



# **PUBLIC POLICY FOR NONPROFITS:**

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## **A Report on ARNOVA's Symposium of October 2010**

*An examination of key questions and issues involving the public policy environment for nonprofits; and a conversation about the research needed to create better policies in order to shape and sustain more vital institutions to meet social needs and support civil society in the years to come.*

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## ARNOVA's Symposium on Public Policy for Nonprofits A Report for the Field

### • Executive Summary •

Our nation contains 1.6 million federally recognized 501(c) tax exempt organizations as of 2009, including more than 1 million 501(c)(3) public charities. In addition there are certainly hundreds of thousands of unincorporated or voluntary associations, and more than 300,000 congregations. Together these comprise a vibrant nonprofit sector that provides crucial functions and services in this society. Nonprofits touch every community, employ 12 to 15 million people, and attract the volunteer energies of 60 million people annually. Yet there are serious gaps in our knowledge—in the data, information, and research—about how public policies at the federal, state, and local level affect the work of this wide array of nonprofit organizations.

On October 4th and 5th, 2010, the Association for Research on Nonprofit Organizations and Voluntary Organizations (ARNOVA), with the support and encouragement of the Bill and Melinda Gates, Kresge, and C.S. Mott foundations, convened a group of 30 nonprofit scholars and leaders to explore what we know about public policies' impact on the nonprofit sector. This gathering focused on how public policy helps or harms the ability of nonprofit organizations, particularly but not exclusively public charities, to fulfill their missions.

The ARNOVA Symposium gathered individuals from a wide range of professional backgrounds and academic disciplines. It included heads of state nonprofit associations, university-based scholars, researchers and analysts from nonprofit think tanks and national associations, and others. These experts explored what we know and do not know about public policies' impacts on nonprofits now. Then they looked at what we should know going forward in order to craft policies that bolster and leverage the work of these organizations for the benefit of all.

In the current economic environment, with both public and philanthropic funding in decline, and needs for service expanding greatly, many nonprofits—and the people they serve—are in dire straits. Developing public policies that support rather than hinder nonprofits is thus more crucial than ever. Still there is little consensus around what public policies do for, or sometimes to, nonprofits; nor what policies would be most useful in helping sustain and support nonprofits.

The participants in the Symposium explored the issues surrounding our knowledge of the intersection of public policy and the nonprofit sector focusing on four central questions:

- What are the most critical policy issues facing the nonprofit sector now?
- Given the limitations of existing research and knowledge, what reliable claims can be made about the positive or negative impacts—present or expected—of current and past policies on nonprofits?

- What is the current state of knowledge about the design and impact of public policies for nonprofits? What are the obvious—or maybe not so obvious, but still important—gaps in our knowledge? Where do we have the data we need for a useful analysis of these issues? What data are we clearly missing?
- How should we frame research on these issues to generate new insights and “immediately usable knowledge” to develop better policies?



On the first day, Symposium participants heard expert presentations from scholars and practice leaders who framed these questions in historical, political, economic, and managerial terms, and examined policy concerns as they play out at the federal, state, and local levels. Participants explored what is known and not known about nonprofits and their circumstances now in relation to complex challenges at different levels of society and government, seeing that public policy affects various kinds of nonprofits, and various roles they play, differently. Variations in nonprofits’ age, size, and geography may be crucial in these matters.

The second day, the group worked on framing the issues in public policy that seem most important to address; identifying the knowledge gaps that inhibit our ability to better understand the issues and make better policy; and outlining an agenda for research going forward to inform better policy and policy makers both within government and within the nonprofit sector.

The diversity of viewpoints and extensive knowledge of those present yielded a rich and lively conversation and an impressive range of insights. There were many issues on which individuals disagreed, as this report makes abundantly clear.

Nonetheless, there was wide agreement among the participants that nonprofits, especially charities, play vital roles in providing crucial services, serving as vehicles for free expression of the identities, interests, and passions of different groups in communities, and building a healthy civil society. Despite analytical differences regarding some issues, Symposium participants clearly shared a core belief in the importance of the nonprofit sector and its role in addressing the critical issues our society faces today.



At the completion of Symposium, the group identified five areas of inquiry where new research was most needed to address concerns about public policies’ impact on nonprofits now:

1. A clear need to better understand different forms of nonprofit financing. Critical questions included, “What are the different forms, and how do their impacts on NPOs vary? What end beneficiaries are best served by different kinds of funding for NPOs? How, if at all, does seeking, getting, or depending on government funding alter the ways NPOs operate?”

2. The necessity to better comprehend the effects of regulatory and tax policies on the nonprofit sector and its organizations in creating a range of hoped for value for society. In this context a clear need was evident to examine more deeply differing aspects or elements of the value NPOs offer in relation to the justifications for providing tax-exemptions and deductions.
3. The recent emergence of new and different models for forming and operating organizations that claim to have primary missions like charities—that is “to provide public benefit”—seems significant. It appears vital to study these developments to see what potential benefit or harm they might generate, and what changes and challenges they may cause, for nonprofit organizations.
4. The need to know more about the roles NPOs may play in strengthening communities by evoking civic engagement and building social capital, and benefits often attributed to them. Equally important is to understand the limitations of the nonprofit sector’s function in this regard. Connected to this question is an apparent need to better understand the work of NPOs in advocacy, including at the boundary of public policy advocacy and political engagement.
5. Many present also felt it important to probe the question, “*What value should the nonprofit sector be delivering to society, and what benefits (tangible and intangible) does the public expect from NPOs?*” One person termed this “The ‘Value Proposition’ of the Nonprofit Sector.” Most participants noted how little the public understands about the history, nature, and functions of the nonprofit sector. Clarifying the desired functions and benefits of the sector seems essential to creating an environment where it is possible to make good public policy.



Participants in the Symposium, policy analysts and nonprofit leaders as well as academics, agreed significant and substantial research needs to be done—much of it without delay—to develop the knowledge needed to craft constructive and effective public policy for nonprofits. The primary product of this Symposium was a “Proposed Research Agenda” which we hope can be pursued by those who have the right backgrounds and skills. The Research Agenda includes many suggested questions categorized under six headings:

- What are the different forms of funding available to the nonprofit sector and how do their impacts differ?
- How does government funding impact how nonprofits operate?
- How do regulatory and tax policies support or hinder the nonprofit sector and the benefits it can deliver?
- What are the challenges and opportunities presented by “emerging organizational forms”?
- What are the civic roles of the nonprofit sector?
- What is “the value proposition” for the nonprofit sector?

Several follow-on activities are envisioned for this work. ARNOVA's publication of this report, which includes a much fuller narrative description of the discussions, texts of the expert presentations, and some other materials generated by participants, is one step. ARNOVA will hold a special colloquium at its 2011 conference to continue and extend this conversation in the academic research community. We will be looking to work with partner organizations to create additional opportunities for examination and discussion of these matters as well. There is a critical need for more and widespread public conversation about the issues and challenges facing nonprofits. The nonprofit sector should be as well understood and appropriately treated in public policy as any other part of our society, particularly given its role in supporting communities and populations that are often least well served in the business and governmental sectors. The kinds of research advocated by the members of the Symposium can better inform the national dialogue on nonprofits that can and should lead to intelligent policy making to help nonprofits fulfill their missions addressing the public good.

Finally, we know some of the funders who supported this event are considering supporting research that follows along (at least some of) the lines laid out in the "Research Agenda" that issued from the Symposium. Insofar as the health of the nonprofit sector and its organizations depends in some degree on having better public policies to undergird their work in serving the common good, we think all funders ought to have some interest in supporting this kind of research. We hope that foundations will find in these research priorities themes and issues that they can support and promote as being in their interests in strengthening the infrastructure and networks of the nonprofit sector.

In short, we hope this report is the beginning of a conversation about these important public policy matters for the nonprofit sector and all of our society. This report is by no means the last word, but an instrument for engaging a broader range of stakeholders with these questions about how to foster and support the work of the nonprofit organizations that seem essential to maintaining a healthy society and vital democracy.

*Thomas Jeavons*

Executive Director  
ARNOVA

## Introduction:

### • Why this Conversation Now? •

The U.S. nonprofit sector is large and diverse, and has for the last 50 years played a growing and increasingly critical role in the life of the nation. Just how important the sector is—and the organizations that comprise it are—was not widely recognized until the last few decades. The significance of the roles these organizations play in sustaining the health of our society, and caring for some of the most vulnerable members of it, has become even more apparent as our nation has faced dramatic demographic changes and massive economic challenges. The search for positive responses to these changes and challenges has also heightened wider awareness of the interactions between nonprofits and government, and of the myriad ways policies established by government (at many levels) relating to nonprofits affect those organizations.

These circumstances make clear how many unanswered—and often unresearched—questions exist about what nonprofits do, how they operate, and most significantly, how the public policies developed by local, state, and federal government may support or hinder the work of nonprofit organizations, thereby strengthening or weakening their abilities to serve the public good.

As of 2010, the Internal Revenue Service recognized 1.6 million 501(c) tax exempt organizations in the U.S. And that figure does not include 350,000 (approximately) tax exempt religious organizations, nor a larger population of informal, unincorporated associations and clubs that constitute the truly “voluntary” sector of this nation. Incorporated nonprofits, large and small, employ as many as 15 million people. They provide services with charitable and government program funding in areas such as health, education, housing, social services, the arts, and other areas of activity. They now account for a significant share of GDP.

So the importance of these organizations and activities to our society and our nation, to our collective well-being, can hardly be denied. Yet decisions are often being made in various government offices and in legislatures with little or inaccurate information about how nonprofits actually operate, how they are supported, and what effects—positive or negative—they have in their communities. These policy decisions may help these organizations thrive and better serve their communities; or may make it more difficult for nonprofits to sustain themselves and fulfill their missions in providing services or fostering civic engagement in diverse communities.



It is against this background that the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) sought support from the Bill and Melinda Gates Foundation, as well as the C.S. Mott and the Kresge Foundations, to hold a Symposium on Public Policy for Nonprofits. We saw the need to strengthen and deepen knowledge about the ways in which past and current policies have enhanced or limited the abilities of nonprofit

organizations to meet public needs and serve the common good. A better understanding of these matters will indicate what kinds of changes in policy may be required now to get better outcomes in the future. This is a moment in time when it is vital to look critically at the framework of institutions and public policies that now generate, support, or inhibit nonprofit activities and missions; and then to ask what changes are needed—and what direction those should take—in order to shape and sustain more vital institutions to meet social needs and sustain civil society in the years to come.

Why is this so important now? Because, at the end of the first decade of the 21st century we find ourselves at a difficult juncture when:

- The needs for the social services and civic engagement that many nonprofits generate are greater than ever, but the financial resources to support such activities and outcomes have decreased. This combination of circumstances puts the future of many nonprofits at risk.
- The definitions, purposes, and characteristics of nonprofits have become considerably more ambiguous; and the evolution of new organizational forms and practices is making it increasingly difficult to say what organizations are or should be part of a “nonprofit sector,” and what privileges and responsibilities they should bear.
- All this has created a context in which nonprofits are more frequently criticized for failing to live up to their social responsibilities, as well as to the ideals they hold for themselves and the public expects of them.
- Proposals for new policies to alter the ways nonprofits can operate, which could make it harder for them to sustain themselves financially or fulfill their missions, are being considered in legislative bodies and administrative agencies more frequently.

The view of most researchers of the nonprofit sector is that our knowledge about how the formation of public policy affects nonprofits is simply insufficient. For better policy to be made, a broader, deeper, and richer understanding of the sector, its organizations, and the processes and dynamics of policy making is needed. It is for that reason that ARNOVA convened leading experts—nonprofit practice leaders, governmental decision makers and regulators, and researchers from nonprofit think tanks and universities—to explore these issues.

