TO THE CONFERENCE:

It came to my attention today that in 1972, after I came on the Court, the Virginia legislature adopted an "Educational Facilities Authority Act" which is quite similar (if not substantially identical) to the South Carolina Act involved in this case. This Virginia enactment was not a surprise as the new Constitution, effective July 1, 1971,* contained a provision (Article 10, Section 11) authorizing the legislature to "provide for a state agency or authority" to assist educational institutions in borrowing money for construction of educational facilities, provided that the primary purpose of the institution is "not to provide religious training or theological education" and provided further that "the Commonwealth shall not be liable for any debt created by such borrowing."*

I did not know until today, however, that Washington and Lee University (of which I am a Trustee) had any interest in borrowing money through the use of such a state-created authority. In a talk with the Assistant to the President there, I was informed that there have been some recent discussions of financing a proposed new dormitory complex in this manner. This is still in the "discussion stage," no decision has been made, and indeed the Virginia Authority is not yet a functioning entity.

Washington and Lee University is strictly non-sectarian, although many years ago it was of Presbyterian origin. Its board of trustees is self-perpetuating, it is privately endowed, it derives no support from any religious faith or organization, has no religious requirements

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*I served on the constitutional revision commission.

*Virginia has a very strong "Establishment" clause in its Constitution, Section 16 of the Virginia Bill of Rights having been attributed primarily to Thomas Jefferson.
as to courses, students, or faculty members. It does offer some courses in religion, on an elective basis, as a part of a broad, liberal arts curriculum.

As the only issue before us in Hunt v. McNair is the challenge to the South Carolina Act on the ground that it infringes the Establishment Clause of the First Amendment, our decision in McNair would not be applicable to Washington and Lee University. I suppose it could be said, nevertheless, that the similarity of the new Virginia statute and the possible interest of Washington and Lee in revenue bond financing of a new dormitory thereunder, might give me a bias in favor of this type of legislation even with respect to a Baptist college such as that involved in Hunt v. McNair.

I personally do not feel disqualified to participate in this case. But I bring these facts to the attention of the Conference, and would welcome and abide by the views of my Brothers. As I do not have a Court yet, there is no possibility of this case coming down prior to our next Conference. I can receive your views and we can discuss this further, if need be, at the May 11 Conference.

Sincerely,
May 4, 1973

The Honorable Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the U.S.
Supreme Court Building
Washington, D. C. 20543

Dear Mr. Powell:

Enclosed you will find copies of the Act of the General Assembly which established the Virginia College Building Authority, the draft of a statement of policies and procedures provided us by the Authority's consultants, and a memorandum which I prepared for Mr. Howe of Wheat, First Securities, Inc., at his request following our discussions with him and Mr. Ashton on April 27.

The notes and underscores in the draft statement are President Huntley's marks made upon his first reading of the original from which this copy was made.

I told President Huntley of your call and interest in the Virginia College Building Authority, and he is pleased that you may have an opportunity to examine these materials prior to the Board meeting. He has asked me to obtain from our Law Librarian information about the pending South Carolina case for his review.

Should you have any further questions requiring answers that I may be able to provide or seek, please don't hesitate to call on me.

With kindest personal regards and best wishes,

Sincerely,

Frank A. Parsons

Cc: President Huntley
Re: Mr. McNeal

(Va. Selenium)
VIRGINIA COLLEGE BUILDING AUTHORITY
CONTENTS

Statement of Policy and Procedures

Basic Structure of Financing

Form of Application for Services
The Virginia College Building Authority (the Authority) has been duly created and organized under Section 23-30.25 of the Code of Virginia of 1950, as amended, as a public body corporate and as a political subdivision and agency and instrumentality of the Commonwealth of Virginia.

The Authority is authorized under the Educational Facilities Authority Act (Chapter 3.3, Title 23, Code of Virginia of 1950, as amended) (the Act) to assist institutions for higher education in the Commonwealth (Institutions) in the acquisition, construction, financing and refinancing of Projects. In particular, the Act authorizes the Authority to issue revenue bonds and notes for any of its corporate purposes, payable solely out of its revenues; to fix, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a Project; to mortgage and pledge its revenues and any Project for the benefit of the holders of its bonds; and generally to do all things necessary or convenient to carry out the purposes of the Act.

