The Unraveling of Donor Intent: Lawsuits and Lessons (Part 1)

by Kathryn W. Miree and Winton C. Smith, Jr.

Editor's Note: *In this, the first installment of a two-part series, the authors review the issues confronting donors who seek to make and enforce a contribution to charity for a particular purpose and examine recent case law on the subject. Their suggestions include a sample Long-Term (Endowment) Gift Agreement (see Exhibit 1, on page 14). The second installment will appear in our next issue, providing comparable guidance for organizations and lessons for both donors and donees.*

Gift restrictions have always been a component of charitable gift planning. In 1643, Lady Anne Radcliffe Mowlson created the first scholarship at Harvard College. In 1887, Josephine Louise LeMonnier Newcomb contributed $100,000 to establish Sophie Newcomb College of Tulane. And during the Industrial Age, families such as the Rockefellers, Carnegies, and Fords made gifts to address social issues, to establish libraries, or for similar directed purposes. Donor interest in gift restrictions continues into the present as evidenced by Joan Kroc's more than $1.5 billion bequest to the Salvation Army to establish community centers across the country. Donors who create family foundations are also often involved in creating endowments and long-term gifts outside the foundation, or in creating a family foundations narrowly focused on a specific result such as the Robertson Foundation.

Structuring a long-term gift that withstands the test of time is difficult as evidenced by the increasing number of lawsuits filed by donors and their families to enforce gift intent. These include high-profile lawsuits such as the recently settled case involving the Robertson family and Princeton or the more recent case involving the Newcomb heirs and Tulane. Major gift donors—whether to charity or to family foundations—may gain a better understanding of the issues and options by studying current conflicts.

Five Cases That Frame the Issues[1]

The last 10 years have yielded a number of cautionary tales that highlight the issues

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in gift purpose litigation. While there are many more lawsuits involving conflicts between donors (or descendants of donors) and the charities they support, the following five cases provide some perspective for the issues discussed herein.

1. *William Robertson et al. v. Princeton University, et al.*[2] Charles S. and Marie H. Robertson[3] contributed $35 million in A & P stock to Princeton University in 1961 to create a supporting organization to fund the Woodrow Wilson School of Public and International Affairs "where men and women dedicated to public service may prepare themselves for careers in government service, with particular emphasis on the education of such persons for careers in those areas of the Federal Government that are concerned with international relations and affairs."[4] The Foundation, with assets of roughly $900 million in recent years, provided funds for the Woodrow Wilson School and also funded other budgets, including a $13 million principal distribution to build Wallace Hall, a building designed to house the expansion of the Woodrow Wilson School as well as the Sociology Department and other programs.

During his lifetime, Mr. Robertson grew unhappy with the Foundation's spending patterns and the low numbers of students engaged in pursuit of diplomatic service, expressing his concerns in writing. The school dismissed his concerns explaining the world of diplomacy was no longer the same. Marie Robertson died in 1972 and Charles Robertson died in 1981. Their son William S. Robertson, his sisters Katherine Ernst and Anne Meier, and his cousin Robert Halligan—also unhappy about the application of Foundation funds—filed a lawsuit in July 2002 to redirect funds to other universities that could fulfill the donors' goals. The suit alleged the school intentionally violated the donors' intent and further claimed Princeton was engaged in self-dealing with regard to the Foundation's investments and distribution of funds. The lawsuit involved numerous depositions and other discovery, costing Princeton over $40 million in expenses through December 2008 when the suit was settled.[5] The settlement required Princeton to transfer $90 million plus interest to the Foundation.[6]

2. *Howard v. Administrators of the Tulane Educational Fund.* From 1886 to 1901, Josephine Louise Newcomb contributed over $3.6 million to create the Sophie Newcomb College in Tulane University to advance "the cause of female education in Louisiana." The gift, worth approximately $75 million in today's dollars, established the first separate college for women in a university in the United States. After Katrina temporarily closed Tulane in Fall 2005, the Trustees voted to merge Newcomb College into Tulane and to absorb its endowment.

