

**Testimony of Sean Parnell**

**Vice President of Public Policy, The Philanthropy Roundtable**

**regarding proposals for Amendment 2019-02**

**to the Oklahoma Ethics Commission**

**January 25, 2019**

Thank you for allowing me to testify regarding Amendment 2019-02. I represent The Philanthropy Roundtable, America's leading network of charitable donors working to foster excellence in philanthropy, protect philanthropic freedom, and help donors advance liberty, opportunity, and personal responsibility in America and abroad. Our 610 members include individual philanthropists, family foundations, and community foundations located in Oklahoma and around the country.

The proposals for Amendment 2019-02 are deeply troubling to members of the philanthropic and charitable communities for a number of reasons. Others have and will address the serious threat this proposal poses to the First Amendment rights of private citizens to communicate with other private citizens, either individually or through the wide variety of religious, civic, cultural, and charitable organizations that Oklahomans from all walks of life belong to. I would instead like to explain how this proposal potentially jeopardizes a crucial and longstanding element of philanthropic giving: the right of donors to decide for themselves whether to be public in their giving or remain private.

Anonymous giving to charity has important religious, cultural, and practical roots that are not just deeply embedded in America's philanthropic community, but that extend back at least two millennia. Nearly two thousand years ago the Roman senator and philosopher Lucius Annaeus Seneca, more commonly known as Seneca the Younger, wrote in his treatise on gifts and favors

“How sweet, how precious is a gift, when he who gives does not permit himself to be thanked,”<sup>1</sup> and “...[A]ll writers on ethical philosophy tell us that some benefits ought to be given in secret... when they do not promote a man or add to his social standing, but help him when in weakness, in want, or in disgrace, they should be given silently, and so as to be known only to those who profit by them.”<sup>2</sup>

Roughly contemporaneous with Seneca’s writing, the book of Matthew in the Bible quotes Jesus telling his followers to “Take heed that you do not do your charitable deeds before men” and “Therefore, when you do a charitable deed, do not sound a trumpet before you... 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.”<sup>3</sup>

Other faith traditions strongly encourage anonymous giving as well. 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,<sup>4</sup> and both Islam<sup>5</sup> and Hinduism<sup>6</sup> 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 an earlier \$10 million gift to the Massachusetts Institute of Technology, *The New York Times* noted that Eastman “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.’”<sup>7</sup> Joan Kroc, widow of McDonald’s founder Ray Kroc, closed down her family foundation in the mid-1980’s to avoid voluminous unsolicited requests.<sup>8</sup> 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.”<sup>9</sup>

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<sup>1</sup> Lucius Annaeus Seneca (translation by Aubrey Stewart), *De Beneficiis* (On Benefits), p. 33, publisher unknown, circa 1900.

<sup>2</sup> *Ibid*, p. 34

<sup>3</sup> Gospel of Matthew 6:1 and 6:3, New King James Version of the Holy Bible

<sup>4</sup> “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](http://www.chabad.org/library/article_cdo/aid/45907/jewish/Eight-Levels-of-Charity.htm)

<sup>5</sup> “Giving Charity in Secret & Publicly” available at Zakat Foundation of America, <http://www.zakat.org/blog/giving-charity-in-secret-publicly/>

<sup>6</sup> Michael Barnett, Janice Gross Stein; *Sacred Aid: Faith & Humanitarianism*, Oxford University Press, 2012, p. 144

<sup>7</sup> William Chenery; “Philanthropy Under a Bushel: George Eastman, Kodak Manufacturer and Music Lover, Long Kept Big Gifts Secret” *New York Times*, March 21, 1920

<sup>8</sup> Paul Sullivan, “Kroc’s Giving, Like McDonald’s Meals, Was Fast and Super-Sized,” *The New York Times*, January 20, 2017

<sup>9</sup> 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>

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 kept anonymous in part for this reason,<sup>10</sup> and 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.”<sup>11</sup>

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,<sup>12</sup> 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.<sup>13</sup> North Carolina businessman, philanthropist, and former state legislator Art Pope testified in 2016 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.”<sup>14</sup>