The Authority has received requests from certain Institutions for assistance in acquiring, constructing and financing Projects and anticipates that similar requests may
hereafter be received from other Institutions. The Authority has determined that prior to making any commitment to assist any Institution it is desirable to set forth the following statement of policies and procedures to serve as a guideline for its operations:

1. In accordance with the Act, the following procedures shall control and limit the operations of the Authority:

   a) The Authority shall assist only nonprofit educational institutions in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.

   b) The Authority will assist in financing only those educational facilities which meet the definition of "Project" contained in the Act, i.e.,

   ". . . a structure or structures suitable for use as a dormitory or other multi-unit housing facility for students, faculty, officers or employees, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the foregoing or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education, and
shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended . . . "

c) The Authority shall not assist in financing any items the costs of which are customarily deemed to result in a current operating charge or any facility used or to be used for sectarian instruction or as a place of religious worship or any facility used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

2. Within the limitations set forth above and pursuant to the Act, the Authority will undertake the acquisition and construction of Projects for lease and ultimate transfer to the Institutions desiring to take advantage of the provisions of the Act, and will finance such Projects, to the extent not financed by the contributions of the institutions, by the issuance of its revenue bonds, notes and other obligations payable solely from and secured by a pledge of all rentals, revenues, receipts and income to be derived from or in connection with, and mortgages on, such Projects.

3. All bonds of the Authority, regardless of their date of issue and the manner in which the proceeds of their sale are applied, shall be issued on a parity basis and shall
have the same right, lien and preference to all the rentals, revenues, receipts and income of the Authority derived from or in connection with Projects financed by the Authority. There will be no preference, priority or distinction of certain obligations of the Authority over any other obligations. This requirement shall not, however, prevent the Authority from applying moneys received by it for the payment of all of its administrative, financing, legal and related expenses.

4. Before committing itself to provide financial assistance to any Institution, the Authority shall first obtain from the Institution and submit to the Council of Higher Education for Virginia such data descriptive of the Project, the need therefor, the proposed financing plan and the financial resources of the Institution as will permit the Authority and the Council of Higher Education for Virginia, in conjunction with the State Division of Engineering and Buildings, to evaluate the need, financial feasibility and overall merit of the Project. In considering whether to assist an Institution in the financing of a Project, the Authority shall take into consideration, but shall not be required to accept, any recommendations of the Council of Higher Education for Virginia or the State Division of Engineering and Buildings.
5. Since the success of the Authority in carrying out its purposes must necessarily depend in large measure upon the continuing financial prosperity of the Institutions it assists, it is recognized that the Authority may not be able to give financial assistance to every Institution requesting it or to give assistance to the degree requested in all instances. Each Institution applying for assistance from the Authority must therefore demonstrate to the satisfaction of the Authority that it can fully perform all of its contractual obligations under its lease with the Authority. Furthermore, no application shall be accepted unless the applicant can show to the satisfaction of the Authority that unencumbered revenues derived from reasonably collectible tuitions and income from investments and unrestricted endowment and the gross receipts to be derived from the use of or for the services furnished by the Project to be financed will equal not less than three times the average annual amount payable by the Institution to the Authority under its lease with the Authority.

6. The Authority shall not assist in the acquisition, construction, financing or refinancing of any Project begun prior to July 1, 1972, provided however that the Authority may assist in the financing of alterations, enlargements, reconstruction and remodeling of existing educational facilities and
reimburse Institutions for legal, engineering, architectural or other preliminary costs or costs of real property incurred or acquired prior to July 1, 1972, if such costs were incurred or acquired in connection with a Project financed by the Authority.

7. The Authority, in its sole discretion, shall determine whether to assist a particular Institution, whether to assist in the financing of a particular Project and the priority for undertaking the financing of Projects.

8. This statement of the Authority shall not under any circumstances be considered as constituting a contractual agreement with the holders of any bonds, notes or other obligations to be issued by the Authority, or with any Institution, or with any other person.
BASIC STRUCTURE OF FINANCINGS

The Authority will issue its revenue bonds on a parity basis without any preference, priority or distinction of certain of its obligations over any other of its obligations. All rentals, revenues, receipts and income shall be applied and pledged to the repayment of all bonds and no bonds will be issued separately by the Authority solely on the credit of one Institution. The Authority believes that only by utilizing this pooling of security approach will it be able to fully perform its purpose of providing financial assistance to the many and varied Institutions of the Commonwealth.

