RESPONSE

CONSPICUOUS PHILANTHROPY: A RESPONSE

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In his Article, Professor Drennan notes that naming rights often have significant value. Therefore, he reasons that, when charitable contributions are made, the value of such naming rights should be subtracted from the amount of the contribution. Only the excess should be a tax-deductible contribution, and the burden should be on the donor to show that such an excess exists.

To make this proposal work, there must be a way to determine (1) which categories of naming rights might be significant benefits; and (2) how such benefits can be valued. As to the first, Professor Drennan has given us some examples of some rights that are clearly significant, and some rights that are clearly not. However, there are a lot of rights in between that should be addressed.

As to the second, in the noncommercial context, valuation is impossible. Therefore, donors will fail to meet their burden, and their contributions will be nondeductible. To solve this problem, as Professor Drennan suggests, donors and donees will agree at the outset on the value of the naming rights. However, such agreed valuations will also serve as liquidated damages, making it easier for donees to renege. As a result, donors will probably limit the duration of their naming rights in the first place. This result would be a step forward.

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INTRODUCTION

Lincoln Center's Philharmonic Hall was erected in 1962, but by 1973, it was in need of substantial renovation.[1] Luckily, an arts enthusiast named Avery Fisher donated $10.5 million for the project, and in exchange, Lincoln Center renamed the building "Avery Fisher Hall" in perpetuity.[2]

In 2014, the Hall needed further, extensive renovation—to the tune of $500 million.[3] David Geffen, a successful American businessman, was willing to pledge $100 million toward the project, but only if Avery Fisher Hall was renamed "David Geffen Hall" in perpetuity.[4] The Fisher family was not pleased.[5] Eventually, Lincoln Center paid $15

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1. Robin Pogrebin, *Lincoln Center to Rename Avery Fisher Hall*, N.Y. TIMES (Nov. 13, 2014), https://www.nytimes.com/2014/11/14/arts/music/lincoln-center-to-rename-avery-fisher-hall.html.

2. *Id.*

3. *Id.*

4. Robin Pogrebin, *David Geffen Captures Naming Rights to Avery Fisher Hall with Donation*, N.Y. TIMES (Mar. 4, 2015), https://www.nytimes.com/2015/03/05/arts/david-geffen-captures-naming-rights-to-avery-fisher-hall-with-donation.html.
Ironically, the renovation plan has fallen through, though the financial support is still there. Michael Cooper, *Lincoln Center Scraps $500 Million Geffen Hall Renovation*, N.Y. TIMES (Oct. 3, 2017), https://www.nytimes.com/2017/10/03/arts/music/lincoln-center-geffen-hall.html.

5. One can imagine the conversation between the Fisher family and Lincoln Center. It probably sounded a bit like an old Willie Nelson song:

> How's your new love
> I hope that he's doin fine
> I heard you told him,
> That you'd love him
> till the end of time
> Now, that's the same thing that you told me,
> Seems like just the other day
> Gee, ain't it funny, how time slips away.

WILLIE NELSON, *Funny How Time Slips Away*, *on* AND THEN I WROTE (Liberty Records 1962).

million to the Fisher heirs to "repurchase" the naming rights, whereupon Lincoln Center renamed the building David Geffen Hall.[6]

Professor William A. Drennan's wonderful Article, *Conspicuous Philanthropy: Reconciling Contract and Tax Laws*,[7] reasons that, if Lincoln Center had to pay $15 million to get those "perpetual naming rights" back, those rights must have been a "significant benefit" to the Fisher family, which should have reduced the amount of the charitable contribution.[8] Drennan begins his analysis with the two-pronged test, formulated by *United States v. American Bar Endowment*[9] and approved by *Hernandez v. Commissioner*,[10] which he characterizes as follows: "when claiming a charitable contribution deduction donors should have the burden of proving (i) the amount they gave to charity in excess of the significant benefits received in return and (ii) that they contributed the excess with the intent to make a gift."[11]

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6. Pogrebin, *supra* note 1.

