

IN THE SUPREME COURT OF IOWA

IN RE EZRA L. TOTTON SCHOLARSHIP

UNIVERSITY OF IOWA,
Plaintiff-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR JOHNSON COUNTY
HONORABLE CHAD KEPROS, PRESIDING

**BRIEF OF AMICI CURIAE: NAACP IOWA-NEBRASKA CONFERENCE
(BETTY C. ANDREWS, PRESIDENT), AMERICAN CIVIL LIBERTIES
UNION OF IOWA, NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, AND AMERICAN CIVIL
LIBERTIES UNION FOUNDATION**

IN SUPPORT OF AFFIRMING THE DISTRICT COURT

Rita Bettis Austen, AT0011558
Thomas D. Story, AT0013130
Counsel for Amicus Curiae
ACLU OF IOWA
505 Fifth Ave., Ste. 808
Des Moines, Iowa 50309
PHONE: (515) 207-0567
FAX: (515) 243-8506
rita.bettis@aclu-ia.org
thomas.story@aclu-ia.org

David S. Walker, AT0008229
Russell E. Lovell, II, AT0004857
Counsel for Amicus Curiae
NAACP IOWA-NEBRASKA
CONFERENCE
Drake University
2507 University Ave.
Des Moines, IA 50311
PHONE (DSW): (515) 556-7944
PHONE (REL): (515) 720-3327
FAX: (515) 271-4100
david.walker@drake.edu
russell.lovell@drake.edu

ReNika C. Moore*
Sarah Hinger*
Counsel for Amicus Curiae
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
PHONE: (917) 565-6837
rmoore@aclu.org

Julie A. Murray*
Counsel for Amicus Curiae
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street NW
Washington, DC 20005
PHONE: (202) 675-2326
jmurray@aclu.org

Janette Louard*
Anthony Ashton*
Counsel for Amicus Curiae
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215
PHONE (JL): (410) 580-5777
PHONE (AA): (410) 580-5738
jlouard@naacpnet.org
aashton@naacpnet.org

* Pro hac vice motion forthcoming

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	5
STATEMENT OF INTEREST OF AMICI CURIAE.....	9
STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d).....	11
I. INTRODUCTION AND FACTUAL BACKGROUND.....	11
The Life of the Remarkable Dr. Ezra Lester Totton.....	11
The Gift Instrument: Dr. Totton’s Will.....	13
The University’s Application and District Court Denial.....	14
II. ARGUMENT.....	15
1. The district court correctly denied the University’s application to repurpose Dr. Totton’s gift for first generation students under section 540A.106 and the cy pres doctrine, codified in Section 633A.5102.....	15
a. Iowa’s UPMIFA and cy pres law prioritize the donor’s general charitable purpose.....	16
b. Cy pres should be applied because it is impracticable for the University to continue to administer Dr. Totton’s gift. The Court need not determine it is illegal to do so.....	20
c. Dr. Totton’s general charitable purpose was to assist Black chemistry students, not first generation students.....	24
d. The trust allows cy pres, but the estate’s direction to the University to return the money so that it might be redirected to other charitable recipients should be honored in principle.....	30
III. CONCLUSION.....	32
COST CERTIFICATE.....	35

CERTIFICATE OF COMPLIANCE..... 36

CERTIFICATE OF SERVICE..... 37

TABLE OF AUTHORITIES

Cases

<i>Bd. of Trs. of Univ. of N. Carolina at Chapel Hill v. Unknown & Unascertained Heirs of Prince</i> , 319 S.E.2d 239 (N.C. 1984).....	23
<i>Bechtel v. City of Des Moines</i> , 225 N.W.2d 326 (Iowa 1975).....	22
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).....	passim
<i>Hodge v. Wellman</i> , 179 N.W. 534 (Iowa 1920).....	19
<i>Home for Incurables of Baltimore City v. Univ. of Maryland Med. Sys.</i> , 797 A.2d 746 (Md. Ct. App. 2002).....	26
<i>Howard Sav. Inst. of Newark v. Peep</i> , 170 A.2d 39 (N.J. 1961).....	26
<i>In re Polytechnic Univ.</i> , 12 Misc. 3d 414, 812 N.Y.S.2d 304 (N.Y. Sur. Ct. 2006).....	23
<i>In re Staab's Est.</i> , 173 N.W.2d 866 (Iowa 1970).....	19
<i>In re Tr. of Rothrock</i> , 452 N.W.2d 403 (Iowa 1990).....	18
<i>Kolb v. City of Storm Lake</i> , 736 N.W.2d 546 (Iowa 2007).....	passim
<i>Mary Franklin Home For Aged Women v. Edson</i> , 187 N.W. 546 (Iowa 1922).....	19-20
<i>Matter of Coe College</i> , 935 N.W.2d 581 (Iowa 2019).....	passim
<i>Missouri ex rel. Gaines v. Canada</i> , 305 U.S. 337 (1938).....	9-10, 12
<i>Mormann v. City of Manchester</i> , 27 N.W.3d 820 (Iowa 2025).....	22
<i>Nat'l Educ. Ass'n v. United States Dep't of Educ.</i> , 779 F. Supp. 3d 149 (D.N.H. 2025).....	30
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896).....	10, 12

Rabiebna v. Higher Educational Aids Bd, 20 N.W.3d 742 (Wis. Ct. App. 2025).....21

Simmons v. Parsons Coll, 256 N.W.2d 225 (Iowa 1977).....18-19, 30

Sipuel v. Bd. of Regents of Univ. of Okl., 332 U.S. 631 (1948).....12

State ex rel. Michael v. Witham, 165 S.W.2d 378 (Tenn. 1942).....9, 11-12

Students for Fair Admissions, Inc., v. Harvard College, 600 U.S. 181 (2023).....passim

Statutes

Iowa Code § 261J.....14-15, 22

Iowa Code § 540A.....passim

Iowa Code § 633A.5102.....passim

U.S. Const. amend. XIV § 1.....21

Other Authorities

Am. Law Inst., Restatement of the Law,
Charitable Nonprofit Organizations § 3.02 (2021).....passim

