

B A C K G R O U N D

Robertson v. Princeton

The Issue: Whether a charitable organization, such as a college, when it accepts a gift for a specific purpose, should be able to use that gift for other purposes without the express approval of the donor, the donor's legal heirs or a court order permitting such a diversion.

Background: In 1961, Charles (Princeton '26) and Marie H. Robertson donated 700,000 shares of A&P stock – valued at \$35 million – to create a Foundation whose sole purpose, according to the Foundation charter, was to “strengthen the Government of the United States and increase its ability and determination to defend and extend freedom throughout the world by improving the facilities for the training and education of men and women for government service.” In pursuit of this, the Foundation’s money was to be used to “establish or maintain and support [at Princeton University, as part of the Woodrow Wilson School of Public and International Affairs] a Graduate School, where men and women dedicated to public service may prepare themselves for careers in government service, with particular emphasis on the education of such persons for careers in those areas of the Federal Government that are concerned with international relations and affairs.” (Composite Certificate of Incorporation of The Robertson Foundation, July 26, 1961).

The Robertsons, placing their personal trust in the integrity of Princeton University, decided that the Board of Trustees of the Robertson Foundation would be comprised of four University-Designated Trustees and three Family-Designated Trustees.

Between 1990 and 2003, Princeton’s annual charges to the Foundation increased from \$4.4 million to \$23.8 million (and are more than \$30 million today). During the same period, however, the School did a progressively worse job of placing Master’s in Public Administration (MPA) students in the center of the Foundation’s target. Even though Princeton spent more than \$195 million of the Foundation’s money during this period, it placed only 86 out of 885 MPA graduates in first jobs in the federal government in international relations. Put bluntly, each such placement cost the Foundation approximately \$2.7 million per student.

The Remedy the Plaintiffs Seek: Robertson Family Trustees have asked the Court to: 1) Amend the Robertson Foundation’s Certificate of Incorporation and By-Laws “so that [the Foundation] will no longer be

controlled by Princeton, but will instead be a private foundation with all of its trustees appointed by the Robertson Family and all of its assets dedicated to graduate training for government service, particularly for federal government careers in international affairs.” 2) Reverse the university’s improper takeover of the Robertson Foundation’s investment portfolio. 3) Require Princeton to “account for all of its expenditures of Foundation funds so that the Court can determine whether such expenditures are consistent with the terms of the restricted gift” and order Princeton to reimburse the Robertson Foundation “for all improper expenditures,” an amount estimated at \$207 million.

Why You Should Care: 1) This is one of the largest “donor intent” lawsuits in U.S. legal history and is likely to set a precedent that will affect the way all U.S. nonprofits use “restricted” gifts. 2) Princeton’s actions and attitude, and those of certain other high-profile nonprofit institutions accused in the recent past of misusing designated contributions, could erode public confidence in the nonprofit sector. The message here is simple: If one of America’s premier universities disregards a major donor’s wishes and instructions, why should we expect other charitable/nonprofit organizations to handle donations with greater care? 3) Princeton’s failure to fulfill the mission of the Robertson Foundation has not only harmed the Robertson Family, the Robertson Foundation, and Princeton University, it also has harmed the American people by denying the federal government a potentially large pool of intelligent and talented individuals who should have been ready to step into – or at least compete for – career positions in the U.S. diplomatic corps and other departments and agencies of government involved in international relations and foreign affairs.

Case History: On July 17, 2002, the descendants of Charles and Marie Robertson and all of the Family-Designated Trustees of the Robertson Foundation filed a lawsuit against Princeton University and the University-Designated Trustees of the Robertson Foundation.

In the original complaint, the plaintiffs charged that the University-Designated Trustees of the Robertson Foundation – and through them Princeton University – have:

- Ignored the intent of donors Charles and Marie Robertson, by failing to honor the Robertson Foundation’s sole mission (as stated above).
- Ignored the intent of donors Charles and Marie Robertson by secretly using Robertson Foundation funds for projects unrelated to the aforementioned goal.
- Ignored the intent of donors Charles and Marie Robertson by taking over control of the Robertson Foundation endowment, thereby commingling Robertson Foundation assets with those of the University, and again violating their express agreement with the donors.

