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Attorneys for Plaintiff

The Trustees of The Stevens Institute of Technology

THE TRUSTEES OF THE STEVENS  
INSTITUTE OF TECHNOLOGY,

Plaintiff,

vs.

ANNE MILGRAM in her official  
capacity as ATTORNEY GENERAL OF  
THE STATE OF NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-

**CIVIL ACTION**

**FILED UNDER SEAL**

**VERIFIED COMPLAINT**

Plaintiff, The Trustees of The Stevens Institute of  
Technology ("Stevens" or the "Institute"), by way of Complaint  
against Defendant, says:

**PARTIES**

1. Stevens is a corporation duly organized under the laws  
of the State of New Jersey, doing business at Castle Point on  
Hudson, Hoboken, New Jersey 07030-5991. A more complete  
description of Stevens' history and governance, and the nature  
and scope of Stevens' educational mission, is set forth later in  
this Verified Complaint.

2. Defendant Attorney General Anne Milgram (the "Attorney  
General") is the Attorney General of the State of New Jersey,  
having a principal office at the Richard J. Hughes Justice

Complex, 8th Floor, West Wing, 25 Market Street, Trenton, New Jersey 08625-0080.

### INTRODUCTION

3. On September 2, 2009, despite the absence of legal authority or a factual basis to do so, the Attorney General personally appeared before Stevens' Board of Trustees (the "Board of Trustees" or the "Board") and threatened to file a lawsuit that she grimly described would be "devastating to Stevens." She stated that she was going to proceed in this manner unless the Board acceded to her demands and essentially agreed to abdicate its responsibility to govern the Institute. At first, she gave the Board until September 4, 2009 to acquiesce to her demands; but later she extended her deadline until September 16th. This abuse of power, which seeks to place in jeopardy the well-being of the institution that the Attorney General has a duty to protect, is both improper and unwarranted as a matter of law.

4. Stevens has, under the present leadership, risen to a level of a major educational institute recognized throughout the world for its contribution in the field of scientific discovery and in the creation, application and management of technology to solve complex problems and to build new enterprises. Its enrollment and revenue have increased dramatically over the last 20 years under the Board's oversight. It has received numerous

awards and commendations. It has forged relationships with foreign educational institutes which span the world, and it has become recognized as a significant partner to the United States government in the war on terrorism.

5. To allow the Attorney General to jeopardize all of these accomplishments because she wants to engage in brinksmanship to coerce a result that she is not entitled to achieve as a matter of law is unconscionable and must be stopped. Consequently, Stevens brings this action to, among other things, protect the Institute from the devastating consequences and irreparable harm that would result by the mere filing of an action, because the Board refused to accede to the Attorney General's unlawful and improper threats.

**THE STEVENS INSTITUTE OF TECHNOLOGY**

6. Stevens is a leading university which provides an excellent educational experience for its students through a broad-based science and technology focused curriculum that encompasses outstanding faculty, research, and hands-on learning opportunities that extend beyond the classroom.

7. Stevens offers Bachelor's, Master's and Doctoral degrees in engineering, science, computer science and management, in addition to a Bachelor's degree in the humanities and liberal arts and in business and technology. Stevens' graduate programs have attracted international participation

from China, India, Southeast Asia, Europe and Latin America, attracting highly-qualified students from around the globe who are attracted to Stevens for its academic quality and the special relationships it has cultivated with governmental and non-governmental technology leaders overseas. Through its broad-based curricula, nurturing of creative inventiveness, and interdisciplinary research, Stevens is at the forefront of studying and solving global challenges in engineering, science and technology management.

8. The formation of partnerships and collaboration between and among business, industry, government and other universities contributes to the enriched environment of Stevens. Stevens creates new knowledge and educates and inspires students to acquire the competencies needed to lead in scientific discovery and in the creation, application and management of technology to solve complex problems and to build new enterprises. Stevens is also recognized as part of the United States' information security infrastructure, through partnerships with the U.S. Department of Defense, Department of Homeland Security, and National Security Agency. Indeed, the Federal Government has regarded Stevens' capabilities so highly that it has named Stevens a Center for Excellence in Port Security and in Systems Engineering.

I. **THE FORMATION OF STEVENS INSTITUTE OF TECHNOLOGY, AND EDWIN A. STEVENS' INTENT TO VEST ULTIMATE MANAGEMENT RESPONSIBILITY AND AUTHORITY IN THE TRUSTEES**

9. Stevens was created in 1870 by a Special and Private Law of the New Jersey legislature (the "Private Law"). See Exhibit A (Chapter LII of the Special And Private Laws of 1870).