Am. Law. Inst., Restatement (Second) of Trusts § 399 cmt. q (1959).....24

Am. Law. Inst., Restatement (Third) of Trusts § 67 (2003).....18

John Archibald, UAB fears Trump reprisals, kills scholarships
for Black medical students, AL.com, Apr. 28, 2025,
<https://perma.cc/24FH-537B>.....31

Pam Bondi, Office of the Attorney General, Memorandum for All Federal
Agencies: Guidance for Recipients of Federal Funding Regarding
Unlawful Discrimination (July 29, 2025),
<https://www.justice.gov/ag/media/1409486/dl>.....29

Durham County Library, And Justice for All: Durham County Courthouse Art Wall, http://andjusticeforall.dconc.gov/gallery_images/white-rock-baptist-church-2/	25
Postsecondary National Policy Institute, Black Students in Higher Education (updated Apr. 2025) https://pnpi.org/wp-content/uploads/2025/05/BlackStudent_FactSheet_Apr25.pdf	28-29
Postsecondary National Policy Institute, First Generation Students in Higher Education (updated Oct. 2025), https://pnpi.org/wp-content/uploads/2025/10/FirstGenStudents_FactSheet_Oct25.pdf	28-29
Jill Horwitz, <i>Universities Hit by US Funding Drain Have Legal Means to Recover</i> , Bloomberg Law (May 21, 2025), https://news.bloombergtax.com/tax-insights-and-commentary/Universities-hit-by-us-funding-drain-have-legal-means-to-recover	24
Legal Defense Fund, LDF Marks Thurgood Marshall's 105th Birthday (Jul. 3, 2013), https://www.naacpldf.org/press/ldf-marks-thurgood-marshalls-105th-birthday/	11
Steven K. Mignogna et al., <i>Gifts Gone Astray</i> , Prob. & Prop., Sept./Oct. 2010.....	18
Briana Lynn Rosenbaum, <i>Deflect, Delay, Deny: A Case Study of Segregation by Law School Faculty Before <i>Brown v. Board of Education</i></i> , 90 Tenn. L. Rev. 1 (2022).....	11-12
Tenn. Judiciary, Black History & Milestones, https://www.tncourts.gov/sites/default/files/docs/black_milestones.pdf	12
Craig Trainor, Acting Dir., Dear Colleague Letter, U.S. Dept. of Ed. Office for Civil Rights (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf	30
University of Iowa, About Iowa, https://uiowa.edu/about-iowa	29

Cheryl B. Wattley, *Ada Lois Sipuel Fisher: How a “Skinny Little Girl” Took on the University of Oklahoma and Helped Pave the Road to Brown v. Board of Education*, 62 Okla. L. Rev. 449 (2010).....12

White Rock Baptist Church, Learn Our History,
<https://whiterockbaptistchurch.org/learn-our-history-2/>25

STATEMENT OF INTEREST OF AMICI CURIAE

The National Association for the Advancement of Colored People (“NAACP”) is the country’s largest and oldest civil rights organization. Founded in 1909, it is a non-profit corporation chartered by the State of Delaware. The NAACP Iowa-Nebraska State Conference is the state affiliate of the NAACP. The NAACP’s mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color.

Among the major goals of the NAACP and the Iowa-Nebraska NAACP are eliminating longstanding racial inequities persisting in higher education in Iowa and facilitating the achievement of education and economic security for Black people and all persons of color. The amicus brief highlights the important role of the NAACP in Professor Totton’s own life. It represented him as a Plaintiff in *State ex rel. Michael v. Witham*, 165 S.W.2d 378 (Tenn. 1942), a case challenging the exclusion of Black graduate students at the University of Tennessee—one of a number of cases brought in multiple states by the NAACP under future Justice Thurgood Marshall’s leadership that ultimately culminated in *Brown v. Board of Education*, 347 U.S. 483 (1954). The *Witham* case was filed in 1939, and looked to build on the NAACP’s victory in *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). In *Gaines*, the United States Supreme Court held that the exclusion of Black students from Missouri’s only state law school

violated equal protection under the *Plessy v. Ferguson* “separate but equal” doctrine. *Gaines*, 305 U.S. at 344, 352 (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896)). *Brown v. Board of Education* is, indisputably, one of the NAACP’s and this nation’s most important cases. As a young scholar, Dr. Totton played a remarkable role in this historic litigation.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in state and federal law. The ACLU of Iowa, founded in 1935, is an affiliate of the national ACLU and shares its mission. The ACLU of Iowa works in the courts, legislature, and through public education to defend and advance civil liberties and rights for all Iowans. The ACLU national and ACLU of Iowa have appeared both as direct counsel and amicus curiae in numerous racial justice cases before the U.S. Supreme Court, Iowa Supreme Court, Eighth Circuit Court of Appeals, and federal and state district courts over decades. The ACLU has been a consistent driver nationally and in Iowa of landmark and ongoing legal battles to eliminate race discrimination in schools. For all these reasons, the proper resolution of this matter is of substantial interest to the ACLU, ACLU of Iowa, and their members.

This Court has previously approved the ACLU of Iowa and NAACP filing this brief in support of affirming the district court. Oct. 7, 2025 Order.

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

No party nor their counsel participated in the drafting of this brief in whole or in part, nor contributed any money for the preparation or submission of this brief. The drafting of this brief was performed pro bono publico.

I. INTRODUCTION AND FACTUAL BACKGROUND

The Life of the Remarkable Dr. Ezra Lester Totton

In 1939 a talented chemistry student and recent graduate of Knoxville College, Ezra L. Totton, was one of six eminently qualified Black students who filed suit to be admitted to graduate and professional programs at the University of Tennessee. *Witham*, 165 S.W.2d at 379-80; App. 008, 044-61, 098-101, 103-05, 145, 163. Represented by Carl A. Cowan, a local civil rights attorney working with the NAACP, Dr. Totton and his fellow plaintiffs brought an equal protection challenge to the University of Tennessee's exclusion of Black students from those programs under a state law making it a crime to admit them. *Witham*, 165 S.W.2d at 380. Their case was an early chapter of a multi-state legal strategy spearheaded by future Justice Thurgood Marshall and Charles Hamilton Houston seeking to dismantle widespread race segregation in education.¹ App. 103-05.

