Beyond Donor Intent:
Leveraging Cy Pres *to Remedy Unintended Burdens Caused by Charitable Gifts*

KATIE MAGALLANES

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I. INTRODUCTION: A HISTORICAL OVERVIEW OF CHARITABLE GIVING

In 2010, the news media commended billionaires Bill Gates and Warren Buffet when they signed the "Giving Pledge," a call for the super-rich to donate at least half of their wealth to charity before or at death.[1] This phenomenon is hardly new—many of the nation's most affluent donate large portions of their wealth to charity rather than leave a mountain of wealth for their

families.[2] One of the more famous donors was also one of America's first super-rich, Andrew Carnegie, whose legacy continues today through the charitable work of the Carnegie Foundation.[3]

Individuals give during life or at death in part to help others, in part to gain "prestige" or immortality, and in part because the government subsidizes large donative transfers to charity with tax exemptions to incentivize giving.[4] According to the IRS, decedents worth more than $20 million bequeath over 20% of their estates to charity; bequests account for roughly 7% of charitable giving annually, or over $150 billion.[5] The law affords the donors a means to obtain some measure of immorality with laws that enforce the conditions of a gift for theoretical eternity, immune from the Rule of Perpetuities.

The public greatly benefits from charitable gifts, which help to fund public libraries, parks, museums, churches, universities, poor relief, and support for existing charitable organizations.[6] To further encourage charitable giving, the law gives donors the right to specify as precisely as they like how bequeathed funds are to be disbursed over time.[7] This "quid pro quo" for charitable giving may gratify donors in the present but often proves burdensome in due course, because society evolves in ways that no one can foresee at the time when a gift takes effect.[8] As time passes, restrictions on charitable bequests can become increasingly inefficient to the point where fidelity to the "dead hand" ceases to be rational.[9] In response, English courts of equity developed the doctrine of *cy pres comme possible* ("*cy pres*"), French for "as near as possible," which enables courts to modify the purposes of charitable trusts when the attorney general, trustee, or other "interested parties" prove that a trust purpose has become impossible or impracticable.[10]

Under traditional rules, a party seeking to invoke *cy pres* must prove three elements: impossibility or impracticability of purpose, that the trust advances an actual charitable purpose, and that the donor possessed general (rather than specific) charitable intent, meaning a preference to continue the trust under revised terms if and when the original purpose becomes obsolete. If the moving party can show all three elements, the court can invoke *cy pres* to modify the trust in line with the settlor's charitable intent.[11] If the trustee fails to prove "general charitable intent," the trust fails and the funds revert to the settlor (if living) or, more commonly, the settlor's estate.[12]

Because trust documents rarely speak directly to the matter, the issue of whether a settlor possessed "general charitable intent" can give rise to litigation.[13] Beneficiaries and "interested parties" have standing to challenge the presence of the settlor's general charitable intent because if a trust fails, the funds are returned to the decedent's estate.[14] The Uniform Trust Code (UTC), currently adopted by twenty-five states and the District of Columbia, creates a rebuttable presumption of general charitable intent when trustees move for *cy pres* modification, with the apparent aim of discouraging litigation over the issue.[15] In these jurisdictions, courts no longer have to decipher testimony about the history of a gift or the preferences of the settlor before it can invoke *cy pres*.

Nonetheless, once a court finds that *cy pres* applies, it still hears evidence to determine whether the proposed modification to the purpose of the trust mirrors the subjective intent of the donor.[16] Representatives of alternative interests continue to have reason to challenge proposed changes, and costly disputes over how to redirect funds often ensue.[17]

This paper argues that state legislatures should carry the UTC's *cy pres* modification doctrine one-step further, and authorize courts to review the trustee's proposal to alter a trust that

no longer has practicable charitable purpose under a "reasonable donor" standard that eliminates speculation about whether the modification strictly aligns with the donor's specific intent. Thus, when a charitable purpose becomes outmoded, and the instrument failed to predict the failure the public can still obtain the benefit of the funds. The law already ensures a trustee's fidelity to the donor's specific intent by requiring proof of impracticability or impossibility before altering the purpose of the trust under *cy pres*.[18] Thus, when courts determine the appropriate remedy upon a finding of impracticality, they should abandon the search for the settlor's implicit preferences concerning trust modification—preferences that are no less opaque than the presence or absence of general charitable intent—and instead impose a reasonable modification that balances the charities' needs, the potential public benefit from the proposed change, and the likelihood that the change might deter future charitable giving.[19]

Current law's quest to unearth a donor's unexpressed intent concedes too much control to the static "dead hand" of the past.[20] The law already offers the wealthy many incentives to give including: authorizing a living donor the option of enforcing his or her gift through life, restricting the purpose of the gift until it becomes impracticable, and exempting charitable gifts from taxes.[21] Absent an express provision in a trust that accounts for changed conditions, trustees should be allowed to propose reasonable modifications, enabling them to prioritize the "charity" over the donor's legacy. Through an analysis of the *cy pres* doctrine and an examination of recent case law, this paper identifies several suggested factors that courts could use to determine the reasonableness of a proposed *cy pres* modification, thereby ending the search for the settlor's intent, once his or her original purpose become unfeasible.

II. OVERVIEW OF *CY PRES* & THE LEGAL REQUIREMENTS TO MODIFY CHARITABLE GIFTS

Courts use the common law doctrine of *cy pres* to modify a trust if its designated charitable purpose becomes impracticable. Thus, when a trust term prevents the effectuation of its purpose, *cy pres* "repurposes" the trust when it no longer serves any practical purpose. [22]

A. Common Law *Cy Pres* and Perpetual Dead Hand Control

Cy pres allows a court to modify the purpose of a charitable trust. Courts invoke *cy pres* when a charitable trust becomes illegal, impractical, impossible, or under some state statutes, wasteful.[23] The doctrine enables courts to reconcile the "inability of charitable settlors to foresee the future" with the settlor's ability to make a conditional gift in perpetuity.[24] Courts apply *cy pres* when the settlor failed to provide for an alternative beneficiary via a gift-over clause, which would normally redistribute the funds if the chartiable purpose fails.[25] Thus, "rather than allowing the trust to fail, *cy pres* preserves the settlor's charitable intent by conforming the trust to contingencies that arise."[26]

Under the common law rule, trustees or the attorney general can request a *cy pres* modification to alter the purpose of a trust believed to be "impracticable or unreasonable" if the moving party could prove that the settlor manifested "general charitable intent" when he or she made the original gift.[27] The Restatement (Second) of Trusts provides a clear summary of the original *cy pres* doctrine, which requires the court to examine extrinsic evidence to determine whether the "settlor manifested a more general charitable intention to devote his property to charitable purposes."[28] If the court found general charitable intent, it could "direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor."[29] If the court found no general charitable intent, the trust would fail and the corpus would revert to the settlor's estate.[30]