1. Master and Supplemental Indenture

All revenue bonds of the Authority will be issued under a master Indenture which will require the assignment of all rentals of Projects to Institutions and other revenues received by the Authority and the mortgage of all Projects to a Trustee for the equal benefit of all those who become holders of the bonds. The Trustee will be a Virginia bank. The master Indenture will contain general provisions for the form, details, payment, redemption and conditions of issuance of the bonds, the application of bond proceeds and the Authority's revenues, mandatory lease provisions, and the investment of funds by the Trustee. It will provide for the establishment and funding of a debt service reserve fund (DSRF), define what
constitutes a default on the part of the Institutions and the Authority, and provide for remedies in the event of a default. The master Indenture will also provide that each separate series of bonds will be issued under a Supplemental Indenture which will set forth the specific terms of the series, e.g., the amount, date, and denominations of the bonds, the interest rate, maturity schedule and redemption provisions.

2. Lease Requirements

The bonds of the Authority will be payable solely out of the rental payments received under leases of Projects with participating Institutions and, in the event an Institution should default in such payments, out of the DSRF. The rental for each Project shall be in an amount not less than 110% of the average annual debt service requirements of the bonds issued therefor over their amortization period, plus an amount sufficient to cover the proportionate share of the Trustee's annual fees and expenses. All leases will be net leases and will provide for the payment by the Institution of all costs and expenses of operation, maintenance, repair or replacement of the Project and will require the Institution to maintain adequate insurance against fire and other casualty.

3. Debt Service Reserve Fund

As previously noted, the master Indenture will establish the DSRF which will equally and ratably secure all revenue bonds
of the Authority. With respect to each Project, there will be deposited to the credit of the DSRF out of the bond proceeds an amount equal to 110% of the average annual debt service requirement of the bonds issued thereunder. Thereafter, all amounts received in connection with the rental of the Project remaining each year after meeting the debt service requirement for that year will be deposited to the credit of the DSRF until the balance to the credit of the Project is equal to two years' annual rental on the Project. Once two years' rental has been accumulated in the DSRF to the credit of the Project, all rentals in excess of the annual debt service requirement will be returned to the relevant Institution.

In the event an Institution defaults in making rental payments on a Project, the deficiency will be made up out of the balance standing to the account of that Project in the DSRF and, if the amount of the deficiency should exceed such balance, the excess shall be charged on a proportionate basis against the balances standing in the DSRF to the credit of all other Projects. When and to the extent that the amounts so withdrawn from the DSRF are recovered from the Institution responsible therefor, such amounts shall be deposited to the DSRF in the proportions withdrawn. After all bonds issued on account of a Project are paid in full, the balance remaining in the DSRF to the credit of that Project shall be returned to the relevant Institution.
4. Expenses

All costs incurred in connection with the issuance of the Authority's bonds, e.g., printing, bond counsel fees, underwriting and financial advisors' fees, rating agency fees, and the Trustee's acceptance fee, will be payable out of bond proceeds. Continuing expenses, such as the Trustee's annual fee, will be payable by the participating Institution as additional rent. The administrative expenses of the Authority will be payable from income earned on investment of the DSRF.
EXAMPLE OF AN AUTHORITY FINANCING

I. University A plans to build, over a two year construction period, a building estimated to cost $5,000,000.

II. Bank B will make a loan to the Authority for the construction period at a 5% rate of interest since the interest is tax exempt.

(a) The Bank Loan

<table>
<thead>
<tr>
<th>Estimated building cost</th>
<th>$5,000,000</th>
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</thead>
<tbody>
<tr>
<td>Debt service reserve fund (DSRF)</td>
<td>537,031</td>
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<tr>
<td>Interest during the construction period</td>
<td>553,703</td>
</tr>
<tr>
<td><strong>Total Bank Loan</strong></td>
<td>$6,090,734</td>
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</tbody>
</table>

(b) The full amount of the loan is taken down at the outset and invested until necessary for progress payments. It is assumed that: 1) the funds will be expended evenly over the two year construction period with payments made semi-annually; 2) the funds are invested at a 7% rate of interest; and 3) the Authority's administrative expenses are $25,000 per year.

