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L. L. Nunn Trust, acting on behalf of the Board of Trustees  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF INYO  
14

15 In re the Matter of

16 L. L. Nunn Trust for the benefit of  
17 Deep Springs College under the Deed  
of Trust dated November 5, 1923  
18

19  
20  
21  
22 Deceased.

CASE No. SICVPB1253232

**DECLARATION OF DAVID NEIDORF IN  
SUPPORT OF PETITIONER'S  
OPPOSITION TO:**

**RESPONDENTS' MOTION FOR A  
PRELIMINARY INJUNCTION; AND**

**RESPONDENTS' MOTION TO JOIN  
DEEP SPRINGS CORPORATION AS A  
PARTY**

**[Probate Code §§ 17200 and 15409]**

**DATE: June 22, 2012**

**TIME: 9:00 A.M.**

**DEPT: 1**

**JUDGE: Dean T. Stout**

**Action Filed: February 6, 2012**

1 I, DAVID NEIDORF, declare as follows:

2 1. I am currently President of Deep Springs College. My acquaintance with  
3 students and supporters of Deep Springs spans nineteen years. I was in temporary residence at  
4 Deep Springs to live and/or teach in 1993, 1995, 1997, 2000, and 2004. I also visited for short  
5 periods to deliver professional presentations to the college in 1999, 2001, and 2002. For the last  
6 seven years I have lived and worked full-time at the college. From 2005 through 2007 I was both  
7 Dean of the college's academic program and Vice President for Operations. I became President of  
8 Deep Springs in January 2008; my current appointment extends through June 30, 2014.

9 2. As President I am designated the managing director of all fundraising  
10 activities for the college, and the primary representative of the college for dealing with  
11 foundations, alumni, and friends. During my term as President I have held ten 3-day alumni  
12 reunion events and four 3-day event visits for family of current students at the college, meeting in  
13 this way approximately 450 alumni, family, and friends of Deep Springs. I have also been present  
14 at approximately thirty alumni events at various locations around the country; attendance varies  
15 from ten to sixty. Not all of these meetings included discussion of coeducation, but at least half of  
16 them have done so. Many people I have of course seen more than once, especially major donors to  
17 the college. Overall, along with what I estimate at hundreds of family members and friends, my  
18 records show that I have met personally over the years with about 445 of our 780 living alumni,  
19 approximately 57%.

20 **Coeducation and the donor community:**

21 3. Deep Springs College maintains a policy of refusing to accept any  
22 donations that contain a restriction on the use of the donation to either coeducation or single-sex  
23 education at Deep Springs. In its most recent fundraising campaign over the last six years, Deep  
24 Springs has raised approximately \$13,472,350.00 in addition to Deep Springs robust annual  
25 campaign for operating funds.

26 4. Since the announcement of the board's change to a coeducational  
27 enrollment policy, I have spoken with over one hundred alumni and supporters about the change.  
28 Most have been supportive, some even enthusiastic. A minority have expressed regret, but stated

1 their intention to continue support to the college nevertheless. Typically of this group, one former  
2 trustee and alumnus from the 1940's who had vocally opposed coeducation said, when I told him  
3 about the vote, "Well, I guess I'm willing to believe that you guys working there know more about  
4 the needs of young people today than I do." Nine days after the September 2011 board vote in  
5 favor of coeducation, one alumnus requested return of a donation he had made over four years  
6 earlier; his has been the only such request. His donation had already been expended for the  
7 particular purposes agreed upon by the donor when he made the gift. No other donor has  
8 requested the return of a contribution.

9           5.       After the college's June 2012 announcement of its Plan B legal approach to  
10 implementing its educational policy in 2013, my office received emails from twelve individuals in  
11 response. Six were congratulatory, and six criticized the approach. Writers who wished to do so  
12 had shared their emails with the board by electronically copying board members.

13           6.       Overall to date, the college has seen a mildly positive net effect on  
14 fundraising stemming first from board's judgment that coeducation will better serve L.L. Nunn's  
15 educational goals and, later, the announcement of Plan B. Exactly six alumni (0.77%) have stated  
16 their intention to cease all giving because of the change to coeducation; twice that number of  
17 alumni (1.54%), along with one estate and two foundations, have stated that they plan to donate or  
18 are now donating to the college *because* of the change to coeducation.

19           7.       In addition to a mild net financial gain, the college has also seen an increase  
20 in offers of administrative and faculty-referral support from sources that had before been keeping  
21 their distance. In sum, neither the original announcement concerning coeducation nor the June  
22 announcement to move forward next year have eroded net support for the college—the opposite is  
23 true. Spontaneous donor flight has been insignificant; the college has continued to meet its  
24 fundraising goals. From the standpoint of support, I have seen nothing to indicate that the  
25 college's reputation has been diminished anywhere but in the minds of a few frustrated opponents  
26 of allowing women to study at Deep Springs.