Two heirs of Josephine Newcomb—Parma Howard and Jane Smith—filed suit to enforce Ms. Newcomb's intent in maintaining a separate college. The district court judge dismissed the Newcomb heirs' lawsuit holding they had no standing to enforce the gift[7]; this ruling was affirmed by Louisiana Fourth Circuit Court.[8] The heirs appealed, and on July 1, 2008, the Louisiana Supreme Court vacated the dismissal and remanded the case to the trial court to allow the descendants of Ms. Newcomb to proceed with the lawsuit to enforce the gift's terms. In August 2008, a second lawsuit was filed in the district court of the Parish of Orleans by another Newcomb descendant, Susan Henderson Montgomery, also seeking to enforce the terms of the gift.[9] Ms. Montgomery filed a Motion for Summary Judgment with the Civil District Court in New Orleans asking that the court order Tulane to reinstate Sophie Newcomb College; however, the Judge denied Ms. Montgomery's motion. In October 2009, Ms. Montgomery announced she would appeal the judge's ruling.[10] The case history and court filings can be found at www.newcomblives.com.

3. The Barnes Foundation's Petition to the Orphan's Court to Change Settlor's Intent. Dr. Albert C. Barnes established the Barnes Foundation in 1922 to house his extensive Impressionist, Post-Impressionist, and early Modern art collection (including many masterpieces with a collective current value of $6 billion) and to educate the working class about art. The collection—which was assembled and mounted by Dr. Barnes—was located in a modest structure in Merion, Pennsylvania, a Philadelphia suburb. Dr. Barnes arranged the paintings and designed the art education curriculum himself. He did not intend to have the entity operate as a traditional museum.[11]

Dr. Barnes died in 1951. In 1991, the trustees went to court to amend the Foundation's governing documents which prevented the trustees from selling or loaning the art in the collection.[12] While the lawsuit—which cost the Foundation about $10 million in expenses—did not result in a change in the Foundation's bylaws, the judge did allow the Foundation to take the art on tour raising about $16 million for renovations.[13]

In September 2002, the financially strapped trustees filed another lawsuit seeking permission to move the art collection from the Merion building to a new building (to be constructed) in downtown Philadelphia; in addition, it asked the court to allow it to expand the number of trustees from 5—as designated by Dr. Barnes in the governing documents—to 15.[14] In early 2004, the court approved the increase in the number of trustees, deferring the decision on the move until other options to raise funds were explored. Then, on December 13, 2004, the Court of Common Pleas of Montgomery County, Pennsylvania, Orphans' Court Division granted the trustees' request to move the Foundation's art gallery from Lower Merion Township, Pennsylvania to a new location in downtown Philadelphia. The court's 41-page published opinion[15] acknowledged the changes ran counter to the terms of the Foundation's 1922 charter and governing documents but noted there was "no viable alternative" for the financially compromised charity.[16] An appeal to the ruling filed by an art student at the Foundation was dismissed by the Pennsylvania Supreme Court for lack of standing.[17]

4. *Tennessee Division of the United Daughters of the Confederacy v. Vanderbilt University.* In 1913, the Tennessee Division of the United Daughters of the Confederacy entered into the first of a series of gift agreements with George Peabody College for Teachers ("Peabody College") to raise $50,000 for the construction of a dormitory, a portion of which would provide rent-free housing for students of Confederate ancestry. The agreements spelled

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out key restrictions on the gift, including the requirement the dormitory bear the name of "Confederate Memorial Hall." The dormitory was completed in 1935, and for many years Peabody College, and Vanderbilt University following its merger with Peabody, abided by the terms of the gift. In 2002, however, Vanderbilt's President decided to rename the building (feeling "Confederate" created a marketing problem for the University).

The United Daughters of the Confederacy, who were not consulted about or informed of the change, filed a lawsuit to compel Vanderbilt to honor the terms of the gift agreement. At trial, the court granted Vanderbilt's motion for summary judgment finding the obligation to comply with the gift agreements was "impractical and unduly burdensome." The Court of Appeals of Tennessee, however, reversed the trial court and upheld the gift agreement.[18] It gave Vanderbilt two choices: (1) either abide by the terms of the agreements between the United Daughters of the Confederacy and Peabody College or (2) return the present value of the original gift to the United Daughters of the Confederacy. Vanderbilt decided not to appeal the decision and to honor the gift terms.