10. Built on land given to it in perpetuity by the late Edwin A. Stevens, the Institute legally exists as "The Trustees of The Stevens Institute of Technology," "a body politic and corporate" endowed by the Private Law with the various rights appurtenant to its status as a corporation. The Private Law provided that "***the entire management of the affairs and concerns of [Stevens], and all the corporate powers hereby granted, shall be and hereby are vested in the . . . trustees to manage and control the same*** as in said codicil provided." *Id.* (emphasis added). The "codicil" from Mr. Stevens' last will and testament:

direct[ed] and empower[ed] the acting ***trustees*** ... or their successors ... [to] erect ... a plain building or buildings, suitable for the uses of an institution of learning, ... to establish there, employing, paying and discharging, at [the trustees'] discretion, the officers and tutors and servants thereof, ***and forever to manage and control, at ... their discretion, ... and make all proper by-laws, rules and regulations...*** [I]t is my intention that the institution hereby directed and created shall be perpetual, and that ***the above mentioned trustees, and their successors, shall forever continue and be the governors thereof, and have the***

***superintendence of the same;*** ... and I do further declare it to be my will and intention that ... all courts of law and equity will so construe this, my will, as to have the said property, real and personal, appropriated to the above uses...

*Id.* (emphasis added)

11. The expressed intent of Stevens' founder was to vest the ultimate responsibility and authority to oversee the management of Stevens in the Board of Trustees - and only in the Board of Trustees.

12. In fact, at no time during Stevens' 135 years of existence prior to the events alleged here, on information and belief, has the State of New Jersey or Attorney General sought to interfere with the Board of Trustees' management of Stevens.

## **II. THE 1980s - DECLINING ENROLLMENT AND ALUMNI ACRIMONY**

13. When Edwin Stevens died in 1868, his will provided for the establishment of the college which bears the family name. With the passage of the Private Law, the Institute opened its doors in 1870. The original trustees determined that Stevens should have a single, rigorous engineering curriculum leading to a baccalaureate degree they designated "Mechanical Engineer," that was firmly grounded in scientific principles and the humanities.

14. Over the decades that followed, Stevens evolved from a small four-year undergraduate college of engineering into a much larger multifaceted institution with inter-disciplinary research

activity and a variety of graduate and undergraduate programs stressing not only engineering, but also science and management.

15. In the late 1980s, Stevens was encountering difficult times. In 1988, it settled a controversial lawsuit with Stevens' independent Alumni Association, and alumni relations were strained.

16. Undergraduate and graduate enrollments were both declining, and Stevens' acceptance rate - a measure of its selectiveness in recruiting top students - was rising, a negative indicator. Only 283 new students matriculated in 1988, and the Institute faced a budget deficit of approximately 10 percent of its \$40 million operating budget. No faculty hiring or development plans existed; laboratory and classroom facilities needed repair; and externally-sponsored research stood at an anemic \$5 million.

### **III. 1988 TO THE PRESENT: A REJUVENATION**

17. In 1988, Stevens hired its current President, Dr. Harold L. Raveché, and began undergoing significant changes that transformed the Institute into a competitive and internationally recognized institution.

18. In the 1990s, Stevens made difficult and sometimes controversial decisions, closing administrative departments, terminating faculty contracts, and discontinuing weak academic programs for the long-term benefit of the school.

19. Stevens also hired a new Chief Financial Officer and Chief Academic Officer, recruited new directors for key academic departments, and developed a plan to raise resources and improve physical and human resources and student life programs.

20. Toward that end, Stevens, and especially Dr. Raveche' personally, worked tirelessly to raise its visibility at the state and national levels.

21. Internationally, Stevens negotiated a new \$5 million scholarship program to conduct graduate degree programs in the Dominican Republic and created the first dual degree program between the U.S. and Singapore in Systems Engineering (the latter of which is offered jointly by Stevens and Nanyang Technological University, and is oversubscribed). Stevens' commitment toward excellence and partnership both here and abroad has also resulted in Malaysia's funding approximately 60 undergraduates to earn degrees at Stevens with full scholarship and living expenses.

22. These initiatives led to increases in undergraduate and graduate enrollment and sponsored research. Freshman enrollment grew to over 400 in 1998 and nearly 600 in 2008, even while Stevens' acceptance rate - a measure of its selectiveness - dropped from 71 percent to just 50 percent of undergraduate applicants. From 1998 to 2008, this greater selectivity resulted in a 13 percentage point increase in the proportion of

entering students who were in the top 10 percent of their respective high school classes. Increases in outside funding and alumni donations have enabled Stevens to more than double the number of undergraduate majors it offers, and nearly triple the number of graduate programs.

