

# THE SPECIAL STANDING OF COMMUNITY FOUNDATIONS AS SPONSORS OF DONOR-ADVISED FUNDS

ALICIA PHILIPP & TERRY MAZANY\*

**Abstract:** Accelerating growth of donor advised funds has attracted vocal advocates and critics whose arguments are fundamentally about definition (the purpose of philanthropy), values (good philanthropy versus bad philanthropy), regulation (government or market), policy (the role and value of tax incentives), and sponsorship (for profit or nonprofit agency). Community foundations assert a special standing as sponsors of donor advised funds (DAF) because of their unique role in communities as anchor institutions whose mission is to serve the interests of their community. The question is, is this role grounds enough to justify and preserve the distinctive value of donor advised funds held by community foundations in their present form?

## THE PURPOSE OF PHILANTHROPY

Without going into exhaustive definition, philanthropy is generally defined as private initiatives for public good, and we can go further to define it as to improve the wellbeing of humankind by preventing and solving social problems.

Arguments against the present form of donor advised funds assert a new standard, that the benefit for public good must be realized, not only in our lifetime, but within the span of a set number of years. We do not agree. Not only does this restrict an individual's freedom to design a strategy for giving to address a social purpose, it also would inhibit the social value to "save for a rainy day." In a society where the pressures are aligned with immediate performance (quarterly business cycles or four-year election cycles), our ability to devote resources for the needs of future generations should be protected.

At a time when we have saddled future generations with massive public debt, the value of endowed resources and growth of DAF funds available for the unforeseen needs of future generations should be applauded as one way that we are ensuring the long-term well-being of our society.

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\* Alicia Philipp is President of The Community Foundation for Greater Atlanta, Inc. Terry Mazany is President and CEO of The Chicago Community Trust.

After all, we encourage individuals to put aside pre-tax dollars in retirement savings – why not promote the value of incentivizing individuals to leave charitable resources for these future needs? DAFs should be seen as a reservoir of goodness and a true act of selflessness that not only does not benefit the donor (who gives up the value he or she could gain from spending those funds for personal benefit), but may not even immediately benefit the donor's community in his or her lifetime.

#### VALUES AND PHILANTHROPY

Leading a community foundation tempers any tendency to assert a standard of good or bad philanthropy. Much as the saying goes that one person's trash is another person's treasure, so too with philanthropy. The moment that we restrict the objects of philanthropic giving we enter into a form of censorship of this most American of practices.

A community foundation is typically cause agnostic and serves the philanthropic goals of the donor. Is the opera more valuable to society than the food bank? Is curing a rare disease more valuable than reducing obesity? Any form of a values-based scale will teeter on a shaky foundation of imposed values held by one person or one group. Just as proponents of the free market assert the markets role to establish value in the market place, similar forces could be postulated to arrive at social benefit through philanthropic decisions. And yes, like in the market place, philanthropic decision making may be, at times, imperfect, but there are corrective forces in the form of research studies, media coverage, community pressures, regulatory oversight, and peer learning to help correct flawed uses of philanthropic resources.

What matters most to community foundations is the philanthropic spirit of the residents in the communities we serve. This truly is a case where more is better. In fact, recently The Chicago Community Trust adopted a strategic priority to inspire philanthropy and we began that effort by first benchmarking the region we serve of 9 million people in northeast Illinois against the primary yardstick we have – the annual Giving USA study. While many community foundations track local giving trends the Chicago Community Trust commissioned the Lilly Family School of Philanthropy at Indiana University to use the Giving USA methodology to determine giving trends within metropolitan Chicago. Based on this methodology it was determined that, indeed, Chicagoland is more philanthropic than the national average.

In metropolitan Atlanta, the Tracking Investment and Engagement: A Regional Portrait study in 2014 on giving and volunteering showed that a majority of residents both gave and volunteered. More was learned about

their motivations, they gave because an issue is important to them – and, if they don't give, it is because they are distrusting of how their contributions would be used. All of the information gathered has been important to the continuous improvement of the Atlanta nonprofit sector.

Our premise is that a more philanthropic community is a community with a better quality of life. In the face of diminished government resources and the seeming inability of government to effectively address social problems, we believe the answers lie within communities themselves. We seek to counteract the forces of division and isolation that researchers like Robert Putnam have documented and rekindle a community spirit of caring and concern for each other.<sup>1</sup> The full range of philanthropy, time, talent, and treasure, we believe to be a powerful force for good that can bind up the societal breakdowns and fragmentation many of our communities' experience.

