IN THE SUPREME COURT OF THE STATE OF VERMONT

CASE NO. 25-AP-148

HON. JAMES H. DOUGLAS, SPECIAL ADMINISTRATOR OF THE ESTATE OF JOHN ABNER MEAD,
Plaintiff-Appellant,
v.
THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE
Defendants-Appellees,

APPEALED FROM: Vermont Superior Court, Civil Division, Addison Unit
Case No. 23-cv-10214

BRIEF OF *AMICI CURIAE* AMHERST COLLEGE, BENNINGTON COLLEGE, CHAMPLAIN COLLEGE, FRANKLIN & MARSHALL COLLEGE, ITHACA COLLEGE, LANDMARK COLLEGE, SAINT MICHAEL'S COLLEGE, SARAH LAWRENCE COLLEGE, SMITH COLLEGE, STERLING COLLEGE, SWARTHMORE COLLEGE, TRINITY COLLEGE, TUFTS UNIVERSITY, VERMONT COLLEGE OF FINE ARTS, VERMONT STATE COLLEGES, WELLESLEY COLLEGE AND WILLIAMS COLLEGE

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STATEMENT OF ISSUE

Should this case be dismissed on the ground that the Court lacks subject matter jurisdiction, where the donor—here, ostensibly represented more than a century after his death by an unrelated Special Administrator—lacks standing based on long-settled common law principles, which grant exclusive authority to the Attorney General to enforce completed gifts?

INTEREST OF AMICI

Amici are colleges and universities that manage tens of thousands of donations, some made generations ago. These gifts are largely administered under the settled expectations of the common law, including the exclusive authority of state attorneys general to enforce that law. To permit private parties unrelated to the donor to enforce alleged gift restrictions, as posited by the Superior Court, would upend the current system and result in significantly increased litigation for the courts as well as unnecessary administrative and legal costs for amici, expending funds that would otherwise support amici's charitable purposes.

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Vermont has always encouraged and protected charitable efforts within its borders. Indeed, the Vermont Constitution contains a provision, stating:

> All religious societies, or bodies of people that may be united or incorporated for the advancement of religion and learning, *or for other pious and charitable purposes*, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.

VT. CONST., ch. II, § 68 (emphasis added). Given Vermont's special consideration and accommodation of charitable organizations—including schools, colleges, universities, hospitals and other charities that benefit Vermont communities—it would seem unthinkable that the state would stray from the common law rule prohibiting donor standing to enforce completed gifts, a rule that is followed by all the other New England states and by the vast majority of states across the country. *See, e.g., Matter of Curtis' Estate*, 88 Vt. 445; 92 A. 965, 967 (1915) (Vermont courts must interpret laws affecting charitable organizations with "due regard" to constitutional provision). If Vermont were to upend this rule, as contemplated by the Superior Court, it would upset the settled expectations of the common law, encourage litigation over long-completed gifts, and force charitable organizations to expend scarce resources resolving donor disputes, rather than accomplishing their charitable missions. That has never been the law in Vermont, and it should not change now. *See, e.g.*, *Wilbur v. University of Vermont*, 129 Vt. 33, 44; 270 A.2d 889, 897 (1970) (recognizing common law rule in charitable trust context).

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[1] Amici adopt the Statement of the Case provided by defendant-appellee the President and Fellows of Middlebury College.

I. THE COMMON LAW PROHIBITION ON DONOR STANDING IS THE MAJORITY RULE IN NEW ENGLAND AND THROUGHOUT THE COUNTRY.

The common law prohibition on donor standing has ancient roots, both in the United States and the legal traditions of England.[2] The idea is simple: once donors have generously supported a chosen charity with a gift, they no longer have a personal interest in that completed gift.[3] *See, e.g.*, *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 683 (1819) (a completed gift "becomes, as against the donor, the absolute property of the donee; and no subsequent change of intention of the donor can change the rights of the donee"). Rather, donors have the same interest as the general public in the proper use of that gift for charitable purposes. *See Hardt*, 302 S.W.3d at 137 (donor retains no interest in gift "except the sentimental one that every person who has contributed to the charity would be presumed to have") (quoting *Voelker v. Saint Louis Mercantile Library Ass'n*, 359 S.W.2d 689,

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[2] *See, e.g.*, David Villar Patton, *The Queen, the Attorney General, and the Modern Charitable Fiduciary: A Historical Perspective on Charitable Enforcement Reform*, 11 U. Fla. J. L. & Pub. Pol'y at 131, 134–144 (Spring 2000) (tracing history of charity enforcement and exclusive role for attorneys general back to England's Statute of Elizabeth, enacted in 1601).

