

POLICY PHILANTHROPY AND ITS KEY ROLE IN CIVIL SOCIETY

BY ELIZABETH MCGUIGAN AND DAVID BASS

EXECUTIVE SUMMARY

- ◆ **POLICY-ORIENTED PHILANTHROPY IS AN IMPORTANT PART OF THE PHILANTHROPIC LANDSCAPE AND SHOULD BE PROTECTED, DESPITE RECENT CRITICISMS.**
- ◆ **PART OF WHAT HAS FUELED CALLS TO RESTRICT POLICY-FOCUSED GIVING IS A LACK OF UNDERSTANDING ABOUT THE DIFFERENCE BETWEEN CHARITABLE GIVING — WHICH INCLUDES GIVING TO POLICY-RELATED ORGANIZATIONS — AND EXPRESSLY POLITICAL GIVING TO CANDIDATES, POLITICAL PARTIES AND POLITICAL ACTION COMMITTEES.**
- ◆ **THE TERM “DARK MONEY” IS OFTEN USED ERRONEOUSLY TO REFER TO CHARITABLE GIVING TO POLICY-ORIENTED NONPROFITS.**
- ◆ **WE MUST REINFORCE AND PROTECT THE RIGHT OF DONORS TO SUPPORT POLICY-ORIENTED NONPROFITS. AT THE SAME TIME, IT IS IMPORTANT TO DEPOLITICIZE THE IRS AND ENFORCE EXISTING LAWS, USING EXISTING FUNDING SOURCES TO ACCOMPLISH THESE GOALS.**



INTRODUCTION

The Philanthropy Roundtable supports the First Amendment right of donors to fund the tax-exempt charitable organizations of their choice, whether those entities are primarily focused on humanitarian relief, public policy advocacy, or both. Our organization does not draw a line distinguishing between general charitable giving and gifts to policy-oriented nonprofit organizations. We believe both lines of giving must continue to be protected by force of law because both contribute to bettering society in accordance with IRS stipulations surrounding what constitutes a charitable organization.¹

All too often in modern discourse, charities are criticized for publicly engaging on a policy issue, what we refer to here as “policy philanthropy.” Rather than painting all policy philanthropy with the “political giving” brush, it is important to understand the difference between political and charitable activities. These differences are rooted in historical precedent and protected by law. The ability for

charities to engage in policy debates is at the very core of civil society. Our position is that all gifts to 501(c)(3) organizations are charitable gifts. These may include donations for policy-related activities, but such gifts are not political, and donor privacy regarding such gifts is imperative. While not constituting legal advice, this paper explains the rationale for our position.

Donor privacy is sacrosanct and has been since the founding of our country. Donors should be free to make their gifts as public or as private as they wish. Recent precedent from the U.S. Supreme Court reaffirms that Americans are entitled to give privately to the causes of their choice in accordance with the First Amendment’s protections for speech and association.² In recent years, there has been a push by some policymakers and anti-privacy activists to restrict the right of donors who choose to support public policy giving. This push has been fueled by the seemingly blurred lines that privacy opponents

claim exist between policy nonprofits and expressly political giving to candidates and political parties. The solution to this alleged problem is not to further restrict philanthropy, but to depoliticize and improve the integrity of the Internal Revenue Service (IRS) and to enforce existing laws and regulatory structures.

DEFINING POLITICAL AND NON-POLITICAL OR CHARITABLE GIVING

It's first important to understand the meaning of political and charitable giving as defined by the IRS. Simply put, the purpose of a charitable gift is what defines its charitable nature. The IRS defines charitable giving through 501(c)(3) organizations broadly:

The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.³

IRS guidance explicitly bans all charities “from intervening in a political campaign for or against any candidate for an elective public office. If a charity does intervene in a political campaign, the penalties are severe: it will lose both its tax-exempt status and its eligibility to receive tax-deductible

charitable contributions.”⁴ Private foundations are also banned from giving to political parties and candidates. They may fund only organizations that are tax-exempt under Sections 501(c)(3) or 501(c)(4) of the IRS code, and the funds may only be used for a charitable purpose.

