



October 17, 2017

Senator Lodge, Representative Wood, and other distinguished members of the 2017 Campaign Finance Reform Legislative Work Group, I would like to submit testimony to you regarding proposed changes to Idaho's campaign finance laws. I represent The Philanthropy Roundtable, America's leading network of charitable donors working to foster excellence in philanthropy, protect philanthropic freedom, assist donors in achieving their philanthropic intent, and help donors advance liberty, opportunity, and personal responsibility in America and abroad. Our 650 members include individual philanthropists, families, and private foundations located in Idaho and around the country, who support a broad range of charitable causes.

The Roundtable has serious concerns that certain provisions under consideration would undermine the longstanding and important practice allowing charitable donors to decide whether or not to keep their giving private, and also conflict with core First Amendment protections that the Supreme Court has long recognized.

Idaho's residents are no stranger to the concept of anonymous charitable giving. A few recent examples include: an anonymous donor who made a \$50,000 matching gift to the Boise State University Alumni Association in support of the fiftieth class reunion for the class of 1967-1968;¹ an anonymous supporter of the L.S. and Aline W. Skaggs Treasure Valley Anatomy and Physiology Laboratories at Idaho State University;² multiple anonymous gifts reported on the annual reports of the Boise Art Museum;³ numerous anonymous gifts on the Donor Wall for Vandal Giving Day at the University of Idaho;⁴ and a few years back an anonymous donor gave two snowguns to the Bogus Basin Mountain Recreation Association, a nonprofit organization.⁵

The proposed legislation would require, among other things, that charitable organizations disclose donors under certain circumstances even if neither the intent nor the effect of their actions is to influence an election. It should be noted that we are talking here about charities organized as corporations under section 501(c)3 of the federal tax code, which are prohibited from intervening in "any political campaign on behalf of (or in opposition to) any candidate for public office."⁶

¹ Available online at: <https://alumni.boisestate.edu/50-years/reunion/>

² University release available at: <https://isu.edu/anatomylabs/about/thank-you/>

³ Available online at: http://www.boiseartmuseum.org/wp-content/uploads/2016/12/FY2016-Annual-Report_for-web-e-mail.pdf

⁴ Available online at: <https://vandalsgive.uidaho.edu/giving-day/378/donors>

⁵ Jessica Murri, "Bogus Basin's Plan to Keep the Mountain White," December 18, 2015; Boise State Public Radio, available at: <http://boisestatepublicradio.org/post/bogus-basins-plan-keep-mountain-white#stream/0>

⁶ 26 U.S. Code § 501

Anonymous giving to charity has important religious, cultural, and practical roots that are deeply embedded in America's philanthropic community. The Bible instructs Christians to "Take heed that you do not do your charitable deeds before men... But when you do a charitable deed, do not let your left hand know what your right hand is doing, that your charitable deed may be in secret."⁷ Many Jewish philanthropists follow the teachings of the 12th-Century rabbi and scholar Maimonides, who wrote that the second and third highest forms of giving (of eight categories) required the donor to give anonymously,⁸ and both Islam⁹ and Hinduism¹⁰ also favor anonymous charitable giving.

Many philanthropists prefer to give anonymously in order to avoid being inundated with unwanted solicitations, such as George Eastman, founder of Eastman-Kodak. After being unmasked in 1920 as the source of a \$10 million gift to the Massachusetts Institute of Technology, *The New York Times* noted that he "had abundant occasion to regret that his identity is no longer a secret... he has become quite aware of the perils beset the paths of those pursued by the advocates of endless 'worthy causes.'"¹¹ Joan Kroc, widow of McDonald's founder Ray Kroc, closed down her family foundation in the mid-1980's to avoid voluminous unsolicited requests.¹² A 1991 survey by the Lilly Family School of Philanthropy found that a majority of "people who give anonymously do so to minimize solicitations from other organizations."¹³

Others prefer that attention be focused on the good work done by the charities they support rather than themselves, such as the late pop singer George Michael. His generous support for causes including aid to cancer patients and helping abused children was done in part for this reason,¹⁴ and perhaps also out of irritation with other celebrities touting their own philanthropic work. In a 1993 MTV interview he explained the public had become aggravated "listening to celebrities patting each other on the back saying how generous they are being. And they are right to."¹⁵