[3] If donors wish to have more control over a gift, they have that option. Donors, for example, can create a charitable trust. States, including Vermont, have recently permitted greater settlor enforcement of charitable trusts. *See, e.g.*, 14A Vt. Stat. Ann. § 405(c). Or donors can retain a reversion interest in the gift. That is, donors can impose a condition and insist that the gift will revert to them if the condition is not satisfied. That continued interest is generally considered sufficient to enforce in court. *See, e.g., Hardt v. Vitae Foundation, Inc.*, 302 S.W.3d 133, 137 (Mo. Ct App. 2010). However, if donors do not avail themselves of either of these mechanisms, then the donation is a simple, completed gift. With a simple gift—such as the one Mead gave to Middlebury—the common law rule applies and donors have no further, enforceable interest.

695 (Mo. 1962). Thus, the only party that can bring an action to enforce the gift's proper use is the people's representative, the state attorney general. *See Wilbur*, 129 Vt. at 44, 270 A.2d at 897 (remedy for breach of charitable trust "is by suit at the instance of the attorney general of the state to enforce compliance"); *see also Derblom v. Archdiocese of Hartford*, 289 A.3d 1187, 1194–95 (2023) ("majority of jurisdictions" have "entrusted the Attorney General" with the duty "to represent the public interest in the protection of any gifts") (citations omitted). This centuries-old rule serves a critical purpose. It avoids unnecessary litigation by disappointed donors and descendants, thus preserving charitable resources—including gifts provided by other donors—for their intended purpose.

A. The Common Law Rule Applies in All Other New England States.

When interpreting its own common law, Vermont will often look to the courts of its sister New England states. *See, e.g., Demag v. Better Power Equip., Inc.*, 2014 VT 78; 197 Vt. 176, 186; 102 A.3d 1101, 1109 (2014) (positively citing decisions from "our neighboring states"). In this instance, Vermont's fellow New England states are unanimous. They all follow the common law rule prohibiting donor standing to enforce completed gifts. *See Maffei v. Roman Cath. Archbishop of Boston*, 867 N.E.2d 300, 311 (Mass. 2007) ("it is the exclusive function of the attorney general to correct abuses in the administration of a public charity") (quotation omitted); *see also Attorney General v. First United Baptist Church of Lee*, 601 A.2d 96, 98 (Me. 1992) ("Where property is given to a charitable corporation and it is directed by the terms of the gift to devote the property to a particular one of its purposes, it is under a duty, enforceable by the Attorney General, to devote the property to that purpose.") (quotation omitted); *Matter of Robert Keeler Maintenance Fund*, 306 A.3d 795, 799–800 (N.H. 2023) (following common law rule, beneficiaries of donor's will lacked standing to enforce condition on completed gift against university); 18 R.I. Gen Laws § 18-9-17 ("In the event that any charitable trust fails to take any actions that are required by this chapter, the attorney general may bring an action to restrain the charity from transacting any business in the state and may take any other action,

including the seeking of any other judicial relief, that may be appropriate to compel compliance with the provisions of this chapter.").

Connecticut's experience is instructive. In *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*, 699 A.2d 995, 996 (Conn. 1997), a donor filed a complaint against the University of Bridgeport, seeking to enforce a completed gift. Specifically, the donor agreed to provide $250,000 in matching funds to provide scholarships to disadvantaged students for medical-related education. *Id.* at 996. The university initially used the funds to provide scholarships to students in its nursing program. *Id.* However, a few years later, the university informed the donor that it had closed its nursing program. *Id.* The donor sued, alleging that the university was using the donated funds for its general purposes, in violation of the gift terms. *Id.*

Connecticut's Supreme Court determined that the donor lacked standing to enforce the gift terms.[4] *Id.* at 999. "At common law, a donor who has made a completed charitable contribution, whether as an absolute gift or in trust, had no standing to bring an action to enforce the terms of his or her gift unless he or she had expressly reserved the right to do so." *Id.* at 997. "[I]t was established that equity will afford protection to a donor to a charitable corporation in that *the attorney general may maintain a suit* to compel the property to be held for the charitable purpose for which it was given to the corporation." *Id.* (emphasis in original) (quotation omitted). Thus, the "general rule" is that charitable gifts are enforceable at "the

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[4] While less relevant, the Connecticut court also found that the donor lacked standing under Connecticut's version of Uniform Management of Institutional Funds Act. Because that act was silent on the issue of donor standing—and given the well-established common law rule, as well as the act's intent to benefit charitable organizations—the Connecticut court determined that the new statute did not create donor standing by implication. *Id.* at 1001-02 ("we find no support from any source that the drafters . . . intended that a donor or his heirs would supplant the attorney general as the designated enforcer of the terms of completed and absolute charitable gifts").

instance of the attorney general," and "[i]t matters not whether the gift is absolute . . . or whether a technical condition is attached to the gift." *Id.* at 998 (quoting *Lefkowitz v. Lebensfeld*, 68 A.D.2d 488, 494-95 (N.Y. App. Div. 1st Dep't 1979).

