Donor-Advised Funds: Warehouses of Wealth?

Wednesday, May 22, 2013
12:00–1:30pm

Program and Panel

12:00 p.m.  Panel discussion
1:10        Question-and-answer session
Gregory W. Baker, President of Renaissance Charitable Foundation
Whitney Ball, President & CEO of DonorsTrust
Ray Madoff, Professor at Boston College Law School
Sarah Frostenson, Reporter for the Chronicle of Philanthropy
1:30        Adjournment
By way of introduction to our topic, let me read you the description of donor-advised funds from the website of the Internal Revenue Service, surely an unimpeachable source.

Generally a donor-advised fund is a separately identified fund or account that is maintained and operated by a section 501(c)3 organization, which is called a sponsoring organization. Each account is composed of contributions made by individual donors. Once the donor makes the contribution, the organization has legal control over it; however, the donor or the donor’s representative retains advisory privileges with respect to the distribution of funds and the investment of assets in the account.

Now lest you think that the IRS is on the lookout nowadays only for groups with terms like “Tea Party” and “smaller government” in their applications, here’s a heads up for you. In its description of donor-advised funds, the wording continues in this foreboding fashion.

The IRS is aware of a number of organizations that appeared to have abused the basic concepts underlying donor-advised funds. These organizations promoted as donor-advised funds appear to be established for the purpose of generating questionable charitable deductions and providing impermissible economic benefits to donors and their families including tax sheltered investment income for the donors and management these for promoters.

I’m sure this ominous and ambiguous warning will do nothing to chill what promises to be a lively conversation about donor-advised funds today. The Center began considering this topic for a panel some time ago when several media outlets began describing DAFs as secretive slush funds through which reactionary plutocrats anonymously funnel millions of dollars in order to subvert the Republic and were getting the full charitable tax deduction in order to do it. So when the Chronicle of Philanthropy announced it would soon release the results of a survey of donor-advised funds, it seemed an excellent time to bring together some of the key actors in this realm to talk these matters over.

We’ll begin this morning with the reporter from the survey and data team who compiled the numbers for the Chronicle of Philanthropy story, Sarah Frostenson. We’ll then hear from Gregory Baker, president of Renaissance Charitable Foundation in Indianapolis. Next will be Whitney Ball, president and CEO of DonorsTrust here in Washington, D.C. And finally, Ray Madoff, professor at Boston College Law School and author of a book wonderfully entitled, Immortality and the Law: The Rising Power of the American Dead. Whenever I have Ray on a panel, I love nothing more than to read the title of that great book, which we did have a discussion about it as I recall several years ago. And I see Stacy Palmer of the Chronicle of Philanthropy just walked in. Thank you, Stacy, again for agreeing to co-sponsor this panel.
SARAH FROSTENSON: Well, thank you so much, Bill. And thanks to the Hudson Institute and Kristen for hosting a discussion on donor-advised funds. Today to start the discussion, I’d like to highlight the trends that emerged in my reporting on donor-advised funds and how DAFs impact the current climate of giving, as I’m particularly interested in opening up discussion for what continued growth of DAFs could mean for the nonprofit world.

So first of all, DAFs are not a new charitable vehicle for planned giving. We’ve collected data on donor-advised funds for more than 10 years. But what makes them noteworthy and why we’re here discussing them today is their continued catalytic growth. Donor-advised funds are now growing at a faster pace than both nonprofits and foundations. They are also growing while the rest of the charitable landscape remains fairly stagnate. For instance, from 2011 to 2012, foundations experienced a 4% increase in asset size, while in that same time period donor-advised funds experienced a 20% increase. And according to our most recent year of philanthropy data, contributions to nonprofits only grew by 7% from 2010 to 2011, whereas DAFs experienced a whopping 46% increase in contributions from 2011 to 2012.

In comparison to pre-recession levels, DAFs are worth almost a third more now than they were then, while foundations and nonprofits still haven’t recovered. In many of my interviews with officials at the funds, I was told 2012 was a groundbreaking year both in terms of increased contributions to the funds and increased giving by donors to charity. Attributing the factors that led to this accelerated growth, however, varied from official to official. Some cited the uncertainty surrounding the fiscal cliff, charitable tax deduction, and capital gains tax as a reason for increased contributions. Others said it was the exact opposite, as some financial advisors recommended donors not increase their giving in light of this. And others said it was really business as usual, just more business as there was a surge in more accounts being opened. For instance, Fidelity Charitable had 6,000 new accounts opened last year. On the other hand, Ann Boyce, who is the president of the T. Rowe Price program for charitable giving told me that their 30% increase in assets was largely due to people who already had accounts. They were just giving more and not an influx of new account holders. She attributed this to the fact that people are finally starting to feel that the economy is recovered to such a point that they can increase their charitable giving.

However with this all said, I would remiss if I didn’t put contributions to DAFs in perspective. In 2011, roughly $298 billion was donated to charity and of that $298 billion, donor-advised funds only received $9.64 billion or 3.24% of the total charitable giving. So while we’re talking about a powerful vehicle for charitable giving that has had great growth, we are still talking about a recent phenomena and it only accounts for a very small percentage of overall charitable giving. And this is largely because DAFs remain a charitable vehicle primarily used by high net worth individuals. Although there is evidence that this is changing, which I will touch on later.

So then why all this fuss about the growth of DAFs if they don’t account for significant portion of the overall charitable giving landscape? Well, it really boils down to the rise of the commercial or national fund. And to better illustrate my point, I want to share with you an interactive my co-workers built for the Philanthropy 400 last year. So you’ll note that this is on Fidelity Charitable. In 2012, it came in at number two in the Chronicles of Philanthropy 400. That is a survey that measures private support given to charities. And so that means it received
the most private support after the United Way worldwide which was ranked at number one. Furthermore, you’ll notice that Fidelity Charitable skyrocketed on to the scene in 1995 at number 41 and then it catapulted to the top 10 by ’98 where it has remained ever since. It managed to stay at number three in 2009, which marked the worst performance for DAFs on record and it manages almost $10 billion assets. So now Fidelity has more assets than the third largest foundation, which is the Robert Wood Johnson Foundation.

The interesting point though is Fidelity Charitable was just incorporated in 1991, whereas the Robert Wood Johnson Foundation was founded in 1936. So why are funds like Fidelity, Schwab, and Vanguard growing so fast to the point that they are surpassing these longstanding institutions? Well, it’s not due to an influx of money per say but rather an increase in liquid assets or complex gifts. As Mr. Lorry Lokey who is the founder of Business Wire and a noted philanthropist who has given $700 million to charity to date through primarily his donor-advised funded Stanford and then at the Silicon Valley community foundation in California. He told me, ‘Well, many wealthy people don’t actually have that much cash on hand. Things are tied up in property, inventory, equipment, and in the business itself. You might be a billionaire but the family only has a $100,000 on hand.’ And Mr. David Wills, the president of the National Christian Foundation, which is a large DAF, consistently in the top 10, manages $1.7 billion in assets, he said that NCF made acquiring a liquid assets a priority in their strategic vision back in the early 2000’s and he told me in 2012 they received $450 million in non-liquid assets and that since 2000, they’ve easily received over a billion. And for the last 10 years, they’ve averaged 20% annuity growth in just complex assets alone.

