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Sarah E. Waldeck

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Cover Page Footnote

Professor of Law and Robert Diab Research Fellow, Seton Hall Law School. Particular thanks are owed to Maja Basioli, Mark Schneider, Shannon Allen, and Paul Olszowka. I also wish to thank readers of the Concurring Opinions blog, who made many useful comments about this Essay and endowments more generally.

ESSAY

THE COMING SHOWDOWN OVER UNIVERSITY ENDOWMENTS: ENLISTING THE DONORS

*Sarah E. Waldeck**

This Essay focuses on the discordance between universities with particularly large endowments and what is occurring in the rest of higher education, particularly with respect to skyrocketing tuition and a growing institutional wealth gap. The Essay considers absolute endowment values, the amount of endowment per student, and expense-endowment ratios at sixty private universities. It concludes that a small number of schools have an excess endowment, and then provides a convenient proxy for determining when an endowment is so large that it should receive less preferential tax treatment. The Essay then considers the effects that large endowments have at their home institutions and throughout higher education, the arguments in defense of large endowments, and some frequently proposed modifications to the tax code. The Essay recommends that policymakers modify the charitable deduction for gifts to universities with mega-endowments, as part of a multifaceted effort to spur endowment spending and control tuition.

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* Professor of Law and Robert Diab Research Fellow, Seton Hall Law School. Particular thanks are owed to Maja Basioli, Mark Schneider, Shannon Allen, and Paul Olszowka. I also wish to thank readers of the Concurring Opinions blog, who made many useful comments about this Essay and endowments more generally.

INTRODUCTION

What a difference twelve months can make. When this Essay was first submitted to the *Fordham Law Review*, educational institutions were having a financial heyday. In 2007, 76 universities had endowments in excess of one billion dollars, up from 62 in 2006.[1] Schools with billion dollar endowments saw record returns on their investments, with an average rate of 21.3%.[2] More than 25 institutions were in the midst of capital campaigns that sought to raise a billion dollars or more.[3] At these fortunate and elite universities, the coffers were substantial and still growing.

Unfortunately, however, university endowments are not immune to the financial crisis. In January 2009, Princeton University announced that its endowment, valued at $15.8 billion in March 2008, was expected to lose 25% of its value by the end of the fiscal year.[4] In December 2008, Yale announced that its endowment had declined an estimated 25% since June 2008, leaving an approximate total value of $17 billion.[5] To add insult to market injury, Yeshiva University (which has had a 28% drop in its

1. NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS, 2007 NACUBO ENDOWMENT STUDY, at ix (2008) [hereinafter 2007 ENDOWMENT STUDY] (on file with author), *available at* http://www.nacubo.org (for a fee). This Essay uses the terms "university," "college," and "school" interchangeably.

2. *Id.* at 4.

3. Brennen Jensen, *Three Universities Seek $3-Billion or More*, CHRON. PHILANTHROPY, Oct. 12, 2006, at B18.

4. Kate Zernike, *Princeton Loses 11 Percent of Endowment*, N.Y. TIMES, Jan. 9, 2009, at A13.

5. Posting of Dave Hoffman to Concurring Opinions, http://www.concurringopinions.com/archives/2008/12/yale_loses_six.html (Dec. 16, 2008, 17:28 EST).

endowment value, leaving a remaining value of $1.2 billion) had more than $110 million invested with Bernard Madoff.[6]

These precipitous declines have taken the spotlight off endowment spending policies, at least temporarily. But because so many observers are deeply troubled by the state of education in the United States, one can be certain that the attention will return when the economy recovers. Tuition has outpaced inflation for more than thirty years; if the prices of milk and gasoline had risen at a similar rate, today a gallon of milk would cost $15, and a gallon of gas would cost $9.15.[7] In 2007, private universities charged an average of $32,000 each year in tuition and other fees, with some schools charging almost $50,000.[8] Even as tuition has risen across all of higher education, a pronounced disparity in institutional wealth has emerged. This wealth gap affects everything from the quality of classroom instruction to the infrastructure, and divides college students into the haves and have-nots. The discordance between massive endowments and the general state of higher education has caught the attention of the Senate Finance Committee, which held hearings on the matter in 2006 and 2007.

The Committee has been interested in endowment spending policies because colleges and universities receive enormous subsidies from the federal government. Some of these subsidies are based on a school's organizational form under section 501(c)(3) of the Internal Revenue Code.[9] These include the tax-free status of income earned from activities related to a university's educational function,[10] the tax-free status of investment income,[11] the right to issue tax-exempt bonds to finance activities related to the educational function,[12] and the ability of donors to deduct gifts to universities made during life or at death.[13] The cumulative value of these tax subsidies is beyond substantial. In 2007, for example, the exemption from a tax on endowment investment returns cost the U.S. Treasury as much as $18 billion.[14] In 2008, the deductibility of gifts to educational institutions cost over $4.26 billion in forgone income taxes alone.[15]

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6. Posting of Lawrence Cunningham to Concurring Opinions, http://www.concurringopinions.com/archives/2008/12/post_36.html (Dec. 17, 2008, 07:47 EST).

7. Jane Norman, *Grassley to Colleges: Use Riches for Tuition*, DES MOINES REG., Jan. 21, 2008, at A11 (quoting Senator Charles Grassley, the ranking Republican on the Senate Finance Committee). Senator Charles Grassley was drawing on testimony that had been made before the Senate Finance Committee during the previous year. *See, e.g.*, *Offshore Tax Issues: Reinsurance and Hedge Funds: Hearing Before the S. Comm. on Finance*, 110th Cong. (2007) [hereinafter Munson] (statement of Lynne Munson, Adjunct Fellow, Center for College Affordability and Productivity).

8. COLL. BD., TRENDS IN COLLEGE PRICING 2 (2007), *available at* http://www.collegeboard.com/prod_downloads/about/news_info/trends/trends_pricing_07.pdf.

9. Evelyn Brody, *Charities in Tax Reform: Threats to Subsidies Overt and Covert*, 66 TENN. L. REV. 687, 697 (1999) (outlining categories of charitable subsidies).

10. I.R.C. § 501(c)(3) (2006).

11. *Id.*

12. *Id.* § 103. For the requirements for qualified 503(c)(3) bonds, see *id.* § 145.

13. *Id.* § 170(c)(2)(B) (discussing income tax); *id.* § 2055(a)(2) (discussing estate tax).

14. Memorandum from Jane G. Gravelle, Senior Specialist in Econ. Policy, Gov't & Fin. Div., to Max Baucus, Chairman, Senate Fin Comm., and Charles Grassley, Ranking

A host of other tax subsidies benefit colleges and universities by helping create demand for their services.[16] Among these are the Helping Outstanding Pupils Educationally (HOPE) tax credit (projected to cost the Treasury $3 billion in 2008),[17] the Lifetime Learning tax credit ($2 billion),[18] the tax treatment of education individual retirement accounts ($140 million),[19] state prepaid tuition plans ($710 million),[20] employer-provided educational assistance ($660 million),[21] the deductibility of student loan interest ($820 million),[22] and the tax-free discharge of student loan indebtedness ($20 million).[23] All of these tax expenditures may lead a student to conclude that she can afford to attend college or that she can afford to enroll at a more expensive institution than she otherwise could. Some scholars have even suggested that universities directly capture the benefit of these demand-generating tax expenditures by raising their tuition to account for the subsidy available to the prospective student.[24]

The Senate Finance Committee has not been alone in questioning whether the public is receiving adequate benefit in exchange for the favorable tax treatment granted to universities and colleges. Articles about large endowments and related issues have become commonplace in industry publications like the *Chronicle of Higher Education* and in the popular press. Between January and March 2008, for instance, the *New York Times* published almost fifteen pieces that discussed endowments, college tuition,

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Member, Senate Fin Comm. (Aug. 20, 2007) [hereinafter Gravelle Memorandum], *available at* http://finance.senate.gov/press/Gpress/2008/prg011408b.pdf.

15. EXECUTIVE OFFICE OF THE PRESIDENT OF THE U.S., 2007 TAX EXPENDITURE BUDGET 288 [hereinafter 2007 TAX EXPENDITURE BUDGET].

16. Brody, *supra* note 9, at 695.

17. 2007 TAX EXPENDITURE BUDGET, *supra* note 15, at 288 tbl.19-1. Helping Outstanding Pupils Educationally (HOPE) allows certain taxpayers a 100% credit for the first $1000 of tuition and fees and a 50% credit for the next $1000 in tuition and fees. HOPE only covers tuition and fees paid during the first two years of a student's postsecondary education. *Id.* at 311.

18. *Id.* at 288. The Lifetime Learning Credit allows certain taxpayers a credit for 20% of a student's tuition and fees, up to a maximum per return of $2000. The credit applies to both undergraduate and graduate education. *Id.* at 311.

19. *Id.* at 288. Investment income earned by education individual retirement accounts (IRAs) is not taxed when earned. The income is also tax-exempt when withdrawn to pay for a student's tuition and fees. *Id.* at 311–12.

20. *Id.* at 288. Investment income earned by prepaid state tuition plans is not taxed when earned and is tax-exempt when withdrawn to pay for qualified expenses. *Id.* at 312.

21. *Id.* at 288. Employer-provided educational assistance is excluded from gross income even though the employer's costs are a deductible business expense. *Id.* at 312.

22. *Id.* at 288. During the first five years in which interest payments are required, taxpayers are entitled to a $2500 above-the-line deduction on interest paid for an educational loan. *Id.* at 312.

23. *Id.* at 288. Certain professionals who work in underserved areas and thus receive a discharge from their student loans may not have to recognize the discharge as income. *Id.* at 312.

24. Brody, *supra* note 9, at 710; *see Report Card on Tax Exemptions and Incentives for Higher Education: Pass, Fail, or Need Improvement?: Hearing Before the S. Comm. on Finance*, 109th Cong. 97 (2006) (statement of James J. Duderstadt, President Emeritus, University of Michigan).

or the growing wealth gap between institutions of higher education. All this attention created tremendous pressure for universities—particularly wealthy universities—to increase endowment spending. Until the current financial crisis hit, schools responded by defending their spending policies or by taking modest measures designed to defuse criticism.

Despite the lofty rhetoric and inflamed passions, the public debate over university endowments has lacked detailed analysis of three key issues. First, there has been inadequate discussion of how to best measure the relative value of an institution's endowment. Second, critics have not carefully explained the effects of excessively large endowments, both on the institutions that hold them and on higher education in general. Instead, the usual argument is that because some universities have large reserves, they should spend more. The debate has also lacked thorough evaluation of the arguments that universities raise in defense of their endowment policies. Third and finally, while critics have floated multiple proposals for congressional action, there has been no careful evaluation of the rationale for and effects of these proposals.

This Essay tackles these issues. Part I considers absolute endowment values, the amount of endowment per student, and expense-endowment ratios at sixty private universities. This analysis suggests that a small number of schools have "mega-endowments," or endowments that exceed what is necessary to satisfy the usual purposes of an endowment. Part II explains the effect that mega-endowments have at their home institutions and throughout higher education. Part III critiques the university defense of endowments and offers alternative explanations for why institutions accumulate excessive endowments, ones that are rooted in cognitive psychology instead of economic theory. Part IV critiques the various proposals for congressional action. Part IV also suggests additional means of encouraging endowment spending, with a particular focus on how donors are able to influence endowment policy.