As the court explained, the "theory underlying the power of the attorney general to enforce gifts for a stated purpose is that a donor who attaches conditions to his gift has a right to have his intention enforced." *Id.* (quoting *Lefkowitz*, 68 A.D.2d at 495-96). "The donor's right, however, is enforceable only at the instance of the Attorney General; and the donor himself has no standing to enforce the terms of his gift when he has not retained a specific right to control the property, such as a right of reverter, after relinquishing physical possession of it." *Id.* (collecting cases from across the country). "On the weight of the foregoing authority," the court determined, "we conclude that it is clear 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 expressly reserved a property right in the gift." *Id.* at 999. Thus, the scholarship donor lacked standing to sue the university over its closing of the nursing program and its use of the donated funds for the university's general purposes. *Id.*

The same analysis applies throughout the New England states. Donors in Connecticut, Maine, New Hampshire, Massachusetts and Rhode Island would all have the same expectation: if they believed their gift was somehow mismanaged or misappropriated by their chosen charity, their recourse would be a complaint to the attorney general. Indeed, given the prevalence and uniformity of the common law practice at the time Mead donated his gift to Middlebury in 1914, it is virtually certain that he would not have expected anyone aside from the Vermont Attorney General to enforce the gift's terms.

B. The Prohibition Against Donor Standing Is the Majority Rule in the United States.

Not only is the common law rule uniform in New England, it is also the majority rule in the rest of the country. *See, e.g., Courtenay C. and Lucy Patten Davis Found. v. Colorado State University Research Found.*, 320 P.3d

1115 (Wy. 2014) (preserving and explaining common law rule). Only three states have adopted statutes permitting donor standing, Kansas, Iowa and North Carolina. And even those statutes tend to be limited in some way. *See, e.g.*, K.S.A. 58–3621, et. seq. (allowing donor standing to enforce written endowment agreements but only for 40 years after donation). Only five additional states—Kentucky, Louisiana, New York, Oklahoma and Texas—have shown any inclination to make exceptions from the common law rule, generally in circumstances distinctly different than those here. *See, e.g.*, *Howard v. Administrators of Tulane Educational Fund*, 986 So.2d 47, 54–56 (La. 2008) (Louisiana does not follow English common law because its law is based on French Civil Code). In the other 41 states, the common law prohibition remains the law of the land, as it has been for centuries. *See* Philanthropy Roundtable, *Protecting Donor Intent: A 50-State Analysis of Legal Protections,* 5 (Jan. 31, 2024) (providing recent 50–state survey); *see also Courtenay*, 320 P.3d at 1125–26 (collecting cases, including Vermont). The Special Administrator has shown no reason—particularly in a case brought a century after the gift was made and at the behest of the donor's great-great-grandson—for Vermont to take the minority view.

1. The Prohibition Against Donor Standing Is the Majority Position.

All major authorities agree that the common law prohibition against donor standing is the majority view throughout the United States. This is reflected in the case law. *See e.g., Courtenay*, 320 P.3d at 1125-26 (only the state Attorney General has standing to enforce terms of charitable gift, collecting cases); *Hardt*, 302 S.W.3d at 139-40 ("we find no reason to expand the common law to give standing to the Hardts"). It is reflected in the relevant Restatements of the Law. *See* Restatement of the Law, Charitable Nonprofit Orgs. § 6.03, comment (a) (2021) ("Under the common law, other private parties—such as donors …–typically cannot bring actions to enforce the charitable purposes or administrative terms governing charitable assets."); 2 Restatement (Second) of Trusts § 348, comment (f) (1959) ("Where property is given to a charitable corporation and it is directed by the terms of the gift to devote the property to a particular one of its interests, it is under a

duty, *enforceable at the suit of the Attorney General*, to devote the property to that purpose.") (emphasis added). And it is reflected in the academic literature. *See, e.g.*, Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society v Donor Empowerment*, 58 VAND. L. REV. 1093, 1143 (May 2005) ("At common law, a donor who has made a completed charitable contribution has no standing to bring such an action to enforce the terms of her gift unless she has expressly reserved the right to do so."). Until the turn of the 20th century, in fact, no state permitted a donor to sue to enforce the terms of his or her gift. *See, e.g., id.* at 1145 ("nearly all modern American authorities—decisions, model acts, statutes, and commentaries—deny a donor standing to enforce a restricted gift").

2. Only Three States Have Adopted Donor Standing Statutes, Often With Restrictions.

In recent years, there has been some movement, in some jurisdictions, to modify the common law. But that change has been slow, cautious and measured. There is only one state, North Carolina, that grants broad donor standing to enforce charitable gifts. *See* N.C.G.A. § 36C-4-405.1 (2006) (The donor of a charitable gift . . . may maintain a proceeding to enforce the gift"). But that was the considered choice of the North Carolina legislature, which presumably weighed all the relevant interests at stake—e.g., burden on the courts, administrative and legal burdens on charitable organizations, potential waste of charitable assets—before making such a substantial change to its settled common law.

