

Mike Parks
President, The Dayton Foundation
Interested Party Testimony on House Bill 151
House Higher Ed Committee, Monday May 15, 2023

I am providing this testimony in opposition to including language from Substitute Senate Bill 83 into House Bill 151 regarding treatment of endowed charitable funds. I have served as President of The Dayton Foundation, one of Ohio's over 70 Community Foundations, for over 20 years. Like every Community Foundation in Ohio, The Dayton Foundation is a 501(c)3 public charity. Ohio is the home to the very first Community Foundation ever in our country, The Cleveland Foundation, which was founded in 1914, followed shortly after by The Dayton Foundation, which celebrated its centennial in 2021. Today, we are fortunate and blessed to steward over 4000 charitable funds established by our donors over the years that provide precious resources to address a wide variety of charitable needs throughout our region. Many of these funds are endowment funds each of which is established by and forever subject to the terms of a written fund agreement that among other things sets out the purpose(s) to which the donor's gift is to be committed, any other legal restrictions placed by the donor on the use of the gift and attaches our spending policy including the administrative fee we charge. We have an ethical and legal responsibility to administer endowment funds in accordance with our donors' intentions which in turn allows us to achieve our mission of helping donors help others and keeps us known as a prime partner in assisting benefactors in meeting their philanthropic goals.

This committee is aware of specific activity that led to the creation of the proposed language. No one, not you nor me, would ever suggest that it is appropriate to disregard donor intent and ignore binding restrictions on charitable gifts. The Dayton Foundation and all of the Community Foundations in Ohio have taken the responsibility of following donor intent and respecting donor restrictions very seriously for decades. Community Foundations are subject to binding obligations set out in current law and donor agreements that commit them to honoring donor intent, and there already exists a gift restriction enforcement process with the Attorney General's Office as the designated enforcement officer should compliance issues ever arise. If a question is raised about whether or not the Attorney General process is working to ensure that donor restrictions are being appropriately followed, I would ask that we review the issues and address that process, if needed. The proposed amendment goes too far in my view by establishing a private right of action for both the donor and /or legal representative creating a substantial departure from current Ohio law and that of nearly every jurisdiction in the country.

This language would make vulnerable all Ohio not-for-profit entities- large or small, state-affiliated or not- that accept restricted donations ... the food bank, the Girl Scouts, the United Way, small county foundations, large county foundations, and the list goes on and on----to the additional time and costs associated with defending lawsuits brought by family members of donors even after the donor is deceased, and even after the Attorney General has concluded that there is no cause to pursue a claim against the charity. The proposed language is an

over-reach response to a specific issue that has been raised and has unintended consequences that impact those organizations in our communities that can least afford them. It is difficult and tough enough for our community's charities to serve the needs of our residents each and every day and they do not need even more unnecessary obstacles and headwinds that divert limited resources away from their charitable efforts.

This is the third time that this issue has been brought forward. If there is a concern or an issue regarding whether and the manner in which Ohio charities respect donor intentions and restrictions, I would ask that we review the current enforcement process within the context of its application to all Ohio charities, state-affiliated and others, and if changes are indeed needed, have any changes to that process made the subject of a stand-alone bill that addresses that specific issue. I am happy to help in any review of that process.

Thank you.