Keith Ellison
Attorney General of Minnesota

Letitia James
Attorney General of New York

The Offices of the Attorney General for the State of Minnesota and State of New York

To: Entities holding charitable scholarships funds

From: The Attorneys General of Minnesota, New York, California, Connecticut, Delaware, Maryland, Nevada, Oregon, Vermont, and Washington

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Summary.

Private entities holding funds subject to donor restrictions on the management, investment, or purpose of gifts are subject to state charities laws that seek to preserve donor intent by significantly limiting the release or modification of those restrictions and requiring court approval to do so.[1] In most states, the attorney general has the duty to enforce such restrictions, to participate in related court proceedings, and to work with entities and the courts to assure that such restrictions are honored to the maximum extent possible. Many attorneys general do not have unilateral authority to approve modifications of gift restrictions without court review.[2] Where a donor has expressed an intent to restrict a scholarship gift to benefit members of protected classes, state law requires good-faith efforts to honor that intent.

The U.S. Supreme Court's decision in *Students for Fair Admissions* ("*SFFA*")[3] generally does not change the duty to honor donor intent. Where charitable entities are subject to federal or state laws that make honoring donor intent impracticable, entities should first determine whether

[1] *See e.g.*, the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), which has been adopted in some form in 49 states.

[2] *See, e.g.*, *Smithers v. St. Luke's Hospital*, 281 A.D.2d 127, 140 (N.Y. App. Div. 2001). The Uniform Trust Code ("UTC"), discussed later in this letter, may sometimes allow charitable trusts to be modified without court approval, but only if the attorney general consents to the modification.

[3] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) ("*SFFA*").

a change to the method of administration—or the entity administering it—can be presented to the court before seeking to change the purpose of a gift that a donor expects will be held inviolate.

Background.

Purpose of this guidance.

This letter serves as guidance to the philanthropic community on navigating directives from donors to fund scholarships and grants for racial minorities and other protected classes in light of *SFFA*. It also explains how attorneys general may respond to petitions seeking to modify the terms of such gifts, given their obligations to protect donor intent. First, the letter provides an overview of the unique role of attorneys general and applicable legal standards that ensure a donor's intent is protected—including through gifts intended to advance the education of members of protected classes like race, gender, religion, or national origin. The letter further explains the limitations and inapplicability of *SFFA* in the context of privately funded trusts and charitable entities and how the decision is an insufficient ground to abandon a donor's desire to fund scholarships and grants for the benefit of students of a protected class. Finally, this letter provides guidance to any public or private institution holding charitable assets intended to benefit students of a protected class when the institution determines that it needs to seek modification (due to legal changes or other obstacles). Such modifications generally require court approval in a proceeding in which the attorney general must be allowed to participate. Proposed modifications should stay as close as possible to the donor's original intent.

The historical role of state attorneys general.

It is axiomatic that assets held by any individual or organization for a charitable purpose are held in trust for the purpose specified by the donor. As with any other trust, a charitable trust exists for the benefit of its beneficiaries. But unlike trusts with individual beneficiaries, the ultimate beneficiary of a charitable trust is the public.[4] Because the public at large cannot speak for itself, under centuries of common law[5] codified in the legal standards discussed below, state attorneys general serve as representatives that enforce the interests of the public and donor intent.[6] Accordingly, attorneys general are granted authority and standing in their respective states to ensure charitable assets are administered in accordance with donor intent, including the power to oppose changes that do not meet these standards.[7] Attorneys general have a special interest in and

[4] Restatement (Third) of Trusts §§ 27, 28; Restatement of the Law of Charitable Nonprofit Organizations (Am. Law Inst. 2021) § 1.01; George G. Bogert et al., *Bogert's The Law of Trusts and Trustees* § 322 (Jul. 2024) ("The beneficiary of a charitable trust is the public").

[5] *See generally Bogert's The Law of Trusts and Trustees* § 321.

[6] Restatement (Third) of Trusts § 94; Restatement of the Law, Charitable Nonprofit Orgs. § 5.01; *Bogert's The Law of Trusts and Trustees* § 322.

[7] Restatement (Third) of Trusts § 94.

authority over potential changes that entities holding charitable assets for the benefit of protected classes may be contemplating because of *SFFA*—or interpretations thereof.

Legal standards requiring charitable fiduciaries to honor donor intent.

