

THORP
PURDY
JEWETT
URNES
WILKINSON, P.C.
ATTORNEYS AT LAW

Lance A. LeFever

February 28, 2019

1011 HARLOW ROAD, SUITE 300
SPRINGFIELD, OREGON 97477
PHONE: (541) 747-3354
FAX: (541) 747-3367

E-MAIL ADDRESS:
lefever@thorp-purdy.com

MARVIN O. SANDERS (1912-1977)
JACK B. LIVELY (1923-1979)
JILL E. GOLDEN (1951-1991)

Susan A. Bower
DOJ Civil Enforcement Division
100 SW Market St
Portland OR 97201

Also sent via email to:
susan.a.bower@doj.state.or.us

Re: **Proposed Modification of University of Oregon Forensics Funds**
In re Failing and Beekman Oration Prize Fund of the University of Oregon
In re W.F. Jewett Prize Fund in Public Speaking
In re George W. Cherry Memorial Scholarship in Speech
Lane County Circuit Court Case Nos. TBD
Our file nos.: 19166-3

Dear Ms. Bower:

I represent the University of Oregon in connection with this matter. In short, please let me know whether the Attorney General's Office will agree to modifications as outlined in the enclosed Applications and proposed Stipulated Judgments for each of the three funds identified above. If so, please have the appropriate person sign the enclosed Stipulated Judgments, and return the originals thereof to me for filing with the Court. In that case I will insert the applicable case numbers, and complete the certificate of compliance at the time I file the documents, and provide you with a copy of whatever is filed and signed by the judge. If on the other hand you desire changes to these documents before they are filed, then please let me know what in your view should be changed.

At more length, the University now maintains the three above funds which were originally established roughly 130, 94 and 38 years ago, respectively. Broadly speaking, all three funds as now constituted are intended to recognize excellence in forensics debate, though the precise expression of that purpose, and the means of doing so, are slightly different for each fund. However, as reflected in the enclosed, proposed Applications and Petitions for Modification of Fund Restrictions, the University believes each fund's purpose and manner of implementing that purpose has become impractical and/or impossible to achieve. There are slightly different reasons why that is the case as to each fund, but the common denominators are that: (a) undergraduate debates are no longer held in the way contemplated by each gift instrument, but are instead now part of an intercollegiate, co-curricular judged competition; and (b) excellence in undergraduate forensics debate is no longer recognized by relatively modest prizes of the types described in each gift instrument, but through an opportunity to compete in and win those intercollegiate events.

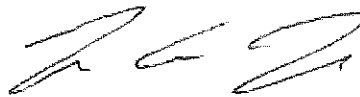
The University believes it would best recognize the respective donors' intent, and still be consistent with the purposes of each gift, if the separate funds were terminated, with the monies transferred to the existing Oregon Forensics Director's Fund now maintained by the University of Oregon Foundation. I have therefore prepared the enclosed Applications and Judgments to implement that outcome. The University of Oregon Office of General Counsel has reviewed and approved the enclosed Applications and Stipulated Judgments. I am concurrently verifying that the University of

Ms. Susan A. Bower
February 28, 2019
Page 2

Oregon Foundation is also agreeable to accepting these funds on the basis described in these documents.

If you have any questions or concerns, please let me know what they are so I can see if the University can address them. If not, please sign and return the proposed Stipulated Judgment for each fund, and I will proceed as outlined above.

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

A handwritten signature in black ink, appearing to read "Lance A. LeFever". The signature is stylized with a large initial "L" and "A".

Lance A. LeFever

Encl.

cc: Jeslyn Everitt, UO Office of General Counsel
Trond Jacobsen, UO Director of Forensics
Jennifer Spry, UO Foundation

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the
**FAILING AND BEEKMAN ORATION
PRIZE FUND OF THE UNIVERSITY OF
OREGON.**

Case No. 19CV _____

**APPLICATION AND PETITION FOR
MODIFICATION OF FUND
RESTRICTIONS**

UNIVERSITY OF OREGON,

(ORS 128.328 - Uniform Prudent
Management of Institutional Funds Act)

Petitioner,

Fee Authority: ORS 21.135 (no specific
fee provided in other law for the
proceeding)

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

Petitioner the University of Oregon (the "University") files this Application and
Petition for Modification of Fund Restrictions (the "Application") pursuant to ORS 128.328,
and respectfully represents and petitions to the court as follows:

1.

The University is and was at all material times an educational institution located in
Eugene, Lane County, Oregon, an "institution" as defined in ORS 128.316(4), and a
"public body" within the meaning of ORS 128.328(5) and 174.109.

2.

On the date this Application was filed, Respondent Ellen Rosenblum is and was
the Attorney General for the State of Oregon, and is therefore entitled to notice of and an
opportunity to be heard on this Application pursuant to ORS 128.328.

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1 3.

2 On or about June 29, 1889, the University accepted gifts from Henry Failing and
3 Cornelius C. Beekman (collectively, "Donor") to be known as the Failing and Beekman
4 Oration Prize Fund of the University of Oregon (the "Fund"). The applicable restrictions
5 and criteria of the Fund are described in the Fund's original gift instrument attached hereto
6 as Exhibit 1, pages 1-5 thereof, as subsequently modified on or about January 30, 1961
7 by Findings of Fact, Conclusions of Law and Decree in Lane County Circuit Court Case
8 No. 60226 attached hereto as Exhibit 1, pages 6 – 9 thereof, which Exhibit 1 is
9 incorporated herein by this reference. However, the salient restrictions on, and purposes
10 of, the Fund as so modified are:

11 (a) The Fund would be administered by the regents of the University and their
12 successors, as a permanent and irreducible one, invested in a safe and profitable
13 manner, and applying only Fund income for the purposes of the Fund;

14 (b) The purpose of the Fund would be to annually award proceeds of the Fund to the
15 two members of the senior class who, during and throughout their student days at the
16 University, had most distinguished themselves in upholding the dignity of the spoken word
17 in public address.

18 (c) The amount of such awards, the recipients thereof, and the rules and regulations
19 for administering the competition would be determined by a committee of the University's
20 faculty, which committee would be appointed by the University's President.

21 4.

22 The University now holds approximately \$68,276 for the Fund.

23 5.

24 Each person comprising the Donor died on or before September 29, 1960.

25 ///

26 ///

1 6.

2 The Fund is an "institutional fund" within the meaning of ORS 128.316(5).
3 Pursuant to ORS 128.328(2) and (3), the court may, upon application of an institution and
4 notice and opportunity to be heard to the Attorney General, modify:

5 (a) A restriction contained in a gift instrument regarding the management or
6 investment of an institutional fund, if the restriction has become impracticable or wasteful,
7 the restriction impairs the management or investment of the fund, or, because of
8 circumstances not anticipated by the donor, a modification will further the purposes of the
9 fund. In such event the modification must, to the extent practicable, be made in
10 accordance with the donor's probable intention; and

11 (b) The purpose of the fund or the restriction on the use of the fund, if a particular
12 charitable purpose or a restriction contained in a gift instrument on the use of an
13 institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful. In
14 such event the modification shall be consistent with the charitable purposes expressed in
15 the gift instrument.

16 7.

17 The Fund's purpose and restrictions described in the foregoing Paragraph 3 have
18 become impracticable and/or impossible to achieve because of one or more of the
19 following circumstances:

20 (a) State-wide symposiums as envisioned by the Fund's modified gift instrument, in
21 which University undergraduates would visit various areas of the state in speechmaking
22 teams to talk to citizens of the state on problems of the present day, no longer occur.
23 Rather, University speech debates by undergraduates are now conducted as part of co-
24 curricular, intercollegiate individual and team competitions, in which the University's
25 undergraduates who elect to participate in the University's Forensics program will travel
26 to other universities and/or or host teams from such other universities for the purpose of

1 participating in competitively-judged events (the "Present Undergraduate Debate
2 Program");

3 (b) Relatively modest prizes of the type envisioned by the Fund are no longer how
4 excellence is recognized and incentivized by the modern forensics community.
5 Excellence in forensics for undergraduates is generally now recognized and incentivized
6 through being afforded an opportunity to compete in, and potentially win, events held
7 pursuant to the Present Undergraduate Debate Program; and

8 (c) The effect of inflation on the income available for making awards from the Fund
9 has rendered the award significantly less valuable now as an incentive for fostering
10 speech debates, than when the Fund was first established.

11 8.

12 It appears from the terms of the gift instrument that the foregoing circumstances
13 were not anticipated by the Donor. The Donor, had the Donor known of such
14 circumstances, would probably desire modification as set forth herein. It would further
15 the purposes of the Fund, and be consistent with the charitable purposes expressed in
16 the Fund's gift instrument, if the Fund's purpose and restrictions were modified to:

17 (a) Permit the University to transfer money held pursuant to the Fund to the Oregon
18 Forensics Director's Fund (the "Forensics Fund"), a fund maintained by the University of
19 Oregon Foundation (the "Foundation") for the following purpose:

20 "to provide a flexible resource for the Director of the Forensics Program in the
21 Robert D. Clark Honors College at the University of Oregon. Funds [in the
22 Forensics Fund] may be used for any purpose relating to the Forensics Program,
23 including, but not limited to, student support, travel expenses, hosting or attending
24 tournament events, programs and activities, excluding the Director's salary
25 expenses. Should the Forensics Program or a successor program cease to exist,
26 the [Forensics Fund] shall be used to support undergraduate scholarships at the
University of Oregon with preference given to students with financial need" (the
"Forensics Fund Purpose")

- 1 (b) Modify the purpose of the Fund to allow money held pursuant to the Fund to be
2 used for any purpose permitted by the Forensics Fund Purpose;
- 3 (c) Remove the restrictions: (i) against use of the Fund's principal, and (ii) requiring
4 the Fund to be a permanent and irreducible one; and
- 5 (d) Remove the restriction authorizing the amount of Fund awards, the recipients
6 thereof, and the rules and regulations for administering the competition to be determined
7 by a committee of the University's faculty appointed by the University's President, and
8 allowing the Director of the Forensics Program, or, in the absence of such role or a person
9 occupying such role, the Dean of the University's Robert D. Clark Honors College, to
10 determine the amount of and recipients for any disbursements from the Fund, consistent
11 with the foregoing modified purpose of the Fund.

