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9 DEEP SPRINGS COLLEGE CORPORATION

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF INYO**

13 In re the Matter of the

14 L. L. Nunn Trust for the benefit of Deep
15 Springs College under the Deed of Trust
16 dated November 5, 1923

17 Case No. SI CV PB 1253232

18 **JOINDER BY DEEP SPRINGS COLLEGE**
19 **CORPORATION IN PETITIONER'S**
20 **PROPOSED STATEMENT OF DECISION**

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1 Deep Springs College Corporation (the “Corporation”) hereby joins the Proposed Statement
2 of Decision filed by Petitioner in this matter.

3 Additionally, the Corporation offers the observations below relative to the evidence presented
4 at trial. These comments focus on the unique interests of the Corporation at stake in this proceeding.

5 The interests of the Corporation are (1) that Deep Springs be as relevant as possible to the
6 challenges of 21st century society, especially for those seeking an education (such as applicants and
7 students) and for those who provide it (such as prospective and current faculty and staff), and (2) that
8 the College be able to continue to operate as an “experimental” and “progressive” institution of
9 higher learning that retains those unique elements of its program which have proven educational
10 value. The evidence adduced at trial demonstrates that these interests cannot be served if Deep
11 Springs remains a men’s college.

12 **A. AN ALL MALE COLLEGE EDUCATION IS SUBPAR AND**
13 **INCREASINGLY UNACCEPTABLE**

14 There is a reason only four men’s colleges remain in existence in the U.S.: an all-male
15 college program is substandard from an educational standpoint. As illustrated by the experience at
16 Columbia, the all-male approach excludes half the applicant pool, reduces the odds of the most
17 qualified male invitees attending the institution, and provides a poor quality of education, both in and
18 outside the classroom, for male students. See 582-583, 590-594, 596-597, 628 (Lehecka). When it
19 became coeducational, the outcome for Columbia was an improved applicant pool and stronger
20 admissions, higher levels of academic performance, and an enhanced maturity level within the
21 student body. See 600-604 (Lehecka).

22 As related by Dean Lehecka, an exclusively male education at the college level today
23 provides no social benefit to male students, adds no value in general, and is a mistake. See 637-643.
24 “[I]f an institution were financially sound, had a terrific faculty, and still had promising students
25 enrolled, I would consider [all male education] a mistake because the quality of education would not
26 be what it should be.” 642:23 - 643:1 (Lehecka).

27 The reliable scientific research supports this conclusion. Single gender education for men
28 yields no academic advantages and likely has certain negative effects. See, e.g., 693, 706-710, 733-

1 734 (Riggio). In the classroom in particular, Professor Newell, Dean Lehecka, and Professor Riggio,
2 each described how instruction in an all-male environment lacks certain essential elements. See, e.g.,
3 515-518 (Newell); 634-635 (Lehecka); 728-729 (Riggio). The perspectives which only female peers
4 can contribute are necessary in order to create and provide the most rich, well-rounded, and beneficial
5 educational experience.

6 The evidence is equally compelling that these same observations apply to Deep Springs.
7 When for a brief period in 2012 the College accepted and considered applications from females, the
8 overall increase in quality of the second round applicant group was significant. See 185-190, 241-
9 243 (Neidorf); 365-371, 373-374 (Robinson); 804-807 (Wilczek). Also see Exhs. 218, 219.
10 Moreover, the addition of female candidates afforded greater opportunity for the College to have a
11 more diverse student population not merely in terms of gender, but with respect to ethnicity,
12 economic background, and other factors as well. See 373 (Robinson).

13 Even more directly, the Court had the opportunity to observe and hear Dr. Wilczek and Ms.
14 Marcus, both of whom wanted to apply to the College when they neared completion of high school.
15 See 807 (Wilczek); 835-836 (Marcus). Those two women personify the extraordinarily competent
16 candidates Deep Springs has excluded because of its all-male admissions policy. The loss is material
17 and, as a consequence, the Student Body has been in the past and is today not as strong as it could
18 and should be. See, e.g., 187-188 (Neidorf); 441-443 (Robinson).

19 In the Deep Springs classroom, as President Neidorf and Dr. Wilczek testified, the important
20 if not essential pedagogical element of female student participation is missing. See 247-251
21 (Neidorf); 810-813 (Wilczek). Moreover, the deficiency is not limited to academics. Neither the
22 labor program nor self-governance is as robust as it could and should be for the simple reason that no
23 female students attend the College. See 251-252 (Neidorf).