Charitable fiduciaries must be mindful of the legal framework governing their conduct when seeking to modify restrictions for the benefit of protected classes. Under well-established common law, a charitable trustee "has a duty to administer the trust, diligently and in good faith, in accordance with the terms of the trust and applicable law."[8] In the absence of an express provision in the gift permitting it, "the trustee has no power to change the purpose of a charitable trust."[9] If a charitable trust requires modification and the donor, settlor, or testator is no longer living, "courts apply the doctrine of cy pres to modify or redefine the settlor's specified charitable purpose, while courts apply the doctrine of deviation to make changes in the manner or means by which the settlor's charitable purpose is carried out."[10]

These doctrines have been codified in state statutes, many of which are based on the Uniform Trust Code ("UTC") [11] and the Uniform Prudent Management of Institutional Funds Act ("UPMIFA").[12] The standards for release or modification of restrictions are similar under both

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[8] Restatement (Third) of Trusts § 76; *see also* Restatement of the Law, Charitable Nonprofit Orgs. § 4.01.

[9] *Bogert's The Law of Trusts and Trustees* § 393; *see also* Restatement (Third) of Trusts § 67, cmt. d (stating that a trustee who "applies property to a purpose other than that designated in the terms of the trust" without court approval is subject to liability for breach of trust).

[10] *Bogert's The Law of Trusts and Trustees* § 396.

[11] *See* UTC §§ 412–413.

[12] UPMIFA § 6; Ala. Code §§ 19-3C-1–10; Alaska Stat. §§ 13.65.010–095; Ariz. Rev. Stat. § 10-11802; Ark. Code §§ 28-69-801–811; Cal. Prob. Code §§ 18501–18510; Colo. Rev. Stat. §§ 15-1-1101–1110; Conn. Gen. Stat. § 45a-535; D.C. Code §§ 44-1631–1639; Del. Code tit. 12 §§ 4701–4710; Fla. Stat. §§ 617.2104(1)–(10); Ga. Code §§ 44-15-1–8; Haw. Rev. Stat. §§ 517E-1–E-9; Idaho Code §§ 33-5001–5010; 760 Ill. Comp. Stat. 51/1–/11; Ind. Code §§ 30-2-12-0.4–12-18; Iowa Code §§ 540A.101–109; Kan. Stat. §§ 58-3610–58-3620; Ky. Rev. Stat. §§ 273.600–645; La. Stat. §§ 9:2337.1–.10; Me. Rev. Stat. tit. 13, §§ 5101–5111; Md. Code Est. & Trusts §§ 15-401–410; Mass. Gen. Laws ch. 180A, §§ 1–11; Mich. Comp. Laws §§ 451.921–931; Minn. Stat. §§ 309.73–77; Miss. Code §§ 79-11-701–719; Mo. Rev. Stat. §§ 402.130–144; Mont. Code § 72-30-207; Neb. Rev. Stat. §§ 58-610–619; Nev. Rev. Stat. 164.640–680; N.H. Rev. Stat. §§ 292B:1–10; N.M. Stat. §§ 46-9A-1–10; N.Y. Not-For-Profit Corp. Law §§ 550–558; N.C. Gen. Stat. §§ 36E-1–11; N.D. Cent. Code §§ 59-21-01–08; Ohio Rev. Code §§ 1715.51–.59; Okla. Stat. tit. 60, §§ 300.11–.20; Or. Rev. Stat. §§ 128.305–.336; R.I. Gen. Laws §§ 18-12.1-1–1-10; S.C. Code §§ 34-6-10–90; S.D. Codified Laws §§ 55-14A-1–10; Tenn. Code §§ 35-10-201–210; Tex. Prop. Code §§ 163.001–.011; Utah Code §§ 51-8-101–604; Vt. Stat. tit. 14, §§ 3411–3420; Va.

acts and founded in the common law of trusts. The doctrine of cy pres[13] permits a trustee to petition the court to modify a trust "to a charitable purpose that reasonably approximates the designated purpose" only if the donor's intended purpose becomes unlawful, impossible, impracticable, or (in some states) wasteful to carry out the charitable purpose of the trust and the terms of the trust do not prohibit it.[14] "[C]y pres is regarded as an extraordinary application and not to be used on every occasion where administration becomes difficult."[15] "Reluctance or unwillingness of the trustee or donee to comply with the donor's specifications, when not based upon an inability to comply but rather on a desire to change or modify the project, will not sustain court authorization" of a cy pres petition.[16]

The doctrine of equitable deviation, in contrast, allows a court to modify an "administrative or distributive provision of a trust" (as opposed to modifying its purpose) if, because of "circumstances not anticipated by the settlor," the modification or deviation "will further the purposes of the trust."[17] "Courts generally have been more willing to permit trustees to deviate

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Code §§ 64.2-1100–1108; Wash. Rev. Code §§ 24.55.005–900e; W. Va. Code §§ 44-6A-1–7; Wis. Stat. §§ 112.11(1)–(10); Wyo. Stat. §§ 17-7-301–307.

