DONOR STANDING TO ENFORCE CHARITABLE GIFTS IN THE 21ST CENTURY

Nancy A. McLaughlin*

Synopsis: This Article outlines the current state of the law regarding donor standing, which illustrates two realities. First, there is an increasing lack of coherence in the law, which has negative consequences, including that the same charitable gift may now be subject to different donor-standing rules depending on completely arbitrary factors. Second, the trend is in favor of granting donors and certain others standing, although this trend is occurring in a haphazard way. This Article also discusses the various factors that led the law of donor standing down this path. Among other things, there has been a gradual normalization of the concept of donor standing since the turn of the century. In addition, there are various factors that support donor standing, which courts have increasingly recognized, including the well-known deficiencies in attorney general oversight, the reality that charities sometimes behave badly, and the fact that in states that allow donor standing, whether by statute or judicial decision, there has not been a flood of vexatious lawsuits filed against charities. This Article briefly concludes by explaining that the law governing charitable gifts has been fragmented in many ways, and it recommends that such law be reunified through the development of a new uniform act that would subject all charitable gifts to the same set of rules—including a uniform donor-standing rule.

* Nancy A. McLaughlin, Samuel D. Thurman Endowed Professor of Law, University of Utah S.J. Quinney College of Law. I would like to thank the participants in the 2024 Trusts and Succession Law Workshop at George Mason University's Antonin Scalia Law School (made possible by a grant from the American College of Trust and Estate Counsel Foundation) for their helpful comments on an earlier draft of this Article. All positions in this Article are those of the author.

I. INTRODUCTION

Historically, under the common law, the donor of a charitable gift generally did not have standing to sue if the donee charity failed to use the gift in accordance with the terms or for the purpose specified by the donor—and this was true whether the gift was characterized as a charitable trust, a restricted charitable gift, or otherwise.[1] Standing to sue to enforce a charitable gift was generally granted only to the state attorney general, a co-trustee or co-director of the donee charity, or, in rare circumstances, a party deemed to have a special interest.[2] The donor, as well as the donor's heirs, personal representatives, and next of kin, were specifically denied

[1] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03 cmts. a, b(3)(B) (A.L.I. 2021). A donor would have standing if the donor retained a right to the return of the gift in the event the donee charity failed to abide by the terms of the gift (a right of reversion), but most donors avoid reversions because they can render a gift ineligible for a federal charitable income tax deduction. *See id.* at § 6.01(b), cmt. c(1). A donor may also have standing if the donor reserved the right to enforce the gift in the governing instrument. *See id.* at § 6.03(a)(1)(A), cmt. b(1).

[2] *See id.* § 6.03 cmt. a; RESTATEMENT (SECOND) OF TRUSTS § 391 (A.L.I. 1959).

standing, even if the donee charity had accepted the gift subject to clear restrictions on its use and then unilaterally decided to disregard such restrictions.[3]

But much has changed regarding the law governing donor standing since the turn of this century.[4] In 2000, the Uniform Law Commission (ULC) approved the Uniform Trust Code (UTC), which expressly grants the settlor of a charitable trust the power to sue to enforce the trust.[5] More than two-thirds of the states and the District of Columbia have adopted the UTC, and most of those states adopted the UTC's settlor-standing provision, sometimes in expanded form.[6] In addition, several states that have not adopted the UTC nonetheless enacted similar or more expansive settlor-standing provisions.[7]

Then in 2006, the ULC approved the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which is silent regarding whether the donor of a gift governed by that act (an "institutional fund") has standing to sue to enforce the gift.[8] UPMIFA has been adopted in forty-nine states and the District of Columbia, and some courts have interpreted its silence on the issue of standing to mean that donors of gifts that fall within

---

[3] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03 cmt. a (A.L.I. 2021); RESTATEMENT (SECOND) OF TRUSTS § 391 (A.L.I. 1959); *see also* Herzog Found. v. Univ. of Bridgeport, 699 A.2d 995 (Conn. 1997).

[4] For purposes of this Article, "donor standing" refers to whether the donor of a charitable gift has standing to sue to enforce the gift, regardless of whether the gift is categorized as a charitable trust, a restricted charitable gift, or otherwise.

[5] *See* UNIF. TR. CODE § 405(c) (UNIF. L. COMM'N 2000).

[6] For the UTC's enactment history, see *Enactment History*, UNIF. L. COMM'N: TRUST CODE, https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d [https://perma.cc/6G83-3Z5U]. See *infra* Part II.D for a discussion of the UTC's settlor-standing provision, and see also N.C. GEN. STAT. § 36C-4-405.1 for North Carolina's more expansive version of the UTC settlor-standing provision. All state statutory citations in this Article refer to the current statute unless otherwise indicated.

[7] *See* IOWA CODE § 633A.5106; DEL. CODE ANN. tit. 12, § 3303(b); GA. CODE ANN. § 53-12-175; IND. CODE § 30-4-2-17(c); LA. STAT. ANN. § 9:2275.A; S.D. CODIFIED LAWS § 55-9-3.

[8] *See* UNIF. PRUDENT MGMT. INST. FUNDS ACT (UNIF. L. COMM'N 2006). UPMIFA specifically applies only to charitable gifts that qualify as "institutional funds" held by "institutions" and not to "program-related assets." *See Id.* § 2(4), (5), (7), cmt. subsections (4), (5), and (7); *see also*, *Program Related Assets Under UPMIFA,* UNIF. L. COMM'N (May 21, 2019), https://www.uniformlaws.org/viewdocument/upmifa-program-related-assets-artic?CommunityKey=043b9067-bc2c-46b7-8436-07c9054064a3&tab=librarydocuments [https://perma.cc/CBE2-DU93].

its purview do not have standing.[9] However, several states have supplemented UPMIFA with a version of a "Donor Intent Protection Act" (DIPA), which expressly grants donors and certain others standing to sue to enforce institutional-fund gifts in certain circumstances.[10]

As a result of these legislative enactments, in many states the donor of a charitable gift that happens to be treated as a charitable trust under the UTC (or a nonuniform state trust code) has standing to sue to enforce that gift. On the other hand, the donor of a charitable gift that is treated as an institutional fund under UPMIFA may not have standing to enforce that gift, although as noted, several states have enacted DIPAs to grant standing to donors and certain others to enforce institutional-fund gifts.

Further complicating matters is that some charitable gifts do not fall within the purview of these statutes and, instead, are governed by the common law, which has become unpredictable regarding donor standing. While some courts continue to deny donors standing under the common law, others grant standing to donors and their personal representatives on various legal grounds, and still others allow donors to press their claims without addressing the standing issue.[11]

There is the additional confounding factor that some courts fail to analyze whether the gift they are faced with constitutes a charitable trust under the UTC or an institutional fund under UPMIFA (or possibly both), or is alternatively subject to the common law, and this leads to confusing and unhelpful opinions.[12]

The above developments have led to an increasing lack of coherence in the law regarding donor standing both within and across the fifty states. This lack of coherence has had several negative consequences, including:

---

[9] For UPMIFA's enactment history, *see Prudent Management of Institutional Funds Act*, UNIF. L. COMM'N (September 19, 2025), https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d [https://perma.cc/8NYB-DAVB]. Pennsylvania is the only state that has not adopted UPMIFA. *See id; see also infra* Part II.E.1 (discussing cases in which courts have interpreted UPMIFA's silence on the issue of standing to mean donors of gifts that fall within its purview do not have standing).

[10] *See* GA. CODE ANN. §§ 14-3-190 to –192; IOWA CODE § 540A.106(5); KAN. STAT. ANN. §§ 58-3621–3625; KY. REV. STAT. ANN. § 273.155; MONT. CODE ANN. §§ 72-30-301 to –303*; see also* N.C. GEN. STAT. § 36C-4-405.1(b) (authorizing the donor, the Attorney General, the district attorney, or any other interested party to maintain a proceeding to enforce any charitable gift).

[11] *See infra* Part II.C.

[12] *See infra* Part II.F.

- an elevation of form over substance, in that the same charitable gift may now be subject to different donor-standing rules depending on the form the gift happens to take, the label assigned to it under state law, or the organizational form of the donee;
- uncertainties regarding which of the various laws applies to a particular gift;
- inequities between sophisticated or well-represented donors and donees, who can structure gifts to benefit their interests, and those who are less sophisticated and without the resources to hire experienced advisors; and
- confusion in the courts as they attempt to navigate this new, much more complex landscape of laws.

Part II of this Article discusses the current state of the law regarding donor standing. This Part illustrates the increasing lack of coherence in the law, with its attendant negative consequences. This Part also illustrates that the trend is in favor of granting donors and certain others standing, although this trend is occurring in a haphazard way.[13]

Part III then discusses the various factors that led the law of donor standing down this path, namely:

- fragmentation of the law resulting from the enactment of the UTC, UPMIFA, and nonuniform statutes, including DIPAs;
- the uniform law drafting process;
- the normalization of donor standing over time; and
- the factors that support donor standing, which courts have increasingly recognized, including the well-known deficiencies in attorney general oversight of charities and charitable gifts, the reality that charities sometimes behave badly, and the fact that in states that allow donor standing, whether by statute or judicial decision, there has not been a flood of vexatious lawsuits filed against charities.

Part IV briefly concludes. It explains that the law governing charitable gifts has been fragmented in many ways, and it recommends that the law be reunified through the development of a new uniform act that would subject all charitable gifts to the same set of rules—including a uniform donor-standing rule.

---

[13] For an earlier observation of this trend, see Marion R. Fremont-Smith, *The Search for Greater Accountability of Nonprofit Organizations: Recent Legal Developments and Proposals for Change*, 76 FORDHAM L. REV. 609, 643 (2007) (noting "the trend in statutes and cases has been to greatly expand the rights of donors to bring suit to enforce the terms of their gifts in state courts ").

II. THE CURRENT STATE OF THE LAW

This Part outlines the current state of the law regarding donor standing. It explains that the American Law Institute has addressed the issue of donor standing in different ways in its Restatements of the Law. It briefly mentions how the major treatises on trust law address the issue of donor standing. It summarizes the current state of the common law based on a sampling of court decisions handed down since 1997. It discusses the UTC, UPMIFA, and the relevant case law addressing those acts, as well as the enactment in several states of a DIPA as a supplement to UPMIFA. It then concludes with two case law examples that illustrate how the new, much more complex landscape of laws in this context is causing confusion in the courts and leading to unhelpful opinions. Taken as a whole, this Part illustrates both the lack of coherence in the law and the trend in favor of granting donors and certain others standing.

A. Restatements

The American Law Institute's Restatements of the Law do not address the issue of donor standing in a uniform way. The *Restatement (Second) of Trusts*, published in 1959, articulates the traditional common-law rule: neither the settlor nor his heirs, personal representatives, or next of kin have standing to sue to enforce a charitable trust.[14] The *Restatement (Third) of Trusts*, the relevant volume of which was published in 2012, takes a different position, providing that the settlor has a special interest in the enforcement of a charitable trust and thus has standing to enforce the trust.[15] The *Restatement of the Law, Charitable Nonprofit Organizations*, published in 2021, takes yet another position, providing that a donor does not have standing to sue to enforce a charitable gift or trust unless the donor reserved standing rights in the gift instrument, qualifies as a party with a special interest, or is granted standing under applicable law (such

[14] RESTATEMENT (SECOND) OF TRUSTS § 391 (A.L.I. 1959) ("A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest or by the settlor or his heirs, personal representatives or next of kin.").

[15] RESTATEMENT (THIRD) OF TRUSTS § 94(2) (A.L.I. 2012) ("A suit for the enforcement of a charitable trust may be maintained only by the Attorney General or other appropriate public officer or by a co-trustee or successor trustee, by a settlor, or by another person who has a special interest in the enforcement of the trust.").

as the UTC's settlor-standing provision).[16] This latest *Restatement* acknowledges that "the laws regarding donor standing vary a great deal."[17]

B. Treatises

Bogert's The Law of Trusts and Trustees explains that the traditional rule of no settlor enforcement is under attack, and the chief reason for this attack has been lax attorney general enforcement.[18] *Scott and Ascher on Trusts* similarly explains that, while the traditional position has been that the settlor lacks standing to enforce a charitable trust, there is impressive and growing authority for the contrary position, and the treatise advocates for that contrary position:

> Given the historical under-enforcement of charitable trusts in both England and the United States, it would seem that allowing the settlor to enforce his or her own trust might well be a step in the right direction . . . [and] is a small price to pay for the settlor's generosity. The risk of repetitious or harassing litigation, which underlies the requirement that one who seeks to enforce a charitable trust have a special interest in doing so, seems quite low insofar as the settlor is concerned. Moreover, if settlors have standing to enforce their own trusts, it would seem that prospective settlors would be more likely actually to create such trusts, knowing that they could insist on compliance with their terms.[19]

A Trustee's Handbook explains that well-represented settlors are engaging in self-help: "Faced with the stark reality that public oversight of charitable trusts is often illusory, sometimes even subversive of donor intent, more and more prospective settlors are . . . including express 'donor control' provisions in their governing instruments."[20]

---

[16] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03(a)(1) (A.L.I. 2021). This Restatement further provides that, to obtain standing, the donor must demonstrate to the court that "the action is likely to be in the best interests of the charity in light of its purposes or, in the case of particular assets held by the charity, the action will advance the purposes to which those assets must be devoted." *Id.* § 6.03(a)(2).

[17] *Id.* § 6.03 cmt. a.

[18] *See* GEORGE TAYLOR BOGERT, GEORGE GLEASON BOGERT & AMY MORRIS HESS, BOGERT'S THE LAW OF TRUSTS AND TRUSTEES § 415 (Supp. 2025).

[19] AUSTIN W. SCOTT, WILLIAM F. FRATCHER & MARK L. ASCHER, SCOTT AND ASCHER ON TRUSTS, Vol. 5 § 37.3.10, at 2451–52 (4th ed. 2008).

[20] CHARLES E. ROUNDS, JR., LORING A TRUSTEE'S HANDBOOK § 9.4.2 at 822 (2007 ed.).

C. The Common Law

While traditionally, under the common law, donors generally did not have standing to sue to enforce their charitable gifts, the common law has been evolving. Whether a court will grant a charitable donor or the donor's personal representative standing has become increasingly unpredictable: some courts still deny such standing based on the traditional rule,[21] others grant such standing on various legal grounds,[22] and still others allow donors to press their claims without addressing the standing issue.[23] In addition, even in some cases in which courts adhere to the traditional common-law "no-donor-standing" rule, they are beginning to acknowledge an openness to reconsidering that rule on policy grounds.[24] Moreover, given the analysis in the cases granting standing to a donor or the donor's personal representative, other courts inclined to grant such standing can easily find support for doing so on both legal and policy grounds.

This Section summarizes a sampling of the relevant case law. It begins with a 1997 case in which the majority applied the traditional no-donor-standing rule, and it then turns to several cases in which the courts granted standing to a donor or the donor's personal representative.

---

[21] *See, e.g.*, Herzog Found., Inc. v. Univ. of Bridgeport, 699 A.2d 995 (Conn. 1997); Hardt v. Vitae Found., 302 S.W.3d 133 (Mo. Ct. App. 2009); Courtenay C. & Lucy Patten Davis Found. v. Colo. State Univ. Research Found., 320 P.3d 1115 (Wyo. 2014); *In re* Lindmark Endowment for Corp.-Bus. Ethics Fund, No. A19-0229, 2019 WL 5546205 (Minn. Ct. App. Oct. 28, 2019) (unpublished); *In re* Est. of Moritz v. Ohio State Univ., No. 19 CAF 11 0060, 2020 WL 6193955 (Ohio Ct. App. Oct. 20, 2020); Herbst v. Univ. of Colo. Found., 513 P.3d 388 (Colo. App. 2022); *In re* Robert Keeler Maintenance Fund 306 A.3d 795 (N.H. 2023).

[22] *See, e.g.*, Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426 (N.Y. App. Div. 2001); L.B. Rsch. & Educ. Found. v. UCLA Found., 29 Cal. Rptr. 3d 710 (Cal. Ct. App. 2005); Maffei v. Roman Catholic Archbishop of Boston, 867 N.E.2d 300 (Mass. 2007); Howard v. Adm'rs of Tulane Educ. Fund, 986 So. 2d 47 (La. 2008); Pearson v. Garrett-Evangelical Theological Seminary, Inc., 790 F. Supp. 2d 759 (N.D. Ill. 2011); Lucker v. Bayside Cemetery, 979 N.Y.S.2d 8, 17 (N.Y. App. Div. 2013); Siebach v. Brigham Young Univ., 361 P.3d 130 (Utah Ct. App. 2015); Fam. Fed'n for World Peace v. Hyun Jin Moon, 129 A.3d 234 (D.C. 2015); Wildlands Tr. of Se. Mass. v. Cedar Hill, 34 Mass. L. Rptr. 52 (Mass. Sup. 2016); Isr. Acad. of Scis. & Humans. v. Am. Found. for Basic Rsch. in Isr., No. 23-1269-cv, 2024 WL 3289482, at *4 (2d Cir. July 3, 2024).

[23] Verdict and Settlement Summary, Brooks v. Integris Rural Health Inc., 2012 No. CJ-2009-738, 2012 WL 507954 (Okla. Dist. Ct. Jan. 25, 2012); *In re* Reed Found., Inc. v. Franklin D. Roosevelt Four Freedoms Park, LLC, 964 N.Y.S.2d (N.Y. App. Div. 2013); Adler v. SAVE, 74 A.3d 41 (N.J. Super. Ct. App. Div. 2013); Register v. Nature Conservancy, No. 5:13-77-DCR, 2014 WL 6909042 (E.D. Ky. Dec. 9, 2014).

[24] *See infra* note 382 and accompanying text.

1. Traditional No-Donor-Standing Rule

In *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*,[25] a majority of the Supreme Court of Connecticut held that a donor did not have standing to sue to enforce its charitable gift under either the traditional common-law no-donor-standing rule or Connecticut's version of the Uniform Management of Institutional Funds Act, which was the precursor to UPMIFA. *Herzog* nicely sets the stage for the discussion of case law in this Section by both articulating the traditional common-law rule and offering a vigorous dissent.