<table>
<thead>
<tr>
<th>6 Mos.</th>
<th>Unexpended Funds</th>
<th>Less: Interest</th>
<th>Plus: Investment Income</th>
<th>Less: Disbursements (Including Administrative Fee)</th>
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<tr>
<td>1st</td>
<td>$6,090,734</td>
<td>$152,268</td>
<td>$213,176</td>
<td>$1,262,500</td>
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<td>4,889,142</td>
<td>152,268</td>
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<td>152,268</td>
<td>127,592</td>
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<td>4th</td>
<td>2,358,318</td>
<td>152,268</td>
<td>82,541</td>
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<tr>
<td>Balance in DSRF at end of construction</td>
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<td></td>
<td></td>
<td>1,026,091</td>
</tr>
</tbody>
</table>

(c)(1) Cost of building at end of construction period, including interest during construction

$5,609,072

Annual debt service required on twenty year issue of $5,850,000 at 6% assumed rate of interest

510,000

(2) Plus 10% to create one year rent reserve at 110% of annual debt service

51,000

(3) DSRF required initially

$561,000
Proceeds of $5,850,000 bond sale after expenses (2 1/2%)  5,703,750
Plus balance remaining in DSRF  1,026,091
Total proceeds from financing  $6,729,841
Less: Repayment of bank loan and funding of DSRF  $6,651,734
Balance*  $ 78,107

<table>
<thead>
<tr>
<th>Year</th>
<th>Rental</th>
<th>DSRF</th>
<th>Income on DSRF (7%)</th>
<th>Administrative Expense</th>
<th>To DSRF***</th>
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<td>99,213**</td>
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<td>1,122,000**</td>
<td>78,540</td>
<td>25,000</td>
<td>104,540</td>
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</table>

* These funds would be added to the DSRF to accelerate the accumulation of the two year DSRF.

** At this point DSRF is fully funded and excess is returned to University A. From the 8th through the 20th year annual rentals would continue at $561,000, but they would be reduced by return to University A of the earnings on the DSRF and the 10% excess payment. This would make the effective rental during this period $456,460. After the 20th year, the DSRF would be repaid to University A and the title to the project would pass to University A.

*** Income on DSRF less Administrative Expenses plus 10% to create one year rent reserve at 110% of debt service.
<table>
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<tr>
<th>Year</th>
<th>Annual Rental</th>
<th>Bonds Retired</th>
<th>Interest at 6.00%</th>
<th>Principal and Interest</th>
<th>Bonds Outstanding</th>
<th>DSRF Beginning Balance</th>
<th>Earnings on DSRF at 7.00%</th>
<th>Less Administrative Expense Fee</th>
<th>DSRF Ending Balance</th>
<th>Available to Reduce Rental</th>
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<td>78,540</td>
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<td>1,227,740</td>
<td>--</td>
</tr>
</tbody>
</table>

Average $510,150
APPLICATION FOR SERVICES
VIRGINIA COLLEGE BUILDING AUTHORITY

I. Name of Institution ____________________________ County ____________________________

Official Business Address ____________________________

City __________________ State __________________ Zip Code __________________

II. DESCRIPTION OF PROPOSED PROJECT:

<table>
<thead>
<tr>
<th>New Building(s)</th>
<th>On New Site</th>
<th>Add. to Existing Building(s)</th>
<th>Alt. to Existing Building(s)</th>
<th>Other*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
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</table>

* Other ____________________________

Location of Proposed Project ____________________________

Street or Highway Route __________________ City or Town __________________ County __________________
III. COST DATA (Estimated) - Continued

### A. STRUCTURE COST*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>2. Heating</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>3. Plumbing</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>4. Electrical</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>5. Test Borings</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>6. Provision for Water</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>7. Other Structure Costs:</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
<tr>
<td>8. Sub-total Structure</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
</tbody>
</table>

### B. Architect's Fee

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Architect's Fee</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
</tbody>
</table>

### C. Movable Furniture and Equipment

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>C. Movable Furniture and Equipment</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
</tbody>
</table>

### D. Sub-total

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>D. Sub-total</td>
<td>$______</td>
<td>$______</td>
<td>$______</td>
</tr>
</tbody>
</table>

* Complete a separate Cost Data Sheet, Items "A" - "D" for each separate building involved.