[13] *See* Ala. Code § 19-3B-413; Ariz. Rev. Stat. § 14-10413; Ark. Code § 28-73-413; Cal. Prob. Code §15409; Colo. Rev. Stat. § 15-5-413; Conn. Gen. Stat. § 45a-499gg; D.C. Code § 19-1304.13; Del. Code tit. 12 § 3541; Fla. Stat. § 736.0413; Ga. Code § 53-12-172; Haw. Rev. Stat. § 554D-413; Idaho Code § 68-1204; 760 Ill. Comp. Stat. 55/15.5; Ind. Code § 30-4-3-27; Iowa Code § 633A.5102; Kan. Stat. § 58a-413; Ky. Rev. Stat. § 386B.4-130; La. Stat. § 9:2331; Me. Rev. Stat. tit. 18-B, § 413; Md. Code Corps. & Ass'ns § 5-209; Md. Code Est. & Trusts. § 14-302; Mass. Gen. Laws ch. 214, § 10B; Mich. Comp. Laws §§ 554.351, 14.254, 451.926, 700.7413; Minn. Stat. § 501B.41; Miss. Code § 91-8-413; Mo. Rev. Stat. § 456.4-413; Mont. Code § 72-38-413; Neb. Rev. Stat. § 30-3839; N.H. Rev. Stat. § 547:3-d; N.M. Stat. § 46A-4-413; N.Y. Est. Powers & Trusts Law § 8-1.1(c), (j); N.C. Gen. Stat. § 36C-4-413; N.D. Cent. Code § 59-12-13; Ohio Rev. Code §§ 5804.12–.13, 109.25; Okla. Stat. tit. 60, § 602; Or. Rev. Stat. § 130.210; 20 Pa. Stat. and Cons. Stat. § 7740.3; R.I. Gen. Laws § 18-4-1; S.C. Code § 62-7-413; S.D. Codified Laws § 55-9-4; Tenn. Code § 35-15-413; Tex. Prop. Code § 113.026; Utah Code § 75-7-413; Vt. Stat. tit. 14A, § 413; Va. Code § 64.2-731; Wash. Rev. Code § 23.100.1315; W. Va. Code § 44D-4-413; Wis. Stat. § 701.0413; Wyo. Stat. § 4-10-414.

[14] Restatement (Third) of Trusts § 67; *see also* UTC § 413; UPMIFA § 6(c).

[15] *First Nat. Bank of Chicago v. Elliott*, 92 N.E.2d 66, 76–77 (Ill. 1950).

[16] 88 Am. Jur. Proof of Facts 3d 469; *see also* Restatement (Third) of Trusts § 67, cmt. c ("It is not sufficient merely that it can be demonstrated that the trust funds could be better spent on some other purpose.")

[17] Restatement (Third) of Trusts § 66; *see also* UTC § 412; UPMIFA § 6(b).

from the administrative terms, as opposed to the charitable purpose, of a trust."[18] Thus, "[i]f it becomes unlawful or impossible to comply with certain terms of the trust, the court may modify those terms or authorize deviation from them in order to further the intended purposes of the trust."[19]

Importantly, "[e]quitable deviation is not available until 'circumstances not known or foreseen by the testator *have come about*,' and the cy pres doctrine is not applicable until the charitable purpose '*is or becomes* impossible or impracticable or illegal to carry out.'"[20] As such, courts have declined to apply these doctrines to "a speculative chain of events that has not played out."[21]

Policy and constitutional foundations for honoring donor intent.

The above legal standards reflect important foundational public policies without which charitable giving cannot succeed. This is illustrated by Alexis de Tocqueville's 1835 publication *Democracy in America*, in which he notes the nature of charity to address aspects of society that are unaddressed elsewhere, and to allow donors freedom to give their money to and associate with causes that address the aspects of society that most resonate with their beliefs, so long as it does not result in social harm.[22] Society has consequently incentivized charitable giving through benefits like tax exemption and donor recognition.

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[18] *Bogert's The Law of Trusts and Trustees* § 396.