A charitable purpose becomes impracticable when "literal compliance would defeat or substantially impair the purposes of the trust."[31] In order to prove the testator possessed "general charitable intent," the court must find that the gift "encompassed something beyond the specific terms in the designation . . . as opposed to a narrow intent to benefit only a particular project, objective, or institution."[32] Courts invoking *cy pres* determine whether the settlor possessed "something beyond" the specific purpose of the gift by examining the language used in the instrument, the nature and duration of the gift, the type of charitable organization, the presence or absence of a reversionary clause, and the mode of gift effectuation, and extrinsic evidence about the settlor's intent.[33]

The comments to the Restatement (Second) explain that once the court found the presence of general charitable intent, the court was not limited to remedies that match "as nearly as possible like that designated by the term of the gift."[34] Instead, the court could approve a modification that directed assets to a "different charitable purpose" within the scope of the settlor's "general charitable intent."[35] Thus, chartiable trusts that became impractical would fail unless a court found that the settlor "manifested" a true charitable intent, but once a court found the necessary intent, it could modify the trust in a manner consistent with the original gift.

Throughout the 20th Century, legal scholars criticized as "speculative" the inquiry into whether a settlor possessed general charitable intent before a court could invoke *cy pres*.[36] Today, courts rarely allow a charitable trust to fail outright based on a finding that the settlor lacked "general charitable intent." Instead, courts employ a modified version of *cy pres* that presumes a settlor's general "charitable intent" and softens the "as near" requirement by allowing modification as long as it is within the scope of the settlor's subjective charitable intent.[37] Courts then gather evidence from "interested parties" to identify a new purpose that is

"as near" to settlor's original intent as possible.[38] Today, many jurisdictions apply the *cy pres* doctrine outlined in the Restatement (Third) of Trusts, which provides:

> Unless the terms of the trust provide otherwise, where property is placed in trust to be applied to a designated charitable purpose and it is or becomes unlawful, impossible, or impracticable to carry out that purpose, or to the extent it is or becomes wasteful to apply all of the property to the designated purpose, the charitable trust will not fail but the court will direct application of the property or appropriate portion thereof to a charitable purpose that *reasonably approximates the designated purpose*.[39]

The comments to the Restatement (Third) explain that the doctrine enables courts to reconcile the "perpetual duration" of charitable trusts with the reality that certain purposes become "obsolete as the needs and circumstances of society evolve over time."[40] The court will find the necessary intent to prevent the trust from failing but, in fashioning the remedy, "the court will consider evidence suggesting what the wishes of the settlor probably would have been if the circumstances had been anticipated."[41] The court determines the settlor's "wishes" with the same extrinsic evidence previously used to determine "general charitable intent" to determine if the modification is "as near as possible" to the original purpose of the gift.[42]

B. *Cy Pres* Under the Uniform Trust Code

The UTC approach attempts to streamline the judicial doctrine of *cy pres* by authorizing any living settlor to challenge the administration of the trustee.[43] When the settlor is deceased, the UTC avoids the muddled business of determining "general charitable intent" that may cause the trust to fail by creating a rebuttable presumption that courts can rely on absent express language in the instrument to the contrary.[44] However, the UTC, like the Restatement (Third), requires the court to select the modification most "consistent with the *settlor's* charitable intent."[45] Thus, the UTC did not eliminate need for courts to engage in a "speculative inquiry" of the settlor's intent; it merely codified its use in the modification phase.[46]

C. Applying *Cy Pres*: Courts Still Rely on Specific Donor Intent

While the UTC helps ensure *cy pres* will save charitable trusts by preventing reversion, the actual application of *cy pres* still focuses on speculation because it still requires the use of extrinsic evidence to ensure the modification is "consistent with the *settlor's* charitable intent."[47] Courts examine submitted evidence and then approve the proposed modification that best aligns with what "the settlor's wishes would have been had he or she anticipated the circumstances."[48]

Courts use the trust instrument as well as extrinsic evidence to "decipher" the "settlor's probable intent" in order to come up with an adequate modification.[49] Interested parties such as the attorney general, settlor's heirs, and the trustee can all propose modifications that purport to align with the settlor's specific charitable intent.[50] A court weighs conflicting proposals focusing on the settlor's intent even if the proposed modification adversely affects the charity's ability to leverage or administer the trust efficiently under the new terms.[51] Cases discussed in Part III demonstrate why courts should abandon the search for the settlor's subjective intent before approving a modification under *cy pres*. The UTC's revision did not eliminate the litigation generating subjective inquiry because it only offers a quick resolution to impracticability when all interested parties agree with the trustee's proposed modifications. If any party disputes the changes proposed by the trustee (and the charity), *cy pres* could still result in costly and unpredictable litigation that may deter the trustee from seeking modification in the first place.[52]

III. EXAMINING THE CASE LAW: THE LEGAL FICTION OF SPECIFIC INTENT

A. Entities Can Easily Invoke *Cy Pres* with the Support of the Donor's Heirs

The examination into subjective intent often relies heavily on testimony by heirs to the estate in question. For example, in *In re Elizabeth J.K.L Lucas Charitable Gift*, Lucas bequeathed some land to the Hawaiian Human Society (HHS) that turned out to be unsuitable for

a public park or educational center as the will directed.[53] After HSS spent extensive time and money surveying the donated land, the trustee, HSS, and the decedent's heirs thought the best remedy would be for HSS to sell its interest in the land and use the funds to build an educational center at an alternative location. Despite the agreement of all parties regarding the use of the funds, the probate court initially rejected the *cy pres* proposal as outside the scope of the settlor's specific intent.

The Court of Appeals reversed the decision, and approved the original proposal of all the parties after a lengthy discussion of the doctrine of *cy pres*. The court's decision relied heavily on testimony from the decedent's daughter regarding the fact that the proposed solution "accomplishes her probable wishes" and otherwise "effectuates" the settlor's charitable intent.[54] In this situation, despite the family's support of HSS's reasonable solution, the court still initially denied the HSS any remedy under *cy pres* which would have forced the charity to forgo use of the land entirely. The court's inquiry focused entirely on whether the decedent would have approved the modification rather than on what made the most sense given the unanticipated circumstances that arose from the gift of the land.