I. MEASURING THE SIZE OF ENDOWMENTS

The vast majority of universities have modest endowments at best. In 2007, 785 schools responded to the annual endowment survey conducted by the National Association of College and University Business Officers (NACUBO). While 76 had endowments of more than one billion dollars, 709 did not.[25] The average endowment for all participating schools was almost $524 million; the median endowment was just over $91 million.[26] With such a wide range of endowment values, one threshold question is: which institutions are truly wealthy? The answer to this question informs judgments about whether Congress should take action to spur spending and, if so, what sort of action is appropriate.

25. *See* 2007 ENDOWMENT STUDY, *supra* note 1, at 54–80.
26. *Id.* at 79.

Like Goldilocks, policymakers have three choices for evaluating endowments: absolute size, the expense-endowment ratio, and the amount of endowment per full-time student. The first measure—absolute size—is what has dominated in congressional discussions and media accounts. Commentators repeatedly emphasize that some institutions have endowments worth more than $1 billion.[27] Senator Charles Grassley, the ranking Republican on the Senate Finance Committee, has suggested that endowments with absolute values that exceed $1 billion warrant particular attention from Congress.[28] For university critics, the $1 billion figure undoubtedly has appeal in part because it *sounds* so large and therefore is useful in helping to shock the public conscience. But the absolute size of an endowment is a crude measure of its strength. The primary value of an endowment stems from its ability to subsidize university operations. Because the magnitude of activity is smaller at a liberal arts college, it needs fewer resources than a large research university. In relative terms, $1 billion buys more at a small institution than at a large one.

Unlike a measure of absolute size, the endowment-to-expense ratio acknowledges that the strength of an endowment depends on the extent to which it can pay for institutional activities. Because the ratio compares the endowment to an institution's actual costs, it is the most sophisticated measure available to policymakers. Some economic research has defined any ratio of more than 2:1 as evidence of an excessive endowment;[29] such research has included, but not been limited to, educational institutions. One commentator considering only universities has suggested that, depending on institutional circumstances, an endowment exceeds its ideal size once it surpasses a ratio of 5:1.[30]

Impressions of institutional wealth change when endowments are compared to institutional costs. The Appendix contains five tables. The first four tables use 2007 data; the fifth table uses 2006 data.[31] Table 1 lists,

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27. *See, e.g.*, *Offshore Tax Issues: Reinsurance and Hedge Funds: Hearing Before the S. Comm. on Finance*, 110th Cong. (2007) (statement of Jane G. Gravelle, Senior Specialist in Economic Policy, Congressional Research Service).

28. Karen W. Arenson, *Yale Plans Sharp Increase in Student Aid*, N.Y. TIMES, Jan. 15, 2008, at A14.

29. *See* John E. Core et al., *Agency Problems of Excess Endowment Holdings in Not-for-Profit Firms* (Nat'l Bureau of Econ. Research, Working Paper, 2005); *see also* Raymond Fisman & R. Glenn Hubbard, *The Role of Nonprofit Endowments*, *in* THE GOVERNANCE OF NOT-FOR-PROFITS ORGANIZATIONS 217, 229 (Edward L. Glaeser ed., 2003) (noting that among arts and educational organizations, the top 10% of organizations have a ratio of more than 10:1).

30. Mark B. Schneider, *Endowments Can Become Too Much of a Good Thing*, CHRON. HIGHER EDUC., June 2, 2006, at B18.

31. At the time of this writing, expense information was not yet available for 2008, hence the use of 2006 and 2007 data. For 2006, the endowment information is taken from the 2006 NACUBO Endowment Study. NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS, 2006 NACUBO ENDOWMENT STUDY 61–90 (2007) [hereinafter 2006 ENDOWMENT STUDY] (on file with author), *available at* http://www.nacubo.org (for a fee). The expense data comes from Line 17 of an institution's 2006–07 Form 990, as reported in the *Chronicle of Higher Education*. *Compensation of Presidents of Private Institutions*, CHRON. HIGHER EDUC., Nov.

by rank, the private universities with the sixty highest absolute endowment amounts.[32] Harvard is in first place with $34.6 billion; Grinnell is in twenty-seventh place with $1.7 billion. Table 2 ranks the same private universities by their endowment-expense ratios. Grinnell leaps to first place (with a ratio of 16.5:1), while Harvard falls to number seven (with a ratio of 10.8:1). More importantly, some colleges (for example, Bowdoin and Lafayette) have absolute endowments that are less than $1 billion ($827 million and $734 million, respectively), but endowment-expense ratios that exceed 5:1. On the flip side, some institutions (for example, the University of Pennsylvania and Vanderbilt) have absolute endowments well over $1 billion ($6.6 billon and $3.5 billion, respectively), but endowment-expense ratios below 2:1. The absolute value of an endowment both under- and overrepresents institutional wealth, sometimes dramatically.

The foregoing discussion suggests that endowment-expense ratios are the best available tool for measuring the relative size of endowments. Unfortunately, key disadvantages make the ratio an impractical choice for policymakers who wish to monitor or regulate endowment spending. First, an institution adjusts its operating budget in response to changes in its endowment. Such adjustments can significantly change the ratio from year to year,[33] making it a moving target. Second, few universities are likely to welcome scrutiny of their endowment spending policies, much less the congressional regulation that might accompany such scrutiny. As such, institutions are likely to be eager to lower their ratios. One way to accomplish this would be to spend more—exactly the behavior Congress might seek to encourage. But one can also imagine a series of Enron-like maneuvers designed to manipulate the ratio.

This leaves the measure of endowment per full-time student. Like the endowment-expense ratio, this measure acknowledges that some schools are more expensive to run than others. But rather than use actual costs, the measure relies on the number of full-time students as a rough proxy for institutional expenses. Table 3 (which ranks institutions by endowment per full-time student) shows that, while the measure is not as sensitive as the endowment-expense ratio, it nonetheless provides a sense of relative wealth. In Table 3, for instance, Grinnell (which has the highest endowment-expense ratio) is ranked number seven, as compared to twenty-seven when ranked by absolute wealth. Moreover, while the amount of endowment per full-time student is less precise than the endowment-

16, 2007, at B21. For 2007, the endowment information is taken from the 2007 Endowment Study, *supra* note 1, at 55–80, 141–55. The 2007 expense data again comes from the *Chronicle of Higher Education*. *Compensation of Presidents of Private Institutions*, CHRON. HIGHER EDUC., Nov. 21, 2008, at B15.

32. In these tables, the "endowment" consists of "the total of all [funds] held for the institution's long-term benefit." *See* 2007 ENDOWMENT STUDY, *supra* note 1, at 1099 (defining "endowment"). It does not include operating funds, plant fund assets, pension funds, working capital, or pledges. *See id.*

33. Schneider, *supra* note 30.

expense ratio, it is also more difficult to manipulate and less likely to vary significantly from year to year.

There has been almost no discussion of what amount of endowment per full-time student is indicative of an excessive endowment.[34] Tables 4 and 5, which list expense-endowment ratios and the amount of endowment per full-time student, provide some insight. Recall that economic researchers have suggested that an expense-endowment ratio of more than 2:1 is excessive; others have suggested that ratios should not exceed 5:1.[35] A review of the data from 2007 (as reflected in Table 4) and 2006 (as reflected in Table 5) shows that schools with endowments per full-time student in the range of \$300,000–\$350,000 or more tend to have expense-endowment ratios that are at least 5:1. Thus an endowment per full-time student in the \$300,000–\$350,0000 range suggests that a university could spend more without jeopardizing its long-term prospects. These are the universities with endowments that are aptly described as "mega," that is, whose values exceed what is necessary to satisfy the usual purposes of an endowment.

This benchmark is by no means perfect. Table 4 shows that, in 2007, the low end of the range (\$300,000) would have picked up the University of Pennsylvania and Vanderbilt, both of which have endowment-expense ratios of less than 2:1. The high end of the range (\$350,000) would have missed some institutions with ratios of 5:1 or higher. (Lafayette, for example, had an endowment per full-time student of approximately \$316,000.) The amount of endowment per full-time student might also overstate the relative wealth of an institution. As Table 5 shows, in 2006, a premier research institution, the California Institute of Technology, had an endowment per full-time student of more than \$700,000, but an endowment-expense ratio of less than 1:1. This anomaly likely results from Cal Tech's small student body and its enormous research budget.

The point, however, is not that the amount of endowment per full-time student is the perfect proxy for institutional wealth. Rather, the argument is that it is less easily manipulated than the endowment-expense ratio and more revealing than the absolute amount of an endowment. As Congress considers which institutions genuinely have an excessive endowment, the amount of endowment per full-time student will be its most useful measure.

With this measure explained, Parts II and III discuss the concerns that have been raised about the effects of mega-endowments and the way universities and colleges have responded to these concerns. The discussion is colored by an issue about whether Congress or universities and colleges bear the burden of proof. That is, do universities and colleges have to convince the public about the wisdom of their endowment spending policies, or does Congress have to convince the public that the social good

34. One commentator suggests that an endowment of \$500,000 per student is an appropriate trigger, but no evidence suggests that the relative merits of this number were carefully considered. *See* Herbert A. Allen, Op-Ed., *Gold in the Ivory Tower*, N.Y. TIMES, Dec. 21, 2007, at A39 (discussing the advantages of taxing endowment investment income).

35. *See supra* notes 29–30 and accompanying text.

produced by these policies is inadequate in light of the favorable tax treatment that these institutions receive? Because current tax policy so favors universities and colleges,[36] the following discussion reflects the belief that universities bear the responsibility for demonstrating the wisdom of their spending polices and the relative good created by them.

II. THE CONCERNS ABOUT MEGA-ENDOWMENTS

As suggested, the sheer magnitude of $1 billion probably would have led to questions about whether the wealthiest universities still need the tax subsidies noted in the Introduction, as well as whether the public receives adequate benefit in exchange for those subsidies. But other factors are also fueling concerns about mega-endowments, including rising tuition, the promise of research and development that takes place in university laboratories, and the inefficiencies that mega-endowments may create at the institutions that hold them. This part discusses these concerns.

First and foremost, it is the combination of endowment values and the ever-rising costs of tuition that have made endowment spending policies the focus of congressional attention.[37] Average tuition increases have been outpacing inflation for at least thirty years.[38] In academic year 2006–2007, the average published tuition and fees at four-year private colleges and universities were up 6.3% (for an average total charge of $32,307). At four-year public colleges and universities, costs were up by 6.6% for in-state students (for an average total charge of $13,589) and 5.5% for out-of-state students (for an average total charge of $24,044).[39] Net tuition—that is, what students actually pay after grant aid and tax benefits—has grown at about the same rates.[40] As a general matter, mega-endowment universities and colleges tend to increase tuition at rates consistent with other institutions, although there are exceptions.[41] Critics of endowment spending policies want universities to use more of their endowments to help offset the cost of an education.[42] One study of twenty universities and ten liberal arts colleges suggests that small increases in endowment distribution could "mitigate or eliminate tuition growth and substantially expand student aid."[43]

There is also concern that mega-endowments increase tuition at less prosperous schools. This is because the spending at mega-endowment

36. *See supra* notes 10–24.

37. Members of the Senate Finance Committee began to express interest when Grinnell announced a 12.6% tuition increase for the 2007–2008 academic year. Norman, *supra* note 7.

38. COLL. BD., *supra* note 8, at 2 (College Board has only been collecting data for about 30 years).

39. *Id.* at 6.

