

IN THE SUPREME COURT OF PENNSYLVANIA

Nos. 137 & 138 MAP 2005

**In re: MILTON HERSHEY SCHOOL and HERSHEY
TRUST COMPANY, Trustee of Milton Hershey School
Trust,**

**The Attorney General of Pennsylvania,
Appellant in No. 137**

**The Hershey Trust Company
and the Milton Hershey School,
Appellants in No. 138**

**The Milton Hershey School Alumni Association,
Appellee**

**BRIEF FOR APPELLANT ATTORNEY GENERAL
OF PENNSYLVANIA**

APPEAL FROM THE ORDER OF THE COMMONWEALTH
COURT ENTERED ON JANUARY 31, 2005 AT NO. 759 C.D.
2004, REVERSING THE ORDER OF THE COURT OF
COMMON PLEAS OF DAUPHIN COUNTY, ORPHANS'
COURT DIVISION, ENTERED ON NOVEMBER 19, 2003 AT
NO. 712, YEAR OF 1963

THOMAS W. CORBETT, JR.
Attorney General

BY: JOHN G. KNORR, III
*Chief Deputy Attorney General
Chief, Appellate Litigation Section*

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 787-1144
FAX: (717) 772-4526

MARK A. PACELLA
*Chief Deputy Attorney General
Chief, Charitable Trusts Section*

DATE: January 31, 2006

HEATHER J. VANCE-RITTMAN
Deputy Attorney General

TABLE OF CONTENTS

	Page
STATEMENT OF JURISDICTION.....	1
STATEMENT OF STANDARD AND SCOPE OF REVIEW	2
ORDERS IN QUESTION.....	3
STATEMENT OF THE QUESTION INVOLVED	4
STATEMENT OF THE CASE.....	5
Procedural History	6
Names of the Judges Whose Decision Is To Be Reviewed.	7
Statement of Facts.....	7
1. The School and Trust.....	7
2. The Alumni Association.	9
3. The Attorney General.	11
4. The 2002 and 2003 Agreements.	11
Statement of the Determination under Review.....	15
Statement of Place of Raising or Preservation of Issues.....	18
SUMMARY OF ARGUMENT	19
ARGUMENT.....	21
I. The Alumni Association Lacks Standing to Sue Over the Administration of the Trust.....	21
A. A charitable trust may be sued only by a trustee, by the Attorney General, or by someone with a special interest, distinct from that shared by all members of the general public, in the enforcement of the trust.....	21
B. The Alumni Association does not have any “special interest” in the administration of the Trust.....	24

II.	Commonwealth Court Erred In Holding That The Association Has A "Special Interest" In The Trust.	28
III.	Commonwealth Court's Novel Expansion of Standing Will Inflict Substantial Harm Upon Charitable Trusts And The Public Interest.....	31
	CONCLUSION.....	35

TABLE OF AUTHORITIES

	Page
Cases	
<i>Comm. v. Barnes Foundation</i> , 398 Pa. 458, 159 A.2d 500 (1960).....	22
<i>In re Barnes Foundation (Appeal of Barnes Foundation)</i> , 453 Pa.Super. 436, 684 A.2d 123 (1996).....	27
<i>In re Barnes Foundation (Appeal of Tinari)</i> , 443 Pa.Super. 369, 661 A.2d 889 (1995).....	27
<i>In re Barnwell’s Estate</i> , 269 Pa. 443, 112 A. 535 (1921).....	21
<i>In re Estate of Bartol</i> , 846 A.2d 209 (Pa.Cmwlt. 2004).....	2
<i>In re Estate of Pruner</i> , 390 Pa. 529, 136 A.2d 107 (1957).....	21, 22, 33
<i>In re Francis Edward McGillick Foundation</i> , 537 Pa. 194, 642 A.2d 467 (1994).....	23, 24, 25
<i>In re McCune</i> , 705 A.2d 861 (Pa.Super. 1997).....	24
<i>In re Milton Hershey School Trust</i> , 807 A.2d 324 (Pa.Cmwlt. 2002).....	8, 11
<i>In re Philadelphia Health Care Trust</i> , 872 A.2d 258 (Pa.Cmwlt. 2005).....	28
<i>Pittsburgh Palisades Park LLC v. Comm.</i> , __ Pa. __, __ A.2d __, 2005 WL 3542666 (2005).....	23
<i>Purcell v. Milton Hershey Sch. Alumni Ass’n</i> , 884 A.2d 372 (Pa.Cmwlt. 2005).....	9, 32
<i>Small v. Horn</i> , 554 Pa. 600, 722 A.2d 664 (1998).....	29
<i>Valley Forge Historical Society v. Washington Memorial Chapel</i> , 493 Pa. 491, 426 A.2d 1123 (1981).....	passim