The legislatures in the two other states with donor standing statutes have placed limitations on that standing. Kansas, for example, permits donor standing to enforce written endowment agreements but only for a period of 40 years following the donation. K.S.A. 58-3621, et. seq. (2023). Thus, the Kansas statute would not be applicable here, where the Special Administrator is seeking to enforce a gift more than a century after it was made. Iowa was even more cautious. Its legislature permitted standing only for donors who had made a gift of more than $100,000, and only for a period of 50 years. IA St. § 540A.106 (5) (2008). Again, that statute would be inapplicable here.

These limitations signal a desire by the relevant legislatures to avoid stale claims and preserve settled expectations over decades-old gifts. They also acknowledge that donor standing would have very real costs for charitable organizations, distracting their officials and siphoning money away from their beneficial core missions. Here, the Special Administrator is asking that this Court abrogate the common law rule and permit limitless donor standing. Not only is that not the rule in Vermont, it is not the rule in virtually all the other states—even those that have recognized donor standing by statute.

3. Only A Handful of Courts From Around the Country Have Permitted Donor Standing, Generally In Very Different Circumstances Inapplicable Here.

Of the hundreds of cases to address donor standing across the country, only five can even arguably be said to stray from the common law rule. None of those five have any bearing here. They either lack precedential value, fail to analyze the standing issue or address unusual or extreme circumstances not present here.

For example, Louisiana's highest court permitted donor standing because Louisiana law is unique in the United States: it is based on the French—as opposed to English—legal tradition. *Howard*, 986 So.2d at 54-56 (noting, for example, that French Civil Code allowed donor to recover *inter vivos* gift based on "ingratitude" of donee"). Here, Vermont law is grounded squarely in the English tradition.

There are two, unreported trial-level cases in Kentucky and Oklahoma that permitted donor claims to proceed against charities. *See Register v. Nature Conservancy*, 2014 WL 6909042 (E.D. Ky. 2014) (unreported opinion); *Brooks v. Integris Rural Health, Inc.*, 2012 WL 507954 (Okl. Dist. 2025) (Westlaw summary of case and jury verdict). However, it does not appear that the common law rule was raised or considered in either case. *See, e.g., Register*, 2014 WL 6909042 at *5 (defendant argued only that letters underpinning gift did not "suffice as written contracts"). There is also an odd case in Texas, *Eshelman v. True the Vote, Inc.*, 655 S.W.2d3d 493, 499, 501

(Tx. Ct. App. 14th Dist. 2022). In *Eshelman,* the court actually applied the common law rule and determined that the donor lacked standing to sue the relevant charity. *Id.* Somehow, however, the court concluded that the donor could sue the charity's *lawyers*. *Id.* at 503. None of these cases have had any influence either in their home states or elsewhere, where the common law rule uniformly prevails. They are simply too flimsy to support deviation from that rule in Vermont.

Finally, advocates for a departure from the common law rule—like the Special Administrator—often rely on the majority opinion in *Smithers v. St. Luke's-Roosevelt Hospital Center*, 281 A.D.2d 127 (N.Y. App. Div. 1st. Dep't 2001). Again, it should be noted that *Smithers* was decided by an intermediate appellate court in just one of New York's four appellate departments. Moreover, one judge from the three-judge panel dissented. *Id.* at 141 (Friedman, J., dissenting). Therefore, *Smithers* does not have the precedential value of a decision from New York's highest court, the Court of Appeals. Indeed, the dissent argued that the Court of Appeals has repeatedly embraced the common law rule and that the majority had no grounds for departing from it. *Id.* at 143-44. Thus, it is not clear how persuasive an authority *Smithers* actually is, even within its own appellate department. *See, e.g., Lucker v. Bayside Cemetery*, 114 A,D. 3d 162 (N.Y. App. Div. 1st Dep't 2013) (limiting *Smithers* and denying standing to relatives of deceased donors).

Moreover, *Smithers* addressed unique and extreme circumstances. In *Smithers*, the charitable organization—a hospital—engaged in repeated misrepresentation and misappropriation of donated funds, in direct contravention of its obligations to the donor. And while the New York Attorney General investigated the hospital's unlawful conduct and recovered significant monies, it failed to provide adequate oversight and the hospital continued to violate the terms of the donor's gift. Indeed, the majority went to far as to imply that the Attorney General had "abdicated" his responsibilities. *Id.* at 134. In this morass of broken promises and failed oversight, the majority noted that only the donor's special administratrix—

who had sued to enforce her late husband's gift to the hospital and uncovered additional wrongdoing—had exercised appropriate "vigilance." *Id.*

Essentially, the two-judge majority was livid. The hospital had engaged in repeated, unlawful conduct. And the Attorney General had, in their view, fallen down on the job. By contrast, the donor's wife had behaved in exemplary fashion. *Id.* at 138 ("the desire to prevent vexatious litigation by 'irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations' has no application to Mrs. Smithers") (citation omitted). Not finding any New York case in which a *donor* was denied standing—although the Court of Appeals had repeatedly adopted the common law rule in other circumstances, specifically with respect to trust beneficiaries—the majority concluded that the donor's wife should be permitted to proceed with her action. *Id.* at 140-41.

