THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2022-0145

In re Robert T. Keeler Maintenance Fund for the Hanover Country Club at Dartmouth College

Appeal Pursuant to Rule 7 from a Judgment of the 2nd Circuit – Probate Division – Haverhill

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BRIEF OF APPELLEE

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Oral Argument Requested. Mr. Holmes will argue.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases **Page(s)**

Federal Cases

State Statutes

Court Rules

Other Sources

QUESTION PRESENTED[1]

1. Whether the Probate Court correctly ruled that the executor (the "Executor") of the Estate of Robert T. Keeler (the "Estate") and the Robert T. Keeler Foundation (the "Foundation") lack standing to contest the Application for Modification filed by Dartmouth College ("Dartmouth") with the assent of the Director of Charitable Trusts (the "DCT") to modify Dartmouth's administration of the Robert T. Keeler Maintenance Fund (the "Fund") under RSA 292-B:6, III.

RELEVANT STATUTES

292-B:6 Release or Modification of Restrictions on Management, Investment, or Purpose.

I. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

II. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

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[1] The four argumentative and confusing "Questions Presented For Review" in Appellants' Brief presume that they have rights and interests in the Fund under the terms of the "Statement of Understanding" that established the Fund, a position the Probate Court clearly rejected in denying them standing. Dartmouth suggests the single question above simply and fairly frames all issues before this Court.

III. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

IV. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than $25,000;

(b) More than 25 years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

V. Upon application to the court by an institution holding a fund with a market value of $1,000,000 or more, which fund would be an institutional fund but for the provisions of RSA 292-B:2, V(b) or (d), the court may order the adoption of the provisions of this chapter with respect to that fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. In reviewing the application, the court shall consider the intent of the donor expressed in a gift instrument, the purposes of this chapter, and the capacity of the institution to comply with the requirements of this chapter.

STATEMENT OF THE CASE AND OF THE FACTS

The factual and procedural history is straightforward and set forth below:

A. Establishment of the Fund as a Completed Gift[2]

In his last will and testament (the "Will"), Robert T. Keeler ("Keeler") made the following residuary bequest to Dartmouth and the Foundation:

> Fifty percent (50%) [of the residue of the Estate] to DARTMOUTH COLLEGE, Hanover, New Hampshire, for the sole purpose of upgrading and maintaining its golf course. Nevertheless, if in the Executor's sole and absolute discretion, the golf course has been sufficiently upgraded and is being adequately maintained, then any amounts in excess of the amounts the Executor determines to be necessary to sufficiently upgrade and adequately maintain the golf course shall be distributed to the ROBERT T. KEELER FOUNDATION, an Ohio nonprofit corporation, located in Cincinnati, Ohio.

Appellants' Appendix ("App.") at 20. The Will, thus, sets forth the following allocation of 50% of the Estate residue:

- To Dartmouth:
  - The entire 50% residue; or
  - Such lesser amount the Executor "determines to be necessary to sufficiently upgrade and adequately maintain the golf course;" and
- To the Foundation:

[2] "At common law, a donor who made a completed charitable contribution, whether as an absolute gift or in trust, had no standing to bring an action to enforce the terms of his or her gift or trust unless he or she had expressly reserved the right to do so." Herzog Found., Inc. v. Univ. of Bridgeport, 699 A.2d 995, 997 (Conn. 1997). Attorney Donovan in his remarks at the December 9, 2021 hearing said that his office regarded the Fund as a "completed gift." Transcript of Dec. 9, 2021 Hearing ("Trans.") at 10-11. Judge Rappa agred in his Order of December 21, 2021. App. at 65.

- 0% of the residue if Dartmouth receives the full 50% share; or
- Such amount remaining if Dartmouth receives less than the full 50% share.

Id. The Will makes no provision for the Executor or Foundation to monitor Dartmouth's management of its bequest or for any return of funds if Dartmouth ceases operations of its golf course.

Following Keeler's death in 2002, the Executor[3] determined that $1.8 million was the amount "necessary to sufficiently upgrade and adequately maintain the golf course." App. at 102-03. The Executor would then have distributed the balance of the 50% Estate residue share to the Foundation.

The gift to Dartmouth was memorialized in the "Statement of Understanding" (the "SOU") dated August 31, 2005, which reads:

> **Purpose**
>
> The Robert T. Keeler 1936 Maintenance Fund for the Hanover Country Club at Dartmouth College is a quasi endowment established by the College with a bequest of $1.8 million from Estate of Robert T. Keeler (henceforth referred to as "the Donor"). This gift is made, consistent with Mr. Keeler's wishes to support the golf course, so that future generations of Dartmouth students and members of the Dartmouth community may continue to enjoy the great game of golf at the course which he so loved.
>
> Item Three A of the Donor's Will reads as follows:
>
> > *Fifty percent (50%) to DARTMOUTH COLLEGE, Hanover, New Hampshire, for the sole purpose of upgrading and maintaining its golf course. Nevertheless, if in the Executor's sole and absolute discretion, the golf course*

[3] At that time the Executor was the decedent's widow, Margaret P. Keeler. App. at 103.

> *has been sufficiently upgraded and is being adequately maintained, then any amounts in excess of the amounts the Executor determines to be necessary to sufficiently upgrade and adequately maintain the golf course shall be distributed to the ROBERT T. KEELER FOUNDATION, an Ohio nonprofit corporation, located in Cincinnati, Ohio.*
>
> It was determined that a bequest of $1.8 million would sufficiently cover the cost of upgrading and maintaining the golf course, and the College agreed to designate the bequest to quasi endowment. Income (and/or principal if needed) is restricted to support upgrades and maintenance of the golf course, including golf course facilities.
>
> **Administration**
>
> Expenditures from the Fund will be monitored by the Office of the Dean of the College and the Executive Vice President for Finance & Administration. The College's investment policy generally views quasi endowments as long term investments with principal remaining intact for a minimum of seven years. Accordingly, all withdrawals of principal are subject to approval by the Executive Vice President for Finance & Administration. As with other endowment funds, the Executive Vice President will oversee this fund in accordance with the endowment management, distribution, and utilization policies established by the Trustees. These policies govern the investment of endowment funds and the distribution and utilization of endowment earnings for the purposes designated by donors, including direct and associated costs incurred pursuant to those purposes. These policies may be revised from time to time by the Trustees. A summary of current policies is available from the Development or Finance Office upon request.