23. A pair of capital campaigns raised more than \$175 million toward the construction of academic and athletic facilities, endowed chairs, scholarships, and other purposes. From 1998 to 2008, the size of Stevens' endowment rose by 171 percent, despite declines in the years after the investment world's "tech bubble" burst in the year 2000.

24. The quality and productivity of faculty has also greatly increased, with nearly four times more faculty publications (books, articles, and other works) in 2008 as compared to 1988, an increase in National Science Foundation-funded research projects in process from 10 to 37 over the same period, and six-fold growth in the amount of externally funded research - from barely \$5 million in 1988 to nearly \$37 million in 2008.

25. Befitting Stevens' competitive standing in the world of technology, the cumulative number of patents published and issued has grown from fewer than 10 to nearly 90 in 2008.

26. In a 2007 article titled "Who Needs the Ivies?", *Business Week* cited the strong entrepreneurial environment at

SIT: "Schools like MIT and Stanford don't graduate more founders than Stevens Institute of Technology or Arizona State University." See Exhibit B.

27. In 2008, *Forbes.com* published an article titled "Universities That Turn Research Into Revenue" that said of Stevens:

Stanford University's fertile breeding ground for breakthrough technology may have spawned the likes of Hewlett-Packard and Google, but *little Stevens Institute of Technology in Hoboken, N.J., really knows how to get serious returns on its research and development.*

To wit: In 2006, the school took in \$4.5 million in research-related income (including licensing revenue and returns on equity stakes in start-ups) while shelling out \$28 million on research--a 16% yield. That same year, Stanford pulled in \$62 million against a \$700 million investment; return on investment (ROI): 8.7%.

\* \* \*

*Which universities get the most bang for their research buck?* We assembled a list of the top 15, based on a 2006 survey (the most recent data) of 189 schools by the Association of University Technology Managers, which tracks university-born patents and licensing revenues. (*Stevens came in at number three; Stanford, number nine.*) See Exhibit C (emphasis added).

28. Early in this decade, Stevens created Web Campus Stevens, an Internet-based distance-learning program that was named the best Graduate Online program by the Sloan Foundation in 2002 and by the U.S. Distance Learning Association in 2005.

In 2007, the Sloan Foundation recognized Stevens' program in China with its "Most Outstanding Online Teaching in Learning Program" award. In addition, Stevens convened a series of meetings with academic leadership and faculty to develop a Strategic Positioning Plan that was adopted by the Board.

29. In 2008, the United States government named two national research centers at Stevens. The U.S. Department of Homeland Security designated Stevens as the National Center of Excellence in Port Security, a \$10 million initiative. The U.S. Department of Defense designated Stevens to be the University Affiliated Research Center in Systems Engineering and Research, an initiative valued at \$25 million.

30. In addition, Stevens is a National Center of Academic Excellence in Information Assurance Education for the academic years 2006 through 2009, and a National Center of Academic Excellence in Information Assurance Research (CAE-R) for the years 2008 through 2013, recognizing Stevens' role in reducing vulnerability in the national information infrastructure by promoting higher education and research in information assurance and producing a growing number of professionals with information assurance expertise in various disciplines.

31. Students attending such designated schools are eligible to apply for scholarships and grants through the

Department of Defense Information Assurance Scholarship Program and the Federal Cyber Service Scholarship for Service Program.

32. This formal recognition from the U.S. Government creates opportunities for prestige and publicity for Stevens' role in securing our nation's information systems.

#### **IV. THE GOVERNANCE OF STEVENS**

##### **A. The Board of Trustees**

33. From the three individuals selected by Edwin Stevens in his will, the Board of Trustees has grown to 21, including seven presidents, CEOs and chairmen in a variety of industries, as well as research scientists, management consultants, investment professionals, and attorneys. See Exhibit D. Most of the Trustees are Stevens' alumni.

34. All of the Trustees are unpaid volunteers who devote their time and energy to accomplishing the objectives of the Founder by overseeing the management and administration of Stevens and helping Stevens achieve and maintain a high level of educational and research excellence. Toward that end, the Board of Trustees meet regularly and have formed various committees dedicated to overseeing the management and administration of Stevens.

35. The Trustees are also instrumental in fundraising on behalf of Stevens, which is vital to the success that Stevens has achieved and hopes to continue. Their relationships and

contacts in the business community, not only attract donors, but also affect some of the most important elements of the modern technical university, such as the ability to form private-sector partnerships, develop intellectual property, connect students with the best employment opportunities, and more.

