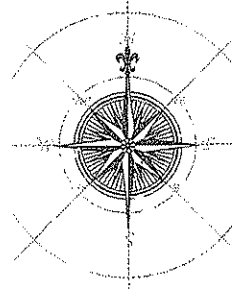


To: the Massachusetts Supreme Judicial Court
Re: the Ipswich Trust
Fr: Frederic J. Fransen, Ph.D.
Date: August 25, 2012



DA·R·E·S
Donor Advising, Research & Educational Services
www.donoradvising.com

I have been following the Ipswich Trust donor intent case since it first began appearing in the news. Recent decisions on sale of the land have led me to write to encourage you to take action to review the case and take seriously the problems of donor intent which it raises.

My entire career has been spent working with foundations and trusts to assure that the original donor's intent is carried out. For ten years this involved working for a collection of foundations created by Pierre Goodrich (Liberty Fund, Inc., the Pierre F. and Enid Goodrich Foundation, and peripherally Winchester Foundation) and dedicated to the preservation of liberty in this country. A tremendous amount of time and energy went into studying, discussing, and planning ways in which to preserve the donor's intent including establishing detailed protocols and frequent review of the donor's expressed wishes at the board, staff, and new hire level. I know of no other foundation which takes donor's intent so seriously.

This work led naturally to a position with the Philanthropy Roundtable, an organization created out of concerns for the growing problem of the rights of donors in expecting their intent to be adhered to. Since 2006, through the Center for Excellence in Higher Education, Inc. and Donor Advising, Research & Educational Services, LLC, I have been working almost exclusively on developing tools for donors and their foundations to assure that there is integrity in the gifts they make, and that the institutions responsible for administering those gifts develop transparent and legally actionable means of protecting donors. I have written extensively on this problem and developed a unique expertise through close study of cases such as *Robertson v. Princeton*, and acted as an advisor to donors engaged in disputes involving tens of millions of dollars of philanthropy.

The problem of violations of donor intent is serious and the consequences of failing to establish clear precedents in this area will have significant repercussions.

Let me mention just two: one of the most troublesome areas of the law concerning donor intent is the difficulty of establishing standing. The default position in most states is that primary standing rests with the attorney general. Attorneys general, however, have few resources and very little incentive to enforce donor intent. Grant recipients know this. Only occasionally does an attorney general receive any oversight for failing to enforce donors' rights. One recent but rare instance occurred in the case of the WCAL Charitable Trust in Minnesota. In that case, supporters of public radio station WCAL sued St. Olaf's college when it sold WCAL to Minnesota Public Radio. The court declared as "deplorable" the failure of the attorney general to intervene in the case when the sale could have been stopped, but issues of standing and the timing of the lawsuit made it impossible to restore WCAL.

It is imperative that donors be given assurance that their intent will be carried out throughout the life of their gift, including into perpetuity if the gift is created in such a way. Without such assurances, donors

will increasingly turn to complicated, second-best solutions in structuring their gifts. This, in turn, will make it much harder for recipients to manage their programs.

Second, large donors are coming under increasing attack. For the past century, philanthropy has been closely integrated into the tax code and while donations are not driven primarily by tax issues, they play an important role. As the tax deductibility of charitable gifts from the wealthy are eroded, we can expect many donors to begin developing a new cost-benefit analysis of giving to charities, as opposed to other uses. If donors believe their gifts will not be used with integrity, many will decide not to give at all. It would be disastrous for this country and the world should Americans' charitable spirit be tarnished by fears of misuse by charitable entities. To avoid this outcome, it is crucial that courts see their primary duty in such cases as to enforce the charitable intent of donors.

The Ipswich case, as perhaps the oldest charitable trust in the United States, is thus important both on its own merits and as a model for other cases. There is little doubt about the intent of the donor to have his gift support the school in perpetuity and for the land not to be sold. It is also clear that it is neither illegal, impossible, nor impracticable for it to continue to do so. As a result, I strongly urge you to hear this case and to send a strong signal that donors' intent is the first consideration of courts when they review such cases, and that available alternatives to sale of the property will preserve the principle which is so important to the way our unique system of charity functions.

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Fransen", with a long horizontal flourish extending to the right.

Frederic J. Fransen, Ph.D.

President & CEO