[19] Restatement (Third) of Trusts § 66, cmt. c; *see also* UTC § 412 cmt. (stating that the purpose of equitable deviation "is not to disregard the settlor's intent but to modify inopportune details to effectuate better the settlor's broader purposes").

[20] *In re Pub. Benev. Tr. of Crume*, 829 N.E.2d 1039, 1047 (Ind. Ct. App.), *aff'd on reh'g*, 834 N.E.2d 705 (Ind. Ct. App. 2005) (emphases in original).

[21] *Id.*; *see also In re Estate of Mabury*, 54 Cal. App. 3d 969, 127 Cal. Rptr. 233 (1976) (holding where it was unclear whether trust was liable under new tax law that "only if, and when, there is a definitive ruling from a federal court" that the trust is "subject to the tax imposed . . . for the fiscal year involved, can it be concluded that the trust creator's specific charitable purposes become Impractical or Impossible of realization"); *Crawford v. Nies*, 113 N.E. 408, 413 (Mass. 1916) (stating that "whenever a charitable trust can be administered in accordance with the directions of the donor or founder, this court is not at liberty to modify it upon considerations of policy or convenience") (citation omitted)); *In re Shoemaker*, 115 A.3d 347, 356 (Pa. Super. Ct. 2015) (holding application of cy pres to speculative circumstances was abuse of discretion); *City & Cnty. of Denver v. Currigan*, 362 P.2d 1060, 1064 (Colo. 1961) (declining to change purpose of government trust funds when it was "not legally impossible" to use the funds for the purpose designated).

[22] "Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small;

Charitable giving is also protected by the First Amendment to the U.S. Constitution. The First Amendment guarantees an individual's right to freely associate; that is, to form and join groups of other individuals. Therefore, general restrictions on charitable behavior tend to stifle the altruistic, gap-filling goals of private individuals giving money and time to charitable associations. As the U.S. Supreme Court recently held in *Americans for Prosperity v. Bonta*:

> This Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." Protected association furthers "a wide variety of political, social, economic, educational, religious, and cultural ends," and "is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." [23]

In addition to the freedom of association, the First Amendment further upholds donor intent through its protection of free speech. The Supreme Court has long held that the right to free speech and expression includes individual monetary contributions, stating that "[a] contribution serves as a general expression of support" and "the expression rests solely on the undifferentiated, symbolic act of contributing."[24] In order "to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people," the First Amendment affords the broadest protection to such expression.[25] In *Citizens United v. FEC*, the Supreme Court expanded First Amendment protections to associations of individuals who donate money.[26] The Court reasoned that a donor's speech must be protected in the marketplace of ideas.

Charitable speech is not without limits from legitimate government regulation, including laws preventing fraud, misuse, and other violations that the undersigned enforce.[27] Here, the government has a strong interest in enforcing laws to *protect* donor intent.

Americans use associations to give fêtes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools. Finally, if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate. Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you will perceive an association in the United States." Volume II, Chapter V.

[23] 594 U.S. 595, 606 (2021) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

[24] *Buckley v. Valeo*, 424 U.S. 1, 21 (1976).

[25] *Id.* (quoting *Roth v. U.S.*, 354 U.S. 476, 484 (1957)).

[26] 558 U.S. 310 (2010).

[27] *See Americans for Prosperity Found.*, 594 U.S. at 612 (quoting *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620, 636 (1980)) ("It goes without saying that there is a 'substantial governmental interest[ ] in protecting the public from fraud.'").

Importance of remediation of the effects of discrimination in education.

Many donors are motivated to offer scholarships to members of protected classes to help remediate the effects of discrimination in education. Discriminatory laws and practices affect members of many different protected classes. For example, for much of our country's history, Black Americans were outright prohibited from obtaining any type of education. In more recent times, due to racial segregation, racial discrimination, and other systemic causes of inequality, Black students, along with students of other minority groups, disproportionately attend high-poverty and under-resourced K-12 schools.[28] Black students who attend college disproportionately attend community colleges.[29] Of the Black students who attend four-year institutions, only half complete their degree program within six years, compared to roughly three quarters of white students.[30] And Black students at both community and four-year colleges borrow more to attend those institutions compared to white students, resulting in significant disparities in levels of student loan debt.[31]

Donors who create scholarships benefitting members of a protected class often do so recognizing the systemic barriers to educational opportunity and the legacy of discrimination. Their scholarships are therefore intended to provide a crucial avenue to ease the financial burden of a college education.

SFFA does not present a categorical impracticability or impossibility sufficient to seek the release of donor restrictions on scholarships to protected classes.