36. Lawrence Babbio, a distinguished alumnus of Stevens, was appointed to the Board of Trustees in 1994 and has served as Chairman of the Board of Trustees since 1998. Mr. Babbio has presided over the rejuvenation and success of Stevens and his deep commitment and contributions to Stevens have been reflected in a variety of ways, including his devotion of substantial time and efforts to management, oversight and fundraising. In fact, Mr. Babbio has contributed in excess of \$6 Million of his own money to Stevens, and in addition thereto, he has raised another \$6 Million of funds from others for Stevens.

**B. Dr. Harold Raveché's Tenure As President**

37. Dr. Harold L. Raveché was recruited in 1988 by Stevens' Board of Trustees as part of a national search for a President. Immediately prior to his appointment by Stevens, Dr. Raveché served for three years as Dean of Science at Rensselaer Polytechnic Institute in Troy, New York.

38. It was under Dr. Raveché's leadership that Stevens began making significant decisions, including those identified above, and that it began taking a turn for the better leading up

to its current status as a renowned institution of learning with a competitive student body and learning partnerships here and abroad.

39. Dr. Raveché worked tirelessly to raise the visibility of the Institute at the state and national levels. In fact, the international programs described above were all implemented under Dr. Raveché's leadership and as a direct result of his efforts on Stevens' behalf. Dr. Raveché serves as the Science Advisor to the President of the Dominican Republic, has advised the Ministers of Education and Defense in Singapore and advises Malaysia's Minister of Science Technology and Innovation, Minister of Education and Minister of Entrepreneurship - all of which have resulted in partnerships with those countries, and have led to increases in undergraduate and graduate enrollment and sponsored research.

40. Dr. Raveché was appointed to the N.J. Commission on Science and Technology by then-Governor James Florio and served on Governor Christine Todd Whitman's transition teams for telecommunications and K-12 education. Dr. Raveché also chaired the National Science Foundation Visiting Committee on Scientific Computing.

41. Dr. Raveche has an employment contract with Stevens through July 1, 2012.

V. THE ATTORNEY GENERAL'S IMPROPER DEMANDS

A. Improper Demands Made by the Attorney General at Her September 2, 2009 Meeting with the Board of Trustees

42. On September 2, 2009, the Attorney General attended a meeting with Stevens' Board of Trustees to present certain allegations that had been made by her office against Stevens.

43. The Attorney General began the meeting by announcing that she planned to file a lawsuit against Stevens, which would seek, among other things, significant corporate governance changes, including the removal of its current leadership and expansive oversight by her office through the imposition of a monitor.

44. *Critically, the Attorney General admitted at the outset that the filing of a lawsuit by her office would have a "devastating" impact on the Institute and raise "accreditation and other issues" for Stevens.*

45. Further, the Attorney General informed the Board of Trustees that *she would file the lawsuit within two weeks* unless Stevens agreed to numerous conditions *which she described as "non-negotiable."*

46. Those and other demands made by the Attorney General, if accepted by Stevens, would eliminate as a matter of law the Board's ability to make independent decisions and exercise their business judgment in the management and oversight of Stevens;

plainly, they are designed to wrest control of management and oversight of Stevens from the lawfully constituted Board of Trustees and cede that authority to the Attorney General.

47. In support of her demands, the Attorney General cited specific instances of alleged misconduct. In several respects, her allegations were simply inaccurate, both factually and/or legally, and/or they amounted to nothing unlawful or illegal, but, at best, reflect her philosophy - as opposed to that of the Board of Trustees - as to how Stevens should be managed. As to other instances cited, her allegations were targeted at actions that occurred several and, in some cases, many years ago and have since been corrected or have been identified and are in the process of being corrected with the assistance of auditors and counsel under the Board of Trustees' supervision.

**B. Allegations Relating To The Taylor Gift**

48. Among the numerous factual and legal inaccuracies raised by the Attorney General was the basis for her accusation that the Trustees were improperly attempting to expend assets, bequeathed to the Institute as set forth in paragraphs 49-51 below, the assets of which (the "Taylor Gift") constitute a portion of Stevens' endowment funds. More specifically, the Attorney General has alleged that the agreements governing the Taylor Gift restrict Stevens, in perpetuity, to expending only income and prohibit Stevens from expending appreciation of those

assets, and that Stevens pooled the Taylor Gift assets in violation of the Taylor Gift instruments. Indeed, the Taylor Gift instruments and governing statutes demonstrate the inaccuracy of the Attorney General's allegations.