<i>Vosk v. Encompass Ins. Co.</i> , 851 A.2d 162 (Pa.Super. 2004).....	2, 29
<i>Wiegand v. Barnes Foundation</i> , 374 Pa. 149, 97 A.2d 81 (1953).....	22, 33
<i>Wm. Penn Parking Garage v. City of Pittsburgh</i> , 464 Pa. 168, 346 A.2d 269 (1975).....	23
Statutes	
42 Pa.C.S. § 724.....	1
71 P.S. § 732-204(c)	11
Other Authorities	
<i>Blasko et al., Standing to Sue in the Charitable Sector</i> , 28 U.S.F. L. REV. 37 (1993).....	17, 29, 30, 31
<i>Bogert, Trusts and Trustees</i> (2d Ed. Rev.)	21, 22
Restatement of Trusts 2d § 391	22, 24, 25, 27

STATEMENT OF JURISDICTION

These are consolidated appeals by allowance from a final order of the Commonwealth Court. The Court has jurisdiction over these appeals pursuant to 42 Pa.C.S. § 724(a). The Court granted the petitions for allowance of appeal on December 1, 2005.

STATEMENT OF STANDARD AND SCOPE OF REVIEW

Scope of review. The Court may examine the entire record.

Standard of review. On review of an order sustaining preliminary objections, the order should be affirmed unless the trial court committed an abuse of discretion or an error of law. *E.g.*, *Vosk v. Encompass Ins. Co.*, 851 A.2d 162, 164 (Pa.Super. 2004); *In re Estate of Bartol*, 846 A.2d 209, 213 (Pa.Cmwlth. 2004). In this context, an abuse of discretion “is not merely an error in judgment. Rather, the trial court commits an ‘abuse of discretion’ when its judgment is manifestly unreasonable, or when the law is not applied, or if the record shows that the decision resulted from partiality, prejudice or ill will.” *Vosk*, 851 A.2d at 164-65.

ORDERS IN QUESTION

Commonwealth Court's order is as follows:

AND NOW, this 31st day of January, 2005, the order of the trial court is reversed and the matter is remanded for hearings on the Association's petition.

Jurisdiction relinquished.

/s/ Dan Pellegrini
DAN PELLEGRINI, JUDGE

* * * * *

The order of the Orphans' Court division of the Court of Common Pleas is as follows:

AND NOW, November 19, 2003, the Petition is DISMISSED.

By the Court:

/s/ Warren G. Morgan
Warren G. Morgan, S.J.

STATEMENT OF THE QUESTION INVOLVED

Whether a third party has standing to challenge the administration of a charitable trust where it is not a beneficiary of the trust, is not mentioned in the deed of trust, has no other direct, immediate and substantial interest in the trust, and the Attorney General is and has been directly involved in overseeing the charitable trust?

STATEMENT OF THE CASE

In this case, a third party is attempting to supplant both the Attorney General and the trustee in overseeing the administration of a charitable trust. The charitable trust in question is the Milton Hershey School Trust, whose trustee is the Hershey Trust Company, and which operates the Milton Hershey School for needy children in Derry Township, Dauphin County. The third party is the Milton Hershey School Alumni Association.¹ The Attorney General, the Trustee and the School are the appellants in this Court, and the Alumni Association is the appellee.