5. *Fisk University v. Georgia O'Keeffe Foundation.* In 1949, Georgia O'Keeffe, the widow of Alfred Stieglitz (and executrix of his estate), transferred the Alfred Stieglitz collection of 97 photographs and paintings to Fisk University in Nashville, Tennessee, subject to a restriction that Fisk University would not at any time sell or exchange the pieces of the collection. Ms. O'Keeffe then contributed four additional pieces that were part of her personal collection for a total of 101 pieces. In 2005 Fisk University filed a petition in the Chancery Court of Davidson County asking the court to invoke the legal doctrine of cy pres to permit the sale of two of the paintings in the college citing the cost of maintaining the collection and other financial needs. The Georgia O'Keeffe Foundation originally filed to block the action; in 2006, the Georgia O'Keeffe Museum filed a petition, granted by the court, to substitute the Museum for the Foundation, alleging the Museum was Georgia O'Keeffe's successor in interest and seeking through counterclaim to have the collection transferred to the Museum through right of reverter. In 2007, the Tennessee Attorney General was permitted to join the proceedings to protect the interests of the people of Tennessee.

A settlement with the Georgia O'Keeffe Museum involving a sale of several of the paintings was rejected initially by the Tennessee Attorney General; a revised version of the same settlement was then rejected by the Chancery Court Judge. In between the two settlement attempts with the Georgia O'Keeffe Museum, Fisk rejected an offer from Crystal Bridges Museum of American Art, Inc. involving the purchase of an undivided 50 percent interest that would allow Crystal Bridges Museum and Fisk to share the collection. In a pretrial motion, the court ruled the *cy pres* doctrine was not applicable because O'Keeffe had specific rather than general charitable intent when she transferred the collection to Fisk and that the Court had the power to order reversion if the Georgia O'Keeffe Museum could demonstrate Fisk breached the gift conditions. Following trial, the Court ruled that none of Fisk's actions had yet violated the gift terms and imposed an injunction that Fisk comply with the gift terms. Fisk appealed,[19] and in July 2009 the court of appeals reversed the trial court's determination the Georgia O'Keeffe Museum had standing to sue finding the museum had no right of reversion in either the 97 pieces transferred to Fisk from Mr. Stieglitz's estate by Ms. O'Keeffe using her power of appointment, or the four pieces from Ms. O'Keeffe's personal collection gifted to Fisk.[20] The court also found the trial court erred in dismissing the university's petition for cy pres relief after determining cy pres was not applicable because Ms. O'Keeffe's charitable intent was specific rather than general. The appeals court did not determine cy pres relief was appropriate, but remanded the petition to the trial court for that determination.[21]

Table 1. Shared Characteristics of Lawsuits

	Robertson/ Princeton	Newcomb/ Tulane	The Barnes Foundation	DAC/ Vanderbilt	Fisk
The donor had "general" rather than "specific" charitable intent in making the gift, allowing the charity some flexibility in interpretation of the gift terms.					X
The charity substantially complied with the terms of the gift for long enough to meet its obligation under the gift document.				X	
The institution's other financial needs are greater than those specified in the gift.	X		X		X
The property will be harmed if a change is not made to the conditions of the gift.			X		X
There are other charitable programs that are more important and need the funds.	X				X
The terms of the gift were no longer convenient or appropriate.	X	X	X	X	X
The costs to administer the gift are too great		X	X		X
The purposes of the gift are no longer appropriate.				X	

What Do the Lawsuits Have in Common?

While each of these five cases is governed by a discrete set of gift agreements, facts, and courts, there are certain patterns in these cases that may provide help charities and their donors in analyzing options and avoiding litigation (see Table 1). Nonprofits seem to stray from donor direction because other institutional financial needs are more important, the donor's gift purpose is no longer relevant, or the gift requires too much time, attention, or funding to remain viable. These problems will occur over time for all perpetual gifts. The accompanying chart sets out some of the factors that may

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have prompted charities to make the changes that prompted the lawsuits.

