

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____ MAL 2005

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

**Thomas W. Corbett, Jr., Attorney General,
Petitioner**

**The Hershey Trust Company and the Milton Hershey
School; and the Milton Hershey School Alumni
Association,
Respondents**

**ATTORNEY GENERAL'S PETITION FOR
ALLOWANCE OF APPEAL**

PETITION FOR ALLOWANCE OF APPEAL FROM THE
ORDER OF THE COMMONWEALTH COURT ENTERED ON
JANUARY 31, 2004 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, 2004 AT NO. 712, YEAR OF
1963

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DATE: March 2, 2005

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OPINONS BELOW

The opinion of Commonwealth Court is reported at — A.2d —, 2004 WL 3142373, and is appended to this petition at 1a.¹ The opinion of the Orphans’ Court Division of the Court of Common Pleas is not reported, but is appended at 35a.

ORDERS IN QUESTION

Commonwealth Court’s order is as follows:

AND NOW, this 31st day of January, 2005, the order of the trial court in the above-captioned matter 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 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.

¹ References to the appendix to this petition will be to “Pet. App. __a.”

QUESTION PRESENTED FOR REVIEW

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 actively involved in overseeing the charitable trust?

STATEMENT OF THE CASE

In this case, Commonwealth Court has sanctioned an attempt by a third party to supplant both the Attorney General and the trustee in overseeing the administration of a charitable trust. The petitioner in this Court is the Attorney General, in his capacity as the *parens patriae* overseer of charitable trusts. The charitable trust in question is the Milton Hershey School Trust, which operates the Milton Hershey School in Derry Township, Dauphin County, and whose trustee is the Hershey Trust Company. The third party is the Milton Hershey School Alumni Association.²

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. About a year later, in 2003, the Trustee and the Attorney General rescinded the 2002 Agreement in favor of a new Agreement. Pet. App. 39a-40a. This apparently provided the impetus for the Alumni Association to bring this action, which seeks not only to set aside the 2003 Agreement, but also to establish a broad and apparently 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 of a “guardian ad litem” and a “trustee ad litem,” named by the Association, to participate

² In this Court, we have designated all of the other parties — the Trustee, the School and the Alumni Association — as respondents, in accordance with Pa. R. App. Proc. 1115(b). In the courts below, however, the Trustee and the School were aligned with the Attorney General and against the Alumni Association, and we anticipate that that will continue to be the case.

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.” Pet. App. 37a n. 2; R. 135a-137a (petition, prayer for relief).³

Procedural History.

The Alumni Association commenced this action 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. The Trustee and the Attorney General, however, challenged the Alumni Association’s standing to sue. The trial court, finding the Association’s prayer for relief “preposterous,” Pet. App. 37a 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. Pet. App. 35a-44a.

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

³ References to “R. __a” are to the Reproduced Record filed in the Commonwealth Court, a copy of which has been lodged with the Prothonotary pursuant to Pa. R. App. Proc. 1112(d).

remanded for further proceedings on the Alumni Association's petition. Pet. App. 1a-34a. The Attorney General now asks this Court to review that holding.

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. 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. 17a-18a (deed of trust), but today its primary asset is its controlling interest in the Hershey Foods Corporation, and it 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. 18a (deed of trust). It empowers the Trustee and the Board of Managers to make all decisions regarding the management of trust assets, R. 20a-21a (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. 21a (deed of trust). 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. 22a-23a), the number of children to be admitted (R. 23a-24a), admissions and expulsions of individual students (R. 23a, 25a), and curriculum (R. 25a) (deed of trust). *See* Pet. App. 43a.

2. *The Alumni Association.* The Milton Hershey School Alumni Association was created about twenty years later, in 1930. It is organized as a nonprofit corporation and, as its name implies, its membership comprises alumni of the School. The Alumni Association has long been permitted to maintain its offices on Trust property, but it is not a part of the School or the Trust Company. The Alumni Association was created during Mr. Hershey's lifetime and with his involvement; nevertheless, under the deed of trust it 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. Pet. App. 41a. 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." Pet. App. 4a, *quoting* R. 25a (deed of trust).⁴ As the trial court found, "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." Pet. App. 39a.

