I feel that you had an obligation a long time ago to take actions to remove this board of trustees for their breach of fiduciary responsibility to The Corporation of Marlboro College.

I seek today a commitment from you that you reset the 20 day timeframe your office has to evaluate the situation, consistent with the dates that you received the additional required information.

I also wish unredacted copies of everything immediately or with an explanation of who redacted what and why. I find it remarkable that lawyers for Marlboro College feel that they have the right to redact information from the AGO that is relevant to the review. Equally remarkable is that your office feels it can deny or hinder public documents. I am also concerned with the conversations by phone conducted between your office and the various Marlboro college lawyers. These communications should be recorded and on the record.

I intent to ask the court today for help to get documents from your office as well as stop the progress until such documents are produced and given to the public without illegal redactions. Once that occurs, your 20 day review clock can begin perhaps, however, I feel there is enough evidence in front of your today to begin the process of removing the current board of trustees of The Corporation of Marlboro College.

Martin Heck

Martin Heck
Director
Save Vermont Colleges Corporation
[REDACTED]
Putney, VT 05346

Tel: [REDACTED]

<https://SaveVermontColleges.org/>

From: [Save Marlboro College](#)
To: [Renner, Jamie](#); [AGO - Info](#); [Curtis, Christopher](#)
Subject: Re: Your Public Records Request
Date: Friday, July 24, 2020 7:48:58 PM
Attachments: [Outlook-horizontal.png](#)

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Mr. Renner, Mr Curtis, Mr AG Donovan,

What is the direct contact information for Deputy Attorney General Josh Diamond.

What is the direct contact information for Attorney General Donovan?

I also am requesting ALL information about ALL complaints regarding the Vermont AGO in regarding to failure to comply with the law regarding release of information under public records request.

I believe that I have come across news articles in the past that indicate the VT AGO has violated this law.

It is my contention that the VT AGO has egregiously violated the law again in order to facilitate an illegal transfer of assets.

On a more personal note I feel that you and Christopher Curtis lied to me. You both indicated that you cared about nonprofits in Vermont and would work diligently to protect them. Your behavior, as well as that as Donovan, I believe to be in serious breach of your duties to protect Vermont Nonprofit exempt corporations. You not only failed to act in the best interest of the corporation, you actually abused or broke the law in order to hurt it. You misapplied the laws regarding the release of public documents, likely at the request of the parties attorneys in your private secret telephone conversations with them. You indicated that Ernest Young Parthenon has a right to privacy , but you offer no documents as to who made the request. I expect that document to be provided to the public in full without redactions. I believe it is one of the many documents that show the Marlboro College Board or Trustees serious violated their fiduciary responsibilities to the Corporation in favor of the teaching staff that were instruments in giving EY Parthenon their marching orders.

The AGO has not met its obligations under the law, and actually deliberately violated the law in order to facilitate this illegal transfer of assets in a very secret, clandestine and non transparent manner.

It's my intention to to the best that I can to bring your very dishonest and corrupt AGO to justice.

I will anticipate your full cooperation in receiving the documents and information requested and, now that the first part of the sale and transfer is completed, will hope that your motivation to evade your legal obligations for the release of information and documents might at least pretend to comply with the law.

I am sorry that I have not an appropriate salutation for the end of this letter, I am furious with you, Chris and AG Donovan, I feel that you each of you violated your responsibilities to protect this entity none as The Corporation of Marlboro College and each of you violated the oath of your office, and let down ever man, women, and child in the State of Vermont.

Martin Heck



Martin Heck

Save Marlboro College, Director



Putney, Vermont 05346

<http://www.savemarlborocollege.org>

From: Renner, Jamie <Jamie.Renner@vermont.gov>

Sent: Friday, July 24, 2020 2:10 PM

To: Save Marlboro College [REDACTED]

Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

Subject: Your Public Records Request

Mr. Heck:

Attached are documents responsive to your Public Records Act Request regarding Marlboro College. As follow up to my correspondence of July 20, the attachment consists of additional documents provided to our Office by Marlboro College on July 17 (i.e. additional to those we produced to you yesterday). There are no redactions within the attached documents.

Please note, per my correspondence of July 20, we continue to review the unredacted Asset Exchange Agreement--an attachment to a correspondence hereby produced--for potential redaction, but will produce said document to you in a timely manner per my correspondence to you of July 20 and the Public Records Act.

As you're aware, appeals under the Public Records Act may be made directly to Deputy Attorney General Josh Diamond.

