

STATEMENT OF LITTLE NECK INTERVENERS

NOVEMBER 6, 2012

Ten months ago we intervened in Essex Probate Court to stop the proposed sale of Little Neck. The sale approved by the Probate Court violated the terms under which William Paine donated the land in his last will and testament in 1660, with instructions that the land “never be sold” and that it be held in trust “forever” for the benefit of the Ipswich Public Schools. Today we have decided to withdraw our appeal.

We made this decision reluctantly because no court of law in Massachusetts has actually examined the facts in this case or made a reasoned legal decision on the validity of breaking Mr. Paine’s will after 352 years. To the contrary, we have been denied an opportunity to argue this case on its merits. If the Supreme Judicial Court had accepted our petition to take this case under direct appellate review, some of the most prominent U.S. experts in charitable trusts and land trusts were ready to submit briefs to the court supporting our appeal. There was agreement among many legal experts that the breach of Mr. Paine’s will to allow the sale of Little Neck would be a violation of well-established law governing charitable trusts and protection of donors’ intent.

While we hate to let down the many people in Ipswich and around the country who have supported our cause, as a practical matter pursuing the case further before the Massachusetts Court of Appeals is unlikely to achieve a different result. The SJC was the court in the best position to protect the public interest and reach the merits of this case. If we do not get a satisfactory result from the Court of Appeals, the SJC is now unlikely to accept a further appeal having already denied our petition for direct appellate review.

One thing that is especially troubling to us is that the Attorney General has never been held accountable for her actions. Ipswich citizens had been raising alarms for decades about the mismanagement of the Little Neck charitable trust, and two Assistant Attorneys General reported in writing in 2001 and 2002 that the trustees (Feoffees) were in breach of their fiduciary duty. Yet instead of seeking removal of the trustees, as was the Attorney General’s legal and moral obligation, the situation was simply allowed to get worse. That gross mismanagement of the trust, which the Attorney General allowed to continue, led to tenant disputes which were then cited in court as the sole rationale for the necessity of breaching Mr. Paine’s trust and selling the land.

Anyone thinking about donating land or property for charitable purposes in Massachusetts should now think twice in light of the Little Neck case. It is clear the Attorney General cannot be counted upon to uphold the intentions of donors and testators. It’s also clear that current state law on charitable trusts – which allows the AG to be the sole representative of the charitable donor and to exclude concerned citizens from the legal process – enables the AG to avoid scrutiny and cover up her own failure to properly oversee public charities in Massachusetts.

The one bright light in this case is the number of concerned citizens in Ipswich and beyond who spoke out against the injustice of violating Mr. Paine's will and cheating the Ipswich Public Schools out of tens of millions of dollars in future income. When citizens could not get straight answers about the management of the Little Neck trust more than a decade ago, they convinced the town meeting to authorize an investigation. Over a three-year period, voters at two town meetings and at a town election voted overwhelming to demand the removal of the Feoffees – back when it would have made a difference in protecting the Little Neck trust and stopping a sale. Before the case was heard by the probate court last year, 681 citizens joined the judicial process by signing an *amicus curiae* (“friend of the court”) legal brief opposing the sale. After the sale was rubber-stamped by the court, an overflow turnout at town meeting voted to oppose the sale and support our appeal.

We will forever be grateful for that support – and for knowing that so many of our neighbors and fellow citizens are willing to stand up and be counted when it really matters.

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Peter Buletza
Douglas DeAngelis
Joanne Delaney
Cara Doran
Tammy Howe
Jacquelyn and Jonathan Phypers
Kenneth Swenson
Robert Weatherall, Jr.
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