Herzog involved the Carl J. Herzog Foundation's (the Foundation's) gift of $250,000 to the University of Bridgeport (the University) in the late 1980s to be used to provide scholarships to students in the University's nursing program.[26] In 1991, just a few years after the gift was made, the University informed the Foundation that it had closed its nursing school and the University appeared to be using the gift for its general operations.[27]

In a subsequent suit filed by the Foundation, the Foundation requested that either the University be ordered to use the gift in accordance with the purpose outlined in the gift instrument or, if that purpose could no longer be fulfilled, the gift be directed to a different charity that was prepared to use the funds for that purpose.[28] The University, for its part, moved to dismiss the suit on the ground that the Foundation, as donor, lacked standing to sue to enforce its gift.[29]

As background, the nursing school at issue in *Herzog* was closed in 1991 because the University of Bridgeport had run into financial difficulties and, in 1992, an affiliate of the Reverend Sun Myung Moon's Unification Church took control of the University.[30] Reverend Moon, who regularly performed mass weddings and whose movement was thought of

---

[25] 699 A.2d 995 (Conn. 1997).

[26] *See id.* at 996. The gift instrument did not include a reversion or specifically reserve to the Foundation the right to enforce the terms of the gift. *See id.* For an example of a donor that retained a right of reversion and decades later successfully sued the donee, see *Tenn. Div. of the United Daughters of the Confederacy v. Vanderbilt Univ.*, 174 S.W.3d 98 (Tenn. Ct. App. 2005) (ordering Vanderbilt to abide by the terms of a restricted gift made in 1933 or return the present value of the gift to the donor).

[27] *See Herzog*, 699 A.2d at 996.

[28] *See id.*

[29] *See id.*

[30] *See* ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 768, n.36 (9th ed. 2013).

as a cult and was accused in the 1970s of brainwashing, had been convicted of tax evasion in 1984.[31]

In holding that the Foundation did not have standing under the common law to enforce the terms of its gift, a majority of the Connecticut Supreme Court (in a 3-2 decision) explained:

> As a matter of common law, when a settlor of a trust or a donor of property to a charity fails specifically to provide for a reservation of rights in the trust or gift instrument, "neither the donor nor his heirs have any standing in court in a proceeding to compel the proper execution of the trust, except as relators."[32]

The majority noted the general rule that charitable trusts and gifts to charitable corporations for stated purposes are enforceable at the instance of the attorney general, and acknowledged that charitable trusts may also be enforced by a co-trustee or a party with a special interest.[33]

The majority further held that the Connecticut legislature, in enacting the Uniform Management of Institutional Funds Act (UMIFA), which was silent on the standing issue, did not implicitly intend to confer standing on donors.[34] In support of this holding the majority referenced an amicus brief filed by various associations of colleges and universities, which it found to be persuasive.[35] The amici argued that, if donor standing became the law, the infinite variety of charitable gift restrictions that affect educational institutions would create the potential for a flood of "time-consuming,

---

[31] *See* Linda Conner Lambeck, *University of Bridgeport Stands on Its Own After Parting with the Church*, CTPOST (June 4, 2019), https://www.ctpost.com/local/article/After-parting-with-church-University-of-13914570.php [https://perma.cc/33EJ-JPKG]. The University formally severed ties with the Unification Church in 2019. *See University of Bridgeport Splits From Unification Church*, ASSOCIATED PRESS (May 29, 2019), https://apnews.com/general-news-9a866b6176944fc78ad2cb474a2bf701 [https://perma.cc/V4QY-WE8G].

[32] *Herzog*, 699 A.2d at 998 (quoting Smith v. Thompson, 266 Ill. App. 165, 169 (1932)). A suit to enforce a charitable gift "may be brought by the Attorney General on the relation of a third person, a 'relator,' who is liable for the costs that the state would otherwise be required to bear." RESTATEMENT (THIRD) OF TRUSTS § 94 cmt. e (A.L.I. 2012). The Attorney General cannot be compelled to allow suit by a relator, may exercise control over the suit, and may terminate the suit and the authorization granted to the relator at any time. *Id*. Suits by relators are rare. ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 785 (9th ed. 2013).

[33] *Herzog*, 699 A.2d at 998 n.4.

[34] *See id.* at 1002.

[35] *See id.* at 1002 n.11.

fact-sensitive litigation."[36] The majority agreed with the amici that this "mischief" would harm the very institutions that UMIFA was intended to protect.[37]

Two Connecticut Supreme Court Justices vigorously dissented, noting:

> The majority here holds that the donor itself may not enforce a restriction in a gift to an educational institution when the institution had specifically agreed to that restriction. This decision is simply an approval of a donee . . . "double crossing the donor," and doing it with impunity unless an elected attorney general does something about it.
>
> This decision will not encourage donations to Connecticut colleges and universities. [We] fail to see why Connecticut, the home of so many respected schools that would honor their promises, should endorse such sharp practices and create a climate in this state that will have a chilling effect on gifts to its educational institutions.[38]

Notably, the Connecticut Attorney General did not appear to be involved in this case.

2. Donors Granted Standing on Variety of Grounds

Despite the traditional common-law no-donor-standing rule, various courts have been willing to grant donors or their personal representatives standing on a variety of grounds. This subsection highlights four such cases, which are from different jurisdictions and were decided on different grounds. The courts' rationales for granting standing are noted in the discussions below. [39]

---

[36] *Id.*

[37] *See id.*

[38] *Id.* at 1002.

[39] *See also, e.g.*, Maffei v. Roman Catholic Archbishop of Boston, 867 N.E.2d 300 (Mass. 2007) (holding that a donor of land to be used as the site of a church and a donor of money to be used to benefit the church each had standing to sue when the church unexpectedly closed); Howard v. Adm'rs of Tulane Educ. Fund, 986 So. 2d 47, 60 (La. 2008) (holding that under Louisiana law, which derives from the French Civil Code, "the right to enforce a conditional donation is afforded to donors and their successors and would-be successors . . . "); Pearson v. Garrett-Evangelical Theological Seminary, Inc., 790 F. Supp. 2d 759, 765 (N.D. Ill. 2011) (granting the donor of a restricted gift standing to enforce the terms of the gift and explaining that the donee did not make it clear "that

a. Smithers v. St. Luke's-Roosevelt Hospital Center

Just one year after the ULC approved the UTC, with its settlor-standing rule, a New York Appellate Court majority (in a 3-1 decision) handed down its decision in *Smithers v. St. Luke's-Roosevelt Hospital Center*.[40] The majority in *Smithers* held that not only do donors of charitable gifts in New York have standing to sue to enforce their gifts, but the personal representative of a donor's estate also has standing to enforce the donor's gift.[41]

The donor in *Smithers*, R. Brinkley Smithers, was a recovered alcoholic and the son of an investment banker who helped finance the creation of IBM.[42] During his lifetime, Smithers pledged to make a $10 million gift in installments to St. Luke's-Roosevelt Hospital Center for the purpose of establishing a free-standing (non-hospital) alcoholism treatment center, and subject to specific instructions regarding the operation of the center.[43] Smithers's relationship with the hospital was "an uneasy one" because the hospital had a habit of not complying with the terms of his gift.[44] After making only roughly half of the promised installment payments, Smithers threatened to not complete the gift.[45] The hospital's then president eventually persuaded Smithers to complete the gift by repeatedly assuring him that the hospital would strictly adhere to the terms of the gift, and by signing a second gift agreement to that effect on behalf of the hospital.[46]

Despite the assurances given to Smithers, just one year after Smithers's death the hospital announced its plans to move the center into a hospital ward and sell the free-standing building in which the center had been housed, claiming it had to do so to become more "competitive."[47] The hospital also directed Mr. Smithers's wife to cancel a gala event that she and Smithers had spent several years organizing, and which was to be

---

Herzog's reasoning should apply in a case such as this, where the donor alleges that he provided funds to a charitable institution pursuant to a contract, which was later breached"); Wildlands Tr. of Se. Mass. v. Cedar Hill, 34 Mass. L. Rptr. 52 (Mass. Sup. 2016) (relying on *Maffei* in holding that a donor of money to a charity for a specific purpose had standing to sue when the charity failed to use a large portion of the gift for that purpose).

[40] 723 N.Y.S.2d 426 (N.Y. App. Div. 2001)

[41] *See id.* at 434–36.

[42] *See id.* at 427.

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.* at 427–28.

[47] *See id.* at 429.

in honor of her and her husband, just a month and a half before the date of the event.[48]

The hospital's actions made Mrs. Smithers's suspicious, and she notified the hospital of her objections and demanded an accounting.[49] The hospital first resisted disclosing its financial records but eventually did so, and they revealed that the hospital had been misappropriating substantial funds from the Smithers endowment since before Smithers's death and using those funds for purposes unrelated to the center.[50] Mrs. Smithers notified the New York Attorney General, who investigated and eventually made a deal with the hospital that Mrs. Smithers believed was contrary to the terms of Smithers's gift.[51] That deal included, among other things, authorization for the hospital to sell the free-standing building in which the center had been housed and return only the original $1 million purchase price, rather than the significantly appreciated value of the building, to the Smithers endowment.[52]

Undaunted, Mrs. Smithers had herself appointed as special administrator of her husband's estate for the purpose of bringing an action against the hospital and the Attorney General, and she filed suit in that role to enforce the terms of Smithers's gift.[53] The hospital and the Attorney General moved to dismiss the case on the grounds that Mrs. Smithers lacked standing.[54] Mrs. Smithers lost in trial court but appealed the case, at which point the Attorney General's office, having "reevaluated the matter" under the direction of a newly elected Attorney General, reversed its position and urged the court to remand for a hearing on the merits.[55] The new Attorney General also urged that the court not address the issue of Mrs. Smithers's standing since he clearly had standing and had joined with her in seeking reversal and remand.[56]

In considering the standing issue, the New York Appellate Court majority first noted that neither the hospital nor the previous Attorney General had sought court approval of the deal they had made, as was required given that the terms of the deal may have been contrary to the

---

[48] *See id.*
[49] *See id.*
[50] *See id.*
[51] *See id.* at 429–30.
[52] *See id.*
[53] *See id.* at 430.
[54] *See id.*
[55] *See id.*
[56] *See id.* at 430–31.

terms of Smithers's gift.[57] The majority also explained that, while the appeal was pending, the new Attorney General and the hospital reached another agreement, which was closer to Mrs. Smithers's position, but the Attorney General again reversed its position, claiming that Mrs. Smithers did not have standing.[58]

The majority then turned to the sole issue before the court: whether Mrs. Smithers had standing to bring the action on behalf of her husband's estate.[59] The new Attorney General argued that, with a few exceptions that were inapplicable in the case, "standing to enforce the terms of a charitable gift is limited to the Attorney General."[60] The majority disagreed, holding that Mrs. Smithers, in her role as personal representative of her husband's estate, had standing to enforce the terms of his gift.[61]

In support of its holding, the majority first pointed to a decision handed down in 1900 by New York's highest court that granted a donor (an alumni association) standing to sue to enforce the terms of its charitable gift.[62] The majority was careful to point out that the high court's holding in this early case did not necessitate the conclusion that donors have standing only if they retain rights regarding the use of their gifts.[63] Rather, donors in New York have standing to sue to enforce their gifts based solely on their status as donors.[64]

Turning to the question of whether the personal representative of a donor's estate also has standing to sue to enforce the donor's gift, the majority explained that "the desire to prevent vexatious litigation . . . by

---

[57] *See id.* at 431.

[58] *See id.*

[59] *Id.*

[60] *Id.*

[61] *See id.* at 435–36.

[62] *See id.* at 432 (citing Assoc. Alumni of the Gen. Theological Seminary of the Protestant Episcopal Church in the U.S. v. Gen. Theological Seminary of the Protestant Episcopal Church in the U.S., 57 N.E. 626 (N.Y. 1900)).

[63] *Id*. at 433 ("[T]he [high] Court's characterization of the association as 'donor and possessor of the right to nominate to the professorship' does not necessitate the conclusion that no donor has standing without having retained such a right. In the case on which the [high] Court relied for its holding of donor standing, the donor had not retained any rights . . . .").

[64] *See id.*; *see also* Lucker v. Bayside Cemetery, 979 N.Y.S.2d 8, 17 (N.Y. App. Div. 2013) (granting a donor standing to sue to enforce a charitable trust based on solely his status as donor); Isr. Acad. of Scis. & Humans. v. Am. Found. for Basic Rsch. in Isr., No. 23-1269-cv, 2024 WL 3289482, at *4 (2d Cir. July 3, 2024) ("To be sure, New York law 'accord[s] standing to donors to enforce the terms of their own gifts concurrent with the Attorney General's standing to enforce such gifts on behalf of the beneficiaries thereof.'").

'irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations' ha[d] no application to Mrs. Smithers."[65] Mrs. Smithers was seeking enforcement of the terms of her husband's gift, not the return of that gift to his estate, which presumably would have benefited her financially.[66] "Without possibility of pecuniary gain for himself or herself," said the majority, "only a plaintiff with a genuine interest in enforcing the terms of a gift will trouble to investigate and bring this type of action."[67]

The majority also noted that "[t]he donor of a charitable gift is in a better position than the Attorney General to be vigilant and, if he or she is so inclined, to enforce his or her own intent."[68] This was certainly true of Mrs. Smithers as her husband's personal representative.[69] It was Mrs. Smithers and her accountants who discovered and informed the Attorney General of the hospital's misappropriation of funds and other failures to abide by the terms of the gift.[70] The majority also pointed out that, absent Mrs. Smithers's vigilance, the Attorney General would have resolved the matter with the hospital in a manner contrary to the terms of the gift and without seeking permission of the court, as was required.[71]

Finally, the majority emphasized the need for "co-existent standing for the Attorney General and the donor," explaining that "the Attorney General's interest in enforcing gift terms is not necessarily congruent with that of the donor."[72] This too is true. While a donor generally "seeks to have his or her intent faithfully executed" and "perhaps also to erect a tangible memorial to himself or herself," the Attorney General represents the broader public interest in charitable assets.[73] As a result, the Attorney General may be less committed to ensuring that the terms of a charitable gift are strictly or even substantially adhered to, so long as the assets continue to be used to benefit the public. The majority emphasized that "there is no substitute for a donor, who has a 'special, personal interest in the enforcement of the gift restriction.'"[74]

---

[65] *Smithers*, 723 N.Y.S.2d at 434.
[66] *See id.*
[67] *Id.*
[68] *Id.*
[69] *See id.* at 434–35.
[70] *See id.* at 435.
[71] *See id.* at 434.
[72] *Id.* at 435.
[73] *Id*. at 435–36.
[74] *Id.* at 435.

Ultimately, the majority concluded that "the distinct but related interests of the donor and the Attorney General are best served by continuing to accord standing to donors to enforce the terms of their own gifts concurrent with the Attorney General's standing to enforce such gifts on behalf of the beneficiaries thereof."[75] Regarding Mrs. Smithers, the court held that the common law of New York also permitted her to bring the action.[76] She had been appointed personal representative of Smithers's estate to pursue claims by the estate against the hospital in connection with the administration of Smithers's gift and, as such, she had standing to sue the hospital for enforcement of the gift terms.[77]

There was a vigorous dissent in *Smithers*. The sole dissenting justice argued that the traditional common-law no-donor-standing rule should have applied and, even if Smithers were deemed to have standing to sue to enforce his gift during his lifetime based on his right to exercise discretionary control over the gift, that right was personal to him, abated at his death, and did not devolve to his estate.[78] The dissenting justice also noted that, by determining that Mrs. Smithers had standing, the majority necessarily concluded that "a decedent's estate, which has no interest in a gift, may prevent the New York State Attorney General from exercising his discretion in determining how to prosecute alleged violations of law."[79]

The dissenting justice did not, however, address the concerns regarding the Attorney General's conduct that were highlighted by the majority—namely, that the Attorney General had initially made a deal with the hospital that was arguably contrary to the terms of Smithers's gift and had not sought court approval of that deal as was required by law; that the Attorney General had no procedure in place to ensure compliance with the terms of that deal and it was, instead, Mrs. Smithers's vigilance that brought the hospital's breaches to light;[80] and that the Attorney General had changed its positions in the case several times, including when a new individual was elected to the office.

Thus far, application of *Smithers* to donor-standing cases in other jurisdictions has been unpredictable. For example, in *Hardt v. Vitae Foundation*,[81] discussed in more detail in Part II.D.2 below, the Missouri

---

[75] *Id.* at 435–36.
[76] *See id.* at 436.
[77] *See id.*
[78] *See id.* at 436–39 (Friedman, J., dissenting).
[79] *Id.* at 442.
[80] *See id.* at 431.
[81] 302 S.W.3d 133 (Mo. Ct. App. 2009).

Court of Appeals declined to grant standing to charitable donors based on *Smithers*.[82] The court said that, unlike in *Smithers*, there was no indication in *Hardt* that the donors had notified the Missouri Attorney General of the donee's alleged failure to comply with the restrictions their gifts.[83] The court explained that, "[w]hile it is conceivable that there may be times when the Attorney General does not sufficiently represent a donor's interest," that had not been shown in *Hardt*, and the court thus found no reason to relax the traditional common-law no-donor-standing rule.[84] Instead, the court encouraged the donors in *Hardt* to notify the Attorney General and ask him to enforce their gift restrictions.[85]

In contrast, in a more recent case, a Vermont trial court, citing to *Smithers*, granted standing to the personal representative of a deceased donor's estate to enforce alleged terms of the donor's charitable gift.[86] *Estate of Mead v. Middlebury College* involved Middlebury College's decision to remove the Mead family name from a chapel on its campus.[87] In 1914, a former Vermont Governor, John Mead, donated funds to Middlebury to construct the chapel, which was named the Mead Memorial Chapel.[88] In 2021, Middlebury decided to remove the Mead name from the chapel due to perceptions about former Governor Mead's role in the eugenics movement. [89] Another former Vermont Governor, James Douglas, was then appointed as personal representative of Governor Mead's estate, and Douglas filed suit in that capacity challenging removal of the Mead name from the chapel.[90]

Middlebury responded by arguing that Douglas lacked standing because, under the common law, only the Attorney General has standing to "enforce a limitation on a completed gift in a charitable trust." [91] The

---

[82] *See id.* at 139–40.