B. Specific Intent Requires Courts to Impose Unnecessarily Narrow Restraints

Courts often unnecessarily burden the recipient of a charitable bequest by applying *cy pres* narrowly. In *In re Estate of Panthea M. Hopkins*, a church wanted to sell land bequeathed to it by a former patron. In 1899, Ms. Hopkins bequeathed her homestead to her church "to be used for and occupied as a parsonage" to house the church's pastor.[55] The church wished to adopt the more "recent trend" of "provid[ing] a housing stipend" to support the pastor and requested a *cy pres* modification that would enable it to sell the land and place the funds in its general expense account.[56] The court granted the request to sell the home, but required the

church to keep the funds in a separate trust "to provide a parsonage for the pastor" because the settlor's intent did not encompass providing funds for the church more generally.[57] The court identified that the donor's "clearly expressed intent" required the church to use the proceeds from the sale only to provide a housing stipend to the pastor. Therefore, the court rejected the church's contention that a separate trust account would result in waste and place an undue burden on the church. The court recognized the need for a modification because of "circumstances the settlor did not anticipate" and allowed the church to dispose of the property—but only if the church segregated the profits because it did not find evidence that Ms. Hopkins possessed any specific intent to support the church or its patrons more broadly.[58]

The court imposed similarly narrow revisions in *Estate of Buck*. In 1975, Beryl H. Buck bequeathed $7 million in stock to support her former community in Marin County.[59] However, shortly after her death the stock in the trust unexpectedly increased in value to over $260 million by 1980, $560 million by the 1990s, and is now valued at nearly $1 billion.[60] In the early 1990s, the trustee filed an action to invoke *cy pres* in order to expand the geographic reach of the trust because the available funds far exceeded any practical needs within the wealthy county.[61] However, the attorney general and several local charities intervened, arguing that the trust instrument explicitly restricted the funds to Marin County, and that allowing funds to leave the county violated Buck's specific intent.[62]

In the end, the parties settled and agreed to a court ordered modification that authorized funding for any charity operating in Marin County, even if the charity served people and organizations outside county lines.[63] To avoid litigation, the trustee agreed to a modification limited by the specific intent of the donor despite the reality that a less restrictive modification would offer greater benefit to the public and nearby counties.[64] The continued growth of the

trust fund illustrates the failure of a narrow *cy pres* remedy based entirely on speculation of specific donor intent. Further, imposing a restriction limited to supporting charities operating in Marin was no more reasonable than simply expanding the geographic reach of the trust given that approved modification authorized beneficiaries to serve populations outside Marin County.[65] This narrowly construed revision seems contrary to the public policy behind perpetual charitable gifts, given the difficulty of ascertaining what Buck would have wanted if she had known about the change in value and the funds' ability to provide an even greater public benefit.[66] Further, the length and cost of the litigation stemming from attempts to modify the trust have likely deterred the Buck trustee from a second attempt to modify the purpose of the gift.

C. Costly Litigation Ensues When "Interested Parties" Intervene in *Cy Pres* Proceedings Alleging a Contrary Charitable Intent

1. Fisk University and the Alfred Stieglitz Collection

In *In re Fisk University*, the Tennessee Court of Appeals examined whether the doctrine of *cy pres* could be used to modify a conditional bequest of over 60 paintings donated to Fisk by Georgia O'Keeffe via the estate of Alfred Stieglitz, O'Keeffe's late husband.[67] In the 1950s, O'Keeffe chose to give part of Stieglitz's collection to Fisk, a historically black college located in the South, to encourage integration by creating a space where blacks and whites could gather and discuss art in the then segregated South.[68] The court found O'Keeffe's decision to "plac[e] the art at Fisk was a strong social statement and integral to [her] general intent to expose Nashville and the South to the [modern] art."[69]

In the early 2000s, Fisk, like many institutions, encountered financial problems that made it difficult to comply with the display and maintenance requirements of the collection, and Fisk sought a remedy under *cy pres* in the hopes of maintaining its interest in the collection, valued at over $60 million.[70] The University offered evidence that maintaining the collection cost

$131,000 per year, and that maintaining the gift required Fisk to substantially reduce funding for other programs to ensure it could maintain the collection.[71] The lower court determined the appropriate remedy by "solicit[ing] proposals" from all interested parties to discern, not what was the most reasonable proposal for the beneficiary, but the one that most closely mirrored O'Keeffe's subjective intent for the gift. After years of litigation over what O'Keeffe would have wanted, the court approved Fisk's proposal, which authorized a partial sale of its interest in the collection in order to enable it to maintain the collection and remain operational as a university.[72]

The *cy pres* remedy enabled Fisk to maintain its rights to the collection without threatening its solvency or forfeiting its interest in the gift, despite language in the original instrument barring Fisk from selling the paintings. The court found that Fisk's proposal "closely approximated her intent" that residents of the South retain access to the paintings and none of the evidence "specifically address[ed]" how Fisk could use the collection "in conjunction with" its "educational program."[73] Thus, the appellate court granted Fisk unrestricted use of the funds received from the partial sale despite the lower court's order that most of the funds be placed in a separate endowment to support the O'Keeffe collection. It seems the appellate court used the speculative nature of specific intent to fashion a remedy it found most helpful to Fisk.

The dissent aptly pointed out that under *cy pres* the "trial court is to fashion a form of relief that most closely approximates Ms. O'Keeffe's charitable intent," and that the court possessed the discretion to modify any proposal submitted for review before adopting it.[74] Thus, under the traditional rules the court could use *cy pres* to "promote what the court views as a worthy charitable agenda."[75] The dissent argued that the record did not contain any evidence of a charitable intent to "fund the general operations of Fisk," and that it should only obtain access

to enough of the proceeds to prevent Fisk from "closing its doors." Further, the dissent pointed out that projections indicated that the cost of maintaining the gift would only increase over time and O'Keeffe "never intended" to help Fisk "pay its general operating expenses." The dissent concluded that the doctrine requires fidelity to the donor's restrictions because enforcing specific intent encourages future charitable giving, which is a benefit thought to outweigh the cost of accepting that some "dispositions [are] imperfectly suited for the achievement of their purposes."[76]

Thus, the dissenting judge claimed that the majority "artificially" found that Fisk's proposal "aligned with O'Keeffe's specific intent" to help the University retain possession of the collection and leverage its interest in the gift to escape a financial bind.[77] In contrast, the dissent found that *cy pres'* "as near as possible" constraint required a more limited modification.[78] The dissenting judge argued that despite an earlier finding of "general charitable intent" on the part of Ms. O'Keeffe, the law required a remedy tailored to O'Keeffe's specific intent, not one that benefited Fisk. Thus, the dissent argued that O'Keeffe's specific intent required all the funds Fisk received from the sale to be set aside in trust in case Fisk encountered future problems that again made it "imperfectly suited" to maintain control over the collection.