** Complete only Column 3 for new building.
III. COST DATA (Estimated) - Continued

<table>
<thead>
<tr>
<th></th>
<th>Cost of Acquiring Site*</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Include purchase price plus all other costs and fees incidental to acquisition of site)</td>
<td>$_______</td>
<td>$_______</td>
<td>$_______</td>
</tr>
</tbody>
</table>

| E2. Pre-planning Costs | $_______ | $_______ | $_______ |

| E3. Other Costs** | $_______ | $_______ | $_______ |

| E4. Total (Line D + E Items) | $_______ | $_______ | $_______ |

<table>
<thead>
<tr>
<th>F. Additional Cost</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contingencies - 2% of Total</td>
<td>$_______</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Administrative &amp; Inspection</td>
<td>$_______</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Total &quot;F&quot; Items</td>
<td>$_______</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Please answer these questions:

1. Does the site include existing buildings?

2. If answer to question "1" is "yes":
   a. What year were such buildings acquired by your College?
   b. If there any outstanding indebtedness applicable to such buildings?
   c. Does the cost of acquiring site as shown include any funds intended to repay such outstanding indebtedness? If so, how much? $________________
   d. Are there any of these buildings to which you do not contemplate additions or renovations under this project?

** Not applicable at time of original application.
III. COST DATA (Estimated) - Continued

G. Total Cost of Project (Sub-total plus Line F3) $__________

H. Less Contributions* $__________

I. Adjusted Total Cost of Project $__________

Desired Period of Amortization ___________ Years

J. Financing Costs (Do Not Complete To Be Estimated By Authority)

1. Capitalized Reserve (Line I x ) $__________

2. Bond Discount and Miscellaneous -
   ( % of Line I)** $__________

3. Capitalized Interest $__________

4. Total "J" Items $__________

K. Total Amount to be Financed Through Authority (Line I + Line J4) $__________

L. Estimated Annual Rental*** $__________

Interest Rate used in Determining
Estimated Annual Rental

* SHOW TOTAL OF CASH GRANTS ONLY. DO NOT INCLUDE IN THIS TOTAL ANY FEDERAL LOANS; SUCH LOANS WILL BE PART OF THE TOTAL AMOUNT FINANCED BY VCBA BONDS WITH SUCH BONDS SOLD DIRECTLY TO THE FEDERAL AGENCY, OR BY INTEREST SUBSIDY BY THE FEDERAL AGENCY. (SHOW THE BREAKDOWN OF GRANTS AND FEDERAL LOANS AT PART IV, PAGE 5 OF THIS APPLICATION.)

** INCLUDES COST OF BOND DISCOUNT, BOND COUNSEL, FINANCIAL ADVISOR, TRUSTEE, PRINTING AND ADVERTISING.

*** THE AUTHORITY CHARGES THE INSTITUTION EXACTLY THE SAME INTEREST RATE IT PAYS ON THE BONDS USED TO FINANCE THE PROJECT AS DETERMINED WHEN THE BONDS ARE SOLD. HOWEVER, IN ORDER FOR THE AUTHORITY TO CONSIDER AND PROCESS THE APPLICATION IT IS NECESSARY TO PROVIDE AN ESTIMATED RENT BASED ON A MAXIMUM INTEREST RATE AND SHORTEST PERIOD OF AMORTIZATION. NEVERTHELESS, THE RENT SET FORTH IN THE LEASE WILL BE BASED UPON THE ACTUAL INTEREST RATE.
IV. Contribution and Federal Aid Data

