

# PREFACE

This new guidebook on protecting donor intent comes at a time when philanthropists are under attack. Some critics declare that philanthropy is, by nature, anti-democratic. Others propose checks on the ability of philanthropists to choose how their gifts will be deployed. Still others attack the concept of donor intent itself, arguing that it is a “dead hand” exerting control from the grave to enforce the original donor’s self-serving or outdated wishes, preventing philanthropists from being “held to account.”

These critiques have sometimes migrated from blogs and editorials into proposed legislation and regulations that would sharply curb the rights and freedoms of donors. In the mid-2000s, the Senate Finance Committee considered requiring “independent directors” on all private foundation boards, which would have interfered with foundations steered by family members or trusted associates. In 2008, the California Assembly passed legislation imposing demographic disclosure requirements on foundations, with the goal of redirecting gifts to politically favored causes. Similar legislation has been put on the table in other states. Calls to limit the charitable deduction to gifts that provide direct assistance to poor people, or follow other prescribed criteria, have introduced notions of “charitable hierarchy”—arbitrarily asserting that some causes are more worthy than others. Legislators and attorneys general in states across the country are advancing donor disclosure requirements that violate the First Amendment right to privacy in giving. The September 2019 wealth tax proposal of Emmanuel Saez and Gabriel Zucman—both of whom advised several 2020 Presidential candidates—urged that private foundations should be taxed “until the time such funds have been spent or moved fully out of the control of the donor.”

At The Philanthropy Roundtable, we believe that private philanthropy is an essential element of American freedom, and central to our greatness as a nation. The voluntary nature of charitable giving, and the sprawling diversity of individual interests it reflects, lie at the heart of cultural innovation in America. Respecting donors’ intentions for their gifts is an essential prerequisite for continued charitable giving, and for preventing giving from becoming homogenized and manipulated. Our flourishing, community-building philanthropy is utterly dependent on

keeping the trust of voluntary donors, during and after their lifetimes. Our charitable laws, regulations, and practices should support donor intent. Those charged with carrying out donors' wishes bear an ethical obligation to do so to the best of their ability. And in a pluralistic democracy, where citizens are free to make their own decisions about the best ways to improve the well-being of society, the voluntary actions taken within civil society must be protected.

Donor intent is a moral issue, demonstrating respect for individual differences and choices. When we speak of protecting donor intent, we are not referring to a slavish adherence to minute details, but rather to a commitment to honor a donor's principles, to maintain the integrity of his or her philanthropy over time. Donors must make their values and intentions very clear in their mission statements and in their interactions with governing boards and grantees. And those entrusted to carry out the details should be faithful to that trust.

To people suggesting that philanthropic gifts are "public money" because they receive government "subsidies" in the form of tax deductions and exemptions, we respond that those tax provisions are, in fact, not subsidies, but rather vital civil-liberty protections that insulate private giving from government control (though not from reasonable regulation). Evelyn Brody and John Tyler recognized this in our 2012 publication *How Public is Private Philanthropy?*, noting that "with the charitable deduction, the donor, not the government, decides whether to give at all, in what amounts and forms, to which qualified charities, and whether any designations or restrictions accompany the contributions." There are also vital Constitutional reasons to resist the nostrum that charitable gifts should be governmentally controlled—see "Why is Charitable Activity Tax-Protected? (Think Freedom, Not Finances)" in *The Almanac of American Philanthropy*.

We hope that this guidebook encourages donors to think carefully about how they deploy their gifts, and provides them with useful guidelines for making sure their philanthropy accomplishes the good they intend.

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