7. William A. Drennan, *Conspicuous Philanthropy: Reconciling Contract and Tax Laws*, 66 AM. U. L. REV. 1323 (2017).

8. *Id.* at 1371–73 (arguing that because the Fisher family's donation had a significant benefit for the donor, it should not have been deductible as a charitable donation).

9. 477 U.S. 105, 117 (1986).

10. 490 U.S. 680, 691 (1989).

11. Drennan, *supra* note 7, at 1330. I accept Professor Drennan's suggestion that Revenue Ruling 68-432, 1968-2 C.B. 104, should be limited to its particular facts, in light of its inconsistency with *American Bar Endowment* and *Hernandez*. *See id.* at 1348, 1362. Yet, I find the Revenue Ruling to be analytically useful in that it divides things into three classes. First, when the value of the benefit is reasonably commensurate with the payment, then there is no donation at all. Second, when the value of the benefit is merely incidental, then the entire payment is a tax-deductible gift. Third, when the value of the benefit is somewhere in between, then that value must be subtracted from the amount of the gift. Rev. Rul. 68-432, 1968-2 C.B. 104.

Revenue Ruling 68-432 is analytically similar to Revenue Ruling 86-63, 1986-1 C.B. 88, on college booster club dues. When one joins a college booster club, one makes a contribution to the athletic department of the school. However, one typically receives back rights to purchase otherwise unavailable (or less available) seats to athletic contests at the school. In Revenue Ruling 86-63, the IRS posited three situations. In the first, the value of the right to purchase the tickets was at least equal to the dues paid. Thus, there was no contribution. In the second, the school's athletic program was so awful that the value of the right was nonexistent. Therefore, the entire amount of the dues would be a deductible contribution. In the third, the value was somewhere in between, and would have to be subtracted from the amount of the payment, in order to determine the deductible amount. Congress later effectively rescinded the Revenue Ruling when it enacted Internal Revenue Code (IRC) section 170A(m), which provides that, in the situations delineated, eighty percent of the dues paid will be deductible. *See* Joel S. Newman, *Joel S. Newman on Contributions to College*

Applying this test to the Avery Fisher facts, Drennan would argue that, in 1973, the IRS should have allowed Avery Fisher a charitable contribution deduction only to the extent that the amount that he gave—$10.5 million—exceeded the value of the significant benefit which he received: the naming rights.[12] Even if Fisher could have shown such excess, he would then have had the further burden of proving that he contributed that excess with charitable intent.[13] Professor Drennan would, of course, apply the same logic to all cases in which the donor received "significant" naming benefits.[14]

To make this proposal work, there must be a way to determine (1) which categories of naming rights might be significant benefits, and (2) how such benefits can be valued. I explore both of these issues in turn. Ultimately, I suggest that to require litigants to make these showings would create an impossible burden on noncommercial donors, and thus, most of the contributions of those donors would be nondeductible.

I. WHEN ARE NAMING RIGHTS "SIGNIFICANT BENEFITS"?

No one ever does anything without expecting some benefit. At the very least, we make donations because it pleases us to do so. Clearly, this "joy of giving" is a nominal benefit of no ascertainable value—not to be subtracted from the amount of the deductible donation. Similarly, there are all sorts of nominal donor benefits, most of which

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Athletic Booster Clubs, LEXIS FED. TAX J. Q., Mar. 2015 § 2.01 (discussing Revenue Ruling 86-63 and IRC section 170).

12. *See* Drennan, *supra* note 7, at 1362, 1368 (asserting that the IRS should adopt the analytical framework established in *American Bar Endowment*, which would only allow donors like Avery Fisher a tax deduction for the difference between their donation amount and the value of the benefit they received from the donation).