40. *Id.* at 2.

41. *See infra* notes 91, 98 and accompanying text.

42. *See, e.g.*, Munson, *supra* note 7.

43. Gravelle Memorandum, *supra* note 14, at 2.

universities affects the priorities of less wealthy institutions. Rich colleges are able to spend ample funds on classroom instruction and still build campus amenities "like fitness centers and wireless-Internet hot spots."[44] These amenities raise student expectations and may be particularly important to eighteen-year-olds who are deciding where to go to college. Less wealthy institutions are thus pressured to add similar amenities by diverting funds from other purposes, including those more directly related to education.[45] As a general matter, the gap in instructional spending between rich and poor institutions continues to grow. In the past ten years, average instructional spending at institutions in the top quartile of wealth has grown by 37%, while instructional spending by those schools in the bottom quartile has grown by only 6%.[46] At the same time, the amount of debt carried by poorer institutions continues to increase.[47]

Public criticism of endowment spending policies has focused almost entirely on how particular endowment spending policies might affect tuition. Some elite institutions, however, have missions that emphasize research as much (or even more) than they emphasize education. At these universities, endowment spending policies have an even broader effect and there are strong arguments for more spending. At the risk of sounding Pollyannaish, the sort of research taking place at America's premier universities is designed to lead to much social good: the easing of the global food crunch, the elimination of certain diseases, and so forth, as well as the creation of knowledge more generally. The ability of researchers and scholars to make productive use of endowment funds seems almost endless, as do the potential gains from their work. But as Part III discusses, universities often argue that their endowment spending policies reflect "intergenerational equity," that is, institutions have to spend less in the present to ensure that they will be able to provide a comparable quality of education to future generations.[48] Ordinarily, however, one would not argue that society will be better off if a particular research advance happens later rather than sooner. The advantages of research developments occurring as soon as possible provide a strong argument for universities to engage in more present endowment spending than they currently do.

Beyond concerns about tuition and delaying research and development, mega-endowments may have disadvantages for the institutions that hold them. A large-scale study of nonprofits has suggested that organizations with excess endowments are inefficient, such that the percentage of program expenditures for the charitable good tends to be lower than at other organizations, while expenditures for fundraising and other administrative

44. Jeffrey Selingo & Jeffrey Brainard, *The Rich-Poor Gap Widens for Colleges and Students*, CHRON. HIGHER EDUC., Apr. 7, 2006, at A1.

45. *Id.* (quoting William G. Bowen, former president of Princeton University and president of the Andrew W. Mellon Foundation).

46. *Id.*

47. *Id.*

48. *See infra* Part III.A.

expenses tend to be higher.[49] Excess endowments also increase the spending discretion of the nonprofit's managers.[50] One commentator has worried that this will lead to "mission drift" because more key decisions will be made by a powerful few instead of being painstakingly hammered out by faculty, as is the tradition at most universities with long histories.[51] Critics of universities would argue that all of these concerns—inefficiency, a present need for increased research and development, and, especially, rising tuition—warrant a change in the tax treatment of the nation's most prosperous universities.

III. In Defense (and Rebuttal) of Mega-Endowments

Universities have responded to this heightened scrutiny by emphasizing four factors: (1) the importance of intergenerational equity; (2) the need for predictable and stable sources of funding; (3) the donor restrictions attached to the many individual funds that, together, comprise the endowment; and (4) the good use to which endowment funds are already put, particularly with respect to student financial aid. As an initial matter, this last argument is almost beside the point. The issue is not whether endowment spending furthers the public good. The question is whether, in the aggregate, increased endowment spending would do even *more* good. The other three arguments most often advanced in defense of mega-endowments, however, deserve more extended discussion.

A. *Intergenerational Equity*

When an institution strives for intergenerational equity, it embraces the principle that an endowment should provide the same level of support to both current and future students. As a formal matter, endowment managers assume that the university will endure forever and adopt a spending rate that ensures the endowment can support the same activities in 2058 as it does in 2008. This means that endowment managers have to reinvest a portion of investment earnings, so that the endowment can support the same activities even after their costs have risen over time. Under this approach, the endowment can support additional activities only after it is enlarged by additional capital gifts.[52] More liberal spending policies would compromise the interests of future students for the benefit of current students, in direct contradiction to the principle of intergenerational equity.

Most Americans would subscribe to at least limited-term intergenerational equity; that is, we care about the interests of our children

49. Core et al., *supra* note 29, at 23.
50. *Id.* at 7.
51. Schneider, *supra* note 30.
52. James Tobin, *What Is Permanent Endowment Income?*, 64 AM. ECON. REV. 427, 427 (1974).

and grandchildren as much as we care about our own.[53] The problem is that intergenerational equity "provide[s] very doubtful support for current endowment policies."[54] First, the economy is likely to grow in the future just as it has in the past. To wit, the 2007 Social Security Trustees' Report projects gross domestic product (GDP) growth rates over a seventy-five-year horizon, using three different sets of assumptions, all with varying degrees of pessimism and optimism about what is likely to unfold. A researcher who has used the Trustees' Report to make projections about future material standards of living describes the results as "stunning": "per capita GDP is forecast to rise by 124% by 2080 in the [most pessimistic scenario], by 212% in the intermediate scenario, and by 333% in the [most optimistic] scenario. . . . [E]ven the most pessimistic scenario show[s] income per capita more than doubling in just over seven decades."[55] Thus future students (and their families) are likely to be at least as prosperous as today's. This prosperity will also allow the alumni of tomorrow to contribute to endowments just like the alumni of today. Because future gifts are likely, universities should take them into account as they plan for the financial horizon.[56]

In his work on endowments, Professor Henry Hansmann has noted that saving for the future assumes that a university's expenditures will yield the same or increased productivity over time.[57] But demand for the institution's services might instead decrease with time because of increased competition, changes in educational technology, or for a host of other reasons. Such risks justify applying a positive discount rate to future expenditures.[58] Moreover, because demand for education is elastic—that is, demand varies with quality, quantity, or both—efficiency considerations argue against reinvesting investment earnings as the costs of education are rising. If education will be more costly in the future than today, we should not do without now to consume later; that is the equivalent of substituting a more expensive good for a cheaper one.[59] Finally and most fundamentally,

53. For a review of the literature on intergenerational equity, see Neil H. Buchanan, *What Do We Owe Future Generations?*, 77 GEO. WASH. L. REV. (forthcoming 2009) (manuscript pt. II, on file with the Fordham Law Review). For a multifaceted discussion of the issues concerning intergenerational justice, see Symposium, *Intergenerational Equity*, 35 LOY. L.A. L. REV. 163 (2001).

54. Henry Hansmann, *Why Do Universities Have Endowments?*, 19 J. LEGAL STUD. 3, 14 (1990).

55. Buchanan, *supra* note 53, at 46. Neil Buchanan acknowledges that economic forecasts are "often proved wrong," but "the scale of revisions necessary to result in a forecast of zero net growth (or something even close to that level) over a several-decade span appear[s] to be beyond reason. Short of unpredictable cataclysms (weather-related disasters, world war, the collapse of global capitalism), [the Social Security Trustees' forecasts] are among the most solid available." *Id.* at 46–47.

56. Hansmann, *supra* note 54, at 16.

57. *Id.*

58. *Id.* The question of what constitutes the appropriate discount rate often dominates discussions of intergenerational equity. *See* Symposium, *Intergenerational Equity and Discounting*, 74 U CHI. L. REV. 1 (2007).

59. Hansmann, *supra* note 54, at 17–18.

it is not at all clear that endowment savings is the best way for a university to benefit future generations. As Hansmann puts it,

> [W]hen a university adds a dollar to its endowment for the purpose of making an intergenerational transfer, it is implicitly making the judgment that the dollar will have a higher rate of return if invested in stocks and bonds than in educating an undergraduate, or doing research in biophysics, or adding books to the library.[60]

Hansmann's debunking of intergenerational equity as a basis for endowment spending policies was published nearly twenty years ago in an essay that ended with the counsel that universities consider whether "their policies toward endowment accumulation are reasonable in light of the ends to which their institutions are dedicated."[61] Since then, his critique of intergenerational equity and endowment policies has been repeated in articles that have appeared in the *Chronicle of Higher Education*, a staple publication for university administrators.[62] To my knowledge, not a single university has attempted to explain why its endowment policies are a sound means of furthering intergenerational equity. Instead, they announce intergenerational equity as a goal and then state the spending rule they have adopted in light of it;[63] endowments must spend less in the present so that the amount earned by the endowment keeps pace with inflation. This is different than explaining why the goal *actually justifies* the spending rule. On the current state of the economic evidence, endowment spending policies do not support intergenerational equity. As such, intergenerational equity is not a reason for allowing universities to continue endowment management as usual.

B. *Saving for a Rainy Day*

Another common justification for large endowments is that they serve as a predictable and stable source of funding—a hedge against a rainy day.[64] Right now rain is falling on universities because of the downturn in financial markets, but other possible difficulties include a decrease in the number of qualified students who can afford tuition, a drop in alumni giving, a downturn in financial markets, cutbacks in government aid, or a

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60. *Id.* at 18.

61. *Id.* at 40.

62. *See, e.g.*, Henry Hansmann, *Bigger Is Not Necessarily Better*, CHRON. HIGHER EDUC., May 28, 2004, at B26; Henry Riggs, *Boards Should Reconsider What They Mean by Intergenerational Equity*, CHRON. HIGHER EDUC., Aug. 5, 2005, at B21; Schneider, *supra* note 30.

63. *See, e.g.*, Dana G. Mead & Jeremy M. Jacobs, *Don't Require Colleges to Spend More of Their Endowments*, CHRON. HIGHER EDUC., Nov. 9, 2007, at B20; *Should Colleges Be Required to Spend More of Their Endowments?*, CHRON. HIGHER EDUC., Mar. 14, 2008, at A33 (quoting remarks of Charles Miller, former Chairman of Texas Board of Regents and Chairman of the U.S. Department of Education's Commission on the Future of Higher Education).

64. *See, e.g.*, Hansmann, *supra* note 54, at 21; Mead & Jacobs, *supra* note 63.

sharp increase in costs. Any prudent university would elect to guard against these risks.

But Table 2 in the Appendix suggests that mega-endowment institutions have built far too large an ark. More than half of the institutions in Table 2 had an endowment in 2007 that could cover their operating budgets for more than three years; those in the upper quartile had more than a six-year reserve; and those in the top ten percent had more than a ten-year reserve.[65] Moreover, an endowment does not include the value of a university's physical assets, which can be used as security on a loan to help carry an institution through financial difficulties.[66]

This is not to suggest that institutions are being disingenuous when they make rainy day arguments. Universities are mostly the equivalent of their human parts. Surveys have shown that when it comes to an individual's financial well-being, *perceived* security is highly subjective. For example, in a survey of 112 individuals with net worth of over $5 million, respondents were asked to rank themselves on a scale of zero to ten, with a 10 indicating that they felt completely financially secure.[67] Thirty-six percent of respondents rated themselves as a ten. Respondents who rated themselves as an eight or nine indicated that they would require an average of an additional 60% of their net worth to feel completely financially secure; respondents who rated themselves lower than 8 indicated that they would require an average increase of 285%.[68] While respondents were presumably accustomed to the standard of living their wealth provided (just as universities are with their endowments), their subjective view likely bore little resemblance to their economic reality. A similar dynamic may be in play here, with the human leaders of universities reacting to institutional wealth in much the same way they would react to individual wealth.

