

**STATE OF VERMONT  
SUPREME COURT**

<b>Hon. James H. Douglas,</b>	)	<b>CASE NO. 25-AP-148</b>
<b>Special Administrator of the</b>	)	
<b>Estate of John Abner Mead,</b>	)	
<b><i>Plaintiff/Appellant</i></b>	)	
<b>v.</b>	)	
	)	
<b>The President and Fellows of</b>	)	
<b>Middlebury College</b>	)	
<b><i>Defendant/Appellee</i></b>	)	

**APPELLANT’S OPPOSITON TO**  
**COLLEGES’ MOTION FOR LEAVE TO FILE AMICUS BRIEF**  
**and**  
**APPELLANT’S REQUEST FOR RECONSIDERATION**

NOW COMES Plaintiff/Appellant, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo & Pelkey, and pursuant to V.R.A.P. Rules 27 and 29, hereby opposes the *Motion to for Leave to File Amicus Brief* filed by 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”) and submits the following Memorandum in opposition thereto, and respectfully requests that this Honorable Court Reconsider and Vacate the Order granting the Colleges’ Motion and DENY the “Colleges” request to file an Amicus Brief as follows:

**MEMORANDUM**

**I. INTRODUCTION**

**A. The Ten Colleges who Propose Amicus Briefing**

The pending Motion for Leave to File an Amicus Brief was filed by ten (10) colleges from four (4) states: **Massachusetts** (Amherst, Smith, Tufts, Wellesley, Williams); **New York** (Ithaca, Sarah Lawrence); **Pennsylvania** (Franklin &

Marshall, Swarthmore); and Connecticut (Trinity).

## **B. Procedural Background**

### **1. Defendant's *Motion to Dismiss***

Defendant's *Motion to Dismiss* was the initial responsive pleading in this case which cited more than a dozen Vermont cases as well as citing caselaw from Massachusetts, New York, Connecticut, Tennessee, Indiana, Minnesota, Georgia, California, Michigan, Ohio, Utah, Wyoming, and Missouri, as well as Vermont statutes, law review articles, treatises, uniform acts, and the Restatement. **See Record, Vol. 9, pgs. 3-39.**

Plaintiff filed an opposition to the motion, to which Defendant filed a *Reply in Support of Motion to Dismiss*, which argued the standing/lack of jurisdiction issue for another 5 pages, citing caselaw from, inter alia, Vermont, Massachusetts and New York. **See Record, Vol. 6, pgs. 478, 482-485.**

The Trial Court denied Defendant's *Motion to Dismiss* and explained:

A real-party-in-interest defect or the mere lack of a cause of action does not affect the court's subject matter jurisdiction, and the matter may be raised under Rule 12(b)(6) (failure to state a claim upon which relief may be granted) rather than Rule 12(b)(1)(defect in subject matter jurisdiction).<sup>4</sup> 5B Wright & Miller, Federal Practice & Procedure: Civil 3d § 1357.

Middlebury raises this issue only to the extent that this case falls under gift law as opposed to contract law. Either way, the court is not persuaded that there is a real- party-in-interest defect or that the cause of action automatically fails because it is brought by an administrator on behalf of the donor's estate rather than by the Attorney General. Middlebury essentially argues that under the common law of Vermont, only the Attorney General can enforce a limitation on a completed gift in a charitable trust. It cites as authority only one Vermont case in which the Attorney General was involved in litigation over a charitable trust. This case does not involve a charitable trust.

More to the point, Middlebury has come forward with no concrete authority that would compel Vermont's Attorney General to take action in a case of this sort or require her to consider it. Nor has it convincingly explained why the Attorney General would have any

interest at all in enforcing the disputed naming right “condition” in this case. While Middlebury points to out-of-state authority generally in support of its “standing” argument under the common law, that authority is not monolithic. See generally, e.g., *Smithers v. St. Luke’s-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426 (2001) (permitting wife of deceased donor to sue to enforce terms of charitable gift). The law in Vermont on this matter is substantially undeveloped, and the Vermont Attorney General has not attempted to intervene in this action or otherwise assert any exclusive authority to bring suit. Nor is there any statute or case law clearly so providing. **It is apparent that Middlebury is not concerned that it should be facing a different adversary so much as it is simply trying to get the case dismissed.** Without more compelling authority that the Vermont attorney general has exclusive authority to sue, in these circumstances, the court declines to conclude that the special administrator of Governor Mead’s estate is an improper party to do so.