27 **Could implementation of coeducation in 2013 damage the college?:**

28           8.       In a letter to alumni in September 2012 I wrote: "I have heard from alumni

1 over the years that coeducation at Deep Springs is thought to be irreversible. I've never heard the  
2 Board discuss it, but I think that's a myth. From an administrative, institutional, and financial  
3 point of view I can't see why, given good reasons, the change couldn't be reversed. I am sure that  
4 coeducation will make, on balance, a very positive contribution to the unique educational mission  
5 of Deep Springs. But if experience shows me that I'm wrong, I'll not be shy about saying so, or  
6 about recommending going back to a better policy."

7           9.       In contrast, some have suggested that a temporary period of coeducation at  
8 Deep Springs will do lasting damage to the college. I do not understand why this would be. For at  
9 least two decades, the college has already been turning away a trickle of women applicants. The  
10 biggest reason I fail to see any lasting threat is the fact that the college has already had temporary  
11 periods of coeducation on campus, manifestly without any such lasting damage.

12 **Prior experience with women as students at Deep Springs:**

13           10.       In the late Eighties summer programs for talented high school students were  
14 held at Deep Springs in conjunction with its sister institution, the coeducational Telluride  
15 Association. In these programs Deep Springs' students participated in classes with a mixed-gender  
16 summer program group in residence. More tellingly, in the 1995-96 academic year, Deep Springs  
17 invited six different women to live at the college as students over the course of the year. I cannot  
18 detect any lasting damage to Deep Springs caused by any of these programs.

19           11.       In the almost year-long coeducational period that is (while different) more  
20 closely related to full peer-group coeducation at Deep Springs, in 1995-96 three women from  
21 Cornell University were present for both summer terms and the winter semester, and a second  
22 group of three women from William Smith College were present for the fall semester. These  
23 women participated fully in student life at Deep Springs; in classes, student body governance,  
24 dormitory life, and the labor program. They were students in all but one respect; the board  
25 stipulated that they were not to be issued course transcripts from Deep Springs. Instead, the Dean  
26 was directed to tell the registrars at their home institutions what grades they would have received,  
27 if they had been given official grades. Their teachers didn't know about even this limitation. I  
28 taught both summer terms in 1995, and the three women from Cornell were in my classes. I

1 assigned the same work and listed them on my grade-sheets in the same way I did all students in  
2 the class. Throughout the summer, their participation across the whole of the program was  
3 indistinguishable from that of the other students.

4           12.     When I returned to teach again two years later, the college was clearly  
5 thriving, just one year after the last of the women students had departed. A capital campaign and  
6 new alumni-funded building projects were underway, and the students the college had enrolled for  
7 that year were some of the best and most effectively focused that I have worked with. It was  
8 abundantly clear that the temporary presence of women students had done no damage to the  
9 college, let alone any lasting damage.

10           13.     I have been in touch in the last few years with two of the women who were  
11 in residence from Cornell, and I am proud of my own (and Deep Springs') association with them.  
12 One of them was invited to return to Deep Springs one year ago to lecture on her exemplary public  
13 service legal career at the Southern Poverty Law Center—a career that she movingly described  
14 taking shape in her mind during her residence at Deep Springs.

15 **Damage from a failure to implement coeducation in 2013:**

16           14.     I do believe, on the other hand, that the college might be damaged if the  
17 board failed to move ahead with its transition to coeducation as soon as it can practically and  
18 legally do so following the decision. Negative effects are probable for the institution as a whole,  
19 and for other reasons are possible for the quality of its eventual transition to coeducation.

20           15.     In the same September 2012 letter to alumni, I wrote: “The question of how  
21 to interpret Nunn’s description of the purpose to which the assets he placed in trust are dedicated  
22 is now in the courts... [A] final decision may be several years away. This state of things would in  
23 itself leave TDS<sup>1</sup> in an untenable position. No responsible board can decide that a policy change  
24 would be best for the college’s mission, and then passively cooperate with its indefinite  
25 postponement. Even accreditation, which (whatever its drawbacks) does guarantee public

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27 <sup>1</sup> In the same letter, I had explained that the acronym “TDS” refers to the board of the Deep Springs  
28 Corporation unless otherwise noted.