12 9.

13 The Foundation is ready, willing and able to hold the Fund pursuant to the terms
14 of the foregoing Paragraph 8.

15 WHEREFORE, the University petitions and prays for judgment approving the
16 Application as follows:

- 17 1. Permitting the University to transfer money held pursuant to the Fund to the
18 Foundation, and for the Foundation to administer the proceeds of the Fund via the
19 Forensics Fund;
- 20 2. Modifying the purpose of the Fund to allow any money held pursuant to the Fund
21 to be used for any purpose permitted by the Forensics Fund Purpose;
- 22 3. Removing the restrictions: (i) on use of the Fund's principal; and (ii) requiring the
23 Fund to be a permanent and irreducible one; and
- 24 4. Removing the restriction authorizing the amount of Fund awards, the recipients
25 thereof, and the rules and regulations for administering the competition to be determined
26 by a committee of the University's faculty appointed by the University's President, and

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1 instead allowing the Director of the Forensics Program, or, in the absence of such role or
2 a person occupying such role, the Dean of the University's Robert D. Clark Honors
3 College, to determine the amount of and recipients for any disbursements from the Fund,
4 consistent with the foregoing modified purpose of the Fund; and

5 5. Granting the University such additional relief as the Court deems just and proper.

6 I hereby declare that the above statements are true to the best of my
7 knowledge and belief, and that I understand they are made for use as evidence in
8 court, and are subject to penalty for perjury.

8 DATED this ____ day of _____, 2019.

9 THE UNIVERSITY OF OREGON

10
11 By: _____
12 Trond Jacobsen, its Director of Forensics and
13 Instructor of Information Science, Robert
14 Clark Honors College

13 **Document Prepared by:**
14 Lance A. LeFever, OSB# 993098
15 of Attorneys for University
16 Thorp, Purdy, Jewett, Urness & Wilkinson, P.C.
17 1011 Harlow Road, Suite 300
Springfield, OR 97477
O: (541) 747-3354
F: (541) 747-3367
E: llefever@thorp-purdy.com

18 **Applicant:**
19 University of Oregon
20 c/o Jeslyn A. Everitt, Assistant General Counsel
Office of the General Counsel
1226 University of Oregon
Eugene OR 97403
21 O: (541) 346-3082
F: (541) 346-6110
22 E: jeveritt@uoregon.edu

23
24
25
26

IN CONSIDERATION of the gift by Mr. Henry Failing of Portland, Oregon, of the sum of Twenty Five Hundred Dollars and the gift by Mr. C. C. Beckman of Jacksonville, Oregon, of the sum of Sixteen Hundred Dollars, to the Regents of the University of Oregon, and their successors in office; in trust, for the uses and purposes hereinafter specified; the said Regents, for themselves and their successors in office, do accept the same, and do covenant and agree with the said Henry Failing and C. C. Beckman, respectively, as follows:-

First:- The respective sums given in trust shall constitute a single fund of Forty One Hundred Dollars, which shall be known as THE FAILING AND BECKMAN ORATION PRIZE FUND OF THE UNIVERSITY OF OREGON.

Second:- The said Regents and their successors shall keep said fund as a permanent and irreducible one, invested in a safe and profitable manner and apply the income thereof as hereinafter provided.

Third:- The annual income arising from said fund shall be divided into two parts, the one to be known as "The First, or Failing Prize" and the other as "The Second, or Beckman Prize": and that part which bears the same proportion to the income for any year, that the sum of Twenty Five Hundred Dollars bears to the whole amount of said fund shall constitute the FAILING prize and the remaining part the BECKMAN prize.

Fourth:- Said prizes shall be awarded at the close of each school year as follows: The FAILING prize to that member of the class of graduates in the classical, scientific or literary course prescribed by the UNIVERSITY, or such course as may, at the time be substituted for either of said courses, who shall pronounce the best original Oration at the time of his or her graduation: And

the BEEKMAN prize to that member of said club who shall at the time pronounce the second best original Oration.

Fifth:- The FAILING prize shall not exceed One Hundred and Fifty Dollars, nor the BEEKMAN prize One Hundred Dollars; and should the annual income of said fund at any time during the first ten years from the date hereof, exceed the sum of two hundred and fifty dollars such excess shall be added to the fund and become a part thereof and kept and invested accordingly; but thereafter, any such excess may be added to the fund or to the prizes from time to time, as the Regents may determine.

Sixth:- The faculty of the aforesaid UNIVERSITY shall select at each commencement exercises, three disinterested persons, from different portions of the state of Oregon, if possible, - or from other states, - or from both this state and other states, - excluding all persons connected with said UNIVERSITY, excepting members of the said Board of Regents; and said three persons selected by the said Faculty, shall act as judges, who, after hearing the orations pronounced by the members of the graduating class, shall determine what member thereof has pronounced the best oration, and also what member thereof has pronounced the second best oration, and to these members shall be awarded respectively the above named FAILING and BEEKMAN Prizes. The judges, in deciding what members have pronounced the best and second best oration, shall take into consideration the originality of the subject-matter, the style of treatment, rhetorical excellence, and manner of delivery; and no oration shall be considered in the award of said prizes unless delivered without the aid of manuscript.

Seventh:- Prior to the delivery of the orations for said prizes the President of the Faculty or some one under his direction shall publicly announce to the judges the terms and conditions

upon which the award is to be made; and the majority of the judges shall be sufficient to award either of said prizes.

Eighth:- The Faculty of the UNIVERSITY may in their discretion, select, at the beginning of each college year, subjects, not less than six nor more than twelve in number,; and upon selecting said subjects, they shall make known the same as the subjects of the FAILING and BERKMAN Orations for the said year. But if the Faculty shall select and announce such list of subjects, no oration upon any other subject shall be considered in the award of said prizes.

Ninth:- The valedictory and salutatory addresses shall not be regarded in the award of said prizes; but the valedictorian and salutatorian shall be entitled to deliver other orations in competition for said prizes.

Tenth:- Only the orations of such members of the graduating class as are publicly delivered shall be considered in the award of the aforesaid prizes; and should the graduating class in the course aforesaid ever become so large as only to permit the delivery of orations by representatives of the class chosen by the Faculty, on consideration of high class standing, then those members only of the graduating class who publicly pronounce orations shall be contestants for the aforesaid prizes.

In Testimony Whereof and in pursuance of a Resolution of the Regents of the UNIVERSITY of Oregon duly passed at a regular meeting thereof, begun and held at Eugene, Oregon, on June 20, 1889, the President of the Regents has this June 29, 1889, hereunto signed his name and the Secretary thereof has also signed his name and affixed the seal of said University.

Matthew P. Deady
President of the
Regents.

Dead of light

Prayer and Oration

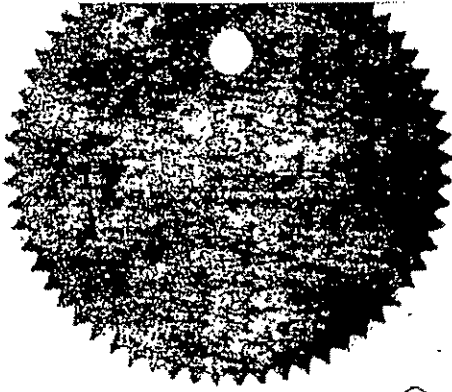
Prayer

Filed July 24 1889

W. A. R. Wilson

Shaw

Shaw



By order of the Regents
William J. Watson
Secretary

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LANE

2 In the matter of the FAILING and
3 BEEKMAN ORATION PRIZE FUND of the
4 University of Oregon on relation
5 of the

6 STATE OF OREGON, acting by and through
7 the STATE BOARD OF HIGHER EDUCATION,

8 Plaintiff,

9 vs.

10 DORIS H. WALKER, HENRY F. CABELL,
11 and HARRISON G. PLATT, Executor of
12 the Estate of CARRIE C. BEEKMAN,
13 Deceased; and all other unknown parties
14 and unknown heirs of Cornelius C.
15 Beekman, Deceased, and of Henry Failing,
16 Deceased, who have or claim some title,
17 estate, lien or interest in the property
18 described in the Complaint herein,

19 Defendants.

FILED
AT.....O'CLOCK.....M

JAN 31 1961

OLGA FREEMAN
COUNTY CLERK
BY *[Signature]*
DEPUTY

Case No. 60226 (3)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE

20 The above entitled matter having come on for hearing before this court
21 upon plaintiff's motion for trial this 30th day of January, 1961, plaintiff
22 appearing by ROBERT Y. THORNTON, Attorney General, State of Oregon, through
23 Wolf von Otterstedt, Special Assistant Attorney General, and the defendants,
24 Doris H. Walker, Henry F. Cabell and George C. Bronaugh, having appeared by
25 stipulation and without counsel and all other defendants having failed to ap-
26 pear and an order of default as to all such defendants having been entered of
27 record in this court prior to the time of this hearing; and the court having
28 heard the testimony of the plaintiff supporting all material allegations of the
29 petition for instructions; and the court being otherwise fully advised in the
30 premises; now therefore this court makes the following

FINDINGS OF FACT:

31 That the relator, State of Oregon, acting by and through the State
32 Board of Higher Education, is the trustee of the Failing-Beekman Oration Prize
33 Fund of the University of Oregon, and that all of the above named defendants are
34 over the age of twenty-one years and are the known surviving heirs of Cornelius
35 C. Beekman, deceased, or of Henry Failing, deceased, respectively, and that they
36 have or claim some vested contingent executory or reversionary interest in the
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

WOLF VON OTTERSTEDT
ATTORNEY-AT-LAW
18 E. BROADWAY
EUGENE, OREGON
DIAMOND 5-8733

Page

Exhibit 1
Page 6 of 9

1 trust referred to and set out in the complaint.

