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9 Attorneys for Objectors/Respondents
Kinch Hoekstra and Edward Keonjian, Directors of the
Deep Springs College Corporation

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF INYO

12
13 In re the Matter of the
14 James R. Withrow, Jr. Chair for Government,
the James R. Withrow, Jr. Lectureship Fund,
15 and the James R. Withrow, Jr. General Fund
Endowments created under the Will of James
16 R. Withrow, Jr. at Deep Springs College
Corporation,

Case No.: SI CV PM 1253233

**OBJECTION AND RESPONSE TO
PETITION FOR COURT ORDER
INTERPRETING ENDOWMENT GIFT
INSTRUMENT**

1 Messrs. Kinch Hoekstra and Edward Keonjian, as dissenting members of the Board of
2 Directors of the Deep Springs College Corporation, hereby object and respond to David Hitz's
3 Petition for Court Order Interpreting Endowment Gift Instrument ("Endowment Petition") as
4 follows:

5 **OBJECTIONS TO ENDOWMENT PETITION**

6 1. Respondents and Objectors, Kinch Hoekstra and Edward Keonjian
7 ("Respondents"), are Directors of the Deep Springs College Corporation (the "Corporation") who
8 dissented when the Directors of the Deep Springs College Corporation voted on September 17,
9 2011 to admit women into the Student Body of Deep Springs College.

10 2. Respondents view this Endowment Petition as entirely derivative of, and
11 dependent upon, the disposition of Petitioner's Petition for Court Order Construing Trust
12 Provisions, Or, If Necessary, Modifying The Trust Instrument ("Trust Petition"), Case No. SI CV
13 PM 1253232, which Petitioner concurrently filed in this Court along with the Endowment
14 Petition. Because of the derivative nature of the Endowment Petition, Respondents aver that the
15 Court should rule on the Trust Petition before addressing and ruling on the Endowment Petition.

16 3. Accordingly, Respondents object to this Endowment Petition on the same grounds
17 as they set forth in their Objection and Response to the Trust Petition ("Objection to Trust
18 Petition"), which Respondents are filing with this Court concurrently with the instant Objection
19 and Response to the Endowment Petition ("Objection to Endowment Petition"). Respondents
20 incorporate herein by reference their Objection to Trust Petition in entirety. The Corporation and
21 its Directors lack the authority to transfer or otherwise dispose of assets of the Corporation or of
22 the L. L. Nunn Trust ("Trust") in violation of the terms and restrictions of the Trust, including but
23 not limited to the Trust's express restriction that its purpose is for the "education of promising
24 young men." Articles of Incorporation of Deep Springs Corporation, Article III(A)(1); Restated
25 Bylaws of Deep Springs College Corporation, a California nonprofit public benefit corporation,
26 Article I, Section 1.02 ("Purposes and Limitations"). The Trustees of the Trust cannot
27 accomplish indirectly what they are not permitted to do directly; *i.e.*, the Trustees of the Trust
28 cannot evade their fiduciary duties to carry out the purpose of the Trust through the

1 instrumentality of the Corporation.

2 **RESPONSE TO ENDOWMENT PETITION**

3 4. Answering paragraphs 1 through 8, 15, and 18 of the Endowment Petition,
4 Respondents lack knowledge or information sufficient to form a belief about the truth of the
5 allegations therein.

6 5. Answer paragraph 9 of the Endowment Petition, Respondents admit that Deep
7 Springs College originally was operated exclusively by trustees of the L. L. Nunn Trust.
8 Respondents lack knowledge or information sufficient to form a belief about the truth of the
9 remaining allegations in paragraph 9.

10 6. Answer paragraph 10 of the Endowment Petition, Respondent admit that since its
11 establishment in 1917 by L. L. Nunn, Deep Springs College has operated as a single-sex
12 institution, extending admissions only to male students. Respondents further admit that various
13 people associated with Deep Springs College have considered whether the college would be
14 better if it were coeducational. Respondents lack knowledge or information sufficient to form a
15 belief about the truth of the remaining allegations in paragraph 10.

16 7. Answer paragraph 11 of the Endowment Petition, Respondents lack knowledge or
17 information sufficient to form a belief about the truth of the allegations concerning events prior to
18 2011. Respondents admit the allegations concerning events from 2011 onward.

19 8. Answer paragraph 12 of the Endowment Petition, Respondents admit that
20 Petitioner is contending what is stated in paragraph 12, lack knowledge or information sufficient
21 to form a belief about the truth of the allegations therein.

22 9. Answer paragraph 13 of the Endowment Petition, Respondents admit that
23 Petitioner is asserting what is stated in paragraph 13, but deny that this assertion is correct.

24 10. Answer paragraph 14 of the Endowment Petition, Respondents admit that
25 Petitioner is seeking the relief set forth in paragraph 14, but lack knowledge or information
26 sufficient to form a belief about the truth of the allegations therein.

27 11. Answer paragraph 16 of the Endowment Petition, Respondents admit that
28 Petitioner has concurrently filed the Petition. Respondent lack knowledge or information

1 sufficient to form a belief about the truth of the allegation regarding the “condition subsequent in
2 Testator’s will”. Respondents admit that Petitioner seeks the interpretation set forth in paragraph
3 16, but denies that this interpretation is proper and correct

4 12. Answer paragraph 17 of the Endowment Petition, Respondents deny that “as a
5 coeducational institution, Deep Springs College will continue to be an institution for the
6 education of ‘promising young men’” as that phrase is used in the Deed of Trust. Respondents
7 lack sufficient knowledge or information to form a belief about the truth of the remaining
8 allegations in paragraph 17.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Respondents pray for relief as follows:

- 11 1. That all relief Petitioner seeks in the Endowment Petition be denied;
- 12 2. That consideration and disposition of the Endowment Petition be stayed until
13 resolution of the Trust Petition;
- 14 3. That the Endowment Petition be denied and dismissed with prejudice and that
15 Petitioner take nothing thereby;
- 16 4. For such other and further relief as the Court deems just.

17 Dated: May 7, 2012

18 JOSEPH C. LIBURT
Orrick, Herrington & Sutcliffe LLP

19 HEATHER M. HOEKSTRA

20
21 By: 

22 JOSEPH C. LIBURT
23 Attorneys for Objectors and Respondents
24 Kinch Hoekstra and Edward Keonjian,
25 Directors of Deep Springs College
26 Corporation
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VERIFICATION

STATE OF CALIFORNIA
COUNTY OF INYO

I have read the forgoing **OBJECTION AND RESPONSE TO PETITION FOR COURT ORDER INTERPRETING ENDOWMENT GIFT INSTRUMENT** and know its contents.

I am one of the Respondents and Objectors. The matters stated in the Objection and Response are true of my own knowledge except to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on May 7, 2012, in Princeton, New Jersey

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct .



Kinch Hoekstra
Director, Deep Springs College Corporation