So with this rapid accumulation of wealth at DAFs and the fact that much of the money is tied up, not readily accessible, many are asking how much is going to charity? And as a charity, how can I gain access to these funds? So this graphic I wanted to share with you. It shows the payout ratio which looks at assets versus grants for the 10 biggest donor-advised funds and this is based on 2012 data. So the median payout rate for the 87 groups that provided us with two years of data was 17%. You’ll see that in the top 10, only three funds, the National Christian Foundation, the Jewish Communal Fund, and Chicago Community Trust, are significantly above the median payout rate of 17%. The three national funds hover around that threshold. And in the case of Chicago, this year’s payout rate was a bit of an exception as one donor distributed $23 million from his fund. So on average, commercial or national funds and Jewish federations have the highest payout rates ranging from 15 to 17%. Community foundations are a little bit lower, normally in the 10 to 15% range.

What is not immediately made clear from these payout rates is how individual donors use their donor-advised funds. Sarah Libby, the president at Fidelity Charitable, told me in an internal study that they found 47% of their donors have made gifts from their funds in each of the seven past years while 70% have awarded money in at least five of the past seven years. However, the study did not capture the average or median grant size awarded from these funds. But you’re still seeing that with the 87 groups that gave us two years of data, $6 billion was collectively awarded to charity with a median total grant value of $24 million. So while this is marking significant charitable activity, giving from the funds has only increased by 7% from last year whereas contributions increased by 46%, which means there is still a lot of unappropriated money floating in these funds awaiting a charitable purpose.
So as a charity, how do gain access to the funds and what are DAFs doing to encourage increased charitable giving from these funds? Well, many of the discussions with fund representatives centered on the fact that most donors already know what causes they want to support when they donate to their fund. And as there is not necessarily much of a need or desire from the donors to facilitate conversations with nonprofits other than the usual vetting process to ensure that they’re a 501(c)3, which is why Dr. Una Osili, the director of research at the Indiana University Lilly Family School, told me the real challenge is if nonprofits aren’t even in the equation. She stressed that the giving decision is much more complex today than it was and it’s no longer a donor just seeking a nonprofit to make a grant. Now donors are turning to their accountants and their attorneys for advice. Donors are interested in developing long-term charitable giving plans.

That said, another trend I found in my interviews that is only beginning to emerge is DAFs are becoming increasingly viable as a charitable vehicle for individual who are not high net worth. While it still costs $25,000 to open an account at the National Philanthropic Trust, this year’s six funds reported that they do not have a minimum fee to open an account. Ms. Debbie Wilkerson, president of the Greater Kansas City Community Foundation, told me that by not having a minimum fee required to open a fund and only a $250.00 annual fee, which breaks down to $21.00 a month, they’re enabling a family of modest means to have access to the convenience and all the benefits of a donor-advised fund. They believe that DAFs have the potential to democratize philanthropy. They currently manage 300 funds that are under a $5,000 balance, which was the previous minimum.

Similarly, the Jewish Communal Fund has a low balance fund called The Next Generation Fund, which only has a minimum fee of $1,800 to open, as opposed to the standard $5,000. This is designed for young donors under 30. Ms. Ellen Israelson at JCF said that they didn’t want the minimum amount to be a barrier for people in wanting to give. And then there’s the new DAF run by Plan G through Renaissance Charitable that aims to make online shopping a way to give back to charity. So there are a lot of different, innovative ways in which donor-advised funds are trying to engage not only with charities but to give donors more viable options.

So in conclusion, in a charitable climate where foundations have struggled to bounce back to pre-recession levels and contributions to charities still haven’t fully recovered, donor-advised funds are growing and they’re growing rapidly. Last year, they were worth more than 20% than they were pre-recession and now it is almost a third. But contributions to DAFs still only make up 3% of the overall charitable giving in the United States. However all signs seem to indicate that DAFs will continue to grow and to have an increasingly important voice in the charitable sector. Already in this first quarter, $7.8 billion has been given to donor-advised funds and $3.4 billion has been awarded to charities. So the question that we must grapple with now is, how will the increasing importance of contributions received by donor-advised funds impact the larger nonprofit world? Thank you. [APPLAUSE]

GREGORY BAKER: Thank you to the Hudson Institute and to the Chronicle for Philanthropy for inviting us today to have this discussion. I bring you greetings from Indianapolis. In Indianapolis, we like to think of ourselves as the heart of philanthropy. We are, of course, the
birthplace of the partnership for planned giving, philanthropic planning. We were also, for 20 years, the home for the Hudson Institute. We were the home to the Lilly Foundation, which is known for innovative grants, including a grant program that has funded several community foundations locally inside the state of Indiana. We are also the home for the Lilly School of Philanthropy. We’re the home to the Central Indiana Community Foundation, which has revitalized Indianapolis specifically with two programs recently, making Indianapolis more bicycle friendly and also the Eugene and Marilyn Cultural Trail.

We are also the home to Renaissance Administration, which is the nation’s largest and oldest third party administrator of a charitable remainder trust with approximately $2 billion under administration and also $2 billion of donor-advised funds for charities across the country. That includes Renaissance Charitable Foundation, which just finished its first quarter of 2013 by just cresting the $500 million level in donor-advised fund assets. We at the Renaissance Charitable Foundation are sponsoring charity for 11 different donor-advised fund programs.

That brings me to my first point I’d like to talk about today and that is definitions within the industry. If we are going to have an industry, we need to have definitions so that we can talk about them in a concise and cohesive manner. Donor-advised funds by the Internal Revenue code refer to both the charity that is running the donor-advised fund and also refer to the individual donor-advised funds that are created so, Ray, if you created a donor-advised fund with a DonorsTrust, Whitney, if you created a donor-advised fund with a DonorsTrust and, Sarah, if you created a donor-advised fund with a DonorsTrust, we’d have donor-advised funds but it’s also very common to refer to DonorsTrust as a donor-advised fund. And I will give you an example from an article that you wrote, Professor Madoff, and this is a tax write off now charity later.

Donor-advised funds are the faster growing charitable vehicle in the United States. They hold an estimated $25 million. There are twice as many as there are private foundations. The largest of these funds, Fidelity Charitable, is the largest charity in the country. So we are using the same phrases to refer to two different parts of the business. And what I would propose is that the individual fund is described as a donor-advised fund and the overall group of funds together be referred to as donor-advised fund program just to help the conversation be a little bit clearer.