See PC Vol. I – pgs.008 to 010 (emphasis supplied).

**2. Defendant’s *Motion for Summary Judgment and Renewed Motion to Dismiss for Lack of Standing***

During Discovery, Defendant filed a *Motion for Summary Judgment and Renewed Motion to Dismiss for Lack of Standing* (MSJ #1)(See Vol. 6, P. 55-110), repeating the same subject matter jurisdiction challenge which confuses a party’s lack of standing (eligibility to sue) with a court’s lack of subject matter jurisdiction (court’s authority to hear the case). Sixteen (16) pages of the Summary Judgment Motion is devoted to the argument that:

**“The Court Should Dismiss the Case for Lack of Subject Matter Jurisdiction Because Plaintiff Lacks Standing to Pursue Enforcement of Gift Restrictions under Well-Established Common Law Principles.”**

(See Record Vol. 6, pgs. 92-107), in which Defendant cites legal precedent from Vermont as well as from Massachusetts, New York, Pennsylvania, and Connecticut, Tennessee, Arizona, New Jersey, Illinois, Utah, Wyoming, Missouri, and Minnesota, in addition to law reviews, treatises, the Restatement, Am Jur 2d, Vermont statutes, the Uniform Prudent Management of Institutional Funds Act

(UPMIFA), and the Uniform Trust Code. Defendant's Motion even cites U.S. Supreme Court cases from the years 1819 and 1844. Therefore, caselaw covering all four states in which the ten "Colleges" are located, has already been cited and argued by the Defendant.

In ruling on Defendant's MSJ #1, the Trial Court deemed the standing/lack of subject matter jurisdiction argument moot in light of the Court's ruling granting judgment as a matter of law to Defendant on the Breach of Conditional Gift claim, explaining:

Middlebury thus is entitled to judgment as a matter of law to the effect that if the transaction is determined to have been a gift, any naming condition attached to that gift is not enforceable in this case. It is unnecessary to further resolve Middlebury's donor standing argument vis-à-vis the attorney general's exclusive authority.

**See PC Vol. I – p.021.**

The Trial Court's Order on MSJ #1 stated as follows:

Order

For the foregoing reasons: (1) Middlebury's motion for summary judgment is granted in part and denied in part; **(2) Middlebury's renewed motion to dismiss is denied as moot;** (3) the parties shall submit further briefing as set forth above; and (4) depositions will remain stayed under the July 23, 2024, order pending further order of the court." <sup>1</sup>

**See PC Vol. I – p.028.**

**3. Plaintiff's *Motion to Amend the Complaint***

Shortly after the Trial Court's Ruling on MSJ #1, Plaintiff moved to Amend the Complaint to add Promissory and Equitable Estoppel claims and to withdraw the Breach of Conditional Gift and Unjust Enrichment claims that had been ruled on in Defendant's favor by the Trial Court on MSJ #1.

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<sup>1</sup> The Trial Court granted Defendant's Motion for Summary Judgment on Plaintiff's Breach of Conditional Gift and Unjust Enrichment claims but denied Defendant's Summary Judgment Motion on Plaintiff's Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing claims. The Trial Court also denied Defendant's Renewed Motion to Dismiss for Lack of Standing as moot.

In response to Plaintiff's Motion to Amend the Complaint, Defendant filed a memorandum in opposition, stating the following:

#### CONCLUSION

For all of the foregoing reasons, **the Court should** (a) deny Plaintiff's Motion to Amend Complaint to add new claims and (b) **condition withdrawal of his claims for Breach of Conditional Gift and Unjust Enrichment on dismissal with prejudice.**

See Record Vol. 4, p. 247 (emphasis supplied).