We are grateful for support from the Bill & Melinda Gates, the C.S. Mott, and the Kresge Foundations, that made this event and report possible. Our hope is that the conversation that began at this Symposium, and the research it may stimulate, will lead to the development of knowledge needed to support public policies that help make nonprofit organizations and associations more effective in bringing significant benefits to their communities and the public as a whole.



What follows is a narrative report of the Symposium that tries to capture the dynamics as well as insights and findings of the event. The narrative is framed around the expert presentations made at the Symposium to inform and provoke a lively, probing conversation. It is sprinkled with sidebars and quotes that highlight some of the surprising and more illuminating exchanges among the participants. Finally, to make concrete the possible directions this discussion might take in the future, we offer descriptions of the kinds of research projects participants recommended someone undertake. (These are projects that, in many cases, the participants would like to pursue themselves.)

In the electronic version of this report it is easy to move through the elements in any order one chooses, and readers are invited to peruse this document in the way that best serves their purposes. As noted, the “conversation starter” presentations are included here in full, but summaries of those are also found in the narrative. The output of the discussions, a sketch of the proposed research agenda, comes at the end of the narrative report. Included as appendices are a list of participants and a list of suggested research projects.



Finally, a word of special thanks is needed here for Rick Cohen’s extraordinary service as the reporter of this event and primary author of the narrative report. His exceptional work in creating a coherent summary and description of an incredibly complex conversation was remarkable, and I am deeply grateful for his service and collegueship.

*Thomas Jeavons*

Project Director &  
Executive Director of ARNOVA

• **A Conversation about Public Policy for Nonprofits:** •

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*A Narrative Report of the ARNOVA Symposium*  
*October 2010*

On October 4<sup>th</sup> & 5<sup>th</sup>, 2010, the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) convened a *Symposium on Public Policy and Nonprofits* in Baltimore, Maryland. A group of 30 scholars and leaders of the nonprofit sector were assembled from a variety of professional backgrounds and academic disciplines as well as different kinds of institutions, regions of the country, and political and policy perspectives. This gathering was designed to help frame and stimulate research on how public policy affects nonprofit organizations in the U.S. The first purpose of this event was to examine our knowledge about the ways in which past and current policies have enhanced or weakened the abilities of nonprofit organizations to meet public needs and serve the common good. The second purpose was to begin a conversation about these matters, and to generate an agenda for the research that can be pursued to inform and support improvement of the public policies that currently frame, facilitate, and regulate the work and of nonprofits in our society.

This narrative report on the Symposium contains more than the formal presentations and summary responses. It attempts to capture the dynamics and insights of an intense conversation among individuals who care deeply about the welfare of our nation, and about the roles and functions of nonprofit, charitable entities in creating and sustaining healthy communities. The individuals who convened in Baltimore engaged in a spirited dialogue which was undergirded by four starting assumptions:

- The needs for the services and goods generated by the nonprofit sector may be greater than ever, but resources available to nonprofits due to a prolonged recession are declining sharply with a fall off in charitable giving and gaping deficits in state and federal budgets. This lack of resources threatens not only what nonprofits can deliver to their constituencies and communities, but the survival and sustainability of many groups.
- The nonprofit sector itself is changing, both in form and function. New organizational forms have emerged: complex multifaceted nonprofits, hybrid organizations that have mixes of nonprofit and for-profit features, and 501(c)(3) public charities connected to 501(c)(4) social welfare organizations, 527 organizations, and Political Action Committees (PACs). This makes it more difficult to define clearly of what types of activities and organizations the nonprofit sector includes and what should be expected from nonprofits.
- The breadth of types of nonprofits, differing by structure, function, and focus, creates an environment in which the public—and sometimes public policy makers—see the nonprofit sector falling short of their expectations for how nonprofits should function and what nonprofits should produce as social value.

- Congress, state legislatures, and governmental agencies are considering a wide array of policies and programs that may alter the way nonprofits operate. Some of these programs or regulations might help nonprofits with new program resources or access to resources that might have been previously denied them. Others could well make it more difficult for nonprofits to fulfill their missions and sustain themselves.

Working from these four assumptions, Symposium participants engaged in a spirited and challenging debate about the research needed to create the knowledge that could help nonprofits and policy makers fashion a policy framework that is beneficial to government, to nonprofits, and to the communities and constituencies both serve. No one in this gathering believed better research and quantitative data would result automatically in “good” policies. We were reminded by Independent Sector’s Pat Read, “policy [tends to be] made more by headlines and emotion than by research and data.” But, she added, “we still need the data to feel confident.”

The participants came to the Symposium not only from different positions within the nonprofit community and policy structure, and from inside and outside the sector, but also with divergent political or ideological predispositions. Without feeling compelled to reach agreements about what might be the “best” policies and practices for the nonprofit sector, the symposium participants did work toward consensual understandings of needed research to answer the following core questions:

- What are the most critical policy issues presently facing the nonprofit sector?
- What do we really know, from rigorous research, about the positive or negative impacts of past, current, and prospective policies?
- What are the gaps in our knowledge—not just research, but basic data—about the interaction of public policies and nonprofits?
- What kinds of research might be framed to generate new insights of immediate utility to nonprofits and policy makers that would elevate the quality and hopefully the results of the nonprofit public policy discourse?

The structure of the program revolved around three interactive settings: brief opening presentations to provide perspectives on what we know about the circumstances of the nonprofit sector now and the policy environment it faces, small group discussions to identify the policy and research issues emerging from the presentations, and plenary conversations to refine an emerging research framework and identify priorities. This report follows the same sequence, utilizing summaries of the opening presentations and anonymous or unattributed quotes from the follow-up conversations, all of which led to the prioritized research choices generated by the participants.

## The Big Picture: Historical, Legal, Economic, and Political Frameworks

### *Opening presentations*

David Hammack of Case Western Reserve University addressed the nonprofit sector as “the sphere of activity in which the federal and state governments provide the advantages of tax exemption, deductibility from income tax for donations, access to tax-exempt financing, and the right to pursue self-defined public or mutual benefit missions that fall within the law.” He challenged the “common misconception that nonprofit organizations exist chiefly to provide social services,” noting the large amount of nonprofit employment in health care and one-sixth in education. As a sector, nonprofits now employ 8 percent of American workers; in some metropolitan areas, more than 10 percent of the workforce. Many people are surprised that while many fields lost jobs between the second quarters of 2007 and 2009, nonprofit employment actually grew by an average of 2.5 percent per year.

#### *Size and Economic Significance of NPO's (as of 2009)*

- 1.6 Million Nonprofits in the US
- Of these, 1,000,000(+) are charities [501c 3's]
- Of these, 583,514 collected more than \$25,000 in gross receipts.
- These organizations had over \$1.9 trillion in revenue and \$4.3 trillion in assets.
- 15.5 billion hours of volunteer labor given to the work of these organizations.

*Source, Urban Institute*

- In 2004, nonprofits employed 9.4 million workers, or 7.2 percent of the US workforce.
- Nonprofit employment actually grew by an average of 2.5 percent per year between the 2nd quarter of 2007 and the 2nd quarter of 2009, the worst part of the recent recession.

*Source, Center for Civil Society Studies, Johns Hopkins University*

In Hammack's view, the growth of the nonprofit sector can be traced to the civil rights movement of the 1960s, in which key legislation and federal and state court decisions expanded First Amendment rights, including the right to pursue legal causes through nonprofit activity and advocacy. Yet, the growth of the nonprofit sector has been “without the guaranteed support of tax revenue... and without any increase in the private giving of money or time.” Even so, the part of GDP attributable to federal spending on nonprofit services has grown, from less than 1 percent in 1962 to approximately 5 percent currently. It is important to see, Hammack noted, that “government aid to the poor accounts for a small share of nonprofit growth... [because] (m)ost government aid goes directly to those who need it, not to nonprofits.”

Still, the amount of federal spending for the poor as contained in health, education, and welfare programs, has grown to 12 percent and continues to increase. In contrast, charitable giving has not broken 2 percent of GDP except immediately after World War II, one-third of which goes to religious entities. He suggested that the change in the nonprofit sector since the civil rights movement has been not only a growth of the size of the sector, but “the decline in the relative importance of donations, and a great rise in earned income as well as government

***Roles of and Threats to Nonprofits***

“U.S. law relating to nonprofits puts the First Amendment into practice. ... The Civil Rights Movement successes of the 1960s opened the doors to rapid nonprofit growth when several key pieces of federal legislation and several decisions by federal and state courts greatly expanded First Amendment rights. ... On current evidence, the most important legislative and regulatory challenges are not to funding, but to nonprofit autonomy.”

~ from David Hammack’s paper

subsidies—reinforced by a broad and pronounced shift of government policy from grants to vouchers.”

Hammack sees some of the public policy challenges to nonprofits as being rooted in historical trends and the competitive posture of the nonprofit sector. He notes that nonprofits constitute “a growing sector of the economy when many elements of America’s manufacturing and commercial economies are in decline”; the growing nonprofit sector is tax exempt and benefits from what are perceived as privileges due to its tax exempt status; much

of the growth of the nonprofit sector has been paid for by government; some nonprofit work is considered controversial; and a significant part of “nonprofit employment is concentrated in the Northeastern quarter of a nation whose politics are quite divided along regional lines.”

He suggests that the most significant challenge facing the nonprofit sector is to the autonomy of nonprofits, not to their funding as many people believe. Again, linking nonprofits to their modern day roots in promoting civil rights for women, racial minorities, ethnic groups, and lesbian and gay populations, Hammack suggests that “Movements aiming to cut back on those rights threaten nonprofit autonomy.” Nonprofit autonomy is further threatened by the fact that nonprofits “now rely to a considerable extent on federal funding.” This subjects nonprofit resources to public policy decisions that Hammack says are not limited to budget decisions; but which now also are about attaching terms and conditions to government grants, setting requirements and standards of accreditation and licensing for these organizations, and creating competition for nonprofits by funding vouchers that those in need of (traditionally nonprofit) services can use to purchase services from for-profit providers.

Evelyn Brody of Kent College of Law in Chicago followed David Hammack and addressed the legal framework of nonprofits. She identified four dimensions of that framework through which nonprofits feel the effects of public policies: First, nonprofits are creatures of state organic law. Their choice of form (trust, corporation, unincorporated association, low-profit limited liability company, etc.) is constrained by state policy affecting how they are governed, what they do, and how they can raise capital. Second, “governments explicitly or implicitly embed policies in their requirements for tax-favored treatment,” such as limitations on lobbying and political activities, prohibition on private benefits, valuation of charitable contributions and tax exempt financing, and definitions of property tax exemptions. Third, nonprofits that are part of regulated industries (e.g., hospitals, universities, nursing homes, childcare, etc.) operate under governmental policy standards that apply to nonprofit and for-profit participants alike. Fourth, government establishes conditions for the use of public funds linked to general governmental funding standards, particular government funding programs, or specific government grants and contracts.

Brody noted key features and benefits of the framework under which nonprofits function in the U.S., such as First Amendment rights to freedom of speech and freedom of association which empower nonprofit activity; and standards for nonprofit financial accounting and reporting, for instance in the form of the IRS Form 990, which may lift public confidence in nonprofits' legitimacy and integrity. Brody suggested, however, that despite this legal framework, policy makers hold on to myths about nonprofits that affect governmental policies toward nonprofits, and can be problematic for them. For instance:

- The myth that nonprofits are “supported largely by donations and volunteer-run.” This leads to public policies on disclosure of or limitations on administrative overhead of fundraising costs, or requirements in some states that receipt of significant levels of private donation are necessary for awarding or justifying property tax exemptions. (Brody called this kind of consideration of donated resources as “super assets.”)
- The myth that nonprofits do not make profits (as opposed to simply not distributing profits). As with the question of the amount of private donations, how much profit a nonprofit does or does not earn may be a factor in state and local government tests for property tax exemption eligibility. (Brody suggested that governments' confusion of not-profit-making with not-profit-distributing was creating “havoc in the public policy sphere.”)
- The myth that nonprofits are democratically governed (and should offer the public a say in governance). This leads to proposals that would shape the minimum, maximum, or desirable numbers and types of members of nonprofit boards; or require boards to listen to the voices of donors and perhaps the general public in their governance functions. The idea that nonprofits are by definition democratically controlled “could carry over into an assumption that the public is entitled to certain disclosures,” according to Brody.
- The myth that nonprofits operate as complements to government regarding income-distributing policy goals. This gives rise to policies such as public-employee salary caps for nonprofit executives, minimum charity care requirements for nonprofit hospitals, and pressures on endowed nonprofits such as educational institutions and foundations to increase their distributions or “payout.” Although there are many nonprofits that fit these myths, the notion that they describe all nonprofits leads to policies that may be inappropriate or counterproductive.