Regards,
Jamie

Jamie Renner
Assistant Attorney General

Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

From: [Curtis, Christopher](#)
To: [Daniel Richardson](#)
Subject: RE: Follow-Up
Date: Tuesday, July 21, 2020 10:57:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Please use this version. On reflection, we decided to include a reference to the corrections in the document itself so the public will be aware of the changes. That is contained in this version by asterisk at the conclusion. Footnote numbering has also been corrected. Thanks.

CC

From: Daniel Richardson [REDACTED]
Sent: Tuesday, July 21, 2020 9:47 AM
To: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Subject: RE: Follow-Up

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Dear Attorney Curtis,

Thank you for the corrected letter. Both copies seem to be missing footnote 3. Was this footnote deleted?

Thank you for your assistance with this matter.

Best,

Dan

Daniel P. Richardson | *Attorney*
Tarrant | Gillies
Richardson | Shems **LLP**
Attorneys at Law

[REDACTED]
[REDACTED]

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From: Curtis, Christopher <Christopher.Curtis@vermont.gov>
Sent: Tuesday, July 21, 2020 9:41 AM

To: Daniel Richardson [REDACTED]

Subject: Follow-Up

Dear Attorney Richardson,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL'S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College ("Marlboro College") provided the Office of the Vermont Attorney General ("AGO") with written notice of its intent to dispose of "all, or substantially all, of its property" through an "Asset Exchange Agreement" with Emerson College, a Massachusetts public benefit corporation located in Boston ("Emerson College").¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. ("Democracy Builders"), a Delaware nonprofit corporation based in New York.

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO's findings regarding the proposed dispositions referenced above.

As to the AGO's findings: ultimately, while the AGO recognizes that Marlboro College's impending closure is an occasion of significant and challenging import for many of the College's students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College's notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.³

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

³ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and

particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁴ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁵ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁴ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁵ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁶

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act*, or "UPMIFA") or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁶ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁷ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁸ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁷ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁸ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;⁹
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹⁰
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹¹

⁹ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹⁰ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹¹ Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹² and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹³ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

¹² Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹³ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁴ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁵

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these funds, each of their respective restrictions,¹⁶ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and

¹⁴ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁵ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

¹⁶ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁷

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent such a sale produces proceeds, it is within the AGO’s purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson

¹⁷ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁸

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.¹⁹ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

¹⁸ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

¹⁹ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College's application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.*

From: [Curtis, Christopher](#)
To: [Daniel Richardson](#)
Subject: Follow-Up
Date: Tuesday, July 21, 2020 9:41:00 AM
Attachments: [Marlboro Notice Final - Corrected Copy.pdf](#)

Dear Attorney Richardson,

After circulation and publication yesterday we discovered two small typos (a missing “d” at the end of a word, and a reference to “Democracy Builders” that was supposed to be a reference to “Emerson College”). They do not substantively affect the notice issued. Please accept this corrected copy with my apology for the inadvertent administrative error.

Best, Christopher

Christopher J. Curtis
Chief, Public Protection Division
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
802-828-5586

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 20, 2020

**THE VERMONT ATTORNEY GENERAL’S NOTICE OF NON-OBJECTION
TO THE PROPOSED DISPOSITION OF ASSETS BY MARLBORO COLLEGE
TO EMERSON COLLEGE & DEMOCRACY BUILDERS**

On June 29, 2020, the Corporation of Marlboro College (“Marlboro College”) provided the Office of the Vermont Attorney General (“AGO”) with written notice of its intent to dispose of “all, or substantially all, of its property” through an “Asset Exchange Agreement” with Emerson College, a Massachusetts public benefit corporation located in Boston (“Emerson College”).¹ It also provided the AGO with written notice of its intent to sell its campus² in Marlboro, Vermont, to Democracy Builders Fund, Inc. (“Democracy Builders”), a Delaware nonprofit corporation based in New York.³

This report sets forth (I) the role of the AGO in reviewing asset-dispositions by Vermont charitable nonprofit corporations; and, (II) the AGO’s findings regarding the proposed dispositions referenced above.

As to the AGO’s findings: ultimately, while the AGO recognizes that Marlboro College’s impending closure is an occasion of significant and challenging import for many of the College’s students, faculty, staff, and alumni, as well as community members of Marlboro, Vermont, the AGO finds that the proposed transactions are consistent with relevant state laws governing charitable nonprofit corporations and their assets. Accordingly, the AGO issues this Notice of Non-objection to the proposed transactions.

¹ Marlboro College provided the AGO with written notice and related documents regarding its proposed Asset Exchange Agreement with Emerson College on June 26 and June 29, 2020. It provided the AGO with written notice and related documents regarding its proposed Purchase and Sale Agreement with Democracy Builders on June 2 and June 5, 2020. The AGO considered Marlboro College’s notice of both transactions effective June 29, 2020.

² And certain related assets, per the proposed Purchase & Sale Agreement.