On June 29, 2023, the Supreme Court issued its decision in *SFFA*, holding that the race-conscious admissions systems utilized at Harvard College and the University of North Carolina ("UNC") violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, respectively. In *SFFA*, the Court asserted three grounds for its determination that Harvard's and UNC's admissions programs violated the Equal Protection

[28] Institute of Education Sciences, *Concentration of Public School Students Eligible for Free or Reduced-Priced Lunch* (May 2023), https://nces.ed.gov/programs/coe/indicator/clb.

[29] Alex Camardelle et al., Joint Center for Political and Economic Studies, *The State of Black Students at Community Colleges* (2022), https://jointcenter.org/wp-content/uploads/2022/09/The-State-of-Black-Students-at-Community-Colleges.pdf.

[30] Shannon Lee & Doug Shapiro, Nat'l Student Clearinghouse, *Completing College: National and State Reports with Longitudinal Data Dashboard on Six- and Eight-Year Completion Rates* (Signature Report 22) (2023).

[31] Institute of Education Sciences, *2019–20 National Postsecondary Student Aid Study (NPSAS:20): First Look at Student Financial Aid Estimates for 2019–20* (NCES 2023-466) (July 2023), https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2023466.

Clause and Title VI in relying on individual students' race as a factor in the admissions process.[32] First, the programs were not implemented in a way that could be "subjected to meaningful judicial review." Second, the programs used race to make a "zero-sum" decision in a "negative" manner that "operate[d] as a stereotype." And third, the programs lacked a "logical end point."

These grounds do not apply, or are of limited relevance, to privately funded trusts and charitable entities. First, *SFFA*'s holding applies to public institutions of higher education that used race as a 'plus' factor in evaluating applications for admission, and to similar private entities that receive federal funding and that are subject to Title VI.[33] Private gifts generally cannot be challenged on the grounds of illegal discrimination, and thus any concerns about "meaningful judicial review" are inapposite.[34] Moreover, private donors' decisions are generally an expression of donors' personal interests in supporting individuals based on the donors' experiences or stated goals. As a result, the multitude of donor-funded scholarships available to students of different backgrounds celebrate the diversity of student excellence and the dedication to redress and overcome barriers to educational opportunity and its related benefits. Lastly, there can be no

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[32] *SFFA*, 600 U.S. at 214–21.

[33] The U.S. Department of Education recently issued guidance stating that *SFFA* applies broadly, including to scholarships operated by educational institutions covered by the U.S. Constitution and Title VI. U.S. Dep't of Education, Dear Colleague Letter (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf. This guidance is currently enjoined by federal court order in *Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, No. 25-CV-091-LM (D.N.H. Apr. 24, 2025), and does not reach privately funded trusts and charitable institutions.

Several state attorneys general published their own guidance explaining the scope of *SFFA* and how schools may continue to operate to advance access to educational opportunities. Offices of the attorney general for the State of Illinois et al., *Guidance to Institutions of Higher Education and K-12 Schools* (Mar. 5, 2025), https://ag.ny.gov/sites/default/files/publications/joint-guidance-re-school-programs-guidance-2025.pdf.

[34] The U.S. Court of Appeals for the Eleventh Circuit's decision in *Am. All. for Equal Rights v. Fearless Fund Mgmt.*, *LLC*, 103 F.4th 765 (11th Cir. 2024) does not alter this principle. *Fearless Fund* involved a race-conscious contest established by the charitable arm of a venture capital firm that was characterized as a "contract" and that required applicants to agree to give rights to use their idea, name, image, and likeness for promotional purposes, to indemnify the firm, and to arbitrate disputes. *Id.* at 775. As a result, the court found that the contest at issue implicated 42 U.S.C. § 1981(a)'s prohibition on racial discrimination in private contracting. *Id.* (internal citation omitted). The court held that where a grant program is structured as a contract, section 1981 applies and a race-conscious program must satisfy strict scrutiny. *Id*. at 776. By contrast, the plain text of 42 U.S.C. § 1981(a) says nothing about gifts or donations, and nothing in the court's decision suggests that this provision would apply to them. In short, *Fearless Fund* addresses a set of circumstances that do not apply to scholarship programs administered by privately funded trusts when the programs are structured as gifts, rather than contractual agreements.

concern about a "logical end point" in the context of a private gift; the donor dictates the terms and longevity of the program.

Even if an entity seeks a modification or release of charitable scholarship restrictions based on protected class status, it should comply with legal standards protecting donor intent.