¹ Justice Marshall had been fighting segregation in education since he was denied admission to the University of Maryland Law School in 1930 because he was Black. Briana Lynn Rosenbaum, *Deflect, Delay, Deny: A Case Study of Segregation by Law School Faculty Before Brown v. Board of Education*, 90 Tenn. L. Rev. 1, 6 n.6 (2022); Legal Defense Fund, LDF Marks Thurgood Marshall's 105th Birthday (Jul. 3, 2013), <https://www.naacpldf.org/press/ldf-marks-thurgood-marshalls-105th-birthday/>.

Totton and his fellow students lost before the Tennessee Supreme Court. *Witham*, 165 S.W.2d at 381-82 (upholding dismissal on mootness grounds, based on a 1941 law authorizing “equivalent” separate educational training for Black students in Tennessee)(citing *Plessy*, 163 U.S. 537, and *Gaines*, 305 U.S. 337)); App. 107, 169-77.²

Thurgood Marshall and the NAACP persevered: Their campaign against racial segregation in education resulted in their historic victory in the *Sipuel* case and culminated in *Brown v. Board of Education*. 347 U.S. at 495; *Sipuel v. Bd. of Regents of Univ. of Okl.*, 332 U.S. 631, 633 (1948); Rosenbaum, at 19–20; Cheryl B. Wattley, *Ada Lois Sipuel Fisher: How a “Skinny Little Girl” Took on the University of Oklahoma and Helped Pave the Road to Brown v. Board of Education*, 62 Okla. L. Rev. 449, 458-61, 469-71, 475 (2010).

Dr. Totton, too, went on to overcome one barrier after another. After he was denied admission to the University of Tennessee, he attended the University of Iowa (hereinafter, “the University”), where he earned a Master of Science degree in Chemistry. App. 008, 133. He then earned his doctorate at the University of Wisconsin-Madison, completed post-doctoral work at Stanford, and was hired on as faculty at North Carolina Central University (hereinafter “NCCU”), where he became an accomplished tenured Chemistry professor who was renowned in his field. App. 008, 018-21, 026, 112, 121-30, 133. NCCU added Dr. Totton’s name to the Chemistry

² The Tennessee courts recognize *Witham*’s importance today. See Tenn. Judiciary, Black History & Milestones, https://www.tncourts.gov/sites/default/files/docs/black_milestones.pdf. Amici are grateful to the Tennessee State Library and Archives staff for their assistance accessing the *Witham* case files.

Building to honor his immense contributions to the field and his extraordinary work establishing and growing the Department. App. 009, 019-21, 137.

The Gift Instrument: Dr. Totton's Will

Upon his death, Dr. Totton's will provided that 60 percent of his estate should go to his heirs, and allocated the remaining 40 percent for charitable purposes, to go in five equal shares to: (1) Knoxville College, an HBCU, to establish "The Ezra L. Totton Scholarship" "for students majoring in chemistry"; (2) North Carolina Central University, also an HBCU, to increase the "Ezra L. Totton Chemistry Scholarship" he had previously established; (3) "The State University of Iowa, Iowa City" to establish the "Ezra L. Totton Scholarship for Black students majoring in the physical sciences, preferably chemistry;" (4) "The University of Wisconsin, Madison" to establish the "Ezra L. Totton Scholarship" "for Black students majoring in Biochemistry"; and (5) White Rock Baptist Church, an historic African-American church in Durham, North Carolina, where Dr. Totton was a longtime member, to establish the "Ezra L. Totton and Christine Barger Totton Scholarship" to "use as a scholarship for students majoring in the physical sciences." D0003-1 at 1, 6, 10; App. 035-39.³ Dr. Totton made no mention of first generation students. *Id.*

³ Amici's Appendix includes a complete certified copy of the will, otherwise not in the record.

The gift letters written to the University by the estate attorney expressly directed, “if you are unable to comply with the requirements of this bequest, please return the check and notify us immediately.” D0003-1 at 1, 6.

Over time, the principal of Dr. Totton’s gift to the University has grown from \$36,860.28 to \$58,015.58. D0003 at 1.

The University’s Application and District Court Denial

On Feb. 11, 2025, the University filed its amended application to modify the terms of the Ezra L. Totton Endowed Scholarship pursuant to section 540A.106. D0003, at 1. The University alleged “that the terms of the Fund set forth originally by the donor is (sic) unlawful” under *Students for Fair Admissions, Inc., v. Harvard College* (hereinafter “SFFA”), 600 U.S. 181 (2023), such that it “cannot fulfill the Donor’s stated preference based on the race of the recipient.” *Id.* The University also noted section 261J, which took effect July 1, 2025, prohibiting state universities from using bequests to “establish, sustain, or staff a diversity, equity, and inclusion office,” and defining “diversity, equity, and inclusion” as “any effort to promote differential treatment of or provide special benefits to individuals on the basis of race, color, or ethnicity.” Iowa Code §§ 261J.1(1)(b), 261J.2, 261J.3(1); D0003 at 2 n.1. The University sought to modify the Fund to instead benefit “first generation students majoring in the physical sciences, preferably chemistry.” *Id.* at 3-4.

The district court denied the University’s petition to modify the gift’s terms in that manner. D0005. It reasoned that the University had provided no authority

demonstrating conclusively that *SSEA* “appl[ied] to gift instruments that have been donated to an academic institution and designated”; thus, the University had failed to establish that following Dr. Totton’s restriction is unlawful. *Id.*

II. ARGUMENT

1. The district court correctly denied the University’s application to repurpose Dr. Totton’s gift for first generation students under section 540A.106 and the cy pres doctrine, codified in Section 633A.5102.