**1. Background of the Taylor Gift**

49. On December 31, 1953, Robert P.A. Taylor created an Irrevocable Indenture of Trust. (Exhibit E). On February 15, 1974, Mr. Taylor also created a Revocable Trust Agreement. (Exhibit F). The assets of both trusts were held in trust for the benefit of Mr. Taylor's wife, Vera Taylor, for her lifetime. Mrs. Taylor died on August 13, 1991.

50. Upon her death, each trust instrument required that the assets of the trusts be offered by way of a written communication to the Trustees upon the express condition that such assets be held as a permanent fund and the income therefrom be devoted to specific Stevens-related charitable purposes. (Exhibit E, 3; Exhibit F, § Sixth, 2).

51. The assets of the two trusts were offered to Stevens on October 23, 1991, and accepted by resolution of the Board of Trustees on December 16, 1991. At the time, the balances were \$1,081,616.17 and \$9,205,662.65, for a total of \$10,287,278.82. As of June 30, 2008 (the last date available), the total value of the Taylor Gift was \$46,109,256.46, or 30.6529% of the Stevens' endowment pool.

**2. The Expenditures Of Appreciation Are Authorized By Statute**

52. The ability of the Board Trustees to expend appreciation in an endowment fund, such as the Taylor Gift, was expressly addressed by the Uniform Management of Institutional Funds Act, N.J.S.A. 15:18-25 et seq. (the "UMIFA") through June 10, 2009, and is now addressed by the Uniform Prudent Management of Institutional Funds Act, N.J.S.A. 15:18-15 et seq. (the "UPMIFA") (which has replaced the UMIFA).

53. Specifically, N.J.S.A. 15:18-16 of the UMIFA allowed the Board of Trustees to expend "so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent..." Similarly, under UPMIFA, the Board of Trustees may "appropriate for expenditure...so much of an endowment fund as that institution determines is prudent for uses, benefits, purposes, and duration for the which the endowment fund is established." N.J.S.A. 15:18-28(a).

54. The UMIFA states that the ability to expend appreciation may be restricted by a gift instrument, but that in the absence of such a restriction, "[a] restriction on expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only

'income' . . . ." N.J.S.A. 15:18-17. Similarly, UPMIFA states that the restriction of the expenditure of appreciation may not be implied from the designation of a gift as an endowment, or from language relating to the expenditure of "income" or the like. N.J.S.A. 15:18-28(c)

**3. The Taylor Gift Instruments Do Not Prohibit The Expenditure Of Appreciation**

55. The Taylor Gift instruments do not mention appreciation; they do not direct that appreciation be maintained and not expended. See Exhibits E and F. Consequently, there is no legal restriction on the expenditure of appreciation from the Taylor Gift.

56. The Attorney General's basic position is that the instruments governing the Taylor Gift restrict the Board of Trustees to expending only "income" (i.e., interest, dividends, rents, royalties) and that the expending of "appreciation" is prohibited in perpetuity. Stevens' position is that the Taylor Gift instruments do not mention appreciation or direct that appreciation must be maintained and not expended, and, as such, the Board of Trustees may determine to expend so much of the appreciation of the Taylor Gift as may be prudent, consistent with UPMIFA. As a result of the actions of the Attorney General, a dispute exists concerning Stevens' right to expend

appreciation from the Taylor Gift on behalf of Stevens, which is ripe for consideration and must be adjudged by the Court.

57. The actions of the Attorney General in seeking to preclude, in perpetuity the Trustees from appropriating any appreciation in the assets of the Taylor Gift for expenditure are contrary to the rights granted to the Trustees under the language of the Taylor Gift instruments and applicable law, and are imprudent and detrimental to the interests of Stevens.

**4. "Pooling" is entirely proper**

58. Additionally, the Attorney General has asserted that Stevens is precluded from pooling the Taylor Gift assets with other endowment assets of Stevens, and that Stevens' pooling of the Taylor Gift assets with other assets as of July 1, 2009 was improper.

59. Pooling is a recognized technique in endowment administration of investing endowment assets in a pool, which allows for broad diversification of investments with attendant protection of principal and relative stability of revenue, and permits economies of administration and accounting. Individual endowment assets in a pool continue to be subject to individual accounting records as to each gift.

60. An endowment investment pool is the way that virtually every institution of higher education in the country manages and

invests their institutional funds where the donor has not imposed a limitation or restriction that would preclude pooling.