App. at 102-03 (italics in original). The SOU, thus, has two sections: "Purpose" and "Administration." The Purpose section quotes the Will provision above and recites that this "gift is made, consistent with Mr. Keeler's wishes to support the golf course, so that future generations of Dartmouth students and members of the Dartmouth community may

continue to enjoy the great game of golf at the course which he so loved." The Administration section provides for monitoring of the Fund by "the Office of the Dean of the College and the Executive Vice President for Finance & Administration" and management of the Fund in accordance with Dartmouth policies. Neither section grants either the Executor or the Foundation a right to monitor administration of the Fund or recover any portion of the Fund if Dartmouth closes the golf course.[4]

B. Closure of the Hanover Country Club[5]

Faced with extraordinary financial challenges of the pandemic and an "institutional budget deficit, projected to be $150 million through the fiscal year ending on June 30, 2021," Dartmouth in 2020, made the difficult decision to eliminate varsity men's and women's golf,[6] varsity men's and women's swimming and diving, and varsity men's lightweight rowing programs and closed the Hanover Country Club ("HCC"). App. at 137-39. In an email to the Dartmouth community, President Philip J. Hanlon explained that the pandemic had "dramatically accelerated our need to find savings across Dartmouth":

> Financial considerations have added to the challenges. Even before the COVID-19 pandemic, Dartmouth was facing financial challenges due to the urgent need to address a number of high-cost capital projects, including renovation of our aging residence halls, the modernization of our campus energy

[4] Appellants acknowledge that "it is true that the gift instrument [the SOU] does not expressly provide a reverter back to Mr. Keeler's estate or successors." Appellants' Br. at 41.
[5] As set forth in the Modification Application, Dartmouth continues to own the HCC property and seeks authorization to modify the Fund, *inter alia,* to investigate "the design [and installation and maintenance] of golf practice area(s) and practice holes" on the HCC property for use by the varsity golf teams. App. at 1-37.
[6] Dartmouth reinstated varsity men's and women's golf on January 29, 2021. App. at 6, ¶ 22.

> system, and an upgrade to our IT infrastructure. In addition, the severe and sudden financial pressure created by the COVID-related institutional budget deficit, projected to be $150 million at the end of the fiscal year ending June 30, 2021, has dramatically accelerated our need to find savings across Dartmouth. This is forcing every school and division, including athletics, to make difficult decisions to adjust to a new financial reality.

App. at 137 (emphasis added). In explaining the decision to close the golf club, President Hanlon described its chronic poor financial performance:

> As part of our overall budget reduction plan, we will permanently close the Hanover Country Club. In recent years, as the cost of operating the golf club has risen and memberships have declined, Dartmouth has had to absorb annual operating deficits in the range of $500,000 to $700,000. Those deficits swell to more than $1 million annually when deferred maintenance is included. Given the downward trend in the golf industry nationally, it is not realistic to expect these deficits to subside. As a result, we are no longer able to justify a deficit of this magnitude. The property, which we have no plans to sell, remains important to Dartmouth's future. We are committed to providing public access to the adjacent Pine Park and, in partnership with the town of Hanover, we will explore how to safely open the land for community recreational use.

App. at 138 (emphasis added). Structural engineers estimated that the cost of addressing deferred maintenance of the golf course would exceed $4 million:

> Structural engineers have determined that the bridge used for holes #6 and #18 must be replaced in the near future at a cost of about $2.5 million. The irrigation pump station is in need of replacement and erosion control measures will need to be implemented, adding a combined cost of about $500,000.

> Much of the grounds equipment is aging and failing, requiring replacement at a cost of about $1 million over the next five years. All of these costs would need to be incurred just to keep the course operating as it currently exists, with each project further increasing the annual deficit. None of these projects would improve the course in a way that would generate more revenue.

App. at 148 (emphasis added). Assessments made by the College have indicated that, "for HCC to be more financially viable, significant investments would need to be made in a relocated clubhouse, adequate parking, and a variety of changes to the course to make it more appealing for a wider range of skill levels" with the most recent assessment determining that, even with these changes, "any revenue gains would be marginal at best and almost certainly only be incremental on the ongoing operational side." App. at 149.

C. Dartmouth's Consultations with the Attorney General

With the closure of HCC, Dartmouth, through its in-house counsel and undersigned counsel's office, began a dialogue with the Attorney General with both the DCT, Thomas Donovan, Esq., and then Assistant DCT, Diane Quinlan, Esq.,[7] participating in almost all conferences and communications. *See* "Chronology of Attorney General Engagement" at App. at 150-66. After months of consultations, Dartmouth, by email dated August 6, 2021, provided to the DCT and Assistant DCT a draft Modification Application for their comment. App. at 159. By email dated August 21, 2021, Attorney Quinlan responded:

[7] After the filing of this appeal, Attorney Donovan retired and Attorney Quinlan succeeded him as DCT.

> Thank you for providing the drafts. We have only two suggestions:
>
> > 1. Tom [Donovan] noted that the school at issue in the case cited on page 9 (Exeter v. Robinson) was not his alma mater (Phillips Exeter); the school involved in that case was the Robinson Female Seminary.
> >
> > 2. With respect to the proposed use, we want to be sure that it is very clear that the Keeler funds are to be used to support golf at Dartmouth. To that end, we suggest that paragraph (a) of the proposed use paragraphs be revised slightly as follows:
> >
> > > a. To support the study and design of golf practice area(s) and practice holes, as well as the construction, upkeep, improvement and maintenance of these facilities, that would support Dartmouth's men's and women's varsity golf programs and other physical education and recreation programs run by Dartmouth that relate to golf, and/or for educational and recreational . . . access to golf by our students, faculty and staff, including without limitation support for the agronomic and infrastructure needs of these facilities, inclusive of supplies, equipment purchases and other necessary investments;
>
> If these changes are acceptable to you we will assent to the petition.

App. at 158 (emphasis added). Plainly, the DCT and Assistant DCT carefully read the draft, commenting on the accuracy of a case citation and conditioning Attorney General assent on editing the proposed modification

to make it "very clear that the Keeler funds are to be used to support golf at Dartmouth."