The real problem, however, is how the nonprofit goes about instituting the change. In many of these cases, we find the age-old problem of failure to communicate. In the case of the Robertsons, the donor expressed concern about variance from the gift terms over his lifetime, but Princeton officials seem never to have engaged in a serious dialogue with him or his family about those concerns. In the case of Vanderbilt's relationship with the Daughters of the Confederacy, the university brass treated the decision as an administrative matter that could be handled by the chancellor and without the Daughters.

Issues for Donors and Their Families in Enforcing Intent

So, let's assume the donor has completed a gift and either the donor or the donor's descendants learn the charity has taken actions that appear to violate the terms of the gift agreement. What actions can a donor or descendants take? Effectively pursuing relief will likely require three things: a written document clearly expressing the agreement between the donor and the charity, standing to sue, and the resources to pursue the claim.

A Written Document. Donor intent is a malleable concept; a written document provides clarity for that concept. Without clear written gift terms, intent is difficult to interpret several years down the road when the parties to the transaction are unavailable and the charitable environment has changed. The written document may include a written directive accompanying the transfer of the gift, a gift through will or other recorded document, or a formal gift agreement signed by both parties. Even documents have limitations. Since the documents are generally prescriptive and direct how the gift will be managed (rather than expressing the charitable outcomes from the operation), the written instructions may not be sufficient to provide absolute guidance to charities, courts, or descendants. The document is, however, an essential starting point.

Standing to Sue. Next, the party bringing suit against the charity to compel compliance with gift terms must have standing to sue. Standing to sue, in the broadest terms, means the individual or entity bringing a lawsuit against another must have a nexus to the action or stake (harm or potential harm) in its outcome. Without this nexus, the suit will not advance, which is why many of the cases cited above focus on the issue of standing.

This principal, that a donor does not have standing to sue a charitable organization to enforce a gift restriction, is based on the premise the donor relinquishes all rights in the property when the gift is made.

Donors and their descendants do not necessarily have standing. For many years, the rule in most state courts has been that a donor does not have standing to sue a charitable organization to enforce a gift restriction. This principal, arising from the common law, is based on the premise the donor relinquishes all rights in the property when the gift is made. In the leading case on this point, *Carl J. Hertzog Foundation, Inc. v. University of Bridgeport*,[22] the donor made a $250,000 gift to the University of Bridgeport designated for medical education scholarships and was initially used to provide nursing scholarships. The nursing school closed, the funds were diverted to another purpose, and the donor filed suit seeking a temporary injunction, an accounting, a reestablishment of the fund in accordance with the gift agreement, or, a gift over to the Bridgeport Area Foundation.

The trial court ruled the donors had no standing to sue. The sole issue in the appeal was whether or not the Connecticut Uniform Management of Institutional Funds Act established standing for a donor to bring suit to enforce a gift restriction. While the appeals court reversed the trial court finding the statute did give a donor standing, the Connecticut Supreme Court disagreed concluding that the general rule at common law was that a donor had no standing to enforce the terms of a completed charitable gift unless the donor had reserved a property interest in the gift (such as a right of reverter) which may bring himself and his heirs within the "special interest" exception to the rule.[23] The court also recognized the rationale that the Attorney General is the public official who has standing to protect the public in the case of a restricted charitable gift.[24]

However, the courts seem to be reconsidering this issue, allowing donors to pursue such lawsuits in some states. For example, a July 2003 lawsuit filed in Amarillo, Texas by the Estate of Sybil B. Harrington and the Amarillo Area Foundation (appointed by Ms. Harrington to oversee the use of the funds) sought the return of $5 million from the Metropolitan Opera in New York. Ms. Harrington had created a significant endowment with the Metropolitan Opera to fund traditional opera, and the suit alleged they had applied the funds for purposes outside that scope.[25] The lawsuit was allowed to proceed.

