

Keith Burwell
President and CEO, Greater Toledo Community Foundation
Interested Party Testimony on House Bill 151
House Higher Ed Committee, Tuesday, May 16, 2023

Chairman Young, Ranking Member Miller, and members of the Higher Ed Committee. My name is Keith Burwell, and I am the President and CEO of Greater Toledo Community Foundation (GTCF), a foundation covering Northwest Ohio with the mission of creating a better community for the citizens of northwest Ohio. I am here today in opposition to House Bill 151.

The Greater Toledo Community Foundation annually awards over \$20 million in grants across Northwest Ohio and brings in over \$20 million in new gifts to the Foundation to support Foundation fund creation for the community. The proposed House Bill 151 would only hinder this support for the community in the future. Donor work with GTCF supports the community in order to build a better today and tomorrow for the citizens of Northwest Ohio. The funds created with endowments are established by and forever subject to the terms of a written fund agreement that sets out the purpose(s) to which the donor's gift is to be committed, any other legal restrictions placed by the donor on the use of the gift. We exist due to the ongoing trust by the community in our work and the honoring of donor interest and intent in the creations of funds at GTCF. No one argues this point. The specific circumstances and activity that led to the creation of the proposed language in this bill seems to be bound to the area of higher education and not the community foundation or nonprofit community at-large in Ohio. If applied to all nonprofits in Ohio I see several concerns arising for the field.

Here are a few quick examples for your review. In the case of GTCF, several years ago an estate attorney passed away creating an endowed fund at the Foundation. Out of nowhere a distant cousin contested the will stating it was not the wish of this woman to give her estate to charity. GTCF was required to move through probate to fulfill this donor's wishes. Under this bill, this cousin would be allowed to sue to stop the donor's intent supplanting the relative's intent in the donor's place. Likewise, nonprofits under this bill could be tied up in court over gifts hindering their operation and mission. An issue the State is currently working through stands as an illustration. If a donor makes an endowed gift to a pro life nonprofit, donor dies, but the grandson, an attorney, of the donor who is pro choice, sues the nonprofit declaring that the nonprofit is not following the original donor's intent. The pro life organization is now tied up in court, potentially loses the endowment, is forced to cease operation due to court requirement, or loses the endowment in court costs or worse completely ceases operation.

The Amendment allows individuals not involved with crafting the language in the endowment agreement to have the right to change the intent. Community foundations take the time to meet and understand how the donor's intent is to be correctly determined and carried out. This includes conversations about what arrangements the donor would like to take should the charity no longer exist, or the cause is no longer relevant. To make this work meaningless

because someone who was not involved in the original conversation would have the opportunity to change the donor's original intent stands beyond understanding for the nonprofit.

Community foundations across the state, including the Greater Toledo Community Foundation, honor donor restrictions through agreements with donors and provide for actions if the foundation does not follow such actions. These terms are established upfront when an endowment is established with the foundation.

The adoption of the Ohio Uniform Prudent Management of Institutional Funds Act (UPMIFA) in the Ohio Revised Code Sections 1715.51 through 1715.59 in 2009; we believe actions are in place to honor donor's wishes and intents through endowments. However, this bill would change the current UPMIFA safe harbor, establishing reasonable, understandable standards for expenditures from endowed funds.

Likewise, this bill appears to take power and authority regarding philanthropy and nonprofits from the Ohio Attorney General, who enforces the area of charitable gifts. 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. By changing this standing enforcement, every nonprofit in Ohio would be open to lawsuits from family members for generations upon generations. Which in turn costs both the nonprofit and the State of Ohio. The Greater Toledo Community Foundation knows well the burden of lawsuits around endowments since our creation was challenged from its first day through the courts. Yet, thanks in large part to our state laws currently in place, the Greater Toledo Community Foundation exists today.

If this bill moves forward, we would be required to add new levels of legal work to each endowment created and seek amendments to all existing endowments to ensure no future legal actions by future generations adding costs and overhead to charitable dollars. And, of course, determining how to fit agreements into this Amendments action and the Ohio UPMIFA code in each case.

If helpful, I can provide numerous additional stories regarding the marvelous work endowments within the Greater Toledo Community Foundation have accomplished for Northwest Ohio. Thank you for this opportunity to provide testimony on this critical topic to Ohio's community foundations and all charitable organizations and, ultimately, their donors and communities. I stand ready to answer any questions and provide further detail supporting our position.