13. I accept Professor Drennan's formulation of the "intent" prong. Yet, having tax consequences follow from the intent of the taxpayer is always problematic because the taxpayer is already inside his own head, and the IRS has no way to get there. *See generally* Walter J. Blum, *Motive, Intent, and Purpose in Federal Income Taxation*, 34 U. CHI. L. REV. 485, 506 (1967) (arguing that state of mind tests are "likely to be very imprecise").

In this instance, however, I do not see the intent prong as much of a problem. The donor's payment is "clearly out of proportion to the benefit received." *See Am. Bar Endowment*, 477 U.S. at 117. Why else would a donor possibly make such an out of proportion payment to a charitable donee, unless there was donative intent? I would be comfortable with a presumption of donative intent, if (1) the payment was out of proportion to the benefit, and (2) the donee was a legitimate charitable organization. Of course, one cannot prove that the payment was out of proportion to the benefit without valuing the benefit. Effectively, valuation becomes the quintessential element, and the two prongs become one.

14. Drennan, *supra* note 7, at 1330.

essentially function as a "thank you." They include "inclusion of the donor's name in an alumni appreciation booklet . . . mention of the donor in a newsletter or press release; or . . . donor name placement on something as trivial as a brick on a sidewalk."[15]

In contrast, however, Drennan asserts that "significant transactions such as naming rights over prestigious university edifices, medical buildings, or other charitable structures" are not nominal at all.[16] Rather, they are significant benefits, which must be appraised and subtracted from the value of the donation.[17] But the continuum of conspicuous philanthropy benefits is a broad one. As I write, I am sitting in a law school building named for a substantial donor. The building would surely fit Professor Drennan's "significant transactions" category.[18] But what about the classrooms, my office, and some of the hallways downstairs? All are separately named.

But wait, there is more. For the indicated donation amount, you can put your name on the following items, all of which are owned by legitimate charitable organizations:

15. *Id.* at 1333. Professor Drennan mentions these items in the contracts portion of his piece, but I feel that he would agree that tax law would characterize them as only nominal benefits as well.

16. *Id.* at 1334.

17. *Id.* at 1330 (asserting that donors who benefit from these types of transactions "should have the burden of proving . . . the amount they gave to charity in excess of the significant benefits received in return").

18. I am willing to finesse the "prestigious" part if you are.

Table 1: List of Naming Rights Acquired Through Donation[19]

Facility	*Price*	*Donee*
Locker lounge	$425,000	Boston University School of Law
Large yurt	$250,000	Adamah Jewish Community Farm
Salad and panini station	$100,000	Greenhill School
Cat behavior modification suite (good luck with that modification)	$25,000	Animal Humane of New Mexico
Football goal post	$10,000	Oakridge School

Which of these purchases would be a "significant transaction," and why?

II. HOW CAN SUCH SIGNIFICANT BENEFITS BE VALUED?

In the commercial context, they can; in the noncommercial context, they cannot.[20] In the commercial context, for example, when a bank

19. Drew Lindsay, *As Menu of Naming Rights Expands, Fundraisers Pitch Options Online; Organizations Are Posting a Wide Variety of Opportunities on the Web. Are They Going Too Far?*, CHRON. PHILANTHROPY (June 1, 2015), https://www.philanthropy.com/article/As-Menu-of-Naming-Rights/230469; *see also* Drennan, *supra* note 7, at 1361–62. For an even more bizarre list, see Sarah Murray, *Institutional Naming Rights Gaining Favour Among Wealthy Donors*, FIN. TIMES (Sept. 18, 2014), https://www.ft.com/content/5c1d62e0-3834-11e4-a687-00144feabdc0?mhq5j=e2 (providing examples of unexpected naming rights transactions, such as Harvard Law School naming bathrooms after a donor, and an organization for the homeless naming common items, such as dental floss, after donors); *see also* Drennan, *supra* note 7, at 1382.

