

Higher Education Institutions and Reckoning with Racist Legacies

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In the wake of George Floyd's murder six months ago, Americans flocked to the streets to voice their anger against institutions that perpetuate racial oppression. Protestors experienced the murder of Floyd as the latest in a long history of acts of racist violence against Black people and other people of color, a history that in recent years included the murders of Eric Garner, Michael Brown, and others; a white supremacist rally in Charlottesville; and a massacre at a Charleston church. They demanded that American society at long last reckon with its racist past. These demands gave fresh fuel to the movement to examine who we as a society choose to honor in public places with statutory and other forms of recognition.

Prominent among the institutions called to account, in the past and with added fervor now, are the nation's colleges and universities whose buildings, schools, and programs often bear names that honor racist alumni, donors, and historical figures. In fact, as recently as this week, [the Virginia Military Institute removed a campus statue](#) honoring the Confederate General, Thomas Stonewall Jackson.

In this alert, we address on-campus naming issues, including the un-naming or renaming process. We describe universities' obligations under gift agreements, a common source of naming rights, and the avenues available to a university seeking to modify controlling terms. We then propose some best practices for addressing campus naming issues.

Naming Issues in Recent Campus Activism

Names have been a focus of recent on-campus civil rights efforts, particularly where the name of a building, an academic program, or the institution itself honors slavery, white supremacy, or their proponents.

Although activists often demand immediate change, the decision to examine, modify, or remove campus names is not one that institutions typically reach quickly. Universities may face legal restrictions (discussed in more detail below), as well as the interests of various university constituencies. Universities have taken a longer, more deliberative approach when faced with such demands than those demanding change would like. For example, in 2017, efforts by student leaders initiated changes such as [Harvard Law School revoking its school seal](#) and [Yale renaming one of its residential colleges](#), both the result of extensive review processes.

With Yale, the university began reexamining the name of one of its residential colleges, named after U.S. Vice President John C. Calhoun, an infamous white supremacist and ardent supporter of slavery, in 2015, in response to an online petition that summer followed by protests in the fall. After months of university-hosted "conversations" and "listening sessions" with students, Yale announced in April 2016 that it would not change the name of the college. This led to further student protests, and by August, the university convened a [Committee to Establish Principles on Renaming](#), comprising Yale faculty, students, staff, and alumni. That fall, the committee produced a [report](#) identifying a set of principles to guide renaming efforts at the university. Applying these principles, the university president set up an ad-hoc group of three advisors, which in 2017 unanimously recommended to [rename](#) the college.

Given this summer's widespread and persistent demands for racial justice, it was reasonable to expect protests at higher education institutions in the fall. The COVID-19 pandemic, however, has largely prevented this from occurring; without all students on campus, and with strict rules in place limiting group gatherings for those on school grounds, university-based protest and community organizing are largely nonexistent.

Despite the impact of the pandemic, the topic of naming rights is unlikely to fade from focus on college and university campuses. Online activism has sparked continuing dialogue and action. This year alone, many colleges and universities announced name changes to show solidarity with ongoing efforts to confront anti-Black racism. The [University of Virginia School of Law removed the name](#) of a former

Confederate soldier from a school building after review by an ad hoc committee of alumni, faculty, staff, and students and using the school's naming guidelines; and [Princeton University removed President Woodrow Wilson's name](#) from its schools in June, four years after it had previously declined to alter the name.

The relative and likely temporary absence of on-campus activism presents an opportunity for colleges and universities to address naming issues thoughtfully and methodically, without the pressure to act too quickly and the animosity and division that often accompany demands for urgent action. In that vein, below are key considerations—legal and otherwise—that institutions should keep in mind as they embark on this process.

Review Gift Agreements

Any institution considering a name change must first identify the original source of the naming rights. Naming rights can arise from a number of sources, including internal administrative decrees, government-controlled designations, and, more commonly, contractual agreements between the university and a donor. The source of naming rights will determine how, when, or under what circumstances un-naming or renaming may be possible. The guide below summarizes how a university may modify or terminate naming rights, including overcoming common issues faced by institutions with decades- or centuries-old naming obligations tied to deceased or unidentified donors.

In the case of a name bestowed by university decree or other honorific, universities will generally look to internal policies and procedures and work with current administrators, board members, and overseers.

Universities reviewing names rooted in historic preservation laws will need to petition state or federal legislatures or seek court intervention.