⁷ Matthew 6:1 and 6:3, New King James Version of the Holy Bible

⁸ "Maimonides Eight Levels of Charity: Mishneh Torah, Laws of Charity, 10:7-14" available at Chabad.org, http://www.chabad.org/library/article_cdo/aid/45907/jewish/Eight-Levels-of-Charity.htm

⁹ "Giving Charity in Secret & Publicly" available at Zakat Foundation of America, <http://www.zakat.org/blog/giving-charity-in-secret-publicly/>

¹⁰ Michael Barnett, Janice Gross Stein; *Sacred Aid: Faith & Humanitarianism*, Oxford University Press, 2012, p. 144

¹¹ William Chenery; "Philanthropy Under a Bushel: George Eastman, Kodak Manufacturer and Music Lover, Long Kept Big Gifts Secret" *New York Times*, March 21, 1920

¹² Paul Sullivan, "Kroc's Giving, Like McDonald's Meals, Was Fast and Super-Sized," *The New York Times*, January 20, 2017

¹³ Deborah Jacobs, "How To Stay Anonymous When You Give To Charity," *Forbes.com*, September 19, 2012. Available at: <https://www.forbes.com/sites/deborahljacobs/2012/09/19/how-to-stay-anonymous-when-you-give-to-charity/#2099e32140dd>

¹⁴ Keely Lockhard, "George Michael's incredible acts of kindness revealed following his untimely death," *The Telegraph*, December 26, 2016

¹⁵ Ibid

Another reason donors to charitable organizations sometimes prefer anonymity is because they are concerned that their giving to controversial causes might trigger retribution, economic reprisals, and even violence. Donors on both left and right face such intimidation – people who gave to support a California initiative defining marriage as between a man and a woman lost jobs and faced boycotts of their businesses,¹⁶ while the corporate foundation of Berkshire Hathaway ceased its support of reproductive health causes after boycotts were threatened against one of its many companies, Pampered Chef. The family foundation of the company’s founder, Warren Buffett, continued to make such grants but only on the condition of strict anonymity.¹⁷ North Carolina businessman, philanthropist, and former state legislator Art Pope testified last year in federal court that his support for organizations advocating smaller government and free markets “caused my family great concern for their safety, my safety. It’s led to a threat of assassination about me, it’s led to boycotts of my business.”¹⁸

It was because of concern over these sorts of retribution that in 1958 the U.S. Supreme Court ruled that the State of Alabama could not force the National Association for the Advancement of Colored People to reveal its members and donors because doing so would infringe on core First Amendment rights by exposing them to “economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility... [C]ompelled disclosure of petitioner’s Alabama membership... may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.”¹⁹

As the NAACP Legal Defense and Education Fund (LDF) noted in a recent defense of the right of charitable donors to remain anonymous, “As an organization that both relies upon private donations and engages in litigation and advocacy that some may consider controversial, LDF has long had an interest in guarding against retaliation against its donors and supporters,” and “[N]umerous contemporary issues – ranging from the Black Lives Matter movement, to gay marriage, to immigration – arouse significant passion by people with many divergent beliefs. Thus, now, as much as any time in our nation’s history, it is necessary for individuals to be able to express and promote their viewpoints through associational affiliations without personally exposing themselves to legal, personal, or political firestorm.”²⁰

¹⁶ “Mozilla CEO resignation raises free-speech issues”, Associated Press, April 4, 2004. Available at <http://www.usatoday.com/story/news/nation/2014/04/04/mozilla-ceo-resignation-free-speech/7328759/>

¹⁷ Karen Weise, “Warren Buffett’s Family Secretly Funded a Birth Control Revolution,” *Bloomberg*, July 30, 2015. Available at: <https://www.bloomberg.com/news/articles/2015-07-30/warren-buffett-s-family-secretly-funded-a-birth-control-revolution>

¹⁸ Bonnie Eslinger, “Koch Bros. Group Donor Testifies He Got Death Threats,” *Law360.com*, February 26, 2016. Available at: <https://www.law360.com/trials/articles/763367/koch-bros-group-donor-testifies-he-got-death-threats>

¹⁹ *NAACP v. Alabama*, 357 U.S. 462 (1958), majority opinion of Justice John Harlan

²⁰ *Amicus* brief of the NAACP Legal Defense and Education Fund, *Americans for Prosperity Foundation v. Becerra*, filed in the United States Court of Appeals for the Ninth Circuit on January 27, 2017.

