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File No. 7347-001

Via Email & Overnight Delivery

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Re: *In re L.L. Nunn Trust for the benefit of Deep Springs College*
Response to Request for Attorney General's Consent to Modification of the Trust for the Benefit of Deep Springs College

Dear Ms. Ibanez:

We write this letter on behalf of those trustees of Deep Springs College ("Deep Springs") who support the continuation of the two-year college as a single-sex institution.

As set forth in greater detail below, we ask that the Attorney General take the affirmative step of denying consent to a proposed modification of the Trust. In the alternative, we request that the Attorney General take no position on the non-dissenting trustees' request.

In summary, we urge such action by the Attorney General because:

- Any decision by the Attorney General in support of the non-dissenting trustees would constitute a radical departure from sound California and national public policy. This is so because there is no California or federal public policy that prohibits charities from advancing the education of women to the exclusion of men, or men to the exclusion of women. To the contrary, California and federal public policy favors single-sex education, and no California court has held that private single-sex college education is against State policy.

- Any decision by the Attorney General supporting the non-dissenting trustees would immediately cast doubt upon the continued vitality of California's three all-female colleges: Mills College, Mt. Saint Mary's College and Scripps College. This is necessarily so, as there is no basis for distinguishing between support for such female post-secondary educational institutions, on the one hand, and support for male post-secondary educational institutions such as Deep Springs.

- Any decision by the Attorney General in support of the non-dissenting trustees would place in peril the viability of Deep Springs itself, one of California's premier educational institutions, which at the completion of its two-year sessions graduates men into the ranks of the country's finest universities. There is evidence that donors have withdrawn support for Deep Springs following the push for a coeducational student body, and that donors support the school for the very reason that it is a single-sex institution.

* * *

On September 17, 2011, ten of the trustees of the L.L. Nunn Trust for the Benefit of Deep Springs College, dated November 5, 1923 (the "Trust"), voted to disregard the express terms of the Trust and change the policy of Deep Springs to permit the admission of women. We represent the two dissenting trustees.[1] You forwarded to us a letter dated February 28, 2014 from Christopher L. Campbell on behalf of the ten non-dissenting trustees urging the Attorney General to consent in writing to modifying the Trust to permit the admission of women (the "Feb. 28 Letter"). We write to ask that the Attorney General expressly withhold consent, or, in the alternative, take no position at least until the Court has decided the issues raised in *In re the Matter of the L.L. Nunn Trust*, Inyo County Superior Court Case No. SICVPB 12-53232 (the "Petition Action"), as the Attorney General did in *Boys and Girls Club of Petaluma v. Walsh* (2008) 169 Cal.App.4th 1049, 1056 ("*Walsh*").

Deep Springs College

Deep Springs is a two year college – one of only four all-male private non-religious colleges in the United States. Deep Springs has been in existence since 1917, and offers a unique learning experience based on pedagogical methods developed by L.L. Nunn – an

[1] The dissenting trustees were Kinch Hoekstra and Edward Keonjian. Dr. Hoekstra still serves as a trustee; Mr. Keonjian's term as a trustee has expired.

entrepreneur, engineer and educator, among other professions – who died in 1925. As conceded by Dr. L. Jackson Newell, Nunn historian, former Deep Springs professor, trustee and president, and expert witness on behalf of the non-dissenting trustees in the Petition Action, Deep Springs has succeeded in accomplishing the purposes for which Nunn created the school from its inception through the present, with the exception of a few "tough years," the last of which was in the 1980s. (Attached as Exhibit 5 is a true and correct copy of excerpts from the rough transcript of Dr. Newell's deposition, taken on March 12, 2014. The referenced testimony can be found on pages 91 and 92. As of the date of this writing, we have not received a final transcript.)

The Deep Springs Trust

Deep Springs is operated pursuant to the terms of the Trust, by which Nunn left the property that was used to found the school. (Ex. 1 [Trust].)[2] The very first "WHEREAS" clause of the Trust – the first salient fact that Nunn chose to recite after identifying himself as the grantor and naming the first seven trustees – states that Nunn "established an educational institution at Deep Springs in Inyo County, California, and has been there carrying on educational work for the education and development of promising young men." (Ex. 1 [Trust] at 84.) After describing the property to be held in trust, Nunn states the purpose of the Trust:

> 1. The purpose for which the property hereby conveyed and the rents, income, profits, and proceeds thereof, shall be used by said trustees is to provide for and carry on educational work in the State of California similar to and in development of the work already inaugurated by grantor at Deep Springs in Inyo County, California, but in such manner and form and at such place or places within said state as said trustees in good conscience and the exercise of their best judgment may determine, for the education of promising young men, selected by said trustees or as they may prescribe, in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism, to a life in harmony with the Creator, in the conduct of which educational work democratic self government by the students themselves shall be a feature as is now the case at said Deep Springs, and which work shall be carried

[2] While we have a copy of Mr. Campbell's February 28, 2014 letter, we do not have the exhibits thereto. Because there are multiple reproductions of the Trust, and because we are not sure which reproduction was attached to that letter, we attach a copy of the Trust hereto as Exhibit 1 so that we may refer to pages of the Trust without causing confusion.