20. *See* Drennan, *supra* note 7, at 1379 (suggesting that although courts calculate subjective noneconomic damages in some cases, determining emotional harm might be too speculative for assessing damages in a noncommercial donor transaction); *see also* Meyer and Anna Prentis Family Found., Inc. v. Barbara Ann Karmanos Cancer Inst., No. 00-024848 CK, 2003 WL 25756356, at *1 (Mich. Cir. Ct. June 4, 2003), *aff'd in part, rev'd in part*, 698 N.W.2d 900 (Mich. App. 2005). *Prentis* lists five categories of donors, two commercial and three noncommercial. In the first two commercial categories, donors could recover money damages for breaches of the naming rights—presumably lost advertising. *Id.* at *7–8. In the noncommercial category, the donor

purchases the right to name an athletic stadium, the bank is purchasing advertising.[21] The benefits of such commercial publicity are clearly significant and relatively easy to value.[22] In the noncommercial cases, the donor is buying an ego trip.[23] The situations are so radically different

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could only recover for "hurt feelings." *See id.* at *8 ("The Court acknowledges that the members of the Prentis family may have hurt feelings regarding the alleged failure to use the Prentis name[,] but they are not parties to this action. The Plaintiff, an entity, cannot recover damages for hurt feelings.").

21. Professor Drennan lists nineteen such transactions in William A. Drennan, *Where Generosity and Pride Abide: Charitable Naming Rights*, 80 U. CIN. L. REV. 45, 94–96 (2011).

22. Here is an example of conspicuous philanthropy in a commercial context, in an old joke: synagogues traditionally take some time during Yom Kippur services to solicit donations from the congregation for the good of the temple. At one such solicitation, a member rose and said, "You all know me. I own the butcher shop on Main Street. We sell the finest kosher meats. This week we're having a sale on lamb chops. We are open Mondays through Thursdays. I would like to contribute $100, anonymously." JOEL NEWMAN, A SHORT & HAPPY GUIDE TO FEDERAL INCOME TAXATION 88 (2017).

For another example, consider Treasury Regulation section 1.513-4(f) example 4, which was inspired by the Mobil Oil Cotton Bowl (which has since been renamed):

> P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that in exchange for a $1,000,000 payment, the name of the bowl game will include the name of the corporation. In addition, the contract provides that the corporation's name and established logo will appear on player's helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. P also agrees to give the corporation a block of game passes for its employees and to provide advertising in the bowl game program book. The fair market value of the passes is $6,000, and the fair market value of the program advertising is $10,000. The agreement is contingent upon the game being broadcast on television and radio, but the amount of the payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's use of the corporation's name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship. The exclusive sponsorship arrangement is not a substantial return benefit. Because the fair market value of the game passes and program advertising ($16,000) does not exceed 2% of the total payment (2% of $1,000,000 is $20,000), these benefits are disregarded and the entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Treas. Reg. § 1.513-4(f) (2002).

23. Noncommercial naming rights are positional goods. Positional goods are goods "whose value depends relatively strongly on how they compare with things

that any valuation information from the commercial cases would be totally irrelevant in determining value in a noncommercial case.

When considering valuation of naming rights in the noncommercial situation, remember that the payment is of a "dual character."[24] A donor always has two motives: making a charitable donation and securing naming rights.[25] Therefore, to determine the value of the naming rights to the donor, one must ask the donor two questions: (1) how much would you have contributed as an anonymous gift, and (2) how much more than that were you willing to give if naming rights were included?[26]

Professor Drennan cites only one case that would have had an opportunity to answer both of those questions. In *Stock v. Augsburg College*,[27] the taxpayer was willing to pledge $100,000 anonymously.[28] However, when given the chance to have a wing of the college named after him, he increased the pledge to $500,000.[29] Apparently, the naming rights were worth $400,000 to Mr. Stock. But that is the only case which gives us such workable numbers.[30]

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owned by others." Robert Frank, *The Demand for Unobservable and Other Nonpositional Goods*, 75 AM. ECON. REV. 101, 101 (1985).