C. *Donor-Restricted Funds*

Universities also defend endowment spending policies by pointing to donor restrictions. An endowment consists of many different gifts. The donors of at least some of these gifts have provided legally binding instructions about how universities can use the money. Even if an institution wanted to, say, provide free tuition for every student, it could not tap all of its endowment to do so; some of the funds would be restricted for professorships, building projects, and other uses that are far removed from free tuition. A study by NACUBO estimates that, in 2006, an average of

65. As discussed in the next section, some endowment funds are restricted to particular uses. A university is thereby limited in its ability to put these funds to general use, at least in the absence of a release granted by the donor or a court. *See infra* notes 69–75 and accompanying text.

66. Hansmann, *supra* note 54, at 22.

67. Paul G. Schervish & John J. Havens, *Gifts and Bequests: Family or Philanthropic Organizations?*, *in* DEATH AND DOLLARS: THE ROLE OF GIFTS AND BEQUESTS IN AMERICA 130, 143–45 (Alicia H. Munnell & Annika Sundén eds., 2003).

68. *Id.* at 143–44.

80% of endowment funds were restricted at public universities, and an average of 55% at private universities.[69]

Donor restrictions undoubtedly limit a university's discretion, but there is reason to suspect (1) that some universities overstate the magnitude of restrictions; and (2) that the restrictions are partially of the university's own making. As an initial matter, and as the NACUBO study cited above suggests, what is loosely referred to as "the endowment" does not consist entirely of restricted funds. An endowment also is comprised of unrestricted gifts (or portions of unrestricted gifts), which the university has elected to save rather than spend.[70] A study of annual giving at private research universities suggests that richer institutions, as measured by endowment-per-student and as compared to poorer institutions, tend to direct a larger share of their unrestricted annual gifts toward building the endowment and a smaller share toward current operations.[71] This sort of policy is one of the reasons for the ever-widening gap between rich and poor institutions,[72] and also is likely to yield an endowment with ample unrestricted funds. Indeed, the NACUBO study suggests that 45%—nearly half—of the endowment funds at private institutions are unrestricted.[73]

Universities and colleges also exert considerable influence over whether gifts are restricted or unrestricted, and, if restricted, the precise terms of the restriction. For example, institutions expend significant resources cultivating donors and helping to shape their giving preferences. These cultivated gifts often pay for expenditures the university would have made even without a gift, thereby allowing the institution to redirect funds to current expenses or to the endowment.[74] Furthermore, corporations, foundations, and alumni each tend to favor different sorts of projects, with corporations and foundations more likely to give to current operating expenses.[75] Thus the allocation of development staff can help determine the kinds of gifts that an institution receives. In sum, while donor restrictions limit the use of some endowment funds, such restrictions do not necessarily mean that universities cannot spend more. Even more important, as universities and Congress plan for the future, they should recognize that institutions themselves exert considerable control over the composition of their endowments.

69. 2006 ENDOWMENT STUDY, *supra* note 31, at 78.

70. 2007 ENDOWMENT STUDY, *supra* note 1, at 1100 (defining "endowment").

71. Ronald G. Ehrenberg & Christopher L. Smith, *The Sources and Uses of Annual Giving at Private Research Universities* 17 (Nat'l Bureau of Econ. Research, Working Paper No. 7307, 2001), *available at* http://www.nber.org/papers/w8307.

72. *Id.* at 20.

73. *See supra* note 69 and accompanying text.

74. Ehrenberg & Smith, *supra* note 71, at 5.

75. *Id.* at 6 n.4.

D. *Beyond the Proffered Justifications*

As the previous discussion suggests, upon close examination, the common justifications for mega-endowments are unpersuasive. Yet universities are passionate about the correctness of their endowment spending policies.[76] Because mega-endowment institutions are at the epicenter of American intellectual life, it is puzzling to find universities offering defenses that do not withstand academic scrutiny. Perhaps "building the endowment" has been a goal for so long that university leaders have not paused to consider whether it is still rational in light of billion dollar endowments.[77] What is equally likely, however, is that endowment spending policies are rational, but not for reasons that warrant deference or support from Congress or American taxpayers.

Measuring the overall quality of a university is a difficult task, as the endless criticism of the *U.S. News & World Report* rankings illustrates.[78] The factors that are typically relevant when evaluating a college—the classroom experience, faculty, campus life, and postgraduation opportunities—have values that are at best subjective. In contrast, the value of an endowment is a concrete measure of a university's success. Among other things, the amount of the endowment: (1) reflects the enthusiasm that alumni and other donors have for the university, (2) provides evidence of institutional permanence, and (3) suggests a means for meeting goals and surmounting short- and long-term challenges. The amount of the endowment (and often its yearly increase or decrease) is reported to ranking entities such as *U.S. News*, to alumni, to professional associations like NACUBO, and in industry publications like the *Chronicle of Higher Education*. In short, the amount of the endowment is the most concrete and visible sign of a university's success. Institutions that do well by this measure are understandably loathe to adopt policies that might compromise the absolute value of their endowments.

The concreteness of the endowment is also important for boards of trustees and the presidents whom they hire. Professor Hansmann has noted that trustees "generally come from the business world rather than the academic world," and that, therefore, overseeing financial investments is often closer to their areas of expertise than guiding the operations of an educational institution.[79] Just as outside observers use the endowment as a proxy for institutional success, boards of trustees are inclined to use the size

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76. *See, e.g.*, Princeton Univ., University Submits Statement on Endowments to Senate Committee (Oct. 9, 2007), *available at* http://www.princeton.edu/main/news/archive/S19/19/37O67/index.xml (reproducing statements by Robert K. Durkee, Vice President and Secretary of Princeton University, defending Princeton's approach to its endowment).

77. Hansmann, *supra* note 54, at 29–30 (noting that Harvard and Yale began building endowments around 1825).

78. For extended criticism of the rankings, see Symposium, *The Next Generation of Law School Rankings*, 81 IND. L. J. 1 (2006).

79. Hansmann, *supra* note 54, at 37.

of the endowment as a measure of their success in managing the university.[80]

The size of the endowment is important for university presidents as well. In recent years, more presidents have come from corporations,[81] making their expertise more similar to that of trustees. But even those without a corporate background are increasingly viewed as the nonprofit equivalents of chief executive officers, with compensation packages that reflect this corporate mindset. In 2006, 81 presidents of private institutions made more than $500,000, a 200% increase from five years earlier;[82] 12 presidents made more than $1 million, almost twice the number as in 2005.[83] At public research universities, the "minimum compensation among big players is $450,000."[84] Ten public institutions pay their presidents at least $700,000, up from just two in 2005. While these salaries still pale in comparison to what can be earned in the private sector, they were nonetheless "inconceivable" just twenty years ago.[85] Boards of trustees justify these salaries by pointing to "intense competition to hold onto talented executives necessary to help build institutional wealth and prestige."[86] Predictably, institutional wealth is measured by the rate of endowment growth. The endowment thus has become the primary yardstick by which boards of trustees judge not just themselves, but also their top administrators.[87] In a large study of almost 9000 nonprofits, including more than 2000 educational institutions,[88] researchers found a positive correlation between executive compensation and an excess endowment, with the amount of compensation increasing as the amount of excess endowment increased.[89]

Of course, whether an institution has a "successful" endowment should be judged on more than just the value of the endowment on the financial markets. A better measure would reflect the size of the endowment, the percentage of earnings and assets spent each year, and how the spending reflects the institution's short- and long-term priorities. This sort of individualized assessment, however, would involve the same sort of subjectivity that is inherent in evaluating the overall quality of a university.

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80. *Id.*

81. *Presidential Pay Is Increasing Fastest at the Largest Institutions*, CHRON. HIGHER EDUC., Nov. 16, 2007, at B3.

82. *Id.*

83. *Id.*

84. *Id.*

85. Jonathan D. Glater, *Increased Compensation Puts More College Presidents in the Million-Dollar Club*, N.Y. TIMES, Nov. 12, 2007, at A11.

86. *Id.*

87. *Id.* (citing the chairman of the University of Delaware's board of trustees, who "in a statement described the growth in his institution's endowment . . . during the tenure of David P. Roselle, who retired this summer as the university's president and who was the [second-highest] earner at a public institution").

88. John Core et al., *supra* note 29, at 11.

89. *Id.* at 27.

In other words, to look beyond an endowment's absolute amount compromises its value as a concrete indicator of success.

None of this is to suggest that boards of trustees or university administrators are more concerned about the absolute size of the endowment than about the well-being of the institution itself. But when so much emphasis has been placed on the endowment, and for so long, at some point the endowment begins to *become* the university. Thus congressional or other outside criticism of endowment spending policies are perceived as striking at the very heart of the institution. Moreover, when endowment management is the leading performance measure for university leaders, a retreat from existing spending policies may seem tantamount to a confession of professional misjudgment. This provides all the more reason for mega-endowment institutions to hunker down and defend spending (or not spending) as usual. But when the university's proffered justifications for its spending policies are unconvincing, and when other plausible explanations do not warrant deference, Congress needs to rethink its tax treatment of university endowments.

IV. CHANGING TAX TREATMENT OF MEGA-ENDOWMENT UNIVERSITIES (AND THEIR DONORS)

When the Senate Finance Committee began rattling its saber in 2006,[90] some mega-endowment schools announced measures to help defray tuition costs. For example, Princeton did not raise tuition for the 2007–2008 academic year.[91] In 2008, Yale raised tuition by 2.2%, the "lowest increase in recent memory."[92] Most notably, several schools have recently announced that lower-income students (those with, depending on the institution, annual family incomes between $40,000 and $100,000) will receive grants instead of loans.[93] In 2008, Harvard expanded its financial aid program to include families with annual incomes up to $180,000 and Yale quickly followed suit.[94] Yale announced that it would increase endowment spending to at least 4.5% and at most 6%, up from about 3.8%

90. *See generally Report Card on Tax Exemptions and Incentives for Higher Education: Pass, Fail, or Need Improvement?: Hearing Before S. Comm. on Finance*, 109th Cong. 1 (2006).

91. Karen Arenson, *Tuition Steady at Princeton; Other Fees Rise*, N.Y. TIMES, Jan. 22, 2007, at B5.

92. Alexandra Perloff-Giles, *Yale and Princeton Limit Tuition Hike*, HARV. CRIMSON, Feb. 5, 2008, *available at* http://www.thecrimson.com/article.aspx?ref=521706 (quoting the *Yale Daily News*).

93. *Brown Ends Tuition for Lower-Income Students*, N.Y. TIMES, Feb. 25, 2008, at A13 (noting similar policy changes by Harvard, Yale, Dartmouth, and Stanford). Princeton has followed such a policy for a decade. Jonathan Glater, *Stanford Set to Raise Aid for Students in Middle*, N.Y. TIMES, Feb. 21, 2008, at A14.