501(c)(3) organizations have been prohibited from engaging in political activity since 1954, under a rule known as the Johnson Amendment. The amendment was named after then-Sen. Lyndon B. Johnson of Texas, who drafted the language in an attempt to circumvent Sen. Joseph R. McCarthy’s Facts Forum and the Committee for Constitutional Government. Johnson also crafted the amendment as a re-election tactic, targeting two tax-exempt organizations that were supporting his young Catholic primary challenger, Dudley Dougherty, in the 1954 election.⁵ The Johnson Amendment has been enforced only a handful of times, including a case involving the Church at Pierce Creek in Vestal, New York, which in 1992 ran a full-page ad opposing the election of then-presidential candidate Bill Clinton.⁶ Enforcement is rare as charities and private foundations are strongly discouraged from engaging in political activity because of the severe penalties that would be enforced by the IRS.

In contrast to 501(c)(3) groups, 501(c)(4) organizations are “social welfare groups” with greater latitude to lobby and influence campaigns.⁷ “A 501(c)(4) may support or oppose candidates, but only as long as that activity remains secondary to its primary, non-candidate work.” In practice, this is widely understood to mean that a majority of such groups’ activities must be non-political in nature. Donors may not take a deduction on their taxes for donations to these groups, but the groups themselves are tax-exempt.

A 501(c)(3) charity is legally allowed to devote a certain percentage of its budget to lobbying on policy issues, but the IRS requires that this percentage not be “a substantial part of its activities.”⁸ There are myriad examples of how this lobbying furthers charitable missions. Joanne

Florino, the Adam Meyerson Distinguished Fellow in Philanthropic Excellence at the Philanthropy Roundtable, offers one such example of permissible lobbying by a 501(c)(3) organization. Consider “an Early Childhood Advocacy Day at a state capitol where nonprofit childcare providers and their allies visit their representatives. These organizations lobby for increased appropriations to boost childcare subsidies, raise salaries of childcare employees and increase the quality of childcare services.”

This is a privilege private foundations do not have. Private foundations are only allowed to lobby when they face an existential threat, such as the revocation of their nonprofit status, mandated increases in their payout requirements and the like. This self-defense exemption spelled out in Treasury regulations says foundations are allowed to communicate with “any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to such foundation.”⁹ These rules are specifically designed to ensure that both 501(c)(3)s and private foundations are able to advocate within specific limits.

HOW WE GOT HERE

Criticism of policy-oriented nonprofits — and the foundations that support them — has come from both the political right and left. And the pace of criticism has only increased in recent years, as has the mistaken muddling of “policy” with “political” and “partisan.”

Hedge fund manager and U.S. Senate candidate J.D. Vance, for example, penned an op-ed for Newsweek in October 2021 taking to task left-of-center private foundations, nonprofits and universities that support advocacy in furtherance of their values. Vance specifically cited the Ford Foundation, the MacArthur Foundation, the Gates Foundation and the Harvard University endowment as examples. He cites problematic advocacy as including “left-wing social justice advocacy,” the use of “‘diversity’ questionnaires,” and tying funds to “various environmental benchmarks.” He argues that, “Taken together, they represent well over \$1 trillion in wealth, and that wealth is deployed in almost exclusively partisan ways.” Vance’s disagreement with the well-funded institutions advocating for policies and practices he opposes is understandable. However, he errs in proposing to handcuff charitable organizations over a certain size, rather than using his platform to criticize the positions he disagrees with.





His solution is to require that “any charitable organization with an endowment over \$100 million must spend 20% of its endowment each year, or else lose its 501(c)(3) status and the preferential treatment of its income.”¹⁰ Setting aside the odious nature of Vance’s desire to use government power to stifle activity he dislikes, his proposal would likely backfire as well. If Vance’s complaint is spending in support of causes he disagrees with, forcing charitable organizations to spend even more money per year in support of causes he opposes will only amplify his frustrations.

Progressive groups calling for restrictions on policy philanthropy include the Institute of Policy Studies (IPS). In one IPS report, authors Chuck Collins and Helen Flannery take issue with philanthropists Charles Koch and his late brother David for donating through their foundations and donor-advised funds, “to nonprofits that, among other things, lobby hard against corporate taxes and spread disinformation about climate change that benefits their family business.” The same report targets the Walton Family Foundation for giving to nonprofits that support conservative and free-market approaches to tax policy, specifically citing The Heritage Foundation, Cato Institute, Americans for Tax

Reform, and Heartland Institute. Again, the author’s complaints lack a justification beyond disliking the ability to fund causes with which they disagree.