I. The Role of the Attorney General in Reviewing Asset Transfers by Charitable Nonprofit Organizations

The Office of the Vermont Attorney General (“AGO”) is empowered to ensure that charitable nonprofit corporations operating in Vermont—called “public benefit corporations”—use their assets in line with (1) their charitable purposes and (2) certain potential additional restrictions governing a specific asset’s use, such as the terms of a charitable trust or gift instrument.⁴

Accordingly, under Vermont state law, at least twenty days before a public benefit corporation “disposes of all, or substantially all, of its property,” it is required to provide the AGO with notice of that transaction. 11B V.S.A. § 12.02(g). This notice-requirement allows the AGO to review:

- what the purpose of the relevant public benefit corporation is;
- what the corporation’s assets are;
- whether any of the corporation’s assets are subject to certain kinds of specific restrictions, such as the terms of a charitable trust or gift instrument;
- how the corporation is proposing to dispose of its assets; and,
- whether the corporation’s proposed disposition of its assets aligns with the corporation’s purpose and asset-restrictions.

While the AGO also reviews the rationale behind the public benefit corporation’s decision to dispose of these assets in the proposed manner, public benefit corporations have wide latitude in making such business decisions. *See generally* 11B V.S.A. § 8.30 (“General Standards for Directors”); 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”) In turn, the AGO has limited authority to challenge such decisions. *See, e.g.*, 11B V.S.A. § 3.03 (authorizing the Attorney General to challenge a corporate action only if the corporation lacked the “power to act” in the manner in question).

Ultimately, if the AGO has concern that a proposed disposition of charitable assets—or aspects of the same—are inconsistent with Vermont state laws, then, depending on the circumstances, it may seek court intervention. However, if the AGO determines that a proposed disposition of assets under 11B V.S.A. 12.02(g) is (1) within the public benefit corporation’s legal power and (2) aligns with the corporation’s charitable purpose and any specific legal restrictions on those assets, then the AGO’s practice is to issue a Notice of Non-objection, such as this one.

⁴ *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act”); and Title 14A, Vermont Statutes Annotated (“Trusts”).

II. The AGO Review Process & Findings as to the Proposed Disposition of Assets by Marlboro College

Below is an overview of the AGO's review process and findings regarding the proposed disposition of assets by Marlboro College.

a. Review Process

In order to review (1) Marlboro College's decision to wind down its affairs and consolidate its assets with those of another educational institution and (2) Marlboro College's proposed disposition of assets as to Emerson College and Democracy Builders, in particular, the AGO inspected:

- information and records reflecting this decision's rationale, including:
 - a written narrative by Marlboro College's Board of Trustees describing its decisions to wind down the College's affairs and enter into the proposed transactions;
 - Marlboro College's audited financial statements for FYs 2017-2019 and unaudited financial statement as of February 29, 2020;
 - Marlboro College's financial projections as of February 2019;
 - Ernst & Young / Parthenon's financial projections regarding Marlboro College as of February 2019;
 - correspondences between Marlboro College and its accreditor (the New England Association of Schools and Colleges / New England Commission of Higher Education) from 2015-'19;
 - the recommendation of a Marlboro College Campus Working Group regarding the future use and sale of the Marlboro College campus; and
 - related Marlboro College Board of Trustees meeting minutes;
- information and documentation related to the respective purposes of Marlboro College, Emerson College, the proposed Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College ("MIEC"), and Democracy Builders, including relevant articles of incorporation, bylaws, Internal Revenue Service 501(c)(3) Determination Letters, and documents reflecting the MIEC's intended academic programming;
- information and documents regarding Marlboro College's assets, including Marlboro College's endowment and its 46 restricted endowment funds; and,
- the legal documents memorializing the proposed disposition of assets in question, including the (1) Asset Exchange Agreement between Marlboro College and Emerson College ("AEA") and (2) Purchase and Sale Agreement between Marlboro College and Democracy Builders.

Additionally, on January 23, 2020, and July 7, 2020, the AGO met with Marlboro College's counsel, President, Chief Financial Officer, other representatives of Marlboro

College's Board of Trustees, and (on July 7) a Marlboro College faculty representative to discuss the proposed transactions and address the AGO's questions regarding them. Further, prior to and particularly during the AGO's 20-day review period, the AGO and Marlboro College's counsel conferred on a regular basis to address the AGO's questions and information/document-requests regarding the transactions in question.

Finally, the AGO reviewed all correspondences to it by members of the public regarding the proposed transactions in question.

b. Findings

As a result of the review process described above, the AGO finds that Marlboro College was and is within its rights to decide to wind down its affairs as an educational institution and consolidate its assets with those of another institution of similar purposes. Further, the proposed dispositions of assets to Emerson College and Democracy Builders, in particular, are consistent with Vermont laws governing nonprofit corporations.

i. Marlboro College was within its rights to decide to wind down its affairs and consolidate its assets with those of another educational institution.

