Vermont Supreme Court
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IN THE SUPREME COURT OF THE STATE OF VERMONT

SUPREME COURT DOCKET 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
Defendant/Appellee

Appeal from
Vermont Superior Court
Civil Division, Addison Unit
Docket No. 23-CV-01214

BRIEF OF APPELLEE THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE

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STATEMENT OF THE ISSUES

1. Should this case be dismissed on the ground that the Court lacks subject matter jurisdiction, where the traditional and widely adopted prohibition on donor standing bars a donor from pursuing claims for breach of an alleged condition associated with a completed gift? (p. 7)

2. Should judgment on the Mead Estate's claims be affirmed on the alternative ground that the law of charitable gifts, not contract law, governs claimed conditions on charitable donations? (p. 15)

3. Should judgment on the Mead Estate's contract claim be affirmed on the alternative ground that the undisputed facts cannot establish any enforceable contractual obligation to maintain the Mead name on Middlebury's chapel? (p. 22)

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STATEMENT OF THE CASE

In the early twentieth century, Middlebury College alumnus John Abner Mead gifted funds to construct a chapel at the school, inspired by the "desire to assist the students of Middlebury [C]ollege in having a place of worship where they could all assemble in one auditorium for [religious] inspiration." PC-III-208. That chapel was known for over a century as the "Mead Memorial Chapel" in honor of Mead and his family. After the College changed the name in 2021—over a century after Mead's death—a great-great-grandchild reopened Mead's estate to bring suit, seeking to compel the College to either maintain the Mead name on its building or return Mead's gift to his heirs. In the ensuing litigation, the Estate advanced various alternative legal theories, the most prominent of which posited that Mead's donation of the chapel was not in fact a charitable gift, but rather a contractual transaction by which the College agreed to permanently use the Mead name on its building in exchange for Mead's financial support.

The trial court correctly granted Middlebury judgment on all of the Estate's claims. Its path to doing so, however, left open consequential questions for the many donation-supported organizations operating in Vermont. The court declined to dismiss the lawsuit under the common law's donor standing rule, which applies in the vast majority of other jurisdictions and bars donor-initiated litigation over completed gifts. That the trial court allowed donor claims to proceed under the extraordinary facts of this case—no other court has ever permitted a donor's estate to bring suit more than a century after their death—could open the door wide for distant heirs to litigate claimed restrictions on gifts long after the donor has passed from the Earth. The court also declined to decide whether the law of gifts or contract governed Mead's donation, potentially unsettling charitable gift jurisprudence in Vermont and beyond. These issues are presented squarely for the Court's resolution on appeal.

I. Mead's Gift to Middlebury

In 1914, former Vermont Governor John Abner Mead wrote to the then-president of Middlebury College, John Thomas, and advised of his intention

to make a substantial gift to the College. Mead, an 1864 graduate of Middlebury and a College Trustee, *see* PC-I-76, -92, explained in his letter (the "Gift Letter") that:

> In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

PC-III-33. Mead further stated that he "ha[d] in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure," to which he would "bind [himself] and [his] estate" upon satisfaction of two contingencies. The first of these was that the "Trustees of the College secure appropriate plans for its erection which shall meet with my approval." *Id.* The second was that the Trustees "appoint a Building Committee at once . . . to make the necessary contracts for such a structure and to supervise the erection of the same." PC-III-33-34.

Aside from these two conditions precedent to the making of the gift, Mead's Gift Letter did not impose any other specific restrictions. This was in contrast to other gifts and bequests made by Mead during his lifetime, which contained explicit conditions and provided for the gifted property to revert to Mead or his heirs upon breach thereof. *See* PC-III-250 (gift of property to establish community center with various "express condition[s]," the violation of which would cause the property to "revert to the said John A. Mead, his heirs and assigns"); PC-III-255-56 (bequests in will subject to conditions).

Upon receipt of Mead's Gift Letter, President Thomas promptly wrote to the College Trustees, enclosing the Gift Letter and noting with "the keenest pleasure" that it "assures the erection of an appropriate and beautiful chapel for Middlebury College." PC-III-36. Thomas asked the

Trustees to reply "immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests." *Id.* The letter did not ask the Trustees to authorize any agreement to use the name "Mead Memorial Chapel," nor did the letter contain any reference to the name at all. *Id.*

At a June 22, 1914 meeting, Middlebury's Trustees voted on and adopted a resolution accepting the gift and appointing a building committee. PC-III-61-66. By December 1914, the College secured plans for the Chapel and a contractor, and the Trustees formally voted at a December 18, 1914 meeting to "proceed with construction of the Chapel, with the understanding that $60,000 would be contributed by Dr. Mead; the balance estimated at about $1,000 to be contributed by the College." PC-III-213-14. Mead wrote to the Trustees on January 13, 1915, confirming his agreement to contribute $60,000. PC-III-216. Mead subsequently agreed to increase his gift toward the Chapel by $1,031, and he also pledged an additional $7,000 to acquire eleven bells for the Chapel's tower, stating in a June 21, 1915 letter that, "[i]f acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." PC-III-218, -222.

Construction of the Chapel was completed in 1916. PC-I-113. The Chapel—which has played a central role for the College and its students not only as a place of worship but also as a "community gathering place for convocations, lectures, concerts, baccalaureates, and countless other events," PC-I-123—was known as the "Mead Memorial Chapel" for over a century thereafter.

II. Middlebury's Renaming of the Chapel

In summer 2021, the Middlebury Board of Trustees' Prudential Committee decided on behalf of the Board to discontinue the use of the name "Mead Memorial Chapel."[1] PC-I-126. The College's President and the Chair of its Board of Trustees sent out a message to the Middlebury community on

[1] The Chapel is now known as "Middlebury Chapel." PC-II-197.

September 27, 2021, advising of the change and explaining the process that brought it about:

> This past spring, the Vermont Legislature made a public apology for its former legislation authorizing the forced sterilization of at least 250 Vermonters as part of the implementation of a eugenics policy in the first decades of the 20th century. The move had bipartisan support from legislators and followed the examples of other states in coming to terms with this painful part of our nation's history.
>
> That statement by the state legislature raised a question for us at Middlebury about the role played by Governor John A. Mead, Class of 1864, whose gift established Mead Memorial Chapel, in advocating and promoting eugenics policies in Vermont in the early 1900s. It compelled us to ask whether it is appropriate to have Mead's name so publicly and prominently displayed on the Middlebury campus, especially on the iconic chapel, a place of welcome for all.
>
> After a careful and deliberative process, Middlebury's Board of Trustees has made the decision to remove the Mead name from the chapel . . . . [¶] We want to stress up front that this was a process involving deep reflection and discussion. No issue like this should be undertaken lightly or often. . . .
>
> [I]t was important for Middlebury to follow its established process for these kinds of considerations and commission a working group to look into the question. Specifically, the president asked the group to examine the role that Governor Mead had in these policies, and what implications that had for us and for the iconic building named after him on campus. She asked the group to conduct its work with a generosity toward the historical context of the time, as well as rigor in historical analysis. . . .
>
> Following its review, citing his central role in advancing eugenics policies that resulted in harm to hundreds of Vermonters, the working group determined that "the name of former Governor Mead on an iconic building in the center of campus is not consistent with what Middlebury stands for in the 21st century." [¶] The group advised that "the President recommend to the

> Board of Trustees to remove 'Mead' as part of the building's name."

PC-II-194-95. The statement noted that the President had forwarded the working group's recommendation to the Prudential Committee of the College's Board of Trustees, which voted unanimously that Middlebury should remove the Mead name. PC-II-196.

