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

REPLY BRIEF OF APPELLEE THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE

Justin B. Barnard, Esq.
DINSE P.C.
209 Battery Street
Burlington, VT 05402-0988
(802) 864-5751
jbarnard@dinse.com

Counsel for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ARGUMENT

I. Appellant Fails to Advance a Colorable Argument for the Estate to Claim Standing.

Appellant's Reply leaves almost completely unanswered the arguments on donor standing set forth in the principal briefs of Middlebury and the Amici Curiae, making no effort to distinguish or respond to the weight of common law authority on the issue. As briefly addressed below, the few arguments Appellant does lay out on the question miss their mark.

A. The Special Administrator's Authority to Bring Claims on Behalf of the Mead Estate Is Irrelevant to Whether the Estate Has Standing to Bring a Claim Arising from a Completed Gift.

Appellant's Reply emphasizes that he has legal authority as Special Administrator to bring claims on behalf of the Mead Estate, *see* Reply at 15-16, a point that is both undisputed and irrelevant. The question Middlebury has raised is whether the Estate of John Mead has a legal interest sufficient to confer standing to bring claims for breach of an alleged obligation arising from Mead's gift to perpetually maintain the Mead name on the College's Chapel. The Special Administrator unquestionably has authority to pursue valid claims on behalf of the Estate, but his standing to do so is necessarily coextensive with the Estate's. To put it simply, he cannot pursue claims for which the Estate itself lacks standing, whatever statutory authority he may have to act on the Estate's behalf.

B. The Uniform Trust Code Does Not Confer Standing on the Special Administrator.

Equally unavailing is Appellant's effort to locate standing in § 405(c) of the Uniform Trust Code. *See* Reply at 15-16. As explained in Middlebury's principal brief, the UTC modified the common law by expanding standing to enforce charitable trusts to 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). For a couple of reasons, § 405(c) cannot supply standing for the Estate to pursue its claims here.

First, the UTC applies, by its terms, only to express trusts. *See* 14A V.S.A. § 102(a). Thus, while the enactment of the UTC in 2009 did expand the category of individuals who can seek enforcement of an *express* charitable trust, it did not disturb the common law rules on standing with respect to charitable gifts generally. As the Wyoming Supreme Court explained:

> By statute, standing to enforce an express charitable trust has been expanded [by the UTC] beyond the common law rule of standing. The same is not true of standing to enforce a charitable gift. No Wyoming statute has expanded the common law standing to enforce a charitable gift, and we agree with the majority rule that such standing should remain limited to the attorney general.

Courtenay C. & Lucy Patten Davis Found. v. Colorado State Univ. Res. Found., 320 P.3d 1115, 1126 (Wyo. 2014) (dismissing donor suit for lack of standing); *see also Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 137-40 (Mo. App. Ct. 2009) (rejecting argument that UTC standing provisions apply to charitable gifts and dismissing donor suit for lack of standing). As the gift here was not made via an express trust, the UTC does not apply.

Second, even if § 405(c) were to apply, the Special Administrator would not fall within the class of individuals authorized to bring suit as the "settlor," contrary to Appellant's suggestion. As the Restatement (Third) of Trusts observes, "settlor standing is 'personal,' although exercisable by an incapacitated settlor's personal fiduciary or by a deceased settlor's personal representative during a reasonable period of estate administration." Restatement (Third) of Trusts § 94, cmt. g(3) (2012) (emphasis added). There is nothing in Vermont's statutes to suggest that settlor standing survives the settlor's death—and, if it did, the Restatement suggests it could only survive during a reasonable period of estate administration. By any stretch of the imagination, the reasonable period for administration of former Governor Mead's estate expired long before this action was filed (over a century after

his death).[1]

C. The Court Should Decline to Adopt the Trial Court's Analysis of the Donor Standing Bar.

Rather than engage with the substance of the arguments advanced by Middlebury and the Amici Curiae on donor standing, Appellant principally relies on—and reproduces verbatim—the trial court's initial analysis of the issue in its 2023 ruling on Middlebury's motion to dismiss. *See* Reply at 18-20. This reliance is misplaced, for the trial court's ruling went astray in several critical respects.