By way of legal background, Vermont laws permit public benefit corporations to wind down their affairs in various manners, including through dissolution (11B V.S.A. §14.01 *et seq.*), mergers (11B V.S.A. §11.01 *et seq.*), sales of assets (11B V.S.A. §12.02 *et seq.*), and transfers of assets otherwise (11B V.S.A. §12.02 *et seq.*). Indeed, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws otherwise. *See, e.g.*, Andover-Newton Theological School transfer of assets to Yale University Divinity School.

Regarding Marlboro College: between 2009 and the present, Marlboro College’s enrollment and net tuition revenue have dramatically declined such that the College is currently operating at a multi-million-dollar annual deficit and is no longer financially sustainable. By way of illustration, in the 2009-'10 academic year, Marlboro College enrolled 310 students, charged net tuition revenues of \$7.2M, and drew \$1.5M from its endowment. By the 2018-'19 academic year, Marlboro College’s enrollment had dropped to 142 (-52%), net tuition revenues had fallen to less than \$2M (-72%), and the College drew \$5.2M (+200% increase) from its endowment and other reserves.

Since at least FY2015, Marlboro College has been operating at a deficit. Between FY2015 and FY2019, its operating deficit increased from (-)\$0.7M to (-)\$3.9M. Marlboro College projects that, to fund the continued costs of operating at such (increasing) deficits, it would likely be required to spend down its endowment (approximately \$29M as of April 2020) at double-digit (\$M) levels annually.

While Marlboro College undertook an array of efforts to improve its financial sustainability between 2009 and 2019,⁵ these efforts were ultimately unavailing. In fact, during these years, the College’s financial position continued to deteriorate, causing the Board of Trustees to conclude, in February 2019, that continuing the College on a stand-alone basis was financially unsustainable. The Board’s then-consultant, Ernst & Young / Parthenon, concurred in this conclusion.

Given these circumstances, Marlboro College’s Board of Trustees subsequently determined that some form of alliance with another educational institution was preferable to outright closure, as an alliance could potentially “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus.” *Narrative of Marlboro College’s Efforts to Maintain its Independence*, at 4. After undertaking substantial efforts to solicit, consider, and negotiate proposals of other educational institutions that were potentially interested in some such form of alliance,⁶ the Board of Trustees identified Emerson College as a potential alliance partner—and one preferable to potential alternatives in light of Emerson College’s apparent financial sustainability; alignment with Marlboro College’s values and pedagogy; and willingness to integrate Marlboro College’s faculty, students, and core pedagogy into a “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College,” as described further below.

Meanwhile, in December 2019, Marlboro College’s accreditor, the New England Commission of Higher Education (“NECHE”), indicated to Marlboro College that it “concurred” that a successful merger with another educational institution was the “only way” Marlboro College could address the enrollment and financial trends that would otherwise put its accreditation at significant risk. *See Letter from NECHE to Marlboro College*, dated December 19, 2019, at 2.

Thus, on May 16, 2020, in conformity with Article VII of Marlboro College’s Bylaws, which authorizes the Board of Trustees to dissolve Marlboro College or enter into mergers and/or partnerships otherwise, the Board of Trustees voted unanimously in favor of a resolution to consummate the proposed disposition of assets as to Emerson College (excepting its campus and related assets, as addressed below in section II(b)(iii)).

⁵ Including the development and implementation of a Task Force on the Future; dual enrollment courses with Brattleboro High School; summer programs for high school students; revised marketing and admission approaches; a new Strategic Plan; a Six College Collaborative to facilitate cross-enrollment; a Beautiful Minds competition; the Renaissance Scholarship program; an expanded experiential learning curriculum; and the “Marlboro Promise.” Additionally, the College implemented a spending freeze, reduced employee health care benefits, and eliminated staff positions. Most recently, the College implemented a Strategic Options Task Force to explore ways in which to “preserve Marlboro’s ‘DNA’ relating to its identity, pedagogy, people and campus,” and hired an expert educational consultant, Ernst & Young/Parthenon, to assist its process.

⁶ For example, in July 2019, Marlboro College entered into a letter of intent to merge with the University of Bridgeport (CT). For reasons not pertinent here, that transaction was not consummated.

