

Changing Charitable Restrictions

Take-Away: The common law *cy pres* doctrine that governs charitable trusts is codified in the Uniform Prudent Management of Institutional Funds Act that governs most charitable institutions.

Background: In past missives the topic of the *cy pres* doctrine has been described, i.e., a judicial remedy to alter a charitable restriction that can no longer be accomplished. Not covered has been the ability to change or modify a restriction on a charitable gift under the Uniform Prudent Management of Institutional Funds Act (UPMIFA or the Act.) The Act governs the investment, management, and administration of funds that are held by public institutions, e.g., public hospitals and universities. One of the features of the Act is the ability of the institution to change, with advance notice to a state Attorney General, the restrictions placed on a charitable gift to the institution, functioning much like the *cy pres* doctrine.

UPMIFA: The Act provides the ability of an institution to modify a charitable restriction, based on the common law *cy pres* doctrine. It looks to court decisions that have applied that doctrine in the past. Modification or release of a restricted gift under the Act allows the transfer of the restricted gift to another institution. Under the Act a no longer workable restriction can be released or modified by the charitable institution with advance notice, but only if two preconditions are met: (i) the amount of the funds subject to the restriction is less than \$50,000; and (ii) the fund to be modified or released from restriction must have been in existence at least 20+ years. In the absence of either of these preconditions, the institution must obtain a court's consent to the release of the restriction or a modification of the restriction, or the transfer of funds to another charitable institution. The Comments to this uniform Act note that the state Attorney General "protects donor intent as well as the public's interest in charitable assets."

A recent court decision from Iowa demonstrates the challenge of complying with the Act's preconditions.

In re Ezra L. Totton Scholarship, Iowa Supreme Court, N.25-0462 (June 5, 2026)

Facts: The donor, Ezra Totten, was denied admission to the graduate program in chemistry from the University of Tennessee because he was Black. After serving in WWII Ezra attended the University of Iowa and he received a master's degree in chemistry, followed by a PhD from the University of Wisconsin. Ezra later served as chair of the chemistry department at North Carolina Central University. Throughout his lifetime Ezra regularly faced racial segregation, and he was a strong advocate for civil rights. When Ezra died, he left a bequest to the University of Iowa (*Iowa*) to establish a scholarship for "Black students majoring in physical sciences,

preferably chemistry." Ezra also established scholarship funds at four other colleges and universities, two of which were historically black colleges and universities (HBCUs.)

Issue: After the U.S. Supreme Court's 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, which held that universities could no longer use race-based preferences in admissions, Iowa filed a petition to modify the terms of Ezra's scholarship, by requesting that the word "Black" be replaced with the words 'first generation.' At the time of this petition, Ezra's scholarship fund maintained by Iowa held \$58,015.58.

Trial Court: This Court dismissed Iowa's petition. It found that Iowa had not established that it would be unlawful to continue the scholarship under its original terms. That decision was appealed.

Iowa Supreme Court: After hearing arguments, the Iowa Supreme Court remanded the case for further consideration of 'other' possible modifications, noting in its decision: (i) an advocate for Ezra's intent should be allowed to participate in the modification proceedings; (ii) the entire terms of Ezra's Will and other relevant extrinsic evidence can be considered by the trial court; and (iii) modifications that may be considered include a release of the restriction or an order that funds be paid without the restriction to another charitable institution.

- **Donor Intent:** The participation of an advocate of Ezra's intent was mentioned because the Iowa Attorney General was effectively 'on both sides of the case', since it also represented the University of Iowa. [There's a lot of that going around in Washington D.C. these days, too.] The Court also noted Iowa's *cy pres* codification that authorizes a "person with a special interest in the trust" to have legal standing in the *cy pres* proceeding.
- **Extrinsic Evidence:** As to looking at more evidence to ascertain Ezra's intent, the Court noted that the attorney who initially sent the check to Iowa on behalf of Ezra's estate stated "if you are unable to comply with the requirements of this bequest, please return the check and notify use immediately" which seems to indicate that Ezra had a strong intent attached to his restrictions regarding his charitable gift. The Court noted that more than just the words used in Ezra's Will bequest to Iowa should be considered in the search for his overarching intent.
- **Impracticable:** The Court noted that the facts of this case met the Act's modification standard of *impracticability*, considering the litigation risk that Iowa would face if continued to apply Ezra's race-based restriction.

- **Preconditions:** Had Ezra's Iowa scholarship fund been less than \$50,000 the Act would have allowed Iowa to make the change that it wanted with a notice to the Iowa Attorney General, but without the need to obtain court approval.
- **Court's Intent?** As noted in the facts, two other charitable beneficiaries under Ezra's Will were two HBCUs, North Carolina Central State University and Knoxville College (where Ezra received his B.S. degree) also to provide scholarships. Since both educational institutions were/are HBCUs, Ezra's Will did not include a race-based restriction on those scholarships. Consequently, a transfer of the Iowa scholarship fund transferred to either of those two HBCUs would be consistent with Ezra's charitable intent.

Conclusion: I wonder if Iowa will be willing to let go of the \$58,000 held in Ezra's scholarship fund to another college or university, in order to meet Ezra's charitable intent?