The Philanthropy Roundtable

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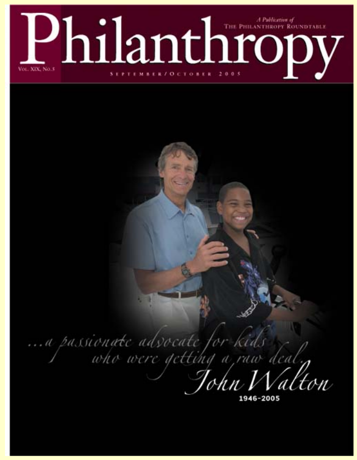
September/October 2005



Whitney Ball

The future of donor-advised funds

Whitney Ball is co-founder and executive director of DonorsTrust, a donor-advised fund-provider and community foundation. Based in Alexandria, Virginia, the group was founded in 1999 to serve the charitable intent of donors who are dedicated to the ideals of individual and economic liberty.

Before launching DonorsTrust, Ball served as executive director of The Philanthropy Roundtable, as well as director of development at the Cato Institute in Washington, D.C. She was also director of finance for the National Journalism Center and circulation manager of Consumers' Research *magazine. She currently serves on the boards of DonorsTrust, Donors Capital Fund, and the State Policy Network.*

PHILANTHROPY: Please tell us how a donor-advised fund works and sketch the current landscape of fund-providers.

BALL: A donor-advised fund begins with a donor contributing cash or assets to a public charity, which in turn creates a separate account for the donor, who may recommend disbursements from the fund to other public charities. Technically, the charity that sponsors the fund has final say on the disbursements, and it is legally required to ensure they go only to charitable purposes, but in normal circumstances the original donor's requests will be followed.

Donor-advised fund-providers fall into four main types, depending on the entity that offers them. First, there are *community foundations*. This is where donor-advised funds originated, and most community foundations across the country offer donor-advised funds.

Second, there are *commercial donor-advised funds*. These began in 1992, when Fidelity, the for-profit financial services firm, launched its Charitable Gift Fund. These types of funds have expanded rapidly and are offered by a number of companies such as Schwab and Vanguard.

Third, there are *charity-sponsored funds*. These are offered by such nonprofits as universities, World Vision, Rotary, and others.

The last category is *philosophical donor-advised funds*. These funds are offered by nonprofits that specialize in working with like-minded donors who have a particular approach to giving. Naturally in America there's a considerable variety of such groups to choose from: The National Christian Foundation, for instance [see "Complex Giving," Jan./ Feb. 2005—Ed.], various Jewish funds, or the Tides Foundation, which works with donors who support left-wing causes. DonorsTrust, where I work, serves donors dedicated to the ideals of limited government, personal responsibility, and free enterprise. These philosophical fund-providers may contribute to a wide range of grantees—everything from social welfare groups, arts and culture institutions, research centers, and more—but always with the goal of advancing the philosophy they share with their donors.

PHILANTHROPY: Why was DonorsTrust created?

BALL: For several reasons, the most important of which was the need to safeguard donor intent. As most *Philanthropy* readers know, charitable capital that's held in a vehicle like a private foundation often drifts away from the intent of its founding donor(s) over time. The classic example is when the grandson of the founder of the Ford Foundation quit its board in disgust because of the way the organization had come to oppose what the founder stood for. Unfortunately, there are many similar examples, large and small.

Donor intent seems especially hard to maintain for donors who want to support a free society as the founders understood it. So in 1999, a small group of donors active in this cause launched DonorsTrust to help like-minded donors.

PHILANTHROPY: How have the old-style community foundation funds fared versus the newcomers?

BALL: You would have to check the actual statistics, but I believe we've begun to see some differences among community foundations. Those that have become more donor oriented have done better, I think, than those that have followed the more traditional pattern of assuming that donors put their money in a community foundation because the foundation's staff is more knowledgeable than the donors about what to fund. Some community foundations have even been recalcitrant about adhering to donors' intentions, which isn't good for their business.

The newfound concern for donor service is market driven. The advent of Fidelity and other commercial funds has created tremendous competition for donors, and as a result, all donors have benefited.

Community foundations may have natural advantages over other fund-providers in some areas of giving. For example, I think it unlikely that a national fund-provider will arise to serve donors who want to concentrate on arts funding, because that requires a lot of local knowledge.

On the other hand, in the fields of public policy giving, or religious giving, the standard community foundation is probably at a disadvantage, because it's not easy to unite a broad array of local citizens on such topics. And with religious giving, community foundations are also at a disadvantage because much of this giving is international, which requires "local knowledge" not in your backyard but in far-flung places.

PHILANTHROPY: How do you protect a donor's intent after he or she dies?

BALL: There are a number of ways. We suggest our donors supply us with a list of charities they would like their account to be spent out to when they're gone. Or donors can name a successor advisor. These successors won't violate the original donor's intent because we still control the parameters of the grantmaking, providing what we refer to as a protective boundary for our donors. Or if a donor names his child a successor advisor, and she wants to give to Greenpeace, we're not going to be able to do that. Also, we only allow the original donor to name successor advisors, and we urge the original donor to limit the life of the donor-advised fund to no more than 25 years after death.

All our donors are asked to give us an intent statement. If they don't give us one, DonorsTrust is free to distribute the funds as it sees fit. Even in this case, however, we look back to the donor's giving in the past and use that as a precedent. We also offer donors the option of fields of interest funds, so that if they don't want to choose grantees themselves, but do want to support K-12 education, we have a fund for that.