A. Private and Federal Grants

IDENTIFY EACH ITEM COMPRISING TOTAL CONTRIBUTION LISTED ABOVE AT LINE "H". (IF A FEDERAL GRANT IS INVOLVED, THE INSTITUTION MUST SUBMIT, WITH THIS APPLICATION, A COPY OF AN APPROVED GRANT AGREEMENT BEFORE THE CONTRIBUTION CAN BE CONSIDERED AS DECREASING THE AMOUNT TO BE FINANCED BY THE AUTHORITY. FURTHERMORE, THE INSTITUTION MUST BE PREPARED ON BID OPENING DAY FOR CONSTRUCTION CONTRACTS TO PAY OVER TO THE AUTHORITY, IN CASH, OR IN DEPOSIT IN A CUSTODIAL ACCOUNT UNDER CONTROL OF THE AUTHORITY SECURITIES, IN THE AMOUNT OF ALL GRANTS, BOTH PRIVATE AND FEDERAL LISTED AS CONTRIBUTIONS AT LINE "H" ABOVE. IT WILL THEN BE THE RESPONSIBILITY OF THE INSTITUTION TO REIMBURSE ITSELF BY OBTAINING THE GRANT FUNDS AS THEY BECOME AVAILABLE.)

B. Federal Loans

- LIST ONLY FEDERAL LOANS FOR WHICH YOU HAVE AN APPROVED LOAN AGREEMENT FOR THIS PROJECT. A COPY OF THE APPROVED LOAN AGREEMENT MUST BE SUBMITTED WITH THIS APPLICATION. DO NOT INCLUDE SUCH LOANS AS A CONTRIBUTION AT LINE "H" ABOVE, SINCE VCBA BONDS WILL BE ISSUED AND SOLD TO THE FEDERAL AGENCY IN THE AMOUNT AND AT THE RATE IN THE APPROVED LOAN AGREEMENT.
ARCHITECT'S CERTIFICATION

This is to certify that the estimated costs of the items comprising the total structure cost are considered to be realistic and have been made according to accepted architectural practices for developing preliminary estimates.

Signature of Architect  Date

Address

City  Zip Code

Telephone Number

(SEAL)
CERTIFICATION:

This certifies that the Board of Trustees of the ____________________________
College or University

By Resolution dated ________________ 19____ authorized the filing of this Application
and that the information herein is correct to the best of my knowledge and belief.

(SEAL)

Secretary of Board of Trustees

Address

City Zip Code

Telephone

Chairman of Board of Trustees:

Name

President of College or University

Name

Business Manager, College or University

Name

Telephone Number

City Zip Code

Telephone Number

City Zip Code
EXHIBIT "A"

Schedule of Enrollment

Include actual full-time enrollment during the regular academic term (September - June) for the 5 year period immediately preceding this application; and projected full-time enrollment during the regular academic term (September - June) for the 5 year period immediately following this application.

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Graduate</th>
<th>Undergraduate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Projected</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT "B"

Schedule of Tuition and Fees

Include actual annual fees (two semesters) being charged in the current year, and projected annual fees (two semesters) to and including either (a) the first year in which the initial rental to this Authority is due, or (b) (in the case of revenue producing projects, such as dormitories, dining facilities, or parking facilities) the first year in which income from all such facilities in the project are anticipated, whichever shall be later.

<table>
<thead>
<tr>
<th>Actual</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Year</td>
<td>Tuition</td>
<td>Room and Board</td>
<td>Other (specify)</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Projected</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Tuition</td>
<td>Room and Board</td>
<td>Other (specify)</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(The above form may be altered so long as the data is presented in a brief schedule form, appropriately footnoted if necessary.)
EXHIBIT "C"

Statement of outstanding indebtedness
(As of end of most recent full fiscal year)

<table>
<thead>
<tr>
<th>Description</th>
<th>Date of Obligation</th>
<th>Amount Issued</th>
<th>Amount Retired</th>
<th>Amount Outstanding</th>
<th>Annual Debt Service*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Total $_____ $_____ $_______ $_______

*Required annual payments for principal and interest.
EXHIBIT "D"

Annual Fiscal Report

(As of end of each of the three most recent fiscal years, to include:)

Balance Sheet
Statement of Changes in Funds
Statement of Cash Receipts and Disbursements
Opinion of Auditors
## EXHIBIT "E"

### Budget Survey

<table>
<thead>
<tr>
<th>Actual</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First Year</td>
</tr>
<tr>
<td></td>
<td>Following</td>
</tr>
<tr>
<td>Current Year</td>
<td>19_19_</td>
</tr>
</tbody>
</table>