The full expression of this community spirit was on full display during The Chicago Community Trust's *On The Table* civic dialogue where 25,000 people on a single day met around individually organized mealtime conversations to discuss the future of Chicago and the role of philanthropy. The number one theme expressed was a desire for collaboration and working together to address our community's most pressing problems.

Community foundations have been innovative in the ways they have animated charitable giving from their donor advised funds and throughout their communities. One example is the launch of community-wide giving days, started by The Columbus Foundation in 2008, and now happening all across America. These giving days inspire foundation donors and others to work together to support the nonprofits of their communities over a 24-hour day of giving, using funds raised from donor advised funds and other sources to incentivize giving by others through gifts to matching and bonus pools. In Dallas, Texas as much as \$26 million was raised in one day from this activity. Other giving days, from Seattle, Washington to Columbus, Ohio, raised over \$15 million in one day, all in this most recent year. This all-out commitment to celebrate and inspire giving is clear evidence of community foundations not being focused on gift acquisition and the "parking" of assets, but in abundant, joyful and expedited distribution in accordance with donors' directions and preferences.

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<sup>1</sup> Robert D. Putnam, *Our Kids: The American Dream in Crisis* (2015).

## THE ROLE OF REGULATION

From the founding of our nation the role of associations and charitable giving has been well documented and was described by Alexis de Tocqueville as central to the American character. He observes that:

Americans of all ages, all conditions, and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools. If it is proposed to inculcate some truth or to foster some feeling by the encouragement of a great example, they form a society. Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.

And concludes:

Among the laws that rule human societies there is one which seems to be more precise and clear than all others. If men are to remain civilized or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased.<sup>2</sup>

We find it odd then that champions of philanthropy would call upon government regulation as desirable and appropriate oversight for these individual acts of generosity. On the contrary, in the domain of social good, the “invisible hand” of the market must be allowed to shape the flow of this public benefit capital.

Not only does a regulation for mandatory payouts imperil this deeply rooted and uniquely American freedom for social engagement and benefit, it also impinges on the locus of the charitable recommendations of the individual within the context of community. In the case of the proposed mandatory payouts within five years, there can be absolutely no empirical reason to be had that five years is an appropriate or relevant standard. At best this is a begrudging compromise by those whose preference would be full payout within the calendar year in which the tax benefit was received. One can imagine countless scenarios where a donor is either growing philanthropic

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<sup>2</sup> Alexis De Tocqueville, *Democracy in America* Part I (1835).

capital for a meaningful culminating or challenge gift at the end of some capital campaign, or has placed a financial windfall in reserve to be annually distributed for a cause or an organization in amounts commensurate with the size of the cause or organization. After all, it is common grant craft to know that too much money to an organization can be as devastating as too little money. And finally, it bears repeating, charitable assets in a DAF have already been given to the community foundation as a public charity.

#### SPONSORSHIP

The conflicted roles of commercial gift funds serving private purposes has been subject to criticism and with that we agree. Alan Cantor's analogy between the impact of Citizens United on American politics with the impact of the IRS ruling declaring Fidelity Charitable a 501 (c) 3 public charity on American philanthropy is accurate. The DNA of a commercial gift fund is based on the profit-motive of the parent company. The purpose is to maintain custodianship of funds, to retain the exclusive relationship for all the financial needs of its clients, and to retain the income streams from fee revenues generated by the invested holdings.

#### THE SPECIAL STANDING OF COMMUNITY FOUNDATIONS

Based on a record and legacy spanning 100 years, community foundations are in a strong and unique position to assert special standing with regard to the philanthropic wealth and public benefit that accrues to our communities and charitable causes. Community foundations are deeply rooted anchor institutions covering virtually every community in our nation – and one of our nation's best exports around the globe with more than 1600 community foundations established in other countries. Community foundations are deeply engaged with and knowledgeable of their communities, the residents, the geography, the needs, the assets, and the opportunities. Community foundations are uniquely positioned to connect donors with community, connect donors with causes, connect donors with donors, and connect donors with effective nonprofit organizations. Community foundations are community builders, investing in human, cultural, and place-based assets. And community foundations are led by community leaders for community interest.

The legacy of the community philanthropy of community foundations predates the advent of donor advised funds and helps to frame the distinctive role, purpose and intent of donor advised funds when sponsored by community foundations, as well as the powerful relationship forged between the donor and the community foundation. Gaining this perspective

requires an understanding of the idea that gave rise to the earliest community foundations in this country over 100 years ago.

