

MAR 01 2024

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

In re:)	
WEBSTER UNIVERSITY, a non-profit)	
corporation,)	Case No. 24SL-CC00511
)	Division No. 12
Petitioner)	

[PROPOSED] ORDER AND JUDGMENT REMOVING RESTRICTIONS ON CERTAIN ENDOWED FUNDS

Pending before the Court is a Verified Petition to Remove Restrictions on Certain Endowed Funds (“Verified Petition”) filed by Webster University, a Missouri non-profit corporation (“Webster”). Attached as Exhibit 1 to the Verified Petition is a list of Webster’s donor-restricted endowment funds for which Webster seeks to reclassify as “unrestricted” funds, pursuant to R.S.Mo. § 402.138.

The Court has also reviewed a supplemental exhibit filed by Webster as Exhibit 4 and an Amended Exhibit 1 to remove from its list of Restricted Endowment Funds certain funds whose donors have voluntarily agreed to unrestrict since Webster filed its Verified Petition. The list of donor-restricted endowment funds appearing on Webster’s Amended Exhibit 1 shall be referenced herein as the “Restricted Endowment Funds” and is attached to this Order with redactions for donors who expressly requested that their gifts be anonymous or remain confidential. Additionally, the Court has reviewed a letter from the Attorney General of the State of Missouri indicating that the Attorney General does not anticipate getting involved in this matter. Exhibit 3 to Verified Petition.

The Court, being fully apprised, finds as follows:

1. Webster maintains its principal place of business in St. Louis County, Missouri, and the Restricted Endowment Funds are located or managed in St. Louis County, Missouri.

Accordingly, venue and jurisdiction are proper.

2. Webster's mission is to ensure "high-quality learning experiences that transform students for global citizenship and individual excellence." Webster's mission qualifies as a "charitable purpose" as that term is used in the Uniform Prudent Management of Institutional Fund Act ("UPMIFA"), as enacted in Missouri. *See Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 138 (Mo. Ct. App. 2009) (noting Missouri's adoption of the UPMIFA in 2009); R.S.Mo. § 402.130(1) (defining the term "charitable purpose" to include "the advancement of education").

3. In support of this mission, over the last one hundred years, Webster has received testamentary and direct gifts, certain of which are restricted as to the purpose and use of funds.

4. Webster has requested that the restrictions on the Restricted Endowment Funds be modified to permit each of the Restricted Endowment Funds to be transferred to Webster's unrestricted endowment, in order to be held as collateral and to meet the minimum liquidity ratio requirements set forth in a loan agreement Webster entered into in 2011 (the "Loan Agreement").

5. Section 402.138.3, RSMo, provides as follows:

If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general will be given the opportunity to be heard.

6. The Verified Petition explains that, to contribute to Webster's liquidity ratio, endowment funds must be "unrestricted" funds. The Verified Petition represents further that, without the reclassification of the Restricted Endowment Funds as "unrestricted" funds, Webster will be unable to achieve a 75% liquidity ratio, as required by the Loan Agreement, in the near future. Finally, the Verified Petition explains that if the issuer or trustee of Webster's outstanding

bonds, which are governed by the Loan Agreement, were to provide notice of an alleged breach of the Loan Agreement based on Webster's failure to maintain a liquidity ratio of at least 75%, that circumstance could impact Webster's viability.

7. Because allowing the donor-imposed restrictions to remain in place for the Restricted Endowment Funds would prevent Webster from satisfying the liquidity ratio requirements under the Loan Agreement, those restrictions have become "impracticable."

8. Unrestricting the Restricted Endowment Funds is consistent with and related to the purposes for which the Restricted Endowment Funds were created: to promote high-quality learning experiences by well-qualified professors for all students, regardless of financial need.

9. On December 17, 2023, the Executive Committee of Webster's Board of Trustees (the "EC") voted to authorize the filing of this action to seek the lifting of restrictions on the Restricted Endowment Funds at issue in this Verified Petition.

10. Additionally, the EC and the broader Board of Trustees have passed resolutions requiring EC approval for any expenditures of the Restricted Endowment Funds.

11. The Missouri Attorney General was notified of Webster's intent to remove restrictions on certain endowed funds by letter dated December 18, 2023, which included a copy of Webster's proposed Petition. The Attorney General has indicated that the Attorney General does not anticipate getting involved in this matter. Exhibit 3 to Verified Petition. Webster has represented that it served the Attorney General with a copy of the Verified Petition and all other pleadings filed by Webster in this matter. A member of the Attorney General's Office entered an appearance and joined the proposed order submitted to the court on February 16, 2024, and further appeared at a hearing on this matter before the Court on February 26, 2024, again joining the proposed order submitted to the Court as of that date. The Attorney General has therefore been

notified of this matter and has been given an opportunity to be heard.

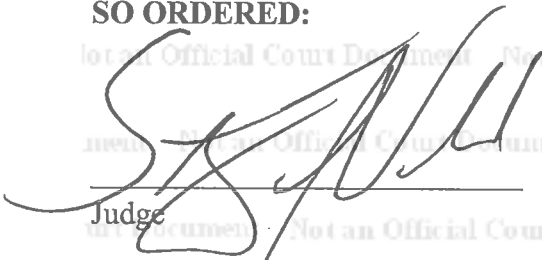
NOW, THEREFORE, the Court hereby Orders, Adjudges and Decrees that the requirements of § 402.138.3, RSMo, have been met, and as a result, the Court removes the restrictions on the endowed funds listed on **Amended Exhibit 1**, such that Webster may reclassify the principal and accumulated interest of said endowments as unrestricted funds, to be maintained in a separate unrestricted donor funds account, to satisfy the liquidity ratio requirements set forth in the Loan Agreement.

The Court further orders that, upon Webster's financial position improving to a point where (1) Webster has experienced at least one full year of budget surplus, (2) Webster's ratio of unrestricted assets to outstanding long-term indebtedness would be 100% or greater, and (3) Webster would be in compliance with all terms of any bond or loan-related agreements despite the reinstatement of restrictions on the Restricted Endowment Funds, the restrictions on such Restricted Endowment Funds shall be reinstated.

The Court further orders that a full copy of the Amended Exhibit 1 may be filed under seal, as the redacted copy is attached to this Order and therefore publicly available.

Judgment is entered accordingly.

SO ORDERED:



Judge

Dated: 3/1/2024