94. *See* Roger Lehecka & Andrew Delbanco, Op-Ed., *Ivy-League Letdown*, N.Y. TIMES, Jan. 22, 2008, at A21 (expressing concern that policy will work to the detriment of poor students because institutions would rather give partial scholarships to middle-income students than full scholarships to poor students).

the previous year.[95] Stanford similarly has stated that it would increase its endowment spending to 5.5%.[96] All of these measures were signs "that the nation's wealthiest universities are trying to fend off action by members of Congress who question why universities raise tuition faster than the rate of inflation while the value of their endowments soar."[97]

None of this, however, means that universities should be allowed to police themselves. First, universities have a long history of conservative spending policies. A spate of congressional interest is probably not enough to permanently change institutional predispositions. For example, in 2000 and 2001, Congress took a similar interest in endowments. Williams College responded by freezing tuition rates for a year; but it has increased tuition in subsequent years and today has tuition comparable to that of its competitors.[98] Second, it is difficult for institutional outsiders to appreciate the broader context in which change occurs. When Princeton held tuition steady in 2007, it also had an unusually high increase in other fees, which resulted in a 4.2% overall increase for students with a full meal contract.[99] Third, given the magnitude of the tax benefits granted to universities (and their donors),[100] Congress has a heightened responsibility to ensure that the public is receiving adequate benefit.

To date, three potential congressional actions have emerged during the course of the public debate: (1) making universities subject to the same five-percent spending rule as private foundations; (2) revising Form 990, which is filed annually with the Internal Revenue Service (IRS) by all private universities and some organizations that are related to public universities; and (3) taxing the investment income earned by mega-endowments. As discussed below, revising Form 990 and taxing investment income have merit; a five-percent spending rule is more dubious. Congress should also consider an avenue that has not previously been suggested: attempting to influence donor behavior.

A. *Five-Percent Spending Rule*

Universities are not required to report their rates of endowment spending, but industry surveys provide a sense of common practices. In 2007, 792 colleges and universities reported spending rates to NACUBO (which codes its results so that users cannot identify the spending rate of any particular institution). Between 2000 and 2007, the average endowment spending rate ranged from 4.6% to 5.1%.[101] When the average was dollar-weighted—to

95. Alan Finder, *Yale Plans to Increase Spending from Its Endowment with Financial Aid to Benefit*, N.Y. TIMES, Jan. 8, 2008, at A12.

96. Glater, *supra* note 93.

97. Finder, *supra* note 95.

98. Scott Jaschik, *Princeton Freezes Tuition*, INSIDE HIGHER ED, Jan. 22, 2007, http://www.insidehighered.com/news/2007/01/22/princeton.

99. Arenson, *supra* note 91.

100. *See supra* notes 9–23 and accompanying text.

101. 2007 ENDOWMENT STUDY, *supra* note 1, at 17, 23

account for the fact that institutions with larger endowments had disproportionate effect on the average—the spending rates decreased, with ranges from 4.0% to 5.0%.[102] For 2007, the equal-weighted average was 4.6%, while the dollar-weighted average was 4.2%.[103] At a minimum, the survey shows that many mega-endowment universities are annually spending less than 5% of their endowments.

Unlike colleges and universities, private foundations are required to make annual distributions for charitable purposes—at least 5% of the value of the foundation's noncharitable assets and the minimum investment return.[104] One proposal is that Congress make universities subject to a similar requirement.[105] While this proposal would boost spending at some institutions and makes for a convenient threat, the five-percent rule is an inappropriate response to mega-endowments.

The five-percent rule and questions about whether universities are hoarding their endowments have a superficial similarity, in that both aim to ensure that the public receives benefits in exchange for the tax subsidies given to charitable organizations. But the five-percent rule also reflects policy concerns that are largely absent in the university context. There is real risk that a private foundation will be organized primarily for the private good; that is, for the benefit of its donors (who receive tax breaks for funding the foundation and who may be able to capture benefits by serving in an administrative capacity) and board members (who similarly may benefit from their administrative roles).[106]

This risk is compounded by a private foundation's lack of accountability. Because private foundations typically are funded by a single individual or family, they are far less accountable than colleges and universities, which usually receive funding from government, corporations, foundations, and private donors. This lack of accountability magnifies the risk that a private foundation will serve the private, and not the public, good. Indeed, the five-percent rule is just one of a series of measures aiming to ensure that private foundations do not just advance private interests. Other measures include prohibitions on self-dealing[107] and limitations on the ability to acquire or retain holdings in business enterprises.[108]

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102. *Id.*

103. *Id.*

104. I.R.C. § 4942 (2000).

105. Goldie Blumenstyk, *College Groups Discourage Forced Endowment Payouts*, CHRON. HIGHER EDUC., Oct. 19, 2007, at A19. A variation on this proposal is to set a payout rate that would vary with the rate of investment return. Gravelle Memorandum, *supra* note 14.

106. *See* CHRISTINE AHN ET AL., CTR. FOR PUB. & NONPROFIT LEADERSHIP, GEORGETOWN PUB. POLICY INST., FOUNDATION TRUSTEE FEES: USE AND ABUSE 16 (2003) (showing that, in a study of 62 small foundations, over 25% spent more than 40% of their administrative fees on trustee compensation).

107. I.R.C. § 4941(d)(1); *see* John M. Strefeler & Leslie T. Miller, *Exempt Organizations: A Study of Their Nature and the Applicability of the Unrelated Business Income Tax*, 12 AKRON TAX J. 223, 242 (1996) (elaborating on the ban on self-dealing).

108. I.R.C. § 4943(c)(2)(A).

While we can question whether universities can make better use of their endowments, no one would seriously argue that institutions like Harvard and Grinnell primarily benefit private interests. The five-percent rule may guarantee some basic level of charitableness but universities have already achieved that. Given the magnitude of educational tax subsidies, and the hurdle that tuition poses for most families, universities should strive for more: to provide the greatest possible level of public benefit without jeopardizing their long-term health.

Aside from the theoretical arguments, there is reason to question whether mandatory spending would have the results its proponents anticipate. Advocates of a mandatory spending rule assume that the increased endowment spending would decrease tuition; that is, an endowment would bear some of the costs that are currently borne by students. Contrary to this assumption, however, a mandatory spending rule could have the unintentional effect of raising tuition across the board.

Even in a world of mandatory spending, universities are likely to try to maintain the size of their endowments. This means the endowment yield must at least equal the annual institutional budget increase and the required payout amount. Higher education budgets have been tending to increase at a rate of roughly 6% each year,[109] so the typical university might aim for a yield of 11% (to cover the 5% annual payout and the budget increase). This would likely push universities with conservative endowment management policies toward strategies that offer the possibility of higher returns. These same strategies are likely to have higher risk and greater yield variability.

One researcher has begun to study endowment patterns at universities and colleges. His very preliminary results demonstrate what one might intuitively expect: high-yield endowments are also more variable. For example, New York University, Cornell, Grinnell and Massachusetts Institute of Technology had endowment yields over 10 years of 8.8%, 10.3%, 12.4% and 15.1%, respectively.[110] Grinnell and MIT had the two highest one-year yields (38% and 55.6%), but also the two largest one-year losses (-12.2% and -10%).[111] NYU, which had the smallest return over the ten-year period, did not have a single year of negative returns.[112] While mega-endowment universities have endowments that are large enough to withstand the years with negative returns, the variability inherent in a high-risk strategy is problematic nonetheless.

Recall that one criticism of university spending is that some of it actually increases the cost of higher education, because it fuels an arms race for the best facilities and student amenities.[113] That is, less wealthy institutions believe that they have to make similar expenditures on their physical plants

109. *See supra* note 38.

110. Mark B. Schneider, Professor of Physics, Grinnell Coll., Comments for Endowment Roundtable (Sept. 8, 2008) (on file with author)

111. *Id.*

112. *Id.*

113. *See supra* notes 44–45.

and campuses in order to compete for students. The naming opportunities that attract large donors are often seen as contributing to the arms race, and the same may be true of the sort of "one-time" spending that a university is likely to undertake after a high-yield year. Although proponents of mandatory spending see it as a means of reducing tuition, a five-percent rule may affect a university's spending priorities, sometimes in ways that are contrary to the overarching goal of controlling tuition.

B. *Form 990*

The IRS requires private universities and colleges to annually file Form 990, which requests information about programs and finances. Form 990 has recently undergone revisions,[114] and some have suggested that it should include questions designed to shed light on endowment practices.[115] Such questions include: (1) What is the size of the endowment? (2) On what is the endowment being spent? (3) Which endowment funds are restricted to specific purposes and what are those purposes? (4) How are endowment funds invested? (5) What are the costs of managing the endowment?[116] These sorts of revisions would be both sensible and useful.

Revisions to Form 990, of course, would not compel any particular changes in endowment spending policies. Because a completed Form 990 is publicly available, however, the answers to these questions would add transparency to a particular institution's policies, as well as illuminate standard practices. A university, knowing its information was public, might feel compelled to spend more. In any event, a revised Form 990 would be useful to a Congress that periodically reevaluates its treatment of universities. The rare donor who is diligent enough to seek out the Form 990 might find the revisions useful as well. Moreover, the answers to at least some of the revised questions are likely to find their way into the media and thereby color perceptions of particular institutions. For example, Form 990 contains information about executive compensation. This salary data is reported by industry publications and then regurgitated in the popular press.

Universities may not like the increased scrutiny, but they have little grounds on which to object. While a revised Form 990 may cost more to complete, such expenditures are unlikely to be a significant factor in a university budget.[117] In addition, many institutions already report similar information to NACUBO (where it is compiled and reported in ways that

114. *See* Press Release, Internal Revenue Serv., IRS Releases Discussion Draft of Redesigned Form 990 for Tax-Exempt Organizations (June 14, 2007), *available at* http://www.irs.gov/newsroom/article/0,,id=171329,00.html.

115. Press Release, Office of Senator Charles Grassley, Sen. Grassley Works to Build Confidence in Nonprofits with Greater Transparency (May 29, 2007), *available at* http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=12581.

116. *Id.*

117. Paul Fain, *A Tax Expert Explains What's in Store for the IRS Form 990*, CHRON. HIGHER EDUC., Nov. 16, 2007, at B14.

often shield the identity of particular schools). For these schools, a revised Form 990 is likely to pose little additional burden.

C. *Taxing Investment Returns*

Another idea is to make endowment investment returns subject to the corporate income tax. This proposal has a couple of iterations. The most straightforward would earmark the funds generated for congressional measures designed to alleviate tuition costs. The more complex would create a revenue-sharing scheme, with funds distributed directly to poorer institutions on a pro rata basis, as determined by the size of an institution's student-to-endowment ratio.[118] Between 1997 and 2007, endowments of at least one billion dollars have had an average compounded investment return rate of 11.1%, net of all management fees and expenses.[119] With a corporate tax rate of 35%,[120] a tax on endowment investment returns could raise substantial funds—$18 billion, according to one estimate.[121] (Some institutions collect more in tuition and other fees than they pay out in expenses, but the differential is usually small.)[122]

Such an approach has some real advantages. First, the amount of tax will be calibrated to the well-being of the endowment. In 2007, mega-endowments had banner rates of returns, 21.3%.[123] This year, however, returns are likely to be negative. When the endowment is doing well, it will pay more tax; when the endowment is doing poorly, it will owe less. Second, unlike with the five-percent rule, universities cannot complain that they are being forced to dip into a rainy day fund; the tax simply means that they can accumulate less. Third, the proposal—particularly the iteration that provides for direct revenue sharing—may help eliminate a pronounced rich-poor gap between mega-endowment universities and their less wealthy counterparts. In particular, the funds may allow poorer colleges to offer aid packages that would allow them to compete for desirable students or compensation packages that would retain up-and-coming faculty.