IPS’s proposed solutions to the legal, legitimate support for policy-oriented nonprofits are in the same spirit as those from Vance. Rather than tackling the work they disagree with on the merits, they call for: forced donor disclosure for those giving to nonprofit organizations; new onerous restrictions on donor-advised funds, including

required payout rates, donor disclosure and time limits on their existence; additional payout and sunseting requirements for private foundations; and several other new handcuffs for the charitable sector.

The authors argue, “While we celebrate the generous impulse behind so much of the philanthropic activity in the United States, we recognize that growing inequity in charitable giving holds risks not only for the nonprofit sector, but for the nation. ... It’s been more than 50 years since last time we significantly addressed the rules governing philanthropy, and it is high time to do it again.”¹¹

What prompted pushback against charitable tax exemptions for policy organizations? One reason is the surge of financial support from individuals and



philanthropies for new and existing conservative nonprofit organizations and opinion leaders from the 1970s through the 1990s. Led by The John Olin Foundation and The William E. Simon Foundation, among others, a burst of grantmaking responding to the Great Society and the policy movements that emerged in the 1960s strengthened think tanks like the American Enterprise Institute and The Heritage Foundation.

The history here is well-documented. According to Florino, “When the policy playbook for the Reagan Administration was essentially a Heritage Foundation whitepaper, the Left took notice and urged its supporters to adopt the strategies of their opponents.” Progressive organizations began to follow suit in the 1990s, 2000s and 2010s with the creation of the Open Society Foundation (founded in 1993), the Center for American Progress (founded in 2003), Third Way (founded in 2005) and similar groups. The establishment of these progressive groups and left-leaning funders backing policy-oriented nonprofits drives some on the right to push back against policy philanthropy as well.

Another piece of the puzzle is that combined philanthropic wealth has never been greater than it is today, with over 50 foundations in the United States holding investment assets over \$1 billion. Yet none of their separate endowments come close to the wealth of individuals like Elon Musk

and Jeff Bezos. The intense publicity and scrutiny directed at such wealth has contributed to the criticism of policy philanthropy, Florino notes, and has fueled accusations that such grantmaking threatens democracy and takes away funds that might otherwise go to community needs. “Focusing so much on ‘big philanthropy’ provides an incomplete and warped view of American generosity,” she adds.

A significant detail that gets lost in the shuffle is the fact that policy giving and general humanitarian giving are not mutually exclusive and frequently go hand-in-hand. For example, The Lynde and Harry Bradley Foundation is one of the most generous foundations nationally to conservative and free market causes, but the foundation also invests generously in its local community of Milwaukee through humanitarian giving. Similarly, philanthropies created by the Koch network invest in nonprofits that promote conservative and libertarian ideas and policy solutions, but the Kochs have also made investments in the arts, cancer research and community-enrichment groups. Or consider other philanthropies like the Adolph Coors Foundation, also a strong supporter of right-of-center think tanks but also a key funder of nonprofits focused on youth development, mentorship, vocational training and job placement services for under-served adults.



The examples are not confined to conservative-oriented philanthropies. Before the Atlantic Philanthropies closed its doors in 2020 after 38 years of giving, it had become one of the largest left-wing foundations in the world. After all, Atlantic is credited with pouring \$26.5 million into an advocacy campaign to pass the Affordable Care Act. At the same time, Atlantic has given generously to groundbreaking cancer research and treatment. The same holds true for the left-leaning Hewlett Foundation, which supports progressive advocacy as a complement to more strictly oriented humanitarian giving.

Also noteworthy is the policy-focused grantmaking that has supported civil and human rights efforts throughout our nation's history, including the movements to abolish slavery, grant women the right to vote and expand civil rights for minorities and LGBTQ individuals. In the early 1800s, the Tappan brothers were pioneering philanthropists who built up the so-called Benevolent Empire, a thick web of thousands of local and national charitable groups established in the first half of the 19th century to ameliorate a host of social problems plaguing the nation. The Tappans also worked to abolish slavery. In more recent history, philanthropists like Stephen Currier and Vernon Eagle undergirded the civil rights movement of the 1960s with their support.