[83] *See id.* at 139.

[84] *Id.* at 139–40.

[85] *See id.* at 140.

[86] *See* Est. of Mead v. Middlebury Coll., No. 23-CV-01214, 2023 WL 11877867, at *1 (Vt. Super. Ct. Aug. 4, 2023) (ruling on Middlebury's Motion to Dismiss).

[87] *See id.*

[88] *See id.*

[89] *See id.* at 1 n.1.

[90] *See id.* at 1.

[91] *Id.* at 2. Contrary to Middlebury's argument, the Attorney General does not appear to be the "only" person with standing to "enforce a limitation on a completed gift in a charitable trust." Vermont adopted a variant of the UTC's settlor-standing provision, which provides: "The settlor of a charitable trust, the Attorney General, a cotrustee, or a person

Vermont trial court rejected that argument, citing to *Smithers* and noting that "[t]his case does not involve a charitable trust."[92] The court acknowledged that the law in Vermont on the standing issue is "substantially undeveloped," but noted that (i) there was no authority compelling the Vermont Attorney General to take action in a case of this sort or require her to consider it, (ii) it was not clear why the Attorney General would have any interest at all in enforcing the disputed naming restriction, (iii) the Attorney General had not attempted to intervene in the action or otherwise assert any exclusive authority to bring the suit, and (iv) there was no statute or case law clearly providing for such exclusive authority.[93]

The Vermont trial court also noted that it was "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."[94] In other words, Middlebury was seeking to use the traditional common-law no-donor-standing rule to avoid having to address the issues on the merits—that is, whether there was a valid naming restriction on Mead's gift and, if so, whether Middlebury had violated that restriction by removing the Mead name from the chapel without obtaining court authorization to do so under the doctrine of deviation or *cy pres*.[95] On the date of this article, this case was on appeal in the Vermont Supreme Court.[96]

b. L.B. Research and Educational Foundation v. UCLA Foundation

Four years after *Smithers*, a California appellate court similarly deviated from the traditional common-law no-donor-standing rule and held that a donor had standing to sue to enforce the terms of its charitable gift.[97] In *L.B. Research and Educational Foundation v. UCLA Foundation*, the L.B. Research and Educational Foundation (the Foundation) donated $1 million to the UCLA Foundation (UCLA) to establish a named endowed chair in cardiothoracic surgery at the UCLA School of Medicine.[98] The gift agreement, which was signed by both parties, provided that the holder

---

with a special interest in the charitable trust may maintain a proceeding to enforce the trust." VT. STAT. ANN. tit. 14A, § 405(c).

[92] Est. of Mead v. Middlebury Coll., No. 23-CV-01214, 2023 WL 11877867, at *2.

[93] *See id.*

[94] *Id.*

[95] *See id.*

[96] *See* Est. of Mead v. Middlebury Coll., No. 25-AP-148 (Vt. 2025).

[97] *See* L.B. Rsch. & Educ. Found. v. UCLA Found., 29 Cal. Rptr. 3d 710, 716 (Cal. Ct. App. 2005).

[98] *See id.* at 712.

of the chair had to meet specified criteria and, if UCLA did not comply with the terms of the gift, the funds had to be transferred to a different university within the University of California system to be used for the same purpose.[99]

Three years after the gift was made, the Foundation sued UCLA, alleging that UCLA had failed to comply with the terms of the gift by electing an unqualified person to the chair, and that UCLA had done this over the objection of both the Foundation and the California Attorney General.[100] UCLA responded by arguing that the Foundation did not have standing because the gift had created a charitable trust and only the Attorney General had standing to enforce a charitable trust.[101] The Foundation countered that the gift agreement constituted a conditional contract rather than a charitable trust, and that it had standing to sue to enforce the terms of the contract.[102]

The appellate court agreed with the Foundation, finding that the gift agreement was a conditional contract because it provided that UCLA would forfeit the gift to different university if it failed to comply with the agreement's (the "contract's") conditions.[103] According to the court, a gift agreement that provides for a reversion or a gift-over to another charity if the original donee fails to comply with the terms of the gift constitutes a conditional contract.[104]

Equally important for purposes of this Article, however, is the appellate court's additional reasoning in support of its grant of standing to the Foundation. The court explained that, even if the gift agreement had created a charitable trust, the fact that the Attorney General could enforce the trust would not have deprived the donor of standing to do so.[105] The court first noted '"the prevailing view . . . that the Attorney General does not have exclusive power to enforce a charitable trust and that a trustee or *other person having a sufficient special interest* may also bring an action for this purpose.'"[106]

---

[99] *See id.* at 712–13.

[100] *See id.* at 713.

[101] *See id.*

[102] *See id.* at 714–15.

[103] *See id.* at 716.

[104] *See id.* at 715–16.

[105] *See id.* at 716–17.

[106] *Id.* at 716 (quoting Holt v. Coll. of Osteopathic Physicians & Surgeons, 394 P.2d 932, 934 (Cal. 1964)) (emphasis in original).

The court then described why there is a need to supplement the Attorney General's enforcement powers when it comes to charitable gifts, citing copiously to an earlier California Supreme Court case that also involved the enforcement of charitable gifts.[107] The court explained that, while "the Attorney General has been empowered to oversee charities as the representative of the public," the public's interest is not the only relevant interest.[108] There also is "the interest of donors who have directed that their contributions be used for certain charitable purposes," and "[a]lthough the public in general may benefit from any number of charitable purposes, charitable contributions must be used only for the purposes for which they were received in trust."[109]

The court further noted that "part of the problem of enforcement is to bring to light conduct detrimental to a charitable trust so that remedial action may be taken," and explained:

> The Attorney General may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact, and the various responsibilities of his office may also tend to make it burdensome for him to institute legal actions except in situations of serious public detriment.[110]

Finally, the court acknowledged that "[a]lthough the Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him."[111] The court explained that "[t]he protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf," emphasizing that "*[t]here is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity*."[112] And the court stated that "[t]he administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available."[113]

Ultimately, the court concluded that, whether the gift agreement in *L.B. Research* was characterized as a conditional contract or a charitable

---

[107] *See id.* at 716–17.
[108] *Id.* at 716 (quoting *Holt*, 394 P.2d at 935).
[109] *Id.* at 717 (quoting *Holt*, 394 P.2d at 935).
[110] *Id.*
[111] *Id.* at 717 (quoting *Holt*, 394 P.2d at 936).
[112] *Id.* (emphasis in original).
[113] *Id.*

trust, the Foundation—the donor—had standing to sue to enforce the gift.[114]

c. Siebach v. Brigham Young University

In 2015, the Utah Court of Appeals held that donors had standing to sue regarding their charitable gifts on the ground that the donee had allegedly induced their donations through negligent or fraudulent misrepresentations.[115]

In *Seibach v. Brigham Young University*, Ralph and Muriel Siebach donated hundreds of thousands of dollars to Brigham Young University (BYU) over several decades to be added to a specific account.[116] The account was ostensibly to be used to fund academic research in philosophy at BYU, but the Siebachs' son, a philosophy professor at BYU, was the only person authorized to spend the funds in the account.[117]

Several decades after the account was created, BYU began an audit of the account and, after determining that the Siebachs were using the account to funnel funds to their son to avoid tax liabilities, BYU froze the account.[118] A few months later, BYU unfroze the account to accept an additional $50,000 contribution from the Siebachs, and then immediately refroze the account.[119] Eight days later, BYU removed the son as the person authorized to spend the funds in the account.[120]

BYU did not inform the Siebachs of any of the above-described actions, and when the Siebachs learned of them, they sued, demanding that BYU be required to use the account funds in accordance with their intent or return the funds to them.[121] The trial court dismissed the action, concluding that the Siebachs lacked standing under the traditional common-law no-donor-standing rule.[122]

On appeal, the Utah Court of Appeals pointed out that the Siebachs did not dispute that the common law has traditionally precluded donors

---

[114] *See id.* at 716. *But cf.* Patton v. Sherwood, 61 Cal. Rptr. 3d 289, 295 (Cal. Ct. App. 2007).

[115] *See* Siebach v. Brigham Young Univ., 361 P.3d 130, 141 (Utah Ct. App. 2015).

[116] *See id.* at 132.

[117] *See id.*

[118] *See id.* at 133.

[119] *See id.*

[120] *See id.*

[121] *See id.*

[122] *See id.* at 134.

from suing to enforce their charitable gifts.[123] Instead, the Siebachs argued, correctly, that no Utah case had applied the traditional common-law no-donor-standing rule.[124] The court then explained that the Siebachs did not argue that the traditional rule should not apply, nor did they articulate any reason why Utah would be ill-served by applying that rule.[125] The Siebachs also did not argue that *Smithers* had altered the traditional rule.[126] Accordingly, the court held that, "[i]n the absence of such argument," it was unable to conclude that the trial court had erred in ruling that Utah follows the traditional rule, and thus, the Siebachs lacked standing to sue to enforce their gifts.[127] The tenor of the court's opinion implied, however, that the court would be open to considering arguments as to why Utah would be ill-served in continuing to apply the traditional rule.

The Utah Court of Appeals next turned to the Siebachs' other argument: "that BYU induced their donations with false or misleading statements about how the funds would be used and managed."[128] The court determined that courts around the country have recognized the standing of donors to allege that their charitable donations were fraudulently or negligently induced.[129] The court also noted that Utah's Charitable Solicitations Act allows a donor damaged as a result of a charitable solicitation to file suit for damages or injunctive relief.[130]

The court ultimately concluded that "claims alleging the improper *inducement* of a charitable donation are distinguishable from claims seeking to enforce donative intent," and that "improper-inducement claims do not fall within the common-law [no-]donor-standing rule."[131] Accordingly, the Siebachs had standing to pursue their fraud and negligent misrepresentations claims.[132]

The holding in *Siebach* offers charitable donors an alternative route to obtaining standing regarding their gifts given that, for many donations of more than a modest amount, there will be communications between the

---

[123] *See id.* at 135.

[124] *See id.*

[125] *See id.*

[126] *See id.* at 135 n.4.

[127] *Id.* at 135.

[128] *Id.* at 139.

[129] *See id.*

[130] *See id.*

[131] *Id.* at 140 (emphasis in original).

[132] *See id.* at 140–41. The Siebachs and BYU apparently settled this case after the court handed down this opinion.

donor and the donee about the anticipated use of the donation. It also is notable that the Utah Attorney General did not appear to be involved in this case.

d. Family Federation for World Peace v. Hyun Jin Moon

In the same year that the Utah Court of Appeals granted the Siebachs standing to bring their improper inducement claims, the District of Columbia's highest court granted a donor standing on two different grounds.[133] *Family Federation for World Peace v. Hyun Jin Moon* involved a nonprofit corporation, the Unification Church International (UCI), which was established in 1977 under the auspices of Reverend Sun Myung Moon, founder of the Unification Church (the Church).[134] UCI's purpose was to manage and use its assets for the benefit of the Church.[135] Over the ensuing decades, hundreds of millions of dollars were donated to UCI, allegedly to be held in trust and used for the Church's endeavors.[136]

UCI operated without controversy for almost three decades.[137] However, "[t]hings changed radically beginning in 2006, when Preston Moon, one of Reverend Moon's sons, became the new president of the UCI as well as one of the five directors."[138] Then in 2008, Reverend Moon appointed another son, Sean Moon, as the next leader of the Church.[139] Sean's appointment allegedly disappointed Preston, who then began "to divest the Church of control over UCI and divert [UCI] from its alleged mission and intended purpose."[140]

In *Family Federation for World Peace,* several entities challenged the actions of Preston and the other UCI directors, including a Japanese entity that was the "corporate embodiment of the Church in Japan and had been the primary donor of funds to UCI for several decades" (the Japanese donor).[141] Preston and the other UCI directors argued that the Japanese donor and the other entities lacked standing to sue because, under the traditional common-law rule, "only a public officer, usually the state

---

[133] *See* Fam. Fed'n for World Peace v. Hyun Jin Moon, 129 A.3d 234, 244-47 (D.C. 2015).

[134] *See id.* at 238.

[135] *See id.* at 238–39.

[136] *See id.* at 240.

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.*

Attorney General, has standing to bring an action to enforce the terms of [a charitable] trust."[142]

The District of Columbia high court rejected the UCI directors' argument, noting that "an important exception to the [traditional] rule exists 'in situations where an individual seeking enforcement of the trust has a "special interest" in continued performance of the trust distinguishable from that of the public at large.'"[143] Although acknowledging that "special interest" is a term of uncertain scope, the court explained that "[t]he exponential expansion of charitable institutions justifies a reasonable relaxation of any rule limiting enforcement to a busy Attorney General."[144] It then held that the Japanese donor and other entities had standing to sue as parties with a "special interest."[145] Interestingly, while the District of Columbia had adopted the UTC's settlor-standing provision, and the court was aware of this, it did not rely on that rule in finding that the Japanese donor had standing to sue.[146]

The Japanese donor also asserted that it had standing on breach of contract grounds.[147] It argued that it had donated funds to UCI on the understanding that the funds would be used in a manner consistent with the purpose for which the UCI was established, and that UCI had an obligation to use the funds for that purpose.[148] In finding that the Japanese donor also had standing on these grounds, the court explained: "Like any other transaction, there is no inherent reason why funds could not be provided to a corporation, charitable or otherwise, with a contractual understanding as to how the funds were to be used and thus standing is established with respect to enforcing the restriction on the donations."[149] The court also cited to the *Restatement (Third) of Trusts*, which provides

---

[142] *See id.* at 244 (quoting Hooker v. Edes Home, 579 A.2d 608, 612 (D.C. 1990)). Although UCI was a charitable corporation, the court noted that the rules relating to charitable trusts also apply to charitable corporations. *Id.* at 244 n.15.

[143] *Id.*

[144] *Id.*

[145] *See id.*

[146] The Japanese donor alleged that it was a "co-settlor" of the trust. *See id.* at 245 n.19

[147] *See id.* at 242, 246.

[148] *See id.* at 246. The court noted that the Japanese donor "strongly characterize[d] the contributions as a restricted gift made to a charitable corporation; funds that were contributed pursuant to a 'condition' or 'promise' or 'understanding.'" *Id.* at 247.

[149] *Id.* at 247.

that donors have special-interest standing to enforce the restrictions they have placed on their gifts.[150]

3. Donors Allowed to Press Claims Without Addressing Standing

Despite the traditional common-law no-donor-standing rule, some courts have allowed donors to press their claims without addressing the standing issue. This subpart highlights three such cases.[151]

a. Brooks v. Integris Rural Health Inc.

In *Brooks v. Integris Rural Health Inc*., renowned country singer and songwriter, Garth Brooks (Brooks), alleged that a hospital in Oklahoma contacted him in early 2005 to perform a benefit concert to raise funds for a major hospital expansion that would include a new women's health center.[152] The hospital was part of Integris Rural Health Inc. (Integris), which was the largest health care system in Oklahoma.[153] According to Brooks, in return for his performing the concert, Integris promised to name the new women's health center after Brooks's mother, who had died of cancer.[154]

Brooks said a concert would be very costly and not raise sufficient funds, so he discussed making a direct donation to the hospital.[155] He indicated that he agreed to donate $500,000 on the condition that the new women's health center would be named for his mother and her name

---

[150] *See id.* at 247 n.20.

[151] *See also In re* Reed Found., Inc. v. Franklin D. Roosevelt Four Freedoms Park, LLC, 964 N.Y.S.2d 152 (N.Y App. Div. 2013). In *Reed*, a foundation made a $2.5 million grant to help complete the Franklin D. Roosevelt Four Freedoms Park, subject to a restriction requiring that an engraving recognizing the foundation and its founders be placed on the structure housing a bronze bust of Roosevelt. *Id.* at 154. Although the donee agreed to this restriction at the time of the donation, it later decided not to add the engraving to the structure for "aesthetic" reasons. *Id.* at 154–55. The court held that the donee breached its contractual obligations to the foundation, ordered specific performance of the engraving obligation, and cautioned that "the failure 'to protect the interest of donors' risks the result that 'donors may become more hesitant to contribute at all.'" *Id*.

[152] *See* Verdict and Settlement Summary, Brooks v. Integris Rural Health Inc., 2012 No. CJ-2009-738, 2012 WL 507954 (Okla. Dist. Ct. Jan. 25, 2012).

[153] *See id.*; Steve Olafson, *Garth Brooks Awarded $1 Million in Suit Against Hospital*, REUTERS (Jan. 25, 2012, at 11:33 EST), https://www.reuters.com/article/lifestyle/garth-brooks-awarded-1-million-in-suit-against-hospital-idUSTRE80O0BT/ [https://perma.cc/F4KB-FJVK].

[154] *See Brooks*, No. CJ-2009-738, 2012 WL 507954; Olafson, *supra* note 153.