24. *See* Drennan, *supra* note 7, at 1347 (explaining that the IRS classifies payments as "dual character" when the "dues payment 'substantially exceed[s] the value of any benefits or privileges offered [and] the discrepancy between the size of the membership contribution and the potential monetary benefit is so great as to make it reasonably clear that the payment is of a dual character'" (quoting Rev. Rul. 68-432, 1968-2 C.B. 104, 105)).

25. *Id.*

26. Perhaps the two questions could be rephrased into one: "just how much of an egotistical maniac are you?"

27. No. C1-01-1673, 2002 WL 555944, at *1 (Minn. Ct. App. Apr. 16, 2002).

28. *Id.*

29. *Id.* ("Appellant believed the donation was too small for the honor of having the wing named after him and he increased his donation to $500,000."). Apparently, the college named the wing after someone else after it discovered that Stock had engaged in a letter-writing campaign denouncing mixed marriages, thus bringing unfavorable publicity to the college. *Id.* at *2.

30. Using those numbers, Mr. Stock pledged $500,000 to the college, but received naming rights worth $400,000 to him. Therefore, he made a deductible charitable contribution of only $100,000. Moreover, when applying Professor Drennan's analysis, Mr. Stock's estate should have included the $400,000 naming rights as an asset, unless he gifted them inter vivos.

What about the cat modification suite and the yurt?[31] For those items, we actually have prices.[32] However, they are only asking prices.[33] Moreover, even if potential donors accept these offers—which, apparently, they sometimes do[34]—those "prices" do not show the value of those naming opportunities to the potential donors. Remember the dual character of the payments. The potential donor is not merely buying the naming rights; he or she is also making a charitable contribution. The relevant question is what portion of the donee's "price" is the donor paying for the naming rights, and what portion is the donor paying as a charitable contribution? The prices listed, therefore, may well set a cap on the value of the naming rights, but they do not set a floor.[35]

What about the Avery Fisher Hall situation? Mr. Fisher donated $10.5 million in 1973.[36] He intended to make a substantial donation, and he expected to receive perpetual naming rights.[37] As it turned out, he only got naming rights for forty-one years.[38] How much less would he have paid in 1973, if he had known that the Hall would be renamed in 2014? We know that his family was paid back $15 million, but they had to wait forty-one years to get it. What is the value in 1973 of the right to receive $15 million forty-one years later?

To calculate that value, one needs to know the rate of return that an investor could have expected to generate in 1973. The prime rate—the interest rate charged by banks to their very best customers—is a good indicator of that rate of return. In 1973, the prime rate was eight percent.[39] If, in 1973, one invested $639,000 at eight percent, it would

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31. Lindsay, *supra* note 19, at 4–5.

32. The naming price was $250,000 for the yurt and $25,000 for the cat modification suite. *Id.*

33. *Id.* (explaining that organizations will post these prices before any contact with a specific donor).

34. *Id.*

35. I agree with Professor Drennan that these cases work better analytically as contracts rather than gifts. Therefore, I would reject any gift case, such as *Tennessee Division of the United Daughters of the Confederacy v. Vanderbilt University*, 174 S.W.3d 98 (Tenn. Ct. App. 2005), a gift analysis, as having any relevance to the valuation of naming rights in the contractual context.