D. The Modification Application

On or around August 21, 2021, Dartmouth filed the Modification Application with the Second Circuit Court, Probate Division (the "Probate Court") with the Application incorporating the Attorney General's suggestions. The Application sought judicial approval to modify the Fund as follows:

> a. To support the study and design of **golf** practice area(s) and practice holes, as well as the construction, upkeep, improvement and maintenance of these facilities, that would support Dartmouth's men's and women's varsity **golf** programs and other physical education and recreation programs run by Dartmouth that relate to **golf**, and/or for educational and recreational access to **golf** by our students, faculty and staff, including without limitation support for the agronomic and infrastructure needs of these facilities, inclusive of supplies, equipment purchases and other necessary investments;
>
> b. To support the administrative activities and equipment storage needs for Dartmouth's varsity **golf** programs and/or other physical education and recreational **golf** programs run by Dartmouth, including without limitation the upkeep, improvement and potential renovation of the existing clubhouse for these purposes; and
>
> c. To otherwise support Dartmouth's varsity **golf** programs, and/or other recreational or educational **golf** programs run by Dartmouth.

App. at 11-12 (emphasis added). Importantly, with regard to modification in paragraph a. above, the Application states:

> 24. Though [HCC] no longer exists in its former capacity, Dartmouth still controls all of the property on which the Club sits and plans to explore the study and design of certain golf practice area(s) and practice holes to support the newly-reinstated varsity golf teams and other physical education and recreation programs run by Dartmouth that relate to golf.

App. at 6, ¶ 24 (emphasis added). Thus, Dartmouth, per its consultations with the DCT, intends as part of the modification to use the Fund to investigate "the design[, installation and maintenance] of golf practice area(s) and practice holes" on the former HCC property.

E. Appellants' Attempted Intervention

Appellants filed a Motion to Intervene, App. at 38-46, alleging, *inter alia*, that "[a]ll funds remaining in the Keeler Golf Course Fund should be directed to the Foundation at the behest of the Estate pursuant to the terms of the [SOU]," and that the "Foundation . . . [is] a third-party beneficiary of the [SOU] and should be allowed to intervene to seek an Order by the Court consistent with the [SOU]". (¶¶ 5-6). Dartmouth objected to the Motion to Intervene. App. at 47-52.

A hearing on the Motion to Intervene was conducted on December 9, 2021 on offers of proof. Counsel for Appellants, unaccompanied by her clients, argued, *inter alia*, that "the statement of understanding should be interpreted under breach of contract, unjust enrichment, and trust law" and stated multiple times that, if so construed, the Foundation has a "remainder" interest in the Fund. Trans. at 5-9, 20-22.

At the hearing, Attorney Donovan, accompanied by Attorney Quinlan, explained to the Court the process his office followed in reviewing and deciding to assent to the modification of the Fund:

> . . . We do support Dartmouth College's petition for modification on the merits. And there's a reason that we did that.
>
> We looked at the will of Mr. Keeler. We looked at the subsequent agreement with the executor. And we understand -- I don't think it's disputed that the funds have been used to support the Hanover Country Club for about 15 years since the agreement was set forth.
>
> We've reviewed the allegations of the change of circumstances that now are alleged by Dartmouth College, and they make sense to us. We know that colleges are rethinking their athletic programs. There are -- there is a financial drain, as we understand it, posed by the college operating a full golf course. And so we think that that meets the definition of impracticable under either common law, either under the Cy Pres statute or under the applicable statute, which is UPMIFA, which uses the term modification of a restriction.
>
> So we had discussions with the college before they came to the Court about what would be an appropriate modification in light of the purpose of the gift, which we did believe is a completed gift to the college. And it remains as an institutional fund of the college. We insisted, and the college came to agree, that the funds, the income would continue to be used for golf-related programming, which we think is consistent with Mr. Keeler's intent, as expressed in his will, golf-related programing and facilities.
>
> So we signed on to the petition with an assent because the relief requested would continue to benefit the golf program and golf facilities at the college. Not a full-blown

> country club, but we think that that would be the appropriate limited modification. So that's our position on the merits, and that's how we got there.

Trans. at 10-11 (emphasis added). Thus, the DCT made clear on the record that the Attorney General had:

1. Reviewed the Will;
2. Reviewed the SOU;
3. Reviewed the financial change of circumstances at Dartmouth leading to closure of HCC;
4. Determined that the change of circumstances "meets the definition of impracticable under either common law, either the Cy Pres statute or under the applicable statute, which is UPMIFA;"
5. Had "discussions with the college before they came to Court about what would be an appropriate modification in light of the purpose of the gift;" and
6. "[I]nsisted, and the college came to agree, that the funds . . . would continue to be used for golf-related programming, which we think is consistent with Mr. Keeler's intent, as expressed in his will, golf-related programing and facilities."

Id.

At the hearing, Dartmouth argued that the Appellants are not entitled to standing under the plain terms of RSA chapter 292-B:2, III or the test of In re Trust of Mary Baker Eddy, 172 N.H. 266 (2019), and offered without objection into evidence an email entitled "Important

Message about Athletics" from Dartmouth President Philip J. Hanlon to the Dartmouth community discussing the closure of HCC and the varsity team programs, App. at 137-38; a webpage posted by the Dartmouth Athletics Department discussing the closure of HCC and the varsity team programs, App. at 140-49; and a "Chronology of Attorney General Engagement" with attached emails, correspondence, and relevant time records of undersigned's office, App. at 150-66.[8]

By Order dated December 23, 2021 (the "Standing Order"), App. at 61-66, the Probate Court (Rappa, J.) held that Appellants lack standing and rejected their arguments that they had rights in the Fund under the SOU:

> Based on the law and arguments presented this Court finds that neither Peter P. Mithoefer as fiduciary for the Estate of Robert F. Keeler nor the Robert F. Keeler Foundation have standing to participate as a party in this case. The Court agrees with the position of both the Petitioner and the Director of Charitable Trust in that funds delivered to Dartmouth College pursuant to the Statement of Understanding constituted a completed gift. The provision in the Will relied upon by the interveners, which provided that estate funds in excess of those determined by the executor to be necessary for the upgrade and maintenance of the Hanover Country Club would be distributed to the Foundation was fully executed through the Statement of Understanding. The amount of the gift was determined. The gift was delivered and received. The balance of the funds in the estate were presumably disbursed to the Foundation. At that point the donor's claim to the gifted funds was extinguished. There were no rights of reverter or residual claims of any nature

[8] These and other documents were contained in a binder entitled "Supporting Authority and Exhibits of Dartmouth College," App. at 100-70, copies of which undersigned provided to all counsel in the courthouse lobby before the hearing. Without objection, the Probate Court accepted the binder and marked it as Exhibit 1 and in the Standing Order referenced certain documents by their binder tab number.