***Key Myths about Nonprofits***

“Public policy threats to nonprofits—whether generally or in narrow cases—can often be traced to one or more consciously or unconsciously held ‘key myths.’” [These mistaken views of NPO’s include the ideas that they are, in general:]

- (1) “Supported largely by donations and volunteer-run;
- (2) Non-profit-making [rather than] just non-profit-distributing;
- (3) Democratically governed;
- (4) Complements to government, particularly [for] income-redistributing.”

~ from Evelyn Brody’s paper

Brody also identified several longer term legal policy challenges to nonprofits:

- Changing population demographics: “As the characteristics of populations change, so might support for certain types of charities and their demand for certain types of governmental programs and tax benefits (e.g., education tax credits).”
- Pressures on the border between nonprofits and government. These may result in pressures to exact revenue contributions from nonprofits to help fill state and local budget gaps (such as increased use of Payments in Lieu of Taxes) and to use means-testing for accessing government-subsidized nonprofit services
- Pressures on the border between nonprofits and business: These are growing with the creation of new hybrid forms which might combine the ability to earn profits with potential access to tax favored resources and programs and in the generation of competition for nonprofits from government and foundation funders who might see hybrids as legitimate alternatives.

Dennis Young of Georgia State University had been scheduled to present next, but could not attend because of health issues. Alan Abramson of George Mason University stepped in to summarize Young’s seven suggested areas that merit more research about nonprofits and public policy. These are:

- Tax policies affecting nonprofits, including the impact of the estate tax on bequest giving, the relationship of corporate profits taxes and UBIT rates affecting the distribution or shift of activity between nonprofits and for-profits, and how much property tax rates cost in terms of government revenues.
- The impact of direct government funding on nonprofits, the cost of government spending on nonprofits in terms of transaction costs and red tape. Also the comparative impacts of different forms of government funding, including funding through voucher programs versus grants and contracts, as they affect how nonprofits relate to clients and the work that nonprofits do.
- The financing of nonprofit capital requirements, particularly in terms of areas of nonprofit undercapitalization such as technology and physical plant.
- How nonprofits “scale up” and how that scaling might be affected by government policy, particularly given the lack of “evidence that government is good at picking winners and losers for scaling.”
- Government policy toward the compensation of nonprofit executives, the extent to which and the arguments for and against government attention to and intervention around compensation issues.
- Nonprofit competition and collaboration. That is, the questions of whether there are too many nonprofits or, in some fields, too few nonprofits; whether the bar for obtaining a tax exemption should be set higher; and the efficacy and desirability of government promoting more collaboration.
- The emergence of hybrid organizational forms, such as low-profit limited liability corporations (L3Cs) and “B corporations”; their impact on the conventional nonprofit sector; their long term viability and social roles.

*Discussion in Small Groups followed these presentations on “big picture considerations of the nonprofit sector and public policy.” The flow and key points are summarized here.*

What is a nonprofit: Much of the ensuing debate concerned whether the idea of “nonprofit” is actually “an ideal organizing concept.” It was noted that it might give short shrift to other kinds of organizational structures or activities that are not primarily focused on the generation of profit and serve a public purpose. These could include “social enterprises,” religious organizations, and unincorporated associations that do not register or file with the Internal Revenue Service. When policy makers debate about nonprofits, for example in the context of property tax exemption questions, they are really talking about 501(c)(3) public charities, particularly those that file 990s. Clearly not all nonprofits file tax returns, so this focus limits our understanding of the nonprofit sector. Among federally registered nonprofits, the lion’s share (1.4 million) are 501(c)(3)s, the rest scattered among 26 other categories of 501(c) types, but even that doesn’t get at the scope of other tax exempt entities that carry out service, expressive, and sometimes advocacy functions.

“We miss the big picture by focusing exclusively on [501(c)(3)] charities,” many agreed, and by assuming that they are all trying to achieve common, consensual purposes. For example, advocacy organizations that are “duking it out on value-based issues like gay marriage, gun control, [and] global warming” are legitimately included within the frame of organizations of concern, even though they view themselves as opponents. In fact, like Hammack’s pointing to the civil rights movement as the pivotal element in spurring the growth of the nonprofit sector in modern times, “cause-related growth within the sector” may be both the source of other kinds of subsectoral growth and serve “as a lightning rod for prescriptive [governmental] regulation,” in the view of one participant.

Oversight complexity: Who regulates the nonprofit sector? Much of the public thinks that it is the Internal Revenue Service, but there is generally a two-year lag for the IRS to deal with nonprofit issues. In fact, it is state charities officials that deal more on a day-to-day basis with nonprofits through consumer protection issues. Yet, less than a dozen states are proactive rather than reactive in addressing nonprofit regulation issues. In thinking about governmental oversight of the sector, rather than simply focusing on IRS’s role, we should note “states play a major role... [and] we need a better mechanism for helping the states help the sector.” A distinctive juxtaposition is that states are the source for nonprofits’ organizational form, but the IRS has been “moving into the realm of [oversight of nonprofit organizational] governance, which is traditionally a state function.”

The need, according to participants, may not be “adding more laws and regulations that may or may not get enforced... [because] there is currently a lack of effective enforcement of existing laws and regulations. Invest(ing) in existing enforcement mechanisms” may be important before adding new regulatory challenges for federal and state officials. Unlike IRS, however, there is “no mechanism for states to report what they are doing on the ground... [even though] states deserve credit for averting [nonprofit] ‘disasters’ on a regular basis.”

Through its use of nonprofits’ submissions of the Form 990, the IRS has made great strides in terms of compiling and making accessible generally standardized financial information about nonprofits. Still, there are questions about how much transparency is desirable and warranted as part of a regime of regulatory oversight. For some kinds of tax exempt entities and some kinds of information, according to one participant, “the results as they

currently exist don't require transparency." One participant made it clear that she finds this unacceptable and called for a "glass pockets" transparency standard, that is, to reveal some of the sources and uses of funds by 501(c)(3) and (c)(4) organizations that are currently not disclosed due to nonprofit confidentiality standards. As a counter, returning to Hammack's reference to the role of the civil rights movement in spurring the expansion of the nonprofit sector, one person noted that the support for the civil rights movement was predicated on a lack of disclosure, so that donors or participants in nonprofits affiliated with the civil rights movement would not be subject to retribution.

Research might also be warranted on thinking beyond the locus of regulation between federal and state government, and exploring how government oversight might be structured based on type of nonprofit: Perhaps regulation should vary with different levels of oversight for small versus large, or newer versus older nonprofits; perhaps "rewarding" in regulatory terms nonprofit "organizations that are there for the long haul;" and maybe distinguishing between nonprofits based on the extent of their government funding or government control.

The value proposition: Underlying much debate was the often unstated "value proposition of the sector," which involves how the role of the sector has changed vis-à-vis government over the years, and continues to change given changes in the economy and in the roles that government plays. One problem is that the word "charity," as one put it, "connotes something very different from what charities actually do." Moreover, as another put it, the value proposition varies given the diversity of nonprofits by type and particularly by size. According to one participant, "it is both dangerous and useful for small nonprofits to be lumped with large nonprofits" such as hospitals and universities. Nonetheless, there are still potential common factors to the value proposition, a commitment to both "individual initiative and collective action for community purposes."

The value proposition is made concrete, according to a practitioner in the group, by asking "what do we want to get done [through nonprofits] in our communities," or put more succinctly, "what is the endpoint" we hope nonprofits will achieve? The question is, "are they delivering or are they not" on needs to be addressed according to specific nonprofit subsectors—health, housing, education, etc. Then we should examine "how government policies facilitate or hinder the activities of nonprofits." Nonprofits are, as one put it, "a very diverse industry...[that should be] celebrate(d) for its vastness...variety and diversity," which should be explained coherently for public policy-making purposes. From within that diversity, however, questions arise of the public's trust of the sector. We have not fully tested what the public really thinks about the value of nonprofits, and therefore our knowledge of what functions as "generators of trust between nonprofits and the public" is insufficient.

Partnership with government: Even prior to the recession, federal, state, and local governments were under pressure from revenue constraints and multiple spending demands. That has only increased with the prolonged recession. Nonprofits therefore have to look at their work in relationship with government, how the nonprofit sector is "leveraging" what government does, and how nonprofits can help "government do its job" because "we need our partner to be healthy." Some dimension of what the nonprofit sector expects of itself may be related to "what government expects of the [nonprofit] sector."

Nonetheless, government is almost certain to be shrinking due to constrained revenues at all levels and federal demands to deal with the looming deficit. How will the shrinking of government, in contrast to past decades of governmental growth, affect nonprofits or change the relationship of nonprofits and government? Can nonprofits use government funding “as a seal of approval that can be used to leverage private dollars,” or will the presence of government funding increasingly be seen as the politicization of the nonprofit sector and a potential fundraising liability? Nonprofits were once “a way for people to self-organize,” but the increasing government funding has “normatively change(d) the relationship between the public and nonprofits.” New funding streams from government further those normative changes. Public attitudes recently have contained some measure of hostility toward government program funding. With significant support from government, do nonprofits risk being caught in a backwash of hostility toward government, and will reduced funding change how the public sees nonprofits?

Differences in the status and roles of donors: Participants argued that tax policies do not affect all nonprofits, nor all donors, equally. Large donors are privileged by the current tax code. In addition, the “strings” that charitable donors might attach and exercise through “donor intent” affect what nonprofits do, but that too varies according to the size of donors’ gifts. “Donors making large donations have the ability to set the agendas of recipient organizations” in contrast to the limited or negligible influence of smaller donors. Foundations, for example, are organizing among themselves, both to protect their privileges within the tax system and to promote causes and functions that they think might be important. How much latitude do nonprofits have “to create terms of agreement with donors,” a participant questioned, and how much do the stipulations and strings of charitable donors constrain nonprofit autonomy?

Comparing nonprofits and for-profits: Participants noted areas where for-profits were engaged in carrying out services typically thought of as within the purview of nonprofits. Discussion went to where for-profits were expanding their service delivery activities, induced in some cases by public policy. The incursion of for-profits could, according to one observer, “destabilize nonprofits and cause communities to lose [their nonprofit service delivery] infrastructure.”

While some policy makers might not look at the involvement of for-profits as a cause for concern, participants suggested two important public policy dimensions. First, that government-funded nonprofits typically function as a social safety net (though, according to one, “there seems to be the feeling that the safety net isn’t there like it has been in the past” during this recession); and, second, according to a researcher in the group, “there are indications that during recessions, for-profits are much more likely to close their doors but nonprofits stay open.” If policy makers are concerned about knitting or re-knitting a safety net for people in need, research that documents the behavior of nonprofits and for-profits during times of economic distress may be called for.

The emergence of hybrids: The emergence of new forms of hybrid organizations which incorporate elements of nonprofit and for-profit structures or behaviors evoked research concerns throughout the Symposium. Why are these hybrids emerging now? What needs do they address that nonprofits do not address or are not suited to address? How will government regulate them? That is, will it regulate them as a distinct type of entity, or will the regulation only follow the government (or possibly charitable) dollar used by the hybrid? How might nonprofits respond to the competitive challenge? Might hybrids become a competitive yardstick for nonprofits or serve as potential partners? To what extent has government policy or practice induced the creation of hybrids such as L3Cs?