At the turn of the last century, cities across the country were experiencing startling and, to some, terrifying growth of American industrial and agricultural capitalism, and significant demographic changes brought about by immigration and the great migration of African Americans from the Deep South. Communities that were small only decades earlier grew rapidly, with an increase in ethnic, religious, and racial diversity. Chicago was an extreme case of this growth. In 1840 Chicago had 4500 people, half a million by 1880 and the population more than doubled again to 1.1 million by 1890. On the Trust's fifth anniversary, in 1920, 2.7 million people lived there.

The prosperity and economic growth brought with it was not evenly distributed. It was within this broader social context that a number of community foundations arose in an attempt to rationalize American capitalism and give it a human face by helping to ameliorate some of the social ills that rapid economic growth had created.

Community foundations were born of the impulse of Progressivism which is infused into the DNA of this philanthropic institution. The Progressives recognized that they lived in cities of extremes of wealth and poverty and the desire to ameliorate them was central to Progressives. The underlying motive for the creation of the community foundation was the desire to give a human face to capitalism by turning its wealth and legal instruments for the distribution of wealth in the direction of ameliorating the social ills that rapid economic and demographic growth had created.

The idea of the community trust thus attempted to solve several problems simultaneously. It incorporated a businesslike approach to the social ills of the city. It made clever use of private funds for public purposes in an age when very few people believed government should play a role in dealing with social and economic dilemmas. It professionalized the philanthropy of wealthy people who frequently were unable to handle their own charity systematically. In short, it reflected an enlightened self-interest that married capitalism with a philanthropic impulse.<sup>3</sup>

For example, "In early solicitations the Trust tried to persuade people of significant means that their wealth would be wasted after their deaths unless they made proper arrangements for its use. The purpose of this organization is to prevent the present waste of wealth either through personal extravagance or institutional failure."<sup>4</sup> Family members could not be relied

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<sup>3</sup> The Chicago Community Trust, *Trust News*, Vol. X No. 2 (1995).

<sup>4</sup> *Id.*

upon to use their inheritance responsibly, or in accord with the wishes of the testators. “To amass a great fortune and leave it all to the family has always required exceptional nerve.”<sup>5</sup>

The inspiration for the creation of community foundations came from a desire to see money left for the benefit of a community spent wisely. This was Frederick Goff’s motivation in working with the banks in Cleveland to have a community-led institution that makes decisions on the spending of earnings from bequests left at the bank for community benefit.

As the community foundation concept picked up speed in the 1950’s and after, it was spreading to many communities with a preponderance of first generation wealth. DAF’s are a particularly attractive philanthropic vehicle for first generation philanthropists, because it gives them the opportunity for learning and engagement in their giving while living.

While community foundations have significantly increased their role and position in their communities, by providing much more than grants, they still perform the vital function of knowing deeply their communities, being open to new ideas and approaches, and having an inclusive decision-making board. Community knowledge is a hallmark of community foundations.

Beyond providing community knowledge for grant making by donors whose gifts are during their lifetime or by bequest, community foundations are also leaders and partners convening and collaborating around critical community issues. The neutral space a community foundation occupies, its knowledgeable staff and board, its commitment to inclusivity in its work makes it the quintessential anchor institution. “Anchor institutions are those nonprofit or corporate entities that, by reason of mission, invested capital, or relationships to customers or employees, are geographically tied to a certain location.”<sup>6</sup> Hospitals and universities are often cited as typical examples of anchor institutions, but they have missions that must ultimately place institutional interest above community interest. The mission of a community foundation, on the other hand, is the community it serves.

As defined by Terry Mazany and David C. Perry, “community foundations have at their root, at their very essence, the community. They have always defined themselves as institutions of communal good – when all is said and done, the community foundation is the one institution, among all others, that seeks to mobilize the resources of the community to meet the community’s needs. . . . Its mission is the community, not restricted to the interests of an individual donor, not limited to the interests of any individual

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<sup>5</sup> *Id.*

<sup>6</sup> H.S. Webber and M. Karlstrom, Chapin Hall at the University of Chicago, “Why Community Investment is Good for Nonprofit Anchor Institutions: Understanding Costs, Benefits, and the Range of Strategic Options” 4 (2009).

grant recipient, nor constrained by a particular instrument of philanthropy (be it a donor advised fund, a giving circle, an endowment, or a host of other competing sites of giving), and not beholden to the interests of any one political party or the allure of any particular initiative.”<sup>7</sup>

As a result, because community foundations are of, for and to the community, they are able to serve and engage “the diversity, fluidity, and political identities that together combine to create the meanings of community.”<sup>8</sup> It is the donors themselves that are the anchoring roots of the community foundation – and therein lies the legitimacy of this charitable institution. As an anchor institution that is permanent and deeply connected to the community, we are part of the identity of a community. We are here forever; communities will always need the resources and leadership, even though the needs and issues change.