Subsequent Supreme Court rulings further recognized the importance of protecting private association from forced disclosure, acknowledging a legitimate governmental interest in revealing donors to political candidates, committees, and parties, but otherwise rejecting efforts to unmask those who prefer to keep their associations and beliefs private.²¹

But the proposed changes to Idaho's campaign finance laws would potentially ignore the various reasons many philanthropists chose to remain anonymous and undermine core First Amendment rights. Despite the prohibition on political campaign intervention by charities organized under section 501(c)3 of the federal tax code, and even with the draft language exempting some types of speech by organizations from the definition of an "electioneering communication," the proposal would in many circumstances treat charities little differently than a political campaign committee for engaging in routine speech that has nothing to do with elections, including:

- A social services organization that informs its clients, vendors, partners, donors, media and others via an e-mail, letter, or newsletter that an elected official has introduced legislation of interest;
- A charitable entity producing research or hosting a forum open to the public regarding the impact of a ballot initiative, even one regarding issues core to its mission;
- A nonprofit organization that wishes to inform and educate the public on a policy issue or legislative action including by responding to, clarifying, or building on the statements of specific, named elected officials;
- A blog, online forum, Facebook or Twitter account hosted by a charity that promotes information and discussion of public policy issues and legislation, including which legislators have announced support or opposition to specific legislation;
- A think tank or advocacy organization that submits testimony to the legislature that references by name an elected official, and then posts that testimony online.

Although the proposed language purports to exempt activity that occurs "in the regular course and scope" of a charity's activity, this term is ill-defined and would lead to substantial confusion. For example, an organization that does not normally submit testimony to the Idaho Legislature but feels it must do so on a critical issue might run afoul of this legislation if they cite the source of any statements made by an elected official it wishes to respond to and then posts the testimony online.

This type of confusion would unquestionably chill public discussion of important public issues. For example, a nonprofit in Colorado decided in 2014 not to run radio ads asking citizens to contact

²¹ Key cases include: *Buckley v. Valeo* (1976), *Brown v. Socialist Workers '74 Campaign Committee* (1982), and *McIntyre v. Ohio Elections Commission* (1995)

their U.S. Senators and urge them to support criminal justice reform because federal campaign finance law could have forced it to disclose its donors.²²

The proposal would also impose a very practical but extremely serious compliance problem – in some cases charities do not know the identity of some of their larger donors. If a charity were determined to have engaged in an electioneering communication, it would be unable to complete the required disclosure report if any anonymous donor had given over \$50 to the group. Estimates suggest three to five percent of large charitable donations are made anonymously, and it is fairly easy for philanthropists both large and small to conceal their identities from the charities they support.

Charitable organizations organized under section 501(c)3 of the federal tax code cannot participate in campaigns for public office, and those that do jeopardize their tax exempt status, yet these proposals could impose intrusive and burdensome disclosure requirements upon nonprofits if they even mention a public official who happens to be a candidate for office while speaking out on issues of public importance or otherwise communicating with the public, members, clients, vendors, partners, donors, media, and others. This disclosure would inhibit charitable giving, ignore centuries of established religious, cultural, and practical reasons for protecting philanthropic anonymity, and undermine core First Amendment associational rights.

I and The Philanthropy Roundtable urge you to carefully consider whether the nearly non-existent threat of campaign intervention by charitable 501(c)3 organizations justifies the intrusions and impositions to the philanthropic and charitable communities that has been proposed. I am happy to respond to any questions you may have, and can be reached at sparnell@philanthropyroundtable.org or (202) 600-7883.

²² Case information available at: <http://www.fec.gov/pages/fecrecord/2016/december/indinstvfecdct.shtml>