WHERE THE CONFUSION COMES IN

The general public, and even lawmakers themselves, can become confused about the differences between political giving and giving to policy organizations. That's because many nonprofits in the policy realm that are registered as 501(c)(3) organizations also have affiliated 501(c)(4) organizations. This is a legal and legitimate way to help further an organization's mission by using multiple tools. For example, the American Civil Liberties Union is a 501(c)(4) and the American Civil Liberties Union Foundation is organized as a 501(c)(3). Their website describes the distinct, complementary roles that each entity plays:

"ACLU: Gifts to the ACLU allow us the greatest flexibility in our work. While not tax deductible, they advance our extensive litigation, communications and public education programs. They also enable us to advocate and lobby in legislatures at the federal and local level to advance civil liberties. ... ACLU Foundation: If you prefer to make a tax-deductible gift, we encourage you to support the ACLU Foundation. Gifts to the Foundation support our litigation, communications, advocacy and public education efforts."

These separate organizations operate under different restrictions yet help to support a common mission. Those without an understanding of the differences may become confused about what are appropriate activities for these groups.

Another problem that arises with misconstruing political giving and public policy giving is that both major political parties used to be less monolithic in their policy objectives. For example, some Democrats were openly pro-life and some Republicans were pro-choice. Now, both parties have siloed themselves on most prominent issues to such an extent that funding a policy objective often seems to put donors in direct alignment with a specific political party. In part, confusion



emerges here because organizations focused on community work are often deeply policy-based. For example, Planned Parenthood offers local services that are fairly non-controversial, such as mammograms, but it is also very politically involved in advocating for controversial abortion policies.

Finally, confusion can arise from the fact that the IRS defines charitable giving broadly. In response to this confusion and to disagreement with the policies put forward by some nonprofits, some critics of policy-focused philanthropy suggest revoking the charitable exemption for, or otherwise restricting, organizations whose primary mission is public policy. This suggested “solution,” however, would create a slippery slope. Florino cautions that, “We’ve seen such attempts to create a hierarchy of charitable organizations, and it won’t end well.” In addition to the opponents of policy philanthropy, she notes, “there are those that argue that giving to churches is not charity, nor is giving to Harvard University. Their definition of charity is frequently limited to gifts for basic needs. Once you begin to narrow the IRS code in this regard, we lose the creativity and dynamism of charitable leaders and the donors who recognize the critical contributions they make in our communities.”

The question becomes, who becomes the arbiter of what counts as charity? As discussed above, there are those on both the right and the left who seek to use government as a tool to fight ideas they disagree with. Skepticism abounds whether a charitable sector dictated by the government could stand as an independent and vibrant civil society, reflective of the real diversity in perspectives and ideas on how to address the problems we face.

Leslie Lenkowsky, professor emeritus in public affairs and philanthropic studies at Indiana University, warns that observers shouldn’t be too quick to rush to judgment and assume that any widespread infractions are occurring in political activity among nonprofits. “Most nonprofits are not particularly interested in political or policy

advocacy. And to the extent that there is a problem, the cure could become worse than the disease.”

As an alternative to further restrictions, Lenkowsky suggests competition. “Start your own groups and compete. Don’t try to use government here in ways that may come back to haunt you.” If followed, this suggestion will yield a strong, independent and diverse civil society.



THE DANGER WITH “DARK MONEY” TERMINOLOGY

Perhaps nothing has fueled this campaign against policy giving as much as the label “dark money,” a term wrongfully applied to charitable gifts protected by donor privacy rules and norms. In reality, dark money is a politicized term to describe giving with which one doesn’t agree. In the vast majority of cases, the term is attributed to giving to conservative or right-of-center causes. The same term is increasingly applied by those on the right in reference to giving to progressive or liberal causes.

