



January 2, 2020

The Honorable Mark Stone  
Chair, Assembly Judiciary Committee  
State Capitol  
Sacramento, CA 65814

Dear Chair Stone:

On behalf of the Alliance for Charitable Reform and The Philanthropy Roundtable, I write to share with you our concerns about AB 1712, a bill that would potentially give California's Office of the Attorney General (AG) the power to obtain and reveal confidential information related to charitable donors. The Assembly Judiciary Committee will hear the bill on Tuesday, January 14, 2020.

The Philanthropy Roundtable is America's leading network of charitable donors working to foster excellence in philanthropy and protect philanthropic freedom. Our 660 members include individual philanthropists, family foundations, and community foundations located in California and around the country. The Alliance for Charitable Reform is the public policy arm of the Roundtable working to protect philanthropic freedom.

We worry that the unintended but possibly significant negative consequences of this legislation outweigh the potential benefits, and would like to share some of those concerns and likely consequences with you.

The language of AB 1712 directs the AG to "...adopt rules and regulations requiring a donor-advised fund, as defined, to include specified information in reports to the Attorney General..." While the information the bill specifically directs the AG to obtain may have some value in oversight of the charitable sector, the language of the bill allows the AG to require additional, unspecified information and could jeopardize a key pillar of philanthropy, the right of charitable givers to keep their donations private.

Anonymous giving to charity has roots that are not just deeply embedded in America's philanthropic community, but that extend back at least two millennia.<sup>1</sup> Many faiths strongly

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<sup>1</sup> The first century Roman senator and philosopher 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," and "...[A]ll writers on ethical philosophy tell us that some benefits ought to be given in secret..." Lucius Annaeus Seneca (translation by Aubrey Stewart), *De Beneficiis* (On Benefits), p. 33, publisher unknown, circa 1900.

encourage anonymous giving – some Jewish philanthropists, for example, 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>2</sup> Christianity,<sup>3</sup> Islam<sup>4</sup> and Hinduism<sup>5</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 revealed in 1920 as the source of an earlier \$10 million anonymous gift to MIT, *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>6</sup>

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 large part for this reason.<sup>7</sup> And some philanthropists simply prefer to avoid the public spotlight out of a sense of modesty.

Another reason donors to charitable organizations sometimes prefer anonymity is because they are concerned about triggering retaliation if they give to causes and organizations that are considered controversial by groups with powerful advocacy or political interests.

It was because of this concern that in 1958 the U.S. Supreme Court ruled that the State of Alabama could not force the NAACP 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...”<sup>8</sup>

AB 1712 specifically directs the AG to obtain information about the policies of DAF sponsoring organizations, which are public charities, related to “dormant” funds as well as information concerning where fund assets are invested. The Philanthropy Roundtable has no significant objection to the AG obtaining this information.

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<sup>2</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>3</sup>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.” Gospel of Matthew 6:1 and 6:3, New King James Version of the Holy Bible

<sup>4</sup>“Giving Charity in Secret & Publicly” available at Zakat Foundation of America, <http://www.zakat.org/blog/giving-charity-in-secret-publicly/>

<sup>5</sup>Michael Barnett, Janice Gross Stein; *Sacred Aid: Faith & Humanitarianism*, Oxford University Press, 2012, p. 144

<sup>6</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>7</sup>Keely Lockhard, “George Michael's incredible acts of kindness revealed following his untimely death,” *The Telegraph*, December 26, 2016

<sup>8</sup>*NAACP v. Alabama*, 357 U.S. 462 (1958), majority opinion of Justice John Harlan

But Sec. 3 (h)(2) of AB 1712 directs the AG to “adopt rules and regulations requiring that reports filed pursuant to this section by a donor-advised fund sponsor disclose information... including, *but not limited to* any of the following...” (emphasis added). It is the inclusion of the *but not limited to* language that potentially would give the AG the authority to demand to know who is funding specific donor advised funds and who is recommending grants to specified charitable organizations.

This would eliminate the longstanding norm in philanthropy of allowing charitable donors to decide for themselves whether to keep their giving private, even from those to which they give or recommend grant. Resources available for California charities are likely to decline if contributors to DAFs in California are concerned their private giving may become public information, as some will undoubtedly shift their giving to DAFs located outside of the state and eliminate giving to California-based charities in order to retain their anonymity.

Some have expressed concerns about DAFs being used to fund so-called “dark money,” meaning funds that flow into election campaigns without disclosing to the public the source of those funds. It should be noted that this is already illegal – funds from DAFs are exclusively for charitable purposes and cannot be distributed to political committees.

In the relatively uncommon circumstances where a DAF might give to a 501(c)4 or other tax-exempt organization that does support or oppose candidates for office, it is the responsibility of the DAF sponsoring organization to ensure those funds are only used for specified charitable purposes.

A brief review of several California community foundations’ Schedule I, Part II of the 990 form that public charities are required to provide the IRS indicate that grants to organizations other than 501(c)3 charities and government-sponsored entities are extremely rare (column c of Schedule I, Part II requires the type of entity given to be reported).

In fact, reviewing the most recently available returns for the community foundations of Kern, Mendocino, San Diego, Santa Cruz, and Sonoma counties as well as the Jewish Community Foundation of Orange County uncovered only a single grant to a 501(c)4 entity, a little more than \$13,000 to the La Jolla Woman’s Club. The club “currently offers its members monthly luncheons, bridge and book clubs and yoga classes” and hosts weddings,<sup>9</sup> and does not appear to engage in election-related spending.

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<sup>9</sup> Ashley Mackin, “Centennial Crossroads: La Jolla Woman’s Club marks 100 years by looking ahead to 100 more,” August 14, 2014. Available at: <http://lajollawomansclub.org/centennial-crossroads-la-jolla-womans-club-marks-100-years-looking-ahead-100/>

As you consider AB 1712 I ask you to keep in mind the important role anonymous charitable giving has played throughout history, and consider revising the language in the bill to ensure that philanthropists can continue to keep their giving private if they chose.

I am happy to answer any questions or respond to any concerns you may have about this issue, please feel free to contact me at [sswirski@urbanswirski.com](mailto:sswirski@urbanswirski.com) or (202) 469-3166

Sincerely,

Sandra Swirski  
Executive Director  
Alliance for Charitable Reform