> retained by the donor, either in the Will or in the Agreement. The controlling statute, RSA 292-B *et seq.*, does not confer any residual rights on the donor and does not create a right to participate in this case as a party.

App. at 65 (emphasis added). "Notwithstanding the above," the Court also "grant[ed Appellants] . . . leave to file an amicus brief with respect to the proposed modification of the [Fund] to be filed within thirty (30) days of the Clerk's notice of this order." App. at 66.

F. Appellants' Failure to File an Amicus Brief and the Probate Court's Decision on the Merits

Incredibly, Appellants never filed an amicus brief on the proposed modification, despite the Probate Court's invitation. Although Appellants now claim that they have been "prematurely silenced," Appellants' Br. at 44, they were given the chance to file an amicus brief in the Probate Court and inexplicably declined to do so. App. at 66.

Having the Attorney General's signed assent to the Modification Application, App. at 14, an explanation on the record from the DCT as to the reasons the Attorney General supported the Application, Trans. at 10-11, evidence of the impracticability of continuing the Fund without modification, and no amicus brief from Appellants, the Court granted the Application by Order dated February 18, 2022 without further hearing. App. at 97-99.

SUMMARY OF THE ARGUMENT

Appellants' appeal must be dismissed as untimely. See N.H. Sup. Ct. R. 7(1)(B). If this Court nonetheless considers the appeal, it must uphold the Probate Court's denial of Appellants' motion to intervene

because they lack standing under RSA 292-B:6, III and In re Trust of Mary Baker Eddy, 172 N.H. 266 (2019). The Fund is a completed gift in which neither the Executor nor the Foundation has any right or interest. The Probate Court's decision on the merits was legally correct and amply supported by the record. Finally, Appellants' constitutional arguments have no merit.

STANDARD OF REVIEW

The Probate Court correctly ruled that the Appellants lack standing in this modification proceeding under RSA 292-B:6, III. "'[A] person who seeks to intervene in a case must have a *right* involved in the trial and his *interest* must be direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege.'" Snyder v. N.H. Sav. Bank, 134 N.H. 32, 35 (1991) (quoting 4 Wiebusch, *New Hampshire Practice, Civil Practice and Procedure* § 176 (1984)) (emphasis in original); see Exeter Hosp. Med. Staff v. Bd. of Trs., 148 N.H. 492, 495 (2002) ("The plaintiff bears the burden of sufficiently demonstrating a right to claim relief." (citation omitted)); Ossipee Auto Parts, Inc. v. Ossipee Planning Bd., 134 N.H. 401, 403-04 (1991) ("When . . . the motion to dismiss . . . challenges the plaintiff's standing to sue, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief." (citation omitted)).

The Court conducts a de novo review to the extent resolution of these matters involves statutory interpretation, Hodges v. Johnson, 173 N.H. 595, 604 (2020), or interpretation of the plain meaning of a last will and testament, see In re Estate of Dow, 174 N.H. 37, 46 (2021).

Specifically, as the appealing party, Appellants have the burden of demonstrating that the Probate Court committed reversible error in applying RSA 292-B:6, III. Gallo v. Traina, 166 N.H. 737, 740 (2014).

ARGUMENT

I. APPELLANTS' APPEAL IS NOT TIMELY AND MUST BE DISMISSED.

The appeal must be dismissed because the Probate Court's denial of Appellants' Motion to Intervene was "a 'final decision on the merits' for purposes of appeal," N.H. Sup. Ct. R. 3, cmt., and Appellants failed to appeal within thirty days of the Court's denial of their timely motion to reconsider. The Court denied the motion to reconsider by order noticed January 21, 2022, see App. at 78-79, and this appeal was filed on September 12, 2022. The appeal is untimely.

II. APPELLANTS LACK STANDING TO CONTEST MODIFICATION OF THE FUND.

Appellants lack standing to contest modification of the Fund because they failed to demonstrate any right or interest in the Fund. Additionally, RSA 292-B:6, III gives them no right to notice, let alone intervention, and they are not entitled to standing under In re Trust of Mary Baker Eddy, 172 N.H. 266 (2019), hereinafter Eddy, even if this Court finds it applies to a proceeding under RSA 292-B:6, III.

A. Appellants Have No Right Or Interest In the Fund.

"The absence of a reverter or forfeiture clause prevents any reversionary interest in the grantors or their heirs for the failure to use the premises for the stated purposes." Trs. of Protestant Episcopal Church in

N.H. v. Danais, 108 N.H. 344, 346 (1967) (citing Borchers v. Taylor, 83 N.H. 564, 564 (1929)). "[T]he absence of a provision for forfeiture is evidence that the donor did not intend the estate should revert while the carrying out of his general purpose is practicable." City of Keene v. Eastman, 75 N.H. 191, 191 (1909); see also Kibbe v. Rochester, 57 F.2d 542, 549 (W.D.N.Y. 1932) (imposition of resulting trust in favor of heirs declined); Souther v. Schofield, 95 N.H. 379, 382 (1949)[9]; Van De Bogert v. Refm. Dutch Church, 219 A.D. 220, 225 (N.Y. App. Div. 1927) ("[c]onditions subsequent are not favored, and to be upheld, must be clearly [ex]pressed" in will); In re Hendricks' Will, 148 N.Y.S.2d 245, 253 (N.Y. Sup. Ct. 1955) (claim of reverter not supported by language in will rejected).