To ensure clarity to the Trial Court, Plaintiff then filed a Reply to Defendant's Opposition to Plaintiff's Motion to Amend the Complaint stating:

Plaintiff has moved to amend his Complaint to withdraw his alternate Conditional Gift and Unjust Enrichment claims because he accepts the Trial Court's determination on Summary Judgment and **will not be seeking further review from the Supreme Court on those claims.** Such a withdrawal is done in good faith to preserve the parties and the Court's resources. Contrary to Defendant's baseless opposition, **Plaintiff is prepared to withdraw those claims with prejudice.**

See Record Vol. 4, p. 183 (emphasis supplied).

The Court granted Plaintiff's *Motion to Amend the Complaint* to add the estoppel claims and specified that the withdrawn claims would be treated as dismissed with prejudice:

#### Order

For the foregoing reasons: (1) Governor Douglas's motion to amend is granted. **The withdrawn claims of breach of a conditional gift and unjust enrichment will be treated as having been dismissed with prejudice.**

See Appeal Record at Vol 4, pgs.170-172. (*Ruling on Governor Douglas's Motion to Amend and Motion for Interlocutory Review*, dated 11/21/2024).

The Trial Court's **dismissal with prejudice** means there is no Gift claim pending before the Court. Consequently, there can be no standing challenge for the Court to resolve for a claim that does not exist.

### C. The “Colleges” Motion to File Amicus Brief

Ten non-Vermont out-of-state “Colleges” who are not bound by Vermont caselaw precedent, have moved for permission to file an Amicus Brief:

**. . . in support of the position taken by [Middlebury], that this case be dismissed on the ground that the Court lacks subject matter jurisdiction.** Specifically, the Colleges propose to support Middlebury’s contention that a donor to a non-profit organization **lacks standing to pursue claims for breach of an alleged condition associated with a completed gift.**

Motion for Leave to File Amicus Brief at 1. In the “Colleges” Motion, they offer the following explanation to the Court to justify their request:

The issue is of particular interest to the Colleges and other nonprofit organizations, nationwide. Colleges, universities and hospitals all manage tens of thousands of donations, some made generations ago. Such gifts are largely administered under the settled expectations of the common law, which generally prohibit donor standing to pursue claims with respect to a completed gift. That is the majority rule in the United States. A deviation from the majority rule, as permitted by the Superior Court, would upend the current system. It would result in significantly increased litigation for the courts as well as unnecessary administrative and legal costs for institutions like Middlebury and the Colleges, requiring them to expend funds that would otherwise support their charitable purposes.

Given the significance of the issue and its potential nationwide impact, the Colleges hope to assist the Court in two ways. **First**, their amicus brief **will provide the Court with a national perspective, demonstrating that the prohibition against donor standing is the majority position** in the United States and that state Attorneys General are the proper authorities to supervise charitable organizations. **Second**, the brief **will provide the Court with concrete examples of the practical issues and complications a change in the common law rule would present for nonprofit institutions like Middlebury and the Colleges**, which manage thousands of gifts, across generations of donors. The Colleges believe that this additional perspective—both national and practical—will more fully inform the Court as it considers this critical question of subject matter jurisdiction.”

Motion for Leave to File Amicus Brief at 2.

**II. The Colleges' Proposed Amicus Brief addresses claims that were Dismissed with Prejudice and are no longer pending before the Court**

The Colleges state their intention to support Middlebury's position that this case be dismissed on the ground that the Court lacks subject matter jurisdiction. Specifically, the Colleges propose to support Middlebury's contention that a donor to a nonprofit organization lacks standing to pursue claims for breach of an alleged condition associated with a completed gift.

**A. The conditional gift claim was dismissed with prejudice**

Plaintiffs' initial complaint included an alternate claim for breach of a conditional gift. However, Plaintiffs stipulated to dismissal with prejudice of the alternate Breach of Conditional Gift claim at the Defendant's insistence, resulting in the Trial Court dismissing the claim with prejudice. Consequently, the Gift claim is no longer part of the case. As this Court has repeatedly emphasized, a "live controversy" must exist for it to exercise jurisdiction and an issue becomes moot when "the reviewing court can no longer grant effective relief." Because the Conditional Gift claim has been dismissed with prejudice, it is not subject to appellate review. Therefore, the Colleges' attempt to brief this issue is therefore moot and would result in the Court issuing an impermissible advisory opinion.