The September 27 statement also provided some limited background on the eugenics movement and John Mead as context for the College's decision. It explained that eugenics policies arose from "early 20th-century notions of racial purity and 'human betterment,'" and "sought to isolate and prevent the procreation of so-called 'delinquents, dependents, and defectives' to bring about a more 'desirable' society." PC-II-194. The statement described John Mead's role in those policies as follows:

> In 1912, two years before the chapel gift was made, in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory. His call to action resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people—based on their race, sex, ethnicity, economic status, and their perceived physical conditions and cognitive disabilities. John Mead's documented actions in this regard are counter in every way to our values as an institution, and counter to the spiritual purpose of a chapel, a place to nurture human dignity and possibility, and to inspire, embrace, and comfort all people.

PC-II-195-96.

III. Procedural History

In 2022, over a century after former Governor Mead's death, a great-great-grandchild of Mead filed a petition in the Probate Division seeking to reopen his estate for the purpose of investigating and presenting claims against Middlebury College for an alleged breach of the terms of Mead's gift of the Chapel. PC-III-303-12. The Probate Division granted the petition and appointed James Douglas as Special Administrator of Mead's estate. PC-III-

325. The Special Administrator filed the present suit on behalf of the Mead Estate in 2023, asserting breach of contract, breach of the covenant of good faith and fair dealing, breach of conditional gift, and unjust enrichment. At no point, either prior to filing suit or thereafter, did the Special Administrator communicate the Estate's concerns about the alleged violation of Mead's gift terms to the Vermont Attorney General to investigate or enforce. PC-III-245-47.

The College responded to the Estate's complaint by filing a motion to dismiss for lack of standing and failure to state a claim, which the court denied in an August 4, 2023 ruling. PC-I-7. With respect to standing, the trial court suggested—in error—that the College was raising the issue "only to the extent that this case falls under gift law as opposed to contract law" (and it declined to recognize a standing deficit in any event). PC-I-9.

The College subsequently renewed its motion to dismiss for lack of standing and moved for summary judgment. The trial court granted summary judgment in part in an October 3, 2024 ruling. PC-I-14. The court declined to decide whether Mead's donation was governed by gift or contract law, but held that, regardless, the Estate could not make out a viable conditional gift claim. PC-I-19-21. On this basis, the court held the issue of standing moot—again incorrectly characterizing the standing argument as limited to the Estate's gift claim. PC-I-21, -28. The court also granted summary judgment on the contract and unjust enrichment claims, leaving only the Estate's covenant of good faith claim for a possible trial.

In November 2024, the court permitted the Estate to amend its complaint to introduce claims for promissory and equitable estoppel and to formally withdraw its conditional gift claim. PC-I-57-59. On April 9, 2025, after the College moved for summary judgment a second time, the court granted judgment on all remaining counts. PC-I-29. This appeal followed.

ARGUMENT

I. The Suit Should Be Dismissed Outright Because the Estate of a Donor Lacks Standing to Pursue Gift-Related Claims.

The threshold issue presented by this appeal has unique significance for the ecosystem of donation-supported organizations operating in Vermont: does a donor have standing to pursue legal claims for the alleged breach of restrictions on a completed charitable gift?

While a question of first impression in Vermont, in answering it the Court will not write on a blank slate. The common law has long considered the regulation and enforcement of restricted gifts to be the sole province of a state's attorney general, who is charged with protecting the public's interest in charitable gifts. Consistent with this, the vast majority of courts that have considered the matter have held that donors—having given up dominion over their property and donated it to a charitable purpose—lack standing to sue for enforcement of a gift restriction, except where the donor expressly retains a right of reversion. This standing limitation applies regardless of whether the donor's claims come cloaked in the language of conditional gift, contract, unjust enrichment, promissory estoppel, or otherwise.

The Court should follow suit here. The conclusion that donors lack standing to sue to enforce conditions on a completed gift not only accords with authority from other jurisdictions but also with Vermont precedent under the common law of charitable trusts, which limited standing to sue for breach of trust to the Vermont Attorney General. Moreover, were the Court ever to consider breaking from the common law on the question of donor standing, this would not be the case in which to do so. The facts here are extreme: it is not the donor himself who has brought suit, but rather the estate of a donor who has been dead for over a century. No court has ever recognized standing for a gift-related claim under such circumstances, and, indeed, to do so would represent an extraordinary deviation from settled law around the country and open a Pandora's box of litigation for charitable institutions.

A. Standard of Review.

"Whether a plaintiff has standing is a legal question," which the Court will "review with no deference to the trial court." *Ferry v. City of Montpelier*, 2023 VT 4, ¶ 10, 217 Vt. 450, 296 A.3d 749 (cleaned up).

B. Donors and Their Estates Lack Standing Under the Common Law to Enforce Claimed Restrictions on Charitable Gifts Absent Retention of a Reversionary Interest.

Although no Vermont court has directly addressed the question of donor standing, it is well settled elsewhere: "[N]early all the modern American authorities—decisions, model acts, statutes, and commentaries—deny a donor standing to enforce a restricted gift to [a] public charity absent express retention of a reversion in the donative instrument." *See* Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society v. Donor Empowerment*, 58 Vand. L. Rev. 1093, 1145 (2005). As the Connecticut Supreme Court has explained, "a donor who attaches conditions to his gift has a right to have his intention enforced" but the "donor's right . . . is enforceable only at the instance of the attorney general." *Carl J. Herzog Found., Inc. v. Univ. of Bridgeport*, 699 A.2d 995, 998 (Conn. 1997) (collecting cases).

The doctrinal basis of the rule derives from the very nature of a charitable gift: in completing a gift, a donor surrenders all dominion over the donated property and devotes it to an institution or purpose serving some public good. *See* 38 Am. Jur. 2d Gifts § 67 (unless subject to an express condition, a gift becomes "irrevocable once transferred to and accepted by the donee."). Thus, absent retention of a reversionary interest, donors and their heirs do not have a legal interest in a completed gift that could confer standing. *See, e.g.*, *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051, 1058 (9th Cir. 2022) ("[W]hen a person fully donates property to charity, what later happens to that property cannot create a 'concrete and particularized' injury in the donor, but at most one that is 'abstract,' and therefore not sufficient [to confer standing]." (Bress, J., concurring)); *Trs. of Dartmouth Coll. v.*

Woodward, 17 U.S. 518, 641 (1819) (donors "have parted with the property bestowed upon [the donee], and their representatives have no interest in that property").[2]

Because a donor has given up property to advance the public good in some manner, "[t]he misuse of property donated to charity is in essence an injury to the community as a whole," rather than to the donor specifically. *Pinkert*, 48 F.4th at 1059. As such, the "Attorney General—on behalf of the community—has traditional enforcement authority in this area." *Id.*; *see also In re Nevil's Est.*, 199 A.2d 419, 422 (Pa. 1964) (as the "beneficiary of charitable trusts is the general public to whom the social and economic advantages of the trusts accrue," the state assumes the role of oversight, and "[t]he responsibility for public supervision traditionally has been delegated to the attorney general to be performed as an exercise of his *parens patriae* powers" (citation omitted)). This places authority and discretion over enforcement of charitable gifts with "a responsible state officer who will act in the public interest rather than for personal motives," thereby protecting charities from "unreasonable and vexatious litigation." *Longcor v. City of Red Wing,* 289 N.W. 570, 574 (Minn. 1940) (cleaned up).

