Before the Ohio House Civil Justice Committee
Statement of Jeffrey Moritz in support of Amendment 3746 to Senate Bill 199

Good afternoon Chairman Hillyer, Vice Chairman Grendell, Ranking Member Galonski and members of the Civil Justice Committee. My name is Jeff Moritz. I live in Rocky River, Ohio and I am here today as a proponent to Amendment 3746, which I hope you will amend into Senate Bill 199.

I think it's important that you hear my family's story as to what brought us here today and why we support this amendment.

We support the amendment because it would make charitable institutions 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 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 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 a stipend to 30 deserving 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. He transferred $30.3 million to OSU, and, at the time, it was the largest privately funded endowment in OSU's history. And OSU graciously 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 actually *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 "prospects" - wealthy people whom the university identifies as likely to fund endowments.

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. Many of the university's endowments are under water.

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.

Because of the way current law is written, 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 a charitable institution go through the charade of signing these agreements with benefactors—when they firmly believe that the benefactors can't enforce them?

In each case, the institution 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 and I hope you will amend Senate Bill 199 to change that.

Earlier this year, language was contained in Senate Bill 135, sponsored by Senator Jerry Cirino, that would have made some substantial improvements to Ohio law in this regard. While it passed the Senate 31-2, it was ultimately removed, along with other provisions of that bill, by a different House committee, so that we could continue to work with interested parties on the legislation. The revised language before you today is a result of those meetings over the past several months.

So what does the language do? Quite simply, it removes ambiguity from Ohio law and requires administrators of *restricted* endowment agreements to live up to those agreements and gives benefactors limited recourse if they believe there has been a breach in the agreement.

If the benefactor or their representative believes there has been a breach of the agreement, they must first notify the charitable law section of the Ohio Attorney General's office in writing of the alleged violation. The Attorney General has six months to investigate and force compliance.

If after six months the Attorney General has not obtained full compliance, the benefactor or the benefactor representative may file a complaint with the courts to force compliance.

To keep things as simple as possible, the language does not allow benefactors to recoup attorney's fees or court costs. 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 institution misspent.

Further, this language only applies to potential breaches moving forward: for instance, it does not allow me to go back and file complaints for breaches that occurred to the Moritz endowment in 2006.

However, if breaches do occur on existing endowments after the effective date of this legislation, those future potential breaches would be subject to this action. Benefactors must file their complaints within six years of the alleged breach.

This bill would eliminate ambiguity in Ohio law by holding charitable institutions accountable for breaching their endowment agreements and for overspending endowed funds when the attorney general—who also represents state universities—does not act.

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. Despite what has been done to my father's endowment, we still want the university and the students who go there to succeed.

This is, in my view, a very simple but extremely meaningful change to Ohio law were everyone wins: By ensuring that benefactors have the right to enforce their own endowment agreements, this amendment to SB 199 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 institution breaches its commitments.

I would like to thank Chairman Hillyer for his willingness to draft this language and work with us on what we believe is a meaningful compromise to the language passed by the Senate earlier this year. I would also like to thank the many members of this committee who have worked with us on improving the language, including Rep. Seitz, and the Buckeye Institute for their support and leadership on this as well.

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