**GROSS STUDENT TUITION***

| | First Year | Second Year | Third Year | Fourth Year | Fifth Year |
| | Following | Following | Following | Following | Following |
| | Current Year | 19_19_ | 19_19_ | 19_19_ | 19_19_ |

**RESTRICTED ENDOWMENT INCOME**

| | First Year | Second Year | Third Year | Fourth Year | Fifth Year |
| | Following | Following | Following | Following | Following |
| | Current Year | 19_19_ | 19_19_ | 19_19_ | 19_19_ |

**UNRESTRICTED GIFTS AND GRANTS**

| | First Year | Second Year | Third Year | Fourth Year | Fifth Year |
| | Following | Following | Following | Following | Following |
| | Current Year | 19_19_ | 19_19_ | 19_19_ | 19_19_ |

**LOSS PROJECT RECEIPTS**

| | First Year | Second Year | Third Year | Fourth Year | Fifth Year |
| | Following | Following | Following | Following | Following |
| | Current Year | 19_19_ | 19_19_ | 19_19_ | 19_19_ |

---

* DEDUCT THEREFROM AMOUNT OF TUITION SPECIFICALLY PLEDGED FOR SECURITY OF OUTSTANDING DEBTS. PLEASE INDICATE BY FOOTNOTE THE EXTENT OF ANY SUCH PRIOR PLEDGE MADE ON ACCOUNT OF A FEDERAL LOAN.

** PROJECTS INVOLVING DORMITORIES WILL SHOW OCCUPANCY CHARGES AS RECEIPTS. PROJECTS INVOLVING CLASSROOM FACILITIES, GYMNASIUM, ETC. WILL NORMALY NOT SHOW PROJECT RECEIPTS.
Dear Lewis:

It sounds as if Washington and Lee's borrowing under the Virginia Act which you describe in your memorandum of May 4th would not, even under the most sweeping arguments of the proponents of the Establishment Clause argument, violate that clause. The only conceivable argument as to Washington and Lee's interest in the outcome of this decision, then, would be that if Virginia cannot make this aid available to "sectarian" as well as to "non-sectarian" colleges, it might repeal it altogether. This is so speculative and remote that I certainly don't feel you should disqualify yourself.

Sincerely,
Dear Lewis:

I have your memo on 71-1523, *Hunt v. McNair*. I see no reason whatsoever for your disqualification to sit in the case.

Mr. Justice Powell

cc: The Conference
RE: No. 71-1523 - Hunt v. McNair

Dear Lewis:

I can see no possible reason for your disqualifying yourself in the above for the reason mentioned in your memorandum of May 4.

Sincerely,

Mr. Justice Powell

cc: The Conference
May 7, 1973

No. 71-1523, Hunt v. McNair

Dear Lewis,

Based upon the information contained in your thoughtful memorandum of May 4, I see no reason whatever why you should disqualify yourself in this case.

Sincerely yours,

Mr. Justice Powell

 Copies to the Conference
Re: No. 71-1523 - Hunt v. McNair

May 7, 1973

Dear Lewis:

This is in response to your memorandum of May 4. I see no reason why you should disqualify in this case.

Sincerely,

[Signature]

Mr. Justice Powell

cc: The Conference
Re: No. 71-1523 - Hunt v. McNair

Dear Lewis:

I see no reason why you should disqualify yourself in this case.

Sincerely,

T.M.

Mr. Justice Powell

cc: The Conference
Hunt v. McNair

Take a look at the opinion to see whether we have quoted the language in Tilton v. Richardson, 403 U.S. 672 at 685 on the difference between secondary and higher education. This is an excellent quote and at least should be put in a footnote to McNair.

I should also consider adding a note to the effect that the South Carolina Court held - if it did (I must check) that the Act was not questioned as to nonreligious schools. No such question was presented in this Court, but I believe the South Carolina Court dealt with the point.

L. F. P., Jr.
MEMORANDUM

TO: Mr. William C. Kelly, Jr.  DATE: May 28, 1973
FROM: Lewis F. Powell, Jr.

Hunt v. McNair and Committee v. Nyquist

Larry and I agree that we like for you to be the chambers
"editor" of Nyquist. In addition to your generally recognized qualifications, I would
like you to undertake this to be sure that our opinions in McNair and
Nyquist harmonize in every respect.