Given Marlboro College's (1) current financial position and projections, (2) inability to restore the College to a financially sustainable position despite substantial efforts in that regard, and (3) likelihood of loss of accreditation should it continue operations in a stand-alone manner, Marlboro College's Board of Trustees was within its rights under Vermont state laws governing public benefit corporations to wind down Marlboro College's affairs through an alliance with another educational institution. In fact, as discussed below, Marlboro College has undertaken laudable effort to maximize the extent to which its charitable purpose and charitable assets could "live on," given the College's evident inability to operate independently in a financially sustainable manner.⁷

- ii. Marlboro College's proposed disposition of assets to Emerson College is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, Vermont public benefit corporations are required to apply their assets in a manner that is consistent with their charitable purposes and any restrictions on those assets' use per the terms of a gift instrument or charitable trust. *See, e.g.*, 11B V.S.A. §14.30 (reflecting the requirement that public benefit corporations apply their assets to their respective purposes); 11B V.S.A. §17.05 (defining "public benefit corporations" as corporations required, "upon dissolution," to "distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section..."); 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms).

Accordingly, when a public benefit corporation disposes of "all, or substantially all" of its assets to another public benefit corporation, state law requires that the disposition be consistent with the corporation's purposes. Practically speaking, where a public benefit corporation is disposing of its assets to another charitable nonprofit corporation, this calls upon the AGO to evaluate whether the charitable purposes of these corporations are sufficiently similar.

Further, if the assets of a public benefit corporation are restricted by the terms of a gift instrument (under the *Uniform Prudent Management of Institutional Funds Act, or "UPMIFA"*) or charitable trust (under the *Vermont Trust Code*), those assets must be disposed of in a manner that is consistent with the relevant restrictions' terms, absent statutory exceptions or court approval otherwise. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a "charitable institution" to use a restricted "institutional fund" consistent with the terms of the relevant "gift instrument."); 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their intended uses per their respective terms).

Here, for the reasons set forth below, the AGO finds that (1) the charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are (and/or will be, pending consummation of the proposed transaction) sufficiently similar to support the proposed

⁷ Marlboro College also sought to maximize outcomes for its current faculty and students, given its determination that it could no longer sustainably operate on a stand-alone basis.

disposition of assets from the former to the latter and (2) the proposed disposition of assets by Marlboro College is consistent with, and will require continued adherence to, the terms governing the College's restricted assets.

1. The charitable purposes of Marlboro College and the proposed Marlboro Institute at Emerson College are substantially similar.

Marlboro College is a public benefit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization. Per its Articles of Association, the purpose of Marlboro College is to “maintain[] an educational institution of higher learning offering instruction in courses of post-secondary grade, and awarding to the students satisfactorily completing the same the degree of Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Business Administration or Master of Science, or such other equivalent degrees as shall be voted by the Trustees.”

In practice, Marlboro College's primary purpose has been to provide for (1) a four-year undergraduate course of self-directed, liberal arts, interdisciplinary study and (2) the “Marlboro Promise” that, whatever course of study Marlboro College undergraduate students pursue, they learn the following practical skills needed for “success,” however they define that term:

- to “Write and communicate with clarity and precision;”
- “Live, work and collaborate with a wide range of people;” and,
- “Lead ambitious projects from idea to execution.”

Also in practice, Marlboro College's purpose is embodied in its current faculty, who, through their teaching (in both substance and approach), most immediately reflect how the College's purpose—including the “Marlboro Promise”—are operationally delivered to undergraduate students.

Like Marlboro College, Emerson College is a public benefit corporation⁸ recognized by the Internal Revenue Service as a 501(c)(3) organization. Per Emerson College's bylaws,⁹ the purposes of Emerson College are to, among other things:

- “Give a general education such as is obtained in college with special reference to perfection in speech, drama, and other communication arts, with authority to confer, in addition to the degree of Bachelor of Literary Interpretation[]; the degree of Bachelor of Arts[]; the degree of Master of Arts []; the degrees of Bachelor of Science in Speech and Master of Science in Speech (changed to Master of Science in Communication Disorders in 2007), and the honorary degrees of Master of Arts, Doctor of Humanities, Doctor of Literature, and Doctor of Laws; the degree of Bachelor of Music; the degrees of Bachelor

⁸ Emerson College is a public benefit corporation under Massachusetts law. It would likewise qualify as a public benefit corporation under Vermont law. *See* 11B V.S.A. § 1.40(28) (defining “public benefit corporation”).

⁹ While Emerson College's bylaws generally parallel its Articles of Organization, they expand upon them in pertinent ways, so are cited here instead of the College's Articles of Organization.

of Science and Bachelor of Fine Arts; the degree of Master of Fine Arts; the degree of Doctor of Philosophy in Communication Disorders;” and,

- “To nurture, encourage, educate and train students to think creatively, to work efficiently, and to achieve in practice what they envision in their imagination. To award degrees in recognition of the attainment of the practical and theoretical skills necessary to practice vocations chosen by the students. To conduct research and to document and publish the results of that research. To receive and hold gifts and grants of tangible and intangible property and to invest and reinvest the same for the aforesaid purposes.”