24 The all-male composition of the Deep Springs Student Body has additional negative impacts
25 on recruitment and retention of faculty and staff. See 190-192, 243-247, 276-278 (Neidorf); 809,
26 813-815 (Wilczek). Qualified candidates do not apply to work at the College. *Id.* This reflects in
27 substantial measure an underlying problem that will persist unless and until the admissions policy
28 changes. In academia, as explained by Dr. Wilczek, tolerance of gender stereotyping is low and

1 sensitivity to lack of diversity high. See 809-810. As a result, a talented professional at the start of
2 her or his career faces concern and resistance from mentors and letter (of recommendation) writers.
3 See 808-809 (Wilczek). These are important contacts and relationships on which the academician is
4 likely to have to rely later. Id. So long as Deep Springs remains out of step with prevailing mores
5 regarding gender equality in higher education, such informal and unspoken impediments -- added to
6 those similar thoughts which some individuals do actually express -- will continue to drive highly
7 qualified candidates away from the College.

8 Both Dean Lehecka and Professor Riggio testified that no one who founded a college today
9 for the purpose of training leaders would make it all male. See 615-616 (Lehecka); 734-735
10 (Riggio). From a contemporary educational standpoint, such a model is not sound. See 638-642
11 (Lehecka); 734-735 (Riggio). The Corporation believes that the lesson is even broader. Irrespective
12 of overall purpose -- whether to train leaders, to encourage individuals to lead unselfish lives, or to
13 educate bright young people to any other end -- a single sex, all male program is no longer viable.
14 Or, as President Neidorf put it, maintaining a men's college does not serve any legitimate educational
15 objective (202-203), and an all-male Deep Springs "[abuses] the faith of our students by giving them
16 a subpar experience." 225:10-12. Also see Exh. 210, p. 7.

17 **B. AN ALL MALE STUDENT BODY ADDS NOTHING OF EDUCATIONAL**
18 **VALUE TO DEEP SPRINGS COLLEGE**

19 There is a reason neither the Trustees nor other interested parties have been able to articulate a
20 rationale for retaining an all-male Student Body at Deep Springs: no credible explanation can be
21 advanced. See, e.g., 22-23, 116-117 (Hitz); 168-175, 182 (Neidorf); 315 (Welle), 518-519 (Newell);
22 589-590 (Lehecka); 713, 719 (Riggio); 1089-1090 (Neidorf). Even in 2011, when coeducation was
23 considered formally over the course of six months or more, Respondents themselves had ample
24 opportunity to propound and promote such a statement but failed to do so. See, e.g., 21-22 (Hitz);
25 982, 984-985 (Hoekstra); 1075-1076 (Neidorf).

26 At trial, Respondents did ascribe several benefits to the all-male student body as a component
27 of the educational program at Deep Springs. However, none of these purportedly positive
28 contributions withstands scrutiny.

1 One supposed advantage of an all-male Deep Springs is that it reduces distractions and
2 promotes higher levels of intensity and focus among the students. See, e.g., 848, 853 (Hoekstra).
3 Not so. Intensity and focus flow from other attributes of the College, such as isolation, the rigorous
4 demands placed on students by the academic and labor pillars, and the broad and serious
5 responsibilities imposed by self-governance. See, e.g., 162-166, 1066-1067 (Neidorf). Moreover,
6 the proposition itself is an insult: “We ask a great, great deal of these students, in terms of
7 responsibility. And to tell the world, if a pretty girl walked into the room, they would not be able to
8 function, . . . it’s false.” 174:15-18 (Neidorf).¹

9 Superior students at distinguished colleges and universities across the country -- the likes of
10 Berkeley, Columbia, Stanford, and Yale -- manage to excel in the presence of students of the opposite
11 sex. Students attending Deep Springs can do so as well.

12 A second benefit of an all-male student cadre identified by Respondents is that it minimizes a
13 potential “profusion of sexual relationships” and resulting conflicts. See, e.g., 851:5 (Hoekstra).

14 This, too, is not reality:

15 I’ve heard it said that, if students have an active erotic life, then everything is just
16 going to go to hell, and it will be a big mess, and there will be rapes and people who
17 abandon all of their academic and other responsibilities because they’re too busy
either pursuing erotic attachments or mourning the demise of erotic attachments.

18 And it is certainly true some of that goes on in all colleges. And, again here at Deep
19 Springs, we’ve had at least 30 years’ experience of [openly] gay students in our
community. I have seen all of those things happen to openly gay students. I have
talked to them about it. I have counseled them through it.