2 II

3 That on or about the 29th day of June, 1889, by resolution duly
4 passed by the regents of the University of Oregon at its regular meeting, such
5 regents being the predecessors in interest to the plaintiff herein, a trust
6 fund was established with a gift from Henry Failing, deceased, in the sum of
7 \$2,500.00 and a gift from Cornelius C. Beekman, deceased, of Jacksonville, Ore-
8 gon, in the sum of \$1,600.00, such trust generally providing for an oratorical
9 contest to be held at the time of commencement exercises each year at the
10 University of Oregon pursuant to certain standards and specifications provided
11 in the trust resolution enacted by the Board of Regents of the University of
12 Oregon as set forth specifically in the trust agreement which is attached to
13 the complaint and by reference was made a part thereof; and that since receiv-
14 ing the said trust fund, the trustee plaintiff has held the same as set forth
15 in the trust resolution in accordance with the desire and intention of the
16 trustors.

17 III

18 That due to a change of circumstances, it is no longer feasible to
19 carry out the intent of the trustors literally, and it has become impossible
20 for the trustee petitioner to conform to the conditions of the trust; that the
21 attending circumstances and conditions which have created a frustration to the
22 trustors' intent in making the gift are as follows:

23 1. That when the trust was established in 1889, oratory and speech-
24 making were almost exclusively an extracurricular activity of the University of
25 Oregon managed by the Philologist Society and that this said society no longer
26 exists and now oratory, debate and speechmaking are a part of the regular curri-
27 culum offered by the University of Oregon and taken by a large number of stu-
28 dents.

29 2. That when the trust was established, no Department of Speech
30 existed at the University of Oregon. That all courses in speech and debate or
31 oratory are now administered by the Department of Speech of the University of
32 Oregon which offers courses in four major areas for under-graduate and graduate

WOLF VON OTTERSTEDT
ATTORNEY-AT-LAW
16 E. BROADWAY
EUGENE, OREGON
DIAMOND B-8723

1 degrees including the doctorate in philosophy, to wit: radio-television, theatre
2 speech correction and rhetoric-public address.

3 3. That when the trust was established, the extracurricular activi-
4 ties in speech were confined to the campus of the University of Oregon in Eu-
5 gene, Oregon, but that today one of the most significant aspects of the program
6 in speech is the state-wide symposium in which students visit various areas of
7 the state in speechmaking teams to talk to citizens of the state on problems of
8 the present day.

9 4. That for a considerable number of years now, it has been impossi-
10 ble to hold the oratorical contest contemplated by the trust resolution at the
11 time of commencement exercises of the University of Oregon.

IV

12 That, therefore, the intent of the donors has been frustrated as pre-
13 viously alleged and that the plaintiff herein is in doubt as to the extent of
14 its authority to use the said trust resolution funds for purposes other than
15 those enumerated hereinabove, and that petitioner, therefore, is in need of
16 instructions from the court with regard to the future use of said trust funds.

V

17 That the plaintiff petitioner, according to the testimony of Professor
18 Glenn Starlin, head of the Department of Speech of the University of Oregon,
19 has determined that the following uses in keeping with present conditions and
20 circumstances would best carry out the intent of the donors or trustors and that
21 approval of the court is sought for instructions authorizing the use of the
22 Falling-Beekman Oration Prize Fund under the following terms and conditions:

23 1. That there be awarded annually two prizes from the proceeds of the
24 Falling-Beekman trust fund, the principal of which at the present time is in
25 the amount of approximately \$5,400.00, in such sums as will be determined by a
26 committee of the faculty, to the two members of the senior class who, during and
27 throughout their student days at the University of Oregon, have most distin-
28 guished themselves in upholding the dignity of the spoken word in public address.

29 2. That there be established a committee of the faculty to be appoin-
30 ted by the President of the University of Oregon to determine who shall be the

1 two recipients of the prizes awarded under the trust, the amount to be so
2 awarded and the rules and regulations for administering the competition and
3 the making of the awards within the intention of the trustors.

4 Based upon the foregoing Findings of Fact, this court now makes the
5 following

6 CONCLUSIONS OF LAW

7 The petitioner trustee is hereby empowered and authorized to employ
8 the principal and income of the Falling-Beekman Oration Prize Fund in accor-
9 dance with the terms and conditions set forth in paragraphs 1 and 2 of para-
10 graph V set forth in the above Findings of Fact and this court hereby approves
11 and confirms such proposed plan for the disposition of the Falling-Beekman
12 Oration Prize Fund in accordance with the petition for instructions herein.

13
14 IT IS THEREFORE ORDERED AND DECREED by this court that the uses pro-
15 posed in paragraph V of the Findings of Fact above for the Falling-Beekman
16 Oration Prize Fund are hereby approved in all respects by this court and the
17 petitioner trustee may employ the income and principal of the Falling-Beekman
18 Oration Prize Fund in accordance with the terms and conditions set forth in
19 paragraph V of the Findings of Fact herein, and that neither party is entitled
20 to any costs or disbursements in the above entitled cause.

21
22 *Edward Leary*
23 Circuit Judge

24
25
26
27
28
29
30
31
32
WOLF VON OTTENSTEDT
ATTORNEY-AT-LAW
16 E. BROADWAY
EUGENE, OREGON
DIAMOND 5-8783

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the
**FAILING AND BEEKMAN ORATION
PRIXE FUND OF THE UNIVERSITY OF
OREGON.**

Case No. 19CV _____

STIPULATED GENERAL JUDGMENT

UNIVERSITY OF OREGON,

Petitioner,

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

THIS MATTER coming before the Court upon the Application and Petition for Modification of Fund Restrictions (the "Application"), and the stipulations endorsed hereon; the Court having considered the matter on the record submitted by the parties; and good cause appearing;

IT APPEARING that the persons listed below, as indicated by their signatures hereon, have stipulated to the following facts:

A. The University asserts the allegations in the Application are true, the other persons listed below do not contest such allegations (except that the University of Oregon Foundation agrees with the allegations of Paragraph 9 therein), and the allegations of the Application are incorporated herein as the findings of this Court if this Stipulated General Judgment is signed by the Court;

B. Each of the persons signing below indicates that such person (or, as to any attorneys signing the instrument, the entity or person whom such attorney represents):

1. has received a true copy of the Application;
2. understands such person has or may have the right to be formally served with process in connection with the Application, including but not necessarily limited to a copy of Summons and the Application;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3. acknowledges such person has or may have the right and opportunity to be heard in connection with the Application;
4. has been given an adequate opportunity to review the Application and this Judgment with counsel of such person's choice, and has either consulted with such counsel or intentionally relinquished the opportunity to do so; and
5. Waives its rights in this matter to: (i) be formally served with Summons and the Application; (ii) be further heard on this matter; or (iii) object to entry of this Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Application is approved, and the fund instrument for the Failing and Beekman Oration Prize Fund of the University of Oregon attached hereto as Exhibit 1 (the "Fund") is modified in the following particulars:

1. The University of Oregon (the "University") may transfer money held pursuant to the Fund to the University of Oregon Foundation (the "Foundation"), and the Foundation may administer the proceeds of the Fund via the Oregon Forensics Director's Fund (the "Forensics Fund"), a fund maintained by the Foundation:

"to provide a flexible resource for the Director of the Forensics Program in the Robert D. Clark Honors College at the University of Oregon. Funds [in the Forensics Fund] may be used for any purpose relating to the Forensics Program, including, but not limited to, student support, travel expenses, hosting or attending tournament events, programs and activities, excluding the Director's salary expenses. Should the Forensics Program or a successor program cease to exist, the [Forensics Fund] shall be used to support undergraduate scholarships at the University of Oregon with preference given to students with financial need" (the "Forensics Fund Purpose");

2. The Fund's purpose of annually awarding proceeds of the Fund to the two members of the senior class who, during and throughout their student days at the University, had most distinguished themselves in upholding the dignity of the spoken word in public address, is removed. Instead, all money formerly held pursuant to the Fund shall be used for any purpose permitted by the Forensics Fund Purpose;

3. The restrictions: (i) on use of the Fund's principal; and (ii) requiring the Fund to be a permanent and irreducible one; are hereby removed; and

4. The restriction authorizing a committee of the University's faculty appointed by the University's President to determine the amount of Fund awards, the recipients thereof, and the rules and regulations for administering the competition, is removed. Henceforth, the Director of the University's Forensics Program, or, in the absence of such role or a person occupying such role, the Dean of the University's Robert D. Clark Honors College, is henceforth authorized to determine the amount of and recipients for any disbursements from the Fund, consistent with the foregoing modified purpose of the Fund.

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS SO ORDERED AND ADJUDGED.

THE PERSONS SIGNING BELOW SO STIPULATE THROUGH THEIR UNDERSIGNED REPRESENTATIVES, AND HAVE NO OBJECTION TO ENTRY OF JUDGMENT IN THE ABOVE FORM:

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

ELLEN F. ROSENBLUM, IN HER
CAPACITY AS THE ATTORNEY GENERAL
FOR THE STATE OF OREGON

Lance A. LeFever, OSB# 993098
of Attorneys for University
Preparer of this Document

Susan A. Bower, OSB# 960960
Of Attorneys for Attorney General
Assistant Attorney General

UNIVERSITY OF OREGON
FOUNDATION

By: _____
Name: _____
Its: _____

* * * * *

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100

Pursuant to UTCR 5.100(2), the undersigned certifies as follows: (1) Compliance with UTCR 5.100(1) Service Requirements: I complied with the service requirements of UTCR 5.100 because this judgment is accompanied by stipulations above that no objection exists as to the judgment or order; and (2) Readiness for Judicial Signatures. This proposed order or judgment is ready for judicial signature because each person listed above in this order or judgment has stipulated to the order or judgment, as shown by each person's signature on the document being submitted.