None of the extreme circumstances present in *Smithers* are present here. Middlebury did not engage in any wrongdoing. It certainly did not engage in any misrepresentation or misappropriation of donated funds. Rather, for more than 100 years, Middlebury faithfully executed Governor Mead's gift in compliance with his wishes. There is no botched investigation here, no dereliction of an elected official's duty. And the Special Administrator is not representing the interests of a recently deceased donor, whose wishes were specially and particularly known to him. Instead, the Special Administrator brought suit on a series of novel theories, to defend the alleged interests of a long-dead donor of a completed gift, at the behest of the donor's great-great-grandson. This is precisely the kind of "vexatious" suit that the common law rule was created to avoid.

II. THE ATTORNEY GENERAL IS THE PROPER AUTHORITY TO SUPERVISE CHARITABLE ORGANIZATIONS AND ENFORCE GIFTS.

For centuries, it has been the exclusive province of the state attorneys general to supervise charitable organizations and ensure that they do not stray from their charitable purpose and responsibilities. *See* Patton, 11 U. Fla. J. L. & Pub. Pol'y at 138 (collecting authorities and reciting history of

charitable enforcement). This is not just a matter of tradition. Rather, long experience has proven that the attorney general is best-suited to weigh the competing interests and demands inherent in enforcing charitable gifts, all while remaining accountable to the public.

A. The Attorney General's Role Is Steeped in History and Supported by Centuries of Experience.

The attorney general's role in charity enforcement is part of the English common law tradition and began to take shape prior to the adoption of the Statute of Elizabeth in 1601. Charities are, of course, themselves ancient. *Id.* at 134 (charities existed in Egypt during time of pharaohs). For just as long, charitable funds have been mismanaged and misappropriated. *See, e.g., id.* at 135-36. To prevent this abuse, English authorities experimented repeatedly with various enforcement mechanisms. None proved effective until enforcement was placed in the hands of the attorney general, who regulated charities in the public interest.

1. The Attorney General's Role in English Tradition

In medieval England, for example, charitable funds and property were generally held by religious organizations. *Id.* at 134. Thus, the ecclesiastical courts had jurisdiction over most charitable enforcement. *Id.* at 135. This eventually became an unacceptable enforcement mechanism because the self-interested courts "earned a reputation for corruption and ineffectiveness." *Id.* at 135-36.

Jurisdiction over charitable enforcement then moved to the English chancery courts. *Id.* at 136. By the mid-sixteenth century, those courts had adopted "the procedure of a simple bill and answer" as the "recognized method of redress for the misappropriation of charitable assets." *Id.* at 137. This procedure was available to anyone, including donors and beneficiaries. Indeed, "[a]nyone alleging mismanagement of a charity was free to seek redress by filing a bill of complaint with the chancery." *Id.* This, too, proved unwieldy and ineffective because "the procedure was abused by litigants through delay tactics and protracted motions and pleadings." *Id.*

To resolve these enforcement difficulties, England adopted the Statute of Elizabeth in 1601. *Id.* at 138. Under the new enforcement scheme, "commissioners" appointed by the Lord Chancellor were authorized to "inquire into any breach of trust, falsity, non-employment, concealment, misgovernment or conversion of charitable funds." *Id.* at 139. This new system—which began to place responsibility for supervising charities in the hands of public officials representing the state—was initially successful. *Id.* However, it apparently foundered under pressures resulting from the English Civil War, which "caused people to simultaneously misappropriate charitable assets and to turn a blind eye to such behavior." *Id.* at 140-41.

Once again, the charitable enforcement system evolved, this time with far more lasting effect. After the English Restoration, the failed commissioners gave way to the appointed attorney general, who had the power to "bring the malfeasance of charitable fiduciaries to the attention of the Chancellor." *Id.* at 142. This authority was "rooted in the Crown's power as *pater patriae,"* that is, as father of the country. *Id.* at 143. Thus, the attorney general represented the interests of the Crown, which in turn protected the interests of the people in the appropriate use and management of charitable funds meant to benefit them.

This model resolved a number of issues. It avoided the self-interest of the ecclesiastical courts. It avoided the chaos of permitting anyone with an interest, or a grudge, to file complaints against charitable organizations. It avoided the wasting of charitable assets on frivolous claims. And it avoided scattershot enforcement, placing responsibility in the hands of a single individual accountable to the Crown and, ultimately, the people. With additional refinements, the attorney general model became the exclusive means of charitable enforcement in England by the late 17th century. *Id.*

2. The Attorney General's Exclusive Enforcement Authority in the United States.

The English model continued in the United States. In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the United States Supreme Court "established the attorney general's monopoly on charitable

enforcement." Patton, 11 U. Fla. J. L. & Pub. Pol'y, at 160 n. 218. *Dartmouth* famously involved a dispute between trustees of Dartmouth College. Unhappy with the direction of the college, one faction of trustees organized themselves as "Dartmouth University" and successfully lobbied the New Hampshire legislature to change the college charter. *Id.* at 160; *Dartmouth*, 17 U.S. at 539-44. Another faction continued to operate as "Dartmouth College." Patton, 11 U. Fla. J. L. & Pub. Pol'y at 160. Both groups believed they were entitled to the college's corporate property and turned to the courts to resolve the dispute. *Id.*; *see Dartmouth*, 17 U.S. at 226.