The deep roots of community foundations are the source of their power to affect change. Working with donors, they can collectively address contemporary problems through grants and leadership. For example, five donors at The Community Foundation for Greater Atlanta have joined together to provide grants through their DAFs to incubate a wealth building business in a very low-income community in Atlanta. This social enterprise will produce 1.5 million pounds of lettuce and herbs for Atlanta’s education and medical institutions, and employ 25 new employees who can build wealth through ownership. DAFs are also working on addressing the future challenges and opportunities in communities. They do it by bringing an inclusive process of donors, nonprofits, community residents, community and political leaders together to bring innovative thinking focused on real solutions.

A common practice of community foundations is to conduct periodic needs assessments of the communities they serve. As a result, community foundations knew, early on, the changing demographics of our nation and the oncoming “silver tsunami” of aging baby boomers – and the development of strategies and programming to engage and support seniors in our communities.

On the other end of the age spectrum, in communities like Chicago that have experienced a rapidly growing Latino population, that means establishing new priorities for early childhood education, bilingual education, immigration and legal services, employment and day-labor rights protections, housing, etc. In an adjacent, seemingly affluent county to Chicago, it was not until such a needs assessment was conducted by its community

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<sup>7</sup> Here for Good: Community Foundations and the Challenges of the 21st Century 5 (Terry Mazany and David C. Perry eds., 2014).

<sup>8</sup> *Id.* at 15.

foundation that its board and the community gained an awareness of the dramatic growth in its Latino population and the consequent need for early childhood services. If the affluent residents of the county were engaged philanthropically only through a relationship with a commercial gift fund, they would not have had this deep knowledge of the challenges facing the place they called home.

Donors are an important part of the solution of community challenges. While community foundations treasure the funds they have received from bequests, the one missing piece of this is not being able to have the advice and insight of the donor. That is why living donors who chose a variety of mechanisms to carry out their philanthropy in the community foundation (DAFs, unrestricted endowments, scholarship, field of interest, supporting organizations), are important. They bring insights as residents of the community who care deeply about place. For many, their commitment to this place is multi-generational represented by deep engagement as leaders of numerous civic and community organizations. They have a perspective that is important and valid in seeking community solutions. Community foundations are fortunate to have their expertise.

As previously stated, there are many vehicles in community foundations for donors. And, just as donors use multiple vehicles outside a community foundation (private foundation, commercial gift funds, issue specific funds (Jewish, Women, Christian, disease-specific, memorial funds, scholarships, etc.)), they also use multiple vehicles within a community foundation. Creating a donor-advised fund within the community foundation often becomes the front door for their deeper engagement with the community foundation and with the needs of their community. A DAF offers the opportunity to engage with community foundation staff, nonprofit leaders, and residents to think about philanthropic goals and the benefit of creating a philanthropic plan.

More often than not, this can also be the time to engage the next generation of the family in philanthropic planning and giving. Philanthropy is conceived by some donors as a family value that they seek to instill in the next generations of their family. For those who have experienced good fortune, there is often a deep desire to give back – particularly to the community in which they achieved their wealth. This was the motivation expressed by Marshall Field V when he and his wife, Jamee, converted their family foundation to an endowed DAF at the Chicago Community Trust. There a few names more synonymous with Chicago than the name Marshall Field, and Marshall Field V felt strongly that the benefits he and his family had gained over generations should be left for the benefit of future generations of Chicagoans – and he was candid in his expression that he was not at all

confident future generations of the Field family would have similar deep roots in Chicago.

With a strong base of understanding of the time, talent and treasure the donor and their family are investing, the community foundation staff can serve as a philanthropic GPS to help guide them to think about the most pressing needs of the community they may wish to consider (basic needs, education, health care, housing, community development), the most effective strategies to address a particular need (reading by third grade or expanding arts in school, housing the homeless, reducing lead poisoning in low income neighborhoods, and so on), and the most effective organizations for their investment. In this process, the donor may also become more deeply engaged with their community foundation as a co-investor with other donors or nonprofit volunteer by working in partnership with the community foundation to have a more substantial impact.