In reality, the majority did defy the principles of *cy pres* in favor of Fisk's reasonable request to use the funds to recover financially and improve its campus while maintaining the requirements of the gift—but it did so under the legal fiction that the holding mirrored O'Keeffe's charitable intent despite the gift instrument barring any sale. Fisk did not need a large endowment to maintain the collection, but the proceeds would greatly benefit the campus, a purpose tangential to O'Keeffe's desire to support desegregation. Thus, if the majority

possessed the authority to approve a reasonable proposal under *cy pres*, it could have avoided arguing the "legal fiction" that Fisk's proposal reflected O'Keeffe's specific intent.

2. Princeton's Woodrow Wilson School

During the height of the cold war in the 1960s, Marie Robertson made a charitable gift of stock to Princeton University so the university could create and maintain the Woodrow Wilson School, a graduate program to train men and women for public service.[79] The stated purpose of the charitable gift was "to strengthen the Government of the United States and increase its ability and determination to defend and extend freedom throughout the world."[80] Mrs. Robertson and Princeton negotiated the terms of her inter vivos gift over several months, and both eventually agreed to conditions within the gift instrument designed to protect their interests: Princeton maintained control over funds to ensure it could develop and manage the school, and Robertson received the right to appoint a minority of the Foundation's board members.[81]

In 2002, Robertson's heirs sought to dissolve the Foundation under the doctrine of *cy pres*.[82] The heirs claimed that Princeton was incapable of carrying out the specific intent of generating public servants, and the Foundation should be dissolved because few Woodrow Wilson School graduates actually pursued government jobs. Princeton countered that *cy pres* did not apply to charitable funds donated in the form of foundations (rather than in the form of charitable trusts), and even if it did, the gift called for a "multi-disciplinary purpose" beyond the limited scope of only educating students for government jobs.[83] Princeton claimed that Ms. Robertson granted the University control over the Foundation to ensure that it could effectively manage the expansion of the graduate program, and rely on the funds for faculty salaries and other expenditures.[84] Princeton requested that the court release the restrictions on the funds outright to the University.

In 2008, after six years of litigation, and tens of millions of dollars in legal fees, the Robertsons' settled with Princeton, reclaiming a small portion of the gift and releasing any claim to the remaining $800 million in the trust outright to the Woodrow Wilson School.[85] Because of the settlement, the court did not have to find whether *cy pres* could be used to alter the purpose of the gift outside the trust context. However, this litigation emphasizes the danger of focusing on the specific intent of a donor whose life ended decades before litigation ensued. If the court would have used *cy pres* to modify the trust, the heirs believed that Marie Robertson's specific intent required the funds to be used for training for solely government jobs and absent that, the gift should fail. In contrast, if the court focused solely on general charitable intent, Princeton could have avoided serious litigation because the court would likely find that Robertson's "general charitable intent" was to found the Woodrow Wilson School, and that a reasonable donor would not want the school's resources dedicated solely to the outmoded goal of defeating communism.

3. Estate of Elkins v. Temple University Hospital

During his life, Mr. Elkins spent much of his time working for and supporting the Hahnemann Hospital in downtown Philadelphia. Upon his death in 1918, he left two equal testamentary trusts to benefit two different hospitals: one in Abington and another in downtown Philadelphia.[86] In the late 20th century, a for-profit entity acquired Hahnemann facility in Philadelphia, and converted the hospital into a medical education center and health clinic, causing the literal charitable purpose of the trust—to benefit a hospital—to fail. Hahnemann's trustee petitioned the court to repurpose the trust and designate an appropriate beneficiary. The new facility in Philadelphia petitioned the court to retain the funds as a *cy pres* beneficiary, because even though the medical center was not a hospital, it could still carry out Elkin's specific intent because it did provide medical services to the same local community. The other

beneficiary to the will, the Abington hospital, also sought to become the new *cy pres* beneficiary and asserted that Mr. Elkin's specific intent required the funds to benefit a *hospital* that served Philadelphia residents.

After nine years of litigation, the Superior Court of Pennsylvania determined that the Hahnemann medical center was the appropriate *cy pres* beneficiary because "Elkins would have chosen [it] as the recipient of his largesse had he been aware of the failure of Hahnemann Hospital's charitable purpose."[87] The court found that if Elkins could have predicted the advances in medical science, "he would have wished" for the funds to remain in place and serve the same local population because the newly formed facility "performs a variety of functions that were historically performed by hospitals."[88] The court thoroughly discussed advances in medical science to justify why it allowed the funds to remain at the Hahnemann location based on Elkins intent, which it found included funding an inter-city "hospital-like" facility. Thus, like the court in *Fisk*, the *Elkins* court provided detailed evidence as to why *Elkins* would approve the original beneficiary's proposal rather than the one offered by the intervening party—whose interpretation was directly supported by the language in the instrument.

D. The Forced Reliance on the Dead Hand May Prevent the Charitable Trusts from Affording Any Public Benefit

Courts adhering to *cy pres* strictly construe the donor's specific intent when considering what modifications to approve. In *In re Trust of Lowry*, the Court of Appeals reversed the lower court's application of *cy pres* to redirect some of the funds in a charitable trust created "for the beautification and upkeep" of three cemeteries within the city.[89] The trust contained over $75,000 in funds and the actual expenditures against the trust over the past 35 years did not exceed a total of $20,000. The lower court ordered the trust assets reduced to $25,000 and created a second trust with the excess funds to be used for "capital expenditures to the three

cemeteries" or "other capital improvements" for the township.[90] The appellate court reversed, even though the Ohio legislature had adopted the UTC, finding that the lower court "misapplied the term general charitable intent" and that *cy pres* will not allow any "modification of the trust . . . for a purpose too dissimilar [to] Lowry's original intent."[91] The court found that the settlor's aim to provide for "beautification and upkeep" did not include "capital expenditures" and that future circumstances might require greater "beautification" expenditures. The *Lowry* court rejected any expanded use of the trust funds for alternative purposes because it was possible that "someday" the funds might be needed for the original narrow beautification purpose the settlor specifically outlined in the original instrument.