> on not for profit but solely for the advancement of the purposes hereinabove mentioned.

(Ex. 1 [Trust] at 87.)

The Present Dispute

On September 17, 2011, the non-dissenting trustees voted to permit the admission of women students at Deep Springs. As the Court has ruled in the Petition Action, admission of women would violate the plain language of the Trust. In their February 28 Letter, the non-dissenting trustees seek the Attorney General's consent to modify that plain language. Such a modification is unnecessary and ill advised, and, as stated above, we urge the Attorney General to deny their request. As we will demonstrate below (and have already demonstrated in part through the deposition testimony of Dr. Newell), Deep Springs is doing well academically, financially, in terms of student applications, and with respect to carrying out Nunn's purposes. Moreover, the non-dissenting trustees' expert on leadership education – Dr. Ronald Riggio – concedes that there is no research on all-male colleges supporting the proposition that the school will be improved in any way if it becomes coeducational. We will show that consenting to the modification may, in fact, hurt Deep Springs because the school risks losing support if its single-sex admission policy is abrogated. The trustees have a fiduciary duty to uphold the terms of the Trust. The Attorney General should not facilitate an effort, even if undertaken by most or even all of the trustees, to alter the Trust for no supportable reason and only to suit the preferences of those trustees. Deep Springs is working well, and it should be permitted to continue doing so.

Deep Springs Is Succeeding

How can we be so certain that Deep Springs is working well? Our source is Deep Springs itself. In the Dean's Report included in materials prepared by the school for a meeting of the trustees starting on the very day you receive this letter[3], Dean Kenneth W. Cardwell describes the state of education at Deep Springs in glowing terms:

> What used to be called the life of the mind flourishes at Deep Springs. The most current evidence for the health of our mental ecosystem seems to me this: skilled, educated, credentialed, intelligent persons from all walks of academic life apply to teach here whenever an opening is publicized. Better evidence even than this: several of those applying for our few short-term and fewer long-term

[3] Excerpts from this packet of materials are attached hereto as Exhibit 7. The entire packet, at 108 pages, is too voluminous to attach to this letter.

> appointments have taught here already. Their dreams of Deep Springs confronted the waking reality and they (ambiguous "they") were not shattered. Evidence just as good: many of the students who apply and most who are accepted have some kind of vision of a **community that thinks** while working and living together. This is perhaps especially true of students transferring in from elite colleges. Whatever service the youth are thinking of contributing to the larger human community, most of them think of Deep Springs as a place to think about that human community and about service to it while living in and serving a small instance of it.

(Ex. 7 [TDS Meeting Packet] at 35.)

The Deep Springs' Applications Committee also speaks well of the state of the school. That committee reports that the number and quality of student applicants to Deep Springs (a school of only 26 total students in a two-year program) this year is "unusually strong":

> It is worth noting that the committee had an unusually strong applicant pool this year. We had 199 applicants, which is a substantial increase over the approximate 140-150 male applicants from last year. It has been observed that the impact from press has a delayed effect on recruitment, so the press over coeducation may be the cause of the larger pool. Anecdotally and apart from the larger pool, it also seems that the average first-round applicant this year was substantially stronger than in years past. Year-to-year averages in first round scores (every reader scores applications on a scale of 1-5) would also suggest that the average first-round applicant is stronger this year, although variations in scoring from year-to-year make this a somewhat unreliable mechanism of evaluation.

(Ex. 7 [TDS Meeting Packet] at 40.)

Deep Springs is also faring very well financially. A draft portion of the Fundraising Report touts: "By the end of 2013, the value of the college's endowment surpassed $20 million for the first time." (Ex. 7 [TDS Meeting Packet] at 68[4].) The draft report goes on:

> We navigated the economic downturn without deficit spending and maintained the endowment intact. By the campaign's close on June 30, 2013, the endowment was at its largest ever, and as of December 31, 2013, invested funds stood at

[4] The name of a donor on page 68 of Exhibit 7 has been redacted to protect the privacy of the donor.