As one commenter has noted, *Dartmouth* is important "not so much because it decided who can represent the interest of the charitable beneficiaries, but because it decided who cannot." Mary Grace Blasko, et al., *Standing to Sue in the Charitable Sector*, 28 U.S.F.L. Rev. 37, 41 (1993). To resolve that issue, the court sifted through the various interests of those associated with the college, who might appear in court to protect the college's "eleemosynary," or charitable, mission. *Dartmouth*, 17 U.S. at 640.

Who had a sufficient interest to protect that mission? Not the founders, the court determined, "who have parted with the property . . . and their representatives have no interest in that property." *Id.* at 641-42. The "donors of land" were "equally without interest." *Id.* "The students [were] fluctuating, and no individual . . . ha[d] a vested interest in the institution." *Id.* Even the trustees, while acting individually, had "no beneficial interest to be protected." *Id.* at 641.

With the donors, beneficiaries and even individual trustees eliminated, who could supervise and enforce the charitable purpose of the college? Ultimately, the court decided that the interest and power rested in the state, which had originally chartered the college. *Id.* at 642-50; *see also* Patton, 11 U. Fla. J. L. & Pub. Pol'y at 161-62. From this conclusion flowed the well-accepted American common law rule that only the state's representative, the attorney general, has standing to enforce the terms of a charitable gift. *Id.* at 162; *see also Vidal v. Girard's Ex'rs,* 43 U.S. 127, 195-97 (1844); *MacKenzie v.*

Trustees of Presbytery of Jersey City, 61 A. 1027, 1040 (N.J. 1905) ("[o]ur legal ancestors appear for a time to have felt a difficulty as to who was the proper person to bring a suit" in cases involving property donated to a charity but "[a]t length . . . it came to be established that the Attorney General, representing the crown, was the proper person").

B. The Common Law Model of Exclusive Attorney General Enforcement Best Resolves Competing Interests in Gift Enforcement.

In the vast majority of states, the attorney general retains exclusive authority to enforce the terms of completed gifts. *See, e.g., Herzog*, 699 A.2d at 998-99 (noting that "a donor who attaches conditions to his gift has a right to have his intentions enforced," but the donor's right "is enforceable only at the instance of the attorney general," and collecting cases). There are good reasons for that. The attorney general represents the interests of the people. She is not self-interested in the enforcement of a particular gift. Instead, she weighs individual disputes and exercises her discretion to determine which require her intervention, mindful of the need to avoid unnecessary wasting of charitable assets. She regulates even-handedly, implementing consistent policy choices. She also remains accountable to the people who elected her. This balancing of competing interests achieves a number of important and desirable purposes: it should not be disturbed.

1. Enforcement is Supported by Substantial State Interests.

Placing exclusive enforcement authority in the hands of the attorney general ensures that enforcement is supported by substantial interests. As courts across the country have repeatedly stated, a donor's interest in a gift ends when the gift is given. *See, e.g., Smith v. Thompson*, 266 Ill. App. 165, 169 (Ill. App. Ct. 1932) ("Where the donor has effectually passed out of himself all interest in the fund devoted to a charity, neither he nor those claiming under him have any standing in a court of equity as to its disposition and control.") (quotation omitted). It is, after all, a gift, generously provided to a charity to further its good works. Unless a donor has explicitly retained some enforceable interest, such a right to reverter, the

gift is complete and the donor has no further interest in it "except the sentimental one that every person who has contributed to the charity would be presumed to have." *Hardt,* 302 S.W.3d at 137 (citation omitted); *see also* Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 GA. L. REV. 1183, 1197 (2007) (prohibition on donor standing derives from "view of the transaction as a property interest—and donated property is simply no longer the settlor's").

By contrast, the state retains an active and substantial interest in the proper management of charitable organizations, long-after an individual gift has been given. Charitable organizations are, after all, meant to benefit the public. *See, e.g.*, 11B Vt. Stat. Ann. § 3.01 (listing lawful purposes of Vermont nonprofit corporations, which must be, for example, "charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social"). Moreover, the state has a public safety and consumer protection interest in preventing fraud and the abuse of its generous citizens. *See, e.g.*, 9 Vt. Stat. Ann. § 2471, *et seq*. (Vermont Charitable Solicitation Law).

In addition, the state grants considerable advantages to charitable organizations. Most critically, the state exempts them from taxes and other obligations shouldered by for-profit organizations. *See*, *e.g.,* 32 Vt. Stat. Ann. § 3802 (exemption from state property tax for nonprofit corporations). The state even grants officers and trustees of charitable organizations immunity from liability in most cases. *See* 12 Vt. Stat. Ann. § 5781. States, therefore, have a vested interest in ensuring that an organization continues to qualify for such advantages.