⁴ 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. Pet. App. 39a, *citing* R. 25a (deed of trust). The Association's petition does not allege any infringement upon or impairment of this interest. Pet. App. 41a.

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.

Pet. App. 38a. 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.” Pet. App. 39a.

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,” Pet. App. 39a, and sought to play a more active role in the affairs of the School and the Trust. The 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.” Pet. App. 38a. It approached the Attorney General’s Office with its concerns and it played an “advisory role,” Pet. App. 42a, in the formation of the 2002 agreement between the Attorney General and the School. And it has attempted three times in recent years to intervene as a party in legal disputes concerning the School and the Trust. *See* R. 8a, 11a (orphans’ court docket entries for March 26, 1999, April 2, 1999 and April 20, 1999).

During this same period and continuing to the present, various other entities — Derry Township, in which the School is located, and an organization called the National Hershey Association — also repeatedly asserted a right to intervene in the proceedings.

See R. 8a, 11a, 13a-14a (orphans' court docket entries for April 26, 1999, September 3, 2002, September 17, 2002, December 11, 2002, and October 16, 2003).

3. *The Attorney General.* The Attorney General 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 program⁵; 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 Pet. App. 42a; *In re Milton Hershey School Trust*, 807 A.2d 324 (Cmwlth. Ct. 2002).

Also in 2002, the Attorney General negotiated the 2002 Agreement which figures in the Alumni Association's petition. The 2002 Agreement addressed issues relating to the governance of the Trust; advance notice to the Attorney General of certain real estate transactions; criteria for student admissions; and ongoing reports to the Attorney General. R. 48a-55a (2002 Agreement). The Alumni Association, which had played an "advisory role," Pet. App. 42a, in reaching the Agreement, was nevertheless not a party to the Agreement and had no rights under it, Pet. App. 42a; and indeed, 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. 54a (2002 Agreement).

⁵ The deed of trust specifically requires that "[e]ach and every scholar shall be required to learn, and be thoroughly instructed in some occupation or mechanical trade...." R. 24a (deed of trust).

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 its aftermath, there were significant changes in the membership and leadership of the Board of Managers and the directors of the Trustee; and as a result, the parties to the 2002 Agreement agreed to modify it. Pet. App. 35a-36a.

In June of 2003, the Attorney General, the School and the Trust executed a new agreement — the 2003 Agreement. *See* R. 31a-37a (2003 Agreement). The new Agreement addressed the same general subject matter as the 2002 Agreement, but restored much of the discretion provided under the deed of trust. For example, the 2002 Agreement contained a flat prohibition against service on the board of Hershey Foods or HERCO — the primary assets of the Trust — by any member of the board of the School or the Trustee; the 2003 Agreement, while it does address conflicts of interest, removes this flat prohibition. *Cf.* R. 31a-34a *with* 49a-51a. Similarly, while both agreements require the School to admit only students who are “poor” within meaning of the deed of trust, the 2002 Agreement required the School to adhere to rigid income limits based on federal poverty guidelines; while the 2003 Agreement requires that the School “consider” these guidelines, together with other factors. *Cf.* R. 35a *with* R. 52a. *See* Pet. App. 40a. Again, the Alumni Association was not a party to the 2003 Agreement and has no rights under it.

The trial court found that this 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.” Pet. App. 42a.

Statement of the Determination under Review.

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. Pet. App. 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. Pet. App. 24a-27a, *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.” Pet. App. 28a. 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.” Pet. App. 28a-29a. 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....” Pet. App. 29a.

The three dissenting judges refused to join what they called a “quantum leap away from historical concepts of standing....” Pet. App. 34a. 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....

Pet. App. 33a. In addition, well-settled principles of *parens patriae* establish that “the Attorney General ... is the watch dog that supervises the administration of charitable trusts.” Pet. App. 33a. 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....” Pet. 34a.