The other part that I see in my conversations with donors and with professional advisors across the country is the use of the phrase donor advisor. Once a donor has created a donor-advised fund and made their charitable gift, very often, 99% of the time, they will be the sole grant advisor. So the sole part making advice with regard to investments and grants. However, we see a rising an increase in grandparent donor-advised funds, where a grandparent is providing the funds and a grandchild is involved in making grant advice. And that is a relationship that the grandparent has with that particular grandchild or grandchildren. The grandchildren have not made a single contribution monetarily but they are, in fact, performing a role and that role is as grant advisor. And I think grant advisor is the best way to refer to these people as opposed to donor advisors. We also see situations where the donor has actually passed and using the phrase grant advisor makes much sense to me or successor grant advisor than successor donor advisor.
Donor-advised funds are as unique as the people who create them, from the people who create them specifically to be an alter ego to them for themselves to the people who create birthday donor-advised funds to make a grant every year on their birthday to their favorite charities to the people who use donor-advised funds when they are in the throes of selling their closely held business. They are as unique as the people who create them.

I would like to propose that there are several safeguards already in place at most donor-advised fund programs if we’re concerned about them about being warehouses for the wealthy. First of all, there is the IRS. We are, in fact, nonprofits. All sponsoring charities that sponsor donor-advised funds are nonprofits. They are required to be registered with the IRS. They are subject to state charitable solicitation registration rules and oversight and compliance. We all file the Form 990 and on there is perhaps the best current proxy for whether donor-advised funds are warehouses for the wealthy, the Schedule A part 2 line 14, the public support percentage number. That is perhaps the best current proxy for describing whether or not a particular donor-advised fund program is a warehouse for just particular wealthy people.

Almost every donor-advised fund program that I know, every sponsoring charity has its own audited financial statements each year. The IRS and their donor-advised fund guide sheet refers to program requirements for making distributions. We refer to this as the inactivity rule. We have a three-year rule at the Renaissance Charitable Foundation. If a donor-advised fund has not had any activity, whether it’s contributions or grants, within a three-year period, and we have increasing alarms and increasing levels of conversations finally resulting in a required grant.

Also, as to donor-advised funds as being warehouses for the rich, our median donor-advised fund value is $27,022. I don’t think that that is a warehouse for the wealthy. One of my favorite donor-advised funds, alex’s place, is a pediatric cancer care unit in conjunction with the University of Miami. Alexander Daley is the lead donor behind this. He was inspired to bring together all the pediatric cancer care units within the University of Miami health system to one location. Before alex’s place was created, the children would have to go to one place for diagnosis, a second place to receive their medication, a third place to receive their treatment. They needed to have that all in one location and now it is in a kid friendly location, whereas before it was right next to the prison ward. Now it is in a very kid friendly location. It’s very close to the street in terms of being an easy access for family members. It’s got Xbox games in the waiting room. It’s a really, really nice place to visit but it would not have occurred without Alex’s donation.

Alex could have written a $2 million check to the University of Miami to create this organization; however, he wanted to make sure that alex’s place was actually up and running, as opposed to ‘I’ll give you $2 million’ and then three years later you come back and they say, ‘We need more money.’ And so he built in a series of triggers in his grant. $250,000 to get started. Once you break ground, another $400,000. Another tranche of money once you actually have programs up and running. And along the way though, Alex has made additional grants to the same organization from his donor-advised fund beyond what he expected originally because of his involvement with this particular organization.
I could talk about several different types of donor-advised funds. I mentioned a couple of them earlier but my closing comments are that DAFs do work. There are 177,000 donor-advised funds approximately in the United States today. There are 650 sponsoring organizations. They made over $7 billion in grants in the year 2011. My view on charitable giving, and I’ve helped people give billions of dollars to charity, is that a bird in the hand is worth more than two in the bush. I would much rather have money in any donor-advised fund or private foundation or any other charitable tool rather than hope that they will make a gift down the road or in their estate plan.

Yesterday I had the privilege of flying in. I came in a little bit early so I thought I would find out where Hudson Institute is. And I got off the wrong exit apparently and wound up at the National Holocaust Museum. And in the National Holocaust Museum and in the other museums that I visited on my walk up here, they were all very similar in that they all had a donor wall. And if we require donor-advised funds to make grants out too quickly, we will not be able to fund the foundations. We will not be able to fund the new medical cures that we need to have. We will not be able to fund new educational programs and that is one big reason why we need to keep donor-advised funds the way they are. Thank you very much. [APPLAUSE]

WHITNEY BALL: Thanks to you, Bill, and the Chronicle for putting this together. I think it’s been a long time coming. I’ve been asked to represent cause-related donor-advised funds and generally defend the vehicle. So I think it will help if I start with a little bit of the history behind DonorsTrust. It starts with the advent of the first commercial fund back in ’92 and that would be Fidelity’s Charitable Gift Fund. At the time, Kim Dennis and I were running the Philanthropy Roundtable, which I’m sure many of you were familiar with. The Roundtable is dedicated to the preservation of donor intent, private voluntary action, and a vibrant private sector that is necessary for the wealth generation that makes philanthropy possible.

During a brainstorming session, Kim came up with the idea that a donor-advised fund could help donors carry out the ideals that the Roundtable was promoting. It would be a tool for putting ideas into action, and in 1999, Kim’s idea and a donor in need of a philanthropic vehicle met. Bruce Jacobs didn’t want to bother setting up a private foundation and he didn’t trust his local community foundation to honor his charitable intent. So he committed the startup funding for DonorsTrust and he opened our first account.

The central animating purpose of DonorsTrust is to protect charitable intent in support of liberty. Many of you are familiar with the problem of donor intent. Historically, it has been all too common for charitable capital, particularly charitable capital held by private foundations, to drift away from the original donor’s intent and free market principles that made the philanthropy possible. Through an account at DonorsTrust, donors can be assured that their charitable capital will be granted out in accordance with the guidance they’ve given us in writing. We’re able to make and keep that promise because we put a protective boundary around the charitable capital in our care. A broad variety of groups fall under the umbrella of liberty. Hospitals, private schools, universities, civic organizations, religious organizations, and, of course, public policy. And although most of our clients are primarily concerned with supporting public policy, we believe that private voluntary action offers the best means of providing for human needs and concerns.
So we are pleased to support a variety of groups that don’t rely on large amounts of government funding. We rarely support groups that take more than 25% of their revenue from government sources. And within these guidelines, donors can recommend grants at any time from their accounts. We also ask that donors plan to sunset their accounts within about 25 years of their death. There are no permanent donor-advised accounts at DonorsTrust. We might be the only donor-advised fund that does this. And while these guidelines provide an additional safeguard for donor intent, they also work to support our mission and our community. There is no lack of need among the charities that we support. Our sunset guideline also lets the air out of the accusation that donor-advised funds are warehousing wealth. We find that simply suggesting a sunset deadline prompts most of our donors to choose a timeline that is closer to 10 years versus 25 for bequest accounts.