For these reasons, "the common-law donor-standing rule has been applied almost universally to prohibit the kinds of donative-intent claims" raised in this case. *Siebach v. Brigham Young Univ.*, 361 P.3d 130, 137 (Utah App. Ct. 2015); *see also, e.g.*, *Courtenay C. & Lucy Patten Davis Found. v. Colo. State Univ. Res. Found.*, 320 P.3d 1115 (Wyo. 2014) (dismissal of

[2] This is consistent with how the concept of a charitable gift is treated under the tax law, which generally requires a surrender of control to qualify for the tax benefit of making a gift. *See, e.g.*, *Macklem v. U.S.*, 757 F. Supp. 6, 8 (D. Conn. 1991) (noting that "[b]y definition, a 'completed gift' is a donation that is placed beyond the dominion and control of the donor" and finding that donor's exercise of "dominion and control over the [gift] funds . . . precludes a finding that there was a charitable gift").

donor suit on standing grounds); *Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133 (Mo. App. Ct. 2009) (same); *Longcor,* 289 N.W. 570 (same).[3]

C. The Donor Standing Bar Applies to Gift Claims Irrespective of How They Are Pled.

The trial court suggested that the issue of donor standing was only implicated by the Estate's cause of action for breach of a conditional gift, *see* PC-I-21, -28, but this misconstrued the law: the donor standing rule applies to any claims seeking to enforce a claimed gift restriction.

The standing inquiry focuses not on the identity of the claim that the plaintiff has pled, but rather on the nature of the interest plaintiff claims. *See Hinesburg Sand & Gravel Co. v. State,* 166 Vt. 337, 340, 693 A.2d 1045, 1047 (1997) (type of interest claimed by plaintiff inadequate to confer

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[3] Courts have departed from the mainstream donor-standing rule in a small handful of cases, the most prominent of which is *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426 (N.Y. App. Div. 2001), in which a New York intermediate appeals court concluded that the widow of a recently deceased donor, acting as executor of his estate, had standing to pursue claims arising from a hospital's misappropriation and misuse of gift funds. That case, however, is unique to its facts and to the specifics of New York law, and it has proven to be an outlier on the issue. *See, e.g.*, *Siebach,* 361 P.3d at 135 and n.4 (citing *Smithers* for proposition that "[a]t least one American jurisdiction has expanded the common-law rule to permit donor standing in some circumstances," but finding that the plaintiff donors lacked standing to enforce charitable gift restrictions and noting that the parties did "not argue that *Smithers* altered the general common-law rule that donors to charitable institutions lack standing to enforce their donative intent"); *Hardt*, 302 S.W.3d at 139-140 (Mo. App. Ct. 2009) (rejecting argument for expansion of common law standing on the basis of *Smithers*); Restatement of the Law, Nonprofit Organizations § 6.03 cmt. b(1) (2017) ("[l]ater courts have tended to limit *Smithers* to its facts," on the grounds "that the violation of the restriction took place while the original donor was still living and involved in the affairs of the charity, that the plaintiff was granted standing only as the executrix of the donor's estate, rather than personally, and that the donor was only recently deceased at the time of the action").

standing). Chief among the showings necessary to establish standing is proof of injury in fact, i.e., the "invasion of a legally protected interest." *Id.*, 166 Vt. at 341, 693 A.2d at 1048 (cleaned up). This is precisely why the donor standing rule applies in cases like this one: as described above, the animating logic of the rule is that, in making a charitable gift, a donor necessarily surrenders any legal interest in the gift absent retention of a reversionary interest. Hence, no matter how creatively a donor may plead their action to enforce a gift, courts have held that donors lack an interest sufficient to confer standing. *See, e.g.*, *Siebach*, 361 P.3d 130 (affirming dismissal of claims for breach of contract, unjust enrichment, and revocation of gift on standing grounds); *Courtenay C.*, 320 P.3d 1115 (affirming dismissal of donor claims for breach of contract, unjust enrichment, and breach of the covenant of good faith and fair dealing on standing grounds).

To limit the donor standing rule to conditional gift claims, as the trial court did, would entirely vitiate the rule—and it would make no sense doctrinally. The one traditional exception to the donor standing bar is where a gift includes an explicit provision for reversion to the donor or their heirs upon failure of a condition, i.e., where the donor retains an enforceable legal interest in the gift. *See Herzog Found.*, 699 A.2d at 998. Likewise, a conditional gift claim will only lie where the donor provides for reversion of the gift upon failure of an express condition.[4] Thus, if the donor standing rule applied solely to conditional gift claims, it would govern a null set: in any case in which a donor retained a reversionary interest sufficient to plead a claim for breach of a conditional gift, they would likewise fall within the exception to the donor standing rule (hence, in every situation in which the rule applied, the claim would be exempt from it). Such a reading of the doctrine is illogical and unsupported by precedent from other jurisdictions.

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[4] *See, e.g., Ball v. Hall,* 129 Vt. 200, 209, 274 A.2d 516, 522 (1971) (absence of reverter or gift-over provision indicates donor did not intend gift to fail upon violation of condition); *Wesley Home, Inc. v. Mercantile-Safe Deposit & Tr. Co.,* 289 A.2d 337, 343 (Md. 1972) (the "absence of a clear reservation of a reversion" indicates that gift was not conditional).

D. The Donor Standing Rule Accords with Vermont Law and Requires Dismissal Here.

There is no question that, if applied here, the donor standing rule would require dismissal. The trial court found that former Governor Mead's gift to Middlebury did not give rise to any right of reversion in Mead or his heirs, a conclusion that the Estate does not challenge on appeal. PC-I-21. Absent any enforceable right of reversion, the Estate lacks a legal interest in enforcement of any alleged condition imposed by Mead in connection with the gift to Middlebury.

The College submits that the Court should follow the majority of American jurisdictions, recognize the common law donor standing rule, and dismiss the Estate's claim on that basis. While Vermont's courts have not addressed donor standing specifically for charitable gifts, the issue has directly surfaced in the context of charitable trusts in *Wilbur v. University of Vermont*, 129 Vt. 33, 270 A.2d 889 (1970). There, James Wilbur made a donation in trust to the University of Vermont to support Vermont students, subject to a condition that the University would limit enrollment. When the University violated the condition by increasing enrollment, Wilbur's heirs brought suit seeking to compel reversion of the gift to his residuary estate. The Court rejected those efforts on the ground, among others, that Wilbur's heirs had no standing to seek enforcement, holding:

> The fact the trustees of a charitable trust violate its terms does not cause the trust to fail nor entitle the settlor or his successor to enforce a resulting trust. Unless it is impossible or impractical to execute the donor's purpose, the remedy for a breach of trust is by suit at the instance of the attorney general of the state to compel compliance. It creates no right in the donor's heirs to enforce a resulting trust.

Id., 129 Vt. at 44, 270 A.2d at 897 (citation omitted). As the "law governing the enforcement of charitable gifts is derived from the law of charitable trusts," *see Herzog Found.,* 699 A.2d at 998 n.2, *Wilbur* squarely supports the adoption and application of the donor standing bar here.

There have been some significant changes to the body of law governing charitable trusts and institutions in Vermont in the time since *Wilbur* was decided, foremost among them the enactment of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and the Uniform Trust Code. However, while introducing some liberalization of standing limitations in cases involving charitable trusts, none of these developments would permit suit by a donor's estate under the circumstances here.

UPMIFA, enacted by Vermont in 2009, was promulgated by the Uniform Law Commission to govern the management of endowments and restricted gifts by charitable institutions. *See* 14 V.S.A. §§ 3411-3420. While UPMIFA would not apply to former Governor Mead's gift—the Act governs only "institutional funds," the definition of which excludes "program-related assets" like the Chapel, *see id.* § 3412(5)—it is significant in that it provides an explicit legal framework addressing what is likely the largest category of restricted gifts: gifts of funds subject to specific, donor-imposed restrictions on expenditure or management (e.g., a restricted gift for the support of a specific department within a college).