As explained above, neither the Will nor the SOU grants either the Executor or the Foundation a right to monitor administration of the Fund or to reclaim Fund assets. Indeed, as Appellants acknowledge, "the gift instrument [the SOU] does not expressly provide a reverter back to Mr. Keeler's estate or successors." Appellants' Br. at 41. The Probate Court's rulings that the "funds delivered to Dartmouth College pursuant to the Statement of Understanding constituted a completed gift" and "[a]t that point the donor's claim to the gifted funds was extinguished . . . and [t]here

[9] In Souther, the last will and testament made a charitable bequest subject to certain conditions to the Town of Bristol and "otherwise to the New Hampshire Orphans Homes in Franklin, New Hampshire. The Court held:

> Neither the will nor the deed contains any forfeiture or reverter clause that is applicable as such after the acceptance of the bequest by the town of Bristol. If facts are found that permit deviation [by Bristol], no interest of the defendant New Hampshire Orphans Home can interfere with its allowance.

95 N.H. at 382 (citing Exeter v. Robinson Heirs, 94 N.H. 466, 467 (1947). The case is instructive as to the absence of rights of the Foundation in this case.

were no rights of reverter or residual claims of any nature retained by the donor, either in the Will or the in Agreement" must be upheld.

B. Appellants Have No Standing Under RSA Chapter 292-B:6, III.

As Appellants acknowledge, "[w]hether the [Appellants] have a 'direct and apparent interest' [entitling them to standing] is strictly an interpretation of RSA 292-B:6 (III) [sic]." Appellants' Br. at 20. The Court "is the final arbiter of the intent of the legislature as expressed in the words of a statute." In re Estate of Locke, 148 N.H. 754, 756 (2002) (citing Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2002)). "When construing a statute's meaning, [the Court] first examine[s] its language, and where possible, [ascribes] the plain and ordinary meanings to words used." Id. "Furthermore, when examining statutory language, we construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result." Id.

Since its enactment in 2008, RSA chapter 292-B, "The Uniform Prudent Management of Institutional Funds Act" ("UPMIFA"),[10] has governed Dartmouth's administration of the Fund.[11] Entitled "Release or Modification of Restrictions on Management, Investment, or Purpose," RSA 292-B:6 authorizes an "institution" such as Dartmouth to modify an "institutional fund" such as the Fund in two *alternative* ways: 1) with donor

[10] In 2008, the legislature repealed the existing RSA chapter 292-B, "The Uniform Management of Institutional Funds Act" ("UMIFA"), and adopted UPMIFA in its stead.

[11] In the parlance of UPMIFA, the Fund is an "institutional fund," RSA 292-B:2, II, the SOU is a "gift instrument," RSA 292-B:2, III, and Dartmouth is an "institution," RSA 292-B:2, IV. Contrary to the position initially advanced and later abandoned by Appellants below, the Fund is not an express trust governed by the New Hampshire Trust Code, RSA chapter 564-B. See Hardt v. Vitae Found., Inc., 302 S.W.3d 133, 138-39 (Mo. Ct. App. 2009) (donor had no standing to enforce gift restrictions under Missouri versions of the Uniform Trust Code or UPMIFA).

consent without court approval or notice to the attorney general; or 2) with court approval and notice to the attorney general *and no notice to the donor*. The statute sets forth the first alternative as follows:

> I. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

RSA 292-B:6, I. Thus, with "donor consent," "an institution may . . . modify . . . an institutional fund" without court approval or notice to the attorney general. Id. Where the donor, Robert T. Keeler, was deceased (and the Estate had long been closed), this was not a viable alternative.

In need of resolution for the use of the funds at issue and unable to obtain Keeler's consent, Dartmouth proceeded under the following provision of UPMIFA:

> III. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

RSA 292-B:6, III (emphasis added). Notably, this provision does not provide for notice to the donor, let alone permit it to participate in the proceeding, even if the donor is available.

"When interpreting a uniform law . . . 'the intention of the drafters of [the] uniform act becomes the legislative intent upon enactment.'" Halifax-Am. Energy Co. v. Provider Power, LLC, 170 N.H. 569, 587 (2018) (quoting In re Ball & Ball, 168 N.H. 133, 137 (2015)) (discussing interpretation of the Uniform Trade Secrets Act). Here, the UPMIFA drafters made clear that they purposely omitted any requirement for notice to a donor as donor intent would, consistent with governing law, be protected by the attorney general and the court:

> The Drafting Committee [of the National Conference on Uniform State Laws] decided not to require notification of donors under subsections (b), (c), and (d) [subsections II, III, and IV of RSA 292-B:2]. The trust law rules of equitable deviation and cy pres do not require donor notification and instead depend on the court and the attorney general to protect donor intent and the public's interest in charitable assets.

Unif. Prudent Management of Inst. Funds ("UPMIFA") § 6 cmt. (2006) (emphasis added). This stated intent of the uniform act became "the legislative intent upon enactment" of RSA 292-B:6, III. Halifax-Am. Energy Co., 170 N.H. at 587 (quotation and citation omitted). Where the Executor as the representative of the donor would not be entitled even to notice of this proceeding, he has no right to intervene. See Conn. Yankee Coun. v. Town of Ridgefield, No. DBDCV085004429S, 2010 WL 2822135, at *5 (Conn. 2010) (donor lacked standing under Connecticut version of UMIFA to enforce gift restrictions); Herzog Found., Inc., 699 A.2d at 1002 (donor lacked standing under Connecticut version of UMIFA to enforce gift restrictions); In re Lindmark Endow. for Corp.-Bus. Ethics Fund, No. A19-0229, 2019 WL 5546205, at *9-10 (Minn. Ct. App., Oct.

28, 2019) (donor lacked standing under Minnesota version of UPMIFA to oppose fund modification).

RSA 292-B:6, III likewise does not provide a right of notice or participation to an alternative charity the donor may have favored. Any interest of such charity derives from the intent of the donor – who has no right to notice or participation in the proceeding. Again, the statute provides that the Attorney General shall represent all such interests. Accordingly, the Foundation has no standing in this proceeding. Judge Rappa's ruling that "[t]he controlling statute, RSA 292-B *et seq.*, does not confer any residual rights on the donor and does not create a right to participate in this case as a party" was correct and should be upheld.