“Dark money” was originally applied to donations to what are known informally as “super PACs,” political entities that disclose detailed information about their donors and exist expressly to advocate for and against candidates, independently of those candidates. The term originated during the 2010 midterm election when the Sunlight Foundation used it to describe the occasional practice of donations to super PACs from 501(c)(4) nonprofits, which are legally allowed to engage in some insubstantial amount of political activity.¹² Even though the identity of any 501(c)(4) that gives to a super PAC is publicly disclosed, Sunlight’s complaint was that the super PAC didn’t have to disclose every donor to the 501(c)(4), many of whom likely had no involvement in the 501(c)(4)’s choice to support a super PAC.

What began as a term associated with political giving, however, is now utilized to taint charitable



donations made to 501(c)(3) organizations, other nonprofits and gifts made through donor-advised funds, which allow for private charitable donations to 501(c)(3) charities.

As discussed above, the long-standing tradition of protecting donor privacy is what allowed for key movements in U.S. history to organize and succeed, including the abolition of slavery, women's suffrage and civil rights.¹³ These are fundamental examples of the role of policy philanthropy in addressing problems in our society. Protecting the right to free speech and association, particularly when it comes to controversial debates, is crucial. Yet, those in favor of forced disclosure target and smear anonymous gifts with the "dark money" label.

Sandra Swirski, founder of Integer, describes this labeling in practice: "The term dark money is a sinister sounding descriptor that's applied to legitimate funds, going to legitimate charities, with legitimate missions. You might not agree with the mission of an organization, but to allege there's something sinister or fraudulent or illegal going on by describing donations to it as dark money, that's misleading at best. Unfortunately, it happens every day, all over the place." More recently,

former South Carolina Gov. Nikki Haley's nonprofit, a 501(c)(4) called Stand for America, Inc., was the victim of a donor leak orchestrated by progressive activist group Documented, which accuses the nonprofit of being "a dark money group."¹⁴

In contrast to charitable giving, individual political giving is subject to transparency rules. If a donor is making a gift directly to a political candidate, his or her name must be disclosed if the gift is greater than \$200. "Federal law requires disclosure of most significant contributions over \$200. This includes donors' names, addresses, occupations and employer information, which then become public record freely available and tracked by the Federal Election Commission (FEC). Many organizations report all contributions to stay on the safe side of disclosure laws."¹⁵ When it comes to political giving to candidates or political parties, transparency is important.

In contrast, the right to privacy for Americans who choose to give anonymously to charities is protected by the U.S. Constitution. Beginning with a 1958 Supreme Court decision in which the court declared that the state of Alabama could not compel membership information from the NAACP, there is historical precedent supporting this vital

First Amendment right. Most recently, in 2021, the U.S. Supreme Court ruled 6-3 in *Americans for Prosperity Foundation v. Bonta* that California’s donor disclosure requirement burdens donors’ First Amendment rights. The case arose when the California attorney general’s office implemented “a policy requiring charities to provide the state, on a confidential basis, information about their major donors, purportedly to help the state protect consumers from fraud and misuse of charitable dollars.”¹⁶

The high court ruled that California’s donor disclosure requirement was unconstitutional and reaffirmed in no uncertain terms that the right to associate must include the right to associate privately. The majority opinion stated, “This court has ‘long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.’ Protected association furthers ‘a wide variety of political, social, economic, educational, religious and cultural ends,’ and ‘is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.’”¹⁷ Tellingly, the robust pro-privacy position adopted by the court was supported in legal filings from 22 states and nearly 300 nonprofits with diverse missions across the political spectrum.¹⁸

POLICY RECOMMENDATIONS

Based on the important role of policy advocacy by nonprofit organizations, it is harmful to further restrict the freedom to give, force nonprofit donor disclosure or eliminate the tax exemption for certain nonprofits. Instead, Philanthropy Roundtable recommends the following three steps to affirm and protect the lines between political giving and policy philanthropy:

1. DEPOLITICIZE THE INTERNAL REVENUE SERVICE.

Closely linked with better enforcement of existing laws, the public must have trust in the integrity and reliability of the IRS to perform its job administering the tax code in a non-political and unbiased manner. In recent years, that public mistrust has grown, fueled by displays of IRS partisanship and carelessness. For example, the 2010-12 practice of denying nonprofit status or delaying such approval based on applicant names suggesting affiliation with the Tea Party movement—a practice endorsed by the former director of the Exempt Organizations unit – undermined the nonpartisan nature of the agency. Around this time, the IRS acknowledged a 2013 leak of donor information for those giving to the National Organization for Marriage, which supported laws defining marriage as between a man and a woman.¹⁹ More recently, an unexplained



breach in IRS records security resulted in the publication of confidential tax returns for a number of wealthy Americans by ProPublica. Until Americans' trust in the IRS is restored, any further enforcement would be questionable. Conversely, any action by the IRS and its employees to attempt to undermine or tighten restrictions on nonprofit giving and advocacy would erode what little trust remains even further.