As established above, *SFFA* does not present an impracticability or impossibility to privately funded entities sufficient to modify a donor's intent to fund the education of students of a protected class. Even in cases where an impossibility exists due to changes in the law or other obstacles, all entities holding charitable assets—including publicly funded entities—still have the obligation to seek modifications that as nearly as possible further the object and intention of the donor.

If a change is necessary, change the method, not the purpose.

As an initial matter, even if an entity concludes that it can no longer fulfill the donor's restrictions and that a change must be made, that does not mean that change should be made to the gift's *purpose*, such as to further the education of or redress disparities caused by discrimination against members of a protected class. Rather, an institution should first evaluate whether the *method of administration* can be altered instead.[35] For example, an institution could evaluate whether it better comports with donor intent to transfer restricted assets to a privately funded institution that does not face the same legal obstacles. The *Restatement* provides examples of restricted donations to universities "to provide scholarships solely for defined categories of students" but the college "refuses (or is legally unable) to accept the devise under those terms."[36] If a donor "manifested an intention to devote the property to charitable purposes and not merely to make a gift to the particular" institution, the appropriate relief may be to direct the funds to a similar institution that is able to fulfill the donor's intent.[37] Alternative methods of administering the gifts, such as "student-to-fund" planning, better known as "pooling and matching," may also be explored.[38]

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[35] *See Bogert's The Law of Trusts and Trustees* § 396 ("Courts generally have been more willing to permit trustees to deviate from the administrative terms, as opposed to the charitable purpose, of a trust.").

[36] Restatement (Third) of Trusts § 67, cmt. c; *see also id.* at cmts. d, e.

[37] *Id.*at cmt. e.

[38] See 34 CFR § 106.37(b) acknowledging different treatment for "wills, trusts, bequests, or similar legal instruments" under Title IX and allowing for gender-restrictive scholarships, "provided that the overall effect" of financial assistance "does not discriminate on the basis of sex"); *see also Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance*, 40 Fed. Reg. 24128, 24133 (June 4, 1975) (noting that "once those students eligible for financial aid have been identified, the financial aid office may award aid from both sex-restrictive and non-sex-restrictive sources").

Tailor requested relief to match as closely as possible the donor's original intent.

Even when honoring a charitable restriction for the benefit of a protected class becomes impracticable or impossible and legal obstacles cannot be alleviated by administrative changes, the remedy need not be the blanket removal of the restriction. Rather, the cy pres doctrine requires (1) a case-by-case analysis of each donor's intent, and (2) crafting tailored relief to match the donor's intent as closely as possible, while acting within the bounds of the law. Each cy pres petition requires a fact-specific analysis to determine the modification that aligns as near as possible to the specific donor's intent.[39] The court will "look to whatever evidence is available concerning the attitudes and interests that appear to have motivated the settlor's selection of the particular purpose," including "the circumstances of the trust's creation" and the settlor's relationships, social or religious affiliations, personal background, and charitable-giving history.[40]

Depending on the specific donor's intent, a court might alter a class restriction to benefit individual students who demonstrate that they have overcome adversity from discrimination or who provide insight as to how their protected class status impacted their lived experience and opportunities. *SFFA* itself provides some guidance in this respect, albeit in a different context, making clear that "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration or otherwise."[41] For example, in other cases, a donor may have indicated an intent to prioritize geography, financial means, family background, socioeconomic status, bilingualism, or neighborhood upbringing. In contrast, a blanket removal of a protected class restriction without any consideration of individualized alternative terms is not likely to be sufficient to honor a donor's intent.

Conclusion.

Our Offices encourage privately funded trusts and charitable entities to consult with their state's respective attorneys general to ensure that you are complying with donor intent. If you are concerned about legal challenges to the scholarship fund, consult with your counsel about how to best protect the fund and your interests.

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[39] Restatement of the Law, Charitable Nonprofit Orgs. § 3.02; *Bogert's The Law of Trusts and Trustees* § 442; UTC § 413(a)(3); *Kolb v. City of Storm Lake*, 736 N.W.2d 546, 560 (Iowa 2007) (stating courts "cannot approve a cy pres modification that would defeat the settlors' intent"); 88 Am. Jur. Proof of Facts 3d 469 ("[T]he doctrine of cy pres is merely a rule of liberal construction to carry out the donor's general charitable intent[.]").

[40] Restatement (Third) of Trusts § 67, cmt. d.

[41] *SFFA*, 600 U.S. at 230.