

## Charities in the Courtroom: Part 2

12.27.16 | Linda J. Rosenthal, JD



In [Charities in the Courtroom, Part 1](#), we explained that there are a surprisingly broad range of legal issues that may bring a charity to the courthouse steps either as a plaintiff or as a defendant.

These can include – just to name a few of many – disputes by or against (or among) among board members, issues arising in connection with memberships, contract or real estate problems, and negligence liability.

To illustrate the range of issues that may arise, here are three recent cases from 2016:

- A bitter and expensive feud between a college and its former alumni association;
- A squabble over accommodation under the Americans with Disabilities Act that mushroomed way out of proportion;
- The catch-22 dilemma facing animal rights and environmental protection groups trying to get the courts to help .

### *New Jersey Institute of Technology*

Bitter breakups and fights over the use of names are, unfortunately, all too common in the nonprofit sector. This one mushroomed way out of control into an 8-years-long, costly, mess.

Traditionally, a university and its alumni association enjoy a friendly and mutually beneficial relationship. Apparently, that was the case with the New Jersey Institute of Technology, a 130-year-old public university, and its 80-year-old alumni group called the [Alumni Association of New Jersey Institute of Technology](#).

The alumni association, comprising prominent graduates, had always been officially independent of the university, but was funded by the university and had offices on campus and worked with successive administrations to raise money and award scholarships.

It all turned sour, though, when a new university president, Robert Altenkirch, came to town in about 2002. Dr. Altenkirch decided that some changes were in order – with the stated motive to “improve relations with the alumni association.” Quickly, though, the “two sides got into a dispute over the alumni group moving its operations to Eberhardt Hall, NJIT’s iconic building.” The alumni group also clashed with university officials over a renovation plan that involved moving the school’s off-campus fraternities. The bad blood continued, expanding into other disagreements and simmering resentments.

By 2008, the university president was fed up with the leaders of the alumni group; he accused them of being an “exclusive club” that no longer represented the interests of the majority of the alumni. The alumni board members, for their part, were “personally affronted by Dr. Altenkirch’s views of the proper role of an alumni association,” and his lack of diplomacy.

In May 2008, the university sent a notice of disaffiliation to the alumni group, declaring their 80-year-old affiliation over, and informing them that the university was creating its own, new, in-house association with entirely new leadership.

It’s an understatement to say that the old guard refused to go away quietly. A lawsuit was filed, with a big issue being the respective names that the old association (still functioning independently) and the new, officially created and approved, alumni group were entitled to use at any given time. In 2009, for instance, a judge made an interim ruling that the old alumni group couldn’t use its old name – that is, the Alumni Association of the New Jersey Institute of Technology, but it could use a new name, the New Jersey Tech Alumni Association. Years later, the old alums had to change their name yet again.

There were also, of course, money claims.

It’s not entirely clear how or why, but this battle dragged on until a trial judge in 2014 declared the university the winner in this feud. By then, at least \$600,000 had been spent by the university alone, with estimates of the old alumni group’s legal fees and costs topping \$400,000. Tensions were so high that the trial judge had to step in and select the final name for the alums – a matter, he wrote reprovingly, that he was not “normally in the business” of doing.

The university was satisfied, but the alums appealed and lost again in 2016. It’s over, but there is still one university and two alumni associations.

### *Franklin Institute*

Another example of out-of-control litigation involved the Franklin Institute, the City of Philadelphia’s “beloved interactive science museum.” For generations of children, it’s been a favorite field-trip destination. As adults, they come back, again and again, often with their own kids.

Michael Anderson remembers those childhood adventures. He “... visited the Franklin often as a child and about 3 times a year as an adult,...”

But Mr. Anderson has special needs. He is a quadriplegic who “requires a personal care attendant (‘PCA’) twenty-four hours a day, seven days a week, to assist with his care. Medicaid pays the cost of his PCA.

The museum, a nonprofit which receives funding from corporate and personal donations, federal grants, and admissions, took in revenue of about \$35 million in 2013. An single, annual, adult membership is \$50; it's \$75 a year for a dual membership. Some of the Franklin Institute's charitable work "includes giving away tickets to groups and individuals."