Most often, naming rights and other obligations to place inscriptions on university property are contained in private gift agreements voluntarily entered into between the institution and donors. Donors often include conditions on charitable gifts, embodied in the final written gift agreement between the parties. Conditional gift agreements are enforceable contracts and governed according to the agreement's terms. In such cases, a university's legal obligations will require careful review of the agreement's terms and applicable laws. Key provisions will include:

- **Identity:** Who owns the naming rights, including whether such rights terminate upon an individual's death or pass to an estate or heir. Similarly, whether rights may be transferred or assigned and under what circumstances.
- **Duration:** Whether the naming rights are indefinite, limited in time, or allow for university review or reconfirmation after a specified period. If an agreement is set to expire or go through review in the near term, the university may opt to plan for an un-naming process to coincide with that timing.
- **Consideration:** The specific gift promised by the donor in exchange for the naming rights, and confirmation that the donor has fulfilled or is in the process of fulfilling the pledged gift. If the donor never completed their promises to the university, the agreement may be subject to cancellation. Where the gift is non-monetary, and includes items or property that the institution no longer needs or values, returning the gift may likewise terminate the agreement.
- **Retention of Rights:** Whether the university reserved the right to revoke or change the name and any criteria triggering that right, including the discovery of illicit sources of funds or conduct that would be detrimental to the university's reputation. The institution may be able to cite such provisions as the basis for revoking naming rights, including cases where the university seeks to cut ties with persons connected to racial injustice.

Absent any clear provisions permitting the termination of a donor's naming rights, the university can still work with the living donor or their designee directly to amend the agreement. A donor may no longer desire the notoriety associated with naming rights, determine that the purpose of the original gift is no longer served by the university, or simply agree to a name change or relinquishment of naming rights altogether.

If a donor is unwilling to relinquish naming rights voluntarily, change remains possible. Institutions can negotiate a buyback price with the donor or return the full original gift in exchange for un-naming rights. (In such cases, at least some jurisdictions have held that the original gift amount must be adjusted by the consumer price index to reflect present-day value.) While it may require large sums to terminate naming rights successfully, universities may conclude that any long-term reputational harm, donor relations, or impact on the student body outweigh the cost of the negotiated payment. Institutions like [Vanderbilt University](#) have even launched successful charitable campaigns to raise the funds necessary to return gifts tied to naming rights.

If the donor is deceased and has not transferred or assigned naming rights to an heir or third-party, or if the donor cannot be identified, a university should work with legal counsel to contact the office of the relevant State Attorney General and discuss modification of the gift agreement. State attorneys general maintain both common law and statutory authority to oversee the activities and governance of nonprofit organizations and charitable trusts. Courts reviewing petitions for relief contrary to a donor's intent will undoubtedly inquire whether the attorney general's office assents to the request.

Recommendations and Best Practices

Even where the path to revoking naming rights is clear, universities must consider how to ensure that the decision-making process is thoughtful and deliberative. Institutions can best position themselves to consider un-naming demands by establishing written policies and procedures now. These policies can also help prevent future issues as new naming opportunities arise. A university naming policy should: (1) aim for transparency; (2) structure a fact-based inquiry; (3) manage expectations; (4) engage relevant stakeholders; and (5) meet reputational challenges by invoking the university's core values. Key criteria should include:

- Any principles guiding the approval, change, or removal of names connected to the institution, including what aspects of the university's mission statement or values should be reflected when naming spaces, scholarships, programs, etc.
- Rules or restrictions on names, including buildings or programs that must remain unnamed or regulations concerning how or where a name may appear on a physical structure.
- Minimum philanthropic requirements for obtaining consideration for naming rights, including approved sources and forms of support.
- The process that must be followed to approve, revoke, or alter name use, including the form of any such request, notice requirements, and timeline.
- The duration of naming rights, including policies setting term limits or periodic reviews.
- Any reservation of rights to un-name or rename, including the circumstances that would warrant or qualify for such action.
- Persons responsible for administering the policy, including whether those individuals retain the authority to appoint standing or ad hoc committees to review naming rights, launch credible studies to investigate whether name changes are warranted, seek input from relevant constituencies, or release statements on the institution's behalf concerning naming rights.
- Persons or bodies with the ultimate power to approve, revoke, or alter any naming rights, including university presidents and other administrators, boards, or overseers.
- Discussion of the role students, alumni, donors, and local residents should play in the name review process, including membership in any standing or ad hoc committees to ensure a wide array of community interests are represented in the process.
- Relevant timetables for delivering interim and final reports related to name changes or un-naming to ensure accountability.

Establishing these policies now—or reevaluating and tightening existing policies—will provide a solid foundation for a college or university when it confronts its first (or next) un-naming demand from members of the community. Having a clear, written policy will also provide reputational support to the institution both as applied to: (1) students, showing that the university understands the legitimacy of concerns relating to naming, is not defensive, and has processes in place to address requests; and (2) current, past, and future donors, demonstrating that the university is not purely reactionary, but is being deliberative and thoughtful about any un-naming suggestion. Universities may also consider going a step further and begin proactively reexamining the names on their walls, programs, and schools. Being on the forefront of the issue will demonstrate an affirmative commitment to anti-racism and make clear that when the university is able to fully reopen, it intends to be welcoming for all who walk the campus.

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