

## EUTHANIZING SMALL CHARITIES

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Perpetual charitable trusts are increasingly a luxury available only to the most affluent class. In a growing number of American states, generous people of moderate means can no longer create a charitable trust with the assurance it will outlast them. Whereas donors of all wealth backgrounds may design their charitable trusts to be perpetual, modest trusts are at growing risk of involuntary termination.

With the widespread adoption of the Uniform Trust Code, many American states are enacting statutes that grant a trustee full discretion to terminate a trust on the sole ground that it has too little money to justify administrative expenses. Section 414(a) of the Uniform Trust Code states that, “After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than [\$50,000] may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.” The Code also permits a court to terminate a trust (or modify its terms or trustee) if the court reaches the same conclusion on the relationship between trust value and administrative costs. Although a well-advised donor may restrict the ability of a trustee to terminate her trust, she cannot prevent a court from terminating it.

The benefit of such a rule is clear: increased efficiency. Channeling under-funded trusts toward extinction relieves the sector of resources needed to continue their administration. The rule certainly benefits for-profit fiduciaries, like financial institutions, who have little appetite for trusts whose resources generate insignificant fees. Scholars have touted the benefits of uniformity in law to the charitable sector. But what are the costs of this rule? What does society lose by exterminating charities with scarcer resources? Is there harm in allowing only survival of the financially-fittest in the charitable sector?

This Article argues that there are two key costs of euthanizing small charities: depleting democracy in philanthropy, and shrinking diversity in charitable focus. To support these claims of harm to democracy and diversity in charity, the Article reviews empirical evidence mined from tax returns: first, on disparity between charitable goals of the well-funded trust and the less-so, and second, on diversity of focus in smaller versus larger charities.

The first cost of terminating small charities is a strike against democracy in giving. By allowing only wealthy charities to resist termination, only wealthy individuals may create durable charitable trusts. To the extent the philanthropic patronage of the rich departs from the goals of the masses (opera support versus poverty relief, for example), supporting only prosperous trusts moves charity away from democracy toward aristocracy.

In a connected malady, diversity suffers; excluding moderately-funded trusts eliminates significant minority support for tailored causes. For example, a family touched by a particular disease may want to create a charitable trust to support research and treatment for that disease. Charities focused on narrow causes may need less funding – and receive less funding – than those focused on broad ones. By eliminating smaller trusts, we will wipe out many targeted charities in favor of fewer undifferentiated ones. We will close the neighborhood toy store and flower shop, and support only the megamall.

In adopting the small trust termination statute of the Uniform Trust Code, or similar statutes in other states or nations, we must be cognizant of the trade-off. Is administrative efficiency a priority over democratic and diverse charity? If not, we should be reluctant to put our smaller charities to sleep.