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Not So Fast: Donor Intent Still Matters When Modifying Restrictions on Endowed Scholarship Funds

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The Iowa Supreme Court recently issued a decision addressing whether a university may modify a donor-restricted scholarship containing a race-based eligibility requirement. Although *In re Ezra L. Totton Scholarship* is an Iowa decision with no precedential effect outside the state, it raises interesting questions for colleges and universities that have been debating whether to seek court approval to remove donor-imposed race- and gender-based scholarship restrictions and replace them with neutral criteria in response to the United States Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* ("*SFFA*") and recent guidance from the Department of Justice (DOJ) and other federal agencies.

Background

In *SFFA*, the United States Supreme Court held that race-conscious admissions programs at Harvard University and the University of North Carolina violated the Equal Protection Clause and Title VI of the Civil Rights Act of 1964.[1] While the holding in *SFFA* was limited to admissions policies, its broader language regarding governmental racial classifications prompted colleges and universities to reevaluate race-based scholarships and other donor-restricted programs.

Following *SFFA*, the Department of Education (DOE) and the DOJ issued administrative guidance targeting diversity, equity and inclusion (DEI) initiatives, which increased institutional concerns about race- and gender-based scholarships. While the DOE's Dear Colleague Letter was vacated by a federal court,[2] the DOJ memorandum titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (the "DOJ Guidance") remains in effect. While explicitly nonbinding, the DOJ Guidance adopts an expansive view of Titles VI, VII, and IX, emphasizing that recipients of federal funding must avoid both direct and indirect discrimination based on protected characteristics. The DOJ Guidance prohibits race- and gender-based scholarships. It states that restricting eligibility for scholarships or fellowships based on protected characteristics is considered illegal "preferential treatment," even if framed as promoting diversity. The DOJ Guidance has not been enjoined and continues to inform federal enforcement priorities, including Title VI compliance reviews and requests directed to higher education institutions.[3]

In response to the *SFFA* decision and the federal agency actions targeting DEI initiatives, many colleges and universities reviewed their endowed scholarship criteria and evaluated whether such criteria needed to be modified to remove race- and gender-based purpose restrictions. Under the statutes of most states that have adopted the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), if the donor's consent cannot be obtained, the institution must petition the court, on notice to the Attorney General, to modify donor-imposed restrictions.[4]

Finding itself in that situation, the University of Iowa sought judicial approval under Iowa's UPMIFA statute to modify the Ezra L. Totton Scholarship, which was established for "Black students majoring in physical sciences, preferably chemistry."[5] The University argued that continuing to administer the scholarship under its existing terms had become unlawful, or, at a minimum, impracticable in light of *SFFA*.[6] The University proposed replacing the race-based eligibility requirement with one benefiting first-generation students.[7] The district court rejected the University's request on the grounds that "no legal authority conclusively demonstrated that it would be unlawful to continue the scholarship under its existing terms." The University appealed the decision.

The Iowa Supreme Court's Decision

On appeal, the Iowa Supreme Court concluded that the scholarship's race-based restriction had become at least impracticable.[8] The Court explained that Iowa's UPMIFA statute does not require the institution to establish that a restriction is definitively unlawful before seeking modification.[9] Rather, modification is permitted when a restriction becomes unlawful, impracticable, or impossible to fulfill.[10]

The Court found that *SFFA*, subsequent legal developments, federal government positions regarding race-based scholarships, and the possibility of Title VI investigations created a substantial risk that the University could face legal challenges if it continued administering the scholarship as written.[11]

The Court, however, rejected the University's proposed modification.[12] Under Iowa law, any modification must remain consistent with the charitable purposes expressed in the donor's gift.[13] Although the University argued that replacing the race-based restriction with one benefiting first-generation students would preserve the scholarship's broader purpose of assisting underrepresented and disadvantaged students, the Court concluded that the proposal did more than remove an unlawful restriction—it imposed a new restriction that was unsupported by the donor's expressed intent.[14] The Court explained that the record demonstrated Dr. Totton specifically intended to benefit "Black students" pursuing careers in the physical sciences, but contained no evidence that he intended first-generation status to serve as a substitute if the original restriction could no longer be carried out.[15] In the Court's view, "there is a world of difference" between Dr. Totton's experience as a victim of de jure racial segregation and the experience of a first-generation college student today.[16] The Iowa Supreme Court ultimately noted that "[w]e do not rule out the possibility that on a different record, a modification of the terms of the gift to benefit first-generation students could be appropriate. But it isn't supported by the present record."[17]

