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Senate Bill 135

Ohio House Higher Education and Career Readiness Committee
American Council of Trustees and Alumni (ACTA)

Emily Koons Jae

Director of ACTA’s Fund for Academic Renewal

December 7, 2021

Chair Lanese, Vice Chair Young, and Ranking Member Ingram, thank you for this opportunity to submit written testimony regarding Senate Bill 135.

My name is Emily Koons Jae, and I am director of the Fund for Academic Renewal, a program of the American Council of Trustees and Alumni, or ACTA, an independent, nonprofit organization. Launched in 1995, ACTA works with alumni, donors, trustees, and education leaders across the United States to support liberal arts education, uphold high academic standards, safeguard the free exchange of ideas on campus, and ensure that the next generation receives an intellectually rich, high-quality college education at an affordable price.

Through the Fund for Academic Renewal, ACTA provides guidance to higher education donors, helping them to navigate the giving process. Our fundamental aim is to support the commitment of thoughtful, active donors to academic quality and intellectual integrity.

We applaud the Ohio Legislature for considering measures to protect donor intent. The charitable sector stands to benefit when we grant donors standing—in certain, limited circumstances—to enforce the terms of their gift agreements through the courts. A modernization of donor standing law is long overdue.

In the two years I have directed ACTA’s Fund for Academic Renewal, I have met too many donors disappointed or in the dark about how their funds have been used. I refer members of the committee to the testimony of Jeffrey Moritz and Greer Rouda. Stories like these corrode trust in our institutions of higher learning at a time when colleges and universities need philanthropy the most.

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1730 M Street NW, Suite 600 Washington, DC 20036
T (202) 467-6787; (888) ALUMNI-8 F (202) 467-6784 info@GoACTA.org
www.GoACTA.org

I. Restricted gifts from private philanthropy are a vital source of revenue to higher education.

When college donors make restricted gifts, they provide not only a source of funding but also new ideas and new programming. Restricted gifts are increasingly the norm in higher education philanthropy, even for alumni donors. [The Teachers Insurance and Annuity Association of America Institute](#) examined 30-year trends in higher education giving from a longitudinal sample of 400 public and private institutions. Total giving to higher education increased from \$9.1 billion in 1988 to \$25.1 billion in 2018. On average, adjusted for inflation, this represents a 3.6% increase annually. Of all the donor types examined in the study, alumni made the most unrestricted gifts, dedicating 50.9% of their support to this purpose in 1988. By 2018, this share declined to just 25.8% of gift dollars. This trend can also be seen among other individuals, foundations, and corporations, all of which trended toward more restricted giving from 1988 to 2018.

Across the board, higher education donors are taking a more active role in their philanthropy. And this should be a welcome development—the more engaged donors are in their giving, the more likely they will continue to give and the more likely their giving will increase.

The continued vitality of Ohio’s public institutions depends on the generosity of private donors. The Ohio State University, for example, launched the most ambitious capital campaign in its history in 2018. The “Time and Change” campaign seeks to raise \$4.5 billion from more than one million donors. A significant portion of this \$4.5 billion will necessarily come in the form of restricted monies.

Intentional, directed giving has the power to renew our colleges and universities, but this revitalization depends on donors having confidence that their intent will be honored.

II. Empowering grantors with the ability to enforce the terms of gift agreements eases the burden on state attorneys general.

Though the character of philanthropy has changed markedly over the past 50 years, the laws governing the charitable sector have not kept pace. Oversight of the charitable sector falls on the shoulders of the state attorneys general, but, given their extensive responsibilities, these offices often lack the funding and capacity to enforce restricted gift agreements.

Historically, state attorneys general have only acted on violations of donor intent when they implicate significant sums of money or truly reprehensible behavior. This leaves the vast majority of donors without recourse if a charity violates their gift agreement.

S.B. 135 preserves the authority of the Ohio Attorney General over restricted gifts. Donors who suspect a public institution of higher education has violated the terms of a gift agreement must notify the office of the state attorney general. However, if the office does not respond within 180 days of notification, donors may seek another possible remedy through the courts.

I would like to pause here and address a common objection to protecting donor standing. First, that allowing donors standing will lead to a flood of vexatious litigation against universities. The careful language with which S.B. 135 is written makes this scenario unlikely. Donors seeking a financial windfall by suing a university will be disappointed by S.B. 135—the bill cuts off any possibility of private financial gain.

Based on my experience with higher education donors, I believe the fear of vexatious legislation is unfounded. Alumni, especially, care deeply about their academic institutions. The courts are the last resort for these donors, and many are hesitant to bring bad publicity to their schools.

III. Extending donor standing to all charitable institutions with an endowment

An earlier iteration of this bill applied the revisions to the Uniform Prudent Management of Institutional Funds Act (UPMIFA) to all charities in Ohio, not just public institutions of higher education. Though public institutions of higher education are perhaps the most troubling offenders, based on the testimony of Greer Rouda and Jeffrey Moritz, a modernization of donor standing is needed for the entire charitable sector.

Applying the same set of rules to all charitable endowments would be simpler to understand and enforce. The bill's treatment of endowment expenditures is perhaps the most glaring example of why singling out public colleges and universities weakens the legislation. In its current form, S.B. 135 applies a different set of rules regarding endowment expenditures to state institutions of higher education than to other nonprofit organizations. If state institutions of higher education spend more than 7% of the fair market value of an endowment, it creates a rebuttable presumption of imprudence. For any other charity, spending 5% or less creates an irrebuttable presumption of prudence.

This is unnecessarily confusing. Given the current controversy over endowment fees brought to light by the Moritz family, it would be wise to bring Ohio's code into line with other states. As drafted by the [National Conference of Commissioners on Uniform State Laws](#) in 2006, UPMIFA includes as an optional provision a presumption of imprudence if a charity spends more than 7% of an endowment fund in any one year. Ohio's current adaptation of UPMIFA is unusual.

IV. Conclusion

S.B. 135 modernizes Ohio's donor standing law and has the potential to make Ohio a leader for protecting donor intent. The limited expansion of donor standing respects historical precedent while potentially freeing up resources for the Ohio Attorney General Office. S.B. 135 establishes transparency, ensures accountability, and encourages generosity.

Sincerely,



Emily Koons Jae
Director, Fund for Academic Renewal
American Council of Trustees and Alumni