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.”<sup>15</sup>

Subsequent Supreme Court rulings further recognized the importance of protecting private association from forced disclosure, acknowledging a legitimate governmental interest in revealing

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<sup>10</sup> Keely Lockhard, “George Michael’s incredible acts of kindness revealed following his untimely death,” *The Telegraph*, December 26, 2016

<sup>11</sup> *Ibid*

<sup>12</sup> “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/>

<sup>13</sup> 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>

<sup>14</sup> 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>

<sup>15</sup> *NAACP v. Alabama*, 357 U.S. 462 (1958), majority opinion of Justice John Harlan

donors to political candidates, committees, and parties, but otherwise rejecting efforts to unmask nonprofit donors and members who prefer to keep their giving, associations, and beliefs private.<sup>16</sup>

Oklahoma is no stranger to anonymous charitable giving, of course. In just the past few months, thousands of dollars in gold Krugerrands and other valuable coins were given anonymously to the Salvation Army through their iconic red kettles,<sup>17</sup> an anonymous donor gave \$500,000 to Oklahoma Panhandle State University to support scholarships for teachers,<sup>18</sup> and an anonymous donor was among the four generous persons and organizations that offered to match up to \$150,000 in gifts to the Regional Food Bank of Oklahoma.<sup>19</sup>

The regulations outlined in the various versions of Amendment 2019-02 threaten to undermine the freedom of philanthropists to, if they wish, keep their giving private. To understand how this is so, consider the hypothetical example of a charity focused on improving access to higher education for low-income students, and that decides to support a bill that would increase state funding for Oklahoma's public colleges and universities and wants to inform the community it serves on the merits of the bill.

Under the most expansive version of the proposed regulation, *any* effort by the charity to communicate its support to some or all of the public would trigger a requirement to disclose donors of \$50 or more, while even the narrower version would capture those charitable donors who support its work to educate the public on issues. For example, a fundraising e-mail soliciting donations and also encouraging recipients to sign an online petition supporting the bill can be classified as "indirect lobbying," triggering disclosure of donors that gave to support the fundraising program.

Perhaps most troubling, the regulations could seriously infringe on religious liberty by forcing churches, synagogues, and other houses of worship to disclose their donors if they communicate to the public their support or opposition to specific legislation. Depending on how this regulation is crafted, a church that pays for a mailing to the community regarding a piece of legislation it deems important could be forced to disclose some of its donors. This would represent an intolerable intrusion into religious freedom.

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<sup>16</sup> Key cases include: *Buckley v. Valeo* (1976), *Brown v. Socialist Workers '74 Campaign Committee* (1982), and *McIntyre v. Ohio Elections Commission* (1995)

<sup>17</sup> Tim Stanley, "Coins valued at more than \$8,700 dropped in Salvation Army kettles," December 18, 2018, Tulsa World, available at: [https://www.tulsaworld.com/news/local/coins-valued-at-more-than-dropped-in-salvation-army-kettles/article\\_39384a79-2f54-5ce3-90f9-ce4f4b97db16.html](https://www.tulsaworld.com/news/local/coins-valued-at-more-than-dropped-in-salvation-army-kettles/article_39384a79-2f54-5ce3-90f9-ce4f4b97db16.html)

<sup>18</sup> Melissa Gaglione, "Panhandle Promise Scholarship hopes to attract teachers to Oklahoma Panhandle," January 16, 2019, KFDA New Channel 10, available at: <http://www.newschannel10.com/2019/01/16/panhandle-promise-scholarship-hopes-attract-teachers-oklahoma-panhandle/>

<sup>19</sup> <https://www.regionalfoodbank.org/newsroom/150000-match-helps-feed-twice-as-many-hungry-children-across-oklahoma>

The Philanthropy Roundtable and I urge you to reject any proposed regulation that would undermine the longstanding and important practice of permitting charitable donors to decide for themselves whether to keep their giving private. I am happy to respond to any questions you may have and can be reached at [sparnell@philanthropyroundtable.org](mailto:sparnell@philanthropyroundtable.org) or (202) 600-7883.

Sincerely,

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