[155] *Brooks*, No. CJ-2009-738, 2012 WL 507954.

would be featured on the exterior of the building.[156] He said he made the $500,000 donation anonymously in December 2005 to avoid publicity, but Integris knew the donation was from him.[157]

According to Brooks, from December 2005 to January 2007 "no part of his donation was spent on the hospital expansion."[158] He also explained that in 2007, his primary contact at Integris met with him to report that construction was behind schedule, and to propose that Brooks make a $15 million donation to name the entire hospital after his mother.[159] Brooks declined to accept this proposal.[160]

Then in September 2008, Integris reportedly informed Brooks that his $500,000 donation would be used to complete construction of the master facility, but there was no mention of the new women's center or the naming of the center after Brooks's mother.[161] In subsequent communications, Integris reportedly offered to place a plaque or bust in the interior of an existing women's center, but Brooks rejected that offer because it was not in accordance with his agreement with the hospital.[162] Brooks said he then demanded that the donation be escrowed and forwarded to another charity but Integris declined to do so.[163]

Unable to resolve his differences with Integris (Brooks's primary contact there was reportedly not returning his phone calls), Brooks filed suit in 2009, alleging breach of contract, fraud in the inducement, and negligent misrepresentation and constructive fraud.[164] Brooks requested that a constructive trust be placed on his $500,000 donation and that the funds be returned to him.[165] Integris, for its part, took the position that Brooks's gift had not been restricted because there was no written gift agreement.[166]

Some of the more damning evidence presented at the jury trial were internal emails sent by Brooks's primary contact at Integris to others in

---

[156] *Id.*
[157] *Id.* The donation was made by the "Music Industry Branch Manager." *See id.*
[158] *Id.*
[159] *See id.*
[160] *Id.*
[161] *Id.*
[162] *See id.*
[163] *See id.*
[164] *See id.*
[165] *See id.*
[166] *See id.*

that organization referring to Brooks with scorn.[167] In one email, this contact—Integris's President and CEO—wrote, in part: "We may not deny Garth access to the money, however, we can sure as hell make him work to get it back."[168] Brooks also reportedly teared up during the trial when he was testifying about his mother.[169]

Perhaps not surprisingly, the Oklahoma jury returned a verdict in favor of Brooks, ordering the hospital to return the $500,000 gift, to pay Brooks an additional $150,000 on his fraud claim, and to pay him $500,000 of punitive damages.[170]

There was no discussion of the donor-standing issue, nor did the Oklahoma Attorney General appear to be involved this case.

b. Adler v. SAVE

Adler v. SAVE involved a married couple's donation of $50,000 to a no-kill animal shelter (SAVE) in connection with the shelter's capital campaign to raise funds to construct a new 30,000 square foot state-of-the-art facility in Princeton, New Jersey.[171] Bernard and Jean Adler first became involved with SAVE in the 1990s.[172] They would bring extra animal food and toys to the shelter and spend time with wayward and feral cats.[173] Bernard, in particular, worked with the feral cats to domesticate them so that they would be more adoptable.[174] In addition to these "personal acts of kindness," in 1992 the Adlers began making small donations to SAVE and attending its fundraising functions.[175]

When SAVE began its capital campaign to raise funds for the new facility, it first targeted its historically loyal and generous supporters, including the Adlers.[176] The Executive Director of SAVE showed the Adlers the proposed plans for the new facility and also gave them a

---

[167] *See* Plaintiff's Trial Brief at 5-6, Brooks v. Integris Rural Health, Inc., No. CJ-2009-738, 2012 WL 300259 (Okla. Dist. Ct. Jan. 9, 2012).

[168] *Id.* at 6.

[169] *See* Justin Juozapavicius, *US Hospital Must Pay $1M to Garth Brooks*, TODAY (Jan. 24, 2012, at 14:15 EST), https://www.today.com/popculture/us-hospital-must-pay-1m-garth-brooks-wbna46119271 [https://perma.cc/9QM4-LQMG?type=image].

[170] *See* Verdict and Settlement Summary, *Brooks*, No. CJ-2009-738, 2012 WL 507954.

[171] *See* Adler v. SAVE, 74 A.3d 41, 47-52 (N.J. Super. Ct. App. Div. 2013).

[172] *See id.* at 44.

[173] *See id.*

[174] *Id.*

[175] *See id.*

[176] *See id.* at 45.

brochure depicting the new facility and informing them of the opportunity to have a portion of the new facility named in honor of them or a person of their choosing.[177] In response to these solicitations, the Alders donated a total of $50,000 to SAVE in 2003 and 2004, which was an uncharacteristically large donation for the Adlers, for the purpose of funding two rooms in the new facility, "one specifically designated for the care of large dogs and the other exclusively dedicated for the care of older cats."[178] The Adlers were interested in these rooms in particular because large dogs and older cats are highly unlikely to be adopted and they wanted to provide a humane environment for their long-term care.[179] The Adlers also understood that nameplates would be placed outside each room recognizing them as the individuals responsible for their creation.[180]

In 2006, SAVE announced that it was merging with another shelter in a different location, and that it planned to construct a new facility there that would be significantly smaller than the facility it had proposed to build in Princeton.[181] This announcement came as a total surprise to the Adlers, who contacted SAVE to discuss the return of their donation.[182] Failing to reach a satisfactory resolution, the Adlers filed suit against SAVE in 2007 requesting that their donation be returned.[183]

SAVE responded by arguing that the donation was not restricted, or, alternatively, that even if it was restricted, the court should modify the restrictions under the doctrine of *cy pres* to allow SAVE to use the funds for similar purposes.[184] SAVE also argued that requiring it to return the Adlers' gift would be detrimental to charities because it would mean that charities would risk losing contributions when it took them longer than anticipated to raise funds for a project.[185]

The New Jersey appellate court sided with the Adlers and ordered SAVE to return the Adlers' gift.[186] The court explained that SAVE had "wooed" the Adlers with "professionally designed brochures" containing pictures of puppies, kittens, and vulnerable-looking older animals, which

---

[177] *See id.* at 46.
[178] *Id.* at 48.
[179] *See id.* at 54.
[180] *See id.* at 48.
[181] *See id.* at 49.
[182] *See id.*
[183] *See id.*
[184] *See id.* at 56.
[185] *See id.* at 53, 57.
[186] *See id.* at 57.

the court referred to as "sophisticated weapons of persuasion."[187] The court found that SAVE had accepted the Adlers' gift, fully aware that the gift was expressly conditioned upon being used to fund rooms for large dogs and older cats in a new facility in Princeton.[188] "Equally clear," said the court, was SAVE's "unilateral decision" not to honor those conditions and to rededicate the Adlers' donation to a purpose unrelated to their express wishes.[189]

The court determined that, under the circumstances, it could reasonably be argued that returning the gift was the most lenient sanction SAVE might receive from a menu that included breach of fiduciary duty and civil fraud.[190] Regarding SAVE's request that the gift conditions be modified via *cy pres*, the court stated that it would be "a perversion of these equitable principles to permit a modern charity like SAVE to aggressively solicit funds from plaintiffs, accept plaintiffs' unequivocally expressed conditional gift, and thereafter disregard those conditions and rededicate the gift to a purpose materially unrelated to plaintiffs' original purpose . . . ."[191] The court also "categorically" rejected SAVE's argument that requiring return of the gift would be detrimental to charities, and concluded its opinion by explaining:

> We believe that responsible charities will welcome this decision because it will assure prospective donors that the expressed conditions of their gift will be legally enforceable. Thus, the trust relationship necessary to promote generous gift giving has been strengthened by the tenacious efforts of two people who love large dogs and older cats.[192]

There was no discussion in the court's opinion of the donor-standing issue, nor did the New Jersey Attorney General appear to be involved in the case.

---

[187] *Id.* at 54.
[188] *See id.* at 55.
[189] *Id.*
[190] *See id.*
[191] *Id.* at 56–57.
[192] *Id.* at 57.

c. Register v. Nature Conservancy

Register v. Nature Conservancy involved a $1 million gift to The Nature Conservancy (TNC).[193] The donor, Layton Register, had a strong relationship with TNC's Kentucky Chapter for approximately 15 years.[194] He physically assisted with certain of the organization's projects, he attended regular events, he served as a trustee, and he was even given the "volunteer of the year" award.[195] He also made over three hundred monetary donations to the organization.[196]

Register made the $1 million gift to TNC in 2002.[197] He alleged that he intended the funds to be permanently restricted to the purchase and management of a 735-acre parcel in Harrison County, Kentucky, known as Griffith Woods, which had been identified by TNC as "the best and most [intact] example of a bur oak, blue ash savannah in the inner Bluegrass."[198] TNC combined an internal loan with Register's donation and purchased Griffith Woods in late 2002 for approximately $2 million.[199]

TNC later sold Griffith Woods in two parts: one to the University of Kentucky and the other to the Kentucky Department of Fish and Wildlife Resources.[200] Rather than using the funds received from those sales (or at least the portion attributable to Register's $1 million gift) for the management of Griffith Woods, as Register alleged he intended, TNC used the proceeds for another project and to add to its general operating funds.[201]

Register objected, and after failing to resolve the issue with the current employees of TNC, he filed suit.[202] TNC argued that the gift was unrestricted because there was no written agreement.[203] TNC also argued in the alternative that once it used the $1 million gift to purchase Griffith Woods the purpose of the gift had been satisfied.[204]

---

[193] *See* Register v. Nature Conservancy, No. 5:13-77-DCR, 2014 WL 6909042 (E.D. Ky. Dec. 9, 2014).

[194] *See id.* at *1.

[195] *Id.*

[196] *See id.*

[197] *See id.*

[198] *Id.* (quoting Record Nos. 78–6, pp. 14; 78–7).

[199] *See id.*

[200] *See id.*

[201] *See id.* at *4.

[202] *See id.* at *1.

[203] *See id.* at *5.

[204] *See id.*

The U.S. District Court determined that, based on all the facts and circumstances, Register had made a restricted donation to TNC via an oral agreement and TNC was bound to abide by the restriction or return the donation.[205] In finding that Register's gift was restricted, the court explained, in part:

> At the time the donation was made, no one appeared to believe that the funds were not restricted to Griffith Woods. Time has passed, and Register is now faced with a number of TNC employees who were not privy to the discussions at the time of his donation. Nonetheless, they are bound by the restrictions made by Register and accepted by TNC. The recipient of a conditional gift is "not at liberty to ignore or materially modify the expressed purpose underlying the donor's decision to give."[206]

Factual questions remained, however, regarding the specific terms of the restricted donation and whether TNC had fully complied with those terms, and those questions were to be decided by a jury.[207] There never was a jury trial because TNC reportedly returned Register's gift to him.

There was no discussion in *Register* of the donor-standing issue, nor did the Kentucky Attorney General appear to be involved the case.

D. UTC's Settlor-Standing Provision

The UTC, contrary to the traditional common-law rule, expressly grants "the settlor of a charitable trust, among others," the right to sue to enforce the trust.[208] "Settlor" is defined in the UTC to mean a person "who creates, or contributes property to, a trust," and, "if more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion."[209] The comments to the UTC explain that the class of

---

[205] *See id.* at *1.

[206] *Id.* at *7–*8 ("TNC employees, at the time the gift was made, understood that the gift was restricted" and "Further, TNC initially designated the funds as restricted and continued to treat the funds as restricted in their own internal processes." (citations omitted)).

[207] *See id.* at *8–*9.

[208] UNIF. TR. CODE § 405(c) (amended 2003) (UNIF. L. COMM'N 2000) ("The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust."). The UTC also grants the settlor the right to maintain a proceeding to modify a charitable trust under the UTC's *cy pres* provision. *See id.* § 410(b).

[209] *Id. §* 103(14).

"others" who also have standing consists of a co-trustee, the state attorney general, and a person with a special interest.[210]

Some have asserted that the impetus for the UTC's grant of standing to the settlor of a charitable trust was the majority's holding in *Herzog*.[211] Recall that in *Herzog*, a foundation made a gift to a university subject to a clear restriction on its use and was denied standing to sue to enforce the restriction, which effectively allowed the university to ignore the restriction.[212] The Reporter for the UTC explained: "Concluding that the settlor often has the greatest, if not the only, practical interest in seeing that the trust is enforced, the [UTC] grants a settlor standing to enforce or to seek modification of a charitable trust."[213]

Discussed below are three issues that should be considered when evaluating the UTC's settlor-standing provision.

1. No Flood of Vexatious Lawsuits

Despite being approved by the ULC in 2000 and subsequently adopted in more than two-thirds of the states,[214] sometimes in expanded form,[215] there is not much case law regarding the UTC's settlor-standing provision.[216] Accordingly, granting standing to settlors of charitable trusts in the

---

[210] *See id.* §§ 405(c) cmt. & 413 cmt.

[211] *See* Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 GA. L. REV. 1183, 1213–16 (2007); *see also* Ronald Chester, *Grantor Standing to Enforce Charitable Transfers Under Section 405(c) of the Uniform Trust Code and Related Law: How Important Is It and How Extensive Should It Be?*, 37 REAL PROP. PROB. & TR. J. 611, 614 (2003) (noting that the UTC's settlor-standing provision "appears to be a concession to a contractarian view of trust law promulgated by one of the UTC drafters, Professor John Langbein of Yale Law School").

[212] *See* Herzog Found., Inc. v. Univ. of Bridgeport, 699 A.2d 995, 999 (Conn. 1997).

[213] David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 MO. L. REV. 143, 180 (2002).

[214] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03, Reps.' Note 23 (A.L.I. 2021); *Trust Code*: UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d [https://perma.cc/6G83-3Z5U].

[215] *See, e.g.*, WIS. STAT. ANN. § 701.0405(3) ("The settlor of a charitable trust or his or her designees, whether identified within or without the terms of the trust, or a charitable entity named in the trust instrument, or the attorney general, or a cotrustee, or such other person the court determines to have sufficient interest may maintain a proceeding to enforce the trust.").

[216] *See* Farina v. Janet Keenan Hous. Corp., 335 A.3d 537, 549 (D.C. 2025) (holding that an individual who advocated for creation of a charitable trust and briefly served on its board of directors did not have standing as a settlor under the UTC "for the simple reason

UTC does not appear to have resulted in a flood of vexatious litigation against charities, as those concerned about granting settlors standing may have feared.

In addition, a number of states that have not adopted the UTC have nonetheless adopted similar or more expansive settlor-standing provisions. For example, Iowa added a provision to its nonuniform trust code in 2008 that grants standing to enforce a charitable trust to the settlor, and also allows the settlor to designate persons—by name or by description, whether or not born at the time of such designation—to enforce the trust if the settlor is deceased or not competent.[217] Although this standing provision has been in effect in Iowa for more than seventeen years, no reported cases appear to have been filed by donors or their designees under this provision. In other words, this provision does not appear to have resulted in a flood of vexatious lawsuits against charitable donees in Iowa. The same can be said for the nonuniform settlor-standing provisions enacted in Delaware, Georgia, Indiana, Louisiana, and South Dakota.[218]

---

that he did not contribute any property to [the trust]"); Stone v. Wash. Reg'l Med. Ctr., 515 S.W.3d 104 (Ark. 2017) (holding that the heirs of a couple who donated real property in 1906 to a city for use as a hospital site lacked standing to sue the city and the medical center that later became the property owner under the UTC because the heirs were neither settlors nor parties with a special interest); Fam. Fed'n for World Peace v. Hyun Jin Moon, 129 A.3d 234, 245 n.17 (D.C. 2015) (suggesting that an entity, as successor-in-interest to the settlor of a charitable trust, could assert the settlor's right to enforce the trust).

[217] IOWA CODE § 633A.5106 ("A settlor may maintain an action to enforce a charitable trust established by the settlor and may designate, either in the agreement establishing the trust or in a written statement signed by the settlor and delivered to the trustee, a person or persons, by name or by description, whether or not born at the time of such designation, to enforce the charitable trust if the settlor is deceased or not competent.").

[218] DEL. CODE ANN. tit. 12, § 3303(b) ("A settlor may maintain an action to enforce a charitable or noncharitable trust under this section and may designate a person or persons, whether or not born at the time of such designation, to enforce a charitable or noncharitable trust under this section."); GA. CODE ANN. § 53-12-175 ("The settlor of a charitable trust may maintain a civil action to enforce the trust."); IND. CODE § 30-4-2-17(c) ("The settlor of a charitable trust, among other persons, may maintain a proceeding to enforce the charitable trust."); LA. STAT. ANN. § 9:2275.A ("Any of the following persons may petition the court [to enforce a] trust [for charitable purposes]: (1) [a] settlor or a universal successor of a settlor, (2) [a] trustee, (3) [a]n institutional beneficiary, (4) [a] person appointed in the trust instrument for this purpose, [and] (5) [t]he attorney general."); S.D. CODIFIED LAWS § 55-9-3 ("A grantor may maintain an action to enforce a charitable trust under this section and may designate in writing a person or persons, whether or not born at the time of such designation, to enforce a charitable trust under this section."). *But see* In re Lindmark Endowment for Corp.-Bus. Ethics Fund, No. A19-0229, 2019 WL 5546205, at

2. Elevation of Form Over Substance

In states that have adopted the UTC, some courts have declined to apply the UTC's settlor-standing provision to restricted gifts made to charities that are corporations. For example, in *Hardt v. Vitae Foundation*,[219] the Missouri Court of Appeals denied donors standing to sue to enforce gifts totaling more than $8 million that they made to a charitable corporation to be used to support pro-life causes in specific ways.[220] The court held that the UTC's settlor-standing provision, which had been adopted in Missouri, "on its face . . . applies only to trusts," and the donors had not claimed that their gifts were made in trust.[221] The court further held that the gifts were subject to UPMIFA, which also had been adopted in Missouri and, in contrast to the UTC, UPMIFA does not grant standing to donors.[222] The court acknowledged that "the two statutory schemes are inconsistent with respect to the enforcement of donor intent."[223]

The Supreme Court of Wyoming held similarly in *Courtenay C. & Lucy Patten Davis Foundation v. Colorado State University Research Foundation*,[224] stating:

> By statute [the UTC], standing to enforce an express charitable trust has been expanded in Wyoming beyond the common law rule of standing [but] [t]he same is not true of standing to enforce a charitable gift. No Wyoming statute has expanded the common law standing to enforce a charitable gift, and we agree with the majority rule that such standing should remain limited to the attorney general.[225]

The stark difference between the UTC and UPMIFA on the issue of donor standing makes categorization of a gift as either a charitable trust governed by the UTC or an institutional fund governed by UPMIFA very consequential. Had the donors in *Hardt* or *Davis Foundation* used gift instruments that stated (perhaps in boilerplate) that the gifted assets were to be held "in trust" by the donee, their gifts may well have been treated

---

*9 (Minn. Ct. App. Oct. 28, 2019) (unpublished) (Minnesota did not adopt the UTC's settlor-standing rule and follows the Restatement (Second) of Trusts § 391).

[219] 302 S.W.3d 133 (Mo. Ct. App. 2009).

[220] *See id.* at 139–40.

[221] *Id.* at 137.

[222] *See id.* at 138–39.

[223] *Id.* at 138.

[224] *See* 320 P.3d 1115 (Wyo. 2014).

[225] *Id.* at 1126 (citations omitted).

as charitable trusts under the UTC and they may have had standing to sue as a result—even though there would have been no substantive change in the gifts themselves.