In a subsequent amended complaint, filed in New Jersey Superior Court on November 12, 2004, the plaintiffs expanded their charges, alleging that Princeton has:

- Wrongfully spent more than \$100 million of the Robertson Foundation's money on programs, projects, salaries, bonuses, buildings, equipment and "overhead" costs that have little or nothing to do with the Robertson Foundation mission.
- Engaged in an elaborate cover-up scheme, involving several Princeton administrations, to hide the improper spending.
- Similarly misused other donors' gifts in what appears to be a systemic university-wide "pattern and practice of diverting [donations] from their intended purpose."

In January 2006, the estimate of more than \$100 million in improper spending was more than doubled, to \$207 million. In two briefs asking for partial summary judgment in the case, accompanied by thousands of pages of newly released evidence, attorneys for the Robertson family disclosed that:

- A detailed analysis of Princeton expenditures performed by PricewaterhouseCoopers placed the amount of improper spending at \$207 million. The present value of those diverted funds approximates \$500 million.
- The university already has acknowledged more than \$18.6 million in improper spending.
- During the 1990-2003 time period, Princeton spent more than \$195 million of the Robertson Foundation's money and 886 students completed the Foundation-funded graduate program, but only 86 of these students took "first jobs" with the federal government in areas concerned with international affairs.
- When all program graduates are included, the picture is even worse, with the most recent Wilson School directory showing that just 5 percent of all active graduate-program alumni hold federal government jobs related to international relations. More than twice that number - 11 percent - work for foreign governments and international organizations and 44.3 percent for private corporations, the directory showed.
- Of the \$195 million-plus in Princeton expenditures, just \$26 million was devoted to instruction, while \$32 million went to research (most of it unrelated to the Robertson Foundation mission), \$50 million was spent on construction, and \$83 million was used to pay administrative and overhead costs, much of it padded or bogus.

Court Decisions to Date:

On June 20, 2003, the Superior Court of New Jersey, Mercer County, *denied* the defendants' Motion to Dismiss the lawsuit.

The Court found that: "From these allegations, it is sufficiently pled that each University Trustee had divided loyalties and possible extraneous considerations or influences. Thus the court holds that Plaintiffs have pled sufficient facts which create a reasonable doubt that a majority of the Board was disinterested and acted independently." (Civil Action Order, Docket Number C-99-02)

The defendants moved for "leave to appeal" the ruling on their motion to dismiss, but they were denied by the appellate court.

In October 2004, Judge Neil Shuster granted the plaintiffs' request to amend their original complaint, rejecting Princeton's assertion that the new complaint's allegations were improper, "scandalous and abusive." The amended complaint includes charges of fraud against Princeton. In his decision, Judge Shuster said the "extensive factual allegations" speak for themselves.

Additional Background and Chronology:

- 1926:** Charles Robertson graduates from Princeton University.
- 1960:** In January, Charles Robertson, and wife Marie, give Princeton University a direct donation of \$500,000 to become part of the university's general investment fund.
- 1961:** Mr. and Mrs. Robertson donate 700,000 shares of Great Atlantic & Pacific Tea Co. stock (A&P), worth approximately \$35 million, to start the Robertson Foundation, which is incorporated in Delaware. The Robertsons ask to remain anonymous. As a result of the gift, the Woodrow Wilson School graduate program is expanded.
- 1970:** In January, Charles Robertson wrote to the Foundation Secretary to follow up on requested survey of Woodrow Wilson graduates which he feared would show a "disappointing number of MPA [Master of Public Administration] degree holders in public service, particularly in the international agencies."
- 1972:** William Robertson, son of Charles and Marie, graduates from Princeton University. Marie Robertson passes away at age 56.