In July of 2002, the Trustee entered into an Agreement with the Attorney General governing certain aspects of the administration of the Trust and the School. *See* R. 115a-133a (2002 Agreement). About a year later, in 2003, the Trustee and the Attorney General rescinded the 2002 Agreement in favor of a new Agreement which addressed the same issues, although not in identical terms. *Orph. Ct. Op.* at 5-6, *see* R. 134a-150a (2003 Agreement). The Alumni Association, which was not a party to either agreement, then started these proceedings, which seek not only to set aside the 2003 Agreement, but also to establish a broad and permanent role for the Alumni Association in the administration of the Trust and the School.

In its petition, the Alumni Association seeks the reinstatement of the 2002 Agreement, but only with “appropriate amendments.” The nature of these “appropriate amendments” is not specified, but to this end the Association also seeks the appointment

¹ For the sake of simplicity, we will refer to these parties as the Trustee, the School and the Alumni Association.

of a “guardian ad litem” and a “trustee ad litem,” named by the Association, to participate in formulating these amendments and to exercise veto power over their adoption. Once this is accomplished, the “guardian ad litem” and the “trustee ad litem” would continue in office “thereafter,” to exercise a similar veto over any future amendments to the Agreement and to “otherwise protect the interests” of current and potential students with regard to “future actions of the Trust.” Finally, the “guardian ad litem” and the “trustee ad litem” would participate in the development of a “long-term growth plan” for the School, and in the meantime the Trust would be permitted to take “no further action ... that in any way affects the future use of Trust land for child purposes.” R. 84a-86a (petition, prayer for relief); Orph. Ct. Op. at 3 n. 2.

The nature of the legal claims which the Alumni Association advances to support this relief are not clear. There is, for example, no claim that the Trustee has violated some specific provision of the deed of trust. The 68-page petition is, as the trial court remarked, “less a pleading than a diatribe,” Orph. Ct. Op. at 10, which complains about virtually every decision, large and small, made since Milton Hershey’s death in 1945. *See, e.g.*, R. 76-77, 83 (petition). The relationship between these complaints and the adoption of the 2003 Agreement is far from clear, Orph. Ct. Op. at 6, nor is it clear what legal claim the Association seeks to assert arising out of the adoption of that Agreement. Rather, the Association seems to seek a sort of general inquest into the conduct of the Trust over the past sixty years.

Procedural History.

The Alumni Association started these proceedings in September of 2003 by filing a petition for a rule to show cause in the Orphans’ Court Division of the Dauphin County

Court of Common Pleas, purporting to sue both on its own behalf and on behalf of current and potential students at the School. *See* R. 15a-87a (petition). The Trustee and the Attorney General, however, challenged the Alumni Association's standing to sue. *See* R. 88a, 91a (preliminary objections). The trial court, finding the Association's prayer for relief "preposterous," Orph. Ct. Op. at 3 n. 2, agreed that the Association lacked standing, either in its own right or as the representative of current and potential students, and dismissed the petition.

The Alumni Association appealed, and Commonwealth Court heard the appeal en banc. By a vote of 4-3, a divided court reversed the Court of Common Pleas and remanded for further proceedings on the Alumni Association's petition. The Attorney General, the Trustee and the School petitioned this Court for discretionary review of that ruling, and the Court allowed and consolidated their appeals.

Names of the Judges Whose Decision Is To Be Reviewed.

The majority opinion in Commonwealth Court was written by Judge Dan Pellegrini, joined by Judges Bernard McGinley, Rochelle S. Friedman, and Mary Hannah Leavitt. The dissenting opinion was written by President Judge James Gardner Colins, joined by Judges René L. Cohn Jubelirer and Robert Simpson.

The trial court was Senior Judge Warren G. Morgan.

Statement of Facts.