36. Pogrebin, *supra* note 1.

37. *Id.*

38. *Id.*

39. *United States Prime Rate*, FEDPRIMERATE.COM, http://www.fedprimerate.com (last updated Jan. 31, 2018). The prime rate changed multiple times in 1973, but the average rate was about eight percent. *Prime Rate History*, FEDPRIMERATE.COM, http://www.fedprimerate.com/wall_street_journal_prime_rate_history.htm (last updated

have grown to $15 million by 2014. Put differently, the right to receive $15 million in 2014, discounted at eight percent for forty-one years, would have been $639,000.[40] Therefore, the 1973 value of the Fisher Family's receipt of $15 million in 2014 was $639,000. This discounted valuation of $639,000, however, is a pretty good guess, but that is all it is.[41]

In noncommercial situations, valuing the naming rights is essentially impossible. To value naming rights in cases of noncommercial conspicuous philanthropy, we have just one case which asks and answers the right questions. Commercial valuations are irrelevant. The prices that the charitable donees suggest in their solicitation materials are unhelpful because (1) they are merely asking prices, and (2) they do not separate out the value of the donation from the value of the naming rights. The Avery Fisher situation gives us a clue as to valuation but not much more.

If the donor has the burden of proof, as Professor Drennan suggests, and that burden is impossible, then the donor will always fail. If so, then whenever the naming rights in noncommercial conspicuous philanthropy cases provide the donor a significant benefit, such donations will be fully nondeductible. Will noncommercial naming rights therefore cease to exist?

Not necessarily; Professor Drennan suggests a lifeline. He expects, and hopes, that the adoption of his proposals will lead to more careful negotiations of donation agreements and more concrete delineations

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Dec. 14, 2017). For a graphic presentation, see *United States Prime Rate Chart*, FEDPRIMERATE.COM, www.fedprimerate.com/prime-rate-chart.htm (last visited Feb. 7, 2018).

40. *Present Value Factor for a Single Future Amount*, ACCOUNTINGSTUDY.COM, www.accountinginfo.com/study/pv/table-pv-s-01.pdf (last visited Feb. 7, 2018). The table gives a factor of 0.0426; the factor multiplied by $15 million is $639,000.

41. Discounting at eight percent for forty-one years presumes that, in 1973, someone would have been willing to commit to pay an eight percent return on an investment for forty-one years. No one would have made such a commitment, then or now. However, the prime rate remained at over 6.75% from 1973 through late 1991, reaching a high of 21.50% in 1980. *Prime Rate History*, *supra* note 39. Surely, with rates like that, a $639,000 investment in 1973 would easily have grown to at least $15 million in 2014.

Moreover, Professor Drennan points out that Fisher's 1973 contribution of $10.5 million in 1973 would have had a purchasing power of roughly $56 million in 2015. Drennan, *supra* note 7, at 1341 n.96 (citing *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., http://www.bls.gov/data/inflation_calculator.htm (last visited Feb. 7, 2018)). But Lincoln Center did not pay the Fisher family $56 million in 2014; it only paid them less than thirty percent of that. Thus, in purchasing power terms, the Fisher family received much less than what Avery Fisher had paid in 1973.

In any event, $639,000 is a significant amount, in absolute terms. But how significant is it when compared to $10.5 million?

of their terms.[42] Presumably, if the parties have negotiated at arm's length, and have set forth in writing their agreed-upon valuation of the naming rights, then tax authorities should accept that valuation.[43] Problem solved?[44]

I am not so sure. Assume that a donor wants to donate $10.5 million to a charitable donee, with the stipulation that the donor will have perpetual naming rights. The donor's tax counsel will want to insert a provision that the naming rights are of the lowest possible value so that the amount of the deductible charitable contribution is maximized.

However, the donor's contracts counsel will disagree. A stipulated low valuation of the perpetual naming rights would function essentially as liquidated damages. Assume that the donation document stipulated that the naming rights were worth $100. Shortly thereafter, the donee reneges and renames the facility after someone else. The donor sues. The donee will claim that the parties agreed that the naming rights were worth no more than $100. Therefore, the amount of the donor's damages for breach of contract should be limited to $100. The donee will win that argument. In effect, an agreement on the valuation of naming rights is essentially a stipulation of liquidated damages should the donee renege.[45] Would the donor and counsel really want to limit their rights in that way?

Perhaps they would. Perpetual naming rights seem increasingly impractical.[46] Consider the Avery Fisher situation. Fisher contributes to the

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42. Drennan, *supra* note 7, at 1371.