Terminating nonprofits: While it is generally easy to become a nonprofit, with many created every year, we know relatively little about how and why nonprofits go out of business. The transaction costs involved in the termination of nonprofits can be huge, with significant differences for larger and smaller nonprofits. How many nonprofits choose to go out of business? What costs are entailed and how long does it take? What inefficiencies are built into the process, and which models of dissolution (bankruptcies, receiverships, mergers, etc.) fit what kinds of nonprofits? We have very little research on any of these matters. Our lack of knowledge about the “death” of nonprofits, about the causes and the processes, raises two high profile policy issues. (It was certainly not everyone’s assumption that all nonprofits should last forever.) First, as one participant noted, “We might want bad organizations to go away, but we don’t really have a way of truly making them go away.” Second, we hear the persistent question of whether there are just “too many nonprofits,” some of which should be allowed to “wither” or be arbitrarily “winnowed,” to use Paul Light’s terms. But both these issues raise questions of power and legitimacy. That is, “Who gets to decide which nonprofits should cease to be, and what grounds, and by what means?”

Nonprofit roles in civic engagement: This question of the value (or problem) of having so many nonprofits also requires deeper consideration of the range of purposes of these organizations. Despite the obvious linkage of government policy and government funding to nonprofit service provision, there was pushback in the Symposium against the tendency to overemphasize the roles of nonprofits as service providers and the measurement emphasis on nonprofit efficiency. Participants turned to the issue of social outcomes, emphasizing research findings such as the Chicago project that appears to be “showing that civic engagement in communities is best predicted by the density of nonprofit organizations in that community.” So some participants wanted to emphasize the need for new research examining what can be learned about: (a) how public policies influence civic participation through nonprofits, and (b) how important and effective “nonprofits [are] as vehicles for [encouraging civic] participation.”

***Summary: Big Picture Themes for Research***

- Evolving relationships among 501(c) organizations and between 501(c)s and business, faith-based, and other entities.
- The emergence of hybrid organizational forms, competitive implications for “conventional” nonprofits and implications for government regulation and oversight.
- How government affects and shapes the structure, functions, and products of the nonprofit sector.
- Differentiation of federal and state functions vis-à-vis the nonprofit sector.
- Public trust and public expectations of the nonprofit sector.
- What should the nonprofit sector be about, what is the value proposition of the nonprofit sector?
- What do we know, or should we know, about the roles of nonprofits in generating social capital and civic engagement as well as social services?

## Critical Issues and Changes in Public Policy and the Nonprofit Sector Landscape at the Federal Level

### *Opening presentations*

Howard Husock of the Manhattan Institute explored some significant questions about the relationship between the federal government and nonprofits, including potential hazards as well as benefits of government funding, and “how to judge performance and whether philanthropy is appropriately joined to public appropriations.” He used the creation of the Social Innovation Fund, a \$50 million program to spur social entrepreneurialism, as a recent development that suggests answers to these questions. Husock further identified a noteworthy, perhaps new, issue in the public policy realm, “the belief that programs which are limited in scope and scale should, to be truly successful, find ways to reach many more who might benefit from their services.” That is an assumption that effective programs should be “going to scale” (to be judged truly effective), and “the most practical way to do so is through public funding” to support expansion or replication.

#### ***Is Bigger Always Better?***

“The predicate of government involvement in the private, non-profit social service sector [with a focus on ‘going to scale’], might be described as “small is not beautiful”—the belief that programs which are limited in scope and scale should, to be truly successful, find ways to reach many more who might benefit from their services. ... [But,] one must consider the likelihood that there are dynamics inherent in a regime of social services provided under government contract that lead to mediocre results.”

~ from Howard Husock’s paper

Turning to government to help successful nonprofits go to scale emanates from “a profound frustration with the apparent limits of the voluntary, philanthropically-supported social service sector” that frequently fall short in obtaining the capital that some programs need, leaving “too any of those who could benefit from assistance of various sorts... [to] go unserved.” Government’s “deep pockets” appear to be an attractive alternative to the financial limitations of philanthropic support. However, Husock suggests that government funding changes even the most successful nonprofit programs, resulting in programs that, while scaled up, “provide broad but mediocre service.”

Husock contends that American charities were “intensely local and largely if not totally independent of even local government” until the 1960’s, when the relationship of government and nonprofits turned to one of mutual dependence. Government funding in some areas of nonprofit activity dwarfs the support for those issues that comes from charitable and philanthropic giving. Nonetheless, he suggests that the emergence of social entrepreneurs establishing new organizations—and new types of organizations—to help the disadvantaged reflect a perception that previously government funded organizations have not been effective, even though they too are seeking government funding for their new structures and programs. He points out that the socially entrepreneurial organizations selected for the Social Innovation Fund aim to address social problems such as job training and public health that have long been supported with government funding—with programs that have apparently fallen short of

delivering on their promise of effective service delivery. (He cites, for example, disappointing evaluations concerning the impact of Head Start).

Husock noted it is possible that “there are dynamics inherent in a regime of social services provided under government contract that lead to mediocre results.” At a minimum, government contracts have significant implications for nonprofit management. Government money “changes the nature of the services provided” and requires adherence to government processes such as reporting about the uses of the government funds. Husock argues that “the most effective form of scaling is cultural change—and that is less likely to stem from billions more in federal appropriations than through establishment and celebration of effective local programs and their replication—with local adjustments—by those who find them inspiring.”

***Making the Best Programs Available  
More Widely***

“The most effective form of scaling is cultural change, ...and that is less likely to stem from billions more in federal appropriations than through establishment and celebration of effective local programs and their replication ... with local adjustments ... by those who find them inspiring.”

~ from Howard Husock’s paper

In contrast to Husock’s analysis of the impacts of federal involvement on the nature of nonprofits and the programs and services they provide, Independent Sector’s Pat Read examined nonprofit relations with the federal government in the context of specific issues that are currently facing Congress and the White House or are likely to arise in the next few years, enumerating the following:

- How will the federal government try to balance the budget and restore fiscal stability, including possibilities such as changing or reducing federal discretionary and entitlement spending and raising new revenues? And in this context, what will be the impacts of those revenue and spending changes on the work of nonprofits?
- Will the federal government alter incentives for charitable giving? For example, she cited President Obama’s proposal to limit itemized deductions for wealthy taxpayers, and how such changes will affect charitable giving, or particularly nonprofits that are more highly dependent on charitable giving than governmental funding.
- Can the sector generate the research and data to demonstrate the impacts and benefits of nonprofit programs in terms of their desired goals, changes in people’s lives, and the quality of life in the nation?
- To what extent will public policy recognize nonprofits and foundations as employers, both for the purpose of ensuring that new policies are cognizant of nonprofit employers to ensure that their employees are given access to benefits and incentives offered to taxable employers? And will the nonprofit sector be seen as a sector in which incentives for job creation can work? (Read observed that these recognitions are hampered by the inadequate data available on nonprofit wage and benefit levels: “Nonprofits are not a part of Congress’s and the White House’s mechanisms for regenerating jobs in response to the recession.”)
- How can nonprofits be helped to access credit and capital for emergency loans while waiting for government contract reimbursements, operating capital especially as

demands increase in the recession, and money for capital investments? (Read noted the Administration is focused on the capital needs of small business, but with “little or no attention to the need for investment in the nonprofit sector.”)

- How will public policies support nonprofits engaging in advocacy, voter education, and voter registration? Or will that support face restrictions due to perceptions of excessive lobbying by special interests and investigations of politically engaged nonprofits such as ACORN? (Indeed, might government policies essentially eliminate support for some service providers because of their policy advocacy positions, such as the position of some USAID contractors that they cannot provide HIV/AIDS programs and not include sex workers in the program scope?)
- Might there be some “changes in the rules and definitions for tax-exempt organizations eligible to receive tax-deductible contributions, and the possible creation of new categories of exempt organizations” as a result of the growth of hybrid organizations?
- How and why the federal government might provide support for nonprofit capacity-building?
- Will the looming funding precipice at the end of federal stimulus money affect nonprofits and how will nonprofits adjust?

*Discussion in small groups followed these presentations on the federal role in shaping public policy for the nonprofit sector. The flow and key points are summarized here.*

What does the federal government do that prevents the nonprofit sector from fulfilling its mission and programs? Following Husock’s analysis, participants questioned efficacy and feasibility of “scaling up,” particularly the partnership between foundations and nonprofits. One participant suggested that the “notion of scale has to be challenged more carefully... [in part because it involves a] false expectation for philanthropy to [pay for] scal(ing) up while government innovates.”

What can be done to address the uneven playing field between better capitalized for-profits and weaker nonprofits? This ultimately is a question of financial capital. What levels of capital could help nonprofits compete with for-profits moving into the nonprofit sector’s realms of activity? To the extent that nonprofits perform a broader, more reliable “community safety net” function than for-profits, then if competition from deep-pocket nonprofits makes nonprofits weaker and unsustainable the results can be deeply harmful to the public good. The public policy issue here comes to a head during times of recession or disaster when the safety net is really called upon. How can nonprofits be capitalized to be sustainable over the long term to play the roles that for-profits are unlikely or ill-suited to perform? What public policies would help generate and support that level of sustainability?

This leads to a policy question about distinguishing nonprofits from each other. The charitable deduction flows to charities regardless of their safety net purposes and functions. In the discussion in response to these presentations, some participants raised the issue of “giving extra credit to nonprofits that are established and have a trusting relationship with the community.” This is a factor that might be worked into government contracting comparisons

between nonprofit and for-profit vendors, but also into possible reformulations of the charitable deduction, potentially giving a higher level deduction or a charitable tax credit of sorts for donations to safety net or some other category of grassroots organizations. One participant noted that eligibility for charitable deductions is based on activities, but “those activities are not necessarily linked to the poor.” In a changing economic environment with potentially long term shifts in the revenues flowing to and through government to reach nonprofits, does the definition of what is charitable—and consequently, what the federal government might consider eligible for a charitable deduction—need to be modified to consider who is served (or benefitted) in addition to the character of the activities of the organization itself?

Government contracting controversies: Both leading up to and following the Symposium, the issue of government contracting problems received much public attention. Major concerns were raised about federal and state practices of late payments to nonprofit contractors, complex and costly systems of accountability and reporting, inefficient and ill-timed government contracting procedures, insufficient provisions of administrative overhead, and government agencies’ failing to provide full funding for the cost of the services delivered. The research and policy challenges most observed included these:

- Is there an identifiable equilibrium between oversight and effectiveness? That is, at some point or level does government oversight undermine the effectiveness of nonprofits in the delivery of their services and programs?
- What are the best models of government contracting that provide sufficient and efficient government oversight for accounting?
- How do various regulations improve or undermine nonprofit contractor accountability?
- How are most nonprofit regulations developed? Do they emerge from trying to address or resolve a small number of particularly bad cases, or from a broader perspective of patterns of nonprofit practice and behavior?
- Do different arenas of governmental contracting—for example, emergency/disaster relief, international aid, etc.—differ in the kinds of government oversight that work for achieving effective account ability?
- What does compliance with government oversight cost nonprofits and how is that paid for, especially for smaller nonprofits that do not have the larger economies of scale to pay for the systems that nonprofits need to deal with governmental regulations and oversight?
- How is the relationship between nonprofits and government structured and monitored when there is relatively little or no government contract money involved?

***The Risks of Advocacy***

“We need to look at the intersection of politics and nonprofits; all we have heard is that advocacy is good, but how much?”

