

Testimony of Lincoln L. Davies  
Dean & Frank R. Strong Chair in Law  
The Ohio State University Michael E. Moritz College of Law  
Before the Ohio House Higher Education and Career Readiness Committee  
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S.B. 135  
The Ohio Legislature, 134th General Assembly

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Chair Lanese, Vice Chair Young, Ranking Member Ingram, and members of the committee, thank you for the opportunity to testify today.

My name is Lincoln Davies, and I have the honor and privilege of serving as the twentieth Dean of the Michael E. Moritz College of Law at The Ohio State University. Prior to my appointment as Dean, I served as the Associate Dean for Academic Affairs at the S.J. Quinney College of Law at the University of Utah, where I held the Hugh B. Brown Presidential Endowed Chair in Law. Before that, I was in private practice for nearly seven years at the international law firm of Steptoe & Johnson in Washington, D.C. My teaching and research focus on energy law and policy, civil litigation, and judicial and executive branch procedure.

In my testimony today, I would like to offer the perspective of someone who engages regularly with alumni, donors, and friends of the preeminent law school in Ohio. In particular, I am deeply troubled by proposed Section 1715.551 in S.B. 135. The bottom line about this provision is clear. It would wreak havoc on noble and good-hearted charitable giving in our state, and it would put Ohio at significant competitive disadvantage in relation to other states. The provision is ill-advised. I very much hope this Committee will see fit to amend S.B. 135 to strike Section 1715.551 from the bill.

As Dean, two fundamental principles guide my relationships with alumni, donors, and friends of Ohio State's Michael E. Moritz College of Law at all times. First, I always seek to

honor, celebrate, and show gratitude to our donors. Without them, we could not achieve so much of what we seek to advance, namely, educating future leaders and lawyers and nurturing the rule of law in society. Second, I aim to align gifts to the College with what will make us better as an institution. In this objective, we keep our core values close at all times: students first, always first; excellence in all ways; cooperation and collaboration; and community.

I can attest firsthand that the generosity of alumni, donors, and friends of the College is transformative—for our law school community, and for our students, whose lives this generosity forever changes. Even during the ongoing global pandemic, I have seen this on a regular basis. Over the last two years, we have received gifts to offer scholarships to students. Many of these students could not have attended law school at Ohio State without this support. We have received gifts to endow professorships. Without this generosity, we could not have succeeded in bringing top-tier talent from across the nation to Ohio. And we have received gifts to support both student and faculty work in the community—again, service to the State and our fellow Ohioans that otherwise would not be possible.

The most transformative gift Ohio State Law has received to date was the incredibly generous donation of one of our alums, Michael E. Moritz, who in 2001 gave roughly \$30 million to the College. This gift had three parts. One-third of the gift created four endowed Chairs in Law. In fact, I have the honor of holding one of those Chaired professorships, the Frank R. Strong Chair in Law. The second third of the gift aimed to uplift the College in strategic ways. That portion of the gift has been used, for instance, to support our Program in Dispute Resolution, currently ranked #2 in the nation. The final third of the gift—the final roughly \$10 million—was dedicated to creating full tuition scholarships for students. Today, there are thirty Michael E. Moritz Scholars enrolled at our law school. Every day, I am grateful for the

tremendous foresight and charity of Mr. Moritz, who had such faith in, and was so grateful for the opportunities he enjoyed because he attended, our College that he wanted to permanently improve it in these ways. Generosity from our alums like Mike Moritz is always humbling. It never ceases to inspire me.

Some proponents of proposed Section 1715.551 point to Michael Moritz's gift as the reason why they believe that provision is necessary in Ohio law. Nothing could be further from the truth. Section 1715.551 would give heirs of donors the ability to undo what the donors themselves sought to achieve through their gifts. In so doing, this provision would create a detrimental chilling effect on charitable giving in Ohio—to public institutions of higher education, whose mission it is to create opportunity for every citizen of our state and to foster economic growth across Ohio, and more broadly as well. Section 1715.551 would announce to the nation that charitable giving in Ohio is something that can later be undone by someone's heirs, in direct contravention of the donor's actual intent. It would drive charitable donations away from Ohio's public colleges and universities, and to private institutions and charities in other states and countries.

This provision is unnecessary and counterproductive. It is contrary—and counterfactual—to the very foundation of how I approach charitable giving to my College. And it is, to all my knowledge, contrary to how each of my predecessor Deans has as well.

Nonetheless, in the media and other forums, proponents of Section 1715.551 have made assertions about Michael Moritz's gift in an effort to suggest that the provision should be adopted into law in our state. In making these assertions, however, these proponents fail to tell the full story:

- They have said, for instance, that Ohio State charges a development fee on its endowed gifts—and that such a fee is somehow objectionable. The first part of this statement is of course true. Ohio State charges a 1% development fee against endowed funds, in order to support fundraising efforts. Objecting to that fee, however, is strange indeed. Ohio law allows for such development fees, these fees are standard practice in philanthropy, and Ohio State manages all endowment funds in accordance with the law. In fact, my College’s alum, Michael Moritz, sat on the Ohio State Foundation Board that approved use of this fee in the first instance.
- Proponents of Section 1715.551 have said that details about OSU endowments are not publicly available, and that “thousands” of these funds are “underwater.” Both statements are simply not correct. Unlike most charitable entities, every donor to Ohio State can look up the details about their donations at any time on a publicly accessible website. Likewise, while it’s of course true that the balance of any endowed fund may fluctuate over time as markets and the national economy shift, a review earlier this year showed that all of Ohio State’s nearly 6,000 gifted endowed funds—including all of the funds from Michael Moritz’s gift—are worth more than when the funds were gifted. These proponents also fail to state that when, in prior years, market conditions pushed certain endowed funds, including the funds connected to Michael Moritz’s gift below their initial value, the University used its own money to add to all of those underwater funds. The University added more than \$5 million to the Moritz funds—to the significant benefit of the Michael E. Moritz College of Law.

- Proponents of Section 1715.551 also have suggested that Ohio State took the Moritz family to court, and that my College has never given the desired 30 Michael Moritz Merit Scholarships per year. Again, both assertions are false. Keep in mind that it was Michael Moritz who donated to our College. This is why our College bears Michael Moritz's name, not the name of the Moritz family. Nor did Ohio State ever sue Mr. Moritz's family. The legal action being referenced was actually instituted by one of Michael Moritz's children, in an effort to reopen his father's estate. Finally, the assertion that we have never funded 30 Michael Moritz scholarships is incorrect. This portion of Mr. Moritz's gift has provided 350 scholarships since its inception, and 30 or more per year in 2004, 2005, 2020, and 2021. Ohio State is only required to fund as many scholarships as are afforded by the income from Mr. Moritz's gift, and because the gift made by Mr. Moritz is not sufficient to fund 30 scholarships per year, the university has chosen to supplement the monies from Mr. Moritz's gift with university monies to support these scholarships.

In conclusion, proposed Section 1715.551 is an unnecessary provision that would only be deleterious to philanthropy in Ohio. Adopting it would be a disservice to our State—and would dishonor the great men and women who give so generously to make Ohio better and to help our students achieve their dreams. I hope this Committee will strike the provision from S.B. 135.

Thank you for your time and for the opportunity to testify today.