61. The UMIFA and the UPMIFA specifically authorize pooling. N.J.S.A. 15:18-18(c) (UMIFA); N.J.S.A. 15:18-27(d) (UPMIFA). Indeed, the UMIFA authorization of pooling was, at the time, a significant advancement specifically designed to put to rest the "troublesome question" of whether such authority existed.

62. The Taylor Gift instruments have no language that would preclude pooling. The instruments state that the assets being conveyed under those instruments to Stevens be "held as a permanent fund . . ." The term "permanent fund" language functions as nothing more than a statement that the conveyance creates an "endowment fund" under N.J.S.A. 15:18-15(c), which is intended to have a perpetual term in supporting the purpose of the gift. It neither imports nor implies any content concerning how the fund is to be administered or invested. Neither Taylor Gift instrument requires that the Taylor Gift assets must be separately invested, or segregated from other assets of the recipient, or limit the investments in which the assets can be invested. Thus the UMIFA/UPMIFA authorization of pooling is fully applicable to the Taylor Gift assets.

## **VI. THE SPECIAL COMMITTEE**

63. In response to the Attorney General's demands, the Board of Trustees appointed a Special Committee consisting of Steven Shulman (Chair), Philip Crowley, Richard Magee, Richard Roscitt, John Schepisi, and James Walsh (the "Special Committee"), which was constituted for the specific purposes of reviewing the Attorney General's allegations and demands, interacting with counsel regarding discussions with the Attorney General, and reporting to the Board of Trustees with respect to its recommendations and conclusions.

64. The Special Committee has determined and advised the Board of Trustees that it will be impossible to respond in a thoughtful and meaningful way to the Attorney General's demands within the required time period. Such a limited window of time, according to the Special Committee, is insufficient for it to investigate the allegations, consult with experts and professionals, and fully respond to the Attorney General's demands in a manner consistent with best practices and its fiduciary duties. In addition, the Board of Trustees has determined that assessing the validity of the Attorney General's list of actions in the timeframe she demanded would preclude the Board of Trustees from exercising its fiduciary duties in a manner consistent with best practices. Notwithstanding the foregoing, the Special Committee has recommended to the Board of Trustees that certain issues raised by the Attorney General be

addressed immediately, and the Board of Trustees, on Wednesday, September 16, 2009, and appropriate Resolutions calling for, among other things, the investigation of the Attorney General's charges.

#### **VII. THE SCHEDULE OF ALLEGATIONS**

65. During her September 2 presentation, the Attorney General referenced a "complaint" that had been "prepared" and would be filed against Stevens unless her demands were met and generally referred to items that she had reviewed in connection with her presentation.

66. The Special Committee, through counsel, asked for a copy of the complaint in order to examine the specific allegations. The Attorney General refused to provide the complaint, but made a so-called Schedule of Allegations available only to the Special Committee and its counsel under a directed agreement of confidentiality. The Schedule of Allegations was only available for review by the Special Committee and counsel at the Attorney General's Offices in Newark, New Jersey.

67. Four members of the Special Committee (one was unavailable on a business trip outside the country, and another outside the state and across the country) as well as counsel to the Special Committee visited the Attorney General's Offices in Newark and reviewed the Schedule of Allegations. As a result of

such review, the Special Committee has concluded that consideration of the Attorney General's demands without detailed investigation of her allegations would not fulfill the fiduciary obligations of the Special Committee or of the Board of Trustees. Consequently, the Special Committee recommended to the Board of Trustees that, among other actions to be taken, this action be filed. At a special meeting of the Board of Trustees held on September 16, 2009, the Board of Trustees authorized the filing of this action.

**VIII.        THE DEVASTATING CONSEQUENCES OF A LAWSUIT BY THE ATTORNEY GENERAL**

68. As admitted by the Attorney General during the September 2 meeting, a lawsuit by her office would have a "devastating" impact upon Stevens. Indeed, regardless of its lack of merit, the negative publicity from such a "scandal" will be broad and immeasurable. For example:

- a. Grant applications pending with government and private funders could be compromised;
- b. Contracts with, among others, the United States Department of Defense, could be jeopardized;
- c. Current students and alumni, already facing a difficult work environment due to the current economic crisis, could find themselves less able to compete with applicants from other institutions because of misimpressions about the quality

of Stevens;

d. Loss of funding streams and research grant potential could be dramatic; and

e. Damage to Stevens' national rankings could result, reducing the number of applicants and overall quality of the enrollees.

69. A lawsuit by the Attorney General would be particularly devastating at this juncture because Stevens had planned to undertake a major capital campaign, by which Stevens is trying to build its endowment through major gifts and to develop and increase annual giving by alumni and friends. Further, Stevens' reputation with current and prospective public and private sector partners in the United States and abroad would be negatively impacted.