REASONS FOR ALLOWING THIS APPEAL

We submit that in this case Commonwealth Court, by a bare majority, has not only decided a question of substantial importance, but has done so in a way that conflicts with decisions of both this Court and the Superior Court. Both of these considerations counsel in favor of discretionary review by this Court.

I. Commonwealth Court’s Novel Expansion of Well-Settled Concepts of Standing Presents An Issue Of Substantial Importance.

Commonwealth Court’s decision, if left unreviewed, is likely to have far-reaching and untoward implications for the Trust which is involved in this case, for charitable trusts in general, and for the Attorney General’s ability to supervise charitable trusts. Two aspects of the majority’s decision make this so.

First, the decision sanctions an unprecedented expansion in the ability of third parties to challenge administrative decisions by trustees, and supervisory decisions by the Attorney General, which until now were well within the areas traditionally confided to their discretion. As the majority candidly acknowledged, the central issue which the Alumni Association seeks to litigate is “whether the 2002 ... Agreement will *better* serve the purpose of the Trust instead of the ... 2003 Agreement.” Pet. App. 28a (emphasis added). In other words, the Alumni Association simply disagrees with the decisions made by the Trustee and the Attorney General about what will “better serve the purpose of the Trust,” and seeks to substitute its own judgment for theirs. *Cf.* Pet. App. 43a (“To make a new Agreement was entirely within the discretion of the Trustees/Managers.”)

But there is no reason to suppose that the Alumni Association’s complaints are limited to the replacement of the 2002 Agreement. To the contrary, the Association’s 68-page petition complains about virtually every decision made by the Trust and the

Attorney General since Mr. Hershey's death in 1945, R. 128a, 134a, from the lighting installed on the School's football field, R. 125a-126a, to the use made of specific buildings, R. 93a-94a, to the salaries paid to employees of HERCO. R. 92a. Clearly, there is a whole range of issues, large and small, on which the Alumni Association believes that its ideas "will better serve the purpose of the Trust" than those of the Trustee, the Managers and the Attorney General; and Commonwealth Court's decision will encourage the Association to litigate each of those issues, now and in the future.

Second, the majority's "multi-factor test" for determining standing is essentially open-ended and subjective, making it all but impossible for courts to resolve claims for standing in any principled or predictable way; and this in turn will encourage other third parties to try their luck. There is no reason to suppose that the Alumni Association will be the only third party seeking to contest decisions with which it disagrees. The assets of the Milton Hershey School Trust currently exceed \$5 billion, and it controls two companies which play a major role in its local economy. This "enormous amount of money," Pet. App. 28a, provides substantial incentive for others who may be affected by the Trust's decisions — local governments, for example — to seek to control, or at least to influence, those decisions. In recent years, at least two other entities have repeatedly asserted their standing to intervene in matters concerning the Trust, *see supra* at 7-8, and Commonwealth Court's decision will encourage still others to assert their own "special interest" in the Trust.⁶

⁶ The Commonwealth Court majority suggested that the Alumni Association was the "only other party with a sufficient relationship to the Trust" to establish such (continued...)

Nor will other charitable organizations be immune from such claims. Most schools, after all, have alumni organizations, and many other charitable institutions — hospitals, museums, symphonies, and so on — have affiliated auxiliary organizations with which they have long-standing relationships and which provide them with invaluable assistance, but which may also, from time to time, disagree with decisions taken by the “parent” charitable organization. Again, Commonwealth Court’s decision will encourage taking these disagreements to court.

Finally, Commonwealth Court’s approach will impair the Attorney General’s ability effectively to supervise charitable trusts in the furtherance of the public interest. “The responsibility for public supervision [of charitable trusts] traditionally has been delegated to the attorney general to be performed as an exercise of his *parens patriae* powers,” *In re Pruner’s Estate*, 390 Pa. 529, 532, 136 A.2d 107, 109 (1957); and “[o]bviously, there is good reason for vesting in a single authority the discretion and power incident to the enforcement of such trusts....” Pet. App. 37a, *quoting* Bogert, *Trusts and Trustees* (2d ed. Rev.) 411. But under the “court-endorsed climate for potentially vexatious litigation,” Pet. App. 37a n.2, sanctioned by the Commonwealth Court majority, the Attorney General may well be merely one voice among many competing to be heard. As the dissenting judges observed, this “interferes with the efficient performance of the Attorney General’s statutorily-mandated duties....” Pet. App. 34a.

standing, Pet. App. 29a, but of course the majority had nothing on which to base that optimistic assessment, nor was the majority in a position to pre-judge the claims for standing that others will certainly make in the future.