DATED _____, 2019.

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

By: _____
Lance A. LeFever, OSB# 993098
Of Attorneys for University
llefever@thorp-purdy.com

IN CONSIDERATION of the gift by Mr. Henry Failing of Portland, Oregon; of the sum of Twenty Five Hundred Dollars and the gift by Mr. C. C. Beckman of Jacksonville, Oregon, of the sum of Sixteen Hundred Dollars, to the Regents of the University of Oregon, and their successors in office; in trust, for the uses and purposes hereinafter specified; the said Regents, for themselves and their successors in office, do accept the same, and do covenant and agree with the said Henry Failing and C. C. Beckman, respectively, as follows:-

First:- The respective sums given in trust shall constitute a single fund of Forty One Hundred Dollars, which shall be known as THE FAILING AND BECKMAN ORATION PRIZE FUND OF THE UNIVERSITY OF OREGON.

Second:- The said Regents and their successors shall keep said fund as a permanent and irreducible one, invested in a safe and profitable manner and apply the income thereof as hereinafter provided.

Third:- The annual income arising from said fund shall be divided into two parts, the one to be known as "The First, or Failing Prize" and the other as "The Second, or Beckman Prize": and that part which bears the same proportion to the income for any year, that the sum of Twenty Five Hundred Dollars bears to the whole amount of said fund shall constitute the FAILING prize and the remaining part the BECKMAN prize.

Fourth:- Said prizes shall be awarded at the close of each school year as follows: The FAILING prize to that member of the class of graduates in the classical, scientific or literary course prescribed by the UNIVERSITY, or such course as may, at the time be substituted for either of said courses, who shall pronounce the best original Oration at the time of his or her graduation: And

the BEEKMAN prize to that member of said club who shall at the time pronounce the second best original Oration.

Fifth:- The FAILING prize shall not exceed One Hundred and Fifty Dollars, nor the BEEKMAN prize One Hundred Dollars; and should the annual income of said fund at any time during the first ten years from the date hereof, exceed the sum of two hundred and fifty dollars such excess shall be added to the fund and become a part thereof and kept and invested accordingly; but thereafter, any such excess may be added to the fund or to the prizes from time to time, as the Regents may determine.

Sixth:- The faculty of the aforesaid UNIVERSITY shall select at each commencement exercises, three disinterested persons, from different portions of the state of Oregon, if possible, - or from other states, - or from both this state and other states, - excluding all persons connected with said UNIVERSITY, excepting members of the said Board of Regents; and said three persons selected by the said Faculty, shall act as judges, who, after hearing the orations pronounced by the members of the graduating class, shall determine what member thereof has pronounced the best oration, and also what member thereof has pronounced the second best oration, and to these members shall be awarded respectively the above named FAILING and BEEKMAN Prizes. The judges, in deciding what members have pronounced the best and second best oration, shall take into consideration the originality of the subject-matter, the style of treatment, rhetorical excellence, and manner of delivery; and no oration shall be considered in the award of said prizes unless delivered without the aid of manuscript.

Seventh:- Prior to the delivery of the orations for said prizes the President of the Faculty or some one under his direction shall publicly announce to the judges the terms and conditions

upon which the award is to be made; and the majority of the judges shall be sufficient to award either of said prizes.

Eighth:- The Faculty of the UNIVERSITY may in their discretion, select, at the beginning of each college year, subjects, not less than six nor more than twelve in number,; and upon selecting said subjects, they shall make known the same as the subjects of the FALLING and BIRTHDAY Orations for the said year. But if the Faculty shall select and announce such list of subjects, no oration upon any other subject shall be considered in the award of said prizes.

Ninth:- The valedictory and salutatory addresses shall not be regarded in the award of said prizes; but the valedictorian and salutatorian shall be entitled to deliver other orations in competition for said prizes.

Tenth:- Only the orations of such members of the graduating class as are publicly delivered shall be considered in the award of the aforesaid prizes; and should the graduating class in the course aforesaid ever become so large as only to permit the delivery of orations by representatives of the class chosen by the Faculty, on consideration of high class standing, then those members only of the graduating class who publicly pronounce orations shall be contestants for the aforesaid prizes.

In Testimony Whereof and in pursuance of a Resolution of the Regents of the UNIVERSITY of Oregon duly passed at a regular meeting thereof, begun and held at Eugene, Oregon, on June 20, 1889, the President of the Regents has this June 29, 1889, hereunto signed his name and the Secretary thereof has also signed his name and affixed the seal of said University.

Matthew P. Deady
President of the
Regents.

Send of light

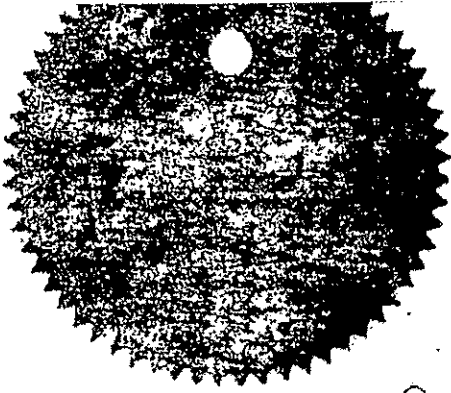
For Salary and ~~expenses~~

Oration Days

Filed July 1st 1889

W. Adams & Co.

de. m. t. p. m.



By order of the Regents
William J. Wallin
Secretary

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LANE

2 In the matter of the FAILING and
3 BEEKMAN ORATION PRIZE FUND of the
4 University of Oregon on relation
5 of the

6 STATE OF OREGON, acting by and through
7 the STATE BOARD OF HIGHER EDUCATION,

8 Plaintiff,

9 vs.

10 DORIS H. WALKER, HENRY F. CABELL,
11 and HARRISON G. PLATT, Executor of
12 the Estate of CARRIE C. BEEKMAN,
13 Deceased; and all other unknown parties
14 and unknown heirs of Cornelius C.
15 Beekman, Deceased, and of Henry Failing,
16 Deceased, who have or claim some title,
17 estate, lien or interest in the property
18 described in the Complaint herein,

19 Defendants.

FILED
AT.....O'CLOCK.....M

JAN 31 1961

OLGA FREEMAN
COUNTY CLERK
BY *[Signature]*
DEPUTY

Case No. 60226 (3)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE

20 The above entitled matter having come on for hearing before this court
21 upon plaintiff's motion for trial this 30th day of January, 1961, plaintiff
22 appearing by ROBERT Y. THORNTON, Attorney General, State of Oregon, through
23 Wolf von Otterstedt, Special Assistant Attorney General, and the defendants,
24 Doris H. Walker, Henry F. Cabell and George C. Bronaugh, having appeared by
25 stipulation and without counsel and all other defendants having failed to ap-
26 pear and an order of default as to all such defendants having been entered of
27 record in this court prior to the time of this hearing; and the court having
28 heard the testimony of the plaintiff supporting all material allegations of the
29 petition for instructions; and the court being otherwise fully advised in the
30 premises; now therefore this court makes the following

FINDINGS OF FACT:

1

31 That the relator, State of Oregon, acting by and through the State
32 Board of Higher Education, is the trustee of the Failing-Beekman Oration Prize
33 Fund of the University of Oregon, and that all of the above named defendants are
34 over the age of twenty-one years and are the known surviving heirs of Cornelius
35 C. Beekman, deceased, or of Henry Failing, deceased, respectively, and that they
36 have or claim some vested contingent executory or reversionary interest in the

Page 1 - Findings of Fact, Conclusions of Law and Decree

Exhibit 1
Page 6 of 9

WOLF VON OTTERSTEDT
ATTORNEY-AT-LAW
16 E. BROADWAY
EUGENE, OREGON
DIAMOND E-8783

✓
✓
✓
✓
✓

1 trust referred to and set out in the complaint.

2 II

3 That on or about the 29th day of June, 1889, by resolution duly
 4 passed by the regents of the University of Oregon at its regular meeting, such
 5 regents being the predecessors in interest to the plaintiff herein, a trust
 6 fund was established with a gift from Henry Felling, deceased, in the sum of
 7 \$2,500.00 and a gift from Cornelius C. Beekman, deceased, of Jacksonville, Ore-
 8 gon, in the sum of \$1,600.00, such trust generally providing for an oratorical
 9 contest to be held at the time of commencement exercises each year at the
 10 University of Oregon pursuant to certain standards and specifications provided
 11 in the trust resolution enacted by the Board of Regents of the University of
 12 Oregon as set forth specifically in the trust agreement which is attached to
 13 the complaint and by reference was made a part thereof; and that since receiv-
 14 ing the said trust fund, the trustee plaintiff has held the same as set forth
 15 in the trust resolution in accordance with the desire and intention of the
 16 trustors.

17 III

18 That due to a change of circumstances, it is no longer feasible to
 19 carry out the intent of the trustors literally, and it has become impossible
 20 for the trustee petitioner to conform to the conditions of the trust; that the
 21 attending circumstances and conditions which have created a frustration to the
 22 trustors' intent in making the gift are as follows:

23 1. That when the trust was established in 1889, oratory and speech-
 24 making were almost exclusively an extracurricular activity of the University of
 25 Oregon managed by the Philologist Society and that this said society no longer
 26 exists and now oratory, debate and speechmaking are a part of the regular curri-
 27 culum offered by the University of Oregon and taken by a large number of stu-
 28 dents.