The district court’s order should be affirmed, and the case remanded with guidance to undergo factfinding under sections 540A.106 and 633A.5102 to redirect Dr. Totton’s gift appropriately. The Court should reject the University’s invitation to be the first to consider the thorny constitutional question of whether *SSEA* applies to privately funded scholarships for public university students. It need not do so in order to decide this appeal for two reasons. First, a more prudent alternative allows the application of cy pres because it would be impracticable for the University to use the funds as Dr. Totton intended. Second, even if for the sake of argument it would be unlawful for the University to use the funds as restricted—whether under the reasoning of *SSEA*, section 261J, or any other law or provision—the district court nevertheless could not grant the modification the University sought. That is because using Dr. Totton’s funds for scholarships for first generation students would be inconsistent with his general charitable purpose. All relevant evidence suggests that his general charitable purpose was to help Black students majoring in the physical sciences, especially chemistry, overcome barriers to advancement in higher education

and their subsequent careers. The district court was therefore correct to deny the University's proposed modification under section 540A.106. While it will be for the district court to determine on remand, the relevant evidence supports either returning Dr. Totton's restricted gift funds back to the Totton family to administer it for Dr. Totton's intended charitable purposes, or to redirect it to other institutions named in his will.

a. Iowa's UPMIFA and cy pres law prioritize the donor's general charitable purpose.

Two overlapping provisions of law govern this case: Iowa's Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), found in section 540A, and the doctrine of cy pres, codified in section 633A.5102. Since the "institutional fund subject to the restriction has a total value" exceeding \$50,000, the district court, not the University, has the power to modify or redirect Dr. Totton's gift in accord with his general charitable purpose. Iowa Code § 540A.106(4)(c); D0003 at 1.

The *UPMIFA* in Iowa was enacted in 2008 and first interpreted by the Court in *Matter of Coe College*, 935 N.W.2d 581 (Iowa 2019). There, the Court set forth the analytic framework for this case under UPMIFA and cy pres. First, it ascertains whether the donor has consented to the proposed modification under section 540A.106(1). *Coe Coll.*, 935 N.W.2d at 592 (finding no consent as the donor institution no longer existed). Next, it considers whether either section 540A.106(2) or section 540A.106(3) apply, which provide in turn:

The court, upon application of an institution, may modify a *restriction contained in a gift instrument regarding the management or investment of an institutional fund* if the restriction has become impracticable or if, because of circumstances not anticipated by the donor, the restriction will defeat or substantially impair the accomplishment of the purposes of the institutional fund. . . . Any modification must be made *in accordance with the donor's probable intention.*

Id. § 540A.106(2) (emphasis added); and:

If a *particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund* becomes unlawful, impracticable, or impossible to fulfill, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund *in a manner consistent with the charitable purposes expressed in the gift instrument.* . . .

Id. § 540A.106(3)(emphasis added to show the distinction between the two provisions).⁴ The court must find that either the investment restriction or purpose restriction has become “unlawful, impracticable, or impossible to fulfill” under these provisions to apply cy pres. *Coe Coll.*, 935 N.W.2d at 594-95 (finding Coe had not met

⁴ The University conflates UPMIFA’s treatment of management and investment restrictions, governed by section 540A.106(2), and purpose restrictions, governed by section 540A.106(3). “Management and investment” are terms of art, governed by an earlier provision describing professional financial fund management, *i.e.*, optimizing “economic circumstances”, “inflation or deflation”, “tax consequences”, “expected total return from income and appreciation,” “overall investment strategy.” Iowa Code § 540A.103(5). D0003 at 1, 3; Appellant Br. at 8, 10, 11. An example of an investment restriction might be “no tobacco stocks”, or “no investment in fossil fuels.” Dr. Totton’s gift, by contrast, is an example of a purpose restriction.

Ultimately, it should not matter here, since UPMIFA—consistent with cy pres—allows the court to modify both types of restrictions if they become unlawful, impracticable, or impossible to fulfill. Iowa Code § 540A.106. Nor can the University overcome the fact that the modification it seeks does not align either with Dr. Totton’s “probable intention,” *Id.* at § 540A.106(2), or “charitable purpose.” *Id.* at § 540A.106(3).

that burden and could not invoke cy pres to modify the inalienability restriction governing a gift of Grant Wood paintings). By its plain terms, section 540A.106 is not meant to override and indeed “overlaps to some extent with” cy pres. *Id.* at 593; Iowa Code § 540A.106(7) (providing section 540A.106 “does not limit the application of the judicial power of cy pres”). Thus, if warranted under sections 540A.106(1), 540A.106(2), or 540A.106(3), the court applies cy pres. *Id.* at 593-94.

Cy pres literally means “as near as may be.” *Id.* at 593. It is an equitable, common law doctrine which has been codified into positive law in section 633A.5102. *Id.* It allows the court to modify a charitable trust when its specific purpose has become unlawful, impossible, or impracticable to fulfill, the donor has provided no alternative disposition of the property foreclosing the application of cy pres, and it is possible to do so in a manner “best meeting the settlor’s general charitable purposes.” *Id.* (citing *Kolb v. City of Storm Lake*, 736 N.W.2d 546, 555 (Iowa 2007)). *See also* Am. Law Inst., Restatement (Third) of Trusts § 67 (2003); Am. Law Inst., Restatement of the Law, Charitable Nonprofit Organizations (hereinafter “Restatement, Charitable Nonprofit Orgs.”) § 3.02 (2021); Steven K. Mignogna et al., *Gifts Gone Astray*, Prob. & Prop., Sept./Oct. 2010, at 57; Iowa Code § 633A.5102. It is “a liberal rule of construction used to carry out, not defeat, the [donor’s] intent.” *Coe Coll.*, 935 N.W.2d at 593 (quoting *In re Tr. of Rothrock*, 452 N.W.2d 403, 406 (Iowa 1990) (citing *Simmons v. Parsons Coll.*, 256 N.W.2d 225, 227 (Iowa 1977))).