~ a participant’s observation

Protecting nonprofit advocacy: Participants wondered if there has been a backlash to the ACORN scandal that has led to various (or renewed) efforts to restrict nonprofit advocacy. It may also be important, though perhaps too early yet, to look at the Citizens United decision of the U.S. Supreme Court to see what impact it had in the distribution and mobilization of resources to affect the 2010 political campaigns. Whether the

question is issue advocacy or more direct 501(c)(4) political engagement, one participant observed that “we need to look at the intersection of politics and nonprofits; all we have heard is that advocacy is good, but how much?” A potential issue in any political engagement of nonprofits is the possibility of the political corruption of nonprofits. One example noted was the involvement of New York State legislators and New York City council members in funneling earmarked grants to nonprofits they or their family members controlled. We do not know what the ripple effects may be for all nonprofits if any are identified as being corrupted in these ways.

Promoting civic engagement: On a broader level the conversation explored the question of how public policies, more specifically, federal government policies, influence civic participation, and if it is true that “nonprofits [are] vehicles for participation.” Another participant suggested that a helpful research agenda might not be one that focuses on the list of pending legislation in front of Congress—extension of the IRA rollover, itemization of charitable deductions for high income taxpayers, etc.—but instead one “focus[ed] on democracy,” the role of a variety of nonprofits in promoting and supporting small “d” democracy. How do federal policies toward nonprofits (and toward foundation grantmaking) help or hinder that nonprofit role? We might explore, for example, whether the composition of the boards of endowed foundations—largely white, high income, and self-selected—run counter to concerns for representativeness and more egalitarian conceptions of the structure and function of nonprofits.

Measuring and monitoring political activity: The Citizens United case may have given special interests a signal inducing more or new corporate money into the political activities of 501(c)(4) organizations. Was the effect of the Citizens United case one that made contributions to 501(c)(4) organizations (though not 501(c)(3) public charities) a “sweet spot,” as one participant put it, for federal political engagement by nonprofits? Debate ensued as to whether or not Citizens United really provided new opportunities for special interest money flowing anonymously into electioneering activities, how we (or the government) actually might identify or measure electioneering (given the lack of a bright line definition for reliably spotting electioneering), and how to distinguish the differences in electoral activity pursued by (and promoted for) 527s, Political Action Committees, and 501(c)(4)s. In the words of one participant, “We need to think about these things definitionally? What is advocacy? What is electioneering?” The lack of generally reliable definitions frustrates not only research, but policy making.

Examining political activity carried out by 501(c) organizations and other tax exempt entities implies the question of the various interests behind those flows of capital. Which kinds of institutions and what kinds of interests have taken to providing anonymous capital to these organizations for political activity? Debate followed about whether the policy research question is to identify those interests (and those nonprofits) that may be misusing their tax exempt status to engage in prohibited electioneering activities; or if the broader concern about Citizens United and other legal decisions, statutes, or regulations is that they will allow special interests to “use” and perhaps divert nonprofits to carry out political rather than charitable purposes?

Answering either question implies an underlying issue again with disclosure. What information needs to be disclosed to determine how nonprofits are being used—or possibly misused—for political purposes? How could that information be provided so that “you find what you need when you need it”? And at what point would transparency potentially drive away donors who would rather be anonymous in their giving, whether to social welfare organizations or to public charities?

Religious organizations: The policy environment for religious institutions was barely touched in these discussions of public policy and nonprofits, even though this is an important sector in American society for which donations are eligible for charitable deduction. Because most religious organizations do not report to the IRS (or other public agencies), we do not know as much about churches, synagogues, and mosques; about what they do for their communities and how they spend their tax exempt funding. The presumption is that if congregations filed publicly accessible financial documents it would add information about hundreds of thousands of tax exempt organizations. Any potential regulation in this sphere is a complex issue for nonprofits, because the exemption for churches is given at the federal level and rooted in the “separation of church and state,” but most of the cases and issues of concern arise from a regulatory matters that occur at the state and local levels.

As one participant put it, “Stuff is going on in religious organizations [that] needs to be fixed, but nobody wants to tackle it politically.” The special treatment of religious organizations can even become an issue for researchers. One participant noted that a current survey asks local government officials about their involvement or membership in the boards of directors of nonprofit organizations, but does not to ask them about their comparable involvement on the governing bodies of religious organizations “because [of] fears about political repercussions” from making that inquiry. Yet, given the ways these spheres overlap—many CDC’s, for instance, are operated by churches—there are real issues that could arise here about political influence and the distribution of public resources that could be hard to bring to light given these sensitivities.

Coming from another angle one participant noted some 66,000 churches file 990s, and many control significant amounts of real property in communities limiting the amount of revenue-generating taxable property in some localities. State and local governments are establishing their own definitions of what kinds of institutions, properties, and property uses might qualify for local tax exemptions. This has the potential to lead to a process of redefining tax exemption—and redefining nonprofit—from the bottom up. This is an issue that federal policy might have to address simply to undo the cacophony of variations emerging at lower levels of government.

***Challenges to Religious Exemptions?***

“State and local governments are establishing their own definitions of what kinds of institutions, properties, and property uses might qualify for local tax exemptions. This has the potential to lead to a process of redefining tax exemption—and redefining nonprofit—from the bottom up.”

~ a participant’s observation

Government contracting with religious organizations: Another policy issue relating to religious organizations' roles in the nonprofit sector involved the shift of the federal government's treatment of faith-based contractors. The Bush Administration made a significant effort to facilitate and induce government contracting with faith-based institutions for human service delivery, even providing a funding program (the Compassion Capital Fund) to provide training and technical assistance for religious organizations to enable them to qualify for and manage federal grants. In the transition to the Obama Administration, the capacity-building funding program was eliminated, but the Administration maintained a federal faith-based office committed to helping religious contractors access federal funds, a pattern that was seen in the flow of a significant federal stimulus funding to faith-based service providers. The following were all identified as policy research issues: The differences in the Bush Administration and Obama administration treatments of faith-based providers; the evidence of how much federal government grant and contract work goes to faith-based providers; the extent to which either Administration's programs increased the proportion of funds going to faith-based contractor; and how the federal government manages the tension between faith-based delivery and religious discrimination in hiring by faith-based providers.

Specific policies affecting the future of the nonprofit sector: One participant noted, "the 800 pound gorilla coming at us is called health care reform," which could entail new roles for nonprofits (and for hybrid organizations) and new costs or challenges in compliance. This could change the nature, and perhaps even the nonprofit status, of nonprofit hospitals, and change a significant part of the structure of nonprofit financing, particularly relating to Medicare and Medicaid reimbursements. New nonprofits will be established or have to be established to provide "community health care" under the terms of health care reform, but there has been little research on the implications of health care reform for the nonprofit sector. Questions about who will be served, the implications for nonprofit employees, potential changes in the functions of nonprofit hospitals, clinics, and other health-related charities, and who will carry out the mandates of the still evolving law may be critical for the sector.

Policies regarding foundations and similar entities: One participant asked whether "federal requirements governing foundations [should] be different." They are different in some respects than regulations for other 501(c) (3)'s. But the implication was that perhaps private foundations should have a 501(c) classification different than the vast bulk of 501(c)(3) public charities.

#### ***Donor Advised Funds***

- The numbers rose from 101,000 in 2005 to 152,000 in 2009.
- They now outnumber private foundations more than 2 to 1.
- They hold assets in excess of \$25 billion.

*Source, National Philanthropic Trust*

One part of philanthropy that needs more research is the donor-advised funds, created in many instances to keep the identity of the donor secret. The limited requirements on public disclosure of grantmaking means that we lack much information (other than that generated by managers of DAFs) about what charitable purposes donor-advised funds typically address, and about their payout rates. One participant summed up the public policy problem as "we are creating a zillion tiny foundations," but with

much more limited information and public policy oversight than traditional private foundations, and outstanding questions about whether DAFs end up as small private foundations existing in perpetuity. It was noted an added complication is that donor-advised funds may be held by or managed by universities, hospitals, and other nonprofit institutions in addition to community foundations and national commercial DAF managers.

The explosive growth of donor advised funds reflects what one participant suggested is a widely accepted assumption in the sector. That is, “there is a general consensus that it is a good idea to ‘let a thousand flowers bloom’ with regard to philanthropy.” “But,” this same person observed, “we don’t really know what it costs.” More research is needed on what it actually costs our society, in terms of revenues forgone for public entities, to have such expansive philanthropic activity supported by tax exemptions and deductions; and on what that charitable activity provides in public benefits.

***What are the Costs of New Forms of Philanthropy?***

“There is a general consensus that it is a good idea to ‘let a thousand flowers bloom’ with regard to philanthropy. But we don’t really know what it costs.”

~ a participant’s observation

***Summary Federal Policy Themes for Research***

- How do governmental initiatives, funding, regulations, and efficiency (or lack thereof) alter or impact nonprofits, missions, character, services and vitality?
- What approaches in government contracting strengthen and weaken nonprofit service delivery and mission fulfillment?
- How can ideals for government accountability and oversight and nonprofit effectiveness be balanced?
- What are the larger issues and implications on barriers for nonprofits in terms of access to capital?
- What are the potential benefits and problems with political financing of tax exempt entities for electioneering activities?
- What are the potential benefits and problems with charitable nonprofits’ engagement in advocacy activities?
- How does public policy treat religious organizations as tax exempt entities now? How has this changed over the last decade?
- What may be the impact of various tax proposals on charitable giving?
- What are the implications of health care reform on the nonprofit sector?
- What policy issues concerning private foundations and donor-advised funds need more research now; and how much is philanthropy costing the public in terms of forgone revenues and public services?

## How Do Policy Issues Look at the State Level?

### *Opening presentations*

Deborah Auger of the University of Delaware spoke about her experience and learning as a researcher and activist in that state. She argues that “the future of the nonprofit sector (or at least its most substantial and essential “charitable services” part) will rise or fall on our ability to identify and coax forward a set of policies. More fundamentally, she contends, there has to be a *new relationship* between nonprofits and state government—in which nonprofits serve “both as fully enfranchised administrative partners, and empowered, independent, politically effective policy forces, who are afforded the respect and understanding of state officials that they merit.” Within that framework, she suggests several areas in need of attention and better policy research:

- There is need for new partnership models for state/nonprofit working relationships, because of “a deep and deepening mutual interdependence among state and nonprofit agencies, which is unlikely to be reversed in coming years.” Though “often unacknowledged, nonprofits are now de-facto financial cosponsors of state public human services, whose support is now critical to their continuation.” Despite these close working relationships around state programs, “nonprofits are closed out of critical policy discussions about future service planning (cutbacks or expansion of services).”
  - She argues nonprofits need state-by-state adoption of new State-Nonprofit Partnership Compacts. She calls for compacts that establish “fair and open operating principles or ground rules for state-nonprofit joint service arrangements” similar to the Voluntary Sector Compact Initiative of the U.K.
  - She notes there need to be new mechanisms for institutionalizing nonprofits voices in high tier state administrative/policy forums.
- For this to be possible, she says there needs to be far greater (and bolder) state-level nonprofit public policy and advocacy capacities. Augers suggests that “nonprofits have historically had a far weaker presence at the state level” than at the local level (where decision makers may be known and approachable), or at the federal level, where national nonprofits have been able to be effective policy advocates. “The nonprofit sector has been hampered by confusing state and national lobbying regulations, misperceptions of nonprofit board member ... and unenlightened grantmaker attitudes that dissuade nonprofits from undertaking important policy work,” she notes. More public policy advocacy is needed at state level, she argues, in order to:
  - Stave off emerging state or local regulatory restrictions on advocacy and lobbying that would have a further chilling effect on public policy work of nonprofits;
  - Escalate foundation commitment and support for advocacy roles of grantees;
  - Launch a multilayered wholesale state-by-state campaign to advance nonprofit public policy engagement, “a kind of Marshall Plan to grow nonprofit skills, create permanent institutional capacities, and embed commitment to public policy into the day-to-day work of nonprofits.”

