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IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI
PROBATE DIVISION

THE CURATORS OF THE UNIVERSITY OF MISSOURI,	)	
v.	)	**Case No.**
HONORABLE ANDREW BAILEY, Attorney General of State of Missouri	)	
In the Matter of the Modification of Various Gift Instruments.	)	

PETITION TO MODIFY GIFT INSTRUMENTS

COMES NOW Petitioner The Curators of the University of Missouri, a Missouri public corporation ("***Curators***"), by and through undersigned counsel, and for its Petition to Modify Gift Instruments, states as follows pursuant to Mo. Rev. Stat. § 402.138.3:

INTRODUCTION

The Curators holds and administers various charitable funds ("***Funds***") established by a variety of gift instruments listed in Appendix A and attached in Appendix B ("***Gift Instruments***") for its charitable purposes including education, research, and scholarship programs on its four (4) university campuses ("***Universities***"). The terms of the Gift Instruments contain racial or ethnic criteria which are in need of modification, as they can no longer be lawfully applied under the principles announced by the United States Supreme Court on June 29, 2023 in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). Accordingly, by this Petition, the Curators seek to modify the terms of the Gift Instruments to excise and remove all racial and ethnic criteria from all Gift Instruments, leaving intact all other criteria pursuant to Mo. Rev. Stat. § 402.138.3.

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PARTIES, JURISDICTION, VENUE

1. Pursuant to Mo. Rev. Stat. § 172.020, the Curators is incorporated and known as "The Curators of the University of Missouri." Government is vested in a Board of Curators ("***Board***"), which has broad powers to act on behalf of the Curators and its Universities. *Id.* Accordingly, The Curators bring this Petition as and on behalf of the Universities pursuant to Mo. Rev. Stat. § 402.138.3.

2. The Office of the Attorney General, State of Missouri, is a party to this action pursuant to Mo. Rev. Stat. § 402.138.3.

3. The various donors who contributed to the Funds are not proper parties to an action to modify a gift instrument for an institutional fund under Mo. Rev. Stat. § 402.138.3, as neither this statute nor the common law confers any standing on the donors. *Hardt v. Vitae Foundation, Inc.*, 302 S.W.3d 133, 138-40 (Mo. App. W.D. 2009).

4. Jurisdiction and venue are proper in this Court because the Curators and the Funds are located in Boone County, Missouri.

GENERAL ALLEGATIONS

5. True and accurate copies of the Gift Instruments are attached hereto as ***Appendix B*** and incorporated herein by reference.

6. Each of the Gift Instruments contain racial or ethnic criteria ("***Racial Criteria***") which must be followed in the making of awards and/or conferring of benefits from the Funds.

7. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), the Supreme Court found that the use of racial criteria in the admissions process by a university is violative of the Equal Protection Clause of the Fourteenth Amendment.

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8. While the Harvard decision most specifically concerned the admissions process, the legal framework and analysis should apply equally to a university's award of other valuable benefits, including scholarship awards and program benefits. The Attorney General has mandated this broader application in his directive letter dated June, 29, 2023, the same day that the Harvard case was handed down: "This means institutions subject to the U.S. Constitution or Title VI must immediately cease their practice of using race-based standards to make decisions about things like admissions, scholarships, programs, and employment." Consequently, the Universities have been unable to make new awards from the Funds since the date of the ruling and the A.G.'s directive letter.

STATEMENT OF LAW

9. By statute, this Court is authorized to modify a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund, on application of the institution, if the purpose or restriction has become unlawful, impracticable, impossible to achieve, or wasteful. Mo. Rev. Stat. § 402.138.3.

10. Any modification shall be made in accordance with the (remaining) charitable purposes expressed in the gift instrument. Mo. Rev. Stat. § 402.138.3.

11. The Office of the Attorney General, State of Missouri, shall be notified and given an opportunity to be heard. Mo. Rev. Stat. § 402.138.3.

MODIFICATION OF GIFT INSTRUMENT

12. The Curators seek to modify each Gift Instrument to excise and remove all Racial Criteria and to leave all other wording of the Gift Instruments intact as in original.

13. Such modifications further the charitable purposes of the Gift Instrument, and will allow new awards to be made in accordance with the remaining non-discriminatory criteria.

WHEREFORE, Petitioner The Curators of the University of Missouri, by and through undersigned counsel, respectfully requests this Court modify the terms of the Gift Instruments as set forth in this Petition pursuant to Mo. Rev. Stat. § 402.138.3, and Order such other and further relief as the Court deems just and proper in the premises.

THE CURATORS OF THE UNIVERSITY OF MISSOURI

By: _____
Thomas F. Richards, Chief Investment Officer

Respectfully submitted,

KIRKLAND WOODS & MARTINSEN LLP

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