29 2. That when the trust was established, no Department of Speech
 30 existed at the University of Oregon. That all courses in speech and debate or
 31 oratory are now administered by the Department of Speech of the University of
 32 Oregon which offers courses in four major areas for under-graduate and graduate

WOLF VON OTTERSTEDT
 ATTORNEY-AT-LAW
 16 E. BROADWAY
 EUGENE, OREGON
 DIAMOND B-8783

1 degrees including the doctorate in philosophy, to wit: radio-television, theatre
 2 speech correction and rhetoric-public address.

3 3. That when the trust was established, the extracurricular activi-
 4 ties in speech were confined to the campus of the University of Oregon in Eu-
 5 gene, Oregon, but that today one of the most significant aspects of the program
 6 in speech is the state-wide symposium in which students visit various areas of
 7 the state in speechmaking teams to talk to citizens of the state on problems of
 8 the present day.

9 4. That for a considerable number of years now, it has been impossi-
 10 ble to hold the oratorical contest contemplated by the trust resolution at the
 11 time of commencement exercises of the University of Oregon.

12 IV

13 That, therefore, the intent of the donors has been frustrated as pre-
 14 viously alleged and that the plaintiff herein is in doubt as to the extent of
 15 its authority to use the said trust resolution funds for purposes other than
 16 those enumerated hereinabove, and that petitioner, therefore, is in need of
 17 instructions from the court with regard to the future use of said trust funds.

18 V

19 That the plaintiff petitioner, according to the testimony of Professor
 20 Glenn Starlin, head of the Department of Speech of the University of Oregon,
 21 has determined that the following uses in keeping with present conditions and
 22 circumstances would best carry out the intent of the donors or trustors and that
 23 approval of the court is sought for instructions authorizing the use of the
 24 Falling-Beekman Oration Prize Fund under the following terms and conditions:

25 1. That there be awarded annually two prizes from the proceeds of the
 26 Falling-Beekman trust fund, the principal of which at the present time is in
 27 the amount of approximately \$5,400.00, in such sums as will be determined by a
 28 committee of the faculty, to the two members of the senior class who, during and
 29 throughout their student days at the University of Oregon, have most distin-
 30 guished themselves in upholding the dignity of the spoken word in public address.

31 2. That there be established a committee of the faculty to be appoin-
 32 ted by the President of the University of Oregon to determine who shall be the

WOLF VON OTTERSTEDT
 ATTORNEY-AT-LAW
 18 E. BROADWAY
 EUGENE, OREGON
 DIAMOND B-8783

1 two recipients of the prizes awarded under the trust, the amount to be so
2 awarded and the rules and regulations for administering the competition and
3 the making of the awards within the intention of the trustors.

4 Based upon the foregoing Findings of Fact, this court now makes the
5 following

6 CONCLUSIONS OF LAW

7 The petitioner trustee is hereby empowered and authorized to employ
8 the principal and income of the Falling-Beekman Oration Prize Fund in accor-
9 dance with the terms and conditions set forth in paragraphs 1 and 2 of para-
10 graph V set forth in the above Findings of Fact and this court hereby approves
11 and confirms such proposed plan for the disposition of the Falling-Beekman
12 Oration Prize Fund in accordance with the petition for instructions herein.

13
14 IT IS THEREFORE ORDERED AND DECREED by this court that the uses pro-
15 posed in paragraph V of the Findings of Fact above for the Falling-Beekman
16 Oration Prize Fund are hereby approved in all respects by this court and the
17 petitioner trustee may employ the income and principal of the Falling-Beekman
18 Oration Prize Fund in accordance with the terms and conditions set forth in
19 paragraph V of the Findings of Fact herein, and that neither party is entitled
20 to any costs or disbursements in the above entitled cause.

21
22 *Edward Levy*
23 Circuit Judge
24
25
26
27

28
29
30
31
32
WOLF VON OTTERBIEDE
ATTORNEY AT LAW
16 E. BROADWAY
EDMONT, OREGON
DIAMOND 5-8783

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the
W. F. JEWETT PRIZE FUND IN PUBLIC SPEAKING.

UNIVERSITY OF OREGON,

Petitioner,

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

Case No. 19CV _____

APPLICATION AND PETITION FOR MODIFICATION OF FUND RESTRICTIONS

(ORS 128.328 - Uniform Prudent Management of Institutional Funds Act)

Fee Authority: ORS 21.135 (no specific fee provided in other law for the proceeding)

Petitioner the University of Oregon (the "University") files this Application and Petition for Modification of Fund Restrictions (the "Application") pursuant to ORS 128.328, and respectfully represents and petitions to the court as follows:

1.

The University is and was at all material times an educational institution located in Eugene, Lane County, Oregon, an "institution" as defined in ORS 128.316(4), and a "public body" within the meaning of ORS 128.328(5) and 174.109.

2.

On the date this Application was filed, Respondent Ellen Rosenblum is and was the Attorney General for the State of Oregon, and is therefore entitled to notice of and an opportunity to be heard on this Application pursuant to ORS 128.328.

///

1 3.

2 In or about June of 1925, the University accepted a gift from Mary H. Jewett (the
3 "Donor") to be known as the W. F. Jewett Prize Fund in Public Speaking (the "Fund").
4 The applicable restrictions and criteria of the Fund are described in the Fund's gift
5 instrument attached hereto as Exhibit 1, and incorporated herein by this reference.

6 However, the salient restrictions on, and purposes of, the Fund are:

7 (a) The Fund would be held by the Board of Regents for the University and their
8 successors, who would apply only Fund income for the purposes of the Fund;

9 (b) The purpose of the Fund was to encourage student effort and interest toward
10 excellence in the art of public speaking.

11 (c) The manner in which such purpose was to be expressed was by restricting Fund
12 proceeds to annual prizes in local public speaking contests held under the direction of the
13 instructor in charge of public speaking courses in the University, and requiring that the
14 winners of such prizes receive a suitable certificate of award at the conclusion of the
15 contest, upon which would appear the name of the recipient, the title of the contest, a
16 reference to the Fund, and a suitable phrase, motto or quotation designed to inspire
17 students to sincere effort and worthy endeavor in speaking, and such other statements
18 as may seem desirable or advisable to the instructor charged with supervising the contest.

19 4.

20 The University now holds approximately \$40,120 for the Fund.

21 5.

22 On information and belief, the Donor died on or about July 25, 1945.

23 6.

24 The Fund is an "institutional fund" within the meaning of ORS 128.316(5).
25 Pursuant to ORS 128.328(2) and (3), the court may, upon application of an institution and
26 notice and opportunity to be heard to the Attorney General, modify:

1 (a) A restriction contained in a gift instrument regarding the management or
2 investment of an institutional fund, if the restriction has become impracticable or wasteful,
3 the restriction impairs the management or investment of the fund, or, because of
4 circumstances not anticipated by the donor, a modification will further the purposes of the
5 fund. In such event the modification must, to the extent practicable, be made in
6 accordance with the donor's probable intention; and

7 (b) The purpose of the fund or the restriction on the use of the fund, if a particular
8 charitable purpose or a restriction contained in a gift instrument on the use of an
9 institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful. In
10 such event the modification shall be consistent with the charitable purposes expressed in
11 the gift instrument.

12 7.

13 The Fund's purpose and/or restrictions described in the foregoing Paragraph 3
14 have become impracticable and/or impossible to achieve because of one or more of the
15 following circumstances:

16 (a) Local public speaking contests as envisioned by the Fund's gift instrument no
17 longer occur. Rather, University speech debates by undergraduates are now conducted
18 as part of co-curricular, intercollegiate individual and team competitions, in which the
19 University's undergraduates who elect to participate in the University's Forensics program
20 will travel to other universities and/or host teams from such other universities for the
21 purpose of participating in competitively-judged events (the "Present Undergraduate
22 Debate Program");

23 (b) Relatively modest prizes of the type envisioned by the Fund are no longer how
24 excellence is recognized and incentivized by the modern forensics community.
25 Excellence in forensics for undergraduates is generally now recognized and incentivized
26

1 through being afforded an opportunity to compete in, and potentially win, events held
2 pursuant to the Present Undergraduate Debate Program; and

3 (c) The effect of inflation on the income available for making awards from the Fund
4 has rendered the award significantly less valuable now as an incentive for fostering
5 speech debates, than when the Fund was first established.

6 8.

7 It appears from the terms of the gift instrument that the foregoing circumstances
8 were not anticipated by the Donor. The Donor, had the Donor known of such
9 circumstances, would probably desire modification as set forth herein. It would further
10 the purposes of the Fund, and be consistent with the charitable purposes expressed in
11 the Fund's gift instrument, if the Fund's purpose and restrictions were modified to:

12 (a) Permit the University to transfer money held pursuant to the Fund to the Oregon
13 Forensics Director's Fund (the "Forensics Fund"), a fund maintained by the University of
14 Oregon Foundation (the "Foundation") for the following purpose:

15 "to provide a flexible resource for the Director of the Forensics Program in the
16 Robert D. Clark Honors College at the University of Oregon. Funds [in the
17 Forensics Fund] may be used for any purpose relating to the Forensics Program,
18 including, but not limited to, student support, travel expenses, hosting or attending
19 tournament events, programs and activities, excluding the Director's salary
20 expenses. Should the Forensics Program or a successor program cease to exist,
21 the [Forensics Fund] shall be used to support undergraduate scholarships at the
22 University of Oregon with preference given to students with financial need" (the
23 "Forensics Fund Purpose")

24 (b) Modify the restriction providing the manner in which the purpose of the Fund would
25 be recognized, by allowing money held pursuant to the Fund to be used for any purpose
26 permitted by the Forensics Fund Purpose;

(c) Remove the restriction against use of the Fund's principal; and

(d) Allow the Director of the Forensics Program, or, in the absence of such role or a
person occupying such role, the Dean of the University's Robert D. Clark Honors College,
to determine the amount of and recipients for any disbursements from the Fund.

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

9.