- 1973:** At the urging of Princeton University, Charles Robertson discloses that he and wife Marie were the anonymous donors responsible for creating the Robertson Foundation.
- 1974:** William Robertson is designated by his father to succeed Gene Goodwillie as a Family-Designated Trustee of the Robertson Foundation, effective at the December 14 Board meeting.
- 1978:** In July, the Robertson Foundation Board approves the creation of an Investment Committee to oversee all of the Foundation's investments. William Robertson is appointed to the Investment Committee.
- 1979:** In February, Charles Robertson, in a letter to William, states that "Family representatives should ... be sure that (the) Foundation controls its own assets."
- 1981:** In April, Charles Robertson passes away at age 75.
- 1997:** In June, the Princeton University Board of Trustees and Princeton University President Harold T. Shapiro praise the Investment Committee of the Robertson Foundation for their investment judgment. President Shapiro acknowledged that "during the past eighteen years ... the Robertson Foundation Endowment has performed significantly better over that period than has the endowment of Princeton." As of December 31, 2005, the Robertson Foundation endowment was valued at approximately \$694 million.
- 2001:** On June 15, Shirley Tilghman becomes President of Princeton University.
- In late June, the University-Appointed Trustees of the Robertson Foundation, without notification to the Family-Appointed Trustees, approve the withdrawal of \$13 million from Robertson Foundation accounts to fund construction of Wallace Hall. Wallace Hall now houses the Department of Sociology, the Bendheim-Thoman Center for Child Wellbeing, the Office of Population Research and other social-science research programs that are unrelated to the Robertson Foundation mission to train individuals for government service, especially in international relations.
- 2002:** On April 16, at an annual meeting of the Foundation Board of Trustees, the Board considers, but does not adopt, a recommendation to put the Robertson Foundation's assets under the management of PRINCO. William Robertson reminds the Board of Trustees that the agreement between the University and his parents mandates the assets be managed independently.

In early summer, despite continued protests about moving the Foundation's endowment to PRINCO, the University-Designated Trustees of the Foundation and Princeton notify Essex Investment Management Company – which managed over \$50 million of the Robertson Foundation's assets – that its service agreement will be terminated and that the assets will be “folded into” the University endowment. Family-Appointed Trustees are not notified of, or asked to approve, the Essex termination.

In late spring and early summer, the University-Designated Trustees of the Robertson Foundation refuse to allow the Family-Designated Trustees to review the complete records of the Foundation's disbursements, despite repeated requests.

On July 17, Family-Designated Trustees William Robertson, Katherine Ernst, and Robert Halligan and the two other children of Charles and Marie Robertson – Anne Meier and John Robertson (now deceased) – file the lawsuit against the University-Designated Trustees and Princeton University.

In November, lawyers for the University-Designated Trustees and Princeton University file a motion to dismiss the lawsuit.

2003: The judge *denies* the motion to dismiss on June 20, clearing the way for the “discovery” process to begin. The University attempts to appeal this ruling, but is rejected by the appellate court.

On November 5, the four University-Designated Trustees – over the unanimous objections of the Family-Designated Trustees – voted to take over control of the Foundation's assets by putting them in the hands of the Princeton University Investment Company (PRINCO), a wholly owned unit of the University that manages the university's general endowment. This violates the express written instructions of the donors, Charles and Marie Robertson, who wanted the Foundation's assets to be kept separate and apart from Princeton's assets.

2004: On November 12, after a year of discovery, the Robertson Family plaintiffs file an amended complaint, alleging that Princeton “improperly and systematically” diverted “to its own use and benefit” more than \$100 million from the Robertson Foundation endowment fund, that misuse of donor funds is systemic at the university, and that the university has “knowingly and willfully misrepresented and concealed material facts” about the improper expenditures in an effort to “defraud and deceive” the plaintiffs and the public.

2006: Early in 2006, both the Robertson family and the University file motions for partial summary judgment. The Robertson family's two motions ask the court to grant partial summary judgment on the following three points: 1) That Princeton and the university-appointed Robertson Foundation trustees "have fiduciary obligations to the [Robertson] Foundation . . . to advance its specific mission and protect its assets"; 2) That Princeton's spending of the Robertson Foundation's money is not an activity "protected" by the business judgment rule and should be legally subject to the "entire fairness" standard of judicial review, and 3) That having admitted more than \$18.6 million in overcharges, Princeton should be ordered to return the "misappropriated funds" to the Robertson Foundation.

Oral arguments on the various motions for partial summary judgment have been scheduled for Nov. 28-29, 2006.