Commonwealth Court’s novel decision is thus likely to have implications that are both substantial and undesirable, and this alone justifies discretionary review by this Court. But as we now discuss, review is also warranted by Commonwealth Court’s radical departure from existing law.

II. Commonwealth Court’s Decision Conflicts With Decisions Of Both This Court And Superior Court.

As the Commonwealth Court majority correctly pointed out, Pennsylvania law has long recognized that an action to enforce a charitable trust may be brought by one who has a “special interest” in the trust. *See, e.g., Valley Forge Historical Society v. Washington Memorial Chapel*, 493 Pa. 491, 498, 426 A.2d 1123, 1127 (1981) (“An action for the enforcement of a charitable trust can be maintained by the Attorney General, a member of the charitable organization or *someone having a special interest in the trust*”) (emphasis added); *Wiegand v. Barnes Foundation*, 374 Pa. 149, 153, 97 A.2d 81, 82 (1953). *See also* Restatement of Trusts 2d, § 391,⁷ *cited with approval in Valley Forge, supra*. But the dissenting judges were also correct to characterize the majority’s application of the “special interest” concept as “a quantum leap away from historical concepts of standing,” Pet. App. 34a, “not supported by over 300 years of case law.” Pet. App. 33a.

⁷ Section 391 of the Restatement provides: “A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by *a person who has a special interest in the enforcement of the charitable trust*, but not by persons who have no special interest or by the settlor or his heirs, personal representatives or next of kin.” (Emphasis added.)

Under Pennsylvania law, the foundation of a party's standing to sue is the existence of a "substantial, direct and immediate interest" in the subject matter of the litigation. *E.g., Wm. Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 191, 346 2d 269, 280 (1975). Accordingly, for a party to establish a "special interest" in a charitable trust, it has always been necessary for that party to show that some "substantial, direct and immediate interest" *of its own* was in some way bound up with the administration of the trust. No Pennsylvania court — that is, no Pennsylvania court until now — has ever recognized standing by a third party to sue to enforce a charitable trust in the absence of such an interest.

Thus, in *In re Francis Edward McGillick Foundation*, 537 Pa. 194, 642 A.2d 467 (1994), the settlor had directed that half of the Foundation's income should be used to establish scholarships for "worthy men and women of the Roman Catholic faith," to be selected by the Catholic bishop of Pittsburgh and his advisory board; while the other half should be accumulated toward the eventual establishment of a vocational school, again with the participation of the bishop and his advisory board. *Id.*, at 196, 642 A.2d at 468. Some years later, the Pittsburgh diocese sued to remove the Foundation's trustees, and the Court discussed at length the requirements of standing in this context:

Standing requires that an aggrieved party have an interest which is *substantial, direct, and immediate*. That is, the interest must have substance — there must be some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. That an interest be direct requires that an aggrieved party must show causation of the harm to his interest by the matter of which he complains. To find an immediate interest, we examine the nature of the causal connection between the action complained of and the injury to the person challenging it.

Id., at 199, 642 A.2d at 469 (internal quotation marks omitted, emphasis added).

Applying this standard, the Court held that the diocese had standing to bring the action, because its “integral involvement . . . in the awarding of scholarships and its prerogative to participate in the establishment of a vocational school under the trust created an interest which is immediate, direct and substantial. . . .” *Id.*, at 199, 642 A.2d at 469-470.