IV. A FACTOR TEST: ESTABLISHING A REASONABLE DONOR STANDARD FOR CHARITABLE TRUST MODIFICATION

Courts created the doctrine of *cy pres* as a trust saving measure designed to prevent charitable trusts from failing because of changes that prevent the original purpose of the trust from being realized.[92] Thus, charitable beneficiaries cannot invoke the doctrine of *cy pres* unless they first prove that the original purpose has become impracticable, impossible or, in some jurisdictions, wasteful.[93] The doctrine ensures that entities cannot modify a trust's purpose unless the unpredictable occurs: the original charitable purpose becomes outmoded or impractical. Settlor's can attempt to avoid issues of impracticality at the planning stages if they wish by providing alternative beneficiaries or purposes for the funds in the event the original purpose fails. Thus, when a trustee seeks *cy pres* relief, the donor is often deceased and cannot consent to the changes proposed by the trustee.[94] Yet, courts and legislatures continue to focus on the settlor's specific intent at the time the gift was made.[95]

Courts often strictly construe *cy pres* and rarely grant requested modifications even when doing so could promote enormous public good, or they may bend the doctrine of *cy pres* to

deduce that the testator's specific intent supports the trustee's proposed changes.[96] Currently, UTC jurisdictions already have loosened the requirements for *cy pres* by creating a rebuttable presumption of general charitable intent on behalf of the settlor, but courts still require the moving party to show that the selected modification conforms to the settlor's subjective intent.[97] Instead, the law should authorize the court to rely on the presumption of general charitable intent and eliminate the "legal fiction" of specific intent from all stages of *cy pres* modification.[98]

The legal remedy to lessen the harmful effects of perpetual "dead hand control" does not require a massive legal reform or intentional circumvention of the legal process, nor should it grant complete power to the trustee.[99] Instead, courts could look to the public benefit of the "charitable gift" and first examine the *trustee's* proposed modification—rather than those of interveners—balanced against the actual reason courts enforce specific intent, namely, the likelihood that the modification might deter future "reasonable donors" from making donations.[100] Through an examination of the cases discussed above, legislatures could extract several factors that would enable courts to openly and directly modify charitable gifts under *cy pres* without delving into speculative extrinsic evidence regarding the specific intent of the long deceased donor.

A. First Factor: Does Modification Increase the Public Benefit?

Courts have rejected proposals under *cy pres* despite recognizing that a great public benefit could result from the proposed change. Often, courts grant *cy pres* relief but adopt narrow modifications or outright reject a change because it is not narrowly tailored to the donor's specific intent, even though the approved change might be more wasteful or less practicable. The Buck Trust litigation illustrates the major problem stemming from the focus on the subjective intent of the donor rather than how the public will benefit from a modification. In

Buck, the court rejected the trustee's initial proposal to expand the geographic reach of the trust to help spend down its assets. Instead, the court approved a settlement proposal submitted by interveners that better mirrored the "subjective intent of the donor," by keeping all funds within Marin County even though the geographic restriction on the instrument was the main reason the trustee requested modification in the first place.[101] To date, the Buck Trust remains substantially overfunded despite the genuine need of charities operating just outside Marin County. Currently, courts cannot consider the public benefit of a trust modification, despite a finding that the gift has become impracticable, because the approved proposal must closely align with what the court deems is the settlor's specific intent.[102] Instead, the court should be allowed to approve a modification accounts for the public benefit of the modification rather than whether it mirrors the frustrated subjective intent of the deceased donor.

B. Second Factor: Elapsed Time and Cultural Changes Since the Donation

Charitable needs evolve over time, and thus, the more time that has elapsed since the date of the gift, the less relevant the narrow purpose of the gift becomes. Again, because *cy pres* already requires a finding of impossibility or impracticability, the original purpose of the gift has already been found partially obsolete. This is particularly true in the case of legacy gifts such as those given to Princeton in light of fears surrounding communism, as well as Fisk's gift designed to encourage desegregation of cultural spaces.[103]

In all the cases discussed in Part III, the courts failed to fully consider changed circumstances, even though the donor did not predict or consider the reasons why the trustee requested a *cy pres* modification in the first place. The only case that truly accounted for temporal changes was *Estate of Elkins*, where the court discussed the radical advances in medical science over the past century to cleverly prove that the approved trust modification matched the

settlor's specific intent for the funds to benefit a "hospital-like" facility in the downtown Philadelphia area.[104] Instead of years of litigation, under the proposed "reasonable donor standard," the court could have simply approved the trustee's proposal because the requested modification was reasonable given that the funds would still support the "general charitable purpose" of providing medical services to the same community. Under a reasonable, objective settlor approach, courts need not determine if the modification matches exactly to the settlor's subjective intent thereby removing the need for hearings on extrinsic evidence, as well as litigation over which proposal most accurately reflects the settlor's specific intent.

C. Third Factor: The Administrative Burden of Alternative Proposals

Focusing on donor intent also creates unnecessary burdens on trust management because the "dead hand" often forces entities to adopt inefficient changes under *cy pres* even though the original purpose failed. The litigation stemming from O'Keeffe's gift to Fisk, Buck's charitable trust for Marin, and Robertson's donation to the Woodrow Wilson School all illustrate this point because all involved litigation between the trustee beneficiaries and various interveners who claimed the trustees' proposed use or current use of trust funds violated the subjective intent of the settlor.[105] In each case, the interveners sought to narrow the use of the particular trust funds claiming that the settlor's subject intent was for only a limited purpose, whether it be to benefit residents of *Marin* County, educate future *government* employees, or exclusively display paintings in *one* location despite astronomical costs. The ability of interveners to litigate the issue of subject intent rather than relying on a more objective standard frustrates the purpose and policy behind *cy pres*. An objective modification standard would eliminate years of litigation that waste trust assets and allow courts to abandon lengthy and administratively difficult process of identifying the modification most in line with the subjective intent of the settlor which often

fails to offset the impracticability that pushed the trustee to seek a remedy with the courts in the first place.

The dissent in *Fisk* argued that the funds for the collection should have been restricted to a separate trust fund, just as the court required in the *Estate of Panthea M. Hopkins.*[106] In these instances, both courts relied on the settlor's original purpose for the gift in determining what type of modification mirrored settlor intent. Here, both courts found that *cy pres* applied but that adherence to settlor intent trumped administrative ease, and required the trustees to maintain all charitable trusts funds in a separate trust account, with a separate a trustee to manage the funds, and incur additional costs each time they attempted to access the funds.

Courts' continued reliance on specific intent can impose wasteful administrative burdens on beneficiaries that could be remedied if courts were able rely on the reasonableness of a trustee's proposal. A reasonableness standard that does not require fidelity to "specific intent" would enable courts to select proposals that decrease, rather than increase, the administrative burdens on the beneficiary that is simply attempting to utilize a gift it has already been given.