Beginning in about 2013, the museum charged Anderson for a dual membership (one for him and one for his caregiver) as well as requiring him to pay extra for his PCA to enter the IMAX Theater or any special exhibits. With assistance from a disability advocacy group, Anderson tried to resolve the issue informally but without success. He then sued Franklin Institute in federal court under the Americans with Disabilities Act, alleging that requiring extra admission fees for his personal care assistant is an ADA violation.

To the surprise of almost no one except – apparently – the defendant Franklin Institute, U.S. District Court Judge Gerald Austin McHugh ruled in plaintiff Anderson's favor in May 2016. He ordered the Franklin Institute to halt its "discriminatory practices" and ordered it "to adopt a clear and enforceable policy and practice of waiving any and all admission fees for paid Personal Care Attendants accompanying severely disabled clients in a formal capacity...."

"I remain frankly puzzled," wrote Judge McHugh, "by FI's determination to resist Plaintiffs' manifestly reasonable request for modification under the ADA...", adding that compliance with the Americans with Disabilities Act "often requires costly changes to infrastructure like putting in ramps."

The museum had argued that "allowing the Personal Care Assistants to have full access to the facility at no charge would 'have severe economic consequences, going so far as to suggest that such a policy could expose FI as a nonprofit institution to running at a deficit, causing ineligibility for certain grants and charitable donations."

Judge McHugh blasted that reasoning as "illogical":

”

---

*Not only is free admission of the PCA revenue neutral, because such persons would otherwise not be visitors, but failure to admit them for free might result in the loss of revenue from the disabled. Unless free admission of a PCA displaces a paying customer, and it does not, the economic impact is negligible to non-existent.*

Once again, we see a judge berating a party in writing for pursuing ridiculous litigation.

A well-respected community institution can't afford either these entirely unnecessary legal fees or this entirely foreseeable humiliation and reputational damage.

To be sure, the Franklin Institute also lost Mr. Anderson as a visitor; he hasn't been back since 2014.

*New England Anti-Vivisection Society*

Do four-legged creatures have standing to sue? That’s the issue that animal rights and advocacy groups face repeatedly.

The New England Anti-Vivisection Society (NEAVS), a pioneer in animal rights since 1895, is a 501(c)(3) organization “dedicated to ending the use of animals in research, testing, and science education.”

In recent years, the group has focused particular attention on its Project R&R: Release and Restitution for Chimpanzees in U.S. Laboratories. The goal is to “end the use of chimpanzees in invasive biomedical research and provide them permanent homes in sanctuary.” This organization and others have been successful in having enacted various federal statutes protecting the primates in this way.

NEAVS learned that the U.S. Fish and Wildlife Service had granted export licenses to “ship eight chimpanzees from Yerkes National Primate Research Center to an unaccredited English zoo” in violation of several of these laws. The group filed suit in federal court.

On Sept. 15, 2016, a federal district judge in Washington, D.C. ruled in the case, dismissing the action while making clear that “the plaintiffs’ allegations were substantial and deserved the attention of the federal courts....”

Why did this meritorious lawsuit get thrown out of court? It boiled down to “standing to sue” – a key concept in law:

”

---

*In law, ‘standing’ or ‘locus standi’ is the term for the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party’s participation in the case.*

For the average plaintiff – that is, a *human* plaintiff – standing can be established under one of three theories: (a) the “something to lose” doctrine; (b) the “chilling effect” doctrine; or (c) standing granted automatically by act of law. F

For instance, “under some environmental laws,” a party “may sue someone causing pollution to certain waterways without a federal permit, even if the party suing is not harmed by the pollution being generated.”

As the Court acknowledged at the beginning of its decision, dismissal of a case on these grounds is a familiar issue for animal advocates: “The question of who can speak for the animals has long vexed federal judges in animal welfare cases.” The Court also noted how difficult it is “to apply settled standing doctrine to determine when and under what circumstances an act that is allegedly harmful to animal works a cognizable injury in fact to humans.”

There was a predictable outcome; that is, a finding of “no standing. “(T)he human plaintiffs were not injured—only the chimpanzees.”

### *Conclusion*

Stay tuned for more installments of ***Charities in the Courtroom***. Sadly, there is no chance at all that we will run out of new examples.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*