1. The School and Trust. The Milton Hershey School was founded by a deed of trust executed in 1909 by Milton S. Hershey and Catherine Hershey, his wife. *See* R. 100a-114a (deed of trust). The deed of trust appoints the Hershey Trust Company as Trustee, and provides that the School is to be administered by its Board of Managers,

who are also members of the Trustee's Board of Directors. The Trust was initially funded with a grant of land, R. 101a-102a (deed of trust), but today its primary asset is its controlling interest in the Hershey Foods Corporation. *See In re Milton Hershey School Trust*, 807 A.2d 324, 329 (Pa.Cmwlt. 2002). The Trust also owns the Hershey Entertainment & Resorts Company (HERCO).

The deed of trust directs the Trustee and the Managers to establish and maintain the Milton Hershey School as "a permanent institution for the residence and accommodation of poor children." R. 102a (deed of trust). It empowers the Trustee and the Board of Managers to make all decisions regarding the management of trust assets, R. 104-105a (deed of trust), including the authority to sell any part of the lands conveyed by the deed of trust which in the Managers' judgment "it may be advisable and advantageous to sell." R. 105a (deed of trust). In fact, however, as of 2003 the Trust held more land than it did ten years earlier. R. 180a (affidavit of Kenneth Gall).

Similarly, the Managers have authority, within the standards set forth in the deed itself, over all aspects of the development and operation of the School, including buildings and equipment for both residence and instruction (R. 106a-107a), the number of children to be admitted (R. 107a-108a), admissions and expulsions of individual students (R. 107a, 109a), and curriculum (R. 109a) (deed of trust). *See Orph. Ct. Op.* at 9. As of 2003, the Milton Hershey School enrolled about 1,300 children, R. 211a (affidavit of Robert Stets), all of whom were "poor" within the meaning of the deed of trust. The School's current policy sets an income cutoff at 150% of the federal poverty line; in 2003, the average annual income of a new student was a little under \$14,000. R. 207a, 210a (affidavit of Robert Stets).

2. *The Alumni Association.* The Milton Hershey School Alumni Association was created in 1930, during Mr. Hershey's lifetime, by a group of alumni and a former superintendent. R. 160a (minutes of organizing meeting). Mr. Hershey was aware of the Association's existence and attended its first banquet. R. 160a (minutes). Nevertheless, he did not provide for it to have any role in the Trust or the School. Under the deed of trust, the Alumni Association has no authority or responsibility for the operation of the School or the management of Trust assets, and indeed it is not mentioned in the deed of trust at all. Orph. Ct. Op. at 7. Neither the Association nor its members are beneficiaries of the Trust; to the contrary, the deed of trust specifically excludes them, providing that on completing the course of education offered by the School, students "shall cease to be the recipients of its benefits." Comm. Ct. Op. at 4, *quoting* R. 109a (deed of trust).²

In 1947, after Mr. Hershey's death, the Alumni Association was organized as a nonprofit corporation and, as its name implies, its voting membership comprises primarily dues-paying alumni of the School.³ The Alumni Association is not a part of the School, the Trust or the Trust Company, although it has long been permitted to maintain offices on Trust property. The trial court found that "the Association does not possess any beneficial interest in the School Trust and has no stake in the Trust that could be adversely affected by the Trustee." Orph. Ct. Op. at 5.

² The Managers of the School, in their discretion, may give alumni the sum of \$100 upon their leaving the School, and may make a contribution toward alumni's further education. Orph. Ct. Op. at 5a, *citing* R. 109a (deed of trust). The Association's petition does not allege any infringement upon or impairment of this interest. Orph. Ct. Op. at 7.

³ In addition to alumni, membership includes "honorary members," who have voting privileges, and "associate members." *Purcell v. Milton Hershey Sch. Alumni Ass'n*, 884 A.2d 372, 374 & nn. 2-4 (Pa.Cmwlth. 2005).

The stated purpose of the Alumni Association was, until very recently,

to continue the friendships formed in orphanhood at the Milton Hershey School and to foster fellowship among all who have left, to inspire and promote the welfare of each other by mutual concern and inquiry, and to reflect credit on the Milton Hershey School and Milton S. Hershey its founder.