In a New York case, *Smithers v. St. Luke's-Roosevelt Hospital Center*, the court found the donor could proceed if she could demonstrate a special relationship to the gift.26 The plaintiff's husband, R. Brinkley Smithers, gave $10 million to St. Luke's-Roosevelt Hospital Center in New York to create and establish an endowment to support an alcoholism research and treatment facility over a period extending from 1971 to 1983. On the facts, the court concluded the donor (or his family) was often in a better position than the Attorney General to enforce gift intent. The court held the donor's widow—and the Attorney General—should have "co-existent standing" to bring suit.27 The hospital settled the lawsuit in July 2003, agreeing to transfer $6 million to another nonprofit to establish a freestanding alcohol treatment center, and to restore $15 million to the endowment.

In California, the Court of Appeal, Fourth District, allowed a donor to sue to enforce gift terms for a gift that provided

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EXHIBIT 1
SAMPLE LONG-TERM (ENDOWMENT) GIFT AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____, 20__, by and between _____, hereinafter referred to as the "Donor", and ABC Charity, a nonprofit corporation organized and located _____, _____.

W I T N E S S E T H:

WHEREAS, the Donor has transferred and delivered to ABC Charity the cash or property set out on Schedule A of this document to be held, invested and reinvested by ABC Charity in the manner set forth herein; and

WHEREAS, ABC Charity has accepted the donation for the purposes and under the considerations hereinafter set forth;

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties do agree as follows:

1. The donation is transferred and delivered to ABC Charity for the purpose of establishing the _____ Fund (the "Endowment.") and is to become an asset of ABC Charity and to be governed by the Articles of Incorporation for ABC Charity, and By-Laws of that organization, as amended from time to time.

2. The original contribution and any and all additional gifts subsequently transferred to ABC Charity either by the Donor or other interested contributors shall be held, invested and reinvested in the manner hereinafter set forth in paragraph 6.

3. The Donor requests that an annual distribution be made from the fund for the purposes described in paragraph 4. The amount of this annual distribution may be set by the Board of Directors of ABC Charity in accordance with a general endowment spending policy of ABC Charity. It is the intent of the Donor that the fund annually distribute a percentage of the annual market value of the fund (as determined by the Board of Directors), to include earned income and realized and unrealized gain, and that the corpus of the endowment will remain and grow in perpetuity.

4. The purpose of the Endowment is to [here insert the purposes for which the funds can be spent and specific programs if appropriate.]

5. Should ABC Charity lose its status as an organization described in each of section 170(b)(1)(A), section 170(c), section 2055(a), and section 2522(a), the Board of Directors of ABC Charity shall distribute all assets remaining in the Endowment to one or more organizations then so described to be used for the purposes outlined in paragraph 4. Should the successor in interest lose its status as an organization described in each of section 170(b)(1)(A), section 170(c), section 2055(a), and section 2522(a), then all assets remaining in this fund shall be distributed outright to one or more charitable organizations then so described that have purposes as similar as possible to those purposes listed in paragraph 4.

Should the purpose for which this Endowment is established cease to exist, represent a need so that the Board of Directors are unable to find purposes for the use of such funds, or become impractical or too difficult to administer, then the Board of Directors, by majority vote, shall have the power to redirect the funds held in this Endowment for a purpose or purposes as similar as possible to the original intent of the Donor.

6. ABC Charity hereby accepts the property contributed to the Endowment and will hereafter invest it in accordance with the investment policies and procedures of ABC Charity. ABC Charity in its sole discretion is authorized to sell, exchange, or otherwise dispose of any securities or other property held by it at any time hereunder and to deliver such instruments as may be required by either a transfer agent, exchange, or other entity effecting such transfer. These assets may be pooled with other like assets in order to facilitate an orderly and cost effective management of assets for the organization. In addition, assets held by ABC Charity may be transferred to a Foundation created to support ABC Charity and its programs (upon a vote of its Board of Directors) if such transfer facilitates an orderly and cost effective management of assets. ABC Charity is authorized to use such methods as it deems necessary or advisable for the investment, sale, exchange, or transfer of any security held hereunder and to pay reasonable compensation and expenses in connection with the performance of said services. ABC Charity shall have the sole power to determine its investment policies and procedures and to decide any and all questions in connection therewith.