Our current accounts are actively being used for annual giving. That is to say, most of our accounts do not carry large balances year after year. We are very proud to boast a cumulative payout of well over 80%. Since our founding in 1999, we’ve received $569 million in gifts to donor-advised funds and we’ve granted out over $500 million. We currently have a fund balance in the neighborhood of $73 to $75 million. As a cause related fund, DonorsTrust is a really hybrid of a donor-advised fund and a community foundation. Our community is philosophic instead of geographic. One could even say that the Tides Foundation are ideological opposite is the best example of a similar organization.

We are first and foremost mission driven. We’re better able to assist and advise our donors than a local community foundation or a commercial donor-advised fund because we’re more knowledgeable about the charities that form the community we support. Now I don’t mean to caste dispersions on donor-advised funds and particularly commercial donor-advised funds. To the contrary, I firmly believe that all donor-advised funds serve to increase the plurality of giving. And I think that the large donor-advised funds are particularly good at this.

DAFs have been criticized for warehousing wealth but I don’t think the critics consider that if it were not for DAFs, it’s possible this money wouldn’t be going to charity at all. The fact that a donor can make a gift of stock with a click of a mouse and manage their giving online can’t be anything other than good for charity. I suppose some donors might have started a private foundation rather than opening up a donor-advised fund, but I don’t see how that helps charity. And as Sarah pointed out, donor-advised funds achieve a much greater payout rate than the required 5% that private foundations have. When you take the example of the Robert Wood Johnson Foundation, you have got one board of directors advising that money compared to how many different donor advisors at just Fidelity alone. So that is where the plurality comes in.

And the thing is, private foundations really are the province of the wealthy while donor-advised funds allow donors with just a few thousand dollars to enjoy tax benefits and administrative assistance along with the luxury for thoughtful and systematic giving. In fact, donor-advised funds make giving so easy that conversion from private foundations into donor-advised accounts has been a real growth area in donor-advised funds. I think you all reported a couple years ago that was the big thing, and that has been true for DonorsTrust as well. The hassle and expense of setting up the foundation, managing the investments, keeping the books, filing the tax returns
just isn’t worth it compared with the efficiency of a DAF. One of our clients, after rolling his private foundation into an account with us, said to me ‘If I had any idea what a pain in the butt it was to run a private foundation, I never would have started one.’

So while I’m defending commercial DAFs, I’d like to dispel another criticism and that is the profit motive. I just don’t see how being paid to add value to the philanthropic process creates a problem. If all the money held in commercial DAFs were distributed among a broad variety of charities that don’t maintain endowments, I think it’s possible you could make an argument that that would benefit charity. But the fact is many charities, private foundations, and most conspicuously university endowments pay investment managers to grow their assets. So why is it okay for an investment manager to be making a profit adding value to endowments but not DAFs? In both cases, the assets are legally set aside for charity and there is plenty of competition out there to keep prices low.

I’ll end by making a couple points in favor of anonymous giving, which has become a bit of a hot topic lately and it is one of the benefits of giving through a donor-advised fund. Though I would like to remind everyone that the only giving that is publicly reportable information in the United States is giving through a private foundation. If you as an individual give directly to a charity, there’s no reporting requirement. Donor-advised funds are the only means of being anonymous to the charity. Anonymous giving has a long history. A couple thousand years easily if you’re looking through the lens of the Judeo-Christian tradition.

There are a lot of reasons why donors might choose to be anonymous. For instance, a donor might want to live a quiet life, below their means, below the radar. A donor might not want to be singled out and harassed by those who disagree with their philanthropic choices and they certainly don’t want to see their children singled out. Imagine a donor who wants to support their university or college and they want their children to be able to attend that same school but they don’t want their kids to be that kid whose family name is on the business school. And, of course, there is no donor out there who wants to become the target of relentless fundraising or crime or even kidnapping. All of us involved in philanthropy know that donors are treated differently. We’ve all done it. There aren’t many grantees who can resist the temptation of flattery or even manipulation for the sake of the cause. And I think removing the option of anonymity could have a coarsening effect on philanthropy, not to mention stifle freedom of speech, free association.

American charity is the envy of the world. It’s fueled by a prosperous and generous society that thrives on innovation. Donor-advised funds may be a creature of the tax code but they’re also undeniably a product of American generosity and innovation. Why would anyone want to strangle the goose that’s laying golden eggs by imposing restrictions on the very qualities that have made DAFs so attractive to so many people who might not otherwise be giving? Thank you. [APPLAUSE]

RAY MADOFF: Hi, everyone. Thanks so much. It’s a real pleasure for me to be here today with these fantastic co-panelists and to talk about this important topic. Although I have hoped that the statute of limitations might have run on this issue of my name since it’s a charitable
crowd, let me just make clear, I’m not related to that fellow for those who are wondering so there is no distraction on that.

Many people describe our age as one in which we are all living in our own siloes speaking to people who have similar values to ours and rarely listening to dissenting views. And yet, Bill Schambra here at the Bradley Center for Philanthropy and Civic Renewal and Stacy Palmer of the Chronicle for Philanthropy have been real beacons in presenting a forum where true dissenting views come together. This is so rare and it really makes it especially valuable for me to be here today at this panel discussing this important topic by these important co-sponsors.

The meteoric growth of donor-advised funds, particularly in contrast to what’s happening in the more traditional charitable gift world, is definitely worthy of attention and though I like a good controversy, I have to say that we might be a little bit disappointed today because I am not somebody who is opposed to donor-advised funds. However, I do believe that the rules governing the donor-advised funds need to be resolved or revised in a way that will promote better practices for all sponsoring organizations and not simply those sponsoring organizations here that choose to adopt excellent policies. I think these excellent policies should be part of the system as a whole.

Now I’m mindful of time and very interested in people’s questions so I’m going to keep my comments brief. But what I’d like to do is talk briefly about the reason for the explosive growth of donor-advised funds and then talk about what I see as problems with the current rules governing donor-advised funds and finally what my proposed solution would be.

So as we know and as is evidenced, donor-advised funds are very much in the process of changing the charitable landscape as we know it. Although it’s true that right now they constitute less than 5% of all the donations, given their meteoric rise there is no reason to think that they aren’t going to be continuing to expand and become more and more popular for donors. And the reason is they provide the maximum benefit for all donors of all sizes. For small donors, by putting money in a donor-advised fund you can avoid that pesky reporting requirement that you would otherwise have if you have to keep track of receipts of every small donation that you make. You make one contribution to your donor-advised fund. You keep that as your record and you don’t have to worry about any more record keeping. And I think donor-advised funds have been served as a very valuable function for that.