The Foundation is ready, willing and able to hold the Fund pursuant to the terms of the foregoing Paragraph 8.

WHEREFORE, the University petitions and prays for judgment approving the Application as follows:

1. Permitting the University to transfer money held pursuant to the Fund to the Foundation, and for the Foundation to administer the proceeds of the Fund via the Forensics Fund;

2. Modifying the restriction providing the manner in which the purpose of the Fund would be recognized, by allowing money held pursuant to the Fund to be used for any purpose permitted by the Forensics Fund Purpose;

3. Removing the restriction on use of the Fund's principal;

4. Allowing the Director of the Forensics Program, or, in the absence of such role or a person occupying such role, the Dean of the University's Robert D. Clark Honors College, to determine the amount of and recipients for any disbursements from the Fund;

and

///

///

///

///

///

///

///

///

///

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1 5. Granting the University such additional relief as the Court deems just and proper.

2 I hereby declare that the above statements are true to the best of my
3 knowledge and belief, and that I understand they are made for use as evidence in
4 court, and are subject to penalty for perjury.

4 DATED this ____ day of _____, 2019.

5 THE UNIVERSITY OF OREGON

6
7 By: _____
8 Trond Jacobsen, its Director of Forensics and
9 Instructor of Information Science, Robert
10 Clark Honors College

9 **Document Prepared by:**
10 Lance A. LeFever, OSB# 993098
11 of Attorneys for University
12 Thorp, Purdy, Jewett, Urness & Wilkinson, P.C.
13 1011 Harlow Road, Suite 300
14 Springfield, OR 97477
15 O: (541) 747-3354
16 F: (541) 747-3367
17 E: llefever@thorp-purdy.com

14 **Applicant:**
15 University of Oregon
16 c/o Jeslyn A. Everitt, Assistant General Counsel
17 Office of the General Counsel
18 1226 University of Oregon
19 Eugene OR 97403
20 O: (541) 346-3082
21 F: (541) 346-6110
22 E: jeveritt@uoregon.edu

19
20
21
22
23
24
25
26

THE W. F. JEWETT PRIZE FUND

IN

PUBLIC SPEAKING

I have, to-day, deposited with L. H. Johnson, Comptroller of the University of Oregon, twenty shares of the stock of the American Telephone and Telegraph Company the said shares bearing a present market value of Two Thousand Eight Hundred Dollars (\$2800.00).

This stock I hereby present, give and donate to the University of Oregon, to be held by the Board of Regents of the University of Oregon for the purposes hereinafter set forth:

1. It is my intention in making this gift, to create a fund to be known as the W. F. Jewett Prize Fund in Public Speaking, for the purpose of encouraging student effort and interest toward excellence in the art of Public Speaking.
2. The Board of Regents of the University of Oregon shall have power to hold and shall hold the stock heretofore designated. But should occasion arise when it shall appear clearly to said Board of Regents that this stock is an unsafe, undesirable, or unprofitable investment, then the said Board of Regents may in their discretion sell or otherwise dispose of the said stock, and invest the proceeds thereof in other stocks or securities representing a sound and profitable investment.
3. It is my direction, further, that the yearly income to be derived from the fund hereby created shall be distributed as cash prizes in local public speaking contests to be held each year under the direction of the instructor in charge of public speaking courses in the University:

COMBIBOTTEL2

PER. S. 494

DECEMBER

4. It is my desire further, that each winner of any of the prizes heretofore mentioned shall, upon the conclusion of the contest in which he ^{or she} shall be declared entitled to a prize, be presented with a suitable certificate of award, upon which shall appear the name of the recipient, the title of the contest, a reference to the fund hereby created, a suitable phrase, motto, or quotation designed to inspire students to sincere effort and worthy endeavor in speaking, and such other statements as may seem desirable or advisable to the instructor charged with supervising the contest. And that a sufficient amount from the yearly income to be derived from the fund hereby created shall be appropriated to the payment of all reasonable expenditures to be incurred in the printing, engraving and lettering of the said awards.

Mary G. Jewett

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the
W.F. JEWETT PRIZE FUND IN PUBLIC SPEAKING.

UNIVERSITY OF OREGON,

Petitioner,

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

Case No. 19CV _____
STIPULATED GENERAL JUDGMENT

THIS MATTER coming before the Court upon the Application and Petition for Modification of Fund Restrictions (the "Application"), and the stipulations endorsed hereon; the Court having considered the matter on the record submitted by the parties; and good cause appearing;

IT APPEARING that the persons listed below, as indicated by their signatures hereon, have stipulated to the following facts:

A. The University asserts the allegations in the Application are true, the other persons listed below do not contest such allegations (except that the University of Oregon Foundation agrees with the allegations of Paragraph 9 therein), and the allegations of the Application are incorporated herein as the findings of this Court if this Stipulated General Judgment is signed by the Court;

B. Each of the persons signing below indicates that such person (or, as to any attorneys signing the instrument, the entity or person whom such attorney represents):

1. has received a true copy of the Application;
2. understands such person has or may have the right to be formally served with process in connection with the Application, including but not necessarily limited to a copy of Summons and the Application;

- 1 3. acknowledges such person has or may have the right and opportunity
2 to be heard in connection with the Application;
- 3 4. has been given an adequate opportunity to review the Application and
4 this Judgment with counsel of such person's choice, and has either
5 consulted with such counsel or intentionally relinquished the opportunity
6 to do so; and
- 7 5. Waives its rights in this matter to: (i) be formally served with Summons
8 and the Application; (ii) be further heard on this matter; or (iii) object to
9 entry of this Judgment.

10 NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the
11 Application is approved, and the fund instrument for the W. F. Jewett Prize Fund in Public
12 Speaking attached hereto as Exhibit 1 (the "Fund") is modified in the following particulars:

13 1. The University of Oregon (the "University") may transfer money held
14 pursuant to the Fund to the University of Oregon Foundation (the "Foundation"), and the
15 Foundation may administer the proceeds of the Fund via the Oregon Forensics Director's
16 Fund (the "Forensics Fund"), a fund maintained by the Foundation:

17 "to provide a flexible resource for the Director of the Forensics Program in the
18 Robert D. Clark Honors College at the University of Oregon. Funds [in the
19 Forensics Fund] may be used for any purpose relating to the Forensics Program,
20 including, but not limited to, student support, travel expenses, hosting or attending
21 tournament events, programs and activities, excluding the Director's salary
22 expenses. Should the Forensics Program or a successor program cease to exist,
23 the [Forensics Fund] shall be used to support undergraduate scholarships at the
24 University of Oregon with preference given to students with financial need" (the
25 "Forensics Fund Purpose");

26 2. The restrictions requiring: (i) the Fund's purpose to be recognized via
annual prizes in local public speaking contests held under the direction of the instructor
in charge of public speaking contests in the University; and (ii) that the winners of such
prizes receive a suitable certificate of award at the conclusion of the contest, upon which
would appear the name of the recipient, the title of the contest, a reference to the Fund,
and a suitable phrase, motto or quotation designed to inspire students to sincere effort
and worthy endeavor in speaking, and such other statements as may seem desirable or
advisable to the instructor charged with supervising the contest, are hereby removed.
Instead, all money formerly held pursuant to the Fund shall be used for any purpose
permitted by the Forensics Fund Purpose;

3. The restriction on use of the Fund's principal is hereby removed; and

4. The Director of the University's Forensics Program, or, in the absence of
such role or a person occupying such role, the Dean of the University's Robert D. Clark
Honors College, is henceforth authorized to determine the amount of and recipients for
any disbursements from the Fund.

///

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS SO ORDERED AND ADJUDGED.

THE PERSONS SIGNING BELOW SO STIPULATE THROUGH THEIR UNDERSIGNED REPRESENTATIVES, AND HAVE NO OBJECTION TO ENTRY OF JUDGMENT IN THE ABOVE FORM:

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

ELLEN F. ROSENBLUM, IN HER
CAPACITY AS THE ATTORNEY GENERAL
FOR THE STATE OF OREGON

Lance A. LeFever, OSB# 993098
of Attorneys for University
Preparer of this Document

Susan A. Bower, OSB# 960960
Of Attorneys for Attorney General
Assistant Attorney General

UNIVERSITY OF OREGON
FOUNDATION

By: _____
Name: _____
Its: _____

* * * * *

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100

Pursuant to UTCR 5.100(2), the undersigned certifies as follows: (1) Compliance with UTCR 5.100(1) Service Requirements: I complied with the service requirements of UTCR 5.100 because this judgment is accompanied by stipulations above that no objection exists as to the judgment or order; and (2) Readiness for Judicial Signatures. This proposed order or judgment is ready for judicial signature because each person listed above in this order or judgment has stipulated to the order or judgment, as shown by each person's signature on the document being submitted.

DATED _____, 2019.

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

By: _____
Lance A. LeFever, OSB# 993098
Of Attorneys for University
llefever@thorp-purdy.com

THE W. F. JEWETT PRIZE FUND

IN

PUBLIC SPEAKING

I have, to-day, deposited with L. H. Johnson, Comptroller of the University of Oregon, twenty shares of the stock of the American Telephone and Telegraph Company the said shares bearing a present market value of Two Thousand Eight Hundred Dollars (\$2800.00).

This stock I hereby present, give and donate to the University of Oregon, to be held by the Board of Regents of the University of Oregon for the purposes hereinafter set forth:

1. It is my intention in making this gift, to create a fund to be known as the W. F. Jewett Prize Fund in Public Speaking, for the purpose of encouraging student effort and interest toward excellence in the art of Public Speaking.

2. The Board of Regents of the University of Oregon shall have power to hold and shall hold the stock heretofore designated. But should occasion arise when it shall appear clearly to said Board of Regents that this stock is an unsafe, undesirable, or unprofitable investment, then the said Board of Regents may in their discretion sell or otherwise dispose of the said stock, and invest the proceeds thereof in other stocks or securities representing a sound and profitable investment.