In drafting UPMIFA, the Uniform Law Commission initially included a provision granting a donor of a restricted gift (or their estate) the right to bring an action to "enforce the restriction on the gift" that would terminate thirty years after the donation was completed. *See* Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 Ga. L. Rev. 1183, 1216-17 (2007) (reproducing text of donor enforcement provision from 2002 draft of UPMIFA). However, the final version of the Act omitted the donor enforcement provision, and the official notes to the Act affirm that, under UPMIFA's structure, "the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds." Uniform Prudent Management of Institutional Funds Act, Prefatory Note at 4. Consistent with this, UPMIFA requires that an institution notify the Attorney General—but not the donor or their estate—when seeking court approval to modify an express restriction on a gift. *See* 14 V.S.A. § 3416(b), (c). Several courts have had occasion to

examine whether UPMIFA and its predecessor (UMIFA) impacted the common law principle that donors lack standing to enforce gift restrictions, and they have uniformly concluded that the Acts left the common law's donor standing rule intact. *See Hardt*, 302 S.W.3d at 138 (holding that UPMIFA did not displace donor standing rule); *Siebach,* 361 P.3d at 137 (same); *cf. also Herzog*, 699 A.2d 995 (holding that UMIFA did not affect donor standing rule).

Vermont adopted the Uniform Trust Code (UTC) in 2009, which expanded standing for suits to enforce express charitable trusts. Under the UTC, the parties authorized to enforce a charitable trust now include "[t]he settlor of a charitable trust, the Attorney General, a cotrustee, or a person with a special interest in the charitable trust." 14A V.S.A. § 405(c). As with UPMIFA, the terms of the UTC do not apply to former Governor Mead's gift, as the UTC only governs "express trusts, charitable or noncharitable." *Id.* § 102(a). Courts in other jurisdictions have rejected the notion that adoption of the UTC abrogated the common-law prohibition on donor standing for gifts not made in trust. *See Courtenay C.*, 320 P.3d at 1126; *Hardt*, 302 S.W.3d at 137-40.

In sum, neither the most recent enactments pertaining to charitable gifts in Vermont nor the common law, as developed in Vermont and its sister jurisdictions, would recognize standing for the Estate to pursue enforcement of supposed restrictions on former Governor Mead's gift more than a century after the gift was completed. The Court accordingly should dismiss this case for lack of subject matter jurisdiction.

II. Alternatively, Summary Judgment Should Be Affirmed Because the Undisputed Facts Do Not Make Out Any Colorable Claim Under the Law of Contract, the Covenant of Good Faith, or Promissory Estoppel.

If the Court declines to dismiss this donor suit for lack of standing, the record nonetheless offers compelling grounds for affirming on the merits. These begin with a central matter of doctrine the trial court left unresolved: what law governs charitable gifts in Vermont. The traditional answer—and

the one consistent with Vermont's existing legal framework—is that the law of gifts, rather than contract law, applies to restricted gifts. As the Estate has conceded its gift claim, summary judgment should be affirmed on the ground that no colorable claim remains. And, even if the Court reaches the merits of the individual causes of action on appeal, the trial court's conclusion that the undisputed facts cannot support the Estate's claims for breach of contract, breach of the covenant of good faith and fair dealing, and promissory estoppel is manifestly correct and should be affirmed.

A. Standard of Review.

The Court applies "the same standard as the trial court in reviewing a grant of summary judgment." *Down Under Masonry, Inc. v. Peerless Ins. Co.*, 2008 VT 46, ¶ 5, 183 Vt. 619, 950 A.2d 1213. Where "the record supports alternate grounds" for the grant of summary judgment, the Court may affirm on a basis different than the one articulated by the trial court. *Id.* ¶ 6.

B. The Law of Gifts Governs Mead's Donation, and the Estate Has Conceded It Has No Viable Gift Claim.

The factual nucleus of the Estate's Complaint is simple: the Estate alleges that the change to the name of Middlebury's chapel in 2021, over a century after the building was donated to the College by former Governor Mead, violated a supposed condition to Governor Mead's gift that the chapel was "to be known forever as the 'Mead Memorial Chapel.'" PC-I-72. Onto this single, core narrative, the Estate has attempted to hang a variety of legal theories, including breach of contract, breach of conditional gift, breach of the covenant of good faith and fair dealing, unjust enrichment, promissory estoppel, and equitable estoppel.

However, only one of these legal theories—the claim for breach of conditional gift—is consistent with the traditional jurisprudential framework governing restricted gifts, and the Estate has abandoned it. After the trial court granted summary judgment on the conditional gift claim, the Estate amended its complaint to formally withdraw the claim, tacitly admitting that the facts here do not and cannot meet the law's stringent standards for

pleading a gift claim. The balance of the Estate's claims represent nothing more than an attempt at an end-run around the law's restrictions on conditional gift claims.

The trial court declined to reach the question of whether the alleged restrictions on Governor Mead's gift to Middlebury sounded in gift or in contract, granting judgment on other grounds. In so doing—and thereby entertaining the notion that Governor Mead's gift *might* be viewed as a contract—the court materially muddied the legal principles governing gifts in Vermont. On the facts here, no reasonable factfinder could conclude that Governor Mead's donation was intended as anything other than a charitable gift. To apply contract principles to Governor Mead's gift would unsettle the law and open the doors to a flood of gift litigation under alternative legal theories. The Court should thus affirm the trial court's grant of summary judgment on the remaining claims—all of which sound in contract-based theories—on the alternative ground that the Mead donation was governed by the law of gifts and, because the Estate has conceded that it cannot assert a colorable gift claim, no valid claim lies here.

1. Charitable Donations Are Governed by Gift Law, not Contract.

There are theoretically "four ways to analyze a restricted gift—three under property law (charitable trust, conditional gift, restricted gift to corporate charity) and then contract law." Brody, *From the Dead Hand*, *supra* at 1190-91. However, the prevailing view has long been "that a restricted gift is not a contract." *Id.* at 1225. Thus, while "[c]onceptually, a restricted gift hovers somewhere between a gift and a contract[,] . . . [t]raditional jurisprudence has seen it as a gift . . . and subsumed it under property law (which is also consistent with allowing restricted gifts to be governed by the law of trusts)." Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 Vand. L. Rev. 1093, 1149 (2005); *see also* 38 Am. Jur. 2d Gifts § 2 (because a gift is voluntary and without consideration, it lies outside "the legal definition of a contract").

The traditional treatment of restricted gifts as a creature of property law—whether conditional gift or charitable trust—accords with Vermont's approach to gifts. Vermont law has long viewed gifts through the lens of trust law, deeming gifts made to a charitable or educational institution without any specific restrictions to be held in trust for use consistent with the charitable purposes of the institution. *See Cramton v. Cramton's Estate,* 88 Vt. 435, 92 A. 814, 815 (1915) (citing 2 Perry, Trusts (3d Ed.) § 733). Likewise, where Vermont courts have recognized a right by donors to sue over restrictions placed on gifts, they have done so only upon finding an express, conditional gift. *See Ball*, 129 Vt. at 206, 274 A.2d at 520 (recognizing that a "gift may be conditioned upon the donee's performance of specified obligations or the happening of a certain event" and finding that failure of express condition required reversion to plaintiffs). There is no published decision in which a Vermont court has ever allowed a donor to pursue an action for breach of contract for violation of a gift restriction.

For several reasons, the interest of a coherent jurisprudence of charitable gifts favors maintaining the line between gift and contract law. First, to apply contract law to gifts would be inconsistent with Vermont's statutory regime for management and oversight of charitable funds. Under UPMIFA, a charitable institution may modify or release a restriction on a charitable gift by petitioning the Probate Division (after notification of the Attorney General), consistent with the trust doctrine of *cy pres*; UPMIFA even allows for an institution to unilaterally modify restrictions on certain small gifts that have been in existence for more than twenty years without judicial approval, subject only to providing notice to the Attorney General. *See* 14 V.S.A. § 3416(b)-(d). The requirement of notification of the Attorney General is consistent with the principle that "in all types of modification the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds." Uniform Prudent Management of Institutional Funds Act, Prefatory Note at 4. There is no requirement that the donor be made a party to a modification proceeding or be consulted in the case of unilateral modification. *See* 14 V.S.A. § 3416(b)-(d). If gift restrictions were independently enforceable in contract, a statutory scheme

that allowed courts and charitable institutions to modify or eliminate restrictions without involving the donor would make no sense and very likely would run afoul of the Contracts Clause of the United States Constitution.