As the cases explain, that means courts will decline to employ cy pres if the donor's intent was to disallow it. *See Coe Coll.*, 935 N.W.2d at 594 (citing *Kolb*, 736 N.W.2d at 555)(quoting *Simmons*, 256 N.W.2d at 227) (ruling a will's express reverter-to-heirs provision required denying Drake University's application to redirect a shuttered college's charitable share to it)). To make this determination, the Court examines whether the donor "anticipated the possible failure of the trust and [if it] has made alternative disposition of [its] property to meet that contingency." *Id.*; *cf. Mary Franklin Home For Aged Women v. Edson*, 187 N.W. 546, 549 (Iowa 1922) (providing that absent remainder or reverter-to-heirs language, cy pres may be applied).

How cy pres is used is also governed by the overarching object of serving donor intent. *See In re Staab's Est.*, 173 N.W.2d 866, 870 (Iowa 1970) ("A significant limitation of the cy pres rule is that the gift's basic purpose cannot be changed, and property devised to education cannot be judicially diverted to religion, relief of the poor or sick, or general charity, nor vice versa."); *see also Hodge v. Wellman*, 179 N.W. 534, 535-38 (Iowa 1920) (applying cy pres to allow a hotel whose income was designated to fund named charities to instead be sold and its proceeds used to fund those named charities, rather than revert to heirs).

The court may redirect funds to a substitute beneficiary in service of the donor's general charitable purpose. *See, e.g., Kolb*, 736 N.W.2d at 548 (concluding "the settlors' general charitable intentions were to memorialize a family member by maintaining a flower garden for the enjoyment of the public, and this charitable

purpose is superior to the specific language of the trust regarding where the funds were to be spent’’); *Mary Franklin Home*, 187 N.W. at 550 (holding an insolvent home for elderly Guthrie County women could be sold and its funds instead used ‘‘for the care and support of aged women in Guthrie County elsewhere’’); Restatement, Charitable Nonprofit Orgs. § 3.02 (explaining cy pres allows for transferring funds to another charity to accomplish the donor’s charitable purpose).

b. Cy pres should be applied because it is impracticable for the University to continue to administer Dr. Totton’s gift. The Court need not determine it is illegal to do so.

The district court was correct to deny the University’s request to use Dr. Totton’s gift to assist first generation students majoring in the physical sciences instead of Black students in those majors. But because the University is no longer willing to administer the gift as restricted in light of the significant litigation-related threats and operational pressures it identifies, it is impracticable for the University to do so. On remand, the district court should apply UPMIFA and the cy pres doctrine. But all the relevant evidence regarding Dr. Totton’s general charitable purpose supports redirecting the fund either directly to the other charitable beneficiaries named in his will, or to his family to further gift them in accord with his wishes—not to first generation students.

Dr. Totton is deceased, and there is no donor consent to the University’s proposed modification. *Coe Coll.*, 935 N.W.2d at 592; Iowa Code § 540A.106(1). Nor does section 540A.106(2) apply because Dr. Totton restricted only the purpose of his

gift to the University, rather than how those funds would be invested or managed.

Compare Iowa Code § 540A.106(2)(governing investment and management restrictions), *with Id.* at 540A.106(3)(governing purpose restrictions).

Cy pres *is* applicable under section 540A.106(3) and section 633A.5102, though not for the reason argued by the University. Administering the Totton scholarship would be impracticable, which is sufficient to repurpose it under cy pres without delving into controversial and uncharted constitutional waters as the State asks.

In *SFFA*, the Court held that Harvard and UNC's consideration of the race of applicants, even as one part of a holistic assessment and in furtherance of student body diversity, failed strict scrutiny and violated the Equal Protection Clause of the Fourteenth Amendment.⁵ *SFFA*, 600 U.S at 215, 226. In its application and Brief, the University cites only a Wisconsin case adjudicating publicly-funded scholarships, rather than privately-funded scholarships. Appellant Br. at 19 (citing *Rabiebna v. Higher Educational Aids Bd.*, 20 N.W.3d 742, 750 (Wis. Ct. App. 2025)). The district court correctly observed that *SFFA* did not even discuss, much less decide, whether it would violate Equal Protection for a public university to have any role in managing a

⁵ In *SFFA*, of course, the Court broke with decades of precedent and overturned prior cases allowing universities to consider race as an affirmative action measure to address systemic racial inequalities that persist in higher education. *SFFA*, 600 U.S. 181 (2023). The decision is widely viewed to have been a loss for civil rights and racial justice. As Justice Jackson powerfully wrote in her dissent, “Deeming race irrelevant in law does not make it so in life.” (*Id.* at 407 (Jackson, J., dissenting)). She predicted *SFFA* will exacerbate existing inequities: “If the colleges of this country are required to ignore a thing that matters, it will not just go away. It will take longer for racism to leave us.” (*Id.* at 408 (Jackson, J., dissenting)).

privately-funded scholarship fund for Black students, or in selecting students to receive it. And unlike the asserted interest in *SFFA*, there is no suggestion Dr. Totton intended to invest in student body diversity, however laudable that goal. Dr. Totton was motivated by a more specific and immediate remedial interest. Informed by his own experiences of segregated education as a Black student and scientist, he sought to provide charitable scholarships that would continue to help Black students overcome barriers to advancement in his field.

It is possible of course that the State is correct in its prediction that a future court will hold that the reasoning of *SFFA* prohibits a public university from having any involvement in administering or awarding privately-funded scholarships restricted to Black students in accord with donor intent. But it cites no case on point and asks this Court to be the first. A court should have a fulsome factual record, developed through the trial court process involving adversarial parties and the testing of evidence, in order to make such a determination. *See Mormann v. City of Manchester*, 27 N.W.3d 820, 831 (Iowa 2025) (reciting the principle of constitutional avoidance when a case can be resolved on nonconstitutional grounds).⁶ *See also Bechtel v. City of Des Moines*, 225 N.W.2d 326, 330 (Iowa 1975) (observing, “a justiciable controversy must

⁶ These principles would also prevent reaching the constitutional questions the University raises without first deciding the statutory question it noted regarding section 261J, *see D0003* at 2 n.1. The University did not rely on section 261J in its petition, and it is not self-evident that this law would actually make the University’s use of Dr. Totton’s restricted gift unlawful—especially given the statute’s focus on a “diversity, equity, and inclusion *office*” as defined. Iowa Code §§ 261J.2(1)(emphasis added), 261J.3(1) (emphasis added).

exist; we will not decide an abstract question simply because litigants desire a decision on a point of law or fact”). No such factual record exists in this case.