For larger donors, as has been talked about, donor-advised funds provide a convenient alternative to private foundations. It is an easy low-cost way of setting aside money and making gifts over time. However, I think that as Sarah talked about, the real reason for the expansion of the donor-advised funds is the fact that DAFs provide maximum tax benefits for the most high end tax donors and the reason is if a wealthy donor wants to set up a private foundation and wants to give something other than cash because they want to avoid capital gains on their assets, they are limited to giving publicly-traded stock. Otherwise, you don’t get the full fair market value deduction. It’s only if you give to a private charity that you can give limited partnership interests and business in small corporations, real estate and tangible personal property. All of these things you only get the maximum tax benefits if you give to a public charity. So donors who want to devote some of their resources to charitable endeavors by giving it to a donor-advised fund, they
get to get all of the tax benefits of a public charity but the continued control of a private
foundation and that is what is driving this explosive growth. It is the fact that it is taxed like a
public charity, as if you’ve given your money to the Red Cross, but it operates in some ways like
a private foundation.

So with all of these advantages of the donor advised funds, what’s not to like? Why am I up here
presenting a diverse view at all? Why aren’t I just joining in the choir? And I feel that, well,
donor-advised funds do serve a function and particularly in terms of things like recordkeeping
and as a good alternative to private foundations. I don’t think private foundations are a better
alternative at all. I think they’re worse. But that’s for another day. I am at heart a tax person and
I am concerned about the lack of coherence in the tax rules. Gifts to donor-advised funds are
being given extraordinary tax benefits and I believe that it’s appropriate that we make sure that
we are getting the value that we as taxpayers in this room are supporting through the charitable
deduction because there is lots of revenue that is being lost when this money is being given and
so I want to make sure that I’m getting something for all of this money that’s going and is being
deducted.

The charitable deduction, as you know, has been in the news quite a bit lately. President Obama
has threatened to give a haircut to the deduction and that has caused the creation of an
organization called the Charitable Giving Coalition. Some of you might here might even be
members of that organization and I credit whoever came up with excellent tagline that says ‘The
charitable deduction is not a loophole. It’s lifeline.’ I think that’s a great line but basically what
they say in their material is that it’s inappropriate to look at the tax aspects of the charitable
deduction. What’s important is to look at what charitable donations are giving to us as a society
and what they’re giving is that they’re serving needs of the world. They’re serving individuals
who are in need. They’re creating museums and all those great nonprofit things and they’re also
growing the economy. You have a huge 10% of America’s workforce works in the nonprofit
sector and so this idea that the charitable deduction supports all this is a very powerful message.

Well, when I take that message and I apply it to donor-advised funds, I’m not so sure that it’s
really fulfilling it. Is money sitting in a donor-advised fund really doing anything to feed
somebody or support a museum or to grow the economy? There are a few money managers that
are being paid but that is not really what we mean when we’re talking about fueling the
economy. And what I’m concerned about is that the rules governing donor-advised funds do
nothing to encourage that end of getting money out. So when you look at the IRS rules, they
require no payout ever, so the money can be held for decades or even centuries and the IRS and
Congress has no problem with that. In addition, private foundations who have their 5% rule are
able to satisfy their 5% payout rule by giving to a donor-advised fund where it can then sit for
decades or even centuries. To me these rules don’t make sense. And the fact that we have
organizations that support better rules, I think that’s great, but shouldn’t all organizations be
adopting those practices? Wouldn’t that be a more sensible alternative?

People like to report this 17% number and say that therefore we don’t have to worry about
donor-advised funds because they’re paying out a lot of money. And my concern with that is
that what’s happening is that a number of donors, as Sarah talked about in her report, particularly
the smaller donors, are using them as a form of charitable checking account where they make
their annual donation once and then they pay it out all during the year. So they essentially have a 100% payout going on, right? Excellent. I’m getting nods from my experts here, and that’s great. However, why should the fact that other donors for the supporting organization are giving 100% of their funds, why should that relieve me of my obligation to make even one gift from my fund? If this is a problem, if we think donors who have gotten a charitable deduction for their gift should put the money out to charity, then we should make sure that each donor is subject to that obligation and not somehow relieved of the obligation because others are going beyond their obligations.

A second problem with donor-advised funds that I have is the fact that donor-advised funds in their current form are built on a deception and this deception undermines the integrity of the tax system. The reason donor-advised funds work for purposes of taxes is because it is legally the case that the charity owns the money and is under no obligation to listen to the advice of the donor. Right? The donor can give advice but the charity is under no obligation to do anything with it. And yet, the parties know that in the vast majority of cases, of course, the organization is going to listen to the donor. So we have a system that is entirely based on this kind of a wink and a nod system. Don’t worry about it. Enter into the agreement. Sign away your rights but we all know what’s going to happen. Well, to me there’s something extremely distasteful about having a tax rule that primarily applies to the wealthiest Americans operate on this kind of wink and a nod system. Why do we do this?

Moreover, the current move of the rules, for those who’ve been following this, has been to try to add even more window dressing to this system. That only makes the problem worse because what it does is it creates problems like the Friends of Fiji situation, which some of you might be aware of but others might not. Friends of Fiji was one of these charities that came out after the tsunami disaster and somebody had some nice winnings. I believe $2 million of winnings in Las Vegas and the tsunami just happened. So the winner decided to give his winnings to this donor-advised fund, Friends of Fiji. And they said this is going to be great and I’m going to commit it to a charitable purpose. Well, the problem was that the people that ran Friends of Fiji were not like the people that ran Renaissance or DonorsTrust and what they did was they decided to instead use the $2 million to pay themselves bigger salaries and to have a celebrity golf tournament. They thought that would be a fun thing to do and the guy sued and they said, ‘No. You signed over your rights.’

Well, what do want to protect that system for? That strikes me as going the exact wrong way in the tax world. So I think the way to address this situation is to recognize donor-advised funds for what people are treating them as, which is basically a tax advantage charitable checking account. It is an opportunity for people to set money aside, receive huge tax benefits, right, because they can give their limited partnership interest and their closely held stock and their real estate and their Stradivarius violins and they can get the maximum tax advantage, which they wouldn’t get in a private foundation. So we’ll give the maximum tax advantage but we won’t require a payout.

I agree that one of the advantages of the donor-advised funds is the flexibility and people want to use them to acquire money. They don’t want to be tied into an annual payout. But you don’t need to have an annual payout in order to have a payout rule. So what I propose is that we have something like 7 or 10 years during which time the money is either spent or if it’s not spent, it
goes to the charity that the donor names at the time of setting up their donor-advised fund. And that would be a simple self-executing way of accomplishing this result. The money will get to charity but you’ll maintain all the flexibility and all the value of the donor-advised funds.