Orph. Ct. Op. at 4. As the trial court noted, historically the Association's activities reflected these purposes: efforts "to foster fellowship among the members, to serve the welfare of each other and to mentor children then in residential care at the School." Orph. Ct. Op. at 5.

Recently, however, "members of the Association became concerned that the School was no longer being managed in the manner of the model observed during Mr. Hershey's lifetime," Orph. Ct. Op. at 5, and sought to play a more active role in the affairs of the School and the Trust. The Alumni Association changed its stated purpose to express a "dedication to the educational and other principals [sic] of Milton and Catherine Hershey's Deed of Trust, with a commitment to the well-being of Milton Hershey School, its students and alumni." Orph. Ct. Op. at 4. It approached the Attorney General's Office with its concerns and it played an "advisory role," Orph. Ct. Op. at 8, in the Attorney General's investigation which led to the formation of the 2002 Agreement between the Attorney General and the School. It has not, however, been content with this advisory role: these proceedings mark the fourth time in recent years that the Alumni Association has attempted to intervene as a party in legal disputes concerning the School and the Trust. *See* R. 5a, 11a (orphans' court docket entries for March 26, April 2 and April 20, 1999), 6a (docket entry for June 4, 1999), 7a (docket entries for August 29 and September 3, 2002).

3. *The Attorney General.* The Office of Attorney General (OAG) has likewise devoted substantial and ongoing attention to the affairs of the School and the Trust. See 71 P.S. § 732-204(c) (Attorney General may intervene in any action involving a charitable trust). In 1992, for example, the Attorney General acted to preserve the School's vocational educational program,⁴ see R. 176a-179a (memorandum of understanding); in 1999, the Attorney General successfully opposed a *cy pres* petition from the Trust to allow it to use trust funds for a purpose other than the School; and in 2002, the Attorney General successfully opposed the Trust's attempt to sell its controlling interest in the Hershey Foods Corporation. See Orph. Ct. Op. at 8; *In re Milton Hershey School Trust, supra*.

4. *The 2002 and 2003 Agreements.* The Attorney General also negotiated the 2002 Agreement, and its replacement by the 2003 Agreement, which figure in the Alumni Association's petition. See R. 115a-133a (2002 Agreement), 134a-150a (2003 Agreement). The Alumni Association, which had played an "advisory role" in the Attorney General's investigation, was not a party to that Agreement and had no rights under it, Orph. Ct. Op. at 8; to the contrary, the Agreement specifically recited the understanding of the parties that no one except themselves would have standing either to challenge or to enforce it. R. 121a (2002 Agreement).

After the 2002 Agreement had been signed but before it was implemented, the controversy over the proposed sale of the Trust's interest in Hershey Foods took place. In

⁴ The deed of trust requires that "[e]ach and every scholar shall be required to learn, and be thoroughly instructed in some occupation or mechanical trade...." R. 108a (deed of trust).

its aftermath, there were significant changes in the membership and leadership of the Board of Managers and the directors of the Trustee⁵; and as a result, the parties to the 2002 Agreement agreed to modify it. *See* R. 134a (2003 Agreement); Orph. Ct. Op. at 1-2. The result was the 2003 Agreement. Again, the Alumni Association was not a party to the 2003 Agreement and has no rights under it. As relevant here, the two Agreements cover four areas: governance of the Trust; real estate transactions; programmatic matters; and reports to the Attorney General. Because they figure so prominently in the Alumni Association's petition, we discuss their provisions in some detail. We note here, however, that neither agreement contains any admission, or accusation, of any wrongdoing or inappropriate action on the part of the Trust or its Board. *See* R. 122a (2002 Agreement); Orph. Ct. Op. at 9.

- *Governance.* The 2002 Agreement prohibited members of the Trust's Board of Directors from serving on the boards of Hershey Foods or HERCO, on the board of the Hershey Medical Center, and on the boards of certain other entities as well. R. 117a. The Agreement prohibited Directors from "materially benefiting" from the sale of goods or services to the School; from using the same accounting and financial advisors as Hershey Foods or HERCO in certain circumstances; and from waiving certain conflicts of interest involving its attorneys. R. 118a.