The fact that the categorization of a gift is so consequential creates inequities. While sophisticated or well-represented donors can structure their gifts to fit within the UTC's settlor-standing provision, donors who are less sophisticated or without the resources to hire experienced advisors are not likely to even be aware of the existence of the UTC or UPMIFA, much less their differences regarding donor standing and the ability to possibly opt into the UTC's settlor-standing provision. And charities opposed to donor standing can structure their model gift agreements to try to ensure that the UTC's settlor-standing rule will not apply, and hope that the donor or the donor's advisors are not aware of or, in the flush of gift-giving, are not considering the donor-standing issue. Charities also have an advantage when disputes over donor standing arise in that they can support one another by filing amicus briefs opposing donor standing, as was done in *Herzog*.[226]

An additional concern in this context is that precisely when a restricted gift made in nontrust form (with no trust language) will be treated as a charitable trust subject to the UTC—or not—is uncertain and can vary depending on the jurisdiction or circumstances. The categorization of such a gift may depend on, for example: how gifts subject to restrictions have traditionally been labeled under state law (as charitable trusts or not); the organizational form of the donee (whether the donee is a charitable trust as opposed to a charitable corporation, association, or some other entity); or whether the gift was made under the terms of the donor's revocable trust agreement (a will substitute designed to avoid probate) rather than the donor's will.[227]

---

[226] *See supra notes* 35 and 36 and accompanying text.

[227] *See, e.g.*, St. Joseph's Hosp. v. Bennett, 22 N.E.2d 305, 308 (N.Y. 1939) ("[G]ifts to a charitable corporation, though subject to enforceable restrictions, do not create a trust in the legal sense."); *In re* Application of Coe Coll., 935 N.W.2d 581, 594 (Iowa 2019) ("Because we have construed the gift letter to impose restrictions on Coe College's ownership rights in the paintings, the letter may be deemed to establish a charitable trust even though it contains no magic trust language."); Hardt v. Vitae Foundation, 302 S.W.3d 133 (Mo. Ct. App. 2009) (declining to apply the UTC's settlor-standing rule to a charitable gift in part because the donors had not claimed that their gifts were made in trust); Reno v. Hurchalla, 283 So.3d 367 (Fla. Dist. Ct. App. 2019) (holding that a devise of real property to a university to be used for a specific purpose was a charitable trust subject to the UTC's *cy pres* provision because the devise was made under the decedent's revocable trust agreement, even though the donee was a charitable corporation and the devise contained

It obviously is arbitrary for one set of laws to apply to a restricted charitable gift made under a donor's revocable trust agreement, while another set of laws would apply to that same gift if it happened to be made under the donor's will. It also is arbitrary for one set of laws to apply to a restricted charitable gift that is nominally labeled a charitable trust under state law, while another set of laws would apply to that same gift in a jurisdiction that does not happen to label such gift as trusts. And it is similarly arbitrary for one set of laws to apply to a restricted charitable gift that was conveyed pursuant to a gift instrument containing, perhaps boilerplate, "in trust" language, while another set of laws would apply to that same gift absent inclusion of those magic words.

3. Outstanding Questions

The UTC's settlor-standing provision raises some important questions. These questions, as articulated in the *Restatement of the Law Charitable Nonprofit Organizations*, include (i) "whether courts should impose a materiality requirement on the amount at issue" (for example, whether a small or nonmaterial donor to an already established trust should have standing to bring an action), (ii) "whether the settlor's standing may be assigned, devised, or carried out by a personal representative," and (iii) "whether the settlor may designate others to enforce the trust."[228]

The American Law Institute considered these questions when it drafted the *Restatement (Third) of Trusts*, which, as previously noted, expressly provides in section 94 that a suit for the enforcement of a charitable trust may be maintained by the settlor.[229] The comments to section 94 explain that the settlor of a charitable trust has a "special interest" in the performance of the trust's charitable purposes.[230] The comments

---

no trust language); Farina v. Janet Keenan Hous. Corp., 335 A.3d 537 (D.C. 2025) (applying the UTC even though the case involved a charitable corporation rather than a charitable trust because the court had previously applied charitable trust principles to charitable corporations); *see also, e.g.,* RESTATEMENT (SECOND) OF TRUSTS § 397 cmt. e (A.L.I. 1959) ("If the owner of property devises or bequeaths it for charitable purposes, and not only does not name a trustee but also does not use language indicating that the property is to be held upon trust, nevertheless the disposition is valid . . . [and] . . . a charitable trust is created.").

[228] RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03 cmt. b(3)(A) (A.L.I. 2021).

[229] *See* RESTATEMENT (THIRD) OF TRUSTS § 94(2) (A.L.I. 2012).

[230] *Id.* § 94 cmts. g, g(3); *see also id.* § 94 Rep.'s Notes to cmt. g(3) (quoting Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426 (N.Y. App. Div. 2001) ("[T]here is no substitute for a donor, who has a 'special, personal interest in the enforcement of the gift restriction.'")).

further explain that this special-interest standing "is justified by society's interest in honoring reasonable expectations of settlors and the donor public and in enhancing enforcement of charitable trusts, in light of the limitations (of information and resources, plus other responsibilities and influences) inherent in Attorney General enforcement."[231]

The comments to section 94 also take the position, however, that settlor standing should be subject to three qualifications, which are intended to respond to concerns sometimes expressed on behalf of charities that broad enforcement rights and rights of potentially unlimited duration (when, for example, the settlor is a foundation) could undermine a charity's ability to operate effectively.[232] First, special-interest standing should "entitle[] the settlor to maintain a suit . . . only to enforce the restriction—that is, to restrain the trustee from diverting funds from the specified charitable purpose . . . [or] compel restitution for any such breach of trust."[233] Thus, "absent flagrant trustee misconduct that is tantamount to disregard or constructive abandonment of the settlor's purpose," standing should not be granted to the settlor regarding matters of ongoing management.[234] Second, "only a settlor who is a major contributor relative to the trust's total funding [should have] the required special interest."[235] And third, "absent [a] contrary provision or agreement, settlor standing [should be] 'personal,' although exercisable by an incapacitated settlor's personal fiduciary" (conservator, natural or legally appointed guardian, or the like, or an agent so empowered under a durable power of attorney) "or by a deceased settlor's personal representative during a reasonable period of estate administration."[236]

E. UPMIFA

The drafters of UPMIFA considered including a donor-standing provision in the act. The provision they considered would have granted the donor, the donor's guardian or conservator, and the personal representative of the donor's estate the right to enforce a restriction on the donor's gift, provided (i) the gift had a value that was either "greater than [$500,000] at the time the donor made the gift" or "greater than [5%] of the value of the assets of the institution at the time the donor begins the

---

[231] *Id. §* 94 cmt. g.
[232] *See id.* § 94 cmt. g(3) & Rep.'s Notes to cmt. g(3).
[233] *Id.* § 94 cmt. g(3).
[234] *Id.* § 94 cmt. g(1).
[235] *Id.* § 94 cmt. g(3).
[236] *Id.* § 94 cmts. d, g(3).

proceeding," and (ii) the right to enforce the restriction would end "[30 years] after the date of the last donation that was subject to the restriction," with the bracketed language being suggested amounts.[237] Ultimately, however, no standing provision was included in UPMIFA, and according to the Reporter for the act, the drafting committee concluded that "the issue of standing . . . [was] better left to other statutes and to the courts."[238]

The following subsections discuss how courts have interpreted UPMIFA's silence on the donor-standing issue and the trend to enact supplements to UPMIFA to grant donors and others standing, referred to as Donor Intent Protection Acts.

1. UPMIFA's Silence on Donor Standing

A few courts have interpreted UPMIFA's silence on the donor-standing issue to mean that donors of gifts governed by UPMIFA do not have standing to enforce those gifts, although their analyses have been somewhat muddled. For example, in *Hardt v. Vitae Foundation*, discussed in more detail in Part II.D.2 above, the Missouri Court of Appeals held that donors of gifts governed by UMPIFA do not have standing to enforce their gifts.[239] In support of this holding, the court noted: (i) UPMIFA, unlike the UTC, does not expressly grant donors standing, (ii) UPMIFA's Prefatory Note "explicitly acknowledges that 'the Attorney General continues to be the protector both of the donor's intent and of the public's interest in charitable funds,'" and (iii) the drafters of UPMIFA considered but ultimately declined to include a donor-standing provision in the act.[240] The court in *Hardt* also noted that, even if it were inclined to adopt the approach in *Smithers* and grant the donors standing under the common law, it would not be appropriate for it to grant standing to donors of gifts governed by UPMIFA given the legislature's adoption of that act.[241]

In *Seibach*, which is discussed in more detail in Part II.C.2 above, the Utah Court of Appeals held that UPMIFA did not preempt the traditional common-law no-donor-standing rule, and UPMIFA's silence on the donor-standing issue "appears to have been designed to accommodate"

---

[237] Brody, *supra* note 211, at 1217–19 (noting that the intent of this provision was "to allow the donor of a significant gift to enforce the terms of the gift, but not give standing to every donor.").

[238] Susan N. Gary, *Charities, Endowments, and Donor Intent: The Uniform Prudent Management of Institutional Funds Act*, 41 GA. L. REV. 1277, 1331 (2007).

[239] *See* Hardt v. Vitae Found., 302 S.W.3d 133, 139–40 (Mo. Ct. App. 2009).

[240] *Id.* at 138–39.

[241] *See id.* at 139–40.

that rule.[242] Notably, however, while the court in *Siebach* followed the traditional rule, it implied that it would be open to considering arguments as to why Utah would be "ill-served" in continuing to apply that rule (the donors in *Siebach* failed to make any such arguments, which would be relatively easy to do given *Smithers*, *L.B. Research*, *Family Federation for World Peace*, and the other sources discussed in this Article).[243]

Utah's approach to UPMIFA and the donor-standing issue is more sensible: UPMIFA does not address the donor-standing issue, so the donor-standing rule applied in the relevant jurisdiction under the common law—whatever that may be—should apply, unless some other statute applies. In other words, UPMIFA's silence should not be interpreted as an affirmative denial of donor standing, particularly given that the drafting committee concluded that "the issue of standing . . . [was] better left to other statutes and to the courts,"[244] and the law on donor standing is evolving.[245]

More recently, in *In re Robert Keeler Maintenance Fund,*[246] the New Hampshire Supreme Court refused to consider whether the personal representative of a deceased donor's estate might have standing as a party with a "special interest" to intervene in proceeding involving a bequest made by the deceased donor.[247] The bequest had been made to Dartmouth College to be used "for the sole purpose of upgrading and maintaining its golf course."[248] Some years later, when Dartmouth closed its golf course, it petitioned the court under New Hampshire's version of UPMIFA to modify the restrictions on the bequest to allow the money to be used for various other golf-related purposes at Dartmouth.[249]

---

[242] Siebach v. Brigham Young Univ., 361 P.3d 130, 137 (Utah Ct. App. 2015). The court noted that the lower court "may have overstated the Legislature's intent when it concluded that UPMIFA 'implicitly adopted the common law rule'" because UPMIFA is silent on the question of donor standing. *Id.* at 136–37.

[243] *See id.* at 135.

[244] *See supra* note 238 and accompanying text.

[245] A donor could potentially avoid the donor-standing analysis under UPMIFA by simply not referencing that statute, as in *Pearson*, where the donor of a restricted scholarship fund to a seminary was found to have standing based on an alleged contract (the gift agreement) that the seminary allegedly breached. *See* Pearson v. Garrett-Evangelical Theological Seminary, 790 F. Supp. 2d 759, 762–66 (N.D. Ill. 2011).

[246] 306 A.3d 795 (N.H. 2023).

[247] *See* id. at 799–800.

[248] *Id.* at 797.

[249] *See id.* at 798. The New Hampshire Attorney General assented to the petition. *Id*.

In refusing to even consider whether the donor's personal representative might have special-interest standing, the court said that it was unable to find any case in which a court had considered whether a deceased donor's estate had a special interest to intervene in a proceeding brought under UPMIFA.[250] Although the court had recognized the special-interest standing doctrine in an earlier case, it distinguished that case as having involved an "ongoing charitable trust," while *Keeler* involved a "completed charitable gift" under UPMIFA.[251]

The scope of the court's holding in *Keeler*—that is, whether anyone could ever be granted special-interest standing to enforce a charitable gift governed by UPMIFA in New Hampshire—is unclear. The holding is also odd and confusing because, traditionally, under the common law (which courts typically look to when analyzing standing under UPMIFA), charitable gifts and charitable trusts were subject to the same standing rules.[252] Moreover, the court did not point to any substantive distinction for standing purposes between an "ongoing charitable trust" and a "completed charitable gift" subject to restrictions on its use.[253]

Notably, had the deceased donor's will in *Keeler* included language, perhaps boilerplate, specifying that the gift to Dartmouth was to be held "in trust," or had the gift been made under the terms of the donor's revocable trust agreement (a will substitute) rather than the donor's will, the court might well have determined that the case involved a charitable

---

[250] *See id.* at 800.

[251] *See id.*

[252] *See, e.g.*, RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.03 cmt. b(3)(B) (A.L.I. 2021) (stating that under the common law, courts generally applied the law of trusts to charitable gifts made to charities established in the corporate or other nontrust form, reasoning that charitable gifts are held in trust by the corporate recipient); Herzog Found., Inc. v. Univ. of Bridgeport, 699 A.2d 995, 997 n.2 (Conn. 1997) ("The law governing the enforcement of charitable gifts is derived from the law of charitable trusts."); Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 VAND. L. REV. 1093, 1110 (2005) ("[A] restricted gift to a charitable corporation places the directors in the role of trustee with respect to those funds so that the directors operate under the same constraints with respect to a restricted gift as would the trustees of a trust.").

[253] *See infra* Part III.B (explaining that the difference between the UTC and UPMIFA approaches to donor standing appears to be attributable to the different attitudes of and pressures placed on their drafting committees rather than any substantive difference between the gifts governed by each statute).

trust.[254] In such a case, the court presumably would have considered whether the donor's personal representative had special-interest standing, given the earlier case noted above and the fact that New Hampshire had adopted a version of the UTC's settlor-standing provision, which grants the settlor of a charitable trust, "among others," standing.[255] Thus, just as in *Hardt* and *Davis Foundation*, *Keeler* illustrates that the form a gift takes (whether it is characterized as an institutional fund under UPMIFA or a charitable trust under the UTC) can have real—and arbitrary—consequences.

2. Donor Intent Protection Acts

When Iowa adopted its version of UPMIFA in 2008, it included provisions granting donors and their designees standing.[256] Under those provisions, a donor whose aggregate gifts to an endowment fund exceed $100,000 may maintain an action to enforce restrictions regarding the purposes of the fund that were established by the donor in a gift instrument.[257] The donor can also designate one or more persons—by name or description, and whether or not born at the time of such designation—to enforce such purpose restrictions if the donor is judicially declared incompetent and for fifty years beginning on the date of the donor's death.[258] Although these standing provisions have been in effect in Iowa for more than seventeen years, no reported cases appear to have been filed by donors or their designees under these provisions. In other words, these provisions do not appear to have resulted in a flood of vexatious lawsuits against charitable donees in Iowa.

The Philanthropy Roundtable reports that, in 2023, it introduced a new model bill—the Donor Intent Protection Act (or DIPA)—in the states.[259] The Philanthropy Roundtable explains: "This legislation provides a legal

---

[254] *See, e.g.,* Reno v. Hurchalla, 283 So.3d 367, 371 (Fla. Dist. Ct. App. 2019) (applying the UTC's *cy pres* provision to a bequest made in nontrust form to the University of Miami, a charitable corporation, presumably because the bequest was made under the decedent's revocable trust agreement rather than her will).

[255] *See* N.H. REV. STAT. ANN. § 564-B:4-405(c); *supra* note 210 and accompanying text (explaining that the class of "others" referenced in the UTC's settlor-standing provision includes parties with a special interest).

[256] *See* IOWA CODE § 540A.106(5) (2008).

[257] *See id.* § 540A.106(5)(a).

[258] *See id.* § 540A.106(5)(b)–(c).

[259] *See* Megan Schmidt, *Understanding the Donor Intent Protection Act*, PHILANTHROPY ROUNDTABLE (May 8, 2024), https://bit.ly/44onPZl [https://perma.cc/ZSG5-EWJK].

pathway for the enforcement of written endowment agreements, which encourages giving and benefits donors, charities and the many individuals served by nonprofit organizations."[260] The donor-standing provisions in Iowa's version of UPMIFA can be viewed as precursors to DIPA and the versions of that act that have recently been enacted in some states as a supplement to UPMIFA.

Kansas, Kentucky, Georgia, and Montana have each recently enacted a version of DIPA.[261] Although the specifics vary, under these acts, if an endowment fund is subject to a donor-imposed restriction, the donor and certain other persons are granted standing to sue the donee for violation of the restriction in certain circumstances.[262] In general:

- in Kansas, an individual donor or that donor's legal representative (the administrator or executor of the individual's estate, the surviving spouse, or any living named individual designated in the endowment agreement) may file a complaint within two years after discovery of the violation but not more than forty years after the date of the endowment agreement that established the endowment fund;[263]
- in Kentucky, an individual donor or that donor's legal representative (the administrator or executor of the individual's estate, the surviving spouse, or any living named individual designated in the endowment agreement) may bring an action within four years after discovery of a breach of the endowment agreement;[264]
- in Georgia, a donor (whether an individual or entity), the donor's lineal descendants (children, grandchildren, or great-grandchildren), or the donor's legal representative (which term is undefined) may bring an action within four years after discovery of a breach of the endowment agreement;[265] and
- in Montana, a donor (whether an individual or entity) or the donor's legal representative (the administrator or executor of the donor's estate, the surviving spouse, or a person designated in the

---

[260] *Id.*

[261] *See* KAN. STAT. ANN. §§ 58-3621–3625; KY. REV. STAT. ANN. § 273.155; GA. CODE ANN. §§ 14-3-190 to -192; MONT. CODE ANN. §§ 72-30-301 to -303 (West).

[262] *See* KAN. STAT. ANN. §§ 58-3621–3625; KY. REV. STAT. ANN. § 273.155; GA. CODE ANN. §§ 14-3-190 to -192; MONT. CODE ANN. §§ 72-30-301 to -303 (West)

[263] *See* KAN. STAT. ANN. §§ 58-3621–3625.

[264] *See* KY. REV. STAT. ANN. § 273.155.

[265] *See* GA. CODE ANN. §§ 14-3-190 to -192.

