

Testimony of John Woods, AVP Estate and Gift Planning
The Ohio State University
Substitute Senate Bill 135
December 7, 2021

Chairwoman Lanese, Vice-Chair Young, Ranking Member Ingram, and members of the Ohio House Higher Education and Career Readiness Committee, I am John Woods, Assistant Vice President of Estate and Gift Planning of The Ohio State University. I appreciate the opportunity to testify today regarding certain provisions in Substitute Senate Bill 135. In particular, I am here to testify about the provisions that many people have referred to as the “donor intent” provisions. I have spent almost 30 years working exclusively with donors who wish to make gifts to institutions of higher education, and I can say with confidence that these provisions do not support donor intent. Instead, they significantly undermine donors’ ability to control the use of their gifts by giving the donor’s family members and professional administrators the right to reinterpret the donor’s intent after he or she has passed away.

After graduating from law school in 1993, I spent over 21 years at the University of Arizona Foundation, last serving as Vice President of Gift Planning before leaving to join Ohio State in 2015. Over that time, I have worked with countless donors who have thoughtfully crafted gift restrictions that they felt very strongly about. In some instances, donors have welcomed the input of their family members and professional advisors, but in most instances, they have not.

Under Ohio’s current law, which is consistent with the national law in this area, donors have the exclusive right to direct how their gifts are used. SB 135 eliminates that exclusive right and instead allows donors’ heirs and other legal representatives to sue to enforce their interpretation of the donors’ wishes. Under the proposed provision, “legal representatives” include both individuals specifically authorized under a donor’s gift agreement to speak on the donor’s behalf, as well as spouses, heirs, and other professional administrators who *are not specifically authorized* by the donor. These legal representatives, whether authorized by the donor or not, would have standing to sue to enforce their interpretation of the donor’s intent.

At Ohio State, we already offer donors the opportunity to designate a family member in their gift agreement who may speak on the donor’s behalf. Most donors decline to do so because they do not want their family members to have the right to redirect a gift, or reinterpret the donor’s intent of the gift, once the donor has passed. SB 135 would give donors’ family members and professional administrators rights that most donors do not want these individuals to have.

In regards to Michael Moritz’s gift specifically, I’ll note that his gift agreement did not designate any family members to speak on his behalf. If this provision is passed,

I anticipate that many donors will choose not to give to Ohio's public colleges and universities, and will instead donate to the thousands of other charities that would not be subject to these provisions, including Ohio's private colleges and universities.

Charitable donations are a crucial component of Ohio State's funding. Without our donors' generosity, Ohio State would not be able to accomplish all that it does. Because of this, Ohio State is incredibly grateful to every donor who has chosen to support the institution, and makes every effort to keep its donors informed. Each endowed fund can be viewed online at Ohio State's Office of Business and Finance website, which can be found at <https://busfin.osu.edu/investments>, and the university's overall investment performance can be viewed online at <https://busfin.osu.edu/university-business/controller/endowment-administration>.

Finally, I'd like to quickly address the differences between a contract and a gift agreement. A contract is a business concept and involves a mutual exchange of something of equal value between two or more parties. You cannot take a charitable tax deduction for a payment made under a contract. A gift agreement memorializes a tax-deductible, philanthropic gift. A donor is only eligible to take a charitable tax deduction for a gift if they have transferred something of value to a charitable entity without an expectation of return benefit. Gifts are meant to benefit the public, not the donor. Gift restrictions that indicate how the gift must be used, for example to fund scholarships or a professorship, are not considered return benefits to the donor. Instead, these restrictions are rooted in accounting rules that dictate how an institution's funds must be used.

Thank you for the opportunity to testify today, and thank you for the work this committee does on behalf of higher education and the state of Ohio.