The Court therefore remanded the case for the district court to consider alternative modifications that more closely align with Dr. Totton's intent.[18] The Court noted that "modify" under UPMIFA is interpreted broadly and

may include releasing the restriction altogether or directing the scholarship funds to another institution if doing so would better effectuate the donor's charitable objectives.**[19]** Although the Court did not identify a specific institution, it emphasized that any alternative must remain faithful to Dr. Totton's charitable intent and should be evaluated using the entire will and relevant extrinsic evidence regarding his purpose.**[20]** The opinion left open the possibility that redirecting the funds to another institution—including a historically black university if consistent with the donor's intent—could be an appropriate modification to satisfy that standard.

To ensure that the donor's intent was given appropriate deference on remand, the Court instructed the district court to ensure that an advocate for the donor's intent participates in the proceedings because the Attorney General represented the University and no separate party had appeared to protect the donor's charitable objectives.[23] The Court further directed the district court to consider whether other parties seeking to intervene may have standing to participate.[24]

Third-Party Participation in *Cy Pres* Proceedings

Perhaps one of the most interesting, and unexpected, aspects of the decision was the participation of third-party advocacy organizations to offer evidence and their opinion on whether the proposed modification was consistent with the donor's intent. After the University appealed, the Iowa Supreme Court invited an amicus curiae to defend the district court's decision. The ACLU of Iowa and the NAACP Iowa-Nebraska Conference accepted the Court's invitation and appeared jointly as amici curiae, joined by the American Civil Liberties Union Foundation and the national NAACP.

Notably, the amici did not dispute that the scholarship's race-based restriction had become impracticable.**[21]** Instead, they argued that the University's proposed modification was inconsistent with Dr. Totton's charitable intent because nothing in the gift instrument or record supported that substitution.**[22]** The amici brief included an extensive appendix that detailed Dr. Totton's life and experience with segregation.

Key Takeaways

In the effort to comply with the *SFFA* decision and the recent federal initiatives targeting DEI initiatives, many institutions have rushed to remove scholarship criteria that may be problematic, often embracing compliance over fidelity to the donor's expressed intent. *In re Ezra L. Totton Scholarship* is a strong reminder that, regardless of the changes in the law, any modification to a donor-imposed restriction must be narrowly tailored to align as closely as possible to the donor's original intent. Replacing a race- or gender-based restriction with another eligibility standard intended to benefit underserved students generally or increase diversity may not, standing alone, satisfy that requirement if the record does not establish that such a modification is consistent with the donor's probable intent. Finally, while it is not clear that a third-party advocacy organization would be given standing to intervene in a *cy pres* proceeding under other circumstances, *Totton* opens the door to such participation where the alignment of the proposed modification with the intent of the donor is in question.

Should you have any questions about modifying donor-imposed restrictions on an endowed scholarship or other gift , please contact Deirdre Mitacek (**dmitacek@cullenllp.com**) or Summer Associate Christian Lastihenos (**clastihenos@cullenllp.com**).

This advisory does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[1] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

[2] *American Federation of Teachers et al. v. Dep't of Ed.*, Case No. 25-cv-00628-SAG (D. Md. 2025).

[3] U.S. Dep't of Justice, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (July 29, 2025) (available at: https://www.justice.gov/ag/media/1409486/dl?bcs-agent-scanner=0f6819cd-17cd-4942-8134-625cf083d203)

[4] *See, e.g.,* NY Not-for-Profit Corporation Law §555(c).

[5] *In re Ezra L. Totton Scholarship*, No. 25-0462, 2026 WL 1614078, at *1 (Iowa June 5, 2026).

[6] *Id.* at *2.

[7] *Id.*

[8] *Id.* at *6.

[9] *Id.*

[10] *Id.*

[11] *Id.* at *5-6.

[12] *Id.* at *7.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at *7.

[18] *Id.*

[19] *Id.* at *10-11.

[20] *Id.*

[21] *Id.* at *3.

[22] *Id.*

Practices

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