> endowment agreement) may file a complaint within three years after discovery of a breach of the endowment agreement.[266]

These acts do not allow the plaintiff to seek an award of damages or the return of the donated funds to the donor, the donor's legal representative, the donor's estate, or the donor's lineal descendants, as the case may be.[267] Remedies for a violation of a donor-imposed restriction must be consistent with the donor's intent or the charitable purposes expressed in the endowment agreement.[268] Montana's DIPA explains that the act "is necessary to provide legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization."[269] Other states are considering enacting similar acts.[270]

Although not technically a DIPA or a supplement to UPMIFA, North Carolina included expansive donor-standing provisions for both charitable trusts and charitable gifts in its version of the UTC, effective in 2006.[271] Those provisions provide that (i) "the settlor . . . , the Attorney General, the district attorney, a beneficiary, or any other interested party may maintain a proceeding to enforce a charitable trust,"[272] and (ii) "the donor . . . , the Attorney General, the district attorney, or any other interested party may maintain a proceeding to enforce [a charitable] gift."[273] Accordingly, it appears that in North Carolina, the donor of any charitable gift—whether characterized as a charitable trust under the UTC, an institutional fund

---

[266] *See* MONT. CODE ANN. §§ 72-30-301 to -303.

[267] *See* KAN. STAT. ANN. §§ 58-3621–3625; KY. REV. STAT. ANN. § 273.155; GA. CODE ANN. §§ 14-3-190 to -192; MONT. CODE ANN. § 72-30-301 to -303.

[268] *See* KAN. STAT. ANN. §§ 58-3621–3625; KY. REV. STAT. ANN. § 273.155; GA. CODE ANN. §§ 14-3-190 to -192; MONT. CODE ANN. §§ 72-30-301 to -303.

[269] MONT. CODE ANN. § 72-30-301.

[270] *See, e.g.*, S. Res. 844, 60th Leg., 1st Sess. (Okla. 2025), https://www.oklegislature.gov/BillInfo.aspx?Bill=SB844&Session=2500 [https://perma.cc/9U4E-XZ2S]; Laura Hancock, *Ohio Legislature Again Rejects Proposal to Allow Donors to Sue over College Endowments*, OHIO POLITICS (June 24, 2025, 05:30 EDT), https://www.cleveland.com/open/2025/06/ohio-legislature-again-rejects-proposal-to-allow-donors-to-sue-over-college-endowments.html [https://perma.cc/JQ57-TTN4]; Norah White, *House Lawmakers Kickstart Bill for Next Year that Looks to Protect Charity Donations*, COMMUNITY NEWS SERVICE (May 15, 2024), https://vtcommunitynews.org/2024/05/15/house-lawmakers-kickstart-bill-for-next-year-that-looks-to-protect-charity-donations/ [https://perma.cc/V4DW-HC8H].

[271] *See* N.C. GEN. STAT. § 36C-4-405.1.

[272] *Id.* § 36C-4-405.1(a).

[273] *Id.* § 36C-4-405.1(b); *see also id*. § 36C-4-405(e) (defining "gift" to include "both inter vivos and testamentary gifts, grants, and other transfers").

under UPMIFA, or a gift that falls outside the purview of those statutes—will have standing to sue to enforce the gift.

Although the North Carolina donor-standing provisions noted above have been in effect for more than twenty years, there has not been a flood of vexatious lawsuits filed by settlors of charitable trusts, donors of charitable gifts, or "other interested parties." In fact, there appears to have been only one case involving these statutory provisions.[274] That case involved a suit filed by a grandson of the founder of a North Carolina corporation operating as a private charitable foundation.[275] The grandson, who also was one of the five directors of the foundation, alleged, among other things, that the foundation was being operated in a manner contrary to the founder's intent.[276] Notably, the North Carolina Attorney General filed a brief opposing the defendant directors' motions to dismiss the case and in support of North Carolina's expansive standing provisions.[277]

Enactment of the donor-standing statutes in Iowa and North Carolina, as well as versions of a DIPA in Kansas, Kentucky, Georgia, and Montana and possibly additional states moving forward, signals support for granting donors and certain others standing to sue to enforce restrictions on charitable gifts. It also adds to the complexity of the law in the donor-standing context.

F. Confusion in the Courts

Two fairly recent cases, discussed in turn below, illustrate how the new, much more complex landscape of laws in this context is causing confusion in the courts and leading to unhelpful opinions.

1. In re Estate of Moritz v. Ohio State University

In re Moritz v. Ohio State University involved Michael E. Moritz's gift of $30.3 million to The Ohio State University (the University) and the

---

[274] *See* Finley v. Brown, No. 17 CVS 2812, 2017 WL 3841645 (N.C. Super. Ct. Sept. 1, 2017) (unpublished).

[275] *See id.* at *1–*2.

[276] *See id.* The grandson also asserted a claim derivatively on behalf of the foundation against his co-directors for alleged breach of fiduciary duty, gross mismanagement, unjust enrichment, and removal of the directors. *See id.* at *1.

[277] *See* N.C. Attorney General's Brief in Opposition to Motions to Dismiss at 2, Finley v. Brown, No. 17 CVS 2812 (N.C. Super. Ct. May 30, 2017), 2017 WL 5195480 ("Derivative suits are a valuable tool to fight improper practices by directors of nonprofit corporations" and "[p]laintiff's claims should be adjudicated on their merits").

University's College of Law, subject to various restrictions on its use.[278] Some years after Moritz's death, his adult son unsuccessfully sought standing to sue the University for its alleged failure to comply with the restrictions on the gift.[279] The son sought to reopen Moritz's estate and be appointed as his personal representative so that he could seek to enforce the terms of Moritz's gift in that capacity.[280] The University and the Ohio Attorney General (the Ohio AG) objected to granting standing to the son.[281]

An Ohio appellate court sided with the University and the Ohio AG, explaining that "the Ohio AG has exclusive authority . . . to enforce the terms of charitable trusts."[282] That is not, however, an accurate statement of the law. First, the state statute referenced by the court, which addresses the Ohio AG's enforcement powers regarding charitable trusts, does not state that such powers are "exclusive."[283] Second, at the time of the case, Ohio had adopted the UTC's settlor-standing provision, which expressly grants "the settlor of a charitable trust, among others," the right to sue to enforce the trust, and the comments to the UTC explain that the class of "others" consists of a co-trustee, the state attorney general, and a person with a special interest.[284] Accordingly, contrary to the court's broad pronouncement in *Moritz*, the Ohio AG does not have the exclusive authority in the state to enforce the terms of charitable trusts.[285] As the reporter for the *Restatement (Third) of Trusts* explained, despite "careless" language in opinions and literature, "it has long been clear that attorney-general standing to enforce charitable trusts is not exclusive."[286]

The *Moritz* court also failed to address whether the gift at issue should be governed by the common law, the UTC, or UPMIFA, making its analysis of the standing issue even more confusing and unhelpful. And to add to the confusion, a gift might qualify as both a charitable trust under the UTC and an institutional fund under UPMIFA, in which case it would raise

---

[278] *See In re* Est. of Moritz v. Ohio State Univ., No. 19 CAF 11 0060, 2020 WL 6193955 at *1 (Ohio Ct. App. Oct. 20, 2020).

[279] *See id.* at *1–*2, *4–*5.

[280] *See id.*

[281] *See id.* at *1.

[282] *Id.* at *4.

[283] *See id.* (citing OHIO REV. CODE ANN. § 109.24).

[284] *See* OHIO REV. CODE ANN. § 5804.05(C) (West 2007); UNIF. TR. CODE §§ 405(c) cmt., 413 cmt. (UNIF. L. COMM'N amended 2003).

[285] For another more recent case in which the court made this same error, see Kromer v. Arthritis Found., Inc., No. 24AP-360, 2025 WL 658033 (Ohio Ct. App. 2025).

[286] RESTATEMENT (THIRD) OF TRUSTS § 94(2) & Rep.'s Notes cmt. e (A.L.I. 2012).

the additional conundrum of which statute should apply for donor-standing purposes.[287]

One of the attorneys for the son in *Moritz* pointed out that the Ohio AG is legal advisor to the state's universities and owes a fiduciary duty to them.[288] Implicit in this assertion is that the Ohio AG may have had a conflict of interest in *Moritz*. The attorney for the son also noted that the Ohio AG, an elected official, "may decide that, as long as a state university continues to spend endowed funds to further the university's educational mission, there is little to be gained by devoting valuable resources to force the school to spend endowed funds exclusively as specified in an endowment agreement."[289] In the words of the *Smithers* court, the interests of the Ohio AG were "not necessarily congruent" with the interests of the donor.[290]

2. Herbst v. University of Colorado Foundation

In *Herbst v. University of Colorado Foundation*, a Colorado appellate court held that a donor to both the University of Colorado Foundation (the Foundation) and the University of Colorado (CU) did not have standing to sue the Foundation or CU's Board of Directors as either a donor or a party with a special interest.[291] The donor objected to the Foundation's alleged mismanagement of its investments and asserted that the Foundation had violated UPMIFA and breached its fiduciary duty.[292]

---

[287] For example, if a fund is donated to a charitable corporation to be held "in trust," with the income to be used for a specified charitable purpose, the gift may qualify as both a charitable trust under the UTC and an institutional fund under UPMIFA. *See* UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT § 2 cmt. (6) (2006) ("trusts managed by charities can be institutional funds.").

[288] *See* David Marburger, *SB 135: Necessary Improvements in Endowment Management*, 32 OHIO PROB. L.J. 4, 5 (Mar./Apr. 2022).

[289] Marburger, *supra* note 288, at 6.

[290] Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426, 435 (N.Y. App. Div. 2001).

[291] *See* Herbst v. Univ. of Colo. Found., 513 P.3d 388, 391-94 (Colo. App. 2022). Although the donor was also a "Trustee Emeritus" of the Foundation, the court noted that it was not aware of any authority supporting the notion that a former trustee or one holding an honorary position has standing. *See id.* at 394 n.8. However, in 2023, the California Supreme Court held that a plaintiff who lost a nonprofit director position after the start of lawsuit did not lose standing under the state's director enforcement statutes. *See* Turner v. Victoria, 532 P.3d 1101, 1119 (Cal. 2023). The court also noted that the Restatement of the Law, Nonprofit Charitable Organizations "'goes further,' allowing some former board members to bring a claim." *Id.* at 1116.

[292] *See Herbst*, 513 P.3d at 390–91.

In denying the donor standing, the court explained that "under [UPMIFA], as at common law, only the Attorney General or a person with a special interest in a charitable trust has standing to sue for mismanagement," and the donor did not have the requisite special interest.[293] The court also stated that "[t]his case involves the management of a charitable trust" and cited various common-law sources of "the law of charitable trusts" in support of its holding.[294] Regarding Herbst's status as a donor, the court explained that "[w]here a donor isn't seeking to enforce some condition attendant to his donation (with an express reservation of the right to do so) or claiming to have been misled into making the donation, his mere status as a donor confers upon him no special status vis-a-vis the trust."[295]

Noticeably absent from the court's "law of charitable trusts" analysis was that Colorado had adopted the UTC, including the provision granting "the settlor of a charitable trust, among others" standing to sue to enforce the trust.[296] Similar to the court in *Moritz*, the court in *Herbst* seemed unaware that Colorado had adopted the UTC's settlor-standing provision and that the common law of charitable trusts continues to apply in the state only to the extent it has not been displaced by the UTC or another statute.[297] Also similar to the court in *Moritz*, the court in *Herbst* failed to address whether the gifts at issue should be governed by the common law, the UTC, or UPMIFA, making its analysis even more confusing and unhelpful.[298] Had the court determined that the UTC was the applicable law, and acknowledged that Colorado had adopted the UTC's settlor-

---

[293] *Id.* at 391.

[294] *See id.*

[295] *Id.* at 393 (citing, in part, to *Siebach*).

[296] *See generally id.*; COLO. REV. STAT. § 15-5-405(3).

[297] *See generally Herbst*, 513 P.3d 388; COLO REV. STAT. § 15-5-106 ("Unless displaced by the particular provisions of [the Colorado Uniform Trust Code], the common law of trusts and principles of law and equity, and other statutes of this state, supplement its provisions."); *see also* OHIO REV. CODE ANN. § 5801.05 ("The common law of trusts and principles of equity continue to apply in this state, except to the extent modified by [the Ohio Trust Code] or another section of the Revised Code.").

[298] *See generally Herbst*, 513 P.3d 388. Some donors appear to be as confused as the courts. See *In re* Atwater Kent Museum, 329 A.3d 128 (Pa. Commw. Ct. 2024), in which the court held that a donor of artifacts to a museum did not have standing to object to the museum's proposed deviation from the terms of its governing trust indenture. The donor unsuccessfully argued that it had standing as a "beneficiary" of the charitable trust and failed to argue that it had standing as a "settlor" under Pennsylvania's version of the UTC, which expressly grants a settlor standing. *See id.* at 137–38, 142, 144; 20 PA. STAT. AND CONS. STAT. ANN. § 7735 (West).

standing provision, Herbst might have had standing, but only with regard to the portion of the Foundation's property attributable to his contributions.[299]

III. HOW WE GOT TO THIS PLACE

The discussion above of the Restatements, treatises, case law, the UTC, UPMIFA, and DIPAs and other nonuniform statutes illustrates the increasing lack of coherence in the law addressing donor standing and the various negative consequences that flow from this lack of coherence. The discussion above also illustrates that the trend is in favor of granting standing to donors and certain others as donors' representatives, although this trend is occurring in a haphazard way.

Before turning to a discussion of where we should go from here, it is helpful to reflect on how we got to this place. There are various factors that led the law of donor standing down this path.

A. Fragmentation of the Law Through Codification

One of the primary reasons for the current lack of coherence in the law governing donor standing is the fragmentation of the law governing charitable gifts that occurred when many states adopted the UTC and UPMIFA.[300] Each of the UTC and UPMIFA applies a different set of rules to a different category of charitable gifts. The UTC codifies trust law and thus applies only to charitable gifts deemed to be "charitable trusts," while UPMIFA applies only to charitable gifts deemed to be "institutional funds" held by "institutions" and not to "program-related assets."[301]

The provision in the UTC granting settlors standing thus applies only to charitable gifts deemed to be charitable trusts, while UPMIFA's silence on the issue of standing, which some courts have interpreted to mean that the traditional common-law no-donor-standing rule should apply, is relevant only to charitable gifts deemed to be institutional funds but not program-related assets.[302] In each case, the failure of the uniform act to address donor-standing for charitable gifts across the board was due to the act's limited scope, rather than a decision by its drafters that gifts that fall

---

[299] *See supra* note 209 and accompanying text.

[300] *See* Nancy A. McLaughlin, *Laws Governing Restrictions on Charitable Gifts: The Consequences of Codification*, 70 UCLA L. REV. DISC. 424, 426–28 (2023).

[301] *See id.* at 427–28.

[302] *See id.* at 428.

outside the act's purview are somehow substantively different and thus should be subject to a different donor-standing rule.[303]

Further complicating matters is that charitable gifts that do not fall within the purview of the UTC or UPMIFA are governed by the common law or a varied collection of nonuniform statutes.[304] Accordingly, we find ourselves now, in any given jurisdiction, with distinct laws that govern different categories of charitable gifts and address donor standing in different ways.

B. Uniform Law Drafting Process

The stark difference between the UTC and UPMIFA on the issue of donor standing appears to be attributable to the different attitudes of and pressures placed on their drafting committees rather than any substantive difference between the gifts governed by each statute.[305] UPMIFA applies only in the charitable context, while the UTC codifies trust law generally.[306] Those involved in the drafting of UPMIFA were focused on the laws relating to charities, while those involved in the drafting of UTC appear to have been focused primarily on the laws governing private trusts.[307] Accordingly, the difference between the two uniform law approaches to donor standing may well be attributable to the involvement of more representatives of charities, who often resist donor standing, in the drafting of UPMIFA than in the drafting of the UTC.[308] And given the UTC's focus on private trusts, those involved in the drafting of the UTC may have been more sympathetic to the plight of charitable donors when it comes to enforcement of their gifts.[309]

---

[303] *Id.* at 432. In an early case, the Supreme Court of Minnesota recognized that the law governing donor standing should be the same regardless of whether a charitable gift is characterized as a restricted gift or a charitable trust:

> Fundamentally and in substance, there is very little practical difference insofar as the beneficiaries are concerned between a gift on condition and a gift by way of charitable trust. Both accomplish the same objectives. Certainly there is little reason to make a distinction between the two in respect to the question of the proper party to enforce compliance with the terms of the conveying instrument. Logically the same general principles should prevail as to both.

Longcor v. City of Red Wing, 289 N.W. 570, 574 (Minn. 1940).

[304] *See* McLaughlin, *supra* note 300, at 428.

[305] *See id.* at 433.

[306] *Id*.

[307] *Id.*

[308] *Id.* at 434.

[309] For discussion of why the UTC and UPMIFA differ in their treatment of other charitable issues, see *id*. at 433.

C. Normalization of Donor Standing

The trend in the case law and in state legislation in favor of donor standing is due in part to the gradual normalization of the concept. This normalization process arguably began when the Uniform Law Commission approved the UTC with its settlor-standing provision in the summer of 2000.[310] Then less than a year later, the court in *Smithers* held that donors of charitable gifts in New York and their personal representatives have standing to sue to enforce the terms of such gifts.[311] Then state after state that adopted the UTC adopted its settlor-standing provision, with few exceptions.[312] And the normalization process was further helped along by the American Law Institute's publication of the *Restatement (Third) of Trusts* in 2012, which provides that the settlor of a charitable trust has standing to enforce the trust as a party with a special interest.[313]

D. Factors Supporting Donor Standing

There also are a variety of factors that support granting donors standing, many of which have been highlighted by the courts.[314] These factors are summarized below.

---

[310] *See supra* note 5 and accompanying text.

[311] *See* Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426, 435 (N.Y. App. Div. 2001).

[312] *See Enactment History*, *supra* note 6.

[313] *See* RESTATEMENT (THIRD) OF TRUSTS § 94(2), cmt. g(3) (A.L.I. 2012).