PHILANTHROPY: What should donors consider before opening a donor-advised fund?

BALL: With any vehicle for giving you're considering, you should first think through exactly what you want to achieve with your giving. Provide specific, detailed grantmaking instructions. Donors should also give serious consideration to time-limiting or "sunsetting" a fund. If you care deeply about promoting a certain philosophy or particular charitable goals, sunsetting makes all the more sense, because it gets more money more quickly into the hands of the groups that can use it, rather than slowly dribbling it out in perpetuity.

I'd beware of any commercial fund-provider that allows successor advisors to name further successors. That could end up producing the same problems that have arisen with foundations like Ford. Another danger to look out for is small print in the paperwork with some community foundations, which have in the past stipulated that upon your death, your fund is passed on to the community foundation's unrestricted or general fund.

PHILANTHROPY: What do you make of the proposals for regulating donor-advised funds that have appeared recently on Capitol Hill? For example, some propose limiting how long non-liquid assets can be held before being liquidated.

BALL: First, I'd say that there are only a few bad actors in the field, and existing laws to prevent abuse need to be enforced. Our mandate is to support charitable organizations, and so we're always eager to liquidate donations promptly, but at the same time, circumstances can arise that make hasty liquidation of, say, real estate or privately held stock undesirable. I don't see why arbitrary limits on how long assets can be held are helpful. Donor-advised funds don't have a history of hoarding assets. Payout is typically far higher than at private foundations.

PHILANTHROPY: What about the proposed ban on foundations' giving to donor-advised funds?

BALL: That would be a problem for us. When a foundation donates to us, they're supporting our philosophical mission. Sometimes they've given us support for marketing. Other times we've received support to produce certain educational materials for donors. Sometimes a foundation will decide it wants to support, say, health care reform, but lacks the expertise to do that well. Under present law, that foundation can give to a field of interest fund at the local community foundation or at DonorsTrust, where the funding will be guided by experts. Where's the abuse in that?

There's another scenario that makes such a ban undesirable, and that's the case of a person who starts a foundation and then decides the tax and paperwork hassles aren't worth it. We've worked with donors in this situation who are happy to roll their private foundation's corpus into a donor-advised fund and close down the foundation. Some do this while they're living; others stipulate it should happen upon their death, to ensure the foundation doesn't end up violating their donor intent. Given that the donors in these cases received less favorable tax treatment by giving their original donation to a foundation instead of to a donor-advised fund, I don't see any abuse here either. One wonders how carefully the Senate Finance Committee has considered some of these ideas.

PHILANTHROPY: Currently, donor-advised funds have no legally required pay-outs, but here too regulations are being considered.

BALL: Again, this seems like an odd thing to worry about. Most donors with these funds are passionately engaged in giving and far exceed the 5 percent minimum payout that private foundations must meet. The average payout per year at Fidelity is over 25 percent. The statistics on donor-advised funds compiled by the *Chronicle of Philanthropy* show the large majority of fund-providers surveyed had pay-out rates well into the double digits. Last year at DonorsTrust we paid out almost 16 percent.

I suspect a desire to eliminate anonymous giving may be behind the push for pay-out regulations and for banning foundation grants to donor-advised funds. That's a bad idea in my opinion. Anonymous giving has a long tradition in this country for many good reasons, including religious ones. Even the desire of an anonymous donor to avoid solicitations from strangers is a good reason for Congress to leave this alone—unless they want to put a big damper on giving, because making everyone's giving public would certainly do that.

Another thing that's frustrating about the drive to saddle donor-advised funds with all kinds of new regulations is that there have only been a handful of bad actors in the field. The problem is enforcement, not a lack of regulation. The genuine abuses people point to involve practices that most fund-providers would never permit. I don't know of any fund-provider, whether it's a commercial provider or a community foundation, that would allow a donor to open up a donor-advised fund and pay himself a consulting fee to run his own philanthropy. We would never dream of doing something like that. I also don't know any fund-provider who would allow someone to open up a donor-advised fund and fund a scholarship at a university for his child's education. Anyone committing such abuses must be extremely rare, and I wish the authorities would go after them, instead of tossing restrictions over the entire industry.

PHILANTHROPY: Any other possible regulations you're concerned about?

BALL: Yes, there's also been talk of forbidding any donor-advised fund from using part of its monies to pay a consultant. Now of course, if the potential consultant would fit the definition of a "disqualified person" at a private foundation—say, the would-be consultant is a family member—then we wouldn't let that person receive a donor's funds for consulting. But if a donor wants to create a donor-advised fund with DonorsTrust and asks us to contract with a philanthropic consultant to help organize and target the giving, we will allow that to happen, because DonorsTrust is the one making the payment and ensuring it goes to someone who is a philanthropic professional. It has to be someone who brings expertise to the table. But assistance like that can be helpful to philanthropy, and we have a couple of donors who have these arrangements, which amount to our offering donors more complete, foundation-like services.

PHILANTHROPY: Any advice for donors who want to pass on the habit of giving to their children?

BALL: If you involve your children early in philanthropic decisions, they'll learn from it. We have a donor who's set up donor-advised funds for his children. He wants to watch them develop as donors and be involved with them as they grow up. He gently guides them, and he gets to see which way they're going. Donor-advised funds offer a great way for any donor to give the kids an opportunity to be philanthropic and have their own little charitable bank account to deal with.

Above all, I think what's most important is being involved with the kids. Often people who lament the next generation's decisions were never involved with that generation until it was too late.

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