**COUNT I**  
**(Declaratory Judgment - Taylor Gift)**

70. Stevens repeats the allegations contained above as if such allegations had been set forth at length herein in their original form.

71. The Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-53 states that "a person...whose rights, status, or legal relations are affected by a statute...may have determined any question of construction or validity arising under

the...statute...and obtain a declaration of rights, status or other legal relations thereunder.”

72. There exists an actual controversy between Stevens and the Attorney General as to whether the Attorney General can preclude the Board of Trustees from appropriating for expenditure any of the appreciation of the Taylor Gift, or whether the Attorney General can compel the Board of Trustees to limit appropriation for expenditure to “income.” In addition, there exists an actual controversy between Stevens and the Attorney General as to whether Stevens is entitled to pool the Taylor Gift with the balance of the Endowment.

73. The instant action is adversarial in nature and the controversy between the parties is bona fide.

**COUNT II**  
**(Order Sealing The Record & Directing All Submissions Be Under Seal)**

74. Stevens repeats the allegations contained above as if such allegations had been set forth at length herein in their original.

75. As the Attorney General admitted during her September 2, 2009 meeting with the Board of Trustees, a lawsuit by her office would have a devastating impact upon Stevens’ ability to continue its educational and other activities in good order because the negative publicity that it is certain to generate will, among other things, destroy its ability to raise funds

through grants and donations, stifle enrollment and its ability to compete for top students, interfere with its contracts and serve to undermine the litany of accomplishment Stevens has achieved.

76. The foregoing devastating consequences will occur merely by the filing of a lawsuit and regardless of its relative merit.

77. The citizens of the State of New Jersey have an interest in protecting Stevens -- a treasured institution of higher learning that confers tremendous educational, economic and social benefits to the State of New Jersey -- from the afore-described devastating consequences, which interest is equal to, if not greater than, any interest that the Attorney General purports to represent in pursuing her actions against Stevens in the public arena.

78. As a matter of law and equity, the Attorney General has a duty to protect the public's interest in Stevens.

79. By engaging in the recent and threatened conduct, the Attorney General has breached that duty, thereby causing and/or threatening substantial and irreparable harm to Stevens.

80. Under Rules 1:2-1 and 1:38-11, this Court may direct that the record of a proceeding be sealed for good cause, which exists when "(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and (2) The person's

or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38."

81. In light of the acknowledged "devastating" consequences that would be certain to result if the Attorney General were to file a lawsuit against Stevens, good cause exist for purposes of sealing the entire record in this matter under Rules 1:2-1 and 1:38-11, including (1) the filing of this Complaint under seal; (2) requiring the Attorney General to file any responsive pleading and any other documents to be filed with the Court in this lawsuit, or in any other related proceedings including, but not limited to, administrative proceedings, under seal and to otherwise maintain the confidentiality of these and related proceedings and of the issues in dispute.

### **COUNT III**

#### **(Appointment of Special Master and Sealing of Record)**

82. Stevens repeats the allegations contained above as if such allegations had been set forth at length herein in their original.

83. Under Rule 4:41-1, the Court has the authority, either "with the parties' consent or in the event of extraordinary circumstances", to appoint a special master to conduct proceedings in civil matters.

84. In light of the devastating consequences that would be

certain to result if the Attorney General were to file a lawsuit against Stevens, extraordinary circumstances exist under Rule 4:41-1. Consequently, the Court should appoint a special master and direct that the special master shall conduct all proceedings in this matter confidentially and under seal, until further Order of the Court.

**COUNT IV**  
**(Order Compelling Confidential Arbitration)**

85. Stevens repeats the allegations contained above as if such allegations had been set forth at length herein in their original.

86. Alternative dispute resolution provides a method that would permit the Attorney General to litigate her concerns and, at the same time, prevent the devastating consequences to Stevens by the mere filing of the Complaint and disclosure attendant thereto, which would occur irrespective of whether there is ultimately an adjudication in favor of Stevens.

87. The Attorney General has rejected this overture and has persisted without any justification in pursuing a course that would devastate the Institute. While such conduct might result in extensive press attention for the Attorney General, it is contrary to her duty to protect the public's interest in the Institute.

88. Consequently, to prevent the devastating consequences

that would be certain to result if the Attorney General were to file a lawsuit against Stevens, this Court should compel the parties to litigate all claims related to the Attorney General's investigation of Stevens through confidential arbitration either as a matter of equity and/or pursuant to Rule 4:21A-1.

