

**Before the Ohio House, Higher Education and Career Readiness
Committee**

Statement of Jeffrey Moritz in support of Senate Bill 135

Good afternoon Chairman Lanese, Vice Chairman Young, Ranking Member Ingram and members of the committee. My name is Jeff Moritz. I live in Rocky River, Ohio and I am here today as a proponent of Senate Bill 135.

I think it's important that you hear my family's story as to why we support Senate Bill 135.

We support the bill because it would make charitable institutions far more accountable when they spend money from privately-funded endowments—which were created to aid people far less fortunate than the citizens who provided the funds.

I hold an undergraduate degree from Kenyon College and an MBA from Ohio State University. I have spent my entire career in the investment banking industry.

My father is Mike Moritz. He grew up in Portsmouth and Columbus. My mother is Lou Ann Ransom. She has lived her entire life in Columbus.

He and my mother both graduated from Ohio State. When applying to law school, my father could not afford the tuition. His family had little money. However, Ohio State offered him a full tuition scholarship plus a stipend. He finished at the top of his class in law school and had the second highest score on the Ohio bar exam in 1961. He could not have attended law school if he had not received this scholarship.

He eventually became a partner in the law firm of Baker Hostetler, where he headed the firm's national corporate law practice.

In June, 2001, he signed an endowment agreement with Ohio State. He promised to provide \$30 million within 20 days after signing—if OSU would invest those funds as a permanent endowment and spend the earnings only for four specified purposes.

One of those specific purposes was to provide full-tuition scholarships, plus stipend to 30 law students every year. OSU agreed and signed on the dotted line.

Providing those scholarships was pivotal to my father's agreement. He wanted to ensure ample funds for a large number of students to do what he did—attend law school and do well without the burden of huge debt.

Mike lived up to his side of the bargain. Within 20 days after signing, he transferred \$30.3 million to OSU. At the time, it was the largest privately funded endowment in OSU's history. And OSU named the law school after him.

Nine months later, a hit-and-run driver killed my father as he and my mother were driving home from hearing John Glenn speak at an OSU event in Florida. My dad was 68.

By then, OSU had already quietly begun to breach the endowment agreement. But we didn't know it.

About five years ago, I discovered that the university had never provided 30 scholarships in any year. For 19 consecutive

years—from the beginning of the Moritz endowment through August, 2020—OSU never lived up to that key commitment.

Each year—instead of providing 30 students with scholarships, the university provided only twelve, sometimes thirteen, sometimes fourteen, sometimes half of its commitment.

I also discovered that the value of the Moritz endowment had declined by an astonishing thirty percent. It went from \$30.3 million in 2001 down to \$21.9 million in 2016. Over those years, the endowment should have grown to over \$50 million and easily provided 30 law students with full-tuition scholarships every year.

In that time, over 300 law students incurred substantial debt for a legal education that should have been free—paid for by privately-endowed funds—at no cost to the taxpayers. Today, it costs an in-state student over \$90,000 to attend 3 years of law school at Ohio State.

I also learned something else.

The university, and as I know now, many universities, have been spending scholarship money to compensate the public employees of their Advancement Offices—and to throw multi-million-dollar galas to entertain what Ohio State calls “prospects” and “suspects.”

“Prospects” are wealthy people whom the university identifies as likely to fund endowments. “Suspects” are wealthy people whom the university identifies as likely to provide at least \$50,000 “now.”

That university, alone, spends as much as \$19 million annually from its endowments to pay for its Advancement Office. Other Ohio public universities have the same practices.

Too often, the agreements between the benefactors and the institutions say nothing that allows that spending.

When colleges and universities—and any other charitable institutions—spend away the principal of an endowment, the endowment's earning power is significantly reduced. With lower earnings, an endowment has less money to provide to students or for any of its charitable purposes. This is one of my family's greatest fears—that eventually administrators of the Moritz endowment will spend the \$30 million endowment down to zero.

According to Ohio State Foundation's 2020 audited financials, of the 3,055 named endowment funds approximately 2,189 of these funds are underwater, meaning their market value is lower than the initial gift amount. Many as much as 20-30% underwater.

Regardless of how underwater an endowment is, the university always paid itself first. First, the university spends money from existing endowments to entertain people who are wealthy already—to cultivate new endowments from them. That spending comes at the expense of student scholarships because the scholarships get only what's available *after* that initial spending.