Now I’m sure we can talk about other aspects of this and I look forward to your comments but it does seem to me that given the state of the enormous charitable needs in the world today and the need for integrity in the rules governing the tax system, it strikes me that now more than ever is the moment that we could adopt some rules that would really serve both of those ends and I thank you for your time. [APPLAUSE]

WILLIAM SCHAMBRA: That’s great. And I quickly should mention this. I got in response to our invitation an email from Terry Mazany at the Chicago Community Trust who said there is a voice missing from this panel and that is the voice of the community foundations, as you see from Sarah’s presentation. Community’s foundations, in fact, do hold a great many of these donor-advised funds. The first donor-advised fund was at the New York Charitable Trust in 1931, so this has been around for a while. Anyway, Terry had mentioned that they were coming out with a book on community foundations to mark the 100th anniversary of the first community foundation, the Cleveland Trust, and I promised him we would do another panel on this topic in the context of community foundations, which I’m always happy to do. Listen to recommendations from folks.

Gregory, Whitney, what about this wink and a nod? First of all, have there ever been instances in which the folks who manage the broader 501(c)3 have said to a donor advisor or a grant advisor, ‘No, we really don’t feel comfortable making that grant.’ Two, is it within your imagination that you might get to the place where something like that would happen?

WHITNEY BALL: Yes. That’s an easy question for us because we’re a cause related donor-advised fund. So there are grants we won’t make and we have had to say to donors before, ‘I’m sorry, we can’t do that. It’s outside the mission.’ When we are talking to donors about opening up an account, we’re interviewing them as much as they’re interviewing us. And this happens with the smaller donor who’s probably less sophisticated wanting to make a grant to an organization that’s c4, which we can’t do and they’ve probably been deducting it on their tax return because they don’t know the rules and, no, we cannot do that. So, yes, we definitely have said no.

GREGORY BAKER: We’ve also said no a number of times, even though we’re not cause related. In fact, on the same day we might get a grant check that would go out to Planned Parenthood as well as to the Billy Graham Evangelistic Association. And since I get to sign the checks, I’m on both of those organizations as a key donor and it’s interesting to receive mail back saying, congratulations, Gregory, we love you so much. So we don’t say no because of cause related but we do clearly say no and we have many times when it is a 509(a)3 organization that we cannot support, when it is a 501(c)4 organization that we cannot support, when it is for tuition of a family member of the donor. There are quite a few restrictions and rules that are in place that we must follow and that we have always followed even before the Pension Protection Act of 2006.
WHITNEY BALL: That’s another thing, which would probably get to some of your concerns, too, is a donor might want to do something like buy a table. You can’t do that through a donor-advised fund. So there are times we just can’t do it.

WILLIAM SCHAMBRA: So the wink and a nod thing, Ray, you just made that up.

RAY MADOFF: No, no. You’re misunderstanding the wink and the nod problem. The wink and the nod problem is the fact that it is not with the organization who are doing the right thing. It is the fact that the reason they are allowing all of the tax advantage that they’re allowing is because it as if you’ve given an outright gift to the Red Cross. Right? For them to do with whatever you want. What I’m concerned about is not what organizations are doing. They’re doing the right thing. What I’m concerned with is, when you look at the definition that you read in the beginning, the person retains advisory privileges. Well, what does that mean? It doesn’t mean anything. There are no such things as advisory privileges. You either have a right to do something or you don’t have a right. What I don’t like is a tax system that is based on something fake. You’ve given it to the organization even though we know that you haven’t really. That’s what I object to, not what the organizations are doing.

WHITNEY BALL: I agree that there is this wink and a nod. But there is the problem of the Friends of Fiji, where I the truth of the matter is legally we could dump all of our donor-advised funds to support stuff that our board of directors wants to do and our donors would not be able to do anything legally. Now the problem is we would be out of business if that happens. So we have a market test.

RAY MADOFF: The question is why Congress doesn’t adopt more honest rules. That’s my only gripe. Why doesn’t Congress do something more sensible? You’re giving me a look. I know.

WILLIAM SCHAMBRA: Therein lies another discussion.

WHITNEY BALL: That might take longer than 90 minutes.

WILLIAM SCHAMBRA: That might take longer than 90 minutes. But Gregory and Whitney, what about this notion, the proposal that Ray has for forcing money out the door, is that a reasonable idea? I mean, as you all pointed out, there’s already a higher payout on average than at private foundations.

WHITNEY BALL: It wouldn’t be an issue for us. I mean, here’s the thing. In principle, I don’t really disagree with that. But the problem is how do you regulate it? How are you going to enforce this regulation? You’re complaining about the wink and the nod and the stupid rules that Congress makes. Well, we can just go the bank on the fact that whatever they decide to solve this problem is going to be ridiculous, and so my only concern with that is what now am I going to have to do when we really do payout. As I mentioned, this is a matter of principle for us. There is no such thing as a permanent account at DonorsTrust and I’m a big fan of sunsetting. I’d like to see private foundations sunset. So I’m with you on that. So I agree in principle. My big concern is what on earth will we have to do?
GREGORY BAKER: The idea of sunsetting a donor-advised fund to me does not make sense. And that is because donor-advised funds at their core, the donor has made a contribution. The donor has a specific goal in mind. Almost all the donors that we come across, they want to support between three and five charities and we see this true in their estates. We see this true in their other charitable giving plans and we see this true in their donor-advised funds. They might wind up writing 26 checks a year to different charities but there are three to five that are core charities that they truly want to support.

But then something happens. When I first started in the business, AIDS was not known. And if someone had created a donor-advised fund or a private foundation 12 years before and then we had 10 year sunset, they would not have been able to participate with that block of money in finding a cure for AIDS. On the drive up today, the National African American Museum for History and Culture, donors would not have been able to support that particular museum with their block of money if they had created their donor-advised fund 13 years ago. And so I feel that ongoing tragedies in Oklahoma, hurricane disasters, they all require ongoing support and to require a sunset or a distribution out of all donor-advised funds on a preset schedule as a requirement in society is the wrong move.

SARAH FROSTENSON: If I may. I think in terms of Ray’s proposal, something that would be interesting to flush out a bit more is how these individual funds are performing. The Congressional Research Service just issued a report in July 2012 on the performance of the funds and they’re saying these variations are kind of hidden. We don’t know how an individual donor uses the fund and I think that would be a really interesting new avenue for research because maybe most organizations are acting like Renaissance Charitable and DonorsTrust and they are holding up these donors, but the fact is we just don’t know. The data is not there.

RAY MADOFF: I agree with Whitney about being skeptical about what Congress can do but I think that there’s actually a very easy way of handling this, which is simply saying that when the donor sets up their donor-advised fund, they simply name a remainder charity. So I don’t think the mechanics would be difficult. I don’t think it would be burdensome for the sponsoring organizations at all.

As for Greg’s point, I think that these are philosophical differences about sunsetting dollars today versus dollars in the future. But the only thing I’d like to say in response is that we do have a system that in its bluntest terms tries to draw a distinction between organizations that are doing things, we call them public charities, and organizations that are holding money and simply supporting the doing organizations. We used to call them private foundations. Now we have these new entities and I do think that it’s appropriate that where they are getting these extraordinary tax benefits, I don’t think it’s too much to ask that there be a payout requirement. You talk about payouts occurring within 14 years but I’m interested what you would think about somebody who said, I want to set up a donor-advised fund but I don’t want it to address any problem until 100 years from now. Is that something that you would have a problem with or is that something that you think should be fine?