In short, the state retains an ongoing and substantial interest in the proper management of charitable organizations across a diverse array of public policies and concerns. That interest is weightier than that of a mere donor, and certainly weightier than that of a donor's descendant. It makes perfect sense, therefore, that the state's interest should be paramount. It also makes sense that the person charged with protecting that interest is the Attorney General, not individual members of the public. *See* State of Vermont, Office of the Attorney General, *Understand Your Responsibilities:*

Guidance for Board Members of Charitable Nonprofit Organizations in Vermont at 1 (Nov. 2015) ("The Attorney General is charged with ensuring nonprofits work for the public good, use charitable funds to further their missions, and act in accordance with Vermont law").

2. Attorney General Enforcement Protects Scarce Charitable Resources.

The attorney general's exclusive authority to regulate charities also avoids so-called "vexatious lawsuits," which could otherwise clog the courts and waste scarce charitable resources. *See, e.g., Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 91 P.3d 1019, 1025-26 (Ariz. Ct. App. 2004) (purpose of common law rule rooted in concern with "vexatious litigation that would result from recognition of cause of action by any and all of a large number of individuals who might benefit incidentally" from charitable trust or gift); *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752, 756 (N.Y. 1985) (standing limited to Attorney General "to prevent vexatious litigation and suits by irresponsible parties who do not have a stake or interest in the matter"). Over time, the class of persons who may have some connection to a gift—either the descendants of the original donor or the intended beneficiaries of the gift—expands. Given enough time, that class expands exponentially. If each of those persons had standing to bring a claim against the charitable organization, "there would be no end to litigation and strife." *Matter of Nevil's Estate*, 199 A.2d 419, 423 (Pa. 1964) (citation omitted). As the Pennsylvania Supreme Court put it, "The general laws of order so necessary to good government forbid anything like this." *Id.* (citation omitted).

Thus, the attorney general's exclusive authority eliminates "the risk and frequency of unwarranted litigation by limiting the scope of potential litigants." *Derblom*, 289 A.3d at 1203. Given her prosecutorial discretion, the attorney general carefully weighs the facts and circumstances before intervening in donor disputes, reserving litigation for cases that will have the most impact across the sector. This is obviously a special consideration for charitable organizations, sparing them from litigation in most disputes. But it is not undeserved: it reflects a decision by virtually every jurisdiction in

the country to shield charitable assets from unnecessary litigation to preserve those assets and maximize their use and effectiveness.

3. The Choice to Shield Charitable Organizations from Some Litigation Is a Sound One, Based in Public Policy, and Should Not be Disturbed.

The trial court judge appeared concerned that the Vermont Attorney General was not *required* to become involved in this dispute. PC-I-9 ("Middlebury has come forward with no concrete authority that would compel Vermont's Attorney General to take action in a case of this sort or require her to consider it."). Of course, some disputes are not resolvable by the courts based on long-standing tradition and public policy determinations. For example, the state can only be sued if it has waived its sovereign immunity. *See, e.g., Jacobs v. State Teachers Retirement Sys. of Vermont*, 174 Vt. 404, 408; 816 A.2d 517, 521 (2002). Absent a waiver, meritorious claims will no doubt go unresolved. *Id.* (noting criticism that sovereign immunity for torts "subordinates the interests of injured citizens to those of the public treasury"). On balance, however, the legislature and courts of Vermont have recognized that there are important, countervailing interests at stake. *Id.* (noting policies supporting sovereign immunity "include the protection of the operation of state government from interference by the judiciary and by private citizens, elimination of the burden on the State of defending lawsuits, and insulation of the state treasury from litigation claims").

So, too, here. For centuries, courts in the United States have struck a balance. They recognize that donors have the right to see their gifts put to their intended purpose. *See, e.g., Herzog*, 699 A.2d at 998-99. That is an obligation shouldered by the charity's board. *Id.* But if that obligation is violated, it is not the donor—or the donor's descendants—who enforce it. To ensure that minor disagreements and personal discontents do not unnecessarily distract a charitable organization from its purpose or drain its assets, the dispute must first be weighed by the attorney general. If she finds the donor's cause worthy, she will pursue it. If she does not, then the charity is spared the expense and worry of litigation. If she makes the wrong choice, the solution is at the ballot box. The Special Administrator has failed to

demonstrate any sound reason to depart from this balanced and time-honored system of enforcement.

III. DEVIATION FROM THE COMMON LAW RULE WOULD CREATE SIGNIFICANT PRACTICAL ISSUES FOR AMICI, WHO MANAGE THOUSANDS OF GIFTS ACROSS GENERATIONS OF DONORS.