D. Fourth Factor: Likelihood of Deterring Future Conditional Gifts

This factor focuses on two prongs: the foreseeability of the change in circumstances and the impact the modification will have on overall charitable giving. A reasonable donor would not desire his or her assets to sit idly in trust simply because the cause he or she sought to support is no longer viable or useful. Thus, when funds are donated for needs that disappear, courts should adopt proposals designed to use the funds in reasonably related manners. Courts should first consider the trustee's proposed changes because charities have an additional incentive to remain loyal to the donor's original purpose to ensure it continues to benefit from new donors.[107]

Further, the trustee possesses the most knowledge regarding the original uses for the gift and can more readily identify a reasonably related purpose for the funds.[108]

If court first focuses on whether the trustee's proposed modifications are reasonable, beneficiaries can avoid the dangers of the speculative inquiry triggered by a *cy pres* motion, and avoid the litigation that arose in *Buck*, *Fisk*, and *Robertson* that often ensues from finding a proposal that most closely aligns with the settlor's specific intent.[109] Because the court need not adopt the "most reasonable" proposal, it can focus first on the trustee's request and test whether its proposed change is reasonable in light of the considerations discussed above.

V. CONCLUSION

This paper argues that when a court finds the existence of "general charitable intent" sufficient for *cy pres*, the court's analysis should aim for objectively reasonable revisions, rather than focus on settlors' supposed subjective preferences. By limiting the court's discretion to the consideration of factors aimed to determine reasonableness, trustees and courts can work together to modify the purposes of outmoded trusts. Thus, courts could approve a trustee's proposal despite the fact that the donor's heirs may not support it, or even if it may not be narrowly tailored to the "specific intent" of the settlor.[110]

This proposal seeks to increase the efficiency of charitable giving without creating any perverse disincentives. Because *cy pres* cannot apply until an entity proves impracticability, the "dead hand" of the donor remains in control until unforeseen circumstances arise. At that point, the entity should be able to modify the gift with a showing that the modification will not deter future gifts and will *increase* the overall public benefit of the assets.[111] Thus, beneficiaries and trustees could leverage *cy pres* without worrying about incentivized protests from interested parties that might offer proposals more attuned to the "specific intent" of the donor.

This reasonableness standard allows courts to consider factors that today they must often veil in "specific intent." The "dead hand" of the past creates conflicting duties for charities that rely on charitable gifts but also strive to serve the public good. Thus, a *cy pres* doctrine that focuses on the current needs of the public enables donors to control the use of their funds, but only until the designated purpose is served or unforeseen circumstances arise that trigger the trustee's ability to suggest reasonable modifications that enable the trust to continue to offer the public a benefit.

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[1] Shelly Banjo & Robert A. Guth, *U.S. Super Rich to Share Wealth*, WALL ST. J., Aug. 10, 2010, *available at* http://online.wsj.com/news/articles/SB10001424052748704017904575409193790337162.
[2] Anderson Antunes, *The 30 Most Generous Celebrities*, FORBES, Nov. 11, 2012, *available at* http://www.forbes.com/sites/andersonantunes/2012/01/11/the-30-most-generous-celebrities/.
[3] *Our Founder*, CARNEGIE CORP. N.Y., http://carnegie.org/about-us/foundation-history/about-andrew-carnegie/ (last visited Oct. 27, 2013).
[4] *See* 26 U.S.C. § 2055(a) (2013) (authorizing bequests to the public, charity, or religious institutions to be deducted from "the *value* of the taxable estate.") (emphasis added); William T. Harbaugh, et. al, *Neural Responses to Taxation and Voluntary Giving Reveal Motives for Charitable Donations*, 316 SCIENCE 1622, 1625 (2007) (discussing that studies on donor control "suggest that both pure altruism and warm glow are important motives for charitable giving.").
[5] Martha Britton Eller, *Charitable Bequests: Evidence from Federal Estate Tax Returns, in* STATISTICS OF INCOME BULLETIN, PUBL'N 1136, 521, 529 (2001).
[6] *See e.g.* RESTATEMENT (THIRD) OF TRUSTS § 28 (2012) (listing legitimate charitable purposes).
[7] Rob Atkinson, *Reforming Cy Pres Reform*, 44 HASTINGS L.J. 1112, 1114 (1993); *see generally* Evelyn yy, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 GA. L. REV. 1183 (2007) (discussing granting donor's standing to enforce the restrictions on their gifts).
[8] The psychology of giving is a major point of research in many academic fields including economics, cognitive science, and legal policy. *See* Adam Hirsch, *Freedom of Testation/Freedom of Contract*, 95 MINN. L. REV. 2180, 2187 (2011) ("Gratuitous transfers . . . gratify a benefactor whose happiness depends on theirs . . . a Pareto optimal gain from transfer, as opposed to trade."); Sara Helms, Brian Scott, & Jeremy Thornton, *New Evidence on Charitable Gift Restrictions and Donor Behavior*, SCI. NEWS, Sept. 17, 2013, *available at* http://www.sciencedaily.com/releases/2013/09/130917090121.htm ("[T]he option to limit a charitable gift increases the average gift size for donors who choose to restrict their gift.").
[9] *See* Hirsch, *supra* note 8 at 2240 ("At some point, the marginal benefit to the testator of continued control must equal the marginal cost to the restriction.").
[10] *See* RESTATEMENT (THIRD) OF TRUSTS § 67 (2012); *see also* Alberto, B. Lopez, *A Reevaluation of* Cy Pres *Redux*, 78 U. CIN. L. REV. 1307, 1308-42 (2010) (providing a detailed history of the doctrine from its English roots to the UTC modifications).