[314] Commentators have argued in favor of some form of donor standing for decades. *See, e.g.*, Kenneth L. Karst, *The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility*, 73 HARV. L. REV. 433 (1960); Henry B. Hansmann, *Reforming Nonprofit Corporation Law*, 129 U. PA. L. REV. 497 (1981); Lisa Loftin, *Protecting the Charitable Investor: A Rationale for Donor Enforcement of Restricted Gifts*, 8 B.U. PUB. INT. L.J. 361 (1999); Chester, *supra* note 211; Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 VAND. L. REV. 1093 (2005); Joshua B. Nix, *The Things People Do When No One Is Looking: An Argument for the Expansion of Standing in the Charitable Sector*, 14 U. MIAMI BUS. L. REV. 147 (2005); Craig Kaufman, *Sympathy for the Devil's Advocate: Assisting the Attorney General When Charitable Matters Reach the Courtroom*, 40 REAL PROP. PROB. & TR. J. 705 (2006); Brody, *supra* note 211; Reid Kress Weisbord, *Reservations About Donor Standing: Should the Law Allow Charitable Donors to Reserve the Right to Enforce a Gift Restriction?*, 42 REAL PROP. PROB. & TR. J. 245 (2007); Edward C. Halbach, Jr., *Standing to Enforce Trusts: Renewing and Expanding Professor Gaubatz's 1984 Discussion of Settlor Enforcement*, 62 U. MIAMI L. REV. 713 (2008)*; see also* Mary Grace Blasko, Curt S. Crossley & David Lloyd, *Standing to Sue in the Charitable Sector*, 28 U.S.F. L. REV. 37, 82 (1993) ("Considering the influence and wealth possessed by charities, the vulnerability of such entities to abuse, and the lack of interested investors to police operations, a reasonable argument can

1. Deficiencies in Attorney General Oversight

Under the common law, State Attorneys General, pursuant to their *parens patriae* power, have primary responsibility for supervising charities and enforcing charitable gifts.[315] However, the deficiencies in Attorney General oversight in the charitable sector are well known. Whether due to lack of resources, lack of expertise, other more pressing priorities, or even politics, only the worst abuses in the charitable sector tend to receive attention, and many go undetected or unaddressed.[316] As one set of commentators explained:

> Most state attorneys general assign few (if any) lawyers to supervision of charities. Unless an alleged breach of trust obtains enough media attention to achieve political salience, actual scrutiny . . . by the attorney general is unlikely . . . . In the usual case there simply is not enough of a political payoff to the attorney general to warrant the diversion of resources from other initiatives.[317]

---

be made to strengthen enforcement by allowing other categories of persons to sue."); Robert H. Sitkoff, *An Agency Costs Theory of Trust Law*, 89 CORN. L. REV. 621, 667–69 (2004) (arguing that settlor standing can reduce agency costs and this analysis may be relevant to donor standing in the charitable context).

[315] RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 5.01 cmt. a (A.L.I. 2021) ("The central role of the state attorney general in the regulation of charities developed as part of the early English common law.").

[316] *See* Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. HAW. L. REV. 593, 622–23 (1999); *see also* Jonathan Klick & Robert H. Sitkoff, *Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hershey's Kiss-Off*, 108 COLUM. L. REV. 749, 781–82 (2008).

[317] Klick & Sitkoff, *supra* note 316, at 781-82 (pointing out the "mirror-image" concern—"that when the attorney general does intervene . . . he or she will be tempted to promote his or her political interests at the expense of the [donor]'s charitable purpose."); *see also* RESTATEMENT (THIRD) TRUSTS § 94 cmt. g (A.L.I. 2012) (noting "the limitations (of information and resources, plus other responsibilities and influences) inherent in Attorney General enforcement."); DAVID BIEMESDERFER & ANDRAS KOSARAS, THE VALUE OF RELATIONSHIPS BETWEEN STATE CHARITY REGULATORS & PHILANTHROPY 3 (Council on Founds. 2006) ("It is widely acknowledged that state regulators lack adequate resources to enforce effectively the laws that regulate charities."); Goodwin, *supra* note 314, at 1138 (explaining that in New York, which has a rare robust charities division in its Attorney General's office, "even if the office had three times the staff, it would still be overburdened. There are so many not-for-profit organizations in New York that the staff cannot review all the annual reports they receive."). One former Attorney General explained that "in a great majority of states, . . . Attorney General offices are not staffed to monitor how each

The courts also have repeatedly noted the deficiencies in Attorney General oversight and the need to supplement the Attorney General's enforcement powers when it comes to charitable gifts. For example, in *L.B. Research*, the court explained that "[t]he Attorney General may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact."[318] The court further explained that the various responsibilities of the Attorney General's office may "tend to make it burdensome for him to institute legal actions except in situations of serious public detriment," and concluded that the administration of charitable gifts "stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available."[319]

In *Family Federation for World Peace*, the court explained that "[t]he exponential expansion of charitable institutions justifies a reasonable relaxation of any rule limiting enforcement to a busy Attorney General."[320] And in each of *Brooks*, *Adler*, and *Register*, the courts allowed the donors to sue to enforce their charitable gifts and the relevant Attorneys General were absent from the proceedings, signaling both the need for and the courts' openness to donors engaging in self-help in this context.[321]

In *Smithers*, the court explained that "[t]he donor of a charitable gift is in a better position than the Attorney General to be vigilant and . . . enforce his or her own intent."[322] The court pointed out that it was Mrs. Smithers who uncovered the donee hospital's misuse of her late husband's charitable gift, not the New York Attorney General.[323] In *Middlebury*, the court made a similar point, noting that the college had not

---

charity administers its restricted gifts, leaving the charities for the most part on the honor system." David L. Wilkinson, *Donor Intent and the Failure of the Honor System*, THE ADVOCATE, Oct. 2010, at 51. The deficiencies in attorney general oversight are also not new. *See, e.g.*, George Gleason Bogert, *Proposed Legislation Regarding State Supervision of Charities*, 52 MICH. L. REV. 633, 634–36 (1954) (detailing why the attorney general "has proved a poor guardian of the welfare of charitable gifts").

[318] L.B. Rsch. & Educ. Found. v. UCLA Found., 29 Cal. Rptr. 3d 710, 717 (Cal. Ct. App. 2005).

[319] *Id.*

[320] Fam. Fed'n for World Peace v. Hyun Jin Moon, 129 A.3d 234, 244 (D.C. 2015); *see also* City of Paterson v. Paterson Gen. Hosp. 235 A.2d 487, 528 (N.J. Super. Ct. Ch. Div. 1967) ("[w]hile public supervision of the administration of charities remains inadequate, a liberal rule as to the standing of a plaintiff to complain about the administration of a charitable trust or charitable corporation seems decidedly in the public interest.").

[321] *See supra* Part II.C.3.

[322] Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426, 434 (N.Y. App. Div. 2001).

[323] *See id.*

come forward with any authority that would compel the Vermont Attorney General to take action in that case, or even consider it, and it was not clear why the Attorney General would have any interest in enforcing the disputed naming restriction.[324]

In *Smithers,* the court also emphasized the need for "co-existent standing for the Attorney General and the donor," in part because "the Attorney General's interest in enforcing gift terms is not necessarily congruent with that of the donor."[325] While the Attorney General protects the public interest in charitable assets, the donor, "who has a 'special, personal interest in the enforcement of the gift restriction' . . . seeks to have his or her intent faithfully executed."[326] The *Smithers* court concluded that

> the distinct but related interests of the donor and the Attorney General are best served by continuing to accord standing to donors to enforce the terms of their own gifts concurrent with the Attorney General's standing to enforce such gifts on behalf of the beneficiaries thereof.[327]

The court in *L.B. Research* made a similar point—noting that, while the Attorney General oversees charities as the public's representative:

> [In] addition to the general public interest . . . there is the interest of donors who have directed that their contributions be used for certain charitable purposes. Although the public in general may benefit from any number of charitable purposes, charitable contributions must be used only for the purposes for which they were received in trust.[328]

There is an additional problem with relying on State Attorneys General to enforce charitable gifts—the Attorney General may have a conflict

---

[324] *See* Est. of Mead v. Middlebury Coll., No. 23-CV-01214, 2023 WL 11877867, at *3 (Vt. Super. Ct. Aug. 4, 2023); *see also* Chester, *supra* note 211, at 628–29 ("Charitable trust abuses are not being effectively policed in most jurisdictions because of lax attorney general oversight and restrictive standing rules" and "[t]he grantor is a logical source to provide . . . additional enforcement because of his particular interest in the observance of the terms of the transfer.").

[325] *Smithers*, 723 N.Y.S.2d at 435.

[326] *Id.*

[327] *Id.* at 435–36.

[328] L.B. Rsch. & Educ. Found. v. UCLA Found., 29 Cal. Rptr. 3d 710, 716–17 (Cal. Ct. App. 2005); *see also* Kaufman, *supra* note 314, at 707 ("[T]here have been, and will continue to be, situations where the attorney general's view of the public interest and the donor's intent diverge . . . .").

of interest. For example, if a state government entity has accepted a restricted charitable gift and is allegedly violating its terms, and the Attorney General serves as legal counsel to the entity, the Attorney General may be precluded from suing the entity to enforce the terms of the gift on behalf of the public.[329]

Finally, even if the Attorney General has the resources and chooses to enforce a charitable gift, he or she may make a deal with the charity that may be contrary to the donor's intent and without receiving the required court approval, and the Attorney General may have no procedures in place to ensure that the charity complies with the terms of any deal, all of which occurred in *Smithers*.[330] There also is the prospect, as illustrated by *Smithers*, that the Attorney General's office may change its positions in a case over time as the individual elected to the office changes, making the Attorney General's enforcement efforts unpredictable and seemingly unmoored from the law.[331]

2. Charities Behaving Badly

In many of the cases discussed above in which the courts allowed donors to sue to enforce their gifts, the charitable donee appeared to have behaved badly. For example, in *Adler v. SAVE,*[332] the court found that the charity had "wooed" a married couple, the Adlers, who were dedicated volunteers for the organization, with "sophisticated weapons of persuasion," and then unilaterally decided to use the Adler's donation for a purpose contrary to their intent.[333] Clearly irritated by the charity's behavior, the court held that returning the gift to the Adlers was "the most lenient sanction [the charity might] receive from a menu that include[d] breach of fiduciary duty and civil fraud."[334]

---

[329] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 6.05 cmt. b, illus. 1 (A.L.I. 2021) (discussing situations in which an Attorney General may be burdened by a conflict of interest).

[330] *See Smithers*, 723 N.Y.S.2d at 428–31. In *Kapiolani Park Preservation Society v. City of Honolulu*, 751 P.2d 1022 (Haw. 1988), the Hawaii Supreme Court granted standing to a party with a special interest when the Attorney General had "actively joined in supporting the alleged breach of trust." *Id.* at 1025. The court explained "were we to hold otherwise, the City, with the concurrence of the attorney general, would be free to dispose, by lease or deed, of all, or parts of the trust comprising Kapiolani park, as it chose, without the citizens of the City and State having any recourse to the courts. Such a result is contrary to all principles of equity and shocking to the conscience of the court." *Id*.

[331] *See Smithers*, 723 N.Y.S.2d at 429–31.

[332] 74 A.3d 41 (N.J. Super. Ct. App. Div. 2013).

[333] *See id.* at 54–55.

[334] *Id.* at 55.

Similarly, in *Brooks,* the President and CEO of the largest health care system in Oklahoma reportedly solicited a gift from Garth Brooks and then treated him with scorn when he inquired as to why the gift was not being used for his intended purpose—to construct a women's center named after his deceased mother.[335] The jury in *Brooks*, clearly disturbed by this behavior, ordered the hospital to not only return Brooks's $500,000 donation, but also pay him an additional $150,000 on his fraud claim and $500,000 of punitive damages.[336]

In addition, as discussed above, State Attorney General enforcement of charitable gifts is lax or nonexistent in many jurisdictions.[337] In these jurisdictions, denying the donor standing can, as the dissenting judges in *Herzog* noted, be "simply an approval of a donee . . . 'double crossing the donor,' and doing it with impunity unless an elected attorney general does something about it."[338] One commentator noted that this "invitation to lawlessness . . . is profoundly corrupting."[339]

Furthermore, when making a gift to a charity, some donors may not consider that the charity's personnel and priorities may change over time, and that could cause the charity to fail to use the gift in accordance with the donor's specified terms or purpose. This type of situation—where institutional loyalties to a donor faded over time—was present in *Register v. The Nature Conservancy*.[340] In that case, the court found that Register had made a restricted gift of $1 million to TNC and TNC was bound to abide by the restriction or return the donation.[341] The court noted that, at the time Register made his gift, "no one appeared to believe that the funds were not restricted" but "[t]ime ha[d] passed," and Register found himself faced with a number of TNC employees "who were not privy to the discussions at the time of his donation."[342] In holding that TNC was "not

---

[335] *See* Brooks v. Integris Rural Health Inc., No. CJ-2009-738, 2012 WL 507954 (Okla. Dist. Ct. Jan. 25, 2012).

[336] *See id.*

[337] *See supra* Part III.D.1.

[338] Herzog Found., Inc. v. Univ. of Bridgeport, 699 A.2d 995, 1002 (Conn. 1997).

[339] Iris J. Goodwin, *Ask Not What Your Charity Can Do For You: Robertson v. Princeton Provides Liberal-Democratic Insights Into the Dilemma of Cy Pres Reform*, 51 ARIZ. L. REV. 75, 77 (2009); *see also* Nix, *supra* note 314, at 152 ("a law rarely enforced is a law rarely followed"); Chester, *supra* note 211, at 76 (noting that if a charity simply ignores the donor's expressed wishes and the Attorney General does not intervene, the donor or his representative may be the only party who can police this abuse).

[340] No. 5:13-77-DCR, 2014 WL 6909042 (E.D. Ky. Dec. 9, 2014).

[341] *See id.* at *1.

[342] *Id.* at *8.

at liberty to ignore or materially modify the expressed purpose underlying [Register's] decision to give,"[343] the court was clearly influenced by the fact that Register and TNC had come to an agreement regarding use of the gift at the time of the donation, and Register later found himself dealing with new employees who had no loyalty to him and who had their own set of priorities that were unrelated to the purpose of his gift.[344]

Finally, courts have also recognized, as did the Vermont trial court in *Middlebury*, that charities may wield the traditional common-law no-donor-standing rule, not so they can face a different adversary, but to have the case dismissed so they can avoid having to address the merits of the issue—that is, whether they may have failed to honor the obligations they undertook when soliciting or accepting a charitable donation.[345] Perhaps not surprisingly, some courts are refusing to allow charities to allegedly behave badly, and then avoid possible accountability by asserting that the traditional no-donor-standing rule applies.

3. Promotes Generous Gift Giving and Avoids Chilling Donations

Courts have indicated that allowing donors to sue to enforce the terms of their charitable gifts will help to promote generous gift giving and avoid chilling donations. For example, in *Adler v. SAVE*,[346] in which the Adlers were permitted to sue when the donee charity unilaterally decided to violate the restrictions they placed on their gift, the court explained that "the trust relationship necessary to promote generous gift giving ha[d] been strengthened by the tenacious efforts" of the Adlers.[347] The court also noted "that responsible charities will welcome this decision because it will assure prospective donors that the expressed conditions of their gift will be legally enforceable."[348]

---

[343] *Id.*

[344] *See id.* For a similar case in which institutional loyalties to a donor faded over time, see Nancy A. McLaughlin, *Keeping the Perpetual in Florida's Conservation Easements*, 18 FIU L. REV. 347, 355–58 (2024) (discussing *Rubinson v. Oklawaha Valley Audubon Soc'y, Inc.*).

[345] *See* Est. of Mead v. Middlebury College, No. 23-CV-01214, 2023 WL 11877867, *1, *3 (Vt. Super. Ct. Aug. 4, 2023).

[346] 74 A.3d 41 (N.J. Super. Ct. App. Div 2013).

[347] *Id.* at 57.

[348] *Id; see also* Karst, *supra* note 314, at 434–35 ("Friends of private philanthropy will not mind our looking over their shoulders. They know that the continued existence of the institutions of private charity will depend in considerable measure on public confidence in the efficiency of those institutions. History teaches that the cloak of immunity can

In *Herzog*, the dissenting justices noted that denying the donor standing to enforce a gift restriction that the donee university specifically agreed to and then ignored "endorse[d]" the university's "sharp practices" and created a climate that would have a chilling effect on charitable gifts to educational institutions in that jurisdiction.[349] Some judges have thus adopted a common-sense approach to this issue: donors have options regarding what to do with their assets, and they are less likely to make charitable contributions if they cannot call charities to account for ignoring the restrictions they place on the use of their gifts, and they are more likely to make contributions if they can.

4. Upholds Principle of Freedom of Disposition

Allowing donors to sue to enforce the restrictions they place on their charitable gifts is also consistent with the organizing principle of the American law of donative transfers: "freedom of disposition."[350] "Property owners have the nearly unrestricted right to dispose of their property as they please," and "American law does not grant courts any general authority to question the wisdom, fairness, or reasonableness of the donor's decisions about how to allocate his or her property."[351]

The principle of freedom of disposition is honored in the charitable context by requiring a charity to comply with donor-imposed restrictions

become a shroud."). *But see* Reid Kress Weisbord & Peter DeScioli, *The Effects of Donor Standing on Philanthropy: Insights from the Psychology of Gift-Giving*, 45 GONZ. L. REV. 225, 226, 288–89 (2009–10) (outlining psychological research "suggesting" that donor standing is unlikely to promote charitable giving, and concluding that the current under-enforcement of gift restrictions due to attorney general deficiencies is preferable because it might "discourage donors from imposing limitations governing the use of charitable assets.").

[349] *See* Herzog Found. v. Univ. of Bridgeport, 699 A.2d 995, 1002 (Conn. 1997) (McDonald, J. and Berdon, J., dissenting); *see also* Tenn. Div. of the United Daughters of the Confederacy v. Vand. Univ., 174 S.W.3d 98, 118–19 (Tenn. Ct. App. 2005) ("allowing Vanderbilt and other academic institutions to jettison their contractual and other legal obligations so casually would seriously impair their ability to raise money in the future."); *In re* Reed Found., Inc. v. Franklin D. Roosevelt Four Freedoms Park, LLC, 964 N.Y.S.2d at 7–8 (N.Y App. Div. 2013) ("failure 'to protect the interest of individual donors' risks the result that 'donors may become more hesitant to contribute at all.'"); Blasko, *supra* note 314, at 39 ("A loss of confidence in private charities' administration, either by individual donors to charitable corporations or by those planning to establish charitable trusts, is likely to be as devastating as over-regulating philanthropy or exposing it to increased litigation, if not more so.").