To start with, the trial court framed the issue of donor standing as a real-party-in-interest question rather than one of subject matter jurisdiction. This was incorrect: the question of donor standing goes directly to subject matter jurisdiction. *See, e.g.*, *Carl J. Herzog Found., Inc. v. Univ. of Bridgeport*, 699 A.2d 995 (Conn. 1997) (affirming dismissal of donor suit for lack of subject matter jurisdiction). Standing presents a "jurisdictional issue," *Ferry v. City of Montpelier*, 2023 VT 4, ¶ 11, 296 A.3d 749 (cleaned up), requiring the party seeking relief to demonstrate, among other things, an injury in fact, "defined as the invasion of a legally protected interest." *Hinesburg Sand & Gravel Co., Inc. v. State*, 166 Vt. 337, 341, 693 A.2d 1045, 1048 (1997) (cleaned up). As explained in Middlebury's principal brief, the

[1] Nor could the Special Administrator skirt this durational limit on settlor standing by claiming to be a person with a "special interest." "Special interest" standing pertains to fiduciaries and beneficiaries who can establish a sufficiently concrete right to receive trust benefits, *see* Bogert's The Law of Trusts and Trustees §§ 413, 414, not to the settlor or the settlor's heirs. *See, e.g.*, Restatement (Second) of Trusts § 391 (1959) (distinguishing between persons with a "special interest in enforcement of the charitable trust" and "the settlor or his heirs"); *but see Carl J. Herzog Found., Inc. v. Univ. of Bridgeport*, 699 A.2d 995, 999 n.5 (Conn. 1997) (noting that "the settlor of the trust may bring himself and his heirs within the 'special interest' exception to the general rule" by "expressly reserving a property interest such as a right of reverter").

primary rationale for the donor standing rule is that a donor, having surrendered all dominion over the gifted property, lacks a legally protected interest. *See* Appellee's Br. at 8-9. This is unequivocally a question of standing.

Second, the trial court wrongly concluded that the donor standing prohibition was limited to claims for breach of a conditional gift and did not apply to Appellant's other causes of action. As explained in Middlebury's brief, this is inconsistent with the authority on donor standing and makes no sense doctrinally. *See id.* at 10-11.

Third, the trial court cited the absence of any attempt to intervene by the Vermont Attorney General as a factor weighing against dismissal. As a matter of doctrine, it is not clear how this could establish that the Estate had a legally protected interest sufficient to confer standing. Moreover, after the trial court's initial ruling, the Special Administrator confirmed that he had not made any attempt to communicate the Estate's concerns with the alleged violation of a gift restriction to the Attorney General to investigate or enforce. *See* PC-III-245-47. It would be unreasonable to suggest that the failure of the Attorney General's Office to intervene somehow justified donor standing—i.e., standing to pursue an action that is traditionally the sole province of a state's attorney general—where the donor did not first seek to procure their involvement and assistance. *Compare Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426 (N.Y. App. Div. 2001) (finding executrix of recently deceased donor had standing to pursue claims where Attorney General was notified of concerns and intervened, but failed to diligently pursue enforcement of gift restrictions).

Fourth, the trial court's ruling was informed by the "undeveloped" state of Vermont law on the question of donor standing, which the court felt constrained it from extending this Court's ruling in *Wilbur v. University of Vermont*, 129 Vt. 33, 270 A.2d 889 (1970), beyond the domain of the common law of charitable trusts. This Court is not so constrained. And, while there may exist no Vermont precedent squarely addressing the question of donor

standing, there is an abundance of out-of-state precedent on the issue, as laid out in Middlebury's principal brief and the brief of the Amici Curiae. Middlebury submits that the Court should follow the mainstream of common law authority by applying the donor standing bar to the Estate's claims.