Second—and relatedly—because restrictions on charitable gifts often persist long after the donor's death, it is important that the law afford a mechanism for charitable institutions to seek relief from obligations that become impracticable or outmoded due to changes in society or in the nature and operations of the donee institution. As the Massachusetts Supreme Judicial Court has observed, in many cases restrictions on a charitable gift "originally may have been imposed, not to facilitate the achievement of a general charitable purpose, but for the personal gratification of the donor in respects wholly irrelevant to any effective execution of a public purpose" and "there is strong ground for disregarding such subordinate details if changed circumstances render them obstructive of, or inappropriate to, the accomplishment of the principal charitable purpose." *Trs. of Dartmouth Coll. v. City of Quincy*, 258 N.E.2d 745, 753 (Mass. 1970).[5] Such relief is available through the doctrine of *cy pres* and UPMIFA where gifts are treated under property law, whereas application of contract law would leave charitable institutions with no clear avenue for relief from outdated or burdensome restrictions.

Third, the donor's remedy (if any) for the violation of a gift restriction has traditionally been limited to restitution—i.e., reversion of the gift. *See Ball*, 129 Vt. at 207, 274 A.2d at 520; *see also Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt Univ.,* 174 S.W.3d 98, 114 (Tenn. App. Ct. 2005) ("If the recipient fails or ceases to comply with the conditions, the donor's remedy is limited to recovery of the gift."). Asserting a claim in contract makes available a broader range of remedies, including specific

[5] *See also Ball,* 129 Vt. at 210-11, 274 A.2d at 522 (citing *City of Quincy* and noting that "[e]ven though personal gratification of the donor may have had a part in the establishment of the trust," there "are compelling reasons for adapting the scheme of charitable trust to meet the demands of changing circumstances and conditions").

performance and consequential damages. Allowing disappointed donors and their heirs to pursue such relief would fundamentally alter the traditional nature of the gift transaction, which, absent an express reservation of a right of reversion, traditionally contemplates that the donor is voluntarily "part[ing] with all present and future dominion" over the gifted funds or property. *Williamson v. Johnson*, 62 Vt. 378, 20 A. 279, 280 (1890).

For all of these reasons, allowing a contract claim to proceed for violation of an alleged condition on a charitable gift would be inconsistent with Vermont's legal framework for charitable gifts.

2. The Undisputed Facts and Evidence Establish that Mead's Donation of the Chapel Was a Gift.

It is difficult to conceive of a case in which the evidence could be more clearcut than in this one that a donation was in fact a gift (rather than a bargained-for contractual transaction) and therefore governed by the law of gifts. All of the relevant evidence of Mead's intent is documentary in nature and is before the Court; because the gift was completed more than a century ago, there was no witness testimony for the trial court to weigh. As no reasonable factfinder could find on the record here that former Governor Mead's donation to Middlebury was anything other than a gift, the Court should affirm summary judgment on that basis.

The law defines a "gift" as a voluntary transfer of property to a donee "without consideration and with donative intent." Restatement (Third) of Property (Wills & Don. Trans.) § 6.1. Gifts may be either absolute—where the donor "part[s] with all present and future dominion over it," *Williamson*, 62 Vt. 378, 20 A. at 280—or they may be made subject to conditions or restrictions. *See* 38 Am. Jur. 2d Gifts § 68 (explaining that "[g]ift transfers with conditions attached are valid"). Thus, the fact that a donor might impose obligations on a donee in connection with a gift is not dispositive of whether the transaction is a gift. As the Restatement of Contracts explains:

> [A] gift is not ordinarily treated as a bargain, and a promise to make a gift is not made a bargain by the promise of the

> prospective donee to accept the gift, or by his acceptance of part of it. This may be true even though the terms of gift impose a burden on the donee as well as the donor.

Restatement (Second) of Contracts § 71 cmt. c (1981). The distinction between a gift subject to conditions (which would form the basis for a conditional gift claim) and a bargained-for contractual exchange depends "on the motives manifested by the parties." *Id.*; *see also* Restatement (Third) of Property (Wills & Don. Trans.) § 6.1 cmt. b (2003) ("[D]onative intent is the essence of a gift.").

Here, the Court need not engage in any speculation as to what motivated Governor Mead's donation, for Mead himself expressly laid out his motives in a letter to the editor of the Middlebury Kaleidoscope in late 1914:

> It will be my pleasure . . . to express . . . my high appreciation for the many kind words spoken and for the innumerable letters received commending *this gift* to our Alma Mater. I have realized for many years that the only enduring source of happiness springs not from selfish acts, but is only attained *by doing for others where no return is expected*, and the greater is the pleasure when you so govern your acts, that mankind may rise to a higher leve[l]—that other lives may be happier and more useful because you have lived and have seen and realized an opportunity. *It was this thought that inspired my desire to assist the students of Middlebury [C]ollege* in having a place of worship where they could all assemble in one auditorium for this inspiration, that the duties of each day might begin with a religious thought, which we all realize is the foundation of all true knowledge.

PC-III-208 (emphasis added). This was, in Mead's words, a "gift" for which "no return is expected." The College's officers and trustees likewise understood and repeatedly referred to the donation of the Chapel as a "gift" or "benefaction," and the College reported Mead's donation among the College's charitable gifts. PC-I-239.

The subject matter of Mead's donation—helping build a place of worship for an educational institution—also bears particular significance.

The law has consistently deemed the building and maintenance of chapels and other houses of worship to be a charitable enterprise. *See, e.g.*, *In re Merritt's Will*, 61 N.Y.S.2d 537, 539 (N.Y. Sur. Ct. 1945) (primary purpose of bequest of property "as a building fund toward the erection of a new chapel, which shall commemorate the memory of my father and mother, George Merritt and Eliza Merritt" was "[c]learly . . . a charitable one"), *decree aff'd sub nom. In re Merritt's Est.*, 75 N.Y.S.2d 828 (N.Y. App. Div. 1947); *In re Graham's Est.,* 218 P. 84, 85 (Cal. Ct. App. 1923) ("gifts for the erection, maintenance, and repair of the church buildings" are charitable); *Sandusky v. Sandusky*, 261 Mo. 351, 168 S.W. 1150, 1151 (1914) ("A gift to repair or build a church is a gift to charitable uses"); *Dale v. Knepp*, 98 Pa. 389, 393 (1881) ("[A] subscription towards the erection of a house of public worship is a work of charity.").

In making his gift to Middlebury, Mead—a pious man, whose tombstone memorializes him as a "Christian and a Philanthropist," PC-I-96-97—emphasized the centrality of his Christian faith to his motivations, writing that it "has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which [C]hristian character and religious faith should always maintain in its work for our youth." PC-III-33. One can imagine that Governor Mead would have suffered no little surprise—and, surely, offense—to have his gift to Middlebury profaned as a private contractual exchange by which he was purchasing the privilege of affixing his name to a building. It was, in Mead's own description, an act driven by his Christian faith and generosity, not the desire for personal gratification—i.e., he expected "no return." PC-III-208.

As no reasonable factfinder could conclude on these facts that Mead's donation of the Chapel to Middlebury was a contractual exchange, the transaction was governed solely by the law of gifts. Middlebury was thus entitled to judgment on all claims when the trial court concluded that no viable gift claim could lie. The Court should affirm on this basis.

C. If Contract Law Applied, the Record Would Not Establish a Contractual Obligation to Maintain the Mead Name on the Chapel in Perpetuity—and the College Satisfied Any Reasonable Term of Such Obligation.

Even if the Estate were entitled to pursue a remedy in contract for the alleged violation of the terms of Mead's gift, Middlebury was nonetheless entitled to judgment on the contract claim. The decision below should be affirmed for two independent reasons.