C. Appellants Have No Standing Under Eddy.

Although UPMIFA is dispositive, Appellants fare no better under the common law. In Eddy, this Court adopted the five-factor "Blasko test" for evaluating standing in charitable trust cases and, applying those factors, rejected the appellant's claim for standing.[12] "The factors are: (1) the extraordinary nature of the acts complained of and the remedies sought; (2) the presence of bad faith; (3) the attorney general's availability and effectiveness; (4) the nature of the benefitted class and its relationship to the charity; and (5) the social desirability of conferring standing." Id. at

[12] 172 N.H. at 271, 275 (citing Mary Grace Blasko et al., *Standing to Sue in the Charitable Sector*, 28 U.S.F. L. Rev. 37, 61 (1993)) ("[B]ecause of the various interests that must be considered to determine special interest standing in the context of charitable trust matters, we conclude that a balancing test of all five Blasko factors best comports with New Hampshire law."). Importantly, both the National Conference on Uniform State Laws in finalizing UPMIFA in 2006 and the New Hampshire Legislature in enacting RSA chapter 292-B in 2008 could have incorporated Attorney Blasko's concepts, which had been in print for over a decade, and chose not to do so.

271. Like the appellant in Eddy, Appellants have no standing under these factors, which are reviewed in turn below.

1. The Extraordinary Nature of the Acts Complained of and the Remedy Sought

Fund modification is not an extraordinary act; indeed, it is contemplated by the governing statute and is the remedy sought appropriately and commonly by institutions when circumstances change. In contrast, the appropriation of Fund assets sought by Appellants would be highly improper and contrary to the nature of this proceeding and the SOU, which granted neither the Estate nor the Foundation a reversionary interest. This factor supported declination of intervention.

2. Presence of Bad Faith

This element requires "fraud or bad faith," not misconduct alone. Id. at 279. There is no basis for finding fraud or bad faith here. Appellants complained below that Dartmouth acted in bad faith by unreasonably delaying in responding to their requests for information, including a response to their claims to an interest in the Fund. App. at 56. During the "delay," Dartmouth was appropriately consulting with the DCT to determine its position on these important matters. Trans. at 19. As Judge Rappa noted in the Standing Order:

> The third factor of the test is the presence of bad faith. Attorney Holmes argued that there has been no bad faith. Although the interveners complained of some delayed response by the college the fact was that the college was waiting for the regulators to opine on the nature of the gift. Once they concluded that the gift was a completed gift that information was shared with the interveners in a timely manner. Exhibit 1**,** Tab J.

App. at 65 (emphasis added).

Appellants now argue that "Dartmouth's Application itself is evidence of its bad faith . . . [as] Dartmouth failed to articulate any of the quintessential factual circumstances required by RSA 292-B:6, III and failed to articulate that Mr. Keeler had expressed a general charitable intent in the gift instrument." Appellants' Br. at 24. In fact, Dartmouth in the Application repeatedly cites the statute, pleads that there was a change in circumstances due to the permanent closure of HCC "partially motivated by severe budget constraints brought on by the COVID-19 pandemic," App. at 6, ¶ 21, and alleges that

> [i]n this case, the Donor's intent was to maintain a golf course at Dartmouth "so that future generations of Dartmouth students and members of the Dartmouth community may continue to enjoy the great game of golf." Granting this Application for Modification will enable the "main purpose" of the Donor, both as set out in the Will and as reflected in the Statement of Understanding's expression of the Donor's intent, to be carried out.

App. at 9, ¶ 33 (emphasis added). If this was not sufficiently clear, Dartmouth at the hearing presented the following evidence without objection or contravention: the decision to close HCC was made in the context of an "institutional budget deficit, projected to be $150 million," App. at 137; Dartmouth "has had to absorb annual [HCC] operating deficits in the range of $500,000 to $700,000 . . . [which are expected to] swell to more than $1 million annually when deferred maintenance is included, App. at 138, 148; and the estimated cost of addressing the deferred maintenance of the golf course was upwards of $4 million, App. at 148.

There was no bad faith or fraud; rather, Dartmouth's Board of Trustees acted with the care an "ordinarily prudent person in a like position would exercise under similar circumstances," demonstrating the prudent stewardship of its assets that is required by law. RSA 292-B:3, II.

3. Attorney General's Availability and Effectiveness

"Under this factor, we consider whether the attorney general is able to enforce the trust or whether the lack of enforcement is due to a conflict of interest, ineffectiveness, or lack of resources." Eddy, 172 N.H. at 279 (citation omitted). Here, Judge Rappa, citing the Exhibit entitled "Chronology of Attorney General Engagement," found the involvement of the Attorney General to be "significant and meaningful" and to "chronical [sic] their involvement and oversight." App. at 65. The Court cited with approval that both "the Director and Assistant Director [were] personally present at the hearing," id., and no doubt had in mind the comments by Mr. Donovan on the record about his office's consideration of the matter, discussed supra at 17-18. Appellants ask this Court to overturn the trial court's finding of the "significant and meaningful" involvement in this matter as "erroneous as not supported by the evidence." Appellants' Br. at 25. This claim has no merit.

The evidence of active and effective engagement by the Attorney General is overwhelming. With the closure of HCC, Dartmouth, through its in-house counsel and undersigned's office, began a dialogue with the Attorney General with Attorneys Donovan and Quinlan both participating in almost all conferences and communications. App. at 150-66. After months of consultations, Dartmouth, by email dated August 6, 2021, provided to the DCT and Assistant DCT a draft Modification Application

for their comment. App. at 159. By email dated August 21, 2021, Attorney Quinlan responded, relaying Mr. Donovan's comment on a case citation and conditioning Attorney General assent on editing the proposed modification to make it "very clear that the Keeler funds are to be used to support golf at Dartmouth." App. at 158. Most important, at the hearing, Mr. Donovan explained to the Court the careful process his office followed in reviewing and its rationale for assenting to the modification of the Fund. See supra at 14-15. The Probate Court's finding of "significant and meaningful" engagement by the Attorney General is well supported and should be upheld. [13]

4. Nature of the Benefitted Class and its Relationship to the Charity

To have standing under this factor, a "'plaintiff should have a direct and defined interest, distinct from that of the general public, in the

[13] The engagement by the DCT in this matter is in stark contrast to that the of New York Attorney General recounted in Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 281 A.D.2d 127, 138-39 (N.Y. App. Div. 2001), relied on by Appellants:

> Indeed, it was Mrs. Smithers's accountants who discovered and informed the Attorney General of the Hospital's misdirection of Gift funds, and it was only after Mrs. Smithers brought her suit that the Attorney General acted to prevent the Hospital from diverting the entire proceeds of the sale of the building away from the Gift fund and into its general fund. The Attorney General, following his initial investigation of the Hospital's administration of the Gift, acquiesced in the Hospital's sale of the building, its diversion of the appreciation realized on the sale, and its relocation of the rehabilitation unit, even as he ostensibly was demanding that the Hospital continue to act "in accordance with the donor's gift." Absent Mrs. Smithers's vigilance, the Attorney General would have resolved the matter between himself and the Hospital in that manner and without seeking permission of any court.