The 2003 Agreement removed the prohibition on service on the boards of Hershey Foods and HERCO, the stock of which constitute the Trust's primary assets. It

⁵ As of 2003, three of the eleven Trustee/Managers were alumni of the School, as was the School's President. Orph. Ct. Op. at 2.

continues to prohibit Directors from serving on the board of the Hershey Medical Center, and it prohibits employees of the School from serving on the Trust's Board of Directors. R. 135a-136a. Directors are prohibited from "materially benefiting" from the sale of goods or services to the School. R. 134a-135a. The Trust is not permitted to utilize the same attorneys as Hershey Foods without the Attorney General's consent, and is prohibited from waiving any conflict of interest on the part of its auditors or attorneys, specifically including any conflict involving Hershey Foods or HERCO. R. 136a-137a.

- *Real Estate Transactions.* The two Agreements are almost identical in substance. Both require ninety days notice to the OAG of any sale of Trust land, or of the placement of certain restrictions such as leases or easements.⁶ *Cf.* 118a (2002 Agreement) with 137a-138a (2003 Agreement).

- *Programs.* In the area of financial need criteria for admission, the 2002 Agreement required that, beginning in the 2003-04 school year, new students' income not exceed 150% of the federal poverty guidelines, that the income of a majority of students not exceed 100% of these guidelines, and that these guidelines be further studied during the 2005-06 school year. R. 119a. In the area of academic criteria, it required the School to consider for admission any student who exceeded "borderline intellectual functioning," and to exhaust support services before terminating a student for academic reasons. R. 120a. It required the School to offer a year-round program, to establish a pilot program to

⁶ There are minor differences between the two agreements. For example, in the case of leases, the 2002 Agreement requires notice only where the lease is for more than five years, R. 118a, while the 2003 Agreement applies to leases of any length, but only if they would interfere with the use of the land for School program purposes. R. 137a.

encourage enrollment of children at risk for foster care, and to continue its evaluation of a Blue Ribbon Task Force's report on student safety. R. 120a.

The 2003 Agreement requires the School to admit only children who are "poor" within the meaning of the deed of trust, and in making this determination to consider the federal poverty guidelines and the lack of the basic necessities of food, clothing and shelter. In the academic area, it requires the School to admit students with a "wide variety of potential for academic achievement," including vocational education students, and to provide adequate support for students having academic difficulties. It requires the School to provide a year-round program, and to continue its plan to increase student safety by reducing the age spread among children in each student home. R. 138a-139a.

- *Reports to Attorney General.* The 2002 Agreement provided that counsel for the School and Trust would meet twice a year with the Attorney General's staff to provide a status report on the Agreement and to inform the Attorney General generally about "major developments." Either party could terminate this provision by so notifying the other. R. 122a.

The 2003 Agreement requires an annual written report from the School, addressing the economic and academic characteristics of the children admitted to the School; year-round programs in place and in development; safety programs in place and in development, including reducing the age spread among children within each student home; and such other matters as the Attorney General requests. R. 139a. In addition, the School is required to provide the Attorney General with "direct access" to "materials, information and personnel," upon request. R. 139a-140a. There is no provision allowing the School to terminate these obligations.

Statement of the Determination under Review.

1. The trial court, with long experience regarding the Trust,⁷ found that the Alumni Association possesses “no beneficial interest in the School Trust,” has no “integral involvement or prerogative in the administration of the Trust or the day-to-day operation of the School,” and had made no allegation that the new Agreement would “jeopardize or threaten a denial of benefits to it or its members.” Orph. Ct. Op. at 7. He noted that the Association likewise had not identified any present or potential student at the School who had been harmed by the adoption of the new Agreement, Orph. Ct. Op. at 9, which he found addresses “most of the ... concerns” which had earlier been advanced by the Association. Orph. Ct. Op. at 6. Instead, its petition — “less a pleading than a diatribe” — simply deplored the manner in which the Trust and the School had exercised their discretion over the handling of Trust real estate and the management of the School, and its claims of harm were “conjectural and extravagant.” Orph. Ct. Op. at 10.