While the purposes of Marlboro College and Emerson College are consistent in fundamental ways (both being charitable 501(c)(3) organizations with the purpose of offering degree programs in the liberal arts and interdisciplinary studies), Marlboro College’s proposed disposition of assets involves a near-wholesale transfer of the College’s academic programming—through its core pedagogy, faculty, and supporting charitable assets—to a distinct division within Emerson College.

That is, under the proposed AEA, Emerson College is required to:

- rename Emerson College’s Institute for Liberal Arts and Interdisciplinary Studies the “Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College” (the “MIEC”);
- collaborate with Marlboro Faculty to integrate Marlboro College’s liberal arts pedagogy as embodied in the “Marlboro Promise” into the MIEC;¹⁰
- appoint and employ current Marlboro College tenured and tenure-track faculty at the MIEC or in affiliation with the MIEC;¹¹
- accept and enroll for the 2020-‘21 academic year those Marlboro College undergraduates in good standing who wish to accept such enrollment;¹²

¹⁰ Emerson College and Marlboro College faculty working groups have collaboratively created a four-year academic model for the MIEC, including, as described in the Asset Exchange Agreement, “yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience....” AEA, Appendix B.

¹¹ Following consummation of the AEA, 20 of 24 Marlboro College tenured or tenure-track faculty would transition to Emerson College. 16 would be housed within the MIEC; the remaining 4, while in other Emerson College Departments pertinent to their areas of expertise, would nonetheless maintain a secondary appointment to—and thereby a substantive affiliation with—the MIEC.

¹² Following consummation of the AEA, approximately 55 of 95 Marlboro College students would transfer to Emerson College.

- appoint two members of the Marlboro College Board of Trustees (at least one of whom must be a Marlboro alumnus) to the Emerson College Board of Trustees for a three-year term;
- use all assets transferred to it by Marlboro College under the AEA exclusively for the purposes of the MIEC;¹³ and, among other obligations,
- identify the MIEC by signage, stationery, advertising, logos, public relations and the like to include “Marlboro,” and include the name “Marlboro Institute” in diplomas awarded to students earning degrees from the MIEC.

As Emerson College stated in its request to its accreditor (NECHE) for approval of these “substantive changes” to the “nature of [its] institution,”¹⁴ these steps “will ensure that the Marlboro College legacy will live on at Emerson and that its name and distinctive educational mission will be immortalized.” *Emerson College Substantive Change Request to NECHE*, dated June 1, 2020.

Emerson College further represented to NECHE: “The new [MIEC] is crafted to uphold Marlboro’s distinctive educational promise that students can craft their own education, engage in self-directed inquiry, and bring a big idea to life from conception to execution. This legacy will live on in the new curriculum that offers an interdisciplinary liberal arts experience in an otherwise specialized environment. Students will combine liberal arts courses with professional and studies courses from across the College in a program of their own design that culminates in a senior capstone project centered on a coherent idea or solution to a problem that sparks their interest and that integrates learning across their chosen disciplines... The program captures and emphasizes the value of agency, independent thinking, and self-direction that we believe are desirable to students. It is designed to nurture independence of mind, innovative thinking, and project-based inquiry valued by employers.”

Given the substantial and intentional similarity in charitable purpose as between Marlboro College and Emerson College vis-à-vis the MIEC, Marlboro College was and is clearly

¹³ Excepting assets required to satisfy certain assumed liabilities under the Asset Exchange Agreement.

¹⁴ Educational institutions accredited by NECHE are required to submit “substantial change proposals” to NECHE when, according to NECHE, proposed institutional changes will “affect significantly the nature of the institution, its mission and objectives, its educational program, and the allocation of its resources.” See NECHE webpage regarding “Substantive Change Proposals,” available at <https://www.necche.org/institutional-reports/substantive-change-proposals/#:~:text=and%20Policy%20Revisions-.Substantive%20Change%20Proposals,not%20affect%20its%20accredited%20status>. (last visited July 15, 2020). NECHE then determines whether the proposed substantive change may be included in the institution’s accreditation. On May 29, 2020, Emerson College submitted a “substantive change proposal” to NECHE regarding the changes the terms of the AEA. On July 6, 2020, NECHE approved the proposal.

within its rights as a public benefit corporation to transfer its assets (as part of a broader effort to transfer of its academic programming) to Emerson College for the purposes of the MIEC.

2. The proposed disposition of assets by Marlboro College is consistent with, and will perpetuate, the terms governing Marlboro College's restricted assets.