- In addition, Auger contends it is essential to build state-level knowledge about how fiscal crisis-driven state budgetary choices are impacting and reshaping the nonprofit sector; and to assemble data that informs state budgetary and fiscal policy choices by advancing awareness of nonprofits' role and importance within that state. To accomplish this sort of agenda, Auger proposes the following policy research agenda:
  - Establish and sustain a multi state, multi year research initiative to track impacts of the state budget crisis on nonprofits. This would follow changes and impacts on a state-by-state basis and assemble a national picture of state budget impacts on nonprofits and foundations. This would allow nonprofit advocates to supply state policy makers with pertinent readily understood data on their state's nonprofit sector and its contributions as a backdrop to policy choices

Following Auger's comments, Kyle Caldwell, president of the Michigan Nonprofit Association, brought the participants a practice leader's perspective, the view of one who works daily to support nonprofits of all sizes and types that are trying to meet their communities' need under very difficult circumstances. Kyle noted that "Michigan has been in some form of economic downturn since 2002," giving their nonprofits longer experience than most with recessionary challenges.

Kyle reminded us of the multifaced benefits nonprofits may bring to their communities. In addition to providing vital services, they may also be significant employers and important agents in creating social capital in their communities. Yet, despite the fact these organizations provide crucial services to their communities, especially now when demand for these services is growing, we may know much less than we need to know about how they actually operate on a day-to-day basis.

He argues, for instance, that "it is unclear how the nonprofit financial model(s) work in their communities and how they impact local communities and economies." If it is true, as Kyle contends, that there is much we do not know about how many nonprofits manage their finances, it is hard to design policies that will make them more likely to succeed. And if it is true these organizations are key partners for governments in providing necessary services for the public—a point on which virtually all our participants agreed—it seems absolutely critical for governments to create such policies.

Caldwell's presentation reminded participants how some of the research to be done has to focus on the operational level of nonprofits' existence. For "the devil may be in the details" of how policies are implemented, not just in what they intend. So a better "nuts and bolts" understanding of how the finances nonprofits of different types work, or the particular challenges of recruiting and maintaining a talented work force to meet the mission, may be vital to creating policies that make it possible to sustain a nonprofit sector that serves the public good in all the varied ways we might hope for, all the ways that nonprofits often claim, and all the ways the public may expect.

***Discussion in Small Groups followed these presentations on considerations of public policy for the nonprofit sector at the State level. The key points are summarized here.***

As these discussions in the small groups began, it became apparent that the effort in this Symposium to tease apart issues by level—federal, state and local—was somewhat arbitrary. The artifice was helpful for discussion, but could not hold firm. Because of the ways funding flows from governments to nonprofits—for instance, with federal funds often being re-granted or distributed by contracts from state or local agencies; and because there are overlapping and intertwined jurisdictions and policies affecting nonprofits, it is clear that many policy issues facing nonprofits are always being shaped by persons and forces operating at multiple levels.

Accordingly, discussions now began to engage questions and perspectives from a variety of governmental agencies at the same time. That is reflected in the record that follows as concerns and questions about the state and local levels are interwoven, and sometimes federal issues reemerge as well. Also, the list of policy research issues follows after the summaries of both the state and local level presentations, since the issues are often so closely conjoined.

Attorneys general: Neither of the state presentations specifically addressed the roles of state attorneys general and their charity officers, but a number of the participants reminded the group of what a crucial role they play.<sup>1</sup> We need to examine the range of differences among the states' postures toward AG oversight and public education of nonprofits and the ways these influence how nonprofits thrive in some states and face difficulties in others. One person noted that “when you talk to [state] legislators or AG offices, they will tell you that they see the sector in a position of weakness or having compliance issues.” If AGs are in a significant oversight role vis-à-vis nonprofits, understanding how the AGs look at and oversee nonprofits within their jurisdiction constitutes an important research question.

Regarding Hybrid Organizations: Most participants believed that emerging forms of “public serving organizations,” L3Cs and other hybrids, “are a huge challenge for the states but also a huge opportunity.” These issues are being wrestled with in the states first because it is state corporation laws that are determining the forms they may take. Because “hybrids are all at the state level,” this is an important policy issue for state government. The challenge is how to fit them into an effective regulatory scheme. The opportunity is that “if done well, they [could] become a way to leverage private money for growth, scale, and replicability.”

The challenge these new organizational forms present to nonprofits is a question of “who does what best at the state level.” That is, are there functions typically thought of as nonprofit functions that might be better carried out and delivered by socially oriented alternatives to nonprofits? Hybrids, according to one observer, “will [have] a marketing advantage” over nonprofits if they can make that case, but so far, the jury is out on them in terms of their impact.

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<sup>1</sup>We invited several AG's to participate in the Symposium, but unfortunately the annual meeting of AG's and Assistant AG's who serve as the oversight officers for the state was the same two days, making that impossible.

State-level nonprofit offices: Auger pointed out a structural difference among the states, in that some states have created a “nonprofit office” to work with and support the nonprofit sector, and sometimes to attract support from nonprofits and foundations for state government policies and initiatives. The functions and effectiveness of those offices are issues for policy research. Their very existence raises further questions about the potential benefits and pitfalls of merging public and private funds to support state services. Outside of the structure of state government but existing largely on a state level are state nonprofit associations that work with state government playing active policy advocacy and standard-setting roles. It is important to understand the roles these organizations play now as well. However, not all states have state-level nonprofit associations, and even among those states that do have state associations, the associations vary in size and program scope.

Earmarks: In addition to the now infamous process of federal budget earmarks, this appropriations mechanism exists in several states. For some nonprofits, it is through legislators’ earmarks that they get financial support from the state. This is not without problems. As noted before, the allocation of state budget funds to nonprofits has created political corruption scandals in several instances. Even so, nonprofits in one state confronted the legislature’s elimination of earmarked funds and “were very upset and argued that earmarks were an effective use of dollars.” There is no systematic research on how state earmarks have been used, what kinds of nonprofits received these funds, how effectively the funds might have been used, or how problematic (or not) such allocations may be in the public (and donors) eyes. Such research could be valuable to help nonprofits understand what kinds of policies and practices are desirable or undesirable in these matters.

## How Do Policy Issues Look, What Is Encouraging, What Is Troubling at the Local Level?

Jon Pratt, president of the Minnesota Council of Nonprofits, examined the nonprofits and local government, positing five categories of nonprofit/government interactions that lead to policy issues meriting research and analysis:

- collaboration
- funding
- health, safety, and law enforcement
- public decision making
- real property

Collaboration: Pratt suggested that “The extent of nonprofit-local government cooperation ranges on a broad continuum from close coordination, co-location, and commingled funds to parallel and autonomous activity in nearby spaces.” If the constellations and densities of these collaborative relationships were to be mapped, the information could be used to address two policy questions: What are the factors that have allowed some communities to maximize the benefits of nonprofit-local government cooperation? And what local government policies inhibit partnerships with nonprofits?

Funding: While much of local government social welfare funding in the 1800s went to and through charities, now a very small portion of local revenues goes to nonprofits. However, local governments do pass through federal program dollars such as Community Development Block Grants (CDBG) to nonprofits. In some states, counties are major distributors of federal- or state-funded social service program funding. Given the predominance of pass-through funding, Pratt raised policy research questions around the differences in nonprofit contracting between funding administered by the state versus funding directed by county government agencies. Presumably, a similar contrasting question could be asked about local government. Linking to his previous points on government collaboration with nonprofits, he called for research that would explore the advantages and disadvantages of highly competitive contract relationships versus longer term partnerships.

Pratt suggested that the funding relationship between local governments and nonprofits was complicated by the increasing tendency of governments to create GONGOs (government organized nongovernmental organizations), such as private fundraising entities linked to public school systems, subject to varying degrees of control by local school authorities. He cited recent cases of private donors and foundations reserving significant sums for public school systems. For example, several foundations offered to support some of the programs of former District of Columbia Public Schools chancellor Michelle Rhee, or the commitment of \$100 million to the Newark, NJ school system by Facebook co-founder Mark Zuckerberg, which came with conditions attached. Pratt asked, to what extent can private contributions displace political decision making and subvert democratic control of local government?

Health, Safety, and Law Enforcement: Because of the occasions for the use of the police powers of local government on nonprofit issues, such as regulating fundraising or dealing

with issues of nonprofits engaged in “anti-government” activities such as anti-war protests, Pratt asked, how are county and city police forces and prosecutors trained about the legal activities of nonprofit organizations?

Public decision making: Pratt suggests, “with such close proximity between local organizations and local government officials, it is easy for neighborhood groups and others to seek to influence decisions at the local level.” But ultimately, the public decision-making challenge for local nonprofits is how closely aligned with (and perhaps on occasion funded by) local government do neighborhood groups want to be, with the risk of sacrificing autonomy if they become too close.

Real property: Land and buildings make up the largest part of the \$2.6 trillion in assets controlled by nonprofits in the U.S. (other than foundations). As assets owned by nonprofit organizations they are typically, though not always, exempt from local property taxes. However, revenue-constrained municipalities, county administrators, and local taxpayers are giving “increased attention [to the]...increasing real estate footprint of nonprofit organizations.” Pratt notes rather than simply negotiating payments in lieu of taxes with typically large nonprofit landowners, “City governments are busy decoupling various city expenses from the property tax to create new fees as a means to increase revenues; separate sewer, garbage collection, street assessments, police and fire and most recently street lighting fees are separated and assessed to all property owners as a fee—whether exempt from the property tax or not.” With this new development, he poses as a research question, how are fees and assessments affecting the ability of cities to enhance their revenue from tax exempt property?

In contrast with Pratt’s practitioner focus on local government issues, Kirsten Gronbjerg of Indiana University drew from the existing research knowledge base and identified the most significant public policy issues and questions nonprofits face with local governments, and she outlined the research that would be needed to help answer them.

***Complicating Factors in Government – NP Relations at the Local Level***

- Numbers of Units of Local Government in the U.S. ----- 89,476
- Variation by State ----- 6994 in Illinois to only 134 in Rhode Island
- Types of Government Entities -----
  - 58% ‘typical’ – e.g., Counties, cities, towns, school districts
  - 42% ‘special purpose’ – e.g., libraries, community development, soil conservation
- **Critical to understand:** “The structure of local governments varies enormously from one community to the next.”

She began by noting the amazing complexity of “local government.” There are, she observed, 87,476 units of local government in the U.S., ranging from 6,994 in Illinois to 19 in Hawaii and 134 in Rhode Island. The majority are traditional units of local government (counties, municipalities, towns, townships, and school districts), while the remainder are special single-function districts (library, fire, police, housing, soil and water conservation, etc.). As the numbers and types of local governments vary so much among jurisdictions, so does the density of

nonprofits. Gronbjerg posits four kinds of major nonprofit/local government interactions that set the context for policy issues in need of research:

- Government spending: She suggests that “spending patterns vary greatly across fields of service, and empirical data to document and track spending patterns are hard to come by, especially at the level of local government.”
- Taxation policies: Like government spending, taxation policies (both indirect such as charitable contributions or bequests and direct when nonprofits are exempt from paying income or property taxes) “vary over time and among jurisdictions... [and] also impact nonprofits differently depending on their fields of service and operational activities.”
- Government regulations: Gronjberg points out that “local governments play an important role in determining which nonprofits are eligible for property tax-exemption, the procedures under which they secure this status... [and] may impose various other regulations... that impact nonprofits, [but] (i)f there is a comprehensive mapping of local government regulations of interest to nonprofits, I am not aware of it.”
- Political Agendas: “(N)onprofits are deeply engaged in the... arena of broader policies that governments pursue... frames by state differences in legal rules, [but] they play themselves out in local communities... differ(ing) in how the results impact them depending on their demographic, educational, and economic composition.”

