



To: Members of the Kansas Senate Committee on Federal and State Affairs

From: Megan Schmidt, Director of Government Affairs
Joanne Florino, Adam Meyerson Distinguished Fellow in Philanthropic Excellence

Re: Senate Bill 133

Date: March 10, 2023

Mr. Chairman and members of the committee:

My name is Megan Schmidt spelled S-C-H-M-I-D-T. I serve as the Director of Government Affairs for the Philanthropy Roundtable and I would like to submit my testimony in support of Senate Bill 133.

The Roundtable is a community of donors who are committed to advancing liberty, opportunity, and personal responsibility through effective charitable giving. Our donors consist of private, community, and family foundations nationwide.

This legislation provides a legal pathway for the enforcement of written endowment agreements, encourages giving, and will benefit donors, charities, and the many individuals served by nonprofit organizations in Kansas. This bill also bolsters levels of trust between donors and charities by adding an extra layer of protection for donor intent so donors can give freely and generously without concern that their mutually agreed upon instructions will be violated.

Donor intent is concerned with making sure that a grantmaking foundation overseeing endowment funds understand and act in the interests of the donors vision. Trustees and board members overseeing the disbursements of charitable gifts have a moral obligation to spend the donor's money on causes that most align with the intent of the donor.

As this committee is likely aware, McPherson College recently received their largest gift ever – a commitment of up to \$500 million from an anonymous donor. If the college is successful in raising \$250 million prior to June 30th, that would result in \$750 million total for the college's endowment. Philanthropists Drs. Melanie and Richard Lundquist have committed \$50 million to the match. The initial \$25 million gift from them was part of a record \$59.5 billion in charitable donations to colleges and universities in fiscal year 2022. Higher education attracts a significant portion of our nation's philanthropic support, and that trend will likely continue as Baby Boomers prepare to make their legacy gifts, many of which will go to their alma maters and other higher ed institutions. McPherson College stands to receive a number of such gifts, especially in light of the anonymous gift.

Along with colleges and universities, many other charitable organizations – both large and small – are the recipients of endowment gifts. Charities seek them because they provide long-term streams of income; donors fund them to provide benefits that extend the donor's impact on a favored organization well beyond the donor's lifetime. But gifts directed to an institution's endowment to be expended in

perpetuity are frequently the cause of disputes when a donor's stated intent is ignored, manipulated, or deliberately violated by those who oversee the administration and spending of those gifts.

One of the most publicized skirmishes is the dispute between Princeton University and the Robertson family. In 1961, Marie and Charles Robertson granted to Princeton A&P stock worth \$35 million to endow a fund whose purpose was to educate graduate students specifically "for careers in government service." The endowment's value mushroomed to \$930 million by 2007, by which time it was being used for general funding for most of the graduate programs in what was then the Woodrow Wilson School of Public and International Affairs. The Robertsons' children concluded that Princeton was not fulfilling the terms of the endowment and filed suit. A forensic audit of the Robertson Foundation accounts revealed that Princeton had in fact misused more than \$100 million in earmarked funds. After spending nearly \$90 million combined on legal fees without even going to trial, the Robertson heirs and the university reached a settlement in 2009 in which Princeton agreed to return \$100 million to the Robertsons' foundation, a portion of which was to cover legal costs. Yet the balance of what was once a restricted endowment—over \$800 million—was left for Princeton to spend however it chose.

These instances are not rare. We have seen similar issues arise in hospitals, human service organizations, museums, and other charities across the country. In one other famous instance even an indenture of trust failed to protect a donor's directive. In 1922, Albert Barnes created a trust called the Barnes Foundation in Merion, Pennsylvania, to hold his personal art collection, a collection now valued at \$25 billion. His indenture clearly required that the art was to be displayed in a specific building he had constructed and was never to be moved nor sold. No fees were ever to be charged for viewing the art. Yet in 2004—53 years after his death—a court approved the move of his collection to a fashionable and costly museum in Philadelphia that would be open to the public for a fee. This was exactly what Barnes had dreaded and it remains one of the most egregious violations of a donor's instructions.

This sort of violation affects even relatively small donations. In 2010, a donor made an endowment agreement with St. John's University in Collegeville, Minnesota to create a summer fellowship for students to complete a substantive research paper on corporate-business ethics. While he received occasional thank-you notes from scholarship recipients, the college provided no information on the research conducted. When he demanded to see the papers that had been produced, he found that most of them had failed to address his specified topic. He went to court producing papers on such topics as "wonderment in the classroom" and even a paper in which the author had explained why he couldn't complete the assignment. The donor ultimately lost his case, but not on its merits. The March 2019 ruling of the U.S District Court of Minnesota stated that he had no standing to sue because the endowment was an "institutional fund" governed by the laws of the state and only the state's attorney general had standing in such matters.

These three examples all demonstrate that honoring the terms and restrictions of endowment gifts is a matter of great importance in preserving the integrity of private philanthropy, and in my colleague's work with charitable donors she is frequently forced to discourage them from making endowment gifts in order to protect donor intent.

The benefits of Senate Bill 133 are twofold:

- Legal Standing - The bill gives donors the ability to file a complaint with the court within six years of a violation being found in a written endowment agreement.
- Remedies - This legislation offers appropriate remedies to a donor should a violation be found. These remedies will be consistent with the recipient charity's mission and with the intent of the

written endowment agreement. The donor would receive neither damages nor any personal benefit.

With these provisions in place, donors will be far more inclined to give generously of their resources than they will be without the safeguards this bill offers.

We want to go on record expressing our support for Senate Bill 133 and we ask you to advance the bill.

Thank you, Mr. Chairman. I am happy to answer any questions the committee members might have.