7. ABC Charity may hire agents to provide investment advice, administrative management, and tax preparation as are reasonable and necessary to carry out its duties. Fees and expenses for these services shall be charged first against the income of the Endowment, and then the fund principal on a pro-rata basis against all funds held in ABC Charity together with any necessary administrative costs of ABC Charity in managing these assets.

8. This Agreement shall be irrevocable and the Donor hereby expressly acknowledges that he/she shall have no right or power either alone or in conjunction with others and in whatever capacity to revoke or terminate this Agreement; provided, however, nothing herein contained shall be interpreted so as to prevent the Donor from making further contributions to this Endowment.

9. Investment funds managed by ABC Charity are exempt from the registration requirements of the federal securities laws pursuant to the exemption for collective investment funds and similar funds maintained by charitable organizations under the Philanthropy Protection Act of 1995 (PL 104-62). Information on the investment of those funds was provided to the Donor upon execution of this document.

10. This constitutes the full and complete agreement by and between the parties and all oral agreements and/or discussions are merged herein and are null and void to the extent that they are in conflict with the terms of this document. In no event shall this Agreement be treated or interpreted as creating a separate trust. No changes, alterations, additions, modifications, or qualifications shall be made or had in the terms, conditions, or provisions of any paragraph or item of this Agreement. Nor shall any amendment, modification or alteration be permitted that would result in this Endowment being treated as a separate trust or that would affect the status of ABC Charity as an organization described in Section 501(c)(3) of the and as an organization which is not a private foundation within the meaning of Section 509(a) of the Code.

11. This Agreement shall be governed by, and construed under, the laws of the State of _____. Jurisdiction and venue for all purposes shall be in the appropriate County of the State of _____.

12. This Agreement is binding upon the parties hereto, their successors and assigns.

IN TESTIMONY WHEREOF WITNESS the signatures of the parties hereto the day and year first above written.

_____ _____

"Donor" Date

ABC Charity

BY:_____ _____

Executive Director Date

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a "gift over," or an alternate charitable beneficiary, in the event the original gift terms were not met. In those facts, the L. B. Research and Education Foundation made a $1 million grant to the UCLA Foundation to create an endowed chair in Cardiothoracic Surgery governed by a written grant agreement specifying the criteria for the chair holder. In October 2003, L. B. Research Foundation used the UCLA Foundation and the Regents of the University of California for specific performance of the gift agreement alleging the funds had been used for purposes other than those specified in the gift agreement. The UCNLA Foundation and the Regents answered alleging the gift created a charitable trust which only the California Attorney General had standing to enforce, moving for judgment that the donor lacked standing to bring the action. The trial court agreed, dismissing the suit, but the court of appeal reversed determining the arrangement was contractual, and that even if not contractual the plaintiff had a "special interest" that allowed it standing. The court further found the Attorney General's power to enforce charitable trusts under California law (the defendants had argued the arrangement was a charitable trust rather than contractual) was not exclusive.[28]

Resources to Pursue Enforcement. Even with a clear written agreement and standing to sue, the donor or descendants must have sufficient resources to pursue relief, especially when the funds in question are large and the charity holding those funds has extraordinary size and/or resources. The Robertson case is a perfect example. The order settling that case held Princeton responsible for the $40 million in attorney's fees incurred by the Robertson family over the years leading to trial. Few donor families have such resources, and imagining state attorneys general in states with tight budgets to allocate such funds is unlikely.

Endnotes

1. While some of these cases have reached a final resolution, others are still in the courts. The facts or resolution of these cases continues to change and the reader should check for updates before relying on the case status set out herein.

2. Docket No. C-99-02 (N.J. Super. Ct., Chancery Div'n, Mercer County).

3. Mrs. Robertson was the daughter of the founder of the A & P grocery chain.

4. The language setting out the Foundation's purpose is taken from its Certificate of Incorporation. To provide context, in 1961 the United States and Russia were engaged in a cold war, the United States was involved in Vietnam, and President Kennedy was asking Americans to "Ask not what your country can do for you—ask what you can do for your country."