L. F. P., Jr.

cc: Mr. Larry A. Hammond
June 4, 1973

Re: No. 71-1523, Hunt v. McNair

Dear Lewis,

I see no reason why the opinion should be reassigned in this case.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference
Dear Lewis:

As respects your memo of June 4th relative to Hunt v. McNair I see no possible reason for you to recuse yourself. I voted the other way in the case. But I would be the last to say you had a "conflict".

William O. Douglas

Mr. Justice Powell

cc: The Conference
RE: No. 71-1523 - Hunt v. McNair

Dear Lewis:

I see no reason whatever for you to recuse yourself.

Sincerely,

Mr. Justice Powell

cc: The Conference
MEMORANDUM TO THE CONFERENCE:

This supplements my note to the Conference of May 4.

At a recent meeting of the Board of Trustees of Washington and Lee University, the possibility of financing several campus buildings through the Authority created under the Educational Facilities Authority Act of Virginia was discussed. The proper officers of the University were authorized to continue discussions with the Authority with the view of determining whether financing in this manner is feasible and advantageous to W. & L. If the answers prove to be affirmative, I think W. & L. will - perhaps by next fall - utilize the Authority.

In other respects, the situation outlined in my note of May 4 remains the same. I was in error, however, in saying that W. & L. was at one time of "presbyterian origin". I am now informed that it always has been strictly independent of church and state.

I regret bothering the Conference with what essentially is my problem. As McNair comes to us only because of the Establishment Clause issue, I see no conflict. Yet, especially in view of the Court's division in this case, I would respect and defer to any differing view. If any Justice would prefer that the opinion be reassigned, I will recuse myself.

L. F. P., Jr.

June 4, 1973
MEMORANDUM

To: William C. Kelly, Jr. Date: June 5, 1973

From: Lewis F. Powell, Jr.

No. 71-1523 Hunt v. McNair

Here is my desk copy of the first draft, on which you will note suggested changes or questions on the three pages indicated.

In addition, what would you think of adding a note to the effect that the South Carolina Court held (as I believe it did) that the validity of the Act was questioned as to nonsectarian schools.

Justice Brennan told me yesterday that he expected to have his dissent this week. After we have seen it, and decided whether it requires a reply, we can recirculate.

I believe you have checked already to be sure that the language in McNair is consistent with that in Nyquist. I think that it is, but we should be meticulous about this.

L.F.P., Jr.

lfp/gg
June 5, 1973

PERSONAL

Re: No. 71-1523 - Hunt v. McNair

Dear Lewis:

I contemplate joining you and will do so for the record before Friday. I want to see how this case and your Nyquist affect my Levitt.

Regards,

[Signature]

Mr. Justice Powell
June 6, 1973

Re: No. 71-1523 - Hunt v. McNair

Dear Lewis:

I certainly see no reason why you should disqualify yourself in this case.

Sincerely,

Mr. Justice Powell

Copies to the Conference
Re: No. 71-1523 - Hunt v. McNair

Dear Lewis:

This is in response to your note of June 4. I see no reason for the opinion to be reassigned.

Sincerely,

[Signature]

Mr. Justice Powell

Copies to the Conference
June 12, 1973

Re: No. 71-1523 - Richard W. Hunt v. Robert E. McNair, et al

Dear Lewis:

Please join me.

Regards,

Mr. Justice Powell

Copies to the Conference
Re: No. 71-1523 - Hunt v. McNair

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

T.M.

Mr. Justice Brennan

cc: Conference
Dear Bill:

Please join me in your dissent in 71-1523, Hunt v. McNair.

William O. Douglas

Mr. Justice Brennan

cc: The Conference
June 18, 1973

Re: No. 71-1523 - Hunt v. McNair

Dear Lewis:

Please join me in your opinion.

I have been troubled about what you define on page 12 as the "closer issue," namely, the possible involvement in day-to-day financial and policy decisions. I was tempted to consider the rate and fee power as unconstitutional and to remand to have the state court consider severability. What you have done, however, seems about all that can be done on this sparse record. Thus, with some uneasiness, I join.

Sincerely,

Mr. Justice Powell

cc: The Conference