20 I have had the exact same conversations that I typically have with both female and
21 male students in coed colleges. It’s part of growing up at that age.

22 And especially . . . those gay students . . . in fact, are very often some of the best,
most emotionally robust, strongest students in the college.

23 And the one thing which this 30 years tells us for sure is you can have a very, very
24 strong Deep Springs experience without having to be sheltered from your own
eroticism. 173:12 -174:8 (Neidorf)²

25 _____
26 ¹ Additionally, of course, male students are not insulated from distractions attendant to telephone
27 calls from young females or attendant to visits to the College by girlfriends. 1066-1068 (Neidorf).

28 ² Interestingly on this issue as well, Professor Hoekstra characterized the all-male environment at
Deep Springs during his days as a student as “unusually healthy.” 868:23. But he also described

1 Nor is the matter of sexual relationships among students an issue which the College is unable to
2 handle appropriately. See 1064 (Neidorf).

3 Yet a third argument for maintaining current policy is that the all-male student population – or
4 so-called “male space” – at Deep Springs leads to a special sort of bonding which cannot otherwise
5 be achieved. See, e.g., 992-993 (Hoekstra). In fact, when asked what was distinctively important
6 about an all-male Deep Springs, Professor Hoekstra identified one such incident and little if anything
7 else. *Id.* But there is nothing unique in this regard about an all-male setting. Bonding and
8 concomitant character development can and do take place just as well when men and women attend
9 college together. See, e.g., 1068-1070 (Neidorf). It is a mistake to attribute the emergence of deep
10 personal relationships among students to the Deep Springs single sex policy; rather, it is “an effect of
11 the other unique aspects of the College’s program.” See, e.g., 1068 (Neidorf). Following
12 implementation of coeducation, this sort of camaraderie “. . . not only . . . can be maintained, I think
13 the student body would, predictably, take responsibility for maintaining it.” 1069:7-9 (Neidorf)³

14 And finally, Respondents contend that an all-male Student Body is integral to the “very well
15 conceived combination of elements” developed by L.L. Nunn for the College which “work together
16 extremely well.” 868:6-12 (Hoekstra). There are, however, at least three deficiencies with this view.

17
18 interactions with his classmates as sometimes devolving into very intense rivalry and hostility.
19 See 850-851. And he admitted as well that the College was then in turmoil in many respects,
20 including inappropriate sexual relationships between students and members of the faculty and
21 staff. See 898. Whatever the explanation may be for this contradictory testimony, it illustrates in
22 a different and more personal context that the supposed prophylactic benefit of an all-male Student
23 Body at Deep Springs is myth and not based upon present conditions or facts.

24 ³ Further still, the advantage of Deep Springs as an experimental institution is highlighted by this
25 point. President Neidorf explained that positive results often attributed to “male space” are not a
26 function of single sex education. See 170-172. Rather, in his experience they arise from small
27 group situations where mixed gender participants face isolation and shared responsibility. *Id.* He
28 then described how the College could address and learn more about the subject by conducting
single sex programs for relatively brief periods of time: “To the extent there is an all male
bonding experience . . . then that can only come about from . . . an all-male experience. I think our
students would probably start creating all-male experiences. [But] I don’t know of any male
bonding experience in any culture which requires the complete ownership of an entire institution
for two whole years. So whatever those benefits are – and I’m personally interested in trying to
identify how to arrange programs to achieve them – it doesn’t seem to me for a minute that it
requires the exclusion of women from the entire institutional life.” 1069:12-23.

1 One, it lacks foundation because Deep Springs today does not encompass the same elements that
2 were included when L.L. Nunn inaugurated the College. See, e.g., 162-166 (Neidorf); 1102, 1113
3 (Newell). Things have changed – even at Deep Springs – over nearly 100 years. Two, the allegedly
4 magical combination of elements has not always worked positively or smoothly. See, e.g., 519-521
5 (Newell); 989-992 (Hoekstra). The all-male factor in particular has sometimes been a disruptive
6 rather than constructive influence. See footnote 2, supra. And three, the elements that really count –
7 those which make Deep Springs such a remarkable place – have nothing to do with restricting student
8 participation to males. See, e.g., 174-175 (Neidorf); 956-958 (Hoekstra); 1065-1071 (Neidorf).

9 Deep Springs College is an unusual and valuable institution. It is probably most different –
10 and indeed among the boldest sustained experiments in U.S. higher education – because of the extent
11 to which students govern their own affairs and have virtually unbridled opportunity to participate
12 directly and substantively in all aspects of running the College. See, e.g., 124-126 (Myers); 508-509
13 (Newell). But neither this nor any other truly fundamental feature of Deep Springs rests on the
14 perpetuation of an all-male Student Body.