First, the undisputed facts cannot support the contention that an enforceable contract as to naming of the Chapel was formed by the parties. It is a "basic tenet of the law of contracts that . . . there must be mutual manifestations of assent or a 'meeting of the minds' on all essential particulars." *Evarts v. Forte*, 135 Vt. 306, 309, 376 A.2d 766, 768 (1977) ("[I]f an instrument that purports to be a complete contract does not contain, or erroneously contains, the substantial terms of a complete contract, it is ineffective as a legal document."). That is absent here: the Gift Letter does not contain "all essential particulars" of a contract, either as to the gift itself or, certainly, as to any promise to maintain the name "Mead Memorial Chapel" for a period of time. Mead did not bind himself to make any specific donation in the Gift Letter, stating only that he "ha[d] in mind the furnishing of from $50,000 to $60,000," to which he would bind himself and his estate once certain conditions were met "in accordance with the suggestions of this letter and with the contracts to be made by your committee." PC-III-33-34.

The Gift Letter was, at most, a contract to make a contract, and a "mere agreement to agree at some future time is not enforceable." *Miller v. Flegenheimer*, 2016 VT 125, ¶ 12, 203 Vt. 620, 161 A.3d 524 (quoting *Wolvos v. Meyer*, 668 N.E.2d 671, 674 (Ind. 1996)); *see also Sinex v. Wurster*, No. 2010-407, 2011 WL 4977680, at *1 (Vt. June 1, 2011) (affirming ruling that there was no legally enforceable contract absent "agreement on the most essential term of the arrangement—the financial obligations of each party"). It was only later—in a letter of January 13, 1915—that Mead actually agreed to bind himself and his heirs to a specific donation of $60,000 toward

construction of the Chapel. PC-III-216. That January 1915 letter reflects that the only obligation Mead expected the College Trustees to undertake was "to complete said chapel, making it complete in every way, as to grounds, furnishings, etc. for the purposes of a college chapel." *Id.* Notably missing is any reference to a naming right.

The trial court disagreed on this point, suggesting that the "record is express that both parties intended that the chapel would be named the Mead Memorial Chapel." PC-I-22. However, the fact—which is undisputed—that the parties referred to the building as the "Mead Memorial Chapel" in practice does not demonstrate that they negotiated a binding contract *requiring* use of that name. As there is no record of any such agreement, Middlebury was entitled to summary judgment.

Second, even if one were to treat Mead's Gift Letter as a contract, the trial court correctly concluded that it cannot be construed as giving rise to an enforceable contractual obligation to maintain the Mead name on the Chapel *in perpetuity*. The law strongly disfavors perpetual terms, and thus courts broadly have refused to recognize and enforce a perpetual condition absent clear and unambiguous language in the contract expressing the parties' intent that the obligation run in perpetuity. *See* 17B C.J.S. Contracts § 608 ("[A] construction conferring a right in perpetuity will be avoided unless compelled by the unequivocal language of the contract" and a "contract which purports to run in perpetuity must be adamantly clear that that is the parties' intent, in order to be enforceable."); *Glacial Plains Coop. v. Chippewa Valley Ethanol Co., LLLP*, 912 N.W.2d 233, 236 (Minn. 2018) (collecting cases and stating that "[i]n general, contracts of perpetual duration are disfavored as a matter of public policy; thus, while we will enforce a contract that unambiguously expresses an intent to be of perpetual duration, we construe ambiguous language regarding duration against perpetual duration").[6]

[6] The Estate cites two purported authorities on this point: *Heneghan v. City of Montpelier*, 161 Vt. 592, 596 (1994) and *Thompson v. Smith*, 119 Vt. 488, 496 (1957). *See* Br. at 23. The undersigned has been unable to locate *any*

An example of the type of express language that might give rise to a perpetual naming right can be found in *Herron v. Stanton*, 147 N.E. 305, 306 (Ind. Ct. App. 1920), where a donor left a bequest for the purpose of establishing an art gallery and school, requiring that they be named in his honor and that "the use of such name or names shall be *perpetual*, or *so long as said art gallery and art school are severally maintained*." (Emphasis added.) Here, in contrast, neither the Gift Letter nor any of the correspondence with Mead clearly establishes *any* naming condition, and they certainly do not include clear language agreeing to maintain the "Mead" name on the Chapel in perpetuity. The Estate asserts that the language of the Gift Letter "sets the duration of the name forever," Br. 19, but that is demonstrably untrue: nowhere can be found a reference to using the Mead name "forever" or "perpetually" or "as long as the Chapel shall stand." Absent clear language, the law will not infer a perpetual obligation.

The Estate does not challenge the trial court's conclusion that, if no perpetual term was expressly negotiated and specified, "the reasonable duration of any contractual term as to the name of the chapel [was] satisfied as a matter of law" by the College's maintenance of the Mead name on the Chapel for over a century. PC-I-25. And, indeed, it is black letter law "that where the continuation of a contract is without definite duration, the law implies a reasonable time." 17A Am. Jur. 2d Contracts § 520; *see also Gade v. Chittenden Solid Waste Dist.,* 2009 VT 107, ¶ 26 n.7, 187 Vt. 7, 989 A.2d 491 ("General principles of contract law . . . support . . . the implication of a reasonable time limit in a contract where no time limit is provided."). Where courts imply durational terms, they generally run much shorter than a century. *See, e.g.*, *Anne Arundel Cnty. v. Crofton Corp.*, 410 A.2d 228, 232 (Md. 1980) (noting that "[i]n the absence of an express time for performance, a reasonable time will be implied," and holding contract terms for developer's operation of private water and sewage system lasted for twenty years); *BNSF*

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published decision that corresponds with the former citation, and the latter does not contain the quoted text or stand for the proposition attributed to it by the Estate's brief.

Ry. Co. v. Panhandle N. R.R., LLC, 946 F.3d 705, 714 (5th Cir. 2020) (twenty-three years for handling-carrier contract between railroads held reasonable); *cf. also St. Mary's Med. Ctr., Inc. v. McCarthy,* 829 N.E.2d 1068, 1077 (Ind. App. Ct. 2005) (nearly fifty years of maintaining chapel satisfied any obligation in trust or under will to use donated funds for a memorial). Accordingly, if it finds contract principles applied, the Court should affirm the trial court's conclusion that maintaining the Mead name on the Chapel for over a century satisfied any obligation in contract.

D. The Trial Court Correctly Determined the Estate Lacks a Viable Claim for Breach of the Covenant of Good Faith and Fair Dealing.

Throughout this litigation, the Estate's claim for breach of the implied covenant of good faith and fair dealing has served as little more than a vessel for bombast and baseless accusations—including the notion that the College used Mead "as a pawn to divert attention away from the College's abhorrent rhetoric and to absolve it of 50 years of Eugenic Sin by claiming to sever[] its only apparent 'connection' to Eugenics by throwing its 'fall guy' . . . Mead 'under the bus.'" Br. at 24. As there was and is no substance to the covenant claim, the trial court rightly dispensed with it.

At the outset, the College notes that the trial court need not have reached the merits of the covenant claim at all. A "cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties," *Monahan v. GMAC Mort. Corp.*, 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298, and, as detailed above, the donation here was a gift transaction, not a contract. As such, the Estate had no claim to press under the covenant.[7]

[7] While the trial court did not rule on the nature of the transaction, it ultimately adopted a version of this logic: it reasoned that, by 2021, Mead had "received all the benefit that he could have been entitled to—naming rights for an indeterminate but by then expired duration," and thus the Estate could claim no ongoing contractual benefit frustrated by the College's alleged actions that could support a covenant claim. PC-I-38.

However, the claim also unmistakably fails on its merits. While the Estate's theory was a moving target in the litigation below, three distinct strains of argument emerged and are present on appeal—not one of which makes out a viable claim.