1 accountability when it comes to nationally-accepted governance standards for non-profits, imposes  
2 the specific requirement that “once the board reaches a decision, it acts as a whole.” Few major  
3 donors, and fewer staff and students if minimally alert and with viable choices before them, would  
4 devote their time, care, and resources—not to mention the required sweat and tears—to an  
5 institution that is suffering or tolerating such drift. In this context, TDS’s second and parallel plan  
6 to set aside the assets of the L.L. Nunn Trust and move forward to implement coeducation (in a  
7 way that doesn't prejudge the trust question before the court) is the most responsible path  
8 available.”

9           16.     This paragraph was not hyperbolic. The college is less than five years from  
10 its centennial, and next year we need to begin building energy for our second-century fundraising  
11 campaign to solidify the college’s financial base as it passes its centennial. An appeals process  
12 regarding coeducation, should one unfold, will be an unfortunate distraction, but tolerable. What  
13 would badly undermine major fundraising, however, is a board that when it could have acted,  
14 failed to act—a board that appears diffident or uncertain about the educational value of its own  
15 policies.

16           17.     By contrast, in pursuing Plan B the board has made my job as a fundraiser  
17 easier. Because of it, I don’t have to explain why college leadership is willing to tolerate a *status*  
18 *quo* broadly identified as *sub-par*, or explain board responsibility for continuing uncertainty  
19 concerning the direction and make-up of the College.

20 **The difficulty of sustaining the *status quo* without first trying coeducation:**

21           18.     Now that the board, after extensive community input and careful study, has  
22 determined that coeducation will best achieve the educational objectives of Deep Springs, I don’t  
23 see any path that leads back to the *status quo ante* without a period of coeducation first. The only  
24 present possibilities are moving forward or remaining in limbo. The latter has serious  
25 consequences for recruiting and fundraising because it places institutional definition in doubt.

26           19.     In raising funds and recruiting personnel, especially when working (as we  
27 must) with non-alumni, one naturally has to explain the purpose and value of the unique  
28 characteristics of Deep Springs. This is easily done for most everything that makes Deep Springs

1 uncommon and unusual: our isolation, small size, commitment to manual labor along with  
2 academics, modes of instruction and evaluation, the length and intensity of the program, the  
3 tuition-free policy, and the college's commitment to maximize the depth of student-body self-  
4 governance and its breadth of its participation in overall college governance. Not only are the  
5 reasons for these distinguishing characteristics of the college intelligible as parts of an educational  
6 whole, but in most cases L.L. Nunn has already done much of the explanatory work, in the  
7 correspondence to which he refers in the Deed of Trust for further elaboration of his purposes.

8           20.     When we are called upon to explain the educational goals and purposes of  
9 remaining all-male, however, it's not so easily done. Alone among the distinct characteristics of  
10 the college, Nunn has nothing to say. Neither have generations of trustees, presidents, faculty and  
11 alumni who have often written eloquently about Deep Springs contributed any positive rationale  
12 explaining the all-male policy to students and supporters. Instead, when asked, we put a good face  
13 on our lack of a clear answer. Up until now, we have tended to point out, without real evidence,  
14 that coeducation might be difficult or challenging; in other words we denigrate our students by  
15 implying that even the best and most responsible students we can find need protection from such  
16 challenge. Or we note that a subset of our alumni have felt that they gained a great deal from  
17 having been being part of an all-male group, even though we have never agreed about what this  
18 gain is, or identified the programmatic conditions or time-period in an all-male cohort—a month, a  
19 semester, need it be two entire years?—necessary to achieve it. Or else, more usually, we simply  
20 point to the fact that whatever the reason, that's the way L.L. Nunn happened to start it—that is,  
21 we are single-sex due merely to inertia.

22           21.     None of these typical explanations were satisfying, but even such  
23 unsatisfying explanations are no longer available to us. Once the board has decided, on the basis of  
24 exactly the kind of careful deliberation of mission that a modern educational board is responsible  
25 for making, that coeducation is the better way to pursue the college's articulated educational  
26 mission, what *now* could I or the board say, without the effort of Plan B, to those who would ask  
27 why the college doesn't do all it can to promptly pursue coeducation?

28           22.     We could, I suppose, answer that a small but determined legal opposition

1 makes it too much trouble this year to implement what the college believes best. Or we could  
2 answer that even though we no longer rely financially on the assets he left in trust, the college has  
3 to remain all-male for now because a small minority believes that this was the guiding core of L.L.  
4 Nunn's intent. These available answers would simply undermine our credibility. They would be  
5 embarrassments.