By way of legal background, when a donor gives a gift to a charitable institution and the accompanying gift instrument contains restrictions on how the institution is to manage, invest, or use that donation, the charitable institution is generally required to abide by the terms of these restrictions. *See generally*, 14 V.S.A. §3411 *et seq.* (requiring a “charitable institution” to use a restricted “institutional fund” consistent with the terms of the relevant “gift instrument.”)¹⁵ Accordingly, as part of its review of Marlboro College’s proposed disposition of assets to Emerson College, the AGO reviewed the terms governing Marlboro College’s restricted endowment funds and whether the proposed disposition of these assets abides by them.

Marlboro College’s endowment includes 46 restricted endowment funds collectively worth approximately \$14M as of April 2020. The AGO reviewed all of Marlboro College’s records, as to each fund, including gift instruments, where available. The AGO then evaluated whether (1) the proposed disposition of restricted endowment funds constitutes a change in the respective fund’s purposes, management, or investment pursuant to UPMIFA, and, relatedly, (2) whether and to what extent the AEA would require Emerson College to abide by these funds’ restrictions, going forward.

Given that the purpose and design of the AEA is to perpetuate the identity, purposes and academic programming of Marlboro College at the MIEC, including facilitating the transition (en masse) of Marlboro College’s current tenured/tenure-track faculty and undergraduate students to the MIEC, the AGO concludes that Marlboro College’s transfer of restricted endowment funds to the MIEC does not constitute a change in the funds’ purposes under UPMIFA.¹⁶

Further, the AEA requires Emerson College/MIEC to abide by the governing terms of each such fund as to purpose, management, and/or investment. The AEA delineates each of these

¹⁵ A public benefit corporation that holds a specific asset in charitable trust is required to abide by the relevant charitable trust’s terms. 14A V.S.A. §101 *et seq.* (requiring charitable trusts to be applied to their respective intended uses per their respective terms). Based on Marlboro College’s representations and the AGO’s review of Marlboro College’s assets, Marlboro College does not currently hold any assets in charitable trust. Accordingly, the laws governing charitable trusts are inapplicable here.

¹⁶ Where an endowment fund’s restrictions require Marlboro College to undertake specific actions regarding the fund if and when the College ceases to operate, the AGO has confirmed with Marlboro College that it has abided by, and/or intends to abide by, the relevant restrictions.

funds, each of their respective restrictions,¹⁷ and requires that, upon closing, Marlboro College transfer to Emerson College “all gift documentation associated with the funds that comprise the endowment.” The AEA then acknowledges the funds as “encumbered” by these restrictions and requires that “spendable income from restricted Marlboro Funds... shall be expended in connection with the Institute consistent with the purposes designated by the donors.” Under the AEA, “if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute.”

For these reasons, the AGO is satisfied that Marlboro College’s proposed disposition of restricted assets to Emerson College abides by state laws governing public benefit corporations.¹⁸

iii. Marlboro College’s proposed sale of its campus and related assets to Democracy Builders is consistent with Vermont state laws governing public benefit corporations.

By way of legal background, in winding down their affairs, public benefit corporations may sell their assets. *See* 11B V.S.A. § 12.02(g) (“Sale of assets other than in regular course of activities”). Indeed, as mentioned above, a public benefit corporation “may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation’s board, if”—for a nonprofit corporation without members, like Marlboro College—“the proposed transaction... [is] approved...by the board,” 11B V.S.A. §12.02(a)-(b)(1), presuming the corporation’s board operates in conformity with applicable state laws (including “General Standards for Directors” pursuant to 11B V.S.A. § 8.30 *et seq.*) and its corporate bylaws.

Additionally, where one public benefit corporation sells assets to another charitable nonprofit corporation that would qualify as a public benefit corporation under Vermont laws, fair market value is not required. *Compare* 11B V.S.A. §12.02(a) (permitting public benefit corporation’s to sell “or otherwise dispose of” assets “for the consideration determined by the corporation’s board”) *with* 11B V.S.A. §11.02(a)(4) (requiring public benefit corporations that merge with business corporations to transfer assets equivalent to their fair market value to an organization they could have transferred said assets to in dissolution). That said, to the extent

¹⁷ The AGO cross-checked the AEA’s description of each such fund’s restrictions with available underlying fund documents to ensure the AEA honors the respective donors’ intents.

¹⁸ Marlboro College is transferring its ownership and/or right of possession of certain archival materials to the University of Vermont (“UVM”) under a Deed of Gift. The Deed requires UVM to “manage and care for these collections according to accepted professional standards and in accordance with its educational mission and objectives.” It also states that “[i]n the event that UVM can no longer house the Marlboro College Archives Collection, UVM agrees in a reasonable and professional manner to find another suitable home for the Collection and make reasonable efforts to communicate with any existing MC stakeholders regarding the status of the Collection.” To the extent these materials could arguably be considered restricted assets under express or implied terms requiring their preservation for educational purposes, Marlboro College’s disposition of these materials to UVM would be consistent with such terms.

such a sale produces proceeds, it is within the AGO's purview to review how the selling public benefit corporation applies them.