43. *See id.* at 1381 (arguing that contract law should govern the terms when the parties carefully negotiate).

44. It is also probable that the impossibility of meeting the burden of valuing the naming rights without written provisions as to their value in the documents would be only a short-term problem. As more and more donors and donees delineate such values in written documents, it would eventually become possible for future parties to refer to those earlier, documented transactions to prove market value.

45. The possibility that the naming rights value would function as liquidated damages would give the donee a stake in the negotiation of value. That stake would make the negotiation more arm's length. Hence, the negotiated value will be more credible.

46. *See* David H. Lenok, *The Perpetual Naming Rights Problem: Is All Charity Helpful?*, WEALTHMANAGEMENT.COM (Oct. 30, 2015), http://www.wealthmanagement.com/philanthropy/perpetual-naming-rights-problem (explaining that perpetual naming rights could limit institutions in the future from "accepting large awards from the next generation of wealthy benefactors"). One might expect that, eventually, no naming rights will be perpetual, but there is an exception for very old naming rights. For example, in 1804, Nicholas Brown paid the College of Rhode Island $5,000, and in exchange, the college renamed itself. *See An Overview of Brown History*, BROWN UNIVERSITY, http://250.brown.edu/browns-history (last visited Feb. 7, 2018). I cannot imagine that

renovation in 1973. Then, forty-one years go by. What if no further renovations take place? Would the Fisher family really want to have their name associated with such a dump?[47] Perhaps it makes more sense to force donor and donee to negotiate naming rights for a fixed term of years, with a reasonable valuation of those rights set forth in the document.[48]

CONCLUSION

Naming rights are an increasingly common aspect of major charitable giving. Sometimes, when a donor receives such naming rights, he or she has received a significant benefit. Professor Drennan has indicated some instances in which there would clearly be significant benefits and some in which there would clearly not be significant benefits. If we are to accept his proposals, we would need to know how the cases in the middle come out.

Professor Drennan's suggestion—that the two-prong test of *American Bar Endowment* and *Hernandez* be applied to these cases of conspicuous philanthropy in which significant benefits were received—would, in my view, create an impossible burden on noncommercial donors. Therefore, such contributions would be nondeductible, unless the parties agreed in advance as to their value. However, such an agreement would fix their value for contracts disputes as well, thus allowing the charitable donees to rename the facility at a later date, upon payment of the agreed-upon valuation as liquidated damages.

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the current trustees of Brown University would agree to rename the institution now, some 210 plus years later, no matter how much money someone offered.

47. A member of the Fisher family described the unrenovated Hall as an "old slipper." Drennan, *supra* note 7, at 1341 & n.95.

48. The policy of Pennsylvania State University is a step in the right direction:

> The duration of the benefactor's name association with any building, or part of a building, be that benefactor an individual or an organization, shall remain in place for the useful life of that building, or part thereof so designated, subject to conditions set forth in the Authority to Name section of this Policy. In the event that a building, or any part thereof, named for a benefactor is removed or replaced at the expiration of its useful life, the University shall not be obligated to continue the name, nor shall it be obligated to name any new construction intended to replace the building, or any part thereof, after the benefactor. The University may seek other means to recognize the benefactor after the useful life of the building.

AD05 Naming University Facilities, PENN STATE, https://guru.psu.edu/policies/AD05.html (last visited Feb. 7, 2018). Also, consider David Koch's $100 million contribution toward the renovation of the New York State Theater. The building will be named for Koch, but, pursuant to Koch's voluntary stipulation, it will be named for him for only fifty years. REYNOLD LEVY, THEY TOLD ME NOT TO TAKE THAT JOB 201–02 (2015).

Perhaps, in light of this prospect, donors and donees would agree in the first instance that the naming rights would not be perpetual after all. Glorifying your name for all eternity is fine, but folks just are not building pyramids any more.