The trial court found that the long history of involvement by the Attorney General “clearly belie[s] any charge that the office of the Attorney General has been inattentive or is likely to be inattentive to its duty regarding supervision of the Milton Hershey School Trust.” Orph. Ct. Op. at 8. He also rejected “out of hand” any suggestion that “the School and the Attorney General have subordinated to other interests the interests of children who now or later may attend the School.” Orph. Ct. Op. at 2. The trial court therefore “categorically reject[ed]” the Alumni Association’s assertion that they alone are “the only true interpreters of the vision of Milton S. Hershey and that they stand alone to protect

⁷ The trial court docket regarding the Trust was opened in 1963.

the interests of the children who now or someday may benefit from his generosity.” Orph. Ct. Op. at 10.

Under these circumstances, the trial court concluded that the adoption of a new agreement was “entirely within the discretion” of the Trust and the Attorney General, Orph. Ct. Op. at 9, that the Alumni Association lacked standing to contest their decisions, Orph. Ct. Op. at 10, and that to hold otherwise would create a “court-endorsed climate for potentially vexatious litigation.” Orph. Ct. Op. at 3 n. 2.

2. The majority judges in Commonwealth Court held that the Alumni Association had established a “special interest” which gave it standing to challenge the 2003 Agreement. The majority did not apply the traditional test for standing in Pennsylvania — whether the party has an interest which is “substantial, direct and immediate” — and indeed, the majority specifically declined to consider whether the Alumni Association has such an interest. Comm. Ct. Op. at 27-28 n. 26. Rather, the majority applied what it called a “multi-factor test” which it said was “presaged” by this Court’s decision in *Valley Forge Historical Society v. Washington Memorial Chapel*, 493 Pa. 491, 426 A.2d 1123 (1981), but which in fact the majority derived from a law review article. Comm. Ct. Op. at 24-27, citing M. Blasko *et al.*, *Standing to Sue in the Charitable Sector*, 28 U.S.F. L. REV. 37 (1993).

Applying this “multi-factor test,” the majority concluded that the Alumni Association had a “special interest” in challenging the 2003 Agreement based on its role in bringing its concerns to the Attorney General’s attention; its role in having the Attorney General seek the 2002 Agreement; the “enormous amount of money at stake”; and the nature of the relief sought, which the majority characterized as “merely seek[ing]

to determine whether the ... 2002 Agreement will better serve the charitable purpose of the Trust instead of the ... 2003 Agreement.” Comm. Ct. Op. at 28. The majority pointed also to the Alumni Association’s historically close and cordial relationship with the Trust, its monetary contributions, its presence at the School, its programs for students, and its members’ “intimate knowledge of orphanhood, poverty and other alternative foster care facilities.” Comm. Ct. Op. at 28-29. Finally, the majority discounted any risk of vexatious or unreasonable litigation by the Association, since, in their view, “the Association only seeks the reasons why the 2002 ... Agreement was replaced by the ... 2003 Agreement....” Comm. Ct. Op. at 29.

The three dissenting judges refused to join what they called a “quantum leap away from historical concepts of standing....” Comm. Ct. Op. at 34. In their view, it was clear that the Hersheys

in no way intended to give the Alumni Association standing in the administration of the Trust. ... To now give the Association legal rights that were expressly excluded by the Settlor of the Trust is a dangerous expansion of standing not supported by over 300 years of case law....

Comm. Ct. Op. at 33. In addition, well-settled principles of *parens patriae* establish that “the Attorney General ... is the watch dog that supervises the administration of charitable trusts.” Comm. Ct. Op. at 33. Extending standing to the Alumni Association “interferes with the efficient performance of the Attorney General’s ... duties, as well as being violative of the wishes of the Settlor of the Trust....” Comm. Ct. Op. at 34.