Worse, the universities and other charitable institutions insist that only the attorney general has the right to enforce an institution's commitments in an endowment agreement. The benefactor, they insist, has no right to enforce the benefactor's own endowment agreement.

The university has insisted that—even if my father were alive today—he would be powerless to do anything about the fact that the university did not provide the promised 30 scholarships in any of the 19 years after receiving \$30 million from my father.

That raises an important question: Why does the university go through the charade of signing these agreements with benefactors—when the university firmly believes that the benefactors can't enforce them?

The university is making its commitments to the benefactor—not to the attorney general. The attorney general doesn't sign these agreements—the benefactor and the university sign them.

The obvious representation is that the university is binding itself to the benefactor and that the benefactor will have recourse if the university fails to live up to its side of the bargain.

For the universities to sign these commitments to the benefactor, knowing that they will later claim that the benefactor can't enforce them is wrong.

The Uniform Prudent Management of Institutional Funds Act governs the lawfulness of spending endowed funds. The key test is whether the amount of spending of endowed funds is what the Act calls “imprudent.”

The Uniform Act's prime purpose is to protect endowments from unprincipled or excess spending by the people who manage endowments for the benefit of the public. It is not the “administrator protection act.” It is the “endowment protection act.”

Of the 49 states that have enacted some version of that law, Ohio is the only one that makes constant spending of endowed funds legally incontestable.

So long as an institution spends 5% of an endowment's value in any given year, Ohio's version of the law says that no one can contest that much spending. No matter how much it shrinks an endowment and thwarts the endowment's ability to satisfy its charitable purpose over the long term.

Ohio's version of the Uniform Act calls that legal immunity an "irrebuttable presumption" of prudence. Spending 5% of an endowment's value each year is automatically prudent. Under Ohio's version of the Act, no one—not a court, not the attorney general, *no one*—can say otherwise.

It should be obvious why no other state has a similar provision. In all 49 states that have adopted it, the Uniform Act identifies specific criteria for deciding that an institution's spending of endowed funds is "imprudent."

But Ohio says that spending 5% of an endowment's value is automatically prudent—even *if that spending is plainly imprudent* when you apply the Act's criteria for *imprudence*.

So, Ohio's unique "irrebuttable presumption" defeats the fundamental purpose of the Act—protecting endowments from imprudent spending.

Even when an administrator's decision to spend 5% of an endowment's value is plainly not prudent under the Act's own criteria, Ohio requires the Alice-In-Wonderland conclusion that the spending is incontestably prudent.

No wonder no other state has a provision like that.

Senate Bill 135 would remove that immunity from challenge—making Ohio’s version of the law conform to the norms of the 48 other states that have essentially the same law.

But removing a unique provision that undercuts the law’s protection of endowments does not mean that endowments will get the protection they deserve.

To provide endowments with the protection they deserve, Senate Bill 135 has other provisions.

Under Senate Bill 135, if a benefactor who signed an endowment agreement discovers a breach, the benefactor can demand that the attorney general cure the breach.

If the attorney general does nothing—or does not fix the problem within 6 months—Senate Bill 135 would allow the benefactor to sue the university to enforce the agreement.

The benefactor would have no right to sue for damages—but can ask a court to stop the breach and to restore to the endowment the funds that the university misspent.

This bill would—for the first time—make universities accountable for breaching their endowment agreements and for overspending endowed funds when the attorney general—who also represents state universities—does nothing.

I also want to make abundantly clear that the Moritz family has absolutely no interest in recouping any of the \$30 million my

father gave to Ohio State, either directly or indirectly. We have never and will never make any effort to do so.

By ensuring that benefactors have the right to enforce their own endowment agreements, Senate Bill 135 would enable benefactors to ensure that universities and other charitable institutions live up to their commitments to use endowed funds as promised.

Enacting this legislation will incentivize potential benefactors to contribute further to university endowments because they will have the assurance that they can do something if the university breaches its commitments.

I want to express my thanks Senator Cirino for addressing this important issue and to Senate President Matt Huffman for his willingness to tackle this and other issues in higher education. We also appreciate the overwhelming support for this legislation that we received in the Senate – a vote of 31-2. Others will be testifying in support of this bill including individuals who have corrected this type of action in other states.

Thank you very much for your time and attention this afternoon. I would be happy to take any questions you may have.