

# president's note

## Misconceptions about “Dark Money”

A long legal tradition protects the rights of Americans to make charitable contributions without publicly disclosing them. This right to confidentiality in charitable giving is grounded in our constitutional freedom of association, and it is one of the most important elements of philanthropic freedom.

The Supreme Court ruled unanimously in *NAACP v. Alabama* in 1958 that “freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment.” In a landmark judgment written by Justice John Marshall Harlan II, the court held that the state of Alabama could not compel the NAACP to reveal the names and addresses of its members because doing so would expose its supporters “to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility” and thereby restrain “their right to freedom of association.” This right of confidentiality applies to members of all associations, whether they be religious, educational, cultural, ideological, or devoted to other causes. As professor Anita Allen of the University of Pennsylvania Law School has put it, “Thanks to *NAACP v. Alabama*, government may not force even a controversial group to identify its members, absent a compelling state interest in disclosure.”

Our tax code similarly protects the confidentiality of individual contributions to public charities. In their 990 tax returns, public charities have to disclose their largest contributors, but this is for purposes of tax administration only. The

Internal Revenue Service is strictly forbidden by statute from revealing these names to the public or even, with a very limited number of exceptions, to other government agencies. The same prohibitions apply when individual taxpayers have to provide the IRS with documentation about their charitable contributions. Indeed, one of the most disturbing allegations in the current IRS scandal is the charge that the agency in recent years has violated its rules and long tradition protecting donor privacy.

Donors do have to disclose publicly their contributions to private grant-making foundations, which in turn have to disclose their grants to public charities. These transparency requirements help to protect against self-dealing and to make sure that foundation grants support genuinely charitable organizations.

Donor-advised funds, America’s most rapidly growing charitable vehicle, receive donations from individuals and then make grants to other public charities on the recommendations of the original donors. Like foundations, the sponsors of donor-advised funds (which include regional community foundations; Christian and Jewish funds; and for-profits such as Fidelity and Schwab) are required to disclose the grants they make to other charities; this helps ensure that the grants are going to charities and not to for-profit or partisan political operations. But consistent with America’s historic confidentiality protection for individual donors to public charities, the sponsors can keep private their own donors as well as those donors’ individual grant recommendations.

This protection is sometimes misunderstood. For instance, conservative critics of the Tides Foundation, a liberal-left donor-advised-fund sponsor, have called it a system “to

evade transparency.” Liberal critics of DonorsTrust, a donor-advised-fund sponsor for “organizations that promote liberty,” have labeled it as a “secretive funding network” and “dark-money ATM.” But the right to privacy enjoyed by contributors to donor-advised funds is no different than the right to privacy that governs the overwhelming majority of charitable giving.

Most donors of course are happy to see their contributions publicized. But a sizable minority want their philanthropy to be anonymous and will not give unless they can keep their donations confidential.

There are multiple reasons to give privately. The great 12th-century Jewish theologian Maimonides held that the second highest form of giving was “to give to the poor without knowing to whom one gives, and without the recipient knowing from whom he received.” In the Gospel of Matthew, Jesus taught that “when you give to the needy, sound no trumpet before you...do not let your left hand know what your right hand is doing, so that your giving may be in secret.”

Many anonymous donors want to protect themselves from unwanted solicitations, to protect their children from knowledge of their family’s wealth, or to be able to visit prospective grantees and “kick the tires” without anyone knowing they are a funder. Still others, like the 1960s NAACP donors, want the freedom to support controversial organizations without fear of reprisal or ostracism.

So-called “dark money” illuminates our free society.



Adam Meyerson  
President

The Philanthropy Roundtable