IN THE SUPREME COURT
OF THE
STATE OF VERMONT

JAMES H. DOUGLAS,

Plaintiff/Appellant,
v.

THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE,

Defendant/Appellee.

Appealed from Vermont Superior Court, Addison Unit, Civil Division

Trial Court Docket No. 23-CV-01214

Supreme Court Docket No. 25-AP-148

COLLEGES' OPPOSITION TO APPELLANT'S REQUEST FOR RECONSIDERATION

NOW COME Amherst College, Franklin & Marshall College, Ithaca College, Sarah Lawrence College, Smith College, Swarthmore College, Trinity College, Tufts University, Wellesley College and Williams College (collectively, the "Colleges"), by and through the law firm of Langrock, Sperry & Wool, as well as the law firm of Hemenway & Barnes LLP (a Massachusetts firm whose counsel have been admitted *pro hac vice*), pursuant to Vermont Rules of Appellate Procedure 27 and 29, and hereby oppose Appellant's Request for Reconsideration of this Court's order, dated October 15, 2025 ("Order"), granting permission for the Colleges to file an amicus brief. The reconsideration request ("Reconsideration Motion") filed by appellant James H. Douglas, as Special Administrator of the Estate of John Abner Mead ("Special Administrator") is both unusual and unfounded.

BACKGROUND

The Colleges filed their motion for permission to file an amicus brief on October 10, 2025. As stated in the motion, this Court's consideration of the common law prohibition against donor standing has national implications. Indeed, the Superior Court's analysis of the issue has already been cited in at least one publication as indicating that Vermont courts "may be open to granting standing when gifts may be

characterized as contracts." Philanthropy Roundtable, *Protecting Donor Intent: A 50-State Analysis of Legal Protections,* at 120 (Jan. 31, 2024), Thus, this Court's decision will have an effect beyond Vermont's borders and nonprofit organizations from around the country—including colleges, universities and hospitals—all have an interest in the outcome of this appeal.

Given its likely effect, the Colleges sought to provide the Court with a national perspective and an understanding that the common law prohibition against donor standing is the majority rule in the United States. The Colleges also sought to explain the Attorney General's traditional role in supervising charitable organizations, and to provide the Court with concrete examples of the types of practical problems that nonprofit organizations might experience if the common law rule were abrogated.

The Special Administrator did not file an opposition to the Colleges' motion. He also did not communicate to counsel any concerns with the motion or otherwise indicate that he opposed the Colleges' relatively routine and benign request.

This Court issued its Order granting the Colleges' unopposed motion on October 15, 2025.

The Special Administrator then waited an additional nine days, until October 24, 2025, to file what he styled as an "opposition" to the already-granted motion and a request for reconsideration of the Order. The Reconsideration Motion was, of course, filed during the time that the Colleges were using to draft their amicus brief, which is due on November 21, 2025.

ARGUMENT

By filing an amicus brief, the Colleges seek only to provide the Court with a broader and deeper understanding of the issues at play in this appeal, issues that will have an impact on the national charitable-giving landscape. Across the country, donors have increasingly sought to take their disputes over completed gifts to court, a venue traditionally denied to them. *See, e.g., Protecting Donor Intent* at 5 (citing developing donor interest in "identifying key challenges and opportunities to ensure that donors remain confident in their robust giving to diverse causes and communities in need"). This Court's decision will necessarily become part of a larger, national discussion. Therefore, it can only be useful to the Court to have a better understanding of that

discussion and the likely implications of any decision overturning the traditional, common law prohibition against donor standing.

Moreover, the Superior Court described Vermont law on this issue as "substantially undeveloped," with the last decision from this Court issued more than 50 years ago. *See* Appellant's Printed Case ("PC"), Vol. 1 at 9; *Wilbur v. University of Vermont*, 129 Vt. 33, 44 (1970). When Vermont law is "undeveloped," Vermont courts will look to the decisions of other states in determining the direction of its own common law. *See, e.g., Avery v. Avery*, 207 Vt. 570, 577 (2017) ("Because we have found no Vermont case law addressing this issue, we look to . . . other states' case law for an expression of the common-law rule . . . ."). Thus, a national perspective is warranted here and highly likely to be useful to the Court. *See, e.g.*, Vt. R. App. P. 29 (prospective amici must state why brief would be "desirable"). The Special Administrator has provided no good reason to deny the Court that assistance.

I. DONOR STANDING REMAINS A LIVE ISSUE IN THIS APPEAL.

Despite the Special Administrator's protestations, the donor standing issue is not moot. *See* Reconsideration Motion at 7 ("Because the Conditional Gift claim has been dismissed with prejudice, it is not subject to appellate review."). The Special Administrator misunderstands the standing issue, which is not limited to his gift claims.

Standing, of course, has to do with the party's *interest* in the dispute. As this Court has put it, "[t]he gist of the question of standing is whether [the] plaintiff's stake in the outcome of the controversy is sufficient to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Perry v. City of Montpelier*, 217 Vt. 450, 459 (2023).