The first posits that the College breached the covenant "[b]y removing the Mead name in 2021." Br. at 25. This theory simply duplicates the factual predicate alleged for the Estate's breach of contract claim, and as such it cannot support a separate claim under the covenant of good faith and fair dealing. *See Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 53, 307 A.3d 209 (where implied covenant claim "is duplicative of [a party's] breach-of-contract claim, it cannot be sustained as a matter of law").

The second aspect of the Estate's covenant claim sounds in defamation: the Estate alleges that the College's public statement explaining the removal of the Mead name "'canceled' John Abner Mead, forever disparaged and vilified his family name, and replaced his legacy with a narrative that brands Governor Mead a eugenicist . . . ." PC-I-70-71. This theory fails for several reasons. To start, it is well established that "[o]ne who publishes defamatory matter concerning a deceased person is not liable either to the estate of the person or to his descendants or relatives." Restatement (Second) of Torts § 560 (1977); *see also* Restatement (First) of Torts § 560 (1938) (same); *accord* Rodney Smolla, 1 Law of Defamation § 4:73 ("There is no liability for defamation of the dead, either to the estate of the deceased or to the deceased's descendants or relatives."). This rule arises from the personal nature of the reputational interest, as well as from public policy concerns—including, among others, the risk that "permitting the cause of action [on behalf of a deceased individual] would hamper historical research and writing." *Gugliuzza v. K.C.M.C., Inc.*, 606 So. 2d 790, 792 (La. 1992). Accordingly, there could be no liability for "disparag[ing]" Mead and his family name.

The Estate's argument also effectively seeks to imply an anti-disparagement clause into the alleged contract between the College and Mead—a proposition that would stretch the covenant of good faith and fair

dealing well past its limits. As the Court has emphasized, "[g]enerally, an implied duty of good faith and fair dealing is not understood to interpose new obligations about which the contract is silent, even if inclusion of the obligation is thought to be logical and wise." *Downtown Barre Dev. v. C & S Wholesale Grocers, Inc.*, 2004 VT 47, ¶ 18, 177 Vt. 70, 857 A.2d 263 (citation and quotation marks omitted). Here, none of the documents exchanged between the parties contained language restraining Middlebury from making public statements about former Governor Mead or his family, and the covenant cannot be used to impose such terms after the fact. *See Knelman v. Middlebury College*, 898 F. Supp. 2d 697, 716-17 (D. Vt. 2012) (rejecting argument under covenant to "impose upon Middlebury contractual obligations that do not otherwise exist"), *aff'd*, 570 F. App'x 66 (2d Cir. 2014).

Moreover, to imply a restraint on the speech of the College and its representatives on the subject of Governor Mead's legacy would present serious First Amendment and public policy concerns. Parties can, through express contractual terms, bargain away their First Amendment rights to free speech. *See Kneebinding, Inc. v. Howell*, 2018 VT 101, ¶ 61, 208 Vt. 578, 201 A.3d 326. However, for enforcement of such a contract to comply with the Constitution's safeguards, the contractual waiver of speech rights must be "knowing, voluntary, clear, and unequivocal." *Id.* ¶ 62. An *implied* restriction on speech would be none of the above, and thus it would thus raise significant issues under the First Amendment—especially given that the speech at issue concerns the public record of a government official.[8]

[8] The First Amendment extends particularly strong protections to speech about public figures and matters of public concern due to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). It is also significant that the party that would be subject to an implied restraint on speech concerning a public figure is a college. Courts have been particularly solicitous of the free speech rights of academics and institutions of higher education, as "academic freedom and political expression" are

The third strain of the Estate's covenant claim rests on the accusation that Middlebury acted with bad motive, i.e., that it "scapegoat[ed] Mead to hide [its] sins." Br. at 26. This theory lacks even the slightest basis in fact or logic—for why would an institution allegedly seeking to *avoid* scrutiny of its history with the eugenics movement draw public attention to the role that an important alumnus, Trustee, and supporter played in that movement? The Estate presented no evidence that Middlebury tried to "hide" or downplay any historical ties to the eugenics movement. Regardless, an allegation of improper motives does not make out a viable claim for breach of the implied covenant. *See Beldock*, 2023 VT 35, ¶ 54 ("[S]imply providing the motivations for [defendant's] alleged breach is insufficient to establish that the [contract and covenant] causes of action are premised on different conduct."); *accord Dunkin' Donuts Inc. v. Liu*, 79 F. App'x 543, 547 (3d Cir. 2003) (holding that, even if claimants had produced evidence of an "ulterior motive," such "motivational analysis would have been irrelevant" to their claimed breach of the implied covenant); *Cent. 21 Real Est. LLC v. All Prof. Realty, Inc.*, 600 F. App'x 502, 506 (9th Cir. 2015) (rejecting implied covenant claim based on theory that party's terminations of agreements "were pre-textual" and the result of an "improper motive," as the allegedly breaching party's "motive is not relevant to the analysis").

Lastly, to the extent that the Estate's briefing suggests that it might have a claim under the covenant to recover attorney's fees for "bad faith" litigation conduct, *see* Br. at 26-27, the suggestion lacks any merit. While "[l]itigation conduct may violate the implied covenant," such a claim "faces a high bar." *Beldock*, 2023 VT 35, ¶ 55. "[A]ny litigation conduct alleged to have breached the covenant must fall within the narrow scope of dishonest conduct," *Tanzer v. MyWebGrocer, Inc.*, 2018 VT 124, ¶ 40, 209 Vt. 244, 203 A.3d 1186, and, as the trial court correctly observed here, "there is no indication of any [such conduct] whatsoever in the record." PC-I-37. As the

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"areas in which government should be extremely reticent to tread." *Sweezy v. State of N.H.*, 354 U.S. 234, 250 (1957).

Estate offered no cogent basis for its covenant claim to move forward, summary judgment should be affirmed.

E. The Trial Court Correctly Determined the Estate Lacks a Viable Claim for Promissory Estoppel.

Lastly, the trial court correctly ruled that there is no viable promissory estoppel claim on the undisputed facts, a holding that should be readily affirmed.

Courts generally "apply the doctrine of promissory estoppel cautiously and sparingly." 31 C.J.S. Estoppel and Waiver § 116. Vermont follows the Second Restatement's articulation of the cause of action for promissory estoppel, which "requires (1) a promise on which the promisor reasonably expects the promisee to take action or forbearance of a substantial character; (2) the promise induced a definite and substantial action or forbearance; and (3) injustice can be avoided only through the enforcement of the promise." *Island Indus., LLC v. Town of Grand Isle*, 2021 VT 49, ¶ 39, 215 Vt. 162, 260 A.3d 372 (quoting *Green Mountain Inv. Corp. v. Flaim*, 174 Vt. 495, 497, 807 A.2d 461, 464 (2002) (mem.)).

Here, the Estate alleged that Middlebury made a promise to Mead that the Chapel "would always be known as the 'Mead Memorial Chapel'" and that Middlebury's promise induced Mead to make a gift of the chapel. PC-I-139-41. For several reasons, this theory fails to make out a colorable claim under promissory estoppel.

First, no reasonable factfinder could find a clear and definite promise by Middlebury to maintain the Mead name on the College Chapel in perpetuity. Promissory estoppel requires "a promise of a specific and definite nature." *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 10, 819 A.2d 703, 710 (2002); *see also Norton v. McOsker*, 407 F.3d 501, 507 (1st Cir. 2005) (promissory estoppel necessitates "a clear, unambiguous and unconditional promise, the terms of which are certain"); 31 C.J.S. Estoppel and Waiver § 116 (same). As the "sine qua non of promissory estoppel is a promise that is definite and clear," *Willis v. New World Van Lines, Inc.*, 123 F.Supp.2d 380,

395 (E.D. Mich. 2000) (cited in *Dillon*), courts closely scrutinize the alleged promises and will reject claims where there is an insufficiently definite promise.