Regardless of whether it would be *unlawful* for the University to enforce Dr. Totton’s purpose restriction, doing so would be impracticable. A significant risk of litigation by the Department of Justice (hereinafter “DOJ”), or plausible threat to state or federal appropriations, sufficiently demonstrates the impracticability required to invoke cy pres. *See, e.g., In re Polytechnic Univ.*, 12 Misc. 3d 414, 812 N.Y.S.2d 304, 311 (N.Y. Sur. Ct. 2006) (allowing cy pres to modify a gift as impracticable so the university might continue to qualify for municipal, state, and federal bonds and funding, reasoning it was “inconceivable that they would have wanted the educational mission for the University to be frustrated” by the restriction); *cf. Bd. of Trs. of Univ. of N. Carolina at Chapel Hill v. Unknown & Unascertained Heirs of Prince*, 319 S.E.2d 239, 247 (N.C. 1984) (finding legislative appropriations exceeding a university’s need made fulfilling a gift’s restriction impracticable). To this end, a Comment to the Restatement (Second) of Trusts provides two useful examples of impracticability:

So also, if a settlor establishes a school and directs that certain subjects only shall be included in the curriculum, and in course of time this restriction prevents the school from affording a proper education, the court will permit changes in the curriculum.

So also, the directions of the settlor with respect to the mode of government or the conduct of an institution created by him may be dispensed with by the court, where these directions seriously impede the usefulness of the institution.

Am. Law Inst., Restatement (Second) of Trusts § 399 cmt. q (1959).⁷

The University is correct that the DOJ and private actors have vociferously communicated those significant risks. Appellant Br. at 8, 21-22. This Court has advised that whether a gift's purpose has become impracticable has “no precise definition” and “is up to ‘the particular facts of each case.’” *Coe Coll.*, 935 N.W.2d at 594 (citing *Kolb*, 736 N.W.2d at 556). Here the facts warrant a finding of impracticability. In light of the current threats it cites, the University no longer *wants* to administer the funds in accord with Dr. Totton’s specific intent. And Iowa law permits cy pres when the impracticability is caused by the donee. *See Kolb*, 736 N.W.2d at 557.

So the University may invoke cy pres—for a different reason than it posits. Yet the proper application of cy pres supports a different modification than the one it seeks.

c. Dr. Totton’s general charitable purpose was to assist Black chemistry students, not first generation students.

The relevant evidence does not support repurposing Dr. Totton’s scholarship funds for the benefit of first generation students. Doing so would not align with Dr. Totton’s general charitable purpose as required. This is an independent, sufficient basis to affirm the district court’s denial without delving into questions around the applicability of *SSFA*. It is the role of the district court on remand—not the

⁷ See also Jill Horwitz, *Universities Hit by US Funding Drain Have Legal Means to Recover*, Bloomberg Law (May 21, 2025), <https://news.bloombergtax.com/tax-insights-and-commentary/universities-hit-by-us-funding-drain-have-legal-means-to-recover>.

University—to engage in the factfinding needed to reformulate or redirect Dr. Totton’s gift in accord with his general charitable purpose.

The gift instrument speaks well enough for itself. In his will, Dr. Totton directs that 40 percent of his assets be divided equally among five charities. All evince his purpose to provide scholarship money to help Black students in his field overcome barriers to advancement in higher education and their subsequent careers. D0003-1 at 1, 6, 10; App. 035-39. The gifts to the University of Iowa and University of Wisconsin included an express restriction on race; the remaining three beneficiaries are predominantly Black institutions, open to all people: two HBCUs and a Historically Black church, founded by freed slaves.⁸ *Id.*

Additionally, this Court has instructed that under *cy pres*, all relevant evidence should be consulted in construing a donor’s general charitable purposes, not just the gift instrument. *Coe Coll.*, at 590 (consulting both “the text of the donative document” “in its entirety” and “relevant extrinsic evidence.”).

Here, the relevant extrinsic evidence of his general charitable purpose aligns with the text of Dr. Totton’s will. Dr. Totton’s family, a former colleague, and student have attested to his general charitable purpose to help Black students in the physical

⁸ White Rock Baptist Church, Learn Our History, <https://whiterockbaptistchurch.org/learn-our-history-2/> (last visited Dec. 26, 2025); *see also* Durham County. Library, And Justice for All: Durham County Courthouse Art Wall, http://andjusticeforall.dconc.gov/gallery_images/white-rock-baptist-church-2/ (last visited Dec. 26, 2025) (mentioning an address by Dr. Martin Luther King Jr. to a crowd of 1,200 at White Rock Baptist Church urging participation in the sit-ins).

sciences, in particular in his own field of chemistry, overcome barriers to advancement in higher education and their subsequent careers. App. 005-27. Likewise, the only reasonable inference from the gift letters' direction to the University to return the funds if it could not expend them in accord with Dr. Totton's bequest is that if returned, the estate could then divide the University's share among the remaining named charitable beneficiaries to meet Dr. Totton's full 40 percent allocation to charities. D0003-1 at 1, 6; App. 037; *see Restatement, Charitable Nonprofit Orgs.* § 3.02 (explaining that if "the specified purposes were more important to the donor than the identity of the charity performing them, and another charity can perform those specified purposes, then a court should direct the transfer of the assets, subject to the original restriction, to such other charity.").⁹

