

No. E062777
[consolidated with E058293]
(Inyo County Super. Ct. No. SI CV PB 1253232)

**IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO**

DAVID HITZ, AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE L.L.
NUNN TRUST, ACTING ON BEHALF OF THE BOARD OF TRUSTEES,

Petitioner and Respondent,

v.

KINCH HOEKSTRA AND EDWARD KEONJIAN, AS TRUSTEES OF
THE L.L. NUNN TRUST,

Objectors and Appellants,

DEEP SPRINGS COLLEGE CORPORATION,

Real Party in Interest and Respondent.

Appeal From A Judgment Of The Superior Court
For The County Of Inyo
(Hon. Dean T. Stout, Presiding)

**MOTION FOR CALENDAR PREFERENCE; SUPPORTING
MEMORANDUM AND DECLARATION OF DAVID
NEIDORF**

ARNOLD & PORTER LLP
STEVEN L. MAYER (No. 62030)
steve.mayer@aporter.com
Three Embarcadero Center, 10th Flr.
San Francisco, California 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

ARNOLD & PORTER LLP
LISA HILL FENNING (No. 89238)
lisa.fenning@aporter.com
777 South Figueroa Street, 44th Flr.
Los Angeles, California 90017-5844
Telephone: 213.243.4000
Facsimile: 213.243.4199

ARNOLD & PORTER LLP
ANDRAS KOSARAS
andras.kosaras@aporter.com
555 Twelfth Street, NW
Washington, D.C. 20004-1206
Telephone: 202.942.5000
Facsimile: 202.942.5999

BAKER MANOCK & JENSEN, PC
CHRISTOPHER L. CAMPBELL (No. 116329)
JEFFREY A. JAECH (No. 76876)
DIRK B. PALOUTZIAN (No. 173676)
5260 N. Palm Avenue, Suite 421
Fresno, California 93704
Telephone: 559.432.5400
Facsimile: 559.432.5620

LAW OFFICE OF PETER E. TRACY
PETER E. TRACY (No. 78185)
106 South Main Street, #200
P. O. Box 485
Bishop, California 93515
Telephone: 760.872.1101
Facsimile: 760.872.2971

Attorneys for Petitioner and Respondent David Hitz

MOTION FOR CALENDAR PREFERENCE

Pursuant to Code of Civil Procedure Section 44 and Rule 8.54 of the California Rules of Court, Respondent David Hitz hereby moves for an order granting calendar preference to the above-referenced appeal. This motion is based on the Memorandum of Points and Authorities and the Declaration of David Neidorf that follows.

DATED: May 9, 2016.

ARNOLD & PORTER LLP
STEVEN L. MAYER
LISA HILL FENNING
ANDRAS KOSARAS

BAKER MANOCK & JENSEN, PC
CHRISTOPHER L. CAMPBELL
JEFFREY A. JAECH
DIRK B. PALOUTZIAN
LAW OFFICE OF PETER E. TRACY
PETER E. TRACY

By:

STEVEN L. MAYER

*Attorneys for Respondent
David Hitz*

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR CALENDAR PREFERENCE**

This appeal is entitled to calendar preference pursuant to Code of Civil Procedure Section 44. That statute provides, in relevant part:

Appeals in probate proceedings . . . shall be given preference in hearing in the courts of appeal, and in the Supreme Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties.

This statutory priority applies to this case. It concerns the interpretation of a trust, the administration of which is governed by the Probate Code. *See* PROB. CODE §15001(b) (“This division applies to all proceedings concerning trusts commenced on or after July 1, 1987”). The petition seeks relief under the Probate Code. 1-AA-1 (seeking relief under Probate Code Sections 15409 and 17200). And the issues raised on appeal concern interpretation of several Probate Code statutes. *See* RB 22-43 (discussing applicability and interpretation of Probate Code Sections 15403 and 15409).

Moreover, the facts of this case illustrate why probate proceedings require priority. The Trustees of the L.L. Nunn Trust voted in favor of co-education in September, 2011 and this case was filed in February, 2012. 1-RT-61:8-13; 1-AA-1. Yet the College is still a single-sex institution more than four years later.