> $20,215,488. For the academic year ended 2013, the endowment provided 53% of our operating funds. That percentage will be even higher for the current academic year.

(Ex. 7 [TDS Meeting Packet] at 69.)

The Non-Dissenting Trustees' Rationales for Change and Their Refutation

With Deep Springs in such good shape, both historically and especially right now, why are the non-dissenting trustees seeking to tinker now with a formula for success? The school acknowledges in a September 20, 2011 publication from its website titled "Frequently asked questions about the planned transition to coeducation at Deep Springs," that "[n]o particular event precipitated the board's decision to review its all-male policy this year. Admissions policy was identified two years ago as one of several long-term strategic areas slated for routine board review over the subsequent years. [¶] Neither do any financial or legal pressures motivate a change in admissions policy." (Ex. 4 [9/20/11 FAQs] at 1.)

In the February 28 Letter, the non-dissenting trustees give several rationales for their decision. First, they state their "decision to institute coeducation was based on their conclusion that coeducation is necessary to further Mr. Nunn's dominant purposes in establishing Deep Springs College . . . ." (Feb. 28 Letter at 2.)[5] They characterize Nunn's purpose as follows: "that Deep Springs College educate leaders for a life of service." (*Ibid.*) As our Supreme Court stated in the year the Trust was executed, "[i]n seeking the true construction of a declaration of trust, the guiding principle must be the intention of the settlor – his intention as expressed." (*Title Ins. & Trust Co. v. Duffill* (1923) 191 Cal. 629, 642.). Nunn's purpose was explicitly stated in the Trust, and while you will certainly find ample support for the proposition that the Trust's purpose is to educate young men "in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism" (Ex. 1 [Trust] at 87), you will find nowhere in the entire document any reference to educating "leaders."

Setting aside that issue – the purpose of the Trust is a question the Court has yet to decide – we turn next to the non-dissenting trustees' statement that they "believe that a male-only student body undermines Mr. Nunn's goal that Deep Springs College educate leaders for a life of

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[5] The non-dissenting trustees assert that they reached their conclusions "after many years of study and consideration." (Feb. 28 Letter at 2.) This statement is misleading. While previous boards of trustees of the Trust carried out studies (and decided against coeducation), the board as constituted in 2011 relied on prior boards' studies and commissioned no studies of its own.

service." (Feb. 28 Letter at 2.) Unfortunately for the non-dissenting trustees, their expert on leadership education, Claremont McKenna College professor Dr. Ronald Riggio, admits that while he may hold this opinion, it is not backed up by research. Dr. Riggio stated, in his written opinions offered at his deposition on March 19, 2014: "There is no research on all-male colleges; all-female college outcomes do not differ from co-ed colleges, except on women's attitudes." (Ex. 6 [Riggio opinions], #2.) If there is no research on all-male colleges, the non-dissenting trustees cannot state with more than their own personal conviction (and perhaps their retained experts' convictions) that a male-only student body undermines the education of leaders, let alone the education of promising young men for a life of unselfish service. Moreover, if outcomes at all-female colleges do not differ from coeducational colleges except with respect to the students' attitudes, and given that there is no research on all-male colleges, it would be pure speculation to assume that an all-male college such as Deep Springs would achieve an inferior outcome in teaching leadership (let alone service) to its students as compared with a coeducational college.

Of course, the non-dissenting trustees' belief is belied by the 97-year history of Deep Springs. Dr. Newell acknowledges that the school has succeeded in accomplishing Nunn's purposes throughout most of its existence, and continues to do so today. (Ex. 5 [Newell rough depo.] at 91-92.)

The non-dissenting trustees next state that "[m]aintaining an all male student body fails to recognize the changes in women's roles over the last 100 years." (Feb. 28 Letter at 2.) While nobody can doubt that the role of women in American society has changed in the last 100 years, this fact is irrelevant to the question of whether the Attorney General should consent to modifying the Trust. As noted above, the Trust's purposes are being amply fulfilled today. Moreover, Nunn was a visionary who set up Deep Springs during the Progressive Era, and was well aware of the role and potential of women in society. Dr. Newell readily acknowledged that Nunn was educated in part by a prominent woman educator (Ex. 5 [Newell rough depo.] at 80-81), one of Nunn's sisters was a scholar (*id.* at 78-79), and Nunn even paid (at least in part) for the education of a woman at Oberlin College (*id.* at 60-61), an institution that has been coeducational since 1837 (*id.* at 58). Moreover, Nunn lived most of his adult life in the West, where women played a more prominent role in the workaday world than in the East; at the time of the formation of the Trust, women were represented in almost all of the professions which the United States then tracked through its decennial censuses. Thus, not only is there no evidence that leadership training is in any way superior in a coeducational college than in a single-sex college, but there is no reason to assume that Nunn established Deep Springs as a single-sex college out of ignorance of the role that women did then, or could in the future, take on in education or society.