There is no evidence that Middlebury, acting through an agent authorized to bind the College, made any affirmative, independent promise to maintain the Mead name on the Chapel. The documents show only that *Mead* himself referred to the Chapel being "known as the 'Mead Memorial Chapel'" in his Gift Letter to the College, and that the Chapel was referred to as such in some correspondence and speeches thereafter. None of the references to the "Mead Memorial Chapel" by College Trustees and personnel can plausibly be read to reflect that, through these individuals' mere references to the building's name, the College was binding itself in a promise to grant Mead naming rights. To be enforceable, a promise "must be more than 'a mere expression of intention, hope, desire, or opinion, which shows no real commitment.'" *Nelson v. Town of Johnsbury Selectboard*, 2015 VT 5, ¶ 56, 198 Vt. 277, 115 A.3d 423 (quoting *Escribano v. Greater Hartford Acad. of Arts*, 449 F. App'x 39, 43 (2d Cir. 2011)). At best, the use of the name "Mead Memorial Chapel" by College trustees and personnel in connection with the building could perhaps be construed as an "expression of intention" or a "vague assurance"—and even that is a stretch—but they do not meet the standards sufficient to show a binding commitment by the College. Moreover, even if the evidence here were construed to conjure up a promise of sufficient clarity and definition to meet the requirements of promissory estoppel, there is absolutely no support for the notion that the College made an express, binding promise to use the name "Mead Memorial Chapel" *in perpetuity*. That is dispositive for the reasons discussed above with respect to the Estate's contract claim.[9]

[9] Upon finding a promise has been made binding by detrimental reliance, the promise is treated as a contract. *See* Restatement (Second) of Contracts § 90 (1981) ("A promise binding under this section is a contract."). Presumably, then, the law would require the same clear, unambiguous expression to find a

Second, promissory estoppel has no application where the alleged promise was made in a negotiated exchange. Promissory estoppel operates only where there is a gratuitous promise that induces "*unbargained-for* reliance" on the part of the claimant. *Chomicky v. Buttolph*, 147 Vt. 128, 131 n., 513 A.2d 1174, 1176 n. (1986) (emphasis added); *see also Overlock v. Cent. Vt. Pub. Serv. Corp.,* 126 Vt. 549, 553, 237 A.2d 356, 358 (1967) (same). For that reason, "[t]he doctrine is inapplicable '[i]f the promisee's performance was requested at the time the promisor made his promise and that performance was bargained for.'" *Andersen v. United Parcel Serv., Inc.*, No. EDCV 23-0027 JGB (SPX), 2024 WL 2104496, at *15 (C.D. Cal. Apr. 11, 2024); *see also Walker v. KFC Corp.,* 728 F.2d 1215, 1220 (9th Cir. 1984) ("[T]he promissory estoppel doctrine is limited to cases where no benefit flows to the promisor.").

Here, to the extent Middlebury made any promise to name the subject chapel "Mead Memorial Chapel" (which it disputes), such promise would have been made within the gift transaction at issue, at the same time as and in direct connection with Mead's offer to make a donation to the College. As the First Amended Complaint alleges:

> Middlebury College has violated the sacred trust that Dr. Mead placed in the Trustees of his beloved alma mater, breaking the promises they made and depriving him and his family of the *benefit of his bargain*, the *quid pro quo*, and/or the *conditions of his gift*: that Mead would erect a chapel to be known forever as the "Mead Memorial Chapel."

PC-I-72 (emphasis added). As alleged, this supposed promise was not a separate, gratuitous undertaking by the College upon which Mead relied; rather, it was a key, bargained-for condition to Mead's donation to the College. In the Estate's telling, the "name 'Mead Memorial Chapel' was the essence of the deal, and it was the entire deal – forever." PC-I-132. Where what is alleged is the deprivation of a central, bargained-for benefit,

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binding perpetual promise as it would to find a binding contractual obligation.

promissory estoppel has no role to play. *See Chomicky*, 147 Vt. at 131 n., 513 A.2d at 1176 n.

Third, to allow the Estate to pursue enforcement of an alleged naming condition to a gift via promissory estoppel would be untenable as a matter of doctrine. The parties disputed—and the trial court did not resolve—whether the gift transaction at issue in this case was properly characterized as gift or contract. If it were a contract, the law is clear that a promissory estoppel claim cannot lie. *See LoPresti v. Rutland Reg'l Health Servs., Inc.*, 2004 VT 105, ¶ 47, 177 Vt. 316, 865 A.2d 1102 (recognizing the "well-established rule that promissory estoppel will not apply when the relationship of the parties is governed by a contract"); 31 C.J.S. Estoppel and Waiver § 116 ("[P]romissory estoppel is intended to enforce promises that are not supported by consideration . . . ; it is not intended to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract."). If a gift, the Estate's recourse would be to the law of conditional gifts—and the Estate effectively conceded the facts do not make out a conditional gift when it withdrew that claim following the trial court's grant of summary judgment on it. Allowing the Estate to seek enforcement of a supposed condition to a gift on promissory estoppel grounds where the requisites for a conditional gift are not present would wholly undermine the law: every failed conditional gift claim could be transmuted into a promissory estoppel claim, unburdened by the stringent requirements the law will impose before it recognizes enforceable conditions to a gift.

At bottom, the Estate's promissory estoppel claim was no more than a transparent attempt to replead its contract claim in another guise after the trial court granted judgment on that claim—and, as the court observed, the Estate offered "no cogent reason why reframing [its contract] claim under the rubric of promissory estoppel could lead to any different" result. PC-I-40. The Court should affirm accordingly.

CONCLUSION

The law approaches the creation and enforcement of restricted gifts with caution, and rightly so. Charitable gifts reflect an inherent deal between a community and a donor: a community receives the benefit of funds devoted to a public purpose that otherwise might have gone to purely private ends, and in turn the donor benefits by special rules that allow a gift to be made with no identified beneficiary and for a period that may extend into perpetuity, allowing the donor's wishes to be carried out long after death. *See* Susan N. Gary, *Restricted Charitable Gifts: Public Benefit, Public Voice*, 81 Alb. L. Rev. 565, 591-94 (2018) (noting that donors also garner tax benefits and public prestige through donations). This tradeoff incentivizes great acts of public charity—but it also carries with it the risk that a donor's idiosyncratic restrictions may shackle and burden the gift recipient over time. The law has traditionally guarded against these burdens by demanding clarity from a donor who seeks to restrict a gift, and by entrusting enforcement not to the donor or their heirs, but to a public officer charged with pursuing the public good.

If there ever were a case that would invite consideration of changes to these basic tenets of charitable gift law, this would not be it. The facts here are extreme, and recognizing an enforcement right on such facts would profoundly unsettle the law. The Estate does not simply seek to open the door for donors to enforce restrictions on gifts during their lifetimes; it effectively asks the Court to recognize standing for a donor's estate in perpetuity. If the Special Administrator can step into former Governor Mead's shoes to enforce a supposed gift restriction over a century after the administration of his estate was completed, who is to say that a motivated third party cannot revive a donor's estate two or even three centuries postmortem to do the same? And to find an enforceable, perpetual gift condition on the basis of the documentation here would entirely vitiate the law's requirement of clarity in imposing conditions, thereby encouraging litigation over even the vaguest expressions of a donor's desires.

The Court should decline to work so radical a change in the law governing charitable gifts. For all of the reasons set forth above, Middlebury requests that the Court dismiss the Estate's suit for lack of standing or, in the alternative, affirm summary judgment.

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

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CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

Pursuant to V.R.A.P. 32(a)(4)(A)(ii) and 32(a)(4)(D), I hereby certify that the foregoing brief contains 11,985 words, exclusive of the content identified in V.R.A.P. 32(a)(4)(C). In so certifying, I have used and relied on the Microsoft Word word-count tool.

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

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