[350] RESTATEMENT (THIRD) PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 10.1. cmt. a. (A.L.I. 2003).

[351] *Id.* § 10.1 cmts a, c.

on a charitable gift even if, in the opinion of the charity's fiduciaries, the gift could be used for a "better" purpose or administered in a "better" manner than the purpose or manner specified by the donor.[352] It is difficult to argue with the proposition that donors who make charitable gifts for specific purposes should not be made to disinherit their heirs for charitable endeavors they did not intend to support or that may be repugnant to their intentions.[353] Even the *Herzog* majority acknowledged that "'a donor who attaches conditions to his gift has a right to have is intention enforced.'"[354]

But the principle of freedom of disposition is significantly undermined when a donor's lack of standing to enforce the terms or purpose of a charitable gift is coupled with lax or nonexistent State Attorney General enforcement of such gifts. In such a climate, charities may feel free to ignore gift restrictions because they have little fear that they will be called to account. As one commentator noted:

> The cat is out of the bag: Donors are fast discovering what was once a well-kept secret in the philanthropic sector—that a gift to public charity donated for a specific purpose and restricted to that purpose is often used by the charity for its general operations or applied to other uses not intended by the donor. [355]

5. Reduces Inequities and Encourages Compliance

Granting donors standing would also reduce inequities and encourage charities to comply with gift restrictions or seek their modification through appropriate channels. Wealthy donors can hire attorneys to help them craft sophisticated gift agreements that take advantage of the UTC's settlor-

---

[352] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 4.01 cmt a (A.L.I. 2021); *see also* Smithers v. St. Luke's-Roosevelt Hosp., 723 N.Y.S.2d 426, 435 (N.Y. App. Div. 2001) (noting "the well settled principle that a donor's expressed intent is entitled to protection."); St. Joseph's Hosp. v. Bennett, 22 N.E.2d 305, 308 (N.Y. 1939) (a charitable corporation may not "receive a gift made for one purpose and use it for another, unless the court applying the cy pres doctrine so commands.").

[353] *See* AUSTIN WAKEMAN SCOTT, WILLIAM FRANKLIN FRATCHER & MARK L. ASCHER, SCOTT AND ASCHER ON TRUSTS § 39.5.1, at 2705–08 (5th ed. 2009) (discussing exercise of the king's prerogative *cy pres* power under English common law and a case in which a donor left money in trust to promote the Jewish religion and the king directed that the fund be used to promote the Christian religion). The treatise notes that the "the prerogative power has no place in American jurisprudence." *Id.* at 2707.

[354] *Herzog*, 699 A.2d at 998.

[355] Goodwin, *supra* note 314, at 1094. The commentator further argued that "donors whose restricted gifts are crucial to the vitality and diversity of the charitable sector should have standing to enforce those gifts, especially now that donors are increasingly aware that such gifts are often misapplied." *Id.* at 1101.

standing provision or expressly grant the donor enforcement rights.[356] On the other hand, charitable donors without the resources to hire experienced legal advisors are unlikely to be aware of the different donor-standing rules in UPMIFA, the UTC, and under the common law, or the possibility of reserving standing rights in a gift agreement. Accordingly, it is this latter category of donors who are most negatively impacted by a "no-donor-standing" rule. As one commentator observed:

> The concern is for the small-to-medium size [donor]. Large scale donors such as Ted Turner can employ a battery of attorneys to draft an impenetrable gift instrument that also grants him standing to enforce its terms. The majority of donors, however, do not find themselves in such a position.[357]

Also, while many small-to-medium size donors may not have the resources or otherwise be willing to bring an action to enforce their gifts, some, like the couple in *Adler v. SAVE*, may bring such an action. Accordingly, the possibility of donor-enforcement actions may encourage charities to abide by the terms of charitable gifts or go through the appropriate channels to modify those terms.[358]

6. Donor Standing Is Not Donor Control

Granting donors standing to enforce the terms and purposes of their charitable gifts does not mean that donors retain control over the gifts or the charities. Standing entitles a donor to maintain a suit against a charity only to enforce gift restrictions—that is, to restrain the charity from using a gift contrary to the administrative terms or charitable purpose specified by the donor.[359] Standing does not entitle the donor to question or dictate the discretionary day-to-day management of the gift or the charity by the

---

[356] *See, e.g.,* Susan N. Gary, *The Problems with Donor Intent: Interpretation, Enforcement, and Doing the Right Thing*, 85 CHI.-KENT L. REV. 977, 1034-35 (2010).

[357] Loftin, *supra* note 314, at 363.

[358] *See, e.g.*, Halbach, *supra* note 314, at 726–27 ("reasonable rules [for donor] standing . . . can go far toward . . . reducing burdens on resources of attorneys general, and . . . enhancing the likelihood of attentive, voluntary compliance by trustees."); Blasko et. al, *supra* note 314, at 82 ("[T]he deterrent value of a general expansion of public scrutiny will have a beneficial effect against abuse that may well outweigh the costs and risks of more litigation."); Nix, *supra* note 314, at 148–49 ("[S]imple expansion of the doctrine of standing will ensure that more eyes are trained upon the actions of nonprofit directors and executives. In turn, such expanded oversight will increase compliance with the regulations that are already in place.").

[359] *See* RESTATEMENT (THIRD) TRUSTS § 94 cmts. g(1), (g)(3) (A.L.I. 2012).

charity's fiduciaries.[360] Moreover, in litigation involving a donor's challenge to a charity's alleged improper use of a gift, it is the court, not the donor, that decides whether the gift was restricted and, if so, whether the charity is complying with the restrictions.

Granting donors standing also does not mean that charitable assets will be locked into being used for obsolete purposes or administered according to obsolete terms in perpetuity. There are various means by which gift restrictions can be modified or released.[361] For example, the UTC and UPMIFA grant charities some autonomy to release or modify restrictions without seeking court approval in the case of relatively small charitable trusts or relatively small and old institutional funds, respectively.[362] In addition, charities can seek court approval to modify or release restrictions on other charitable gifts under the doctrines of *cy pres* and deviation, and the versions of those doctrines included in the UTC and UPMIFA have been liberalized in a number of ways.[363]

Granting donors standing may also encourage charities to negotiate with donors at the time donations are made for provisions that grant the charities some flexibility to unilaterally modify gift restrictions to respond to changing conditions. These negotiations may lead to inclusion of provisions in gift agreements that give charities some leeway to unilaterally make modifications to adapt to changed conditions, while also helping to ensure that such modifications are consistent with the donors' intent.[364]

7. No Flood of Vexatious Lawsuits

Finally, a common objection to donor standing is that it would result in a flood of vexatious lawsuits against charities.[365] But that argument is

---

[360] *Id.* cmt. g(1) (noting that a settlor can "maintain a suit against [a charity] to enforce a restriction," but cannot maintain a suit "with regard to matters of ongoing management of the charity (absent flagrant [fiduciary] misconduct that is tantamount to disregard or constructive abandonment of the settlor's purpose)").

[361] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. §§ 3.01 & 4.03 (A.L.I. 2021).

[362] *See id.* § 4.03, cmts. c & d.

[363] *See id.* § 4.03. cmt. c

[364] *See* Gary, *supra* note 356, at 1029–42 (2010) (discussing drafting considerations and strategies for donors and donees).

[365] *See, e.g.*, Smithers v. St. Luke's-Roosevelt Hosp., 723 N.Y.S.2d. 426, 433–44 (N.Y. App. Div. 2001) (noting the reason for placing limits on standing is "the desire to prevent vexatious litigation by 'irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations'"); *supra* notes 35–36 and accompanying text (noting that the various associations of colleges and universities that

not persuasive. As noted above, the enactment of the UTC's settlor-standing provision in many jurisdictions, of similar and even more expansive settlor-standing provisions in several states that have not adopted the UTC, and of nonuniform donor-standing provisions in states such as Iowa and North Carolina has not resulted in a flood of vexatious lawsuits against charities in those jurisdictions. There also has not been a flood of such suits in the states in which the courts have granted donors standing.

Professor Henry Hansmann argued in favor of donor standing more than forty years ago in part based on the fact that, in the few jurisdictions that had taken a relatively liberal attitude toward standing at that time, no evidence existed of a flood of problem suits.[366] He explained:

> [I]t makes sense to deny standing to [donors] only if the consequence would be large numbers of spite suits, strike suits, or suits filed through sheer idiocy—which are presumably what the courts and commentators have in mind when they raise the specter of "harassing" litigation . . . . Yet it appears extraordinarily unlikely that suits of this nature would ever become a sufficiently significant problem to outweigh the benefits of enlisting [donors] into the enforcement effort.
>
> . . . [T]he real problem appears to lie in creating sufficient incentives to lead individuals to bring suit rather than in creating roadblocks to hold them back.[367]

The lack of enforcement suits by donors in jurisdictions in which they have standing may be due to a variety of factors. Litigation is time-consuming and expensive. Donors are mortal. And donor standing may

---

filed an amicus brief in *Herzog* argued that donor standing "would create the potential for a flood of 'time-consuming, fact-sensitive litigation'").

[366] *See* Hansmann, *supra* note 314, at 609.

[367] *Id.* at 609–10; *see also* Goodwin, *supra* note 314, at 1160 ("[T]he number of [donors of restricted gifts] is not large enough to deny them standing to enforce their gifts by reason of protecting the charity from vexatious litigation. Also . . . it is hard to say that, personally concerned with projects as they are, these donors have no stake in the outcome."); Nix, *supra* note 314, at 183–86 (suggesting that expanding standing would not "force nonprofits to battle constant lawsuits as doomsday theories have warned" by analogizing to the history of expanded standing in administrative proceedings (namely those involving the Federal Communications Commission); while not a perfect analogy, the author notes that it offers "an example of how traditional notions of the role of an agency . . . can become outdated by the realities of the impossible tasks laid before them").

encourage charities to comply with gift restrictions and settle disputes with donors when they arise.[368]

If standing to sue to enforce charitable gifts is extended to donors' personal representatives and certain other designated individuals by statute, the risk of potentially vexatious lawsuits increases, but could be minimized by preventing such persons from profiting from the litigation. For example, the DIPAs discussed above do not allow a plaintiff suing to enforce restrictions on a charitable gift to seek an award of damages or return of the donated funds.[369] Instead, remedies for the violation of gift restrictions must be consistent with the donor's intent or the charitable purposes expressed in the gift agreement—meaning the gift must remain in the charitable sector.[370] Given the time and expense associated with litigation, the number of plaintiffs willing to file suit to harass a charity with no prospect of personal financial gain could be expected to be low.[371]

Notably, when the court in *Smithers* allowed Mrs. Smithers to sue to enforce the terms of her late husband's charitable gift as his personal representative, it stated that it was not concerned about the prospect of allowing "vexatious litigation by 'irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations.'"[372] It explained that Mrs. Smithers did not bring the action on her own behalf or on behalf of the beneficiaries of her late husband's gift.[373] Rather, she brought the action as the court-appointed personal representative of her husband's estate to enforce the terms of his gift to the hospital.[374] The court concluded that "[w]ithout possibility of pecuniary gain for himself or herself, only a plaintiff with a genuine interest in enforcing the terms of a gift will trouble to investigate and bring this type of action."[375]

---

[368] *See supra* note 358 and accompanying text.

[369] *See supra* note 267 and accompanying text.

[370] *See supra* note 268 and accompanying text.

[371] Karst, *supra* note 314, at 448 ("[I]t is important that strike suits against charitable fiduciaries be avoided. One sure way to prevent such suits is to prohibit the plaintiff from receiving any private gain from his action.").

[372] Smithers v. St. Luke's-Roosevelt Hosp., 723 N.Y.S.2d 426, 434 (N.Y. App. Div. 2001).

[373] *See id.*

[374] *See id.*

[375] *Id.*

IV. CONCLUSION—WHERE WE SHOULD GO FROM HERE

In a previous article, I explained that adoption of the UTC, UPMIFA, and nonuniform statutes in many states has led to a lack of coherence in the law regarding a number of important issues relating to restricted charitable gifts, not just donor standing.[376] Other aspects of the law relating to restricted charitable gifts that are addressed differently in the UTC, UPMIFA, nonuniform statutes, and the common law include reversions, attorney general oversight, extrajudicial modification of "small gifts," donor consent to modifications, and the *cy pres* and deviation doctrines.[377]

In that previous article, I suggested that one approach to addressing the various negative consequences flowing from this lack of coherence in the law would be to fashion an entirely new uniform law to address the release or modification of donor-imposed restrictions and standing to sue with regard to all charitable gifts, regardless of whether a gift is treated as a charitable trust under the UTC or an institutional fund under UPMIFA (or potentially both), or the gift falls outside the purview of those statutes.[378] In other words, all charitable gifts would be subject to the same set of laws.

I noted that, while this may seem like a bold proposal, the provisions governing the release or modification of donor-imposed restrictions and standing to sue in the UTC and UPMIFA appear to have been tangential to the main purposes of those uniform laws.[379] In addition, we can learn from experience, and the drafters of the new uniform law could avoid the types of uncertainties that have arisen in the interpretation and application of the UTC and UPMIFA provisions.[380] Most importantly, though, a uniform law would eliminate the negative consequences that have resulted from the lack of coherence of the law in this area, namely the elevation of form over substance in the categorization of gifts, which leads to inconsistent and arbitrary results; uncertainties regarding which of the various laws applies to a particular gift; inequities between sophisticated or well-represented donors and donees and those who are less sophisticated and without the resources to hire experienced advisors; and confusion in the courts.

---

[376] *See generally* McLaughlin, *supra* note 300.
[377] *Id.* at 427.
[378] *Id.* at 447.
[379] *Id.*
[380] *Id*.

Whether consensus could be reached regarding the *cy pres*, deviation, donor-standing, and other provisions of such a new uniform law, and whether states would be willing to adopt such a law and repeal the corresponding provisions in their versions of the UTC and UPMIFA and other nonuniform laws, is not clear. However, given the importance of charitable giving in our lives and our culture, and the negative consequences that result from having different sets of laws apply to different categories of charitable gifts, state legislatures may be persuaded of the need for uniformity in this context.

The issue of donor standing may be one of the more controversial subjects addressed in such a new uniform law given the concerns sometimes expressed on behalf of charities regarding the potential for vexatious litigation that could drain charitable assets.[381] However, the benign experience thus far with donor standing in a variety of contexts (for example, in the jurisdictions that have adopted the UTC's settlor-standing or a similar provision, and in New York, Iowa, and North Carolina) should help assuage the concerns of those worried that a uniform donor-standing rule would result in a flood of nuisance suits against charities.

It also is helpful to consider that courts and state legislatures are expanding donor standing for the reasons discussed in this Article, and it would be preferable that such expansion occur in a uniform rather than haphazard fashion. Even in states that currently deny donors standing, courts are beginning to acknowledge that the traditional common-law no-donor-standing rule could be reconsidered in light of "modern developments," including the "impressive and growing authority" for granting donors standing.[382] Donors also can rely on the holding in *Siebach* to argue that they should be granted standing because the charitable donee induced their donations with false or misleading statements about how the gift would be used or managed.[383]

The concerns expressed on behalf of charities could be further assuaged by incorporating appropriate safeguards into the uniform donor-

---

[381] *See supra* note 365 and accompanying text.

[382] *See* Derblom v. Archdiocese of Hartford, 289 A.3d 1187, 1200 n.14 (Conn. 2023); *supra* notes 242–243 and accompanying text (discussing *Siebach*); *In re* Found. for Anglican Christian Tradition, 103 A.3d 425, 431 n.8 (Pa. Commw. Ct. 2014) (leaving "for another day" the issue of whether the donor of a restricted gift has standing to enforce the gift restrictions); *see also* Brody, *supra* note 211, at 1196 ("[T]hose who oppose expanding standing must acknowledge the apparent growing number of sympathetic judges."); Goodwin, *supra* note 339, at 108 ("Where donors are concerned, there is no doubt that of late both courts and academic commentators are more open to their cause.").

[383] *See supra* notes 131–132 and accompanying text.

standing statute, including limiting standing to suits involving the enforcement of gift restrictions (rather than the day-to-day management of a charity),[384] and not allowing plaintiffs to seek an award of damages or the return of the donated property, thus ensuring the property will remain in the charitable sector.[385] And concerns about charities' ability to respond to changing conditions could be alleviated by including provisions in the new uniform law similar to those found in the UTC and UPMIFA, which liberalize the doctrines of *cy pres* and deviation and grant charities autonomy to modify or release restrictions without seeking court approval in certain circumstances.[386]

It would be of critical importance to avoid potential capture of the drafting committee for the new uniform law by those on one side or the other of the donor-standing issue. Accordingly, a concerted effort should be made by the ULC to ensure that a wide range of stakeholders have a seat at the table, including not only representatives of charities but also donors, the latter of whom have difficulty organizing and may therefore tend to be left out of the discussions. Judges, too, should be included, as they would be tasked with interpreting and enforcing the new law.

Whether the donor-standing provision included in such a new uniform law should be a simple provision, similar to the UTC's settlor-standing provision or the standing provisions found in North Carolina's version of the UTC, or a more detailed provision, such as Iowa adopted in its version of UPMIFA, is beyond the scope of this Article.[387] What is important is the recognition that—in the interest of avoiding continued uncertainty, inequities, confusion, and inconsistent and arbitrary results—all charitable gifts should be subject to the same rules, including those governing donor standing.

---

[384] *See supra* notes 233–234 and accompanying text.

[385] *See supra* notes 267–268 and accompanying text.

[386] *See* RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. § 4.03 cmt. c (A.L.I. 2021).

[387] Drafters of a uniform donor-standing provision would be greatly aided in their task by the many existing statutes granting donors and others standing, the relevant case law, and the extensive commentary on donor standing in Restatements, law review journals, treatises, and other publications.