The Office of Kat Taylor
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April 15, 2019

The Honorable Buffy Wicks
California State Assembly
State Capitol, Room 5160
Sacramento, CA 95814

RE: Assembly Bill 1712 (Wicks) Donor Advised Funds - SPONSOR

Dear Assemblymember Wicks,

My name is Kat Taylor, an impact investor and donor advised fund holder, and I am proud to express my public support and sponsorship of Assembly Bill 1712 (Wicks), requiring organizations that sponsor donor advised funds (DAFs) to report additional information about the operation and management of their DAFs, subject to new rules and regulations developed by the California Office of the Attorney General. Many DAFs held by various types of sponsors, from local community foundations to large commercial entities, grant money actively and impactfully to improve the lives of Californians. In fact, many donors open DAFs with the truest spirit of philanthropy in mind, directing sponsors to get a large share of their assets out the door to produce social benefit quickly. There will always be donors aligned with the goal of using philanthropy to actively improve the quality of life of under-resourced communities, and DAFs are a flexible vehicle for them to do so. AB 1712 does not call the generosity of these individuals into question.

DAFs are a rapidly growing and increasingly leveraged vehicle for charitable giving, and are estimated to currently hold about $110 billion in donated assets. Although many DAF donors claim charitable tax deductions as a result of their meaningful investments in our communities, a substantial portion of these donated assets are held in DAF accounts indefinitely, growing tax-free, reducing federal and state tax revenues, and instead generating revenue for account managers without providing public benefit in the form of grants to charities.

DAF sponsors include not only traditional community foundations, but also entities affiliated with the largest Wall Street commercial financial institutions (e.g. Fidelity and Vanguard, Goldman Sachs). These massive, hyper-profitable entities are not required to report on the individual DAF accounts they manage, nor are they obligated by federal or state laws to disburse funds from these accounts within an impactful timeline, yet receive substantial tax breaks. In fact, DAFs affiliated with Fidelity have recently become the single largest recipient of individual charitable giving in the country, surpassing all other large charities such as The Salvation Army, Habitat for Humanity, and the American Heart Association *combined*.

The State of California spends millions of dollars annually on tax expenditures resulting from charitable deductions for contributions made to DAFs. Therefore, the people of California have a clear and substantial interest in gathering relevant financial information and reporting about DAFs to determine levels of contributions and disbursements, in order to analyze how much charitable benefit they produce in reality, and to understand what entities manage them, how they are managed, and who profits from them.

DAF sponsors repeatedly tell me that many sponsoring entities currently have inactivity policies regarding DAFs. These policies internally require some amount of disbursement over a specified period of time, and funds that are eventually classified as inactive will often have money granted out by the sponsoring entity. With many organizations it is entirely unclear to regulators and taxpayers what these specific payout requirements are for a fund to retain active status, and over what period of time. One company that does make their inactivity policy public is Fidelity Charitable. Fidelity's policy designates a DAF as inactive if three years have gone by without a single grant from a fund, and the sponsor (Fidelity) will only begin granting money out of a DAF after four years of complete inactivity. This policy could be easily sidestepped by a donor granting out a minimal amount of funds one time every three years to meet this requirement. Aside from these easily manipulated internal policies, DAFs have no state or federal requirements to pay out their funds to social benefit charities - ever.

While DAF sponsors tout their DAF grants at around 20 percent of net assets each year, the aggregate method for measuring the payout rates from DAFs is misleading in many ways. Firstly, this aggregate data can be skewed due to activity in one fund and inactivity in another offsetting one another. As a simple example, one fund could grant out all of its assets to charities in one year, while another fund grants no money at all during that same year, giving an average reported payout of 50 percent. There would be no data on the inactive fund in that explanation. This could be doubly misleading due to differences in the amount of assets between these two accounts. A DAF that granted out 100% of assets could be quite small in comparison to the one granting 0%, or vice versa. Secondly, further compounding these issues with transparency, the Giving USA report, published in July of 2018, found that a proportion of granting from DAFs was going to other DAFs -

(DAF-to-DAF) grantmaking. This means that this granting from one DAF to another counts in this reporting as money that is being granted to 501(c)(3)s' and creating social benefit. Additionally, an Institute for Policy Studies (IPS) report found that DAF payout rates have declined since 2010. The IPS report states "even as the amount of funds flowing to DAFs has increased, payout rates have been steadily going down." In summation, the report concluded that DAFs appear to be shifting giving away from active charities. DAFs can create the illusion of meaningful philanthropic activity. Even worse, the current system allows a donor to recycle funding from his or her DAF to provide 100 percent of the charitable support of a controlled charitable entity, which in turn can spend up to $1 million per year on political advocacy and lobbying activities and then recycle the remaining amount back to the DAF as a grant.

AB 1712 seeks a data-based framework for understanding and fixing the current legal loopholes which allow for active abuses, while simultaneously depriving government programs essential revenue. The public policy to support charitable activities---with contribution deductions from taxable income and tax exemption on the earnings of charities---aims to get more dollars out the door to entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." This is the fundamental objective of all charitable contribution deductions and income tax exemptions. The current commercial DAFs are instead accumulating massive wealth primarily for the purpose of enlarging the investment pools managed by massive profit-oriented financial conglomerates.

Attesting to DAFs' potential for such abuses, in 2017 a multi-million dollar community foundation federal lobbying arm, The Community Foundation Public Awareness Initiative, advised Congress explicitly to collect data on the inactivity of donor advised funds before addressing or altering public policy surrounding these funds. AB 1712 seeks to collect similar data on these inactive funds as requested by this community foundation lobbyist group. Given the utter lack of federal action on this issue, California must once again be a leader by doing what our federal government is incapable of doing.

Community foundations have legitimate concerns in relation to the disadvantages they face in comparison to management rates and technological advantages offered by larger commercial DAF sponsors. I am committed to ongoing meaningful discussions with these community foundations in order to help achieve a more just outcome in the David and Goliath situation they face against commercial entities. However, negative overreaction to legitimate calls for transparency has to end in order for good public policy to be made in our state. To quote directly from the Editor in Chief of Nonprofit Quarterly in an article recently published about AB 1712 and the regulation of DAFs, "The time for this kind of overreaction is long past" and "acting as if half of the nonprofit sector is showing up with pitchforks when rational regulations are being suggested is worse than a bad look in a sector which the public depends upon for transparency."

Assemblymember Wicks, I thank you for introducing AB 1712 and I look forward to working with you to ensure that our state government has access to the information necessary to properly review how DAFs are being used and what public benefits are being generated by the charitable tax deductions they receive.

Respectfully,
Kat Taylor
Impact Investor and DAF Holder