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Interested Party Testimony on Sub S.B. 135
House Higher Education and Career Readiness Committee
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Chairwoman Lanese, Vice Chair Young, Ranking Member Ingram, and members of the House Higher Education and Career Readiness Committee, thank you for the opportunity to submit written interested party testimony on Substitute Senate Bill 135.

My name is Claudia Y.W. Herrold and I am the Chief Communications and Public Policy Officer at Philanthropy Ohio, a statewide membership association that provides the network, tools and knowledge to help people engaged in philanthropy become more effective partners for change in their communities. Philanthropy Ohio has almost 200 member organizations comprised of private and family foundations, community foundations, united ways, corporate foundations and giving programs, all of whom possess assets totally to approximately \$50 billion and who contribute more than \$4 billion annually to thousands of nonprofits.

I am submitting interested party testimony and ask you to retain the language of the Senate-passed version of SB 135, including the provisions addressing donor contributions, the Uniform Prudent Management of Institutional Funds Act revisions and associated language. Our view is that such dramatic changes and additions to the Ohio Revised Code – changes that would impact our members who hold such funds, not only the public universities' endowed funds – should not be applied to the full range of Ohio's charitable organizations and limited – if needed at all – to the public higher education institutions.

SB 135, as passed last summer by the Ohio Senate, seeks to do two primary things: first, create a process to bring civil legal action by a donor's descendants if they believe the donor's restrictions are not being followed. Second, it would change the current UPMIFA safe harbor that establishes reasonable, understandable standards for expenditures from endowed funds.

Let's address the first element as it relates to the philanthropic community and explain why the provisions in SB 135 should not apply to such organizations. Ohio's community foundations, which receive millions of dollars in endowed gifts, routinely see such restrictions included in their agreements with donors – and they honor them.

Expanding the class of persons who could challenge a community foundation's stewardship of endowed funds goes against the centuries of Ohio law that spells out that such gifts to benefit the public should be overseen and enforced by a public entity – in this case, the Ohio Attorney General. As Ohio's adopted public policy, it also follows the law of nearly every other U.S. jurisdiction. Creating a private right of action for not only the donor but the donor's family in perpetuity – who may have very different goals or wishes than the donor -- is something our community foundation leaders cannot support.



As the executive director of one of Ohio's 68 community foundations said, "A big concern with Senate Bill 135 is that it allows individuals who were not involved with the crafting of the language in the endowment agreement to have the right to change the intent. At community foundations, a great amount of time and effort is spent with the donor to make sure the donor's intent is appropriately designated and carried out. Several meetings are held and there are conversations about what the donor would like to have done should the charity no longer be in existence or the cause is no longer relevant. It is incomprehensible to think that someone who was not involved in the conversation would have the opportunity to change the original intent of the donor. The agreement is a contract and between the charity and the donor and another party should not have the right to enter into the agreement at a later time."

Community foundations have numerous incentives to honoring these restrictions, in addition to their legal obligation contained in signed donor contracts and their commitment and passion to improving the lives of community residents that happens because of the donations. First, they hope that these generous individuals will make future donations to the foundation, and second, that they will encourage family and friends to donate as well. Community foundations, in our experience, exercise great care and integrity in managing both endowed funds with which they are entrusted and in the use of such funds, consistent with donor's restrictions and for the good of communities across the state.

Additionally, Philanthropy Ohio believes that the long-established authority of the Ohio Attorney General as the entity responsible for assuring that nonprofits honor donor wishes and restrictions on endowment gifts is most appropriate and effective. Examples of such wishes or restrictions that donors place are "to provide scholarships" or "support homeless youth" or "provide services for victims of domestic violence." Ohio's Attorney General, through his well-qualified Charitable Law Section staff, is best positioned to enforce donor restrictions within the Ohio Revised Code's provisions and should continue to be the entity charged with enforcing them, as is the case in almost all other states.

Now on to the second item. An additional restriction on Ohio endowment funds is laid out in Ohio's UPMIFA provisions, last updated in 2009, that establish a safe harbor annual spending rate expressed as a percentage of the fund's value. This safe harbor provides charitable organizations with certainty on the propriety of their spending decisions and predictability in their expenditures. Ohio's version of UPMIFA is unique in setting this safe harbor by establishing that a certain level of annual expenditure from an endowment fund – up to 5 percent – will be considered prudent. Our community foundations and other charitable organizations – as well as their donors – rely on this concept in their many governing documents, such as investment and spending policies and donor agreements.

Additionally, our over 3000 private foundations in the state would be severely impacted by this legislation, as they are required by federal law to expend at least 5% of their endowed assets in grantmaking (along with reasonable administrative expenses) each year. Ohio's safe harbor thus aligns perfectly with federal law. The 5% is a minimum requirement and many foundations provide more support to their nonprofit partners, especially during times of disasters, economic recessions and the pandemic. Indeed, one of Ohio's largest private foundations, when Covid-19 hit, chose to spend 10% to address the enormous needs in Ohio communities. Should the spending rule



provision in this bill be applied to the nonprofit sector as a whole, that foundation – and possibly many others – would automatically be presumed imprudent and open to litigation and Attorney General action. Why would we want to penalize such foundations for stepping up in times of extreme need? We do not believe that is the legislature's intent and encourage you not to support extending that provision to the thousands of Ohio foundations, which together provide over \$1.9 billion a year in grants.

We strongly encourage the legislature to maintain the current safe harbor provisions for all nonprofit entities as these provisions protect donor restrictions by assuring the long-term viability of endowment funds. The uncertainty that would be created by adoption of the proposed change – eliminating the presumption of prudence – would be detrimental to pursuing donors' intentions as nonprofits would cut back expenditures out of a fear that any spending rate could be challenged as imprudent. This provision would likely result in fewer dollars being spent annually to achieve the donor's wishes to help their communities and neighbors.

Ohio's common law and current UPMIFA provisions provide a very solid foundation for nonprofits to use in managing their endowment funds. We see no need to change the status quo and urge the members of this committee to agree with us and not broaden SB 135 to include entities other than institutions of higher education. We stand ready to assist you in addressing the problems that have caused this proposed revision and language, to assure that community foundations and their generous donors are not harmed or dis-incentivized from supporting the organizations and causes they care about. Thank you for this opportunity to provide written testimony on this very important topic not only to Ohio's community foundations but to all charitable organizations and, ultimately, to their donors and communities. We stand ready to answer any questions and provide further detail supporting our position.