Here, as discussed above, Marlboro College was and is within its rights under state laws governing public benefit corporations to undertake the proposed transaction with Emerson College. Because Emerson College was not interested in acquiring Marlboro College's campus and related assets, Marlboro College elected to dispose of the same to a different party.

To that end, in November 2019, Marlboro College's Board of Trustees established a Campus Working Group (CWG) including Trustees, faculty, staff, students, alumni, and town and county community members to (1) retain a consultant and a broker to market the College's campus and solicit bids and (2) recommend the favored bid to the Board of Trustees for approval. Ultimately, the CWG recommended that Marlboro College accept the bid of Democracy Builders, a Delaware nonprofit corporation recognized by the Internal Revenue Service as a 501(c)(3) organization.¹⁹

According to the CWG's recommendation to the Board of Trustees, "CWG easily reached consensus to recommend Democracy Builders and its plan to develop Freedom College on the Marlboro Campus as the CWG's first choice based on the merits of Democracy Builders' proposal and financial offer. Democracy Builders' submission contained a strong and detailed proposal that: [] Is in many ways consistent with Marlboro's educational mission and strongly aligns with the historical use of the campus[;] demonstrated a strong vision, a plan, organizational capacity and a strong track record in creating and operating educational projects like Freedom College[;] showed a commitment to the community by offering to making space on the campus available to Marlboro College alumni for an alumni center, an interest in land conservation and making some campus facilities available to community activities and developing local partnerships, and potentially hiring some of the College staff who will not be moving to Emerson; and [] was compatible with the Marlboro Music Festival's summer lease. Additionally, they demonstrated a strong commitment to stewarding the campus with an interest in continued community access."

The Board of Trustees accepted the CWG's recommendation and, on May 22, 2020, Marlboro College entered into the proposed Purchase & Sale Agreement with Democracy Builders. According to the terms of the Purchase & Sale Agreement, Marlboro College is selling its campus and certain related assets to Democracy Builders for more than nominal consideration.²⁰ Consistent with then AEA, Marlboro College will transfer the proceeds of the sale to Emerson College for the purposes of the MIEC.

Based on these findings—namely, that Marlboro College is (1) selling its campus to another educational charitable nonprofit corporation for more than nominal consideration after a

¹⁹ Counsel for Democracy Builders has represented to the AGO that Democracy Builders would provide the AGO notice upon registering as a foreign corporation in Vermont and requesting and/or obtaining accreditation to operate in Vermont.

²⁰ Pursuant to at least 1 V.S.A. § 317(c)(9), given the confidentiality of the Purchase and Sale Agreement's price term prior to the sale's closing, the AGO is not publicizing said term at this time.

reasoned process of marketing the campus, soliciting and evaluating potential buyers, and selecting a winning bidder and (2) applying the proceeds of the sale to Emerson College for the purpose of the MIEC—the AGO has no basis on which to object to the proposed campus sale.

III. Conclusion

The proposed dispositions of assets by Marlboro College to (1) Emerson College for the purposes of the MIEC and (2) Democracy Builders are consistent with Vermont laws governing public benefit corporations. Accordingly, the AGO has no statutory basis on which to object.

The AGO has provided a copy this Notice of Non-Objection to the Massachusetts Office of the Attorney General to ensure continued oversight of Emerson College’s application of the charitable assets in question. It has provided a copy of this Notice to Emerson College, as well.

This Notice of Non-Objection concerns the review of the AGO pursuant to 11B V.S.A. § 12.02(g). It does not implicate the jurisdiction of any other local, state, or federal agency that may also have a role in reviewing the proposed transactions.

From: [Curtis, Christopher](#)
To: [Mays, Chris](#)
Subject: Your Public Records Request
Date: Wednesday, July 22, 2020 10:49:00 AM

Dear Mr. Mays,

Thank you for your public records request of Friday, July 17, 2020. You requested: "the findings on the Emerson/Marlboro merger and sale to Democracy Builders."

Please find the document you requested here: <https://ago.vermont.gov/wp-content/uploads/2020/07/Marlboro-Notice-Final.pdf>. If you have any questions or concerns please do not hesitate to contact me. The request has been fulfilled. If you feel this production is in error, or you wish to appeal you may do so by contacting Chief Deputy Joshua Diamond.

Best, Christopher

Christopher J. Curtis
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