There are, however, reasons for Congress to proceed cautiously as it considers whether to tax investment income. First, congressional interest is fueled by spiraling tuition costs. As discussed previously, some commentators have suggested that when Congress offsets the cost of tuition (as with the HOPE tax credit), institutions respond by increasing tuition or fees, thereby capturing the benefit for themselves.[124] If Congress used a tax on investment income to create new tuition-relief measures, or distributed

118. Allen, *supra* note 34.

119. 2007 ENDOWMENT STUDY, *supra* note 1, at 4.

120. I.R.C. § 11(b)(1)(D) (2006).

121. Gravelle Memorandum, *supra* note 14.

122. *See* Jeffrey Brainard, *Compensation of Presidents of Private Institutions*, CHRON. HIGHER EDUC., Nov. 21, 2008, at B20 (listing both expenditures and revenues for private institutions).

123. 2007 ENDOWMENT STUDY, *supra* note 1, at 4.

124. *See supra* note 24 and accompanying text.

funds directly to poorer schools, it is not certain that families would have lower out-of-pocket expenses. Another concern is potential objections from donors, who are likely to perceive investment returns as the "fruit" of their gifts. Such donors may be interested in advancing the interests of (for example) Harvard, and not at all concerned about the general state of higher education. But since the federal government also subsidizes the gifts of these donors (at least those who itemize deductions or die with substantial wealth), donors should not have the only say in how their gifts are used. These objections, however, suggest a part of the puzzle that has been mostly missing from discussions about mega-endowments: the donors who contribute to them. The next section turns to them.

D. *Influencing the Behavior of Donors*

Neither Congress nor commentators have identified donors as a potential means of encouraging endowment spending, although universities have pointed to donor restrictions as one reason why they cannot spend more.[125] The relative silence about donors is curious, as their continuing gifts are one reason that endowments prosper. Moreover, donors directly benefit from educational tax subsidies, because they can deduct lifetime gifts from their annual taxable incomes and bequests from their taxable estates.[126] If Congress wants to spur spending at mega-endowment universities, it should enlist (or conscript) donors.

Congress has a very large carrot with which to influence donor behavior: the charitable deduction from income and estate taxes. One possibility is that Congress could deny a deduction for any gift to a mega-endowment institution that does not specify that the gift must be spent within, say, twenty-five years.[127] A revised Form 990 would provide a means of tracking whether universities honor these time restrictions; those that did not could pay substantial penalties. In addition, Congress could cap the amount of deduction available for gifts that are restricted for the purchase or construction of the kinds of assets that businesses typically depreciate, such as buildings, machinery, or equipment.[128] These simultaneous changes would encourage present spending and help direct donors away from gifts that may inadvertently contribute to the rising costs of education.

Begin with a rule that would cap the deduction for gifts that contribute to the purchase or construction of depreciable assets. As previously discussed, some observers have concluded that some endowment gifts have the unintended consequence of *raising* tuition. They point to an "edifice

125. *See supra* notes 69–75 and accompanying text.

126. I.R.C. § 170 (2006) (income tax deduction); *id.* § 2055 (discussing estate tax deduction).

127. As a practical matter, universities (who will be eager to reassure their potential donors of the availability of a deduction) are likely to structure giving arrangements so that they promise to spend the gift within the specified time, unless the donor opts out.

128. *See* Internal Revenue Service, A Brief Overview of Depreciation, http://www.irs.gov/businesses/small/article/0,,id=137026,00.html (last visited Feb. 7, 2009).

complex," where some major donors prefer to put their names on new buildings that require "massive additional investment in both construction and long-term maintenance."[129] Moreover, when a mega-endowment institution improves its infrastructure or offers students amenities like high-end workout facilities, dining halls, or dormitories, they fuel an arms race in which other institutions feel compelled to make similar investments, thereby raising their tuitions as well.[130] With a limit on the available deduction, a university could still use donations to improve its infrastructure, but not as easily as at present. (This is because few donors will be willing to forgo a deduction on the sort of multi-million-dollar gifts behind so many campus improvements). This does not mean, of course, that mega-endowment universities will be unable to make improvements, but they likely will have to go about it in the same way as poorer institutions—by borrowing. This would slow the growth of physical improvements that inadvertently raise tuitions across higher education. Over time, such a limit on deductions also may decrease the most visible signs of the wealth gap between rich and poor colleges.

Now take the rule that would deny a deduction unless a gift specified that it had to be spent within twenty-five years. A requirement that a gift be spent in the same year it is made is generally meaningless, as an institution can simply retain other funds in its place.[131] But as the length of the time restriction increases, such shell games become more difficult. Without the rule that limits the deduction for gifts to depreciable assets, universities might respond by encouraging the kinds of gifts that contribute to the edifice complex, that is, the construction of new buildings or general campus beautification. But in absence of that possibility, universities would have to spend more on initiatives that would reduce tuition or otherwise relate very directly to the educational mission. Depending on the magnitude of the gift, universities might have to think creatively about reaching beyond their own borders in ways that further their educational missions.[132] This would provide another avenue for mega-endowment universities to reap the benefits of their wealth.

Some would argue that donors are already intimately and appropriately involved in creating endowment spending policies. This sentiment reflects a market-based approach to endowments: donors are aware of the enormity of university endowments and contribute to them anyway. These continuing contributions signal that the market for charitable gifts endorses university policies, or at least that, despite spending policies, the market

129. *See Higher Education Tax Exemptions and Incentives: Hearing Before the S. Comm. on Finance*, 109th Cong. 7 (2006) (statement of James Duderstat, President Emeritus of the University of Michigan and member of the Spellings Commission on the Future of Higher Education).

130. *Id.*

131. Hansmann, *supra* note 54, at 35.

132. *See* Stephanie Strom, *How Long Should Gifts Just Grow*, N.Y. TIMES, Nov. 12, 2007, at H1 (discussing how the Gates Foundation, which must spend multi-billion-dollar gifts from Warren Buffet within one year, has helped build additional outlets for its money).

finds universities more attractive than others who compete for charitable dollars.[133] From a pure market perspective, this argument has appeal. While there are occasional signs that universities fear the size of their endowments will decrease alumni giving,[134] and economic research suggests that large endowments might crowd out some gifts,[135] mega-endowment institutions continue to launch and complete multi-billion-dollar fundraising efforts.[136] The market favors these universities enough that the gifts keep coming in.

But this "leave-to-the-market" argument would be more powerful if studies showed that the typical donor carefully evaluates the relationship between a university's mission, its endowment, and its spending polices. Instead research has suggested numerous reasons why people make charitable gifts, very few of which involve a careful weighing of an institution's intrinsic merits. At the simplest level, contributing to a charity usually makes the donor feel good. This "warm glow" provides utility to the donor and acts as an incentive to give.[137] More specific to the university context, graduates who give to their alma maters may perceive themselves as repaying a deferred debt with interest (or a discount) to reflect the value of their degrees;[138] those who attend college are likely to hear, somewhere along the way, that tuition only partially covers the cost of an education. Donations can also serve as a means of purchasing social status or prestige.[139] In this regard, a university is doing more than just conveying information when it publishes a list of donors. Instead, it hopes that alumni will purchase the ability to signal that they are civic-minded enough to support their school or successful enough to give at a certain level. In addition, large donations might allow donors to influence institutional policy.[140] Donors might be particularly interested in securing favorable admissions decisions for their children or grandchildren.

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133. *See, e.g.*, Charity Governance, http://www.charitygovernance.com/charity_governance/2007/11/the-new-tax-on.html (Nov. 25, 2007, 14:56 EST).

134. *See, e.g.*, Ben Stein, *Three Cheers (and a Big Question) for Yale*, N.Y. TIMES, Oct. 23, 2005, at BU3 (questioning why he should give to Yale instead of poorer non-profits); Ben Stein, *All Right, Already: A Second Look at Yale*, N.Y. TIMES, Nov. 6, 2005, at BU4 (deciding, after a barrage of mail, that he would continue to give, not because doing so was sound economic policy, but because he "loves" Yale).

135. Sharon M. Oster, *The Effect of University Endowment Growth on Giving: Is There Evidence of Crowding Out?* 16–18 (Yale Sch. of Mgmt., Working Paper No. ES-10, 2001), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=271597.

136. *See supra* note 3 and accompanying text.

137. James Andreoni, *Giving with Impure Altruism, Applications to Charity and Ricardian Equivalence*, 97 J. POL. ECON. 1447, 1448–49 (1989); James Andreoni, *Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving*, 100 ECON. J. 464, 470 (1990).

138. HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 233 (1996).

139. ERIC A. POSNER, LAW AND SOCIAL NORMS 49–68 (2000); *see also* Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH L. REV. 338, 365–66 (1997) (suggesting that in certain instances charitable giving might be necessary in order to avoid a loss in prestige).

140. FRANCIE OSTROWER, WHY THE WEALTHY GIVE 37 (1995).

Economists from Princeton and Stanford analyzed alumni contributions at a "selective" university and found that alumni with children gave more and that giving increased as the children neared the age of eighteen. Giving dropped off after the child was accepted and declined even more sharply if the child was rejected.[141] Although legacy admissions are increasingly under fire, such donations can yield the results that alumni seek. In 2002, for instance, Texas A&M University admitted 321 students of alumni who would not have been admitted without the help of parents' donations.[142]

Of course, some donors—particularly those who give large gifts—thoroughly evaluate their options before deciding which institution will benefit from their largesse. These individuals often think of themselves as more like "charitable investors" than mere donors. But sometimes the donation to the university is a "default gift," in that a contributor wishes to make a substantial donation and has difficulty finding organizations that can absorb and manage a large influx of resources.[143] This sort of approach is hardly a ringing endorsement of university endowment policies.

Some donors use charitable giving as a means of obtaining immortality, although recent trends in philanthropy suggest that the numbers of these kinds of donors are shrinking.[144] At present, charitable gifts and their gains can remain in an endowment long after the donor has died. Some donors take special satisfaction in the idea that they continue to contribute or to exert control after their deaths. But perpetual control is more a myth than a reality. Every trusts and estates student knows about the safety valve of cy pres, which allows a court to modify the terms of a charitable gift to account for changed conditions.[145] In addition, a number of cases suggest that charities ignore donor restrictions much more often than donors realize.[146] Moreover, a time period, such as the twenty-five years suggested

141. *Higher Education Tax Exemptions and Incentives: Hearing Before the S. Comm. on Finance*, 109th Cong. 168–72 (2006) (Statement of Daniel Golden, Deputy Bureau Chief, Boston Bureau, *Wall Street Journal*); Jonathan Meer and Harvey S. Rosen, *Altruism and the Child-Cycle of Alumni Giving* (Nat'l Bureau of Econ. Research, Working Paper No. W13152, 2007), *available at* http://ssrn.com/abstract=992155.

142. Adam Liptak, *A Hereditary Perk the Founding Fathers Failed to Anticipate*, N.Y. TIMES, Jan. 15, 2008, at A12.

143. Strom, *supra* note 132 ("'One of the great lines from our experience was when we were sitting with a donor who said, "I know how to give $100 million to my Ivy League university, but I don't know how to give $100 million to help kids in the city,"' recalled H. Peter Karoff, founder of the Philanthropic Initiative, a strategic planning and consulting firm. 'We told him he would have to hire 20 people to do that well, and he wrote his check to the Ivy League school. Many of these huge gifts are what I call default gifts.'").

144. *See id.* (noting the growing number of major philanthropists who require that their gifts be spent in a short period of time).