For example, community foundations typically host giving circles of one sort or another. The Young Leaders Fund at the Chicago Community Trust engages young professionals early in their careers in a form of organized philanthropy. YLF is led by the young leaders themselves who identify areas of community need (education or after school programs, or neighborhood arts programs) and then teams of young leaders scour disadvantaged neighborhoods to find the local leaders and emerging organizations that are doing amazing work but are not of a size to effectively build a deep donor base or attract funding from foundations. More often than not, the first foundation grant received by these organizations is from the YLF – and they are able to parlay that into subsequent grants from foundations based on that initial recognition and visibility.

Sometimes these initiatives that are beyond traditional grant making come from a donor's passion or experience and benefit from the guidance and community connections and knowledge of community foundation staff.

In 2004, a donor with a DAF at The Community Foundation for Greater Atlanta expressed concern about poor rural counties lacking an economic base and trained workforce. To get at the root cause, literacy, the donor began a series of conversations with his Philanthropic Advisor at The Community Foundation for Greater Atlanta. This led to the creation of the Georgia Rural Libraries Initiative (GRLI), to enhance early childhood reading in five rural Georgia counties. Since its establishment, the donor has been deeply involved in the initiative, including the selection of the counties, annual site visits, and review of semi-annual assessment reports and evaluations. The results of this effort, indicate both high school graduation rates and standardized test scores improved (in some cases, significantly) in all five counties during the GRLI period. This is just one example of the value

of donor engagement and the power of DAF's over an extended period of investment.

Does every donor fully take advantage of all a community foundation offers at every moment? No, but we have found that donors engage more deeply at various points in their lives, often building up their resources in a DAF, much like an IRA, while they are working and then heightening their engagement at retirement. This often coincides with the intergenerational engagement of their children. When these children become adults they are already engaged and able to make a meaningful difference in the community, as a donor and as a community leader. The intergenerational dimension of philanthropy is important to emphasize. As stated earlier, philanthropy is a family value, an American value, a human value. Mandatory payout will restrict the ability to strengthen family and connect one generation to the next, limiting the bonds that could be forged within a family and across a community.

The final attribute that sets community foundations apart from commercial gift funds and other philanthropic vehicles is its form of governance. Community foundations are led by community leaders through a process of vetting, nomination, and appointment. For some of the original community foundations, such as the Chicago Community Trust, its board is defined by a Declaration of Trust that sets forth appointing authorities for each of the board positions. The university presidents have appointments, as does the mayor, the chief justice, the United Way, and the trustee banks. Collectively, these are broadly representative of the community and serve with an eye toward the common good, not as a representative of any single institutional perspective.

Boards of the newer community foundations (those established since the 1950's) are self-perpetuating through nomination processes similar to most nonprofit organizations. What sets community foundations apart from other foundations in this regard is that community foundation boards create opportunities to be intentionally inclusive of diverse leaders representing varied community interests and spheres of influence. That leads to stronger governance and deeper community knowledge that reflects the communities served.

Consequently, the board members serve as community leaders, as does the staff of the foundation. Donors are also engaged in leadership roles, as our nonprofit leaders and residents in myriad collaborations. It is the role of trusted convener that gives a community foundation its greatest strength of contribution to the community. More often than not we work through the vehicle of collaboration for collective action – recognizing that most of the problems we face require effort beyond the scope or resources of any single organization (including ourselves).

## CONCLUSION

We recognize that the accelerating growth of donor advised funds has attracted increased public attention and scrutiny. It is important that philanthropy be transparent to continue to merit its privileged role in our society and thus we welcome this scrutiny and debate. We too are concerned with the granting of tax benefits for charitable gifts that become unmoored from their philanthropic claim for social benefit. Those cases not only don't help anyone, but have the potential to cast the shroud of cynicism over philanthropy that may dampen or stunt the growth of philanthropy that we promote as vital for a healthy society.

In response, we assert that community foundations are different and that this difference makes a compelling rationale for how donor advised funds should be organized and operate. Sponsorship by a community foundation provides a strong guarantee as to the charitable intent and use of the funds – whether in our lifetimes or for the benefit of future generations, both are equally valid.