The Philanthropic Community's Position on Donor Intent:

All donors have the right "*To be assured their gifts will be used for the purposes for which they were given.*"

- from the Donor Bill of Rights

The "**Donor Bill of Rights**" - a statement of principle governing nonprofit fundraising and management - was created and adopted by the **American Association of Fund Raising Counsel, Association for Healthcare Philanthropy, the Association of Fundraising Professionals, and the Council for Advancement and Support of Education**. The statement of donor rights also has been adopted and endorsed by numerous other fundraising-related organizations and associations, including **Independent Sector, National Catholic Development Conference, National Committee on Planned Giving, National Council for Resource Development, Alliance of Nonprofit Mailers, and United Way of America** and by hundreds of individual charities, universities, and non-profit organizations.

The "Donor Bill of Rights" states:

Philanthropy is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the nonprofit organizations and causes they are asked to support, we declare that all donors have these rights:

- I. *To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.*

- II. *To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.*
- III. *To have access to the organization's most recent financial statements.*
- IV. *To be assured their gifts will be used for the purposes for which they were given.*
- V-IX (These items deal with donor recognition, confidentiality, professionalism)
- X. *To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.*

Among the many colleges and universities that publicly embrace the Donor Bill of Rights are the University of Alaska, Auburn University, Austin Peay State University, University of California at Los Angeles (UCLA), The Citadel, Colby College, East Tennessee State University, Holy Cross, Gettysburg College, Indiana University, Iowa State University, University of Massachusetts, University of Missouri, Michigan State University, State University of New York (SUNY)-Buffalo, Purdue University, University of Vermont and Wabash College. Princeton apparently does not.

Public Opinion and Donor Intent:

According to a November 2005 nationwide survey by Zogby International, a leading public opinion research firm (commissioned, for the record, by the Robertson family), a near-unanimous 97 percent of the 1,216 voting-age adults surveyed by the firm said they consider it a "very" or "somewhat" serious matter if charities are spending money donated to them on unauthorized projects, while 78.7 percent said they would "definitely" or "probably" stop supporting charities that accept contributions for one purpose and use them for another.

A near equal number of respondents (72.4 percent) said that when a nonprofit organization uses money "for a purpose other than the one for which it was given," the managers of the recipient organization "should be held legally or criminally liable for acting in a fraudulent manner."

Other Prominent Controversies Involving Donor Intent:

- ***Yale University, New Haven, CT*** (1995): The University returned a \$20 million gift from Lee Bass because administrators refused to allow Bass to approve the nomination of professors being hired with money from the donation.
- ***Boston University, Boston, MA*** (2002): The University returned a \$3 million donation to build a library from alumnus David Mugar after Mugar questioned how fast the money was being used.

- ***St. Luke's-Roosevelt Hospital, New York, NY*** (2002): The New York Attorney General's Office ordered the hospital to return \$5 million of a \$10 million endowment set up by R. Brinkley Smithers, saying the hospital had diverted funds from the intended purpose of financing alcoholism treatment.
- ***Harvard University Graduate School of Education, Cambridge, MA*** (2003): The University agreed to return a \$12.5 million donation to actress Jane Fonda after she protested the University's sluggishness in hiring professors for the gender studies program she sought to establish.
- ***Metropolitan Opera, New York, NY*** (2003): Relatives of the late oil millionaire Sybil Harrington sued the Metropolitan Opera requesting the return of a \$5 million gift, saying the Met didn't use the funds for the production of traditional opera, as Harrington requested.
- ***University of Southern California, Los Angeles, CA*** (2004): The University settled a \$1.6 million lawsuit initiated by donor Paul F Glenn alleging his donation, which was to be spent funding a professor in Cellular and Molecular Gerontology, was not being used as directed and that USC had concealed how it was spent.
- ***UCLA, Los Angeles, CA***: (2005): The California Court of Appeals ruled that a donor has standing to sue UCLA for misuse of its donation. The donor alleges that UCLA failed to employ a professor in Cardiothoracic surgery meeting the terms of its \$1 million gift. The donor requests that, pursuant to the gift agreement, the gift should be withdrawn from UCLA and transferred to another university.

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Last Updated: October 2006