Here, the Special Administrator bases his interest in the current dispute on a gift made by former Governor John Abner Mead to Middlebury College more than 100 years ago. PC-I-66-71 (Introduction to First Amended Complaint). This is true for *all* his claims, no matter how styled. PC-I-135-42 (Causes of action in First Amended Complaint).

However, the common law rule is that—absent a reverter or similar interest—a donor retains *no interest* in his or her gift, once given. As the United States Supreme Court put it, long ago, "[a] gift, completely executed, is irrevocable. The property

conveyed by it becomes, as against the donor, the absolute property of the donee; and no subsequent change of intention of the donor can change the rights of the donee." *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 683 (1819); *see also Carl J. Herzog Foundation, Inc. v. University of Bridgeport,* 699 A.2d 995, 998-99 (Conn. 1997) (when "donor has effectively passed all interest in the fund devoted to a charity, neither he nor those claiming under him have any standing in a court of equity as to its disposition or control") (quotation omitted). Thus, a completed gift confers no *interest* and no *standing* on the person who gave it. *See, e.g., Wilbur*, 129 Vt. at 44 ("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.").

Moreover, this is true whether the donor seeks to enforce the alleged terms of the donation as a gift, or as a contract. Whatever the nomenclature, courts have determined that the donor lacks the necessary *interest* to confer standing. *See, e.g.*, *Derblom v. Archdiocese of Hartford*, 289 A.3d 1187, 1192-93, 1200-01 (Conn. 2023) (donors lacked standing to bring constructive trust, breach of fiduciary duty and declaratory judgment claims); *Courtenay C. and Lucy Patten Davis Foundation v. Colorado State University Research Foundation*, 320 P.3d 1115, 1117-18, 1124 (Wy. 2014) (donors lacked standing to bring breach of contract, unjust enrichment, breach of covenant of good faith and fair dealing and charitable trust claims). Indeed, if the opposite were true, the common law rule prohibiting donor standing would have virtually no meaning. To avoid it, donors would simply style their claims as breaches of contract. That is simply not the law.[1]

Thus, it makes no difference that the Special Administrator has withdrawn his conditional gift claims. That does not moot the consideration of his interest in the dispute. Without an adequate interest, he does not have standing to bring *any* of his claims, no matter what he calls them. Therefore, whether Vermont follows the common law rule on donor standing remains a live issue in this appeal and it is appropriate for the Colleges to file a brief discussing it.

[1] Moreover, this issue is an important one, going to the heart of a significant argument made by Middlebury College. Therefore, it should be decided on the merits after full briefing by all the parties, not on a motion for reconsideration of an order permitting the Colleges to file an amicus brief.

II. THE COLLEGES' BRIEF WILL OFFER A HELPFUL PERSPECTIVE, AND WILL NOT INTRODUCE EXTRA-RECORD MATERIAL OR BE "CUMULATIVE."

The Special Administrator asserts that, if permitted to file a brief, the Colleges will "introduce extra-record factual evidence and issues not raised or litigated below." Reconsideration Motion at 8. This is incorrect. Like all amici, the Colleges seek simply to give context to the Court's consideration of the issues. Nothing presented by the Colleges is or could be part of the record. All the Colleges have offered is to provide the Court with concrete examples of practical issues that nonprofit organizations may experience if the common law rule is abrogated. That is not "evidence," as the Special Administrator claims. Reconsideration Motion at 8. Indeed, the Court could ignore the examples if they are not useful; something it could not do with an inconsistent fact in the record. Rather, the examples will provide the Court with additional perspective, against which it can test any rule it may eventually adopt. They are, in that sense, no different than hypotheticals used by the Justices at oral argument. The answers to those hypotheticals are not "evidence." Rather, they help the Court to explore and test the pending issues more deeply.

Similarly unavailing is the Special Administrator's claim that the Colleges' brief will be merely "cumulative" of Middlebury's position. Indeed, his argument is internally inconsistent. On the one hand he argues that the Colleges' brief is inappropriate because it will present "new" examples and context, "not raised below." Reconsideration Motion at 8. On the other, he claims that the brief will be "cumulative, duplicative and an unnecessary burden on the court." Reconsideration Motion at 8. In addition to being inconsistent, the Special Administrator is simply wrong. The Colleges' brief will provide a national perspective on an issue of significant interest to nonprofit organizations across the country. That national perspective will not be duplicative of Middlebury's position, which is focused on Vermont law and how that law affects a Vermont gift to a Vermont institution. Instead, the Colleges' brief will provide context and perspective not currently available to the Court. Thus, as the Court has already determined when it issued the Order, the Colleges' amicus brief will be "desirable" within the meaning of Rule 29.

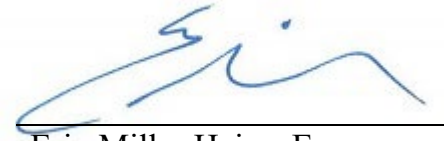
CONCLUSION

WHEREFORE, the Colleges respectfully request that the Vermont Supreme Court deny the Special Administrator's Motion for Reconsideration, and continue to permit the

Colleges to file their amicus brief in support of the position taken by Defendant/Appellees.

DATED at Burlington, Vermont, this 31st day of October, 2025.

LANGROCK SPERRY & WOOL, LLP



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