II. Gift Law, Not Contract, Governs Appellant's Attempt to Enforce an Alleged Restriction on Mead's Gift.

Appellant offers up two arguments in opposition to the principle that his claims are governed by gift law rather than contract. Neither has merit.

First, Appellant protests that gift law is "irrelevant" to this case because the trial court dismissed his conditional gift claim with prejudice and because Middlebury "failed to plead Gift Law as an Affirmative Defense." Reply at 23. Not so. Gift law is not an "affirmative defense" that a defendant must raise in an answer, nor does Appellant offer any argument or authority for the proposition that it is. Rather, it is the area of substantive law under which Appellant brought his claim for breach of a conditional gift—which was his only proper claim, as discussed in Middlebury's principal brief. The fact that Appellant's gift claim was dismissed following the trial court's grant of summary judgment points directly to *why* gift law remains central to this case: Appellant, unable to make out a viable claim under the body of law governing gifts, now seeks to evade the requirements of proving a gift claim by pursuing causes of action under inapposite legal theories. The Court should decline to countenance this end-run around the standards for gift claims—which are rightly demanding, and which Appellant was unable to satisfy.

Second, Appellant argues that gift transactions may sometimes be enforceable in contract, citing *Allegheny College v. National Chautauqua County Bank of Jamestown*, 159 N.E. 173 (N.Y. 1927) and a string of other cases involving the enforcement of pledges to make a charitable gift—i.e., cases where a *donee* organization sought to compel a donor to complete a promised gift, rather than (as here) cases presenting claims by a donor

seeking to compel compliance with an alleged condition of a gift.[2] These gift pledge decisions represent a very specific (and muddled) area of jurisprudence that has no application here.

It is true that courts in most jurisdictions, including Vermont, will find charitable pledges enforceable by a donee under some conditions (often where the donee can demonstrate some minimal level of reliance on the pledge), and many courts use the language of contract in doing so.[3] *See* Restatement of

---

[2] Appellant also cites one case that did involve a suit by a donor on a contract theory, *Stock v. Augsburg College*, No. C1-01-1673, 2002 WL 555944 (Minn. App. Ct. Apr. 16, 2002), but that case is an outlier and has no precedential value. The plaintiff there gifted $500,000 to Augsburg College in exchange for an express agreement to name a wing of a new building after him; the school subsequently backed out of its naming agreement after a racist letter-writing campaign by the plaintiff came to light. A number of years later, the plaintiff sued for breach of contract, and the trial court entered summary judgment for the college on statute of limitations grounds. In an unpublished opinion affirming summary judgment, an intermediate appeals court suggested that the plaintiff would have had a cause of action for "breach of contract" at the time the college repudiated its agreement, but the court agreed that any claim was time-barred. The court's discussion of the "contract" claim is thus dicta—and, moreover, the court analyzed the issue as one of a "conditional gift," suggesting significant confusion as to the nature of the claim. *Id.* at *5-7.

[3] Not all courts do so; courts in some jurisdictions have "done away with the requirements of consideration or reliance and will enforce a pledge on purely public-policy grounds." Restatement of the Law, Charitable Nonprofit Orgs. § 4.04 cmt. c (2021). Even in those jurisdictions that employ a contract-based rationale, it is fair to assume, as Judge (and later Justice) Cardozo recognized in *Allegheny*, that the jurisprudence on enforcement of pledges was likely "shaped, more or less subconsciously," by "conceptions of public policy," i.e., by the concern that violations of charitable pledges represent "breaches of faith towards the public . . . and an unwarrantable disappointment of the reasonable expectations of those interested." *Allegheny*, 159 N.E. at 175 (cleaned up).

the Law, Charitable Nonprofit Orgs. § 4.04 cmt. c (noting that while "courts and commentators have long understood [that] donative promises such as those made in pledges do not constitute contracts and, therefore, traditional contract principles are ill-fitted to the enforcement of pledges[,] . . . [n]onetheless, courts generally use the language of contracts in enforcing pledges, often engaging in a search for fictional forms of consideration or for reliance"). In *University of Vermont v. Wilbur's Estate*, 105 Vt. 147, 163 A. 572, 581 (1933), for example, the Court cited *Allegheny* and held that the University of Vermont's acceptance of a gift pledge subject to various conditions represented "adequate consideration for [the donor's] promise . . . , and her promise thereby became an obligation which legally bound her to pay and which was enforceable at law."