⁹ When there are multiple explicit or implicit purposes governing the use of charitable assets, and all the purposes can no longer be carried out, the court should attempt to modify the purposes in a manner preserving the most important purpose. *Restatement, Charitable Nonprofit Orgs.* § 3.02. Here, the evidence supports finding Dr. Totton's overarching purpose was to assist Black physical science and chemistry students in overcoming barriers to obtaining education in his field and having good careers. This purpose distinguishes Dr. Totton's gift from cases terminating racial or religious restrictions and repurposing gifts for the broader use of the college. *See Howard Sav. Inst. of Newark v. Peep*, 170 A.2d 39, 41 (N.J. 1961) (scholarships for "American born, Protestant, Gentile boys"); *Home for Incurables of Baltimore City v. Univ. of Maryland Med. Sys.*, 797 A.2d 746, 747 (Md. Ct. App. 2002) (hospital bequest for "white patients who need physical rehabilitation"). In those cases, longtime relationships existed between the donors and institutions—for example, decades of annual giving—and the institutions were the recipients of larger gifts from the donors, facts wholly absent here. Dr. Totton's general charitable purpose is focused on support for Black students, not the University.

Those who knew him best attest to his motivations and general charitable purpose all these years later. App. 005-27. Dr. Totton was an accomplished chemist who was dedicated to his field, yes. App. 120-30, 136-37. But equally, he was accomplished in, and dedicated to, the cause of civil rights and equal opportunity for Black people in that field. App. *passim*. Fifteen long years before *Brown v. Board of Education*, and at considerable personal and professional risk, he played a courageous role in the NAACP's historic litigation to overcome race discrimination in higher education. App. 008, 044-61, 098-101, 103-05, 145, 163. And later in his career, he supported colleagues and mentored Black students at HBCUs where he studied and taught, and was a leader in his church, itself a longstanding institution in the movement for civil rights in and around Durham. App. 017-27. His family members have described how the culture he grew up in emphasized the importance of Black People helping other Black People. App. 006-10, 014-15. That is something he experienced through his father and his stepmother. *Id.*

Beyond detailing his many accomplishments, the extrinsic evidence provides a glimpse into the kind of person Dr. Totton was—the kindness and consideration with which he treated others: teaching neighborhood kids science in his backyard and coordinating a yearly neighborhood Christmas tree display with his wife. App. 113-17. And yet, even the newspaper clipping about the Tottons' organization of their neighborhood's Christmas Tree Lane tradition is powerfully juxtaposed with an article

about the injury of three Black children, as young as two years old, in the horrific bombing of the Bethel Baptist Church in Birmingham, Alabama. App. 114.

Dr. Totton’s life and his historic role in our nation’s fight to end the exclusion and segregation of Black Americans in education should be remembered and honored. The University should not be allowed to divorce them artificially from his general charitable purpose in making this gift: to help Black students overcome barriers to success in his field.

Nowhere in the district court record or in its Brief does the University provide any support whatsoever for its suggestion that the court repurpose the gift to benefit first generation students. In its Brief, the University states that “[t]he proposed modification aligns with the ‘the donor’s probable intention.’” Appellant Br. at 8, 26 (quoting Iowa Code § 540A.106(2)). It never explains how.

While there is some overlap, these are distinct populations—especially at the University—and without question, repurposing Dr. Totton’s gift to first generation students will have the effect of significantly diluting its potential benefit to Black students. Black students make up 12.5 percent of all postsecondary enrollment nationwide, versus 25.8 percent who are first-generation.¹⁰ At the University, this

¹⁰ Compare Postsecondary Nat'l Policy Inst. (hereinafter “PNPI”), Black Students in Higher Education (updated Apr. 2025) https://pnpi.org/wp-content/uploads/2025/05/BlackStudent_FactSheet_Apr25.pdf, with PNPI, First Generation Students in Higher Education (updated Oct. 2025), https://pnpi.org/wp-content/uploads/2025/10/FirstGenStudents_FactSheet_Oct25.pdf.

contrast is even more stark. Black students make up less than 3 percent of all students, whereas 19 percent are first-generation.¹¹ More Black students than first generation students receive financial aid.¹² Black students also carry the largest student loan debt.¹³ And Black students have a lower gross income on average than first generation students, ten years after earning their bachelor's degree.¹⁴

On the completely opposite end of the spectrum, the groups are viewed as *too* overlapping by the DOJ. It warns that it views recasting scholarships intended for Black students to instead benefit first generation students as *also likely* to violate its broad interpretation of *SFFA*, the basis for the University's petition in the first place.

See Pam Bondi, Office of the Attorney General, Memorandum for All Federal Agencies: Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination, at 8 (July 29, 2025), <https://www.justice.gov/ag/media/1409486/dl>.

So even if the district court's cy pres analysis were governed by the University's stated goal to avoid the risk of litigation, Appellant Br. at 8, 21-22, rather than donor purpose as required, redirecting the scholarship to first generation students would not

¹¹ University of Iowa, About Iowa, <https://uiowa.edu/about-iowa>.

¹² Compare PNPI, Black Students ("60% of Black students received a Pell Grant"), with PNPI, First Generation Students ("55.2% of first-generation students received a Pell Grant").

¹³ PNPI, Black Students.

¹⁴ Compare PNPI, Black Students ("\$59,100, compared to the national average of \$76,370"), with PNPI, First Generation Students ("\$68,278, compared to the average of \$78,720 for continuing-generation students").

resolve those risks.¹⁵ The University's proposal is a worst-of-both-worlds solution, meeting neither the donor's purpose, as required, nor achieving its own goals to retain the money for the University's students.

The district court rightly rejected the University's proposed reformulation.

d. The trust allows cy pres, but the estate's direction to the University to return the money so that it might be redirected to other charitable recipients should be honored in principle.