Gronjberg described a set of local government policy issues with important research implications now, given current circumstances:

- Fiscal Crisis: She noted that the prolonged recession and the decline in housing values, the latter the basis for municipal revenues from property taxes, are both contributing to a fiscal crisis that is altering local government revenues. Gronjberg posits that “we don’t know how fiscal conditions of local government are affecting nonprofits.”
- Tax Exemption: Although the local tax exemption is an important factor for some kinds of nonprofits (hospitals, universities, museums, churches), Gronbeg says we have “no systematic information about which charities are exempt, the value of their exemption, or how that compares to property owned by units of government, which also are not taxed.” We know even less, she suggests, about the value of exemptions from sales taxes, which also vary from jurisdiction to jurisdiction. For all the debates about whether and how to assess tax exempt property owners with PILOTs or SILOTs, “it would be good to have solid empirical evidence on which to base these discussions, [but] (w)e don’t.”
- Funding Structures: Important issues for research include the changing structure of government funding for nonprofits, such as the shift from restricted grants to service or performance contracts and the “shift has been from producer subsidies (such as grants and contracts from government directly to nonprofits) to consumer subsidies (such as educational vouchers, dependent care tax credits, and deductible education or health expenses).” These shifts are evident in federal grantmaking, but Gronjberg suggests that “we don’t fully know how effectively these transformations in the form and structure of government funding for nonprofits have percolated down to local government.” She also indicated that “some units of government have sought to impose special conditions on nonprofits receiving government funding [such as requirements that nonprofit grant or contract recipients] provide domestic partner benefits to their employees, practice non-discriminatory hiring and firing

policies, or limit executive salaries. However, we have only anecdotal evidence on these types of requirements or how aggressively they are enforced.

- The Rhetoric of Politics and Engagement: Like local government, nonprofits play “an important role in promoting civic engagement and participation in community problem solving” where there are “clash(es) between religious and secular world views, of different symbolic and practical needs.” She asks, “to what extent do local nonprofits fan the flames or calm the waters” around these antagonisms and “what role do they play in developing, promoting, and preserving effective leadership in local communities?”

*Discussion followed that combined perspectives on state/nonprofit and local/nonprofit governmental dynamics with regard to public policy. The new considerations were:*

Missing elements: The focus strictly on nonprofits in these debates tends to shortchange the emergence of social entrepreneurs and hybrid organizations, which is odd in that it is state governments that have enacted laws authorizing, for example, L3Cs, and local governments such as Philadelphia that have offered a tax benefit to B Corporations. The discussion also emphasizes incorporated nonprofit entities, even incorporated groups that file with the IRS. Omitted is the category of informal groups and associations. A participant observed that informal associations “do exist, but what do we know about them, what are their variations, and does local public policy make or facilitate or make it difficult for informal, unincorporated groups to function?” These groups are likely most important at the local level, and we need to know more about them, about how they are affected by—and how they influence—policy at that level.

Further discussion revisited, and looked in greater depth, at many of the questions and issues highlighted in the summary of the conversation about state issues.

***Summary of State and Local Government Themes and Questions for Research***

- We need to know more about similarities and differences in policies toward nonprofits and the different impacts among states and localities.
- We need to understand implications of “the new normal” of state budget crises and their impacts on nonprofits.
- We need to pay attention to the emergence of hybrid organizations.
- It would be helpful to better understand the function and impacts of state nonprofit offices (where they exist), and of state-level nonprofit intermediaries (associations).
- We need to know more about the roles nonprofits can and do play as mechanisms for democratic deliberation, especially at the local level where they may be most vital but also largely invisible.

Following the excellent presentations and intense discussion of the issues and questions they raised—most of which occurred in small groups the first day—the group engaged on the second day in several exercises, and in further discussion as a whole body, that focused on refining the description of the issues we thought important. The participants then prioritized those issues in terms of what research might be most important to have now—or soon.

**Emerging from these deliberations were the beginnings of a research agenda for the policy issues facing nonprofits at the federal, state, and local levels. What follows is a summary of recommendations for a research agenda about nonprofits and public policy the Symposium participants thought should be pursued.**

## An Overview of the Proposed Research Agenda

1. Different Forms of Nonprofit Financing: Given the recent economic climate there were very strong convictions that we need to know much more about how nonprofits' financial operations actually work, and about what the impacts of different kinds of funding are, especially at the local level. **Central research questions** about forms of nonprofit financing are: *“What are the different forms, and how do their impacts on nonprofits vary? What end beneficiaries—i.e., people needing or receiving services—are best served by different kinds of funding for nonprofits? How can funding and impact be better tracked? How do the arrangement and specific forms of government funding—terms of contracts, payments protocols, use of vouchers vs. grants—help or harm different nonprofits? How, if at all, does seeking, getting, or depending on government funding alter the ways nonprofits operate?”*
2. How Regulatory and Tax Policies Support or Hinder the Nonprofit Sector and the Benefits it Can Deliver: There was a shared conviction in the room that the nonprofit sector does deliver value to society, provides needed goods and services, and offers crucial, often less tangible, social benefits. There were also clearly differing views of which aspects or elements of the value nonprofits offer may be most important; and critical questions about how the different aspects are interrelated, and how they can be tested or measured. **Central research questions** about these matters include: *“What are the espoused and the operative criteria for deciding what organizations can be nonprofits, especially charities? How do policies defining which entities can be charities (and which not) affect the sector in terms of supporting or hindering a spirit of “charitable behavior” and help or hinder the emergence of groups serving minority and low-income populations? How do states and localities differ in their enforcement of regulations, and what is the differential impact on nonprofits by location? What is the difference in efficiency of tax expenditures versus other forms of government spending in support of nonprofits? How does the presence of, or reliance upon, government funding affect nonprofits' engagement in advocacy?”*
3. Challenges and Opportunities in New/Emerging Forms of “Public Serving” Organizations: It was the sense of many in the group that the recent emergence of a range of new and different models for forming and operating organizations that claim to have missions like charities—that is “to serve the public good”—is a significant development for the nonprofit sector. However, some questioned just how significant this may be, and very few participants claimed to have any clear sense just what that significance would be. **Central research questions** about these phenomena are: *“Are these emerging forms supplanting or complementing traditional nonprofits? How different or substantive are these organizations, and are they delivering something nonprofits cannot? What policies are needed or developing to ensure fair oversight, transparency, and accountability of these new organizations? How do these vary from state to state? How do existing rules affect the forms “social entrepreneurs” choose for their various projects? Will confusion about these forms further complicate—and perhaps undermine—public support for traditional charities?”*

4. Recognizing and Understanding the Civic Roles of Nonprofits: Many present saw a vital need to know more about the roles nonprofits may or may not play in building social capital and strengthening communities, so that we might avoid both the tendency to underestimate these contributions of nonprofits and the tendency to overestimate (or misunderstand) their impact. Learning more about the real and verifiable contributions of nonprofits to society in this regard is a research challenge many saw as vital. Closely coupled with this, there was keen desire to better understand the work of nonprofits in advocacy in different roles and at different levels. **Central research questions** surfacing here are: *“What do we know about how much and what kind of advocacy nonprofits do, what constituencies they engage and represent in these efforts, and how much impact they have? What is known about how current policies support or inhibit nonprofit advocacy activity? How do funders’ attitudes and relationships with nonprofits affect the nonprofits’ desire or ability to engage in advocacy? To what degree are nonprofits truly engaging communities they claim to serve, or advocate for, especially when those are people of color or low-income? How does the absence of diversity in the leadership of many nonprofits affect their ability to effectively serve diverse communities? To what degree are nonprofits building “bridging” as well as “bonding” social capital in and between communities they serve?”*

5. What is “the Value Proposition” of the Nonprofit Sector: Another set of ideas and questions that might be linked together, but were also present in the other topics here, arose with the group’s frequent recognition of how little the public understands about the history, nature, and functions of the nonprofit sector. This research would involve a cluster of issues around discerning what the public wants nonprofits, especially charities, to provide in terms of services and benefits to those they serve, and how the public thinks nonprofits should behave, as well as what nonprofits and those who lead them understand to be their broader mission. **The central question here** is: *“What value should the nonprofit sector be delivering to society, and what benefits (tangible and intangible) does the public expect from nonprofits?”*

## The Research Agenda in Detail

Attached here are lists of topics the Symposium participants prioritized as most important, and the full list of questions articulated by the group.

### **What are the different forms of funding available to the nonprofit sector and how do their impacts differ?**

- How has the form and composition of funding for nonprofits changed over time?
- How does funding for the nonprofit sector change by field? Or by program (e.g., federal health care funding programs)?
- Compare the direct funding for nonprofits with the tax expenditures that assist or go to nonprofits.
- Is there really leveraging? Examine funding mixes to determine where and how some funding sources leverage others.
- How do funding sources and flows differentially impact various demographic groups (who benefits)?
- What funding sources are more or less correlated with indicators of financial health (e.g., nonprofits with surpluses or facing deficits)?
- How can funding be tracked or measured for nonprofits that are outside of the IRS system (codes, identifiers, etc.)?
- How does the mix of funding sources and types of funding for U.S. nonprofits compare with nonprofit organizations in other countries?
- How does government funding work differently than private funding?
- In the mix of funding availability, are there some things better left to government funding (or direct governmental action) versus those that might be better left to the traditional voluntary sector?

### **How does government funding impact how nonprofits operate?**

- Overall question—How does government funding impact how nonprofits operate, both directly and indirectly?
- How does the demand for services relate to the magnitude, sources, and impacts of government funding for nonprofits?
- Does the type or source of government funding matter regarding its impact on the operations of nonprofits?
- What are the opportunities and challenges of capital funding?
- What are the transactional costs of different kinds of government funding for nonprofits? What is being done to control or reduce transaction costs, including uniform contracting and audit practices, etc?
- What do nonprofits do—or have to do—to structure themselves and alter their operations to deal with government funding?
- How do nonprofits have consultative input for feedback into how government structures funding for the sector, how it cuts back on funding due to economic downturns, etc.?
- How does the use of or receipt of government funding affect the ability of nonprofits to interact with the markets?

- How does government funding alter how nonprofits engage and communicate with their communities or constituencies?
- What proportions of nonprofits are suffering what kinds of financial distress because of governmental late payments, slow contracting, budget cutbacks, etc.?
- How does government funding affect the amount and types of advocacy pursued by nonprofits that receive government contracts and grants?
- To what extent is government shifting from nonprofit contracting to contracting with for-profit businesses, and how does government treat its for-profit and nonprofit contractors differently?
- Does a nonprofit's ability to generate or show earned income affect its access to government funding?
- What does it cost the nonprofit sector regarding compliance with governmental regulations and policies, and where do the funds for those compliance costs come from?
- How does the nonprofit sector (and its interest in governmental funding) affect how government makes funding decisions?

**How do regulatory and tax policies support or hinder the nonprofit sector and the benefits it can deliver?**

- What are the criteria for determining what is or isn't a nonprofit, and how are those criteria being applied?
- How does the public understanding of nonprofits (or public understanding of what is a nonprofit) affect policy?
- How do different tax and regulatory policies affect the "charitableness" of nonprofits?
- How do regulatory and tax policies encourage or inhibit the emergence of minority-serving, low-income servicing small/local/grassroots nonprofits?
- Can we map the regulatory and tax policies that affect nonprofits and demonstrate how they interact, overlap, contradict, etc.?
- Do regulatory/tax policies induce nonprofits toward greater professionalization, and if so, what are the costs and benefits of nonprofit professionalization?
- What has been the impact of the shift of tax expenditures from a supply side focus to a demand side focus?
- How do the states differ in their enforcement of regulations and how do those differences affect the structure and operations of the nonprofit sector? What is the appropriate level of government regulation of nonprofits? How should the nonprofit sector be held accountable through governmental tax and regulatory policy?
- What are the compliance rates of different kinds of nonprofits in different states and regions?
- Is there a difference in the efficiency of tax incentives compared with direct expenditures for nonprofits?
- Would simplification of the regulatory structure for advocacy, such as simplifying the 501(h) option or other changes, increase policy advocacy at the federal, state, and local government levels?
- What is the impact of the nondistribution constraint on the ability of nonprofits to raise capital in the private markets?