WHEREFORE, being without adequate remedy at law, and being threatened with irreparable harm and injury, Stevens demands judgment against Defendant as follows:

a. Sealing the entire record in this matter pursuant to Rules 1:2-1 and 1:38-11 and directing: (A) that the Verified Complaint be filed under seal; and (B) that the Attorney General file any responsive pleading or any other documents to be filed with the Court in this lawsuit, or in any other related proceedings -- including, but not limited to, administrative proceedings -- under seal and otherwise maintain the confidentiality of these and related proceedings;

b. Appointing a special master pursuant to Rule 4:41-1 and directing that the special master shall conduct all proceedings in this matter confidentially and under seal;

c. In the alternative, compelling the parties to litigate all claims related to the Attorney General's investigation of Stevens through confidential arbitration;

d. Adjudicating and declaring that Stevens has the power and right to expend appreciation from the Taylor Gift

pursuant to the terms of the Taylor Gift instruments and the Uniform Prudent Management of Institutional Funds Act, N.J.S.A. 15:18-25 et seq.; and

e. For any and all other relief that this Court deems just and equitable.

**WINDELS, MARX, LANE & MITTENDORF, LLP**  
Attorneys for Plaintiff  
The Trustees of The Stevens Institute  
of Technology

By: \_\_\_\_\_  
Timothy J. O'Neill

Dated: September 16, 2009

**DESIGNATION OF TRIAL COUNSEL**

Timothy J. O'Neill is hereby designated as trial counsel for Stevens.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I hereby certify that:

1. The matter in controversy is not subject of any other pending court or arbitration proceeding.

2. I am not aware of any other contemplated court or arbitration proceeding.

3. I am not aware at the present time of any other party that should be joined in this litigation.

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Timothy J. O'Neill

Dated: September 16, 2009

RULE 4:30A ENTIRE CONTROVERSY DOCTRINE

Stevens hereby demands that all counterclaims and third-party claims filed by the Attorney General be joined in this action and be subject to all sealing and confidentiality requirements as ordered by this Court and as required by Rule 4:30A.

VERIFICATION

I, Randy Greene, do certify and say:

I am an authorized representative of Stevens. I have read paragraphs 49, 50, 59 and 60 of the Verified Complaint and certify that all statements made therein are true and correct to the best of my knowledge, and that the documents that are attached to the Verified Complaint (Exhibits A, E and F) are true and correct copies of the original documents maintained by Stevens. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_  
Randy Greene

Dated: September 16, 2009

VERIFICATION

I, Mark L. Samolewicz, do certify and say:

I am an authorized representative of Stevens. I have read paragraphs 33 through 41 of the Verified Complaint and certify that all statements made therein are true and correct to the best of my knowledge, and that the documents attached at Exhibit D to the Verified Complaint are true copies of documents maintained by Stevens. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_  
Mark L. Samolewicz

Dated: September 16, 2009

VERIFICATION

I, Maureen Weatherall, do certify and say:

I am an authorized representative of Stevens. I have read paragraphs 18 through 25; 28 through 32; and 68 through 69 of the Verified Complaint and certify that all statements made therein are true and correct to the best of my knowledge. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_  
Maureen Weatherall

Dated: September 16, 2009

VERIFICATION

I, Jay Samuels, do certify and say:

I am a partner with the law firm of Windels Marx Lane & Mittendorf, LLP, attorneys for the Plaintiff in this action. I have read paragraphs 48, and 52 through 56, 57 (excepting the final clause), 58, 61 and 62, of the Verified Complaint and certify that all factual statements made therein are true and correct to the best of my knowledge. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: \_\_\_\_\_  
Jay Samuels

Dated: September 16, 2009

VERIFICATION

I, William Cagney, do certify and say:

I am a partner with the law firm of Windels Marx Lane & Mittendorf, LLP, attorneys for the Plaintiff in this action. I have read paragraphs 1 through 3; 42 through 47; and 63 through 67, of the Verified Complaint and certify that all statements made therein are true and correct to the best of my knowledge except those expressly stated as assertions "as a matter of law." I further verify that the documents attached as Exhibits B and C to the Verified Complaint are true copies of on-line articles our firm obtained from the internet. I add that the Court may take judicial notice of the allegations set forth at paragraphs 9 through 11. Any remaining, un-verified paragraphs are either supported by documentation and/or constitute background information not, in our view, essential for the Court to consider for the issuance of restraints. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: \_\_\_\_\_  
William C. Cagney

Dated: September 16, 2009