**III. An Amicus Brief is inappropriate in a Summary Judgment Appeal which is limited to the record and is not on the merits**

**A. Appellate Review is a *de novo* procedural review limited to the Statements of Undisputed Material Facts in the Record**

The Vermont Supreme Court reviews grants of summary judgment *de novo*, applying the same standard as the trial court, without deference. This standard is procedural, and the Court's task is to determine whether "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law" V.R.C.P. 56(a). The Court does not weigh evidence or decide the ultimate merits of the case during this review. Its role is to view "the

evidence in the light most favorable to the nonmoving party" to determine if a genuine factual dispute exists. An amicus brief, the purpose of which is to provide context on the merits, is fundamentally misaligned with this procedural review.

**B. The Proposed Amicus Brief Seeks to Introduce Irrelevant and Prejudicial Extra-Record Evidence and Factual Issues Not Raised Below or Properly Before the Court for Review**

The Colleges state they will "provide the Court with concrete examples of the practical issues and complications a change in the common law rule would present" [Colleges' Motion at 2]. This is an attempt to introduce extra-record factual evidence and issues not raised or litigated below. The Vermont Supreme Court confines its factual review to the undisputed material facts established in the summary judgment pleadings at the trial level. Allowing new factual information on appeal is inappropriate and prejudicial to the Plaintiff, as it has not been subject to the adversarial process of discovery and cross-examination and effectuates a "trial by ambush". An amicus brief that supplements the record in this manner is a direct attempt to circumvent the well-established rules of appellate procedure with regard to summary judgment decisions and constitutes a deprivation of Plaintiff's due process rights.

**C. The Colleges' Motion does not satisfy the requirements of VRAP Rule 29 and is an unnecessary burden on the Court and Plaintiff**

Under V.R.A.P. 29, an amicus brief may be filed "by leave of court granted on motion" and the motion "must identify the interest of the applicant and state the reasons why a brief... would be desirable". However, the Colleges fail to demonstrate why their brief is "desirable" for this specific case. Their focus is on broad policy issues and "national impact" rather than the narrow procedural question before the Court.

Moreover, the Colleges admit they seek to support Middlebury's position. An amicus brief that merely restates a party's arguments is cumulative, duplicative and an unnecessary burden on the court and the Plaintiff. This moot issue which is no longer before the Court, was fully and robustly briefed below in Defendant's Motion



to Dismiss, in Defendant's Reply, and in Defendant's MSJ #1/Renewed Motion to Dismiss, all of which presented caselaw from at least 14 other states, including caselaw from each of the four (4) states where the ten (10) Colleges are located, in addition to law review articles, treatises, Am Jur 2d, statutes, uniform rules, etc.

Furthermore, none of the Colleges are located in Vermont or organized under the laws of Vermont, nor are any of the Colleges subject to or bound by Vermont caselaw precedent. Thus, the outlandish notion that the summary judgment decision in this case will cause the entire country's law of charitable gifts to be catastrophically and fundamentally altered, strains credulity to the breaking point.

#### **IV. Conclusion**

For the reasons stated above, Plaintiffs respectfully request that the Vermont Supreme Court reconsider and deny the College's Motion for Leave to File an Amicus Brief. The Colleges' motion fails on three independent grounds: it addresses a moot issue challenging a claim that is no longer before the Court, it attempts to introduce extra-record information in a summary judgment appeal which is prejudicial to Plaintiff, it fails to demonstrate how an amicus brief is desirable under V.R.A.P. 29 and will not be cumulative, duplicative and a burden on the Court and Plaintiff. Allowing this Amicus filing would amount to a deprivation of due process rights and undermine the procedural integrity of the appeal process.

**DATED** at Randolph, Vermont this 24<sup>th</sup> day of October, 2025.

**The Honorable James H. Douglas, Special  
Administrator of the Estate of John Abner  
Mead, Plaintiff/Appellant**

By: /s/ L. Brooke Dingleline

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