Superior Court has likewise consistently applied the “substantial, direct and immediate” test in the context of standing to sue charitable trusts. *See, e.g., In re McCune*, 705 A.2d 861, 864 (Pa.Super. 1997). In *McCune*, Superior Court noted that while standing “does not require the presence of a direct economic interest, it does mandate that a party possess *some sort of substantial interest*, which has been adversely affected by the alleged misconduct,” *id.*, at 865 (emphasis added), and it held that the distribution committee of the trust in that case lacked such an interest. The court said that, unlike the Pittsburgh diocese in *McGillick*, the committee in *McCune* “does not distribute Foundation funds in order to promote its *own* substantive, religious or social goals. . . . [I]t does not derive a benefit or fulfill a programmatic function through such distributions.” *Id.*, at 865 (emphasis added). The committee thus lacked a “special interest” that would give it standing to sue the trust. *Ibid. Accord In re Barnes Foundation (Appeal of Tinari)*, 443 Pa.Super. 369, 377-380, 661 A.2d 889, 894-895 (1995) (former student lacked “substantial, direct and immediate interest” in educational foundation); *In re Barnes Foundation (Appeal of Barnes Foundation)*, 453 Pa.Super. 436, 449-450, 684 A.2d 123, 129 (1996) (current students lacked “substantial, direct and immediate interest”).

In this case, however, Commonwealth Court completely discarded the requirement for a “substantial, direct and immediate” interest. The trial court specifically

found that “the Association does not possess *any* beneficial interest in the Trust and has *no* stake in the Trust that could be adversely affected by the Trustee.” Pet. App. 39a (emphases added). The Commonwealth Court majority, ignoring this finding, simply declined to address at all whether the Alumni Association has such an interest, Pet. App. 27a-28a n. 26, in favor of its newly-minted “multi-factor test.”

This abandonment of any requirement that a party demonstrate some concrete interest of its own, goes hand in hand with Commonwealth Court’s abandonment of any concrete limits on the relief which such a party might seek. Even in those cases where a “special interest” was found to exist, the party asserting it was permitted to sue only to enforce that specific interest — not to further some general notion of “better serv[ing] the ... purpose of the Trust.” Pet. App. 28a. Vindicating the general public interest in the enforcement of a charitable trust is the exclusive province of the Attorney General as *parens patriae*, and even the Attorney General himself may not delegate that responsibility to a private party. *Wiegand v. Barnes Foundation*, 347 Pa. at 156, 97 A.2d at 84 (Attorney General could not authorize private party to bring suit complaining that charitable trust was administered in a manner “violative of its corporate purposes”). The standing to seek broad and open-ended relief sought by the Alumni Association is simply *parens patriae* under another name, and Commonwealth Court’s sanctioning of it contradicts literally centuries of well-settled law.

Commonwealth Court relied on this Court’s decision in *Valley Forge Historical Society v. Washington Memorial Chapel*, *supra*, to support its “multi-factor test,” Pet. App. 24a, but its analysis rests on a serious misreading of *Valley Forge*. It is true that the Court did not explicitly discuss the “substantial, direct and immediate” test in *Valley*

Forge, but in that case the existence of such an interest was so manifest as to need no discussion. In *Valley Forge*, the plaintiff Historical Society was faced with eviction from the quarters it had long occupied on the grounds of the Chapel, together with the risk of the loss and destruction of its historical artifacts as a consequence of their removal and storage. *Id.*, 493 Pa. at 494, 501, 426 A.2d at 1125, 1128. The Court therefore turned directly to the question of whether the Historical Society’s interest constituted a “special interest” in the charitable trust; and concluded, based on the “special circumstances of its creation and relationship with the Chapel,” that it did. But certainly, nothing in *Valley Forge* suggests that this Court intended to jettison the long-settled requirement of a “substantial, direct and immediate” interest; and as we have seen, both this Court and Superior Court continue to require that such an interest be established.

The Court should therefore review Commonwealth Court’s decision to resolve the conflict which Commonwealth Court has created with the decisions of this Court and Superior Court, and to dispel any uncertainty about the meaning of the *Valley Forge* decision.

CONCLUSION

For these reasons, the Court should allow this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John G. Knorr, III, Chief Deputy Attorney General, do hereby certify that I have this day served the foregoing Attorney General's Petition For Allowance Of Appeal by depositing two copies of the same in the United States mail, first class, postage prepaid, to the following:

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