5. Hathirimani, Raj, "Robertson Lawsuit Most Expensive in University History," The Daily Princetonian, www.dailyprincetonian.com (Nov. 19, 2004); the lawsuit was settled on December 10, 2008 and approved by the court on December 12, 2008.

6. "Robertson Lawsuit Settled," http://paw.princeton.edu/issues/2009/01/28/pages/7658/index.xml.

7. Howard v. Administrators of the Tulane Educational Fund (unreported) (Civil District Court, Orleans Parish, No. 2006-4200, Div. B-15).

8. Howard v. Administrators of the Tulane Educational Fund, 970 So. 2d 21 (Ct. App. 4th Cir. Oct. 22, 2007).

9. Montgomery v. Administrators of the Tulane Educational Fund (unreported) (Civil District Court, Orleans Parish, No. 08-8619, Div. B-I).

10. This lawsuit is still unfolding and further developments may have occurred after this article was written. Please check for recent developments at www.newcomblives.com.

11. According to the Foundation's press release the Foundation has a three-year horticulture program, and a two-year art and esthetics program with a one-year seminar extension.

12. Solis-Cohen, Lita, Maine Antiques Digest, March 2004 <http://www.maineantiquedigest.com/articles/mar04/barnes0304.htm>.

13. Id.

14. Id.

15. The Barnes Foundation, No. 58,788 (Dec. 13, 2004).

16. Debra E. Blum, "Court Ruling Could Influence Restrictions Donors Place on Bequests," The Chronicle of Philanthropy (Jan. 6, 2005); "Court Allows Barnes Foundation to Move Collection to Philadelphia," Nonprofit Issues (Dec. 16, 2004–Jan. 15, 2005) <www.nonprofitissues.com/public/features/leadfree/2004dec2-IS....>

17. Debra E. Blum, "Pennsylvania's Highest Court Allows Multibillion-Dollar Art Collection to Move," The Chronicle of Philanthropy (April 28, 2005).

18. Tennessee Division of the United Daughters of the Confederacy v. Vanderbilt University, 174 S.W.3d 98 (Ct. App. 2005).

19. A copy of the appeal can be found on the Tenessean website at http://www.tennessean.com/assets/pdf/DN115593814.PDF.

20. Slip Copy, 2009 WL. 2047376 (Tenn. Ct. App., July 14, 2009) (No. M200800723 COAR3CV).

21. Id.

22. Carl J. Hertzog Foundation, Inc. v. University of Bridgeport, 699 A.2d 995 (Conn. 1997).

23. See Hertzog, 243 Conn. at 15, 669 A.2d at 999.

24. This approach giving the state attorneys general responsibility for protecting public interests, including charitable gifts, is well established. Conceptually, this prevents charities from having to defend countless lawsuits from individuals with only a tenuous relationship to the gift. As a practical matter, however, state budgets do not afford sufficient staff to the offices of the state Attorneys General to provide extensive oversight.

25. Brad Wolverton, "Bequest to Metropolitan Opera Challenged," The Chronicle of Philanthropy (Aug. 7, 2003).

26. Smithers v. St. Luke's-Roosevelt Hospital Center, 281 A.D.2d 127, 723 NYS 2d 426, 2001 N.Y. Slip Op. 02953 (App. Div. 1st Dep't 2001).

27. See Smithers, 281 A.D. at 140.

28. L. B. Research and Education Foundation v. The UCLA Foundation et. al., Cal. App. No. B176151 (June 4, 2005), 130 Cal. App. 4th 171. The opinion is available at http://www.courtinfo.ca.gov/opionions/documents/B176151.PDF.

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Collaboration and Dialogue

All that said, if there is collaboration among generations in the philanthropic process it can create in the younger generation an appreciation for the prejudices, biases and historical family path reflected in philanthropic decisions. Active dialogue about why and how much a family gives can be thought provoking and educational without any of the downsides of grants of autonomy.

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