However, the enforcement of pledges by a donee is entirely distinct from a donor's attempt to enforce conditions on a completed gift. As emphasized in *In re Carson's Estate* (cited in Appellant's Reply at 22), the law distinguishes between treatment of a completed, "executed gift"—governed traditionally by trust law or conditional gift principles—and a pledge or offer of a gift, which, if supported by consideration, can be an enforceable contract. *See* 37 A.2d 488, 491-92 (Pa. 1944) (holding that the doctrine of cy pres had no application because "there was no executed gift to trustees for a charity" but only a pledge that "created, at most, an executory contract"). This can be seen in the Court's decision in *Wilbur's Estate*¸ which held that once the donor at issue actually completed delivery of her pledged gift to the University of Vermont, "she relinquished all interest therein and power of control over the same" and the "transaction constituted an executed gift . . . which is irrevocable."[4] 163 A. at 581; *cf. also id.* at 575 (recognizing, under the law of gifts, that even a completed, absolute gift "may be made subject to be defeated upon the happening of a subsequent event"—i.e., where the donor

[4] The Court acknowledged that the donor separately had rights against the University under an annuity bond executed in connection with her gift, but that the gift itself was "absolute" and "not affected" by any of the conditions of the bond. *Id.*

expressly imposes a valid condition subsequent in making the gift).

The distinction in bodies of law governing different aspects of the gift transaction is not atypical. In matters involving real property, for example, a purchaser might sue in contract to enforce a purchase and sale agreement, *see, e.g.*, *Sisters & Brothers Inv. Group. v. Vermont Nat. Bank*, 172 Vt. 539, 773 A.2d 264 (2001) (claim for breach of contract and specific performance of purchase and sale agreement), but it is the law of property, not contracts, that primarily governs the landowner's rights and obligations with respect to property once the transfer is completed. So too with respect to charitable gifts: the fact that an unfulfilled gift pledge may be enforceable in contract does not mean that contract law governs the management and administration of gifted funds or property once the transaction has been completed.

As explained in Middlebury's principal brief, application of contract law to completed charitable gifts would run contrary to the established framework governing gifts in Vermont, including (among other things) the Uniform Prudent Management of Institutional Funds Act. Appellant fails to offer any basis to harmonize the application of contract law with that framework. Middlebury requests that the Court, in upholding judgment for Middlebury on Appellant's contract claim, squarely affirm that the law of gifts controls.

CONCLUSION

The claims advanced by Appellant in this case, if allowed to proceed, would represent a sea change in the law governing charitable gifts in Vermont and most other states across the United States. In arguing for this radical break with the existing legal framework, Appellant offers no cogent justification for why it is necessary, desirable, or consistent with established jurisprudence. For the reasons laid out above and in Middlebury's principal brief, Middlebury requests that the Court dismiss this case for lack of subject matter jurisdiction under the common law donor standing rule or,

alternatively, affirm that Appellant could not make out any viable claims on the facts of this case.

Dated at Burlington, Vermont this 9th day of January, 2026.

/s/ Justin B. Barnard
Justin B. Barnard, Esq.
DINSE P.C.
209 Battery Street, P.O. Box 988
Burlington, VT 05402
802-864-5751
jbarnard@dinse.com

Counsel for Appellee

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

Pursuant to V.R.A.P. 32(a)(4)(B)(iii) and 32(a)(4)(D), I hereby certify that the foregoing brief contains 2,812 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 9th day of January, 2026.

/s/ Justin B. Barnard
Justin B. Barnard, Esq.
DINSE P.C.
209 Battery Street, P.O. Box 988
Burlington, VT 05402
802-864-5751
jbarnard@dinse.com

Counsel for Appellee