2. IMPROVE THE ENFORCEMENT OF EXISTING LAWS.

No further legislative steps should be taken until current laws on the books are enforced. The IRS is responsible for enforcing the law as it pertains to political activity for 501(c)(3) nonprofits, but it should do so in a neutral manner. Solely focusing on the IRS is an insufficient response, however. State attorneys general and related state agencies are the primary watchdogs of the charitable sector and already have existing powers to investigate credible accusations of wrongdoing without enacting overly broad regulations across the sector.

3. LEVERAGE EXISTING FUNDING STREAMS FOR IRS IMPROVEMENTS.

To meet the goals of depoliticizing the IRS and prioritizing the enforcement of existing laws, no new revenue stream is necessary. Instead, lawmakers could allocate a certain percentage of revenue from the existing private foundation excise tax to the IRS tax-exempt section. Under current law, most private foundations are subject to a 1.39% tax on net investment income.²⁰ An excise tax is also levied against foundations and those involved with foundations who engaged in certain prohibited acts, including prohibited self-dealing and running afoul of annual distribution requirements.²¹ In light of the increased IRS funding enacted in the 2022 Inflation Reduction Act, diverting a portion of the excise tax funding could be used to underwrite the cost of further IRS improvements in the tax-exempt section specifically. Improvements that could support depoliticizing the IRS, such as data security enhancements, would increase trust in IRS neutrality.

CONCLUSION

At Philanthropy Roundtable, our goal is to encourage giving that facilitates human flourishing. That includes very direct, on-the-ground education and workforce development grantmaking, and it can also include policy grantmaking. Both humanitarian and policy-oriented goals, in and of themselves, do not run afoul of the prohibition on expressly political activity, and, in fact, many humanitarian causes are enhanced by wise policy initiatives. Increasing parental choice in K-12 education is a clear example of this, as are licensing rules that promote workforce development. There is no "hierarchy" of charities, with some causes more valuable than others. Our legal system should support the right of all Americans to privately support policy-focused nonprofits, and donors should not face reprisal for doing so.