The non-dissenting trustees also assert that "Deep Springs College's mission to provide practical training for effective leadership is compromised both by excluding qualified women from the unique training provided by Deep Springs and by denying men the experience of collaborating with women as an integral part of their education." (Feb. 28 Letter at 2.) Although the non-dissenting trustees insist that these statements are explained in Dr. Newell's declaration, they are belied both by Dr. Newell's deposition testimony and conduct, and by the testimony and opinions of Dr. Riggio. As noted above, Dr. Newell admits that Nunn's purposes have been accomplished, not compromised, throughout most of the school's history. Dr. Newell himself is so confident of a single-sex model as a means of accomplishing Nunn's purpose that he (along with Deep Springs' current president, David Neidorf) serves on the Board of Advisors of Arete College, a nascent all-women's college "based on a Nunnian model." (Newell rough depo. at 39-42.) How could Dr. Newell support the creation of a second single-sex Nunnian college if he believes that Nunn's purposes are compromised by the single-sex nature of Deep Springs?

With respect to the non-dissenting trustees' assertion that Deep Springs' mission is compromised by denying men the experience of collaborating with women[6], one need only look to Dr. Riggio's opinion #2 to see that there is no research supporting this position. (Ex. 6 [Riggio opinions], #2 ("There is no research on all-male colleges . . . .").) Looking further in Dr. Riggio's opinions, one sees that the assertion that men learn better in collaboration with women is based on the opinion that "[m]en, as a group, tend to be more 'agentic'; women more 'communal'." (*Id.*, #4.) One also sees the opinion that when men are not educated with women, they begin to "rely on stereotypes of women[.]" (*Id.*, #5.) The non-dissenting trustees would have the Attorney General base her decision to change the Trust on these broad characterizations of men and women and assertions about their educational capacities. But whatever the general validity of these broad characterizations may be, they do not hold at Deep Springs. As Dr. Newell stated when he was president of Deep Springs in 2002-2003:

> With no female peers, Deep Springs students naturally assume the full range of roles and responsibilities that, however ironically, remain divided along gender lines in college environments elsewhere. In worn cowboy boots or frayed bib overalls, Deep Springers may be seen in a public meeting unselfconsciously knitting a wool cap or consoling one another with a bear hug when something goes wrong. Emotionally, the all-male student body is more mellow than macho.

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[6] Approximately forty percent of the faculty and staff at Deep Springs are female. The students interact with women on a daily basis while on the campus.

(Ex. 2 [2002-2003 Annual Report] at 3.) At Deep Springs, therefore, the young men take on roles without regard to which gender those roles are traditionally attributed. It is ironic, and shows how strained their reasoning is, that the non-dissenting trustees have retained an expert who argues that coeducation is necessary to train leaders to avoid gender stereotyping, but who bases his argument on those very stereotypes – all the while acknowledging that there is no research that addresses teaching effective leadership at a single-sex college. As reflected in Dr. Newell's statement quoted above, Deep Springs succeeds because of, not in spite of, it being a single-sex institution.

The non-dissenting trustees next proffer two policy reasons to support their request to modify the Trust. Neither is persuasive.

The first is that the trustees of a public charity "should not be prevented from deciding that it is appropriate for the charity to provide the same opportunities for women as it does for men." (Feb. 28 Letter at 3.) Whether or not this statement is true in the abstract, it should not guide the Attorney General's discretion in this case. Assuming that "decide" means to vote to take action as trustee, the statement is, in fact, incorrect as a matter of law where, as here, the Trust does not permit coeducation (as the Court has held). Every trustee also has a fiduciary duty to "administer the trust according to the trust instrument . . . ." (Prob. Code, § 16000.) Other doctrines, such as *cy pres* and equitable deviation, may relieve a trustee of the obligation to adhere strictly to the trust instrument, but those are matters for the Court to decide in the Petition Action. A trustee who does not wish to administer a trust according to the trust instrument (as written or as interpreted or modified by the Court) should resign from his or her office. The trust instrument here states – twice – that the trustees hold the property in trust to run a college "for the education of promising young men." (Ex. 1 [Trust] at 84, 87.) The non-dissenting trustees would ask the Attorney General to disregard that provision because they believe it is "appropriate" to eliminate it.