3. It is my direction, further, that the yearly income to be derived from the fund hereby created shall be distributed as cash prizes in local public speaking contests to be held each year under the direction of the instructor in charge of public speaking courses in the University.

COMBIBOITFB,2

MAR 5 1920

OFFICE

4. It is my desire further, that each winner of any of the prizes heretofore mentioned shall, upon the conclusion of the contest in which he ^{or she} shall be declared entitled to a prize, be presented with a suitable certificate of award, upon which shall appear the name of the recipient, the title of the contest, a reference to the fund hereby created, a suitable phrase, motto, or quotation designed to inspire students to sincere effort and worthy endeavor in speaking, and such other statements as may seem desirable or advisable to the instructor charged with supervising the contest. And that a sufficient amount from the yearly income to be derived from the fund hereby created shall be appropriated to the payment of all reasonable expenditures to be incurred in the printing, engraving and lettering of the said awards.

15/ Mary W. Jewett

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the

Case No. 19CV _____

**GEORGE W. CHERRY MEMORIAL
SCHOLARSHIP IN SPEECH.**

**APPLICATION AND PETITION FOR
MODIFICATION OF FUND
RESTRICTIONS**

UNIVERSITY OF OREGON,

(ORS 128.328 - Uniform Prudent
Management of Institutional Funds Act)

Petitioner,

Fee Authority: ORS 21.135 (no specific
fee provided in other law for the
proceeding)

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

Petitioner the University of Oregon (the "University") files this Application and
Petition for Modification of Fund Restrictions (the "Application") pursuant to ORS 128.328,
and respectfully represents and petitions to the court as follows:

1.

The University is and was at all material times an educational institution located in
Eugene, Lane County, Oregon, an "institution" as defined in ORS 128.316(4), and a
"public body" within the meaning of ORS 128.328(5) and 174.109.

2.

On the date this Application was filed, Respondent Ellen Rosenblum is and was
the Attorney General for the State of Oregon, and is therefore entitled to notice of and an
opportunity to be heard on this Application pursuant to ORS 128.328.

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1 3.

2 On or about August 27, 1981, Louise Cherry Little ("Donor") delivered to the
3 University a gift to be known as the George W. Cherry Memorial Scholarship in Speech
4 (the "Fund"). The applicable restrictions and criteria of the Fund are described in the
5 Fund's gift instrument attached hereto as Exhibit 1 and incorporated herein by this
6 reference. However, the salient restrictions on, and purposes of, the Fund are:

7 (a) The Fund would be administered by the University through its Financial Aid Office
8 and Office of Business Affairs, and using only interest income for the purposes of the
9 Fund;

10 (b) The purpose of the Fund was to provide scholarships for any enrolled
11 undergraduate students at the University, to be awarded on the basis of a speech contest
12 conducted each Spring term and judged by the University's Speech Department, through
13 a panel consisting of faculty appointed by the Speech Department Chairman, and working
14 in concert with the University of Oregon Mother's Club (the "Club").

15 (c) The initial scholarship from the Fund would be in the amount of \$500, with
16 subsequent increases to be determined by Donor or, in her absence, the Club.

17 4.

18 The University now holds approximately \$26,983 for the Fund.

19 5.

20 The Donor died on or about August 14, 2005.

21 6.

22 The Fund is an "institutional fund" within the meaning of ORS 128.316(5).
23 Pursuant to ORS 128.328(2) and (3), the court may, upon application of an institution and
24 notice and opportunity to be heard to the Attorney General, modify:

25 (a) A restriction contained in a gift instrument regarding the management or
26 investment of an institutional fund, if the restriction has become impracticable or wasteful,

1 the restriction impairs the management or investment of the fund, or, because of
2 circumstances not anticipated by the donor, a modification will further the purposes of the
3 fund. In such event the modification must, to the extent practicable, be made in
4 accordance with the donor's probable intention; and

5 (b) The purpose of the fund or the restriction on the use of the fund, if a particular
6 charitable purpose or a restriction contained in a gift instrument on the use of an
7 institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful. In
8 such event the modification shall be consistent with the charitable purposes expressed in
9 the gift instrument.

10 7.

11 The Fund's purpose and restrictions described in the foregoing Paragraph 3 have
12 become impracticable and/or impossible to achieve because of one or more of the
13 following circumstances:

14 (a) The Speech Department closed in 1991, and as a result the University has no
15 Speech Department faculty to act as judges of speeches pursuant to the Fund's gift
16 instrument, nor any Speech Department Chairman to appoint them;

17 (b) The Club no longer exists, and as a result any panel judging such speech contests
18 may not work in concert with the Club as required by the Fund gift instrument, nor may
19 the Club approve subsequent increases to the amount of Fund scholarships in the
20 absence of the Donor;

21 (c) Intra-collegiate, extra-curricular speech debates by undergraduates of the type
22 envisioned by the Fund's gift instrument no longer occur at the University's (now non-
23 existent) Speech Department. Rather, University speech debates by undergraduates are
24 now conducted as part of co-curricular, intercollegiate individual and team competitions,
25 in which the University's undergraduates who elect to participate in the University's
26 Forensics program will travel to other universities and/or or host teams from such other

1 universities for the purpose of participating in competitively-judged events (the "Present
2 Undergraduate Debate Program");

3 (d) Relatively modest prizes of the type envisioned by the Fund are no longer how
4 excellence is recognized and incentivized by the modern forensics community.
5 Excellence in forensics for undergraduates is generally now recognized and incentivized
6 through being afforded an opportunity to compete in, and potentially win, events held
7 pursuant to the Present Undergraduate Debate Program; and

8 (e) After the loss of the Speech Department and its faculty, it is unclear to the
9 University when the last speech debate was held pursuant to the Fund, nor the amount
10 of the scholarship last approved from the Fund by the Donor or the University's Mother's
11 Club. Furthermore, the effect of inflation on the initial \$500 scholarship approved in the
12 1981 gift instrument for the Fund has rendered such sum significantly less valuable as an
13 incentive for fostering speech debates.

14 8.

15 It appears from the terms of the gift instrument that the foregoing circumstances
16 were not anticipated by the Donor. The Donor, had she known of such circumstances,
17 would probably desire modification as set forth herein. It would further the purposes of
18 the Fund, and be consistent with the charitable purposes expressed in the Fund's gift
19 instrument, if the Fund's purpose and restrictions were modified to:

20 (a) Permit the University to transfer money held pursuant to the Fund to the Oregon
21 Forensics Director's Fund (the "Forensics Fund"), a fund maintained by the University of
22 Oregon Foundation (the "Foundation") for the following purpose:

23 "to provide a flexible resource for the Director of the Forensics Program in the
24 Robert D. Clark Honors College at the University of Oregon. Funds [in the
25 Forensics Fund] may be used for any purpose relating to the Forensics Program,
26 including, but not limited to, student support, travel expenses, hosting or attending
tournament events, programs and activities, excluding the Director's salary
expenses. Should the Forensics Program or a successor program cease to exist,
the [Forensics Fund] shall be used to support undergraduate scholarships at the

1 University of Oregon with preference given to students with financial need” (the
“Forensics Fund Purpose”);

2 (b) Modify the purpose of the Fund to allow money held pursuant to the Fund to be
3 used for any purpose permitted by the Forensics Fund Purpose;

4 (c) Remove the restriction against use of the Fund’s principal; and

5 (d) Remove the restriction authorizing the Donor or Club to determine the amount of
6 any disbursements from the Fund, and allow the Director of the Forensics Program, or,
7 in the absence of such role or a person occupying such role, the Dean of the Robert D.
8 Clark Honors College, to determine the amount of any disbursements from the Fund.

9 9.

10 The Foundation is ready, willing and able to hold the Fund pursuant to the terms
11 of the foregoing Paragraph 8.

12 WHEREFORE, the University petitions and prays for judgment approving the
13 Application as follows:

14 1. Permitting the University to transfer money held pursuant to the Fund to the
15 Foundation, and for the Foundation to administer the proceeds of the Fund via the
16 Forensics Fund;

17 2. Modifying the purpose of the Fund to allow any money held pursuant to the Fund
18 to be used for any purpose permitted by the Forensics Fund Purpose;

19 3. Removing the restriction on use of the Fund’s principal;

20 4. Removing the restriction authorizing the Donor or Club to determine the amount of
21 any disbursements from the Fund, and authorizing the Director of the Forensics Program,
22 or, in the absence of such role or a person occupying such role, the Dean of the
23 University’s Robert D. Clark Honors College, to determine the amount of and recipients
24 for any disbursements from the Fund; and

25 ///

26

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1 5. Granting the University such additional relief as the Court deems just and proper.

2 I hereby declare that the above statements are true to the best of my
3 knowledge and belief, and that I understand they are made for use as evidence in
4 court, and are subject to penalty for perjury.

4 DATED this ____ day of _____, 2019.

5 THE UNIVERSITY OF OREGON

6
7 By: _____
8 Trond Jacobsen, its Director of Forensics and
9 Instructor of Information Science, Robert
10 Clark Honors College

9 **Document Prepared by:**
10 Lance A. LeFever, OSB# 993098
11 of Attorneys for University
12 Thorp, Purdy, Jewett, Urness & Wilkinson, P.C.
13 1011 Harlow Road, Suite 300
14 Springfield, OR 97477
15 O: (541) 747-3354
16 F: (541) 747-3367
17 E: llefever@thorp-purdy.com

14 **Applicant:**
15 University of Oregon
16 c/o Jeslyn A. Everitt, Assistant General Counsel
17 Office of the General Counsel
18 1226 University of Oregon
19 Eugene OR 97403
20 O: (541) 346-3082
21 F: (541) 346-6110
22 E: jeveritt@uoregon.edu

19
20
21
22
23
24
25
26

Declaration of Gift
The George W. Cherry Memorial Scholarship
In Speech

607041
405941

I, Louise Cherry Little, herewith establish at the University of Oregon, a fund for the George W. Cherry Memorial Scholarship in Speech, in tribute to and in memory of my late husband. George W. Cherry was President of the University of Oregon student body of Nineteen Hundred Thirty-One (1931). The scholarship is to be known as the George W. Cherry Memorial Scholarship in Speech.