15 **C. THE RISK OF FAILURE IS HIGH AND WILL CONTINUE TO INCREASE**
16 **UNTIL DEEP SPRINGS COLLEGE CAN OFFER ADMISSION TO WOMEN**
17 **AS WELL AS MEN**

18 There is a reason Deep Springs wishes to become coeducational: to best ensure that it
19 continues to survive. And even more importantly, coeducation is essential for the College to reach its
20 full potential as a trailblazing institution of higher learning.

21 The evidence is uncontradicted that Deep Springs would offer a far more effective program as
22 a coeducational institution. Per Mr. Robinson, things would change and “. . . the all-male part of it
23 would be something that is lost . . . however . . . the benefits would be overwhelmingly positive.”
24 408:7-16. Others active at and affiliated closely with the College agree. See, e.g., 33-36, 57-64
25 (Hitz); 131-132 (Myers); 196-197 (Neidorf); 815 (Wilczek); Exhs. 210, 211, 212, 214, 216, 229. So
26 do the educational experts. See, e.g., 513-519 (Newell); 638-643 (Lehecka); 749-750, 769 (Riggio).

27 The discordant notes sounded by Professor Hoekstra on this subject are speculation and carry
28 no weight. As to the prospect that the admission of female students would separate the College from
its necessary moorings (e.g., 909-912, 926-927), President Neidorf observed as follows:

1 Individuals who don't have any experience of coed groups under these circumstances
2 [isolation, sole activity, self-governance, and mutual responsibility] . . . are at a
disadvantage in trying to imagine what would happen

3 And . . . it's not just my own . . . quite considerable experience . . . which assures me
4 that those groups, with coed can be very, very rich and successful and do not present
a grave peril.

5 [W]e have reached out to other professionals who have similar experiences to verify
6 that [O]ne of the things that might cause individuals to see the possibility of
grave peril in coeducation is imaging that Deep Springs is exactly like it was when
7 they were students and imaging that women would be plunked into the mix.

8 But our society has changed very, very much decade to decade . . . with regard to the
expectation of students . . . and their maturity level and their ability. So I think the
9 notion of grave peril from coeducation is imaginary. 1065:16-1066:9.

10 And as to the contention that coeducation could be a "radical change" against which L.L.
11 Nunn warned (e.g., 901-904 (Hoekstra)), discussion and deliberation for four or five decades belie
12 the concern. The elite institutions such as Harvard, Princeton, and Yale which L.L. Nunn considered
13 models for his Deep Springs experiment made the transition to coeducation in the 1960's and 1970's
14 (see, e.g., 613-614 (Lehecka)) -- and, of course, were not harmed as a result. The admission of
15 female students at Deep Springs has been studied with care by the Trustees and others with decades
16 of direct experience at the College, and is expected to enhance rather than negatively impact the
17 educational goals of the institution and its ability to carry those out. See, e.g., 31-35, 39-42; 57-64,
18 88-89 (Hitz); 269-272 (Neidorf); 350 (Welle); 518-519 (Newell); 1072 (Neidorf). Indeed, as even
19 Professor Hoekstra admitted, *none* of the basic components of a Deep Springs education -- isolation,
20 labor, small size of the College, small class size, faculty-student ratio, academic rigor, or student self-
21 governance -- would be eliminated as a result of women attending the institution alongside men. See
22 956-958. That is hardly radical change.

23 In addition to strengthening all elements of the Deep Springs program, a transition to
24 coeducation would ease or eliminate a serious dilemma for the Corporation and its Board of
25 Directors. Principles of sound governance for a non-profit entity, as well as a basic demand of
26 accreditation, mandate that the organization continually re-articulate its goals and assess whether
27 those objectives are being met. See, e.g., 116-117 (Hitz); 176 (Neidorf). Yet because of the deep
28 ambiguity of L.L. Nunn's Deed of Trust from the viewpoint of an educator, coupled with the inability

1 of the Trustees and others over the years to explain how maintaining an all-male Student Body yields
2 any educational benefit, the task remains undone. See, e.g., 29, 116-117 (Hitz); 159, 167 (Neidorf);
3 Exh. 203. Limitation on the ability of the Board to adjust admissions policy to best meet the
4 College’s substantive educational goals may in the future jeopardize approval by the accrediting
5 agency. See 259-260 (Neidorf). But in the interim, the situation leaves the Board in the untenable
6 position of not being able to act on what it believes is in the best interest of the College.