There is no public policy against charities advancing the education of women to the exclusion of men, or men to the exclusion of women. In fact, single-sex education (at least at the level of elementary and secondary schools) is consistent with federal policy, and no California court has held that private single-sex college education is against State policy. This should be clear from the abundance of women's colleges in California and throughout the United States, as well as from the existence of scholarships and other enterprises aimed at furthering the education of women.

Rather than furthering a trustee's fiduciary duties, transitioning Deep Springs to coeducation would constitute a fundamental violation of a Deep Springs trustee's fiduciary duty. The college is thriving as a single-sex institution and there is no evidence that it could become any better if it discards that heritage and practice. To the contrary, there is evidence that donors

support the school because of it being a single-sex institution. Donors have withdrawn support and others may find Deep Springs a less compelling recipient for their support if the school becomes coeducational. One example is the Hugh & Hazel Darling Foundation, a long-time donor to Deep Springs that was instrumental (through generous donations) in the school's campaign in the 1990s to rebuild its physical plant and continued to donate thereafter. In a letter to the Deep Springs trustees shortly before they voted to permit themselves to admit women, the sole trustee of the Darling Foundation, Richard L. Stack, wrote to express his views on the subject. (Ex. 3 [Stack letter].) Mr. Stack opined: "L.L. Nunn created an opportunity for education through participatory learning that deserves support in the form that it exists today." (*Id.* at 1.) He continued:

> There is a place for single-sex education just as there is a place for co-educational education, education supportive of minorities (such as traditionally black institutions) and religious training (e.g. seminaries). Certainly, the value of single sex education is well established in the more than 60 women's colleges and universities in America. I feel that Deep Springs represents an educational opportunity for the training of men that should not be lost.

(*Id.* at 1.) While not expressly stating that he would withdraw support for the school if it ceases to be operated "in the form that it exists today," Mr. Stack does state: "I doubt that I would have been attracted to Deep Springs if it was a co-educational institution." (*Id.* at 2.) If Deep Springs is likely to lose generous supporters like the Darling Foundation because it decides to become coeducational, making that change would thus be a violation of a trustee's fiduciary duty. Because public policy favors trustees of a public charity adhering to their fiduciary duties, public policy does not support the trustees of Deep Springs changing the school to a coeducational institution.[7]

Mr. Stack's letter, moreover, shows the fallacy in the non-dissenting trustees implied assertion that changing Deep Springs to be coeducational would contribute to the "diverse mix of innovative colleges and universities" in California. (See Feb. 28 Letter at 3.) As Mr. Stack puts it: "I believe in diversity in education, including diversity of educational opportunity. No one form of education is the best for everyone. If anything, there should be opportunities for learning in many different environments." (Ex. 3 [Stack letter] at 1.) There are currently four single-sex

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[7] Even were it to be the case that some donors would be attracted to Deep Springs only if it becomes coeducational, that must be balanced against the donors who have stated, in Mr. Stack's words, that they find single-sex education is a reason that Deep Springs "deserves support . . . ." (Ex. 3 [Stack letter] at 1.)

private all-male colleges in the United States (of which Deep Springs is the only one in California), where there are many more private all-female colleges (over 60 according to Mr. Stack). The vast majority of colleges and universities are coeducational. Changing Deep Springs to a coeducational institution would be a blow to diversity, and would eliminate one of the precious few opportunities for those who seek an all-male college.

The second policy reason advanced by the non-dissenting trustees is nothing more than a partial statement of Probate Code section 15403. The non-dissenting trustees state that "a donor's restriction on a charitable trust should not permanently limit the trustees' discretion to chose [*sic*] the means of pursuing the charitable purpose if a court determines either (1) that the restriction is not a material purpose of the trust or (2) that the reason for easing the restriction outweighs the interest in honoring the restriction." (Feb. 28 Letter at 3.)

Probate Code section 15403 provides that "if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court," subject to the qualification in subdivision (b) that "[i]f the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust."