The initial gift will be in cash in the amount of Five Thousand Dollars (\$5,000).

The scholarship shall be administered by the University of Oregon Financial Aids Office and the University of Oregon Office of Business Affairs. The principal shall be kept in tact, using only the interest income for the purpose hereinafter described.

To provide a scholarship or scholarships for any enrolled undergraduate student or students of the University of Oregon.

The initial scholarship shall be in the amount of Five Hundred Dollars (\$500), provided income is available. Additional increases in the amount of the scholarship or additional scholarships shall be determined by Louise Cherry Little or by the University of Oregon Mother's Club in her absence.

The scholarship or scholarships shall be awarded on the basis of a Speech contest conducted each Spring term and judged by the University of Oregon Speech Department. The Speech contest panel shall consist of faculty appointed by the Speech Department Chairman and said panel will work in concert with the University of Oregon Mother's Club. The Speech contest will be held no later than April 15th of each year so that the award or awards can be made for Fall, Winter, and Spring terms of the next academic year.

cc: Mrs. James
James Ferguson
Ed. Vignone

End copy sent 7/29/53

Once the recipient or recipients are determined, the Director of Business Affairs will prepare checks in three equal amounts to the winner or winners and tender the checks to the President of the University of Oregon Mother's Club who will make the award or awards.

In case a winner leaves the University, the remainder of the award will be given to the next highest ranking contestant.

The endowment funds and interest funds will be invested by the Treasurer of the State of Oregon in the same manner as all other endowments.

I establish this scholarship to perpetuate the memory of George W. Cherry, to help and encourage others in following the ideals that guided his life, and to contribute to the University of Oregon's ability to aid others to enhance their life by advancing their education.

Dated this 27 day of Aug, 1981.

Louise Cherry Little
Louise Cherry Little

WITNESSED:

Billie H. Wilson

This 27 day of Aug, 1981.

THORP, PURDY, JEWETT, URNESS & WILKINSON, P. C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the

Case No. 19CV_____

**GEORGE W. CHERRY MEMORIAL
SCHOLARSHIP IN SPEECH.**

STIPULATED GENERAL JUDGMENT

UNIVERSITY OF OREGON,

Petitioner,

v.

ELLEN ROSENBLUM, not as an individual,
but in her capacity as Attorney General for
the State of Oregon,

Respondent.

THIS MATTER coming before the Court upon the Application and Petition for Modification of Fund Restrictions (the "Application"), and the stipulations endorsed hereon; the Court having considered the matter on the record submitted by the parties; and good cause appearing;

IT APPEARING that the persons listed below, as indicated by their signatures hereon, have stipulated to the following facts:

A. The University asserts the allegations in the Application are true, the other persons listed below do not contest such allegations (except that the University of Oregon Foundation agrees with the allegations of Paragraph 9 therein), and the allegations of the Application are incorporated herein as the findings of this Court if this Stipulated General Judgment is signed by the Court;

B. Each of the persons signing below indicates that such person (or, as to any attorneys signing the instrument, the entity or person whom such attorney represents):

1. has received a true copy of the Application;
2. understands such person has or may have the right to be formally served with process in connection with the Application, including but not necessarily limited to a copy of Summons and the Application;

THORP, PURDY, JEWETT, URNESS & WILKINSON, P. C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

- 1 3. acknowledges such person has or may have the right and opportunity
2 to be heard in connection with the Application;
- 3 4. has been given an adequate opportunity to review the Application and
4 this Judgment with counsel of such person's choice, and has either
5 consulted with such counsel or intentionally relinquished the opportunity
6 to do so; and
- 7 5. Waives its rights in this matter to: (i) be formally served with Summons
8 and the Application; (ii) be further heard on this matter; or (iii) object to
9 entry of this Judgment.

10 NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the
11 Application is approved, and the fund instrument for the George W. Cherry Memorial
12 Scholarship in Speech attached hereto as Exhibit 1 (the "Fund") is modified in the
13 following particulars:

14 1. The University of Oregon (the "University") may transfer money held
15 pursuant to the Fund to the University of Oregon Foundation (the "Foundation"), and the
16 Foundation may administer the proceeds of the Fund via the Oregon Forensics Director's
17 Fund (the "Forensics Fund"), a fund maintained by the Foundation;

18 "to provide a flexible resource for the Director of the Forensics Program in the
19 Robert D. Clark Honors College at the University of Oregon. Funds [in the
20 Forensics Fund] may be used for any purpose relating to the Forensics Program,
21 including, but not limited to, student support, travel expenses, hosting or attending
22 tournament events, programs and activities, excluding the Director's salary
23 expenses. Should the Forensics Program or a successor program cease to exist,
24 the [Forensics Fund] shall be used to support undergraduate scholarships at the
25 University of Oregon with preference given to students with financial need" (the
26 "Forensics Fund Purpose");

27 2. The Fund's purpose of awarding scholarships resulting from a judged
28 debate is removed. Instead, all money formerly held pursuant to the Fund shall be used
29 for any purpose permitted by the Forensics Fund Purpose;

30 3. The restriction on use of the Fund's principal is removed; and

31 4. The restriction authorizing only Louise Cherry Little, or, in her absence, the
32 University of Oregon Mother's Club, to determine the amount of disbursements from the
33 Fund, is removed. Henceforth, the Director of the University's Forensics Program, or, in
34 the absence of such role or a person occupying such role, the Dean of the University's
35 Robert D. Clark Honors College, is authorized to determine the amount of and recipients
36 for disbursements from the Fund.

///

///

///

THORP, PURDY, JEWETT, URNESS & WILKINSON, P.C.
ATTORNEYS AT LAW
1011 HARLOW ROAD, SUITE 300, SPRINGFIELD, OR 97477
PHONE: (541) 747-3354; FAX: (541) 747-3367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS SO ORDERED AND ADJUDGED.

THE PERSONS SIGNING BELOW SO STIPULATE THROUGH THEIR UNDERSIGNED REPRESENTATIVES, AND HAVE NO OBJECTION TO ENTRY OF JUDGMENT IN THE ABOVE FORM:

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

ELLEN F. ROSENBLUM, IN HER
CAPACITY AS THE ATTORNEY GENERAL
FOR THE STATE OF OREGON

Lance A. LeFever, OSB# 993098
of Attorneys for University
Preparer of this Document

Susan A. Bower, OSB# 960960
Of Attorneys for Attorney General
Assistant Attorney General

UNIVERSITY OF OREGON
FOUNDATION

By: _____
Name: _____
Its: _____

* * * * *

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100

Pursuant to UTCR 5.100(2), the undersigned certifies as follows: (1) Compliance with UTCR 5.100(1) Service Requirements: I complied with the service requirements of UTCR 5.100 because this judgment is accompanied by stipulations above that no objection exists as to the judgment or order; and (2) Readiness for Judicial Signatures. This proposed order or judgment is ready for judicial signature because each person listed above in this order or judgment has stipulated to the order or judgment, as shown by each person's signature on the document being submitted.

DATED _____, 2019.

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.

By: _____
Lance A. LeFever, OSB# 993098
Of Attorneys for University
llefever@thorp-purdy.com

Declaration of Gift
The George W. Cherry Memorial Scholarship
In Speech

607041
405941

I, Louise Cherry Little, herewith establish at the University of Oregon, a fund for the George W. Cherry Memorial Scholarship in Speech, in tribute to and in memory of my late husband. George W. Cherry was President of the University of Oregon student body of Nineteen Hundred Thirty-One (1931). The scholarship is to be known as the George W. Cherry Memorial Scholarship in Speech.

The initial gift will be in cash in the amount of Five Thousand Dollars (\$5,000).

The scholarship shall be administered by the University of Oregon Financial Aids Office and the University of Oregon Office of Business Affairs. The principal shall be kept in tact, using only the interest income for the purpose hereinafter described.

To provide a scholarship or scholarships for any enrolled undergraduate student or students of the University of Oregon.

The initial scholarship shall be in the amount of Five Hundred Dollars (\$500), provided income is available. Additional increases in the amount of the scholarship or additional scholarships shall be determined by Louise Cherry Little or by the University of Oregon Mother's Club in her absence.

The scholarship or scholarships shall be awarded on the basis of a Speech contest conducted each Spring term and judged by the University of Oregon Speech Department. The Speech contest panel shall consist of faculty appointed by the Speech Department Chairman and said panel will work in concert with the University of Oregon Mother's Club. The Speech contest will be held no later than April 15th of each year so that the award or awards can be made for Fall, Winter, and Spring terms of the next academic year.

cc: Mrs. James
Harry Ferguson
Ed. Vignone

End copy sent 7/29/55

Once the recipient or recipients are determined, the Director of Business Affairs will prepare checks in three equal amounts to the winner or winners and tender the checks to the President of the University of Oregon Mother's Club who will make the award or awards.

In case a winner leaves the University, the remainder of the award will be given to the next highest ranking contestant.

The endowment funds and interest funds will be invested by the Treasurer of the State of Oregon in the same manner as all other endowments.

I establish this scholarship to perpetuate the memory of George W. Cherry, to help and encourage others in following the ideals that guided his life, and to contribute to the University of Oregon's ability to aid others to enhance their life by advancing their education.

Dated this 27 day of Aug, 1981.

Louise Cherry Little
Louise Cherry Little

WITNESSED:

Billie H. Wilson

This 27 day of Aug, 1981.