The College’s academic year starts in July of each year. Declaration of David Neidorf in Support of Motion for Calendar Preference ¶3. The deadline for applying to that class is the second week of the previous November. *Id.* In addition, the College needs several months prior to November to recruit prospective students. *Id.*

Even if calendar preference is granted, this litigation is unlikely to be finally resolved by September 1, 2016.

Consequently, assuming that the trial court's decision is affirmed, and the Supreme Court declined to hear the case, the first academic year in which female students could be admitted to the College would be 2018-19, almost seven years after the Board's decision. Granting calendar preference now is essential to ensure that this litigation is finally resolved within the next sixteen months.

Respondent understands that this is an important case that has taken time for the trial court to resolve and time for the parties to prepare their respective briefs. But now that appellate briefing has been completed, it is time for the Court to implement Section 44 and give these appeals the calendar preference to which they are entitled by statute.

DATED: May 9, 2016.

Respectfully submitted,

ARNOLD & PORTER LLP
STEVEN L. MAYER
LISA HILL FENNING
ANDRAS KOSARAS

BAKER MANOCK & JENSEN, PC
CHRISTOPHER L. CAMPBELL
JEFFREY A. JAECH
DIRK B. PALOUTZIAN
LAW OFFICE OF PETER E. TRACY

PETER E. TRACY

By:

STEVEN L. MAYER

*Attorneys for Respondent
David Hitz*

35963899v2

DECLARATION OF DAVID NEIDORF

I, David Neidorf, declare:

1. I am the President of Deep Springs College. I have held this position since January 1, 2008. This declaration is submitted in support of Respondent's Motion for Calendar Preference.

2. The facts set forth herein are true and correct of my own personal knowledge. If called upon to do so as a witness, I could and would competently testify thereto.

3. The College's academic year starts in July of each year. The deadline for applying to that class is the second week of the previous November. In addition, the College needs several months prior to November to recruit prospective students.

4. In order to have a coeducational class entering in July 2017, the College would need to start recruiting by September 1, 2016. This time is necessary for the College to inform prospective applicants that women will be admitted to the College with the class entering the following July.

5. In order to have a coeducational class entering in July 2018, the College would need to start recruiting by September 1, 2017.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ___th day of _____, 2016 in _____, California.

DAVID NEIDORF

PROOF OF SERVICE

I am over eighteen years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Three Embarcadero Center, Tenth Floor, San Francisco, California 94111-4024.

On May 10, 2016, I served the following documents described as follows as **MOTION FOR CALENDAR PREFERENCE; SUPPORTING MEMORANDUM AND DECLARATION OF DAVID NEIDORF** on the persons listed below by U.S. Mail. I placed the document in a sealed envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Christopher L. Campbell
Jeffrey A. Jaech
Dirk B. Paloutzian
Baker Manock & Jensen
5260 N. Palm Avenue
Suite 421
Fresno, California 93704

Peter E. Tracy
Law Offices of Peter E. Tracy
106 South Main Street
Suite 200
P.O. Box 485
Bishop, California 93515

*Attorneys for
Petitioner and Respondent
David Hitz*

Heather Matsumoto Hoekstra
2175 N. California Blvd.
Suite 424
Walnut Creek, CA 94596

Eric M. George
Ira Bibbero
Browne George Ross, LLP
2121 Avenue of the Stars, Suite
2400
Los Angeles, CA 90067

Joseph Charles Liburt
Orrick, Herrington & Sutcliffe, LLP
1000 Marsh Road
Menlo Park, California 94025

*Attorneys for
Objectors and Appellants*

Jon Michaelson
Kilpatrick Townsend &
Stockton LLP
1080 Marsh Road
Menlo Park, CA 94025

*Attorneys for
Deep Springs College
Corporation*

Inyo County Superior Court
Hon. Dean L. Stout
168 North Edwards Street
P.O. Drawer U
Independence, CA 93526

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

Dated: May 10, 2016

Geraldine Francisco-Ferrer