145. UNIF. TRUST CODE, § 413, 7C U.L.A. 509 (2006).

146. *See* Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 VAND. L. REV 1093, 1094 (2005) (collecting cases and noting that "[t]he cat is out of the bag: [d]onors are fast discovering what was once a well-kept secret in the philanthropic sector—that a gift to public charity donated for a specific purpose and restricted to that purpose is often used by the charity for its general operations or applied to other uses not intended by the donor").

here, allows donors to influence events throughout the education of both the present generation and the next. As an actual matter, many of us have difficulty seeing beyond that horizon. Universities, of course, will continue to ensure that donors who value immortality have a means of appearing to achieve it, either through naming rights for particular initiatives or through other commemorative opportunities on campus. Finally, it is not at all clear why donor preferences for perpetual gifts should determine congressional policy. So long as a donor itemizes or dies with an estate that exceeds the applicable exclusion amount,[147] the public subsidizes the charitable gift. As such, donor judgments and preferences should not control.

The twenty-five-year spending rule and the limit on the deduction on gifts for depreciable assets might cause some donors to reevaluate whether to give to mega-endowment universities. But the majority of the reasons for giving—warm glow, repayment of an implicit loan, prestige among peers, policy-making access, and influence over admissions decisions—would remain unchanged. Of course, institutions with super-sized endowments will vehemently oppose any tax changes that might make them less attractive to donors, even if such risk is low. But if some donors did migrate away from mega-endowment institutions, society at large might actually benefit.

To state the obvious, the United States is not lacking for 501(c)(3) institutions that are capable of creating great good. If donors who dislike these proposed tax changes redirect their charitable dollars, less rich (and often financially strapped) charities are likely to benefit. Researchers who have studied giving patterns describe "identification with the fate of others" as the "primary variable" that explains why donors give to give charities.[148] In visual terms, donors are at the center of a series of concentric circles, with the smallest circles representing the individuals and organizations closest to the donor, and the larger circles representing those a bit more removed. Donors tend to provide for those on the inner circles before moving on to those on the outer circles.[149] If a mega-endowment institution is an inner circle and the donor desires, say, perpetual control (and a tax deduction), she will likely move to the outer circles more quickly than she otherwise would. The mega-endowment institution's loss is likely another charity's gain.

CONCLUSION

With the current economic downturn and reports of steep endowment losses, congressional interest in spending policies may seem like a relic from healthier times. Indeed, universities are likely to point to the current economic crisis as evidence of their wisdom—hard times come, and when

147. In 2008, an estate that is worth $2 million or less will pay no tax; in 2009, an estate that is worth $3.5 million or less will pay no tax. I.R.C. § 2010 (Supp. V 2005).

148. Schervish & Havens, *supra* note 67, at 134.

149. *Id.* at 138.

they do, institutions need to have saved for them. But some of the losses help put endowment size into perspective and illustrate just how large particular endowments have become. For instance, Yale reported that in fiscal year 2008 its endowment had fallen 25%, to approximately $17 billion.[150] Given the expenditures reported in Table 3, its endowment-expense ratio is likely in the range of 7:1, a number that is more than comfortable.

When Congress returns to endowments, two factors should inform its debate. First, the amount of endowment per full-time student is a convenient proxy for determining which institutions have excessively large endowments. Second, donors can play a valuable role in helping to spur the sort of endowment spending that promotes research and helps control tuition across the board. So long as tuition continues to trend upward and worthy research remains unfunded, endowment spending policies are a matter of national concern.

150. *See* Hoffman, *supra* note 5.

APPENDIX[151]

Table 1: Private Institutions Ranked by 2007 Endowment Value

Rank	Institution	State	2007 Endowment Value
1	Harvard University	MA	$34,634,906,000
2	Yale University	CT	$22,530,200,000
3	Stanford University	CA	$17,164,836,000
4	Princeton University	NJ	$15,787,200,000
5	Massachusetts Institute of Technology	MA	$9,980,410,000
6	Columbia University	NY	$7,149,803,000
7	University of Pennsylvania	PA	$6,635,187,000
8	Northwestern University	IL	$6,503,292,000
9	University of Chicago	IL	$6,204,189,000
10	University of Notre Dame	IN	$5,976,973,000
11	Duke University	NC	$5,910,280,000
12	Washington University	MO	$5,567,843,000
13	Emory University	GA	$5,561,743,000
14	Cornell University	NY	$5,424,733,000
15	Rice University	TX	$4,669,544,000
16	Dartmouth College	NH	$3,760,234,000
17	University of Southern California	CA	$3,715,272,000
18	Vanderbilt University	TN	$3,487,500,000
19	Johns Hopkins University	MD	$2,800,377,000
20	Brown University	RI	$2,780,798,000
21	New York University	NY	$2,161,800,000
22	Williams College	MA	$1,892,055,000
23	California Institute of Technology	CA	$1,860,052,000
24	Case Western Reserve University	OH	$1,841,234,000
25	Pomona College	CA	$1,760,902,000
26	University of Rochester	NY	$1,726,318,000
27	Grinnell College	IA	$1,718,313,000
28	Boston College	MA	$1,670,092,000
29	Amherst College	MA	$1,662,377,000
30	Wellesley College	MA	$1,656,565,000

151. The information in these tables was gathered from the 2006 and 2007 NACUBO endowment studies. *See* 2007 ENDOWMENT STUDY, *supra* note 1, pt. 5; 2006 ENDOWMENT STUDY, *supra* note 31, pt. 5; *see also supra* Part I.

Rank	Institution	State	2007 Endowment Value
31	University of Richmond	VA	$1,654,988,000
32	Tufts University	MA	$1,452,058,000
33	Swarthmore College	PA	$1,441,232,000
34	Yeshiva University	NY	$1,409,576,000
35	Smith College	MA	$1,360,966,000
36	Southern Methodist University	TX	$1,327,816,000
37	Wake Forest University	NC	$1,248,695,000
38	Texas Christian University	TX	$1,187,057,000
39	George Washington University	DC	$1,147,451,000
40	Carnegie Mellon University	PA	$1,115,740,000
41	Berea College	KY	$1,102,272,000
42	Boston University	MA	$1,101,386,000
43	Syracuse University	NY	$1,086,143,000
44	Lehigh University	PA	$1,085,639,000
45	Georgetown University	DC	$1,059,343,000
46	Baylor University	TX	$1,018,012,000
47	Tulane University	LA	$1,009,129,000
48	Trinity University	TX	$991,112,000
49	St. Louis University	MO	$959,486,000
50	Middlebury College	VT	$936,354,000
51	University of Tulsa	OK	$915,320,000
52	Vassar College	NY	$869,122,000
53	Bowdoin College	ME	$827,714,000
54	Oberlin College	OH	$816,135,000
55	Rensselaer Polytechnic Institute	NY	$812,996,000
56	University of Miami	FL	$741,382,000
57	Pepperdine University	CA	$734,924,000
58	Lafayette College	PA	$734,421,000
59	Wesleyan University	CT	$710,800,000
60	Colgate University	NY	$709,047,000

Table 2: Private Institutions Ranked by 2007 Endowment-Expense Ratio

Rank	Institution	State	2007 Endowment Value	2006–2007 Expenditures	Endowment-Expense Ratio
1	Grinnell College	IA	$1,718,313,000	$104,000,000	16.52224038
2	Berea College	KY	$1,102,272,000	$69,000,000	15.97495652
3	Pomona College	CA	$1,760,902,000	$129,000,000	13.6504031
4	Princeton University	NJ	$15,787,200,000	$1,200,000,000	13.156
5	Rice University	TX	$4,669,544,000	$396,000,000	11.79177778
6	Swarthmore College	PA	$1,441,232,000	$132,000,000	10.91842424
7	Harvard University	MA	$34,634,906,000	$3,200,000,000	10.82340813
8	Amherst College	MA	$1,662,377,000	$155,000,000	10.7250129
9	University of Richmond	VA	$1,654,988,000	$160,000,000	10.343675
10	Yale University	CT	$22,530,200,000	$2,200,000,000	10.241
11	Williams College	MA	$1,892,055,000	$189,000,000	10.01087302
12	Trinity University	TX	$991,112,000	$113,000,000	8.770902655
13	Wellesley College	MA	$1,656,565,000	$224,000,000	7.395379464
14	University of Notre Dame	IN	$5,976,973,000	$818,000,000	7.306812958
15	Bowdoin College	ME	$827,714,000	$127,000,000	6.517433071
16	Smith College	MA	$1,360,966,000	$218,000,000	6.242963303
17	Stanford University	CA	$17,164,836,000	$3,100,000,000	5.537043871
18	Lafayette College	PA	$734,421,000	$142,000,000	5.171978873
19	University of Tulsa	OK	$915,320,000	$177,000,000	5.171299435
20	Vassar College	NY	$869,122,000	$171,000,000	5.082584795

Rank	Institution	State	2007 Endowment Value	2006–2007 Expenditures	Endowment-Expense Ratio
21	Dartmouth College	NH	$3,760,234,000	$766,000,000	4.908921671
22	Oberlin College	OH	$816,135,000	$178,000,000	4.58502809
23	Wake Forest University	NC	$1,248,695,000	$283,000,000	4.412349823
24	Middlebury College	VT	$936,354,000	$213,000,000	4.396028169
25	Northwestern University	IL	$6,503,292,000	$1,500,000,000	4.335528
26	Colgate University	NY	$709,047,000	$164,000,000	4.323457317
27	Massachusetts Institute of Technology	MA	$9,980,410,000	$2,400,000,000	4.158504167
28	Texas Christian University	TX	$1,187,057,000	$287,000,000	4.136087108
29	Brown University	RI	$2,780,798,000	$677,000,000	4.107530281
30	Columbia University	NY	$7,149,803,000	$2,000,000,000	3.5749015
31	Wesleyan University	CT	$710,800,000	$206,000,000	3.450485437
32	University of Chicago	IL	$6,204,189,000	$1,800,000,000	3.446771667
33	Lehigh University	PA	$1,085,639,000	$343,000,000	3.16512828
34	Duke University	NC	$5,910,280,000	$1,900,000,000	3.110673684
35	Southern Methodist University	TX	$1,327,816,000	$427,000,000	3.109639344
36	Washington University	MO	$5,567,843,000	$1,800,000,000	3.093246111
37	Cornell University	NY	$5,424,733,000	$2,000,000,000	2.7123665
38	Emory University	GA	$5,561,743,000	$2,200,000,000	2.528065
39	Pepperdine University	CA	$734,924,000	$298,000,000	2.466187919
40	Boston College	MA	$1,670,092,000	$688,000,000	2.427459302