[11] *See* Susan N. Gary, *The Problems with Donor Intent: Interpretation, Enforcement, and Doing the Right Thing*, 85 CHI.-KENT L. REV. 977, 1033 (2010).
[12] *See* UNIF. TRUST CODE § 413(a)(3) (2010) ("[T]he court may apply *cy pres* to modify or terminate the trust by directing that the trust property be applied or distributed . . . in a manner consistent with the settlor's charitable purposes"); *Changing the Situs of a Trust* § 3.09 (2013) (providing an enumerated list of jurisdictions currently following the UPC); UNIF. TRUST CODE § 413 cmt. a. (discussing that the UTC "modifies the doctrine of *cy pres* by presuming that the settlor had a general charitable intent . . . . Traditional doctrine did not supply that presumption, leaving it to the courts to determine whether the settlor had a general charitable intent.").
[13] *See* RESTATEMENT (THIRD) OF TRUSTS § 67 cmt. a (2012); *see generally* Wendy A. Lee, *Charitable Foundations and the Argument for Efficiency: Balancing Donor Intent with Practicable Solutions Through Expanded Use of Cy Pres*, 34 SUFFOLK U. L. REV. 173 (discussing the evolution of the doctrine of *cy pres*).
[14] *See* RESTATEMENT (THIRD) OF TRUSTS § 94(2) (2012) ("A suit for the enforcement of a charitable trust may be maintained only by the Attorney General . . . another person who has a special interest in the enforcement of the trust."); Lopez, *supra* note 10 at 1350 ("Heirs are fixed by statute . . . but subsequent *cy pres* beneficiaries are chosen by the court . . . [s]ome courts request that interested parties submit *cy pres* proposals to aid in the decision-making process.").
[15] *See* UNIF. TRUST CODE § 413 (2010).
[16] *See* UNIF. TRUST CODE § 413(a)(3) (2010) ("the court may apply cy pres to modify . . . the trust . . . in a manner consistent with the settlor's charitable purposes").
[17] *See* In re Fisk Univ., 392 S.W.3d 582, 587 (Tenn. Ct. App. 2011); *cf.* In re Elizabeth J.K.L. Lucas Charitable Gift, 125 Haw. 351, 357 (2011). *See generally* 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 (discussing "how to ameliorate the force of restrictions imposed by donors on large gifts in the face of societal change"); Jonathan Klick & Robert H. Sitkoff, *Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hersey's Kiss-Off*, 108 COLUM. L. REV. 749 (2008) (explaining how the A.G's intervention ultimately harmed the Hersey Trust and decreased the value of the trust).
[18] *See* Atkinson, *supra* note 7 at 1115 ("[T]he . . . frustration must be relatively great, the donor must at least implicitly assent to the change, and the . . . change must be relatively small.").
[19] *See infra* Part IV.
[20] *See generally* Adam J. Hirsch & William K.S. Wang, *A Qualitative Theory of the Dead Hand*, 68 IND. L.J. 1 (1992) (discussing the various types of restrictions that decedents can place on gifts and the various problems encountered with each of them).
[21] *See generally* Shannan Weeks McCormack, *Taking the Good with the Bad: Recognizing the Negative Externalities Created by Charities and Their Implications for the Charitable Deduction*, 52 Ariz. L. Rev. 997 (2010) (discussing the social implications of the "subsidies" and advocating for limiting the scope of what organizations and gifts should qualify).
[22] *Cy pres* is distinguishable from the doctrine of equitable deviation, which authorizes courts to change the administrative terms of a trust when terms frustrate its otherwise valid purpose. *See* RESTATEMENT (THIRD) OF TRUSTS § 66.
[23] *See* RESTATEMENT (THIRD) OF TRUSTS §§ 28, 67 (2012); UNIF. TRUST CODE § 413 (2010); In re Elizabeth J.K.L. Lucas Charitable Gift, 125 Haw. 351, 357 (2011).
[24] *See In re Elizabeth*, 125 Haw. at 357.

[25] *See id.* at 362-63 (discussing, however, when the gift over clause bequeaths to an equally impracticable or impossible purpose, the court will apply *cy pres* to the original bequest).
[26] *See id*. at 358.
[27] *See* RESTATEMENT (SECOND) OF TRUSTS § 399 cmt. a (1959) (explaining that *cy pres*); *In re Elizabeth*, 125 Haw. at 358 (noting that courts do not require proof of literal impossibility).
[28] *See* RESTATEMENT (SECOND) OF TRUSTS § 399.
[29] *See id*.
[30] *See* RESTATEMENT (THIRD) OF TRUSTS § 67 cmt. b (2012) (discussing how racial restrictions often caused a trust to fail and revert to the heirs).
[31] *See id*. (discussing that this includes a "trust of real property" unsuitable for the stated purpose).
[32] *See In re Elizabeth*, 125 Haw. at 359.
[33] *See id*. at 364.
[34] RESTATEMENT (SECOND) OF TRUSTS § 399 cmt. b. (1957).
[35] *Id.* cmt. a.
[36] *See id.* cmt. b (providing a list of articles criticizing the "artificial and speculative" inquiry); *see generally* Atkinson, *supra* note 7 (discussing the fact that *cy pres* is "insufficiently attuned to societal needs); Melanie B. Leslie, *Time to Sever the Dead Hand: Fisk University and the Cost of the Cy Pres Doctrine*, 31 CARDOZO ARTS & ENT. L.J. 1 (2012) (advocating for a fixed expiration date on dead hand control); *cf*. Eric. G. Pearson, Note, *Reforming the Reform of* Cy Pres *Doctrine: A Proposal to Protect Testator Intent*, 90 MARQ. L REV. 127 (2006) (calling for more narrow powers on the courts to limit the redistribution of trust assets in situations of "waste.").
[37] *See* RESTATEMENT (THIRD) OF TRUSTS § 67 cmt. d (2012).
[38] *See id*.
[39] *See id*. § 67 (emphasis added).
[40] *See id*. cmt. a.
[41] *Id.* cmt. d.
[42] *See supra* note 33 and accompanying text.
[43] *See* UNIF. TRUST CODE § 405(c) (2010) ("the settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust"); RESTATEMENT (THIRD) OF TRUSTS § 94(2) (2012) (indicating that standing extends to "a person who has a special interest in the enforcement of the trust."); *see generally* 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. & T. J. 611 (2003) (arguing standing should extend to successors in interest in lieu of the attorney general).
[44] *See* In re Elizabeth J.K.L. Lucas Charitable Gift, 125 Haw. 351, 359 (2011). Under the UTC "[t]he court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes." *See* UNIF. TRUST CODE § 413; OR. REG. CODE ANN. § 5803.13 (2013).
[45] This interpretation is consistent with the UTC, which states that "if the particular purpose for which the trust was created becomes impracticable, unlawful, impossible to achieve or wasteful, the trust does not fail. The court must . . . modify the terms of the trust . . . in a manner consistent with the *settlor's charitable purposes*." *See id*. § 413 cmt. a (emphasis added).
[46] *See* In re Fisk Univ., 392 S.W.3d 582, 587 (Tenn. Ct. App. 2011) ("[T]he second step requires the court to determine if the proposed modification closely approximates the donor's charitable intent"); In re Trust of Lowry, 175 Ohio App. 3d 107, 113 (2008).