The problem is not speculative. If the Special Administrator is successful in convincing this Court to deviate from the common law rule, Vermont schools, colleges, universities, hospitals and other charities could suddenly face a wave of litigation. According to statistics compiled by Common Good Vermont, there are almost 6,500 Vermont charitable organizations. Each of these organizations—previously protected by the settled expectations of the common law—could then face litigation from disappointed donors or their descendants.

The example of Wellesley College is instructive. On average, Wellesley receives almost 14,000 gifts annually. While many of those gifts do not contain restrictions on their use, they nonetheless have to be carefully monitored and tracked to ensure that no gift restriction is missed.

Wellesley also manages about 2,500 endowed funds. An endowed fund is a permanent gift of money or property to the college. The principal of such a gift is invested in perpetuity and never spent. The income can be spent, but is generally subject to donor restrictions.

Endowment income is often the principal source of long-term financial support for colleges and universities. That income is a dependable source of fiscal stability and allows these institutions to invest in high-quality academic programs and top-notch faculty. Endowment income also supports scholarships for highly-qualified and deserving students. At Wellesley, endowment spending accounts for approximately 40% of the college's net operating revenues.

Most of Wellesley's endowment funds have donor restrictions. That means that Wellesley must track and effectuate thousands of such

restrictions. Many of Wellesley's funds date back generations. While the college was unable to pinpoint the date of its earliest fund, it was able to trace certain scholarships and other significant gifts back to a President's Report published in 1897, which was about 30 years after its founding.

Imagine if colleges were no longer protected by the common law prohibition against donor standing. They would, no doubt, take additional pains—and expend additional resources—to even more carefully track donor restrictions on existing and new gifts in an effort to insulate themselves from this new class of claims. They would also likely recalibrate their interpretation of those restricted gifts, taking a more conservative view than otherwise warranted as a result of Attorney General oversight to avoid any donor conflict that could lead to litigation. This could result in significant opportunity costs. For example, charitable assets could be fastidiously kept where they are not needed, even where state law may permit flexibility, instead of being appropriately deployed where they are.

If litigation does materialize, colleges would have to spend their limited resources on lawyers and devote staff time to supporting its defense. More devastating, perhaps, would be the potential financial instability litigation would introduce. If a donor were to sue, arguing that a gift was being mismanaged, the college would likely be unable to spend any money from the gift during the pendency of the litigation, including the income. Instead of being able to rely on and plan for the use of a steady source of financial support—support that forms 40% of Wellesley's net operating revenues, for example—uncertainty would prevail. The prospect of litigation would always hang over the college, threatening planned projects, hiring and scholarships, undermining the college's financial well-being and stability.

Imagine this scenario being repeated across the thousands of charitable organizations in Vermont that serve, educate, treat and employ scores of Vermonters. The Special Administrator simply has not provided a compelling case to overturn the long-standing common law prohibition against donor standing. His proposal would introduce increased litigation costs and financial instability into a sector that can scarcely afford it,

diverting time and money away from critical charitable purposes. A private desire to perpetually control the terms of a gift simply does not outweigh the harm that would befall Vermont's many and diverse charitable organizations.

CONCLUSION

There is no reason to believe—and neither the Special Administrator nor the Superior Court has provided any—that Vermont has ever intended to stray from the common law prohibition against donor standing, adopted uniformly by its sister states in New England and across the country. Therefore, amici join in Middlebury's request that this case should be dismissed on the ground that the Court lacks subject matter jurisdiction because the Special Administrator lacks standing to bring his claims.

Respectfully submitted,

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[SIGNATURE PAGE FOLLOWS]

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IN THE SUPREME COURT
OF THE
STATE OF VERMONT

HON. JAMES H. DOUGLAS, SPECIAL ADMINISTRATOR OF THE ESTATE OF JOHN ABNER MEAD, Appellant, v. THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE, Appellees.	Supreme Court Docket No. 25-AP-148 Appealed from Addison Civil Division, Docket No. 23-CV-010214

CERTIFICATE OF COMPLIANCE

NOW COME *AMICI CURIAE* AMHERST COLLEGE, BENNINGTON COLLEGE, CHAMPLAIN COLLEGE, FRANKLIN & MARSHALL COLLEGE, ITHACA COLLEGE, LANDMARK COLLEGE, SAINT MICHAEL'S COLLEGE, SARAH LAWRENCE COLLEGE, SMITH COLLEGE, STERLING COLLEGE, SWARTHMORE COLLEGE, TRINITY COLLEGE, TUFTS UNIVERSITY, VERMONT COLLEGE OF FINE ARTS, VERMONT STATE COLLEGES, WELLESLEY COLLEGE AND WILLIAMS COLLEGE, by and through their counsel, Erin Miller Heins of Langrock Sperry & Wool, LLP, and pursuant to V.R.A.P. 32(a)(4)(D), certify that the number of words in Brief of Amici Curiae is 6,973 as indicated by the word count of Microsoft Office Word 365 which was used to prepare the brief.

DATED at Burlington, Vermont this 21st day of November, 2025.

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