The remaining prong of the cy pres analysis, meant to ensure the donor's wishes are honored in making a restricted gift, *see Coe Coll.* at 594 (citing *Koll*, 736 N.W.2d at 555 and quoting *Simmons*, 256 N.W.2d at 227), allows for redirecting the funds under cy pres because there is no reverter-to-heirs type provision in Dr. Totton's will, the gift instrument. D0003-1 at 1, 6, 10; App. 028-41. Yet the gift letter

¹⁵ The Guidance states:

Prohibit Demographic-Driven Criteria: Discontinue any program or policy designed to achieve discriminatory outcomes, even those using facially neutral means. Intent to influence demographic representation risks violating federal law. For example, a scholarship program must not target “underserved geographic areas” or “first-generation students” if the criteria are chosen to increase participation by specific racial or sex-based groups. Instead, use universally applicable criteria, such as academic merit or financial hardship, applied without regard to protected characteristics or demographic goals.

Id. See also Craig Trainor, Acting Dir., Dear Colleague Letter, U.S. Dept. of Ed. Office for Civil Rights (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf> (importantly, including a stamped notification that the letter is currently preliminarily enjoined under *Nat'l Educ. Ass'n v. United States Dep't of Educ.*, 779 F. Supp.3d 149, 196-201 (D.N.H. 2025)).

from his estate directed the University to return the funds if it was unable to comply with the bequest's terms. D0003-1 at 1, 6. While amici have been in touch with Dr. Totton's family, the University has not claimed any contact with them.¹⁶ But the district court on remand may at least honor that direction in principle, either by redirecting the funds to one or more of the alternative charitable institutions named by Dr. Totton in his will, or by returning the money to the family in order for them to be able to further distribute it in service of Dr. Totton's wishes.

To be clear, Dr. Totton's family members in this case are not seeking to have the money returned to them for noncharitable purposes as heirs. To the contrary, in light of what they believe Dr. Totton would want, the family would like to see the funds put toward his general charitable purpose to support Black scholars in overcoming barriers to advancement in higher education in his field. App. 010-11. They specifically do not believe the University's proposal to give Dr. Totton's money to first generation students at the University aligns with his wishes. *Id.* And if the money were returned to the family, they would further direct the money toward his true charitable purpose. *Id.* at 12.

¹⁶ The University's brief perplexingly cites an opinion piece regarding a decision by the University of Alabama at Birmingham Medical School to discontinue a scholarship for Black medical students to support its argument that the Totton scholarship should be given to first generation students. Appellant Br. at 23 (citing John Archibald, *UAB fears Trump reprisals, kills scholarships for Black medical students*, AL.com, Apr. 28, 2025, <https://perma.cc/24FH-537B>). Yet the University fails to mention that the University of Alabama at least gave the money back to the family of Dr. Hamilton, for whom that scholarship was named.

III. CONCLUSION

Because the district court rightly denied the University's petition, it should be affirmed. While the district court was not in error in finding that the University had failed to point to specific, on point authority making it illegal to administer Dr. Totton's gift on its terms, amici submit that impracticability and Dr. Totton's general charitable purposes serve as far preferable and readily available alternative rationales allowing the court to apply *cy pres* doctrine. On those bases, the case should be remanded to the district court to undergo factfinding under sections 540A.106 and 633A.5102 and redirect the funds appropriately.

Amici's suggestion in light of relevant extrinsic evidence, which the University and State failed to put before the district court, is to consider redirecting the University's share of the 40 percent of Dr. Totton's estate that he allocated to charitable purposes to one or several of the remaining named charitable beneficiaries; it may also consider directing the University's share back to the family, who would direct the funds further in service of Dr. Totton's charitable purpose, which was to help Black students in his field overcome barriers to advancement in higher education and their subsequent careers.

Respectfully Submitted:

/s/ Rita Bettis Austen
Rita Bettis Austen, AT0011558
Thomas D. Story, AT0013130
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Telephone: 515-243-3988
Facsimile: 515-243-8506
rita.bettis@aclu-ia.org
thomas.story@aclu-ia.org

Counsel for amicus curiae ACLU of Iowa

/s/ David S. Walker
David S. Walker, AT0008229
Russell E. Lovell, II AT0004857
NAACP IOWA-NEBRASKA CONFERENCE
Drake University
2507 University Ave.
Des Moines, IA 50311
PHONE (DSW): (515) 556-7944
PHONE (REL): (515) 720-3327
FAX: (515) 271-4100
david.walker@drake.edu
russell.lovell@drake.edu

Counsel for amicus curiae NAACP Iowa-Nebraska Conference

ReNika C. Moore*
Sarah Hinger*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
PHONE: (917) 565-6837
rmoore@aclu.org

Julie A. Murray*
**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**
915 15th Street NW
Washington, DC 20005
Telephone: (202) 675-2326
jmurray@aclu.org

Counsel for amicus curiae ACLU Foundation

Janette Louard*
Anthony Ashton*
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215
Phone (JL): (410) 580-5777
PHONE (AA): (410) 580-5738
jlouard@naacpnet.org
aashton@naacpnet.org

Counsel for amicus curiae NAACP

* Pro hac vice motion forthcoming

COST CERTIFICATE

I hereby certify that the cost of printing this brief was \$0.00, paid in full by the ACLU of Iowa.

/s/ Rita Bettis Austen

Rita Bettis Austen, AT0011558
ACLU of Iowa Foundation Inc.
505 Fifth Ave., Ste. 808
Des Moines, Iowa 50309
PHONE: (515) 243-3988
FAX: (515) 243-8506
EMAIL: rita.bettis@aclu-ia.org

Dated: January 9, 2026

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.906(4) and Iowa R. App. P. 6.903(1)(i) because:

[x] this brief contains 6,453 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because:

[x] this brief has been prepared in a proportionally spaced typeface using Garamond in 14 point, or

/s/ Rita Bettis Austen

Rita Bettis Austen, AT0011558
ACLU of Iowa Foundation Inc.
505 Fifth Ave., Ste. 808
Des Moines, Iowa 50309
PHONE: (515) 243-3988
FAX: (515) 243-8506
EMAIL: rita.bettis@aclu-ia.org

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2026, a copy of the foregoing was served on all parties, through counsel, by EDMS.

/s/ Rita Bettis Austen

Signature of server