Here, even were the Attorney General to consent to change the Trust as requested by the non-dissenting trustees, which we urge her not to do, no change would be possible because "all beneficiaries" have not consented. In the November 13, 2013 order attached as Exhibit C to the February 28 Letter, the Court in the Petition Action finds that the Attorney General's consent is likely required (as the Court put it, "it would strain logic to conclude [otherwise]" (Feb. 28 Letter, Ex. C at 10:4-7))[8], but the Court also leans heavily towards "requiring the consent of the current students to modify the Trust." (Feb. 28 Letter, Ex. C at 11-15, quoted passage at 15:6-7.) Patently, all students at Deep Springs have not consented to modify the Trust. In a vote taken before the trustees' vote on September 17, 2011, a bare majority of the students supported coeducation. As reflected in the Student Body Trustees' Report attached to Exhibit 7, in a more recent vote, "all members of the Student Body, save for a small handful who abstained, voted in favour of Deep Springs' continued commitment to coeducation." (Ex. 7 [TDS Meeting Packet] at 15.) Setting aside whether voting in favor of a "continued commitment to coeducation" is the same as consenting to modify the Trust, it is clear that the "small handful who abstained" did not consent to modification. Absent consent of all of the current students at Deep Springs, the

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[8] The non-dissenting trustees assert that the Court relied on Government Code section 12591. (Feb. 28 Letter at 2.) That statute is nowhere mentioned in the Court's order.

threshold condition of Probate Code section 15403, subdivision (a) is not met, and therefore it would be an idle act for the Attorney General to consent even were the Attorney General to favor modification.

Conclusion

In view of all of this evidence, the Attorney General should deny consent to the request of the non-dissenting trustees. This is not a case, as in *Walsh*, where modification by consent is necessary because the Trust has been stymied in its ability to achieve its purpose for the past 97 years, or even for a single day since the 1980s. (*Walsh, supra*, 169 Cal.App.4th at p. 1061 ("Over five years have passed since his death, and not a penny of his estate has been 'dedicated to charitable purposes' or distributed to charitable organizations. . . . The modification unquestionably accomplishes Moore's overriding goal of dedicating the Trust to charity.").) As Dr. Newell stated, the Trust has been accomplishing Nunn's purposes admirably. (Ex. 5 [Newell rough depo.] at 91-92.) The school is drawing excellent faculty and student applicants and generous donors. (Ex. 7 [TDS Meeting Packet].) Deep Springs is not in peril, as neither any "particular event" nor any "financial or legal pressures" precipitated the September 17, 2011 vote. (Ex. 4 [9/20/11 FAQs] at 1.) There is no research in leadership training at all-male colleges. (Ex. 6 [Riggio opinions], #2.) All indications are that the stereotyped attitudes that Dr. Riggio believes are more likely to be developed in the course of single-sex leadership training do not exist at Deep Springs. (Ex. 2 [2002-2003 Annual Report] at 3.) And at least one generous donor to Deep Springs has indicated that it would find the school to be a less compelling cause to support if the school becomes coeducational. (Ex. 3 [Stack letter].) In sum, there is no evidence that consent to modifying the Trust will help Deep Springs, and there is evidence that modification will hurt Deep Springs.

At minimum, we urge the Attorney General to file a statement of "no position" as was done in *Walsh*. As you acknowledged in your October 2, 2013 letter to Mr. Campbell, "[t]he Court, however, has the ultimate responsibility for making the final decision regarding the applicability of Probate Code section 15403 to the facts of this case. (See, for example, *Town of Brookline v. Barnes* (1951) 327 Mass. 201, 208.)" As the court held in *Town of Brookline*, "[t]he function of the Attorney General is 'simply to present the question to a court of justice, not to control or direct its judicial action.'" (*Town of Brookline v. Barnes* (1951) 327 Mass. 201, 207-208.) As reflected by the February 28 Letter and the proceedings that have already transpired in the Petition Action, this is not a case where the dissenting and non-dissenting trustees themselves are not adequately represented and able to "present the question to a court of justice." The issues raised by subdivision (b) of section 15403 are so similar to the issues raised by the equitable deviation standards that the outcome of the Petition Action is likely to be identical whether or not the Attorney General consents to the modification. Thus, there is no evident need for the

Attorney General to have any active involvement in the Petition Action, including by signing the consent urged by the non-dissenting trustees.

For the foregoing reasons, we respectfully submit that the Attorney General should expressly deny consent to the modification of the Trust requested by the non-dissenting trustees in their February 28, 2014 letter, or, in the alternative, take no position on the non-dissenting trustees' request.

Please feel free to contact any of the counsel for the dissenting trustees should you wish to discuss this matter further.

Sincerely,

Ira Bibbero

IB:cb
Enclosures

cc: Joseph Liburt (via email)
Heather M. Hoekstra (via email)