WHITNEY BALL: I don’t even know if we’ll even be here 100 years from now.
RAY MADOFF: That’s why I think it’s a problem.

WILLIAM SCHAMBRA: Okay, questions from the audience.

Q: Hi. I have a question for Professor Madoff. I know you’ve been making a distinction between maximum tax benefits and what I presume are somewhat lower levels of tax benefits. You may hang a great deal of importance on that distinction. I don’t know that all of us would want to after all for decades the case has been made that you get significant tax benefits from any charitable donation that’s get deducted, right? So assume that there’s a vast difference between a lot of tax benefit and even more tax benefit. Is there anything you said about DAFs that wouldn’t apply to university endowments? And if so, if you get a significant tax benefit when you give to it, they tend to sit there often virtually in perpetuity. They’re often put in designated accounts within the endowments. The donor has advice to give that need not be taken by the university. The money can sit there for virtually forever. Many universities never touch them. So I’m assuming that anybody who advocate DAF sunsetting or minimum payout requirements would say the same about university ones, and if anything, should go after university ones first. They’re much larger. They have longer standing. And yet, a little bird tells me that a lot of people would make a very sharp distinction between those two.

RAY MADOFF: I wouldn’t make a sharp distinction. I’m glad you raised that question because I think that’s one of the more powerful objections to saying that there should payouts. But in response, I’d say that there is a small difference, which is that the purpose of the university or any other public charity is to pursue whatever their charitable purpose is that they’re promoting. Their board is deciding how to use the funds and they’re allocating sometimes to their permanent funds and sometimes not. And at least we’re one step closer to the operating organization. Personally I would like to see there be payout obligations for these types of funds. But I don’t think it’s the case that because many public charities are holding endowment funds that therefore it’s perfectly fine for these funds to be even one step further removed sitting in the donor-advised fund for 50 years and then being given to a university endowment for another 100 years. I still think that this is a problem and it’s a particular problem because the purpose of these funds is to promote charitable giving. Don’t just hold it in there.

GREGORY BAKER: I would also say that on the idea of the donor-advised fund sticking around forever and ever and not making the grants, our three-year activity rule would be a best practice that I think should be adopted.

RAY MADOFF: As legislation.

GREGORY BAKER: I have no problem with that because we do it.

RAY MADOFF: There we go. See, look at this. You get all sorts of agreement here today.

WILLIAM SCHAMBRA: I try to avoid.

RAY MADOFF: I know.
WILLIAM SCHAMBRA: This field is rife with agreement and I’m determined to change that.

Q: Scott Walter at Capital Research Center. I realize they go back almost a century but they haven’t been very big for very long. Do we have any data on how much money ends up not getting spent before the original donor dies? Do we know anything about that? There’s a classic thing that happens with money that survives the original maker of the money and that is the left captures it, at Pew Charitable Trust, the Packard Foundation. Endless examples like that. I know what’s going to happen at Whitney’s DonorsTrust and that’s good. But what about at Fidelity, at Schwab, at community foundations? Is there likely to be a huge sum 50 years from now of posthumous money sitting there to be played with by who knows?

WILLIAM SCHAMBRA: Well, Scott, then Capital Research Center will be able to do lots of work on those organizations. This will be good for business over at Capital Research. I’m sorry. I didn’t mean to interrupt the question.

GREGORY BAKER: We do not have data about after donors die. We have had a number of donors who have died and it’s quite an experience when you meet the donor across the table year after year and then you get notice that they have died. One example that I’m thinking of right now specifically, his children have gone on to be the grant advisors in that donor-advised fund and they are continuing to make grants on a regular basis. His children did support the contributions in both parents estates while they were living and they have gone on to make the contributions themselves, smaller contributions, but at the same time they have made contributions, and they do continue to support very similar charities to the charities their parents supported.

SARAH FROSTENSON: And I think on that note, something that’s becoming a more popular trend because these are formulized planning vehicles for wealth is succession plans. So what I think of is National Philanthropic Trust. They really have an established one they ask questions, is it going to stay in the family? Who would you appoint as the advisee? And in the Jewish Communal Fund they actually have an interesting model where children nearing around their bar mitzvah age of 13 often establish their own fund. So their focus really is on this family legacy giving. And I think because these are a formulized or formal planned way in which to give, you’re going to see more and more funds adopt that approach.

WHITNEY BALL: And a large commercial fund, if a donor does not leave any sort of instructions, is it that the money ends up in the general foundation of that like Fidelity has?

SARAH FROSTENSON: That’s my understanding.

GREGORY BAKER: Every organization is going to have their own policy. Of course, all charities are subject to whatever agreement they have with the donors, whatever they have originally set up in their A, their marketing materials, their brochures or in specific agreements. I refer to them as a flip DAF, where they start out as a donor-advised fund during the donor’s life, during the grant advisor’s life and when they die, they become a restricted fund where the money will go out to these particular charities that they always wanted to support on this payment schedule. And that material is already written in advance while the donor is still alive.
For situations where we have no successor grant advisor, where we have no written agreement already in place, our policy is to continue the grantmaking that was already in place the last three years of that donor-advised fund’s previous existence. So whichever charities were supported at that point, we start making income distributions to those charities that they supported over the last three years continuing to keep that donor-advised fund alive in that donor’s name.

Q: Kevin Laskowski with the National Committee for Responsive Philanthropy. In the interest of getting Ms. Frostenson’s research begun, can Ms. Ball and Mr. Baker tell us what the median payout is of the funds that you manage?

WILLIAM SCHAMBRA: Median. We have a statistician.

KEVIN LASKOWSKI: Or the average. What’s a typical fund?

WHITNEY BALL: Do you mean the size of the grant? Do you mean on an annual basis?

KEVIN LASKOWSKI: The percentage annual payout, if that’s something you track.

WHITNEY BALL: We payout so much that it’s sort of a non-issue for us because in the past 13 years, we’ve brought in $569 million and given away $505 million. So I think it’s around 88% just cumulatively. And what we found, which was kind of interesting, was when the market tanked, that year we saw money coming in dip but money going out increased. So our donor-advised fund was able to be a shock absorber for charities, which pleased us greatly because would like to be able to do that for the organizations. So I can’t give you those numbers but it’s sort of like I don’t worry about it because our payouts are high.

GREGORY BAKER: And at our organization over the last several years, our payout ratio has been 15%, 19%, 25%, 24%, 26% of the initial beginning value.