The opinion is a "scathing criticism of the part played throughout the entire matter by the New York Attorney General." Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 Vand. L. Rev. 1093, 1100 (2005).

enforcement of the charitable obligations at issue.'" Eddy, 172 N.H. at 281 (quoting Blasko et al., supra, at 70). As explained above, Appellants have no interest in the Fund and, indeed, are not even members of the "benefitted class," namely, the members of the Dartmouth community who have enjoyed (and will continue to enjoy) the services the Fund allows the College to provide. Neither Appellant suggests that it would use the assets in any way to benefit the Dartmouth community. This factor also supports the Probate Court's declination of intervention.

5. Subjective Factors and Social Desirability

This factor is intended to allow the court to address "'an egregious wrong which would otherwise go uncorrected.'" Id. at 283 (quoting Blasko et al., supra, at 75). No "egregious wrong" is presented here. As documented in its communications to the college community about closure of HCC, App. at 137-49, its engagement with the DCT on issues of modification, and its participation in this proceeding, Dartmouth submits that it is a conscientious and careful steward of this charitable resource and is committed to continue to carrying out its charitable purpose. This factor supports the Probate Court's declination of intervention.

Balancing these five factors, Appellants cannot show that they have standing to contest Dartmouth's application to modify the terms of the Fund and the trial court's ruling should be upheld. See Eddy, 172 N.H. at 272, 283.

III. THE PROBATE COURT'S APPROVAL OF THE MODIFICATION APPLICATION IS LEGALLY CORRECT AND SUPPORTED BY THE RECORD.

If, notwithstanding Appellants' lack of standing, this Court decides to review the Probate Court's ruling on the merits, it must be upheld. Having the DCT's signed assent, App. at 53, his explanation on the record of his support of the Application, Trans. at 10-11, evidence of the impracticability of continuing the Fund without modification, and no amicus brief from Appellants, the Court appropriately granted the Application by Order dated February 18, 2022 without further hearing. App. at 97-99.

If the purpose of or restriction on the use of an institutional fund "becomes unlawful, impracticable, impossible to achieve, or wasteful," a court upon application of the institution may modify the purpose or restriction "consistent with the charitable purposes expressed in the gift instrument." RSA 292-B:6, III. The comments to subsection (c) of Section 6 of UPMIFA, which New Hampshire codified at RSA 292-B:6, III, makes clear that subsection (c) "applies the rule of *cy pres* from trust law." UPMIFA § 6 cmt., subsection (c). The Probate Court's modification of the Fund is consistent with the plain meaning of the statute and the common law of *cy pres.*

"A review of the case law on impossibility and impracticability has led many to believe 'no precise definition of the standard exists,' and whether something has become impossible or impracticable is up to the 'particular facts of each case.'" Kolb v. City of Storm Lake, 736 N.W.2d 546, 556 (Ia. 2007) (quoting Nancy A. McLaughlin, *Rethinking the*

Perpetual Nature of Conservation Easements, 29 Harv. Envtl. L. Rev. 421, 465 (2005)). In Kolb, the Iowa Supreme Court ruled that *cy pres* allowed modification of a fund for the support of a garden and fountain that the city "voluntarily destroyed" as part of a "multi-million dollar [revitalization] endeavor." Id. at 557. The court held that "when a 'natural and unavoidable change in conditions or circumstances' causes the trustee or donee to act," *cy pres* is permitted, notwithstanding the trustee's role in causing the impracticability. Id. (quoting Pres. & Fellows of Harvard Coll. v. Jewett, 11 F.2d 119, 122 (6th Cir. 1925)). "After all, the trustee or donee is the cause of the impossibility or impracticability in most cases." Id. The court ruled that the city was entitled to *cy pres* under this standard:

> We also believe the City's actions in this case, while causing the impracticability and impossibility, are the result of "natural and unavoidable" changes. It is only natural for a city to respond to the inevitable changes in its economic and societal needs. . . . While the settlors specifically wanted the trust to fund the garden at a particular location within the park, the City is not improperly disregarding the express terms of the trust by planning an economic revitalization project that requires the garden to be moved.

Id. at 558.[14]

[14] Conn. Coll. v. United States, 275 F.2d 491 (D.C. Cir. 1961), relied on by Appellants, is easily distinguished as the donee, the United States government, provided no evidence that the purpose of the gift was impracticable:

> Neither of the Government's affiants said it had become impossible or impracticable to use the site specified by Mrs. Crozier. They merely said the Military Academy authorities, who initially approved and earmarked the site chosen by the testatrix, had later declared it unavailable because they had changed their minds by 1958 and had decided to reserve the area for another purpose. And unavailability was declared, although the original site was still physically available and was still the 'logical location' for the memorial.

Id. at 498.

"To establish impracticability, a party must demonstrate that it would be unreasonably difficult to comply with the current provisions of a trust." United States ex rel. Smithsonian Inst., No. 17-mc-3005, 2021 WL 3287739, at *3 (D.D.C., Aug. 2, 2021) (quotation and citation omitted). A court "may find that compliance with the current provisions is impracticable 'even where it is not a literal impossibility.'" Id. (quoting In re United States ex rel. Smithsonian Inst., No. 13-mc-1454, 2019 WL 3451394, at *15 (D.D.C. July 10, 2019)). The record amply supports continuation of the Fund was impracticable given that Dartmouth "has had to absorb annual [HCC] operating deficits in the range of $500,000 to $700,000 . . . [which are expected to] swell to more than $1 million annually when deferred maintenance is included," and the estimated cost of addressing the deferred maintenance of the golf course was upwards of $4 million in the context of an "institutional budget deficit, projected to be $150 million." App. at 137-38, 148.