Rank	Institution	State	2007 Endowment Value	2006–2007 Expenditures	Endowment-Expense Ratio
41	Yeshiva University	NY	$1,409,576,000	$598,000,000	2.357150502
42	Tufts University	MA	$1,018,012,000	$642,000,000	2.261772586
43	Baylor University	TX	$1,452,058,000	$463,000,000	2.198730022
44	Case Western Reserve University	OH	$1,841,234,000	$902,000,000	2.041279379
45	University of Pennsylvania	PA	$6,635,187,000	$3,400,000,000	1.951525588
46	Rensselaer Polytechnic Institute	NY	$812,996,000	$424,000,000	1.917443396
47	University of Southern California	CA	$3,715,272,000	$2,100,000,000	1.769177143
48	Tulane University	LA	$1,009,129,000	$659,000,000	1.53130349
49	St. Louis University	MO	$959,486,000	$631,000,000	1.520580032
50	Syracuse University	NY	$1,086,143,000	$810,000,000	1.340917284
51	Carnegie Mellon University	PA	$1,115,740,000	$836,000,000	1.334617225
52	Vanderbilt University	TN	$3,487,500,000	$2,800,000,000	1.245535714
53	George Washington University	DC	$1,147,451,000	$963,000,000	1.191537902
54	Georgetown University	DC	$1,059,343,000	$928,000,000	1.141533405
55	University of Rochester	NY	$1,726,318,000	$2,000,000,000	0.863159
56	Johns Hopkins University	MD	$2,800,377,000	$3,300,000,000	0.848599091
57	California Institute of Technology	CA	$1,860,052,000	$2,300,000,000	0.808718261
58	New York University	NY	$2,161,800,000	$2,700,000,000	0.800666667

Rank	Institution	State	2007 Endowment Value	2006–2007 Expenditures	Endowment-Expense Ratio
59	Boston University	MA	$1,101,386,000	$1,500,000,000	0.734257333
60	University of Miami	FL	$741,382,000	$1,700,000,000	0.436107059

Table 3: Private Institutions Ranked by 2007 Endowment Per Full-Time Student

Rank	Institution	State	2007 Endowment Per Full-Time Student
1	Princeton University	NJ	$2,228,257
2	Yale University	CT	$1,983,641
3	Harvard University	MA	$1,774,875
4	Boston College	MA	$1,670,092
5	Stanford University	CA	$1,152,776
6	Pomona College	CA	$1,150,165
7	Grinnell College	IA	$1,094,467
8	Syracuse University	NY	$1,086,143
9	Amherst College	MA	$1,003,851
10	Swarthmore College	PA	$974,464
11	Massachusetts Institute of Technology	MA	$973,699
12	Rice University	TX	$946,785
13	Williams College	MA	$933,426
14	California Institute of Technology	CA	$891,684
15	Wellesley College	MA	$740,530
16	Berea College	KY	$712,983
17	Dartmouth College	NH	$664,705
18	University of Notre Dame	IN	$519,963
19	Bowdoin College	ME	$478,724
20	Duke University	NC	$475,868
21	Washington University	MO	$473,738
22	University of Chicago	IL	$469,765
23	Emory University	GA	$458,511
24	Smith College	MA	$439,305
25	University of Richmond	VA	$415,513
26	Northwestern University	IL	$397,390
27	Middlebury College	VT	$392,766
28	Trinity University	TX	$377,998
29	Vassar College	NY	$362,739
30	Brown University	RI	$350,226
31	Columbia University	NY	$337,398
32	University of Pennsylvania	PA	$317,336
33	Lafayette College	PA	$315,609
34	Vanderbilt University	TN	$300,647

Rank	Institution	State	2007 Endowment Per Full-Time Student
35	Oberlin College	OH	$289,512
36	Cornell University	NY	$276,222
37	Colgate University	NY	$255,974
38	Wesleyan University	CT	$234,587
39	University of Tulsa	OK	$233,262
40	University of Rochester	NY	$219,522
41	Case Western Reserve University	OH	$215,551
42	Johns Hopkins University	MD	$195,434
43	Yeshiva University	NY	$189,408
44	Wake Forest University	NC	$187,548
45	Lehigh University	PA	$176,383
46	Tufts University	MA	$156,861
47	Southern Methodist University	TX	$145,994
48	Texas Christian University	TX	$144,358
49	Rensselaer Polytechnic Institute	NY	$127,329
50	Carnegie Mellon University	PA	$119,933
51	University of Southern California	CA	$117,915
52	Tulane University	LA	$107,320
53	Pepperdine University	CA	$105,532
54	St. Louis University	MO	$91,896
55	Georgetown University	DC	$80,614
56	Baylor University	TX	$73,881
57	New York University	NY	$62,053
58	George Washington University	DC	$57,505
59	University of Miami	FL	$49,389
60	Boston University	MA	$44,223

Table 4: Private Institutions Ranked by 2007 Endowment Per Full-Time Student, with 2007 Endowment-Expense Ratios

Rank	Institution	State	2007 Endowment-Expense Ratio	2007 Endowment Per Full-Time Student
1	Princeton University	NJ	13.156	$2,228,257
2	Yale University	CT	10.241	$1,983,641
3	Harvard University	MA	10.82340813	$1,774,875
4	Boston College	MA	2.427459302	$1,670,092
5	Stanford University	CA	5.537043871	$1,152,776
6	Pomona College	CA	13.6504031	$1,150,165
7	Grinnell College	IA	16.52224038	$1,094,467
8	Syracuse University	NY	1.340917284	$1,086,143
9	Amherst College	MA	10.7250129	$1,003,851
10	Swarthmore College	PA	10.91842424	$974,464
11	Massachusetts Institute of Technology	MA	4.158504167	$973,699
12	Rice University	TX	11.79177778	$946,785
13	Williams College	MA	10.01087302	$933,426
14	California Institute of Technology	CA	0.808718261	$891,684
15	Wellesley College	MA	7.395379464	$740,530
16	Berea College	KY	15.97495652	$712,983
17	Dartmouth College	NH	4.908921671	$664,705
18	University of Notre Dame	IN	7.306812958	$519,963
19	Bowdoin College	ME	6.517433071	$478,724
20	Duke University	NC	3.110673684	$475,868
21	Washington University	MO	3.093246111	$473,738
22	University of Chicago	IL	3.446771667	$469,765
23	Emory University	GA	2.528065	$458,511
24	Smith College	MA	6.242963303	$439,305
25	University of Richmond	VA	10.343675	$415,513
26	Northwestern University	IL	4.335528	$397,390
27	Middlebury College	VT	4.396028169	$392,766
28	Trinity University	TX	8.770902655	$377,998
29	Vassar College	NY	5.082584795	$362,739
30	Brown University	RI	4.107530281	$350,226
31	Columbia University	NY	3.5749015	$337,398
32	University of Pennsylvania	PA	1.951525588	$317,336
33	Lafayette College	PA	5.171978873	$315,609

Rank	Institution	State	2007 Endowment-Expense Ratio	2007 Endowment Per Full-Time Student
34	Vanderbilt University	TN	1.245535714	$300,647
35	Oberlin College	OH	4.58502809	$289,512
36	Cornell University	NY	2.7123665	$276,222
37	Colgate University	NY	4.323457317	$255,974
38	Wesleyan University	CT	3.450485437	$234,587
39	University of Tulsa	OK	5.171299435	$233,262
40	University of Rochester	NY	0.863159	$219,522
41	Case Western Reserve University	OH	2.041279379	$215,551
42	Johns Hopkins University	MD	0.848599091	$195,434
43	Yeshiva University	NY	2.357150502	$189,408
44	Wake Forest University	NC	4.412349823	$187,548
45	Lehigh University	PA	3.16512828	$176,383
46	Tufts University	MA	2.261772586	$156,861
47	Southern Methodist University	TX	3.109639344	$145,994
48	Texas Christian University	TX	4.136087108	$144,358
49	Rensselaer Polytechnic Institute	NY	1.917443396	$127,329
50	Carnegie Mellon University	PA	1.334617225	$119,933
51	University of Southern California	CA	1.769177143	$117,915
52	Tulane University	LA	1.53130349	$107,320
53	Pepperdine University	CA	2.466187919	$105,532
54	St. Louis University	MO	1.520580032	$91,896
55	Georgetown University	DC	1.141533405	$80,614
56	Baylor University	TX	2.198730022	$73,881
57	New York University	NY	0.800666667	$62,053
58	George Washington University	DC	1.191537902	$57,505
59	University of Miami	FL	0.436107059	$49,389
60	Boston University	MA	0.734257333	$44,223

Table 5: Private Institutions Ranked by 2006 Endowment Per Full-Time Student, with 2006 Endowment-Expense Ratios

Rank	Institution	State	2006 Endowment-Expense Ratio	2006 Endowment Per Full-Time Student
1	The Rockefeller University	NY	6.815208	$8,859,770
2	Princeton University	NJ	11.859	$1,910,501
3	Yale University	CT	9.0153	$1,589,159
4	Harvard University	MA	9.638569	$1,504,616
5	Stanford University	CA	4.856785	$1,070,671
6	Pomona College	CA	12.45481	$952,427
7	Grinnell College	IA	15.01841	$944,675
8	The Juilliard School	NY	9.763029	$862,190
9	Swarthmore College	PA	10.12424	$844,831
10	Amherst College	MA	9.760277	$820,846
11	Massachusetts Institute of Technology	MA	3.63829	$820,399
12	Rice University	TX	10.74573	$795,107
13	Baylor College of Medicine	TX	1.059393	$779,539
14	California Institute of Technology	CA	0.75282	$728,871
15	Williams College	MA	8.214219	$724,545
16	Wellesley College	MA	6.957685	$627,738
17	Berea College	KY	14.16027	$610,121
18	Dartmouth College	NH	4.342829	$534,965
19	Emory University	GA	2.319057	$409,865
20	Smith College	MA	5.61335	$406,022
21	Bowdoin College	ME	5.564843	$404,898
22	University of Notre Dame	IN	5.717299	$392,379
23	University of Chicago	IL	3.041877	$384,106
24	Bryn Mawr College	PA	5.469311	$371,633
25	University of Richmond	VA	9.14198	$348,877
26	Duke University	NC	2.645716	$337,768
27	Middlebury College	VT	3.747599	$330,564
28	Hamilton College	NY	5.065362	$325,350
29	Northwestern University	IL	3.671906	$320,690
30	Vassar College	NY	4.635344	$316,541
31	Trinity University	TX	7.474055	$303,869
32	Lafayette College	PA	4.948794	$284,588

Rank	Institution	State	2006 Endowment-Expense Ratio	2006 Endowment Per Full-Time Student
33	Columbia University	NY	2.19919	$279,954
34	Washington & Lee University	VA	4.8914	$269,870
35	Brown University	RI	3.277033	$268,148
36	Vanderbilt University	TN	1.133228	$265,680
37	University of Pennsylvania	PA	1.610081	$252,029
38	Cornell University	NY	1.878782	$222,204
39	University of Tulsa	OK	4.805765	$211,270
40	Wesleyan University	CT	3.068124	$204,542
41	University of Rochester	NY	0.828486	$195,219
42	Case Western Reserve University	OH	1.82069	$186,552
43	Johns Hopkins University	MD	0.758306	$179,446
44	Yeshiva University	NY	2.165522	$176,263
45	Wake Forest University	NC	3.964099	$157,439
46	Lehigh University	PA	2.982454	$154,189
47	Texas Christian University	TX	3.75038	$138,543
48	Tufts University	MA	2.058903	$137,896
49	Boston College	MA	2.234394	$113,222
50	Carnegie Mellon University	PA	1.159514	$103,353
51	University of Southern California	CA	1.532968	$99,019
52	Saint Louis University	MO	1.332554	$79,054
53	Tulane University	LA	1.127888	$74,327
54	Georgetown University	DC	0.98757	$65,471
55	Baylor University	TX	2.164267	$62,280
56	Syracuse University	NY	1.179703	$53,620
57	New York University	NY	0.70988	$52,292
58	George Washington University	DC	1.06134	$49,398
59	University of Miami	FL	0.413621	$41,570
60	Boston University	MA	0.610678	$37,202

Notes & Observations