WILLIAM SCHAMBRA: I have to ask. Whitney, you mentioned Tides and the parallel universe of Tides and DonorsTrust. Could you say a bit more about that because some folks watching this will be saying, well, you’ve got DonorsTrust there, this capital of reactionary funding and you’re not even asking that question. So have to ask that question. What are you guys up to? And why are you so secretive? And what’s the story? I was counting on Kevin to ask that question, but if he won’t ask it, I will.

WHITNEY BALL: Thank you, Bill.

WILLIAM SCHAMBRA: You’re welcome. Surely, you have a talking point.

WHITNEY BALL: Well, we don’t disclose our donors anymore than any other donor-advised fund does. And we operate very much like the Tides Foundation. They’ve been around maybe 40 years and as far as I know, they’re a very well-run organization. We thought they were a very good model to follow.
So what bothers me is because of the organizations we support, we have been demonized in mainly the blogosphere as being dark money and secretive and all this stuff. These same people would never say that about the Tides Foundation. And the Tides Foundation runs the same way and has been for a long time. It’s just that they happened to agree with the groups that the Tides Foundation supports. So does that sort of get to your --

WILLIAM SCHAMBRA: In fact, Tides actually provides sort of a place where very temporary projects can go on. They don’t even have to be a donor-advised fund or seek a (c)3.

WHITNEY BALL: Well, we’ve done some of that, too.

Q: Thank you. Dorothy Weiss, private consultant. I barely know where to start on this one. I’ve got so many questions and comments. But I’d like to start with something that Sarah said, which was that nonprofits haven’t been part of the equation and I don’t think they’ve gotten their full due in this discussion either, although the last question was a segue. One of the other things that Tides does is you can talk to their staff, which is not the case at certainly most of the commercial funds. And the reason I bring this up is that, yes, I can understand the issues with anonymity and some donors wanting that although as somebody who has been on both sides of the table, I also know how difficult it is as a nonprofit to not know where your money’s coming from and who it is that’s supporting you and you can’t learn what you’ve done right or wrong in your fundraising and you can’t make sure they’re getting the information and all that. But I also know that the private foundation rules were set up for a reason. There’s a reason it’s more onerous to set up a private foundation. It’s because there were scandals and abuses led to the Tax Act in 1969. I do think that he industry that Mr. Baker and Ms. Ball represent could some day find themselves in the same position as private foundations were in the late 60’s through no fault of your own. It could be some other organization that really causes that scandal. But getting back to the transparency thing, I think if the anonymity is an issue, then there could be separate rules around payout or something like that for donors who want to stay anonymous or even though this couldn’t be a matter of government policy and legislated, it would go a long, long way if the funds would provide at least as much of a gatekeeper function as bank trustees used to, who we used to bemoan in the nonprofit sector as being hard to get through. Now we don’t even know who to talk to. You can’t research these funds. But the question is basically would the two of you that run these kinds of funds be willing to set up a real mechanism for nonprofits who want to put projects before your donors?

WHITNEY BALL: This, again, is sort of an easier question for us to answer because we’re a cause-related fund and we do actually have a community. Believe me, my phone is ringing off the hook and we do talk to grant seekers. Often times, I’m going to regret I said this, we will look at proposals and we’ll send them to donors who might be interested. So in that respect, we are sort of functioning like a consultant for the donor. And so, yes, we’ll do that. But there isn’t a formal application mechanism. I’m not completely against that but it would take a lot of effort.

GREGORY BAKER: On a grant by grant basis it can be completely different with regard to the same donor-advised fund making 15 grants in one day. And so when a charity calls up and says, ‘We’ve got this $15,000 check, I had a conversation last week with a charity.’ They were used to
receiving from us a $5,000 check every single year and they knew that it was associated with a particular donor family and they were wondering did this come from the same family and because that particular grant was marked up as anonymous, we have to honor those wishes. The reality is we do have multiple donors that want to support the same charity and so there’s no absolute assurance that the same donor is supporting this charity as they were in previous years.

WILLIAM SCHAMBRA: Sarah, did anybody say anything to you about that?

SARAH FROSTENSON: Right. There’s definitely the vetting process that is present at any supporting organization that administers funds. But then there are grants databases that really are up to the donor themselves because I think a common prevailing thought is that most donors already know where they want their money to go. In my conversation with Dr. Osili at the Lilly School, she was more stressing that nonprofits now need to start thinking about opportunities for donors that would be conducive to a more formulized giving plan. So maybe forming campaigns on their own, letting their local community foundations knowing of this and taking a more proactive stance but one that is conducive to this more formulized giving since it’s no longer just ad hoc grants. That’s kind of the trend.

Q: I used to do finance committee for Chuck Schumer, working on a lot of the crazy rules that you mentioned. I do some government relations now for a number of community foundations. And one thing that they would say if they were here, the question to Ray is, one of the purposes that we serve as community foundations is to serve as a local community charitable endowment. So when a donor or a succession generation dies and that money reverts to a trust and then a community foundation will run a charitable grant program like a private foundation to help nonprofits and the local community. If you had the kind of thing you were talking about, a lot of these community foundations wouldn’t have those kinds of funds at the end of the day to deal with the problems in the local community and I just wanted to know what your comment would be.

RAY MADOFF: Wouldn’t they actually have more of it because what you would have is a rule that says if after 10 years you haven’t designated the funds it will go to this community foundation? You name it as a remainder beneficiary. They’d know they were getting the money in 10 years and it would be more explicit.

Q: So you’re saying name the remainder beneficiary.

RAY MADOFF: Sure, absolutely.

Q: What particular charity it would go to.

RAY MADOFF: Well, no. What I’m saying is the community foundation would be the charity that it would be going to.

WILLIAM SCHAMBRA: Yes. That was, Frederick Goff, who founded the first community foundation in Cleveland. This was his point, to try to deal with this problem of the dead hand because he saw too many of these smaller charitable purposes being overtaken by events and the
whole point of the community foundation was to make sure that that didn’t happen. That there was some sort of living trust. So to the folks at Philanthropy Magazine, to whom I promised that article on the Cleveland experience, I’m doing the work. Our time is up but last comments on this topic. Anyone have any parting thoughts on donor-advised funds. Sarah.

SARAH FROSTENSON: I would just say more research on how individual donor-advised funds function. I think that would really contribute to the field.

GREGORY BAKER: I’ll say donor-advised funds work. They are very useful and very valuable in today’s society and economy and they are providing the benefits that they are supposed to provide.

WHITNEY BALL: I would echo that.

RAY MADOFF: And I’d like to say that as long as donor-advised funds are providing the benefit, then they’re great but why not have rules that make sure that they do? My quest or hope would be that people would join together because nonprofits are the ones that have the most to gain by having these organizations have real payout obligations. So however we think change can happen, I hope all of you will do something to do whatever change you think it should be.

WILLIAM SCHAMBRA: I’ll turn it over to the IRS. Okay, let’s give our panelists a round of applause. [APPLAUSE]