Consistent with the rule that a right of reverter is not to be implied in the construction of charitable gifts, see supra at 24, the law requires that the purposes of a charitable trust are to be construed liberally. As this Court stated in Eastman,

> The mere making of a gift for charitable purposes, which is unlimited as to the length of time it may continue, presupposes a knowledge on the part of the donor that material change in the surrounding circumstances will occur which may render a literal compliance with the terms of the gift impracticable, if not impossible, and it is not unreasonable to infer that under such circumstances the nearest practicable approximation to his expressed wish in the management and development of the trust will

> promote his intention to make his charitable purpose reasonably effective, for it would be rash to infer that he intended that the trust fund should be used only in such a way that it would not result in a public benefit; in other words, that he wished his general benevolent purpose to be defeated, if his method of administering the trust should become impracticable. . . . "The rule of equity on this subject seems to be clear that, when a definite charity is created, the failure of the particular mode in which it is to be effectuated does not destroy the charity, for equity will substitute another mode, so that the substantial intention shall not depend upon the formal intention."

75 N.H. at 191 (quoting Adams Female Acad. v. Adams, 65 N.H. 225, 226 (1889)). Indeed, this Court has liberally construed gifts to allow *cy pres* relief many times.[15] See, e.g., In re Certain Scholarship Funds, 133 N.H. 227, 233 (1990) (*cy pres* modification of town-administered scholarships for a high school "boy" and a "protestant boy" to scholarships for students generally); Trs. of Pittsfield Acad. v. Attorney General, 95 N.H. 51, 54-55 (1948) (gifts of land and funds from multiple donors for the establishment and operation of the Pittsfield Academy approved to fund Pittsfield High School); Robinson Heirs, 94 N.H. at 466 (1947) (deviation of gift for education of girls by teachers engaged in "the sole instruction of females" to fund girls' education in co-ed school); Petition of Rochester Trust Co., 94 N.H. 207, 208-09 (1946) (bequest to be given to some strictly Protestant charitable institution in Rochester, New Hampshire could be given to an

[15] Undersigned has not found and Appellants have not cited any decision by this Court denying *cy pres* relief in favor of a resulting trust. While the Court commented that this could occur in Opinion of the Justices, 101 N.H. 531 (1957), that case concerned the constitutional separation of powers on matters of equity and not the disposition of a charitable gift.

institution in another New Hampshire locality when none in Rochester existed).

In Trs. of Pembroke Acad. v. Epsom Sch. Dist., this Court held that the interests of the "poor boys in Epsom" referenced in the will are "paramount" in fashioning *cy pres* relief. 75 N.H. 408, 408 (1910). Here, the SOU, under the heading "Purpose," states: "This gift is made, consistent with Mr. Keeler's wishes to support the golf course, so that future generations of Dartmouth students and members of the Dartmouth community may continue to enjoy the great game of golf at the course which he so loved." App. at 102. The interests of "future generations of Dartmouth students and members of the Dartmouth community" are "paramount" in this matter and the Probate Court's approval of the Modification Application plainly is in their interest and, therefore, was correct.

Appellants falsely claim that the affirmation of the Probate Court's ruling would enable Dartmouth to enjoy an "unlimited power of amendment that is in violation of the law." Appellants' Br. at 44. However, as is demonstrated in the record here, UPMIFA gives charities no unilateral amendment power over restricted charitable gifts. Like the common law of *cy pres* that preceded it, UPMIFA requires a formal judicial process with notice to the Attorney General. See RSA 292-B:6, III. Dartmouth proposes to act only as the law permits, and as the common law has long permitted, which is pursuant to a modification duly approved by the courts of this state. The instant modification was approved by the Probate Court, and should now be affirmed.

IV. APPELLANTS' CONSTITUTIONAL ARGUMENTS HAVE NO MERIT

Appellants argue that the legislature unconstitutionally infringed on their contractual rights by enacting UPMIFA and that the Probate Court erred in denying them standing in light of their constitutionally protected contractual and property interests in the Fund. "A Contract Clause violation 'has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial.'" State v. Fournier, 158 N.H. 214, 221 (2009) (quoting Opinion of the Justices, 135 N.H. 625, 630 (1992)). Because, as explained supra at 23-24, Appellants have no right or interest in the Fund, there is no contractual relationship and, therefore, no Contract Clause violation could have occurred. Further, Appellants do not allege (nor could they) that they had some vested right by reason of UMIFA, UPMIFA's predecessor, which the legislature was free to repeal and replace. See id. ("Because the confidential status of the respondent's records is purely dependent upon the existence of statutory, administrative or common law, we cannot say that he acquired a vested right to medical confidence." (citations omitted)). Appellants had no property or contractual interest in the Fund and have not been denied any constitutional rights.

CONCLUSION

The Probate Court's ruling should be affirmed because Appellants failed to timely file their appeal. Furthermore, Appellants have no standing under either the governing statute, RSA 292-B:6, III, or Eddy (should this Court find it applies to this proceeding). Because Appellants lack standing, this Court should not entertain their purported appeal of the Probate Court's

allowance of the Modification Application, which, in any case, was correctly decided.

REQUEST FOR ARGUMENT

Dartmouth requests oral argument before a full court with 15 minutes allotted to each party. Dartmouth believes oral argument is necessary because of the significant import and instruction an opinion from this Court would have on the issues presented. Mr. Holmes will argue for Dartmouth and share his time with the DCT.

CERTIFICATE OF COMPLIANCE

This brief complies with the word limitation set out in Supreme Court Rule 16(11) and contains 9,196 words.

/s/ Ralph F. Holmes
Ralph F. Holmes

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief shall be served on counsel and parties with service contacts through the New Hampshire Supreme Court's electronic filing system.

/s/ Ralph F. Holmes
Ralph F. Holmes

Respectfully submitted,

TRUSTEES OF DARTMOUTH COLLEGE

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October 12, 2022 By: /s/ Ralph F. Holmes

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