[47] *See* UNIF. TRUST CODE § 413 cmt. a (2010) (emphasis added).
[48] *See In re Elizabeth*, 125 Haw. at 360.
[49] *See id*.
[50] *See* Lopez, *supra* note 10 at 1350 (noting interested parties include alternative beneficiaries).
[51] *See In re Fisk Univ.*, 392 S.W.3d at 587.
[52] *See supra* Part III.
[53] *See In re Elizabeth*, 125 Haw. at 365.
[54] *See id*.
[55] *See Opinion of the Connecticut Probate Court: In re Estate of Panthea M. Hopkins*, 26 QUINNIPIAC. PROB. L.J. 234, 238 (2013).
[56] *See id*. at 236.
[57] *See id*. at 236-37.
[58] *See id*. at 239.
[59] *See* Estate of Buck, 29 Cal. App. 4th 1846, 1850 (1994).
[60] *See id*.; *Buck Trust beginnings*, MARIN NEWS, Dec. 1, 2007, *available at* http://www.marinij.com/marinnews/ci_7614326.
[61] *See Estate of Buck*, 29 Cal. App. 4th at 1851.
[62] *See id*. at 1850.
[63] *See id*. at 1852.
[64] *See id*.
[65] *See* Peter Fimrite, *S.F. supervisors lack faith in trust / Buck fund attacked for restricting aid to poor in Marin*, S.F. GATE, Mar. 2, 2002, *available at* http://www.sfgate.com/bayarea/article/S-F-supervisors-lack-faith-in-trust-Buck-fund-2866958.php
[66] *See* Gary, *supra* note 11 at 998 ("Determining donor intent on these facts seems impossible . . . describing the court's decision as one made in conformity with donor intent seems inapposite.").
[67] Georgia O'Keeffe Found. v. Fisk Univ., 312 S.W.3d 1, 4 (Tenn. Ct. App. 2009); *see also* Leslie, *supra* note 36 at 1-15 (providing a detailed overview and history of the Fisk litigation).
[68] *See In re Fisk Univ.*, 392 S.W.3d 582, 589-90, n.9 (Tenn. Ct. App. 2011); *Fisk University History*, http://www.fisk.edu/about/history, (last visited Nov. 23, 2013).
[69] *In re Fisk Univ.*, 392 S.W.3d at 590.
[70] *Georgia O'Keeffe Found.*, 312 S.W.3d at 4.
[71] *See In re Fisk Univ.*, 392 S.W.3d at 588.
[72] *See id*. at 595.
[73] *Id*. at 595.
[74] *Id*. at 600 (Clement, F., dissenting).
[75] *Id*. (internal quotations omitted).
[76] *Id*. at 601-02.
[77] *See id*. at 596.
[78] *Id*. at 602.
[79] *See* Robertson v. Princeton Univ., No. C-99-02, 2007 N.J. Super. Unpub. LEXIS 3015, *3-4 (2007).
[80] *Id*. at *4.
[81] *Id*. at *10.
[82] *Id*. at *2.
[83] *See id.* at *27-28; Gary, *supra* note 11 at 983 (discussing the Robertson Trust litigation).
[84] *See id*.

[85] Oliver Staley & Janet Frankston, *Princeton Settles Lawsuit Over $900 Million Endowment*, BLOOMBERG, Dec. 10, 2008, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aMXdCghYl7Gw.
[86] *See* Estate of Elkins v. Temple Univ. Hosp., 32 A.3d 768, 771-72 (Super. Ct. Penn. 2011).
[87] *Id*. at 774.
[88] *Id*. at 778.
[89] *See* In re Trust of Lowry, 175 Ohio App. 3d 107, 114 (2008).
[90] *See id*. at 110.
[91] *See id*. at 113.
[92] *See generally* Ray Madoff, IMMORTALITY AND THE LAW: THE RISING POWER OF THE AMERICAN DEAD (2010) (arguing that the dead hand of the past often interferes with legitimate charitable pose a large cost to society and, ultimately, the donor as well).
[93] *See supra* Part II.A.
[94] *See* Hirsch *supra* note 8 at 2244 (discussing scholarly arguments of "dead hand" control stemming from changed circumstances and the inability to communicate with the donor).
[95] *See supra* Part III; John, K. Eason, *Motive, Duty, and the Management of Restricted Charitable Gifts*, 45 Wake Forest L. Rev. 123, 175-77 (2010) (advocating for an analysis that asks "why did the donor impose the restriction" and applying an objective approach to reform after determining the donor's specific purpose).
[96] *See supra* Part III.
[97] *See supra* Part II.B.
[98] *See* Hirsch, *supra* note 8 at 2247-50 (discussing that "a mandatory power of modification should come into effect only after [sufficient] time has elapsed").
[99] *Cf.* Rob Atkinson, *The Low Road to Cy Pres Reform: Principled Practice to Remove Dead Hand Control*, 58 CASE. W. RES, L. REV. 97, 101-05 (2007) (discussing the "glacial[]" pace at which legislatures and courts have moved and advocating for methods that side-step courts and the legislature); Atkinson, *supra* note 7 at 1140-41 (advocating removal of judicial discretion).
[100] *See* Gary, *supra* note 11 at 996-08 (explaining that only when a charity unexpectedly redirects its purpose or circumstances change will it attempt to repurpose the funds).
[101] *See supra* notes 60-65 and accompanying text.
[102] *See supra* notes 48-**Error! Bookmark not defined.** and accompanying text; *see also* Part III.C.3 (discussing the gift to Hahnemann Hospital). *See also* In re Fisk Univ., 392 S.W.3d 582, 602 (Tenn. Ct. App. 2011) (dissenting opinion) ("[T]he entire $30 million to Fisk University to be used as it deems necessary, albeit for a very worthy cause, cannot be justified under the restraints of cy pres. . . . The record clearly reveals that Ms. O'Keeffe never intended for the Collection to be sold or otherwise monetized . . . Ms. O'Keeffe's stated intent was to expose the Collection to the South by having it exhibited at Fisk University.").
[103] *See* Georgia O'Keeffe Found. v. Fisk Univ., 312 S.W.3d 1, 4 (Tenn. Ct. App. 2009); Ben Gose, *Princeton and Robertson Family Settle Donor-Intent Dispute*, PHILANTROPHY.COM, Dec. 10, 2008, http://philanthropy.com/article/PrincetonRobertson-Family/62967/.
[104] *See supra* Part III.C.3.
[105] *See supra* Part III.
[106] *See In re Fisk Univ.*, 392 S.W.3d 582, 602 (Tenn. Ct. App. 2011) (dissenting opinion); *Opinion of the Connecticut Probate Court: In re Estate of Panthea M. Hopkins*, 26 QUINNIPIAC. PROB. L.J. 234, 238 (2013).

[107] *See* Atkinson, *supra* note 7 at 1127 (discussing the reality that charities always worry about the risks of "alienating future donors."); Gary *supra* note 11 at 1036-42 (arguing that charities should leverage gift agreements that expressly allow beneficiaries to redirect the funds).
[108] *See* Atkinson, *supra* note 7 at 1127.
[109] *See* Lopez, *supra* note 10 at 1350 ("[C]hoosing between competing proposals can be as costly as redistributing the charitable assets to the donor's successors in interest.").
[110] *Cf.* Lee, *supra* note 13 at 201 (advocating for the adoption of a trustee's proposal if it is in line with the trust's "broader purpose" rather than the narrowest modification).
[111] *Cf.* Atkinson, *supra* note 7 at 1120 (arguing that an objective intent focused solely upon "efficiency" would enable the courts too much latitude and deter future donations).