7 The evidence is also clear that financial circumstances would improve for a coeducational
8 Deep Springs. Impediments to receipt of federal funds by the College and to certain types of direct
9 support to students which turn on Title IX eligibility would disappear. See 951 (Hoekstra); 1025,
10 1029, 1030 (B. Jones); 1072-1073 (Neidorf); Exh. 51. The realm of possibilities for obtaining grants
11 from foundations would expand. See, e.g., 179-180, 182-184 (Neidorf); 316-318 (Welle); 1094-1095
12 (Newell). The College would be more relevant and accordingly more attractive to generations of
13 younger alumni (along with their spouses) whose increased support will be critical as the extremely
14 small and already elderly cadre of key donors disappears. See, e.g., 179-182 (Neidorf); 305-311, 355
15 (Welle); 1061-1062 (Neidorf). And those who are responsible for raising money will finally have a
16 coherent and credible story to present to potential new donors who have no personal connection with
17 Deep Springs. See, e.g., 92 (Hitz); 168-169, 182 (Neidorf); 315 (Welle); 1094 (Newell).

18 But while finances are important, dollars and cents are not the most critical consideration for
19 the future of Deep Springs. It is the ability of the College to define and carry out effectively a
20 meaningful educational mission which counts the most. And it should. If Deep Springs cannot
21 articulate and maintain its relevance in educational terms, it is not worth preserving.

22 Several scenarios were discussed during trial regarding consequences for Deep Springs if it
23 remains an all-male institution. According to Professor Newell, material risks of remaining single
24 sex male include inability to fully satisfy the overarching objective established by L.L. Nunn,
25 increased difficulty recruiting committed and qualified trustees, loss of financial support as the
26 College must rely increasingly on upcoming generations of alumni, and continuation of a divisive
27 debate which in the past nearly destroyed the institution and has the potential to do so again. See,
28 e.g., 523-529, 1104-1106. Yet at the core, in order to survive Deep Springs “must maintain the

1 capacity to change the things which [it] must in order to remain relevant to the needs that [it] exists to
2 serve.” 1104:12-15.

3 Similarly, the brush strokes applied by President Neidorf depict a “listless, old” visage for an
4 ongoing all male Deep Springs:

5 [I]ts not really possible for any institution . . . to long ask things of its students . . . ,
6 and yet remain unwilling . . . to set an example.

7 Deep Springs is, as we often note, an education for young men. I’d emphasize
8 “young” along with “men.” By contrast, the right word for those who resist or resent
9 pressure to adapt their . . . virtues to novel conditions, who turn from the liminal
10 beauty of those moments of challenge and possibility that our best students embody,
11 is “old.”

12 [I]f the [C]ollege remains single-sex, then for more reasons than I can list . . . I worry
13 that failure to move towards the future *will* engender a fundamental change that
14 culminates the end of its century. Exh. 210, p. 2 (original emphasis). Also see
15 193:11-195:2.

16 In other words, the College would cease to be vibrant for its participants from an educational
17 standpoint. Or, even worse, the institution runs the risk of being perceived by the students, its most
18 important constituents, as being hypocritical and ironic by emphasizing democratic principles of self-
19 governance while at the same excluding women -- thereby operating contrary to its fundamental
20 ideals. See, e.g., 192 (Neidorf). That, of course, is a prescription for failure.

21 Professor Hoekstra described the Deed of Trust as “an anchor for the institution.” 927:18-19.
22 “Anchor” is an apt metaphor. Anchors possess different utilities and varying degrees of effectiveness
23 in different conditions. In the calm waters of a sheltered cove, an anchor can provide stability. But
24 when weather turns and surroundings change, the anchor must be raised so the vessel can stay afloat
25 by sailing into the wind. Or when there is an important new opportunity along the coastline which
26 can and should be pursued, no progress can be made if the anchor remains deployed.

27 L.L. Nunn provided Deep Springs with a marvelous legacy of special and unique ideas for
28 effective education, but an all-male student body is not one of them. As a super-majority of the
29 directors of the Corporation decided in their best judgment and exercise of good conscience, the

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1 single sex admissions policy should not be allowed to continue to hold the College back or to imperil
2 its ongoing existence.

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4 Respectfully submitted,

5 **KILPATRICK TOWNSEND & STOCKTON LLP**

6 Dated: August 25, 2014

7 By: _____
8 Jon Michaelson

9 Attorneys for
10 DEEP SPRINGS COLLEGE CORPORATION
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