6           23.     Since neither of these answers is responsible, then if the college remains all-  
7 male, we owe to our students and supporters a better explanation of what purposes are thereby  
8 served. If the court were to find that an all-male educational community is the *governing purpose*  
9 of the entire college and its future, (as opposed to a temporally contingent state of development, a  
10 historical accident, or merely the purpose to which the assets provided by L. L. Nunn are limited),  
11 then what is required to sustain the college effectively and with integrity is that the board explain  
12 and justify that guiding purpose. The board (and its public surrogates like me) will require a  
13 definitive statement of why all-male education is, in robust fact and aside from historical accident,  
14 more desirable than coeducation.

15 **A single-sex student body is not, educationally speaking, a goal or a purpose:**

16           24.     Like isolation, student self-governance, and a labor program, coeducation is  
17 a mode of instruction, a programmatic device that must, in practice and in conscience, be justified  
18 in terms of a reasonable, stated, and sought-after outcome. Whatever its legal status, when  
19 explaining the college to potential students or supporters, "all-male student body" taken by itself is  
20 no more a purpose than is "fourteen-week semester." If enrollment were limited to a traditionally  
21 underserved minority group, the purpose that limitation served would be manifest. But Nunn's  
22 explicit educational purposes require only that we select for the most mature, responsible,  
23 academically-gifted potential leaders we can find.

24           25.     What particular educational outcome or purpose would the college serve by  
25 remaining all-male? On several occasions the board has tried and failed to develop such a  
26 statement of purpose. And as noted above, neither L. L. Nunn nor 95 years of board and  
27 administrative leadership have articulated the particular and relative value of an all-male student  
28 body for this unique educational project. Yet if the board did not move forward with coeducation



1 after determining that it is a better way to reach the educational purposes that L.L. Nunn did  
2 articulate for Deep Springs, our credibility, (and possibly our accreditation, which reasonably  
3 requires that policies be adjusted to identified goals), will be at risk, unless by revising the mission  
4 statement and (if necessary) adjusting practices, the college provides a clear and assessable  
5 educational reason for remaining all-male. If, however, after a period of coeducation the board  
6 were to find that coeducation is not serving the college's mission as well as was hoped, then a  
7 return to the *status quo ante* would be manifestly a responsible act.

8 **Risks of delaying transition to coeducation:**

9           26. Now that the board has decided there will be a transition to coeducation, I  
10 believe it is best that it begin this year. There is a possibility that it would not be done as well if  
11 begun later. The transition to coeducation is a 3-4 year process that begins the year before women  
12 arrive. The new and unfolding situation will impose challenges on the staff and students that  
13 won't persist once the transition has been worked out. To be successful, we need to have the right  
14 staff members in place, energized and focused on the transition. At present we have the strongest  
15 staff I have seen at Deep Springs, and it includes women members who are exceptionally well-  
16 qualified to support the unique demands of the transition period. But this is not a state of things  
17 that can be turned on and off easily. Because of our remoteness and our (necessary) absence of  
18 academic tenure, staff turnover at Deep Springs is more rapid than at other colleges. We don't  
19 know who will be working here two or three years into the future. For example, the two most  
20 senior administrators after me are both in their sixties and nearing retirement. Students, who will  
21 be full partners in the transition, will be better able to do so the more fully they have understood  
22 the texture of the board's decision, as it is transmitted by older students who participated in it; this  
23 effect will wane the longer we wait. Since I am confident that the transition can be done well if  
24 done now, I believe the board is acting most responsibly by pursuing the transition quickly if  
25 possible.

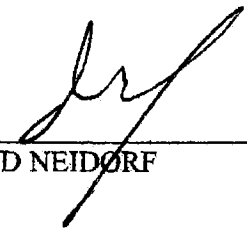
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 15, 2012, at Deep Springs, California.

  
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DAVID NEIDORF

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF FRESNO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 5260 North Palm Avenue, Fourth Floor, Fresno, CA 93704.

On October 15, 2012, I served the original of the following document(s) described as **DECLARATION OF DAVID NEIDORF IN SUPPORT OF PETITIONER'S OPPOSITION TO: RESPONDENTS' MOTION FOR A PRELIMINARY INJUNCTION; AND RESPONDENTS' MOTION TO JOIN DEEP SPRINGS CORPORATION AS A PARTY** on the interested parties in this action as follows:


JOE LIBURT  
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1000 MARSH ROAD  
MENLO PARK CA 94025-1015

TANIA M. IBANEZ  
SUPERVISING DEPUTY ATTORNEY GENERAL  
CHARITABLE TRUSTS SECTION  
300 S. SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

**BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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

Executed on October 15, 2012, at Fresno, California.

  
Tina L. Webb