

## Family office news: When philanthropy goes wrong

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It seemed like such a noble idea at the time. A prosperous family – heirs to the fortune from the A&P supermarket chain – would donate US\$35 million to support education for public service in foreign affairs at Princeton University.

Forty-seven years later, the original endowment bestowed by the Robertson family has grown to more than US\$880 million. The Woodrow Wilson School has become one of the most respected centers for the study of foreign affairs in the world. Yet the descendants of the original donors and the university have been embroiled in a lawsuit for six years that has already cost more than the entire amount of the original gift.

### What happened?

According to the Robertson family, Princeton has strayed from the original intent of the gift, which was to train students for careers in foreign service with the federal government. The Robertson Foundation, formed to support the work of the Woodrow Wilson School, shares trustees with the university, and the family says those trustees have a conflict of interest that has led them to divert funds from the foundation to purposes other than what the donors had in mind. The university, the Robertsons allege, has improperly given control of the foundation's investments to PRINCO, the Princeton University Investment Company. Money from the foundation has gone to support scholarships, faculty salaries, building projects and other efforts that are not specifically directed at training students for government service.

The university counters that the conflict is not really about donor intent, since the intentions of the original donors are set down carefully in the Robertson Foundation's Certificate of Incorporation. The terms for the gift were the result of negotiations between the donor and the university. According to the explanation the Foundation attached to its Form 4653 when it requested classification as a public charity, "The university made it clear from the outset that it could not undertake the long-term commitment involved with the project... unless it had effective control of the Foundation." The Foundation is a Type 1 supporting organization with only one permissible function: "to pay over its assets to Princeton in furtherance of the purposes described in the Certificate of Incorporation," according to Victoria B. Bjorklund, one of the attorneys representing Princeton and the Foundation trustees who are defendants in the case.

Bjorkland points to language in the Certificate of Incorporation specifying "that the Graduate School should be a place where men and women 'may prepare' for careers in government service. The use of 'may prepare' as opposed to 'shall prepare' or 'must prepare' is critical," she argues.

Princeton alleges that the Robertson family is trying to infringe on its academic freedom by dictating the interpretation of its implementation of those terms. The Woodrow Wilson School is not a vocational school, the university asserts, but a center of academic excellence. And while it can encourage its graduates to go into public service, it cannot force them to do so, nor force the federal government to hire them. It points out that the case is also unusual in that the plaintiffs allege the trustees are faithless fiduciaries – of an endowment that has multiplied significantly despite paying out enormous amounts to support the Woodrow Wilson School's programs.

The Robertson family wants the court to order Princeton to return the foundation's endowment to the family to be used at other educational institutions. While some observers, including many in the media, have characterized this case as a significant test of donor intent, Princeton says that different principles are at stake: academic freedom and the ability of donors' heirs to change the terms many years after a gift is made.

Princeton has also questioned the Robertson family's use of a private foundation, the Banbury Fund, to pay the legal expenses of the lawsuit.

The case is set to trial in October

Many lessons are now emerging from this unhappy tale. Among them:

- Would-be donors need to spell out their wishes as concretely as possible in setting up charitable instruments, with the knowledge that future

- generations, and subsequent developments affecting the receiving institutions, may create all kinds of unanticipated pressure to change or at least modify their original vision.
- Donors to educational institutions need to recognize the institution's need for flexibility and the fact that universities and schools resist being tied down to restrictive conditions. If it's really important to limit the scope of a gift, it may be better for the family or foundation to make a series of separate gifts over a period of years, each subject to strict, and possibly changing, guidelines.
- In the absence of ironclad, unambiguous language accompanying a bequest, along with clear misapplication of funds by the institution, a donor's heirs face huge obstacles if they try to reverse the course of an established philanthropy.