ENDNOTES

- 1 This report serves as an overview of this issue. For a full, thorough discussion of the important role of policy philanthropy, see: John J. Miller and Karl Zinsmeister, "Agenda Setting: A Wise Giver's Guide to Influencing Public Policy," Philanthropy Roundtable, 2015. <https://www.philanthropyroundtable.org/resource/agenda-setting/>
- 2 Elizabeth McGuigan, "Donor Privacy: A Constitutional Right for American Givers" Philanthropy Roundtable, Nov. 1, 2021. <https://www.philanthropyroundtable.org/resource/donor-privacy-a-constitutional-right-for-american-givers/>
- 3 IRS, "Exempt Purposes – Internal Revenue Code Section 501(c)(3)." <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3>
- 4 National Council of Nonprofits, "Political Campaign Activities – Risks to Tax-Exempt Status" <https://www.councilofnonprofits.org/tools-resources/political-campaign-activities-risks-tax-exempt-status>
- 5 Joanne Florino, "The Johnson Amendment Walls Separating Church, Charity, and State" Philanthropy Magazine, Fall 2018. <https://www.philanthropyroundtable.org/philanthropy-magazine/article/the-johnson-amendment-walls-separating-church-charity-and-state>
- 6 The First Amendment Encyclopedia, "Johnson Amendment." <https://www.mtsu.edu/first-amendment/article/1744/johnson-amendment>
- 7 IRS, "Social Welfare Organizations." <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>
- 8 IRS, "Lobbying." <https://www.irs.gov/charities-non-profits/lobbying#:~:text=In%20general%2C%20no%20organization%20may,loss%20of%20tax%2Dexempt%20status>
- 9 Treas. Reg. Section 53.4945-2(d)(3)
- 10 J.D. Vance, "Stop Treating Left-Wing Advocacy Groups Like Charities," Newsweek, Oct. 13, 2021. <https://www.newsweek.com/stop-treating-left-wing-advocacy-groups-like-charities-opinion-1637733>
- 11 Institute for Policy Studies, "Gilded Giving 2022," Jul. 2022. <https://ips-dc.org/report-gilded-giving-2022/>
- 12 Ryan Sibley, "Dark money: Super PACs fueled by \$97.5 million that can't be traced to donors," Sunlight Foundation, Oct. 20, 2010. <https://sunlightfoundation.com/2010/10/20/quarterly-filings-fec-reveals-big-power-behind-big-money/>
- 13 Elizabeth McGuigan, "Donor Privacy: A Constitutional Right for American Givers," Philanthropy Roundtable, Nov. 1, 2021. <https://www.philanthropyroundtable.org/resource/donor-privacy-a-constitutional-right-for-american-givers/>
- 14 Alex Isenstadt, "Document reveals identify of donors who secretly funded Nikki Haley's political nonprofit," Politico, Aug. 26, 2022. <https://www.politico.com/news/2022/08/26/donors-secretly-funded-nikki-haleys-nonprofit-00053963>
- 15 Ike Devji, "Political contributions: What to know before you donate," Medical Economics, Jul. 10, 2020. <https://www.medicaleconomics.com/view/political-contributions-what-to-know-before-you-donate>
- 16 Oyez, "Americans for Prosperity v. Bonta." <https://www.oyez.org/cases/2020/19-251>
- 17 U.S. Supreme Court, "Americans for Prosperity Foundation v. Bonta, Attorney General of California." https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf
- 18 "Free speech case attracts support from nearly 300 diverse groups," Americans for Prosperity Foundation. <https://americansforprosperity.org/wp-content/uploads/2021/04/AFPF-v-Becerra-Amici.pdf>
- 19 Mackenzie Weinger, "IRS pays \$50K in confidentiality suit," Politico, Jun. 24, 2014. <https://www.politico.com/story/2014/06/irs-nom-lawsuit-108266>
- 20 Hurwit & Associates, "Excise Tax (IRC Section 4940)." <https://www.hurwitassociates.com/private-foundations-and-excise-taxes/excise-tax-irc-section-4940/#:~:text=Effective%20for%20tax%20years%20starting,of%20IRS%20Form%20990%2DPF.>
- 21 IRS, "Private Foundation Excise Tax." <https://www.irs.gov/charities-non-profits/private-foundations/private-foundation-excise-taxes>

ABOUT THE AUTHORS

ELIZABETH MCGUIGAN

SENIOR DIRECTOR OF POLICY & GOVERNMENT AFFAIRS

Elizabeth McGuigan is the senior director of policy & government affairs at Philanthropy Roundtable. Prior to joining the Roundtable, Elizabeth spent more than eight years as a director of legislative and policy research for a trade association where she oversaw all state and federal policy research. She has also covered a wide range of policy analysis for advocacy groups and the financial industry. Elizabeth holds a bachelor's degree in economics and graduated from George Washington University with a master's degree in public policy.

DAVID BASS

CONTRIBUTING WRITER

David Bass is a frequent writer for Philanthropy Roundtable content including two donor guidebooks focused on workforce development and vocational career training. He lives in Raleigh, North Carolina, where he operates a consulting firm dedicated to supporting nonprofit organizations with services in journalism, public relations and marketing. David holds a bachelor's degree in journalism from Thomas Edison State University.

ABOUT PHILANTHROPY ROUNDTABLE

Philanthropy Roundtable is a nonprofit organization dedicated to building and sustaining a vibrant American philanthropic movement that strengthens our free society. To achieve this vision, the Roundtable pursues a mission to foster excellence in philanthropy, protect philanthropic freedom and help donors to advance liberty, opportunity and personal responsibility.



1120 20th Street NW, Suite 550 South, Washington, D.C. 20036

philanthropyroundtable.org