- How does earned income affect the identity and structure of nonprofits?
- Are there biases for or against faith-based organizations embedded in regulatory and tax policies?

**What are the challenges and opportunities from “emerging organizational forms”?**

- Are emerging organizational forms supplanting traditional forms of nonprofit organizations?
- How real or substantive are these new, emerging organizational forms? What are they delivering per se and what are they delivering that nonprofits are not or cannot?
- How do the emerging organizational forms reflect attitudinal challenges about the efficacy of the nonprofit sector?
- How do existing “rules” or policies affect the choice of form (for example, social entrepreneurs’ decisions on nonprofit, L3C, B corporation, etc.)?
- What do we really know about what social enterprise is, how it is practiced, where it is practiced, in what subsectors it is practiced, and with what impact?
- Where is legislation occurring allowing for new forms of organization as alternatives to nonprofit, what are the new forms, and how are they operating?
- How are 501(c)(3)s and 501(c)(4)s working together, relating, collaborating, and affiliating in holding companies, etc., with what impacts?
- What are the impacts or outcomes these new forms of organization are trying to achieve that are not being achieved by the nonprofit sector?
- What losses of tax revenues occur now or might occur through the authorization of alternative “non-nonprofit” forms of social enterprise?
- What kinds of capital do (or can) these new forms bring to bear on pressing social problems? What protections are there to ensure that the capital they leverage is not misused?
- What are the policies of regulatory oversight, transparency, and accountability that apply or should apply to these emerging organizational forms? What losses in transparency might occur as social benefit functions shift from the nonprofit sector to these new organizational forms?

**What are the civic roles of the nonprofit sector?**

- To what degree are nonprofits actually engaging their community (with special attention to income and racial/ethnic populations)?
- To what degree are nonprofits fostering social capital and collective efficacy?
- How do current laws governing nonprofit election activity by nonprofits impact the activity of nonprofits, and where is there a need for clarification (regarding the boundaries between advocacy and electioneering)?
- What are 501(c)(3)s and other exempt organizations ((c)(4)s for example) doing that is important for civic engagement, getting citizens engaged in their communities?
- What is known about how nonprofit advocacy affects public policy and how specific policies (for example on lobbying) affect nonprofit advocacy?
- What are the impacts of lobbying restrictions on nonprofits and on the public’s attitude toward nonprofit advocacy?
- Do lobbying restrictions create a chilling effect on nonprofit advocacy?

- To what extent do the large foundations “speak for” the nonprofit sector and, therefore, should they be modeling behaviors for the nonprofit sector?
- How can the energies of the Tea Party movement be harnessed in or for the nonprofit sector?
- How can the nonprofit sector build bridges with the religious sector to make it more effective?
- How can nonprofits aggregate power to be able to participate in more meaningful partnerships within the sector and with government and business outside of the sector?
- How can and do nonprofits mediate partnership (versus nonprofits whose existence is predicated on furthering separation)?
- How does the relative absence of diversity in the leadership of the nonprofit sector affect public attitudes toward nonprofits and public policy support for the nonprofit sector?
- What are nonprofits doing to increase diversity in the sector and how are those efforts working, with what impacts?
- What gaps and needs do nonprofits address in communities?
- How do foundations and donors impact nonprofits’ decisions regarding civic engagement?
- What factors and strategies lead to effective advocacy at the community level, at the state or federal level?
- What currently exists to build the capacity of nonprofits to engage in nonpartisan political activity, with what impacts, and what additional resources and strategies are needed?

**What is the value proposition for the nonprofit sector?**

- What value should the public be getting from the nonprofit sector, what bundle of nonprofit attributes would the public want to see that the public would think well enough of to defend?
- How would these value propositions differ among nonprofit fields?
- What are the impediments that prevent nonprofits from operating in a way that facilitates the delivery of the value that the public might want to see?
- How can and should the value of the nonprofit sector be explained, described, and documented in more than economic terms?
- To the extent that nonprofits and the public think that poor people should be served, how much does the nonprofit sector serve poor people?

## Conversation Starter Presentations

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### *Papers from Session 1*

## **“The Big Picture: Historical, Legal, and Economic Perspectives”**

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### **How Did We Get Here? But First, Where Are We?**

David C. Hammack

❖ **Where are we? What is the position of the Nonprofit Sector today? What is the “Nonprofit Sector”?**

I would define the nonprofit sector as the sphere of activity in which the federal and state governments provide the advantages of tax exemption, deductibility from income tax for donations, access to tax-exempt financing, and the right to pursue self-defined public or mutual benefit missions that fall within the law, in ways selected by an organization’s board, or by as association’s members. “Charitable immunity” has faded as a general proposition, but faith-based nonprofits and those that serve challenged populations enjoy various sorts of immunity from zoning, licensing, accreditation, and employment-discrimination rules. “Nonprofit” embraces more and less than “charitable”; voluntary help within a family or neighborhood is praiseworthy but not “nonprofit.”

In effect, U.S. law relating to nonprofits puts the First Amendment into practice.

As the IRS puts it, “exempt purposes” under section 501 (c) (3) of the tax code include religion, education, literary activity, the advancement of science, defending human and civil rights, eliminating prejudice and discrimination, fostering amateur sports, and erecting public buildings and monuments.

The exempt code also includes such activities as preventing cruelty to children or animals, aiding the poor or distressed, “lessening neighborhood tensions,” and combating “community deterioration” and juvenile delinquency.<sup>1</sup>

The law provides for certain kinds of tax exemption, as well as corporate autonomy, for mutual benefit associations that do not seek profits but do work above all to serve their own members and hence do not qualify for deductibility of donations or charitable immunity.

It is a common misconception that nonprofit organizations exist chiefly to provide social services.

In reality, more than half of all nonprofit employment is in health care, about a sixth is in education, 10% each in religious and member-serving organizations, 2% is in the arts. Just 7% is in social services of all kinds; just 3% has directly to do with civic affairs.<sup>2</sup>

A quick reflection will remind each of us that we engage with most nonprofits in the spirit of a particular religious or cultural outlook: we send children to private schools that are Orthodox, Quaker, Progressive; we use a Catholic or Lutheran or Baptist or decidedly nonsectarian hospital; we choose a college for its commitment to academic excellence and free inquiry, or for its adherence to evangelical or Mormon or Catholic principles, or for its loyalty to the classics.

### **What is the state of the Nonprofit Sector today?**

In a word, nonprofits are thriving as never before. As Lester Salamon has shown, they currently employ about 8% of all American workers, and considerably more than 10% in the great metro centers from Boston to St. Louis to the Twin Cities. Nonprofit workers are relatively well paid, and more than a few earn very high incomes.<sup>3</sup> Nonprofits educate a majority of the nation's higher-paid professionals, care for a substantial majority of all hospital patients, provide critical child-placement, childcare, job training, and mental health services, operate almost all of our major performing arts organizations and art museums, mount many civic and advocacy efforts, and maintain all religious activities.

This is a situation unprecedented in American history. Nonprofits have been thriving, during a period when many other employment sectors have stagnated or declined. In the 50 years from the late 1950s to the eve of the current Great Recession, American nonprofits flourished, growing from about 2% to 10% of the labor force. And as Salamon recently reported, as jobs disappeared in many fields, “nonprofit employment actually grew by an average of 2.5 percent per year between the second quarter of 2007 and the second quarter of 2009.”<sup>4</sup>

### **❖ How did we get here?**

The Civil Rights Movement successes of the 1960s opened the doors to rapid nonprofit growth when several key pieces of federal legislation and several decisions by federal and state courts greatly expanded First Amendment rights. No longer could state courts and state regulators refuse to allow Americans to pursue legal causes through nonprofit activity—or declare many causes illegal.<sup>5</sup>

Nonprofits have grown to their present flourishing state without the guaranteed support of tax revenue—and without any increase in the private giving of money or time. Private giving of money as a share of income has actually decreased since the 1950s.<sup>5</sup> And largely because women now insist on paid work, there has also been a decline in both volunteering and the acceptance of below-going-rate compensation.

Significantly increased government funding has driven a good deal of nonprofit growth. In 1962, for example, the federal government spent less than half of one percent of the Gross Domestic Product on the services that nonprofits provide. Today that figure has grown to about 5%.<sup>6</sup>

Because nonprofit organizations earn more than half their income from the sale of services to consumers,<sup>7</sup> even more important is the fact that the per capita incomes of Americans have nearly tripled since the early 1960s.<sup>8</sup> Wealthier people purchase more services.

I think I have to add here that government aid to the poor accounts for a small share of nonprofit growth. Basic support for the needs of the poor *does* come overwhelmingly from government, through Social Security, Disability programs, Medicaid, the Veterans' Administration, Public Schools, County Hospitals, Food Stamps, Rent Supplements. The new federal health care law, if it goes into effect, will add to this list. Most government aid goes directly to those who need it, not to nonprofits. When vouchers of various kinds are spent on food, clothing, transportation, heat, and most forms of housing including nursing homes, the money goes overwhelmingly to profit-seeking business firms, not to nonprofits.

Government aid to the poor has grown dramatically. In the United States of 1940, the federal government spent less than 4% of the Gross Domestic Product on health, education, and welfare programs of all sorts. Since 1960 the federal government has spent more than 12% of a much larger, and steadily growing, GDP on such programs. No doubt that number should ideally be higher, but for 50 years it has been rising or steady, not falling. Private charity never approached this level, and has certainly not been crowded out: the total of all private giving has never amounted to more than 2% of GDP except in the immediate aftermath of World War II—and a third or more of private giving goes to houses of worship.

Nonprofit organizations are not chiefly concerned with the poor, and do not provide significant resources to poor people. Nonprofits can advocate for the poor—as for other causes; nonprofit schools and hospitals and arts organizations have to consider how to finance the services they provide to the poor, and do benefit from Medicaid, Medicare, and school voucher programs. The health care reforms of 2010 may increase the total flow of federal and federally-directed funds to nonprofits. And if school vouchers catch on in a big way, state and local funding to nonprofits would also increase.

American nonprofits have always relied on private giving, earned income, and direct and indirect government subsidies. Earned income is not new. What changed after the Civil Rights Revolution of the 1960s was a great diversification in the *sponsorship* and *purposes* of nonprofits, a very substantial decline in the relative importance of donations, and a great rise in earned income as well as government subsidies—reinforced by a broad and pronounced shift of government policy from grants to vouchers.

❖ **So, why are nonprofits criticized? Why do they face calls for restriction?**

Surely it should be no surprise that critics look enviously on a *growing* sector of the economy when many elements of America's manufacturing and commercial economies are in decline. Especially when that sector enjoys special tax exemptions and other privileges. When government funds raised through taxes pay for much of its work. Even more when a good deal of nonprofit work is controversial in one way or another. And when nonprofit employment is concentrated in the Northeastern quarter of a nation whose politics are quite divided along regional lines.

On current evidence, the most important legislative and regulatory challenges are not to funding, but to nonprofit autonomy. Autonomy is key to the rights of individuals, and to the peaceful accommodation of religious and cultural difference. I'm inclined to give the availability of the nonprofit "space" credit for the fact that nineteenth-century Boston and Philadelphia saw much less violence between Protestants and Catholics than Belfast, and for the generally welcoming response to Jews. And, I'd add, if America's nonprofits retain their autonomy, it will most likely be because it is so tightly associated with the nation's complex commitment to religious freedom, the separation of church and state, and the First Amendment in general.<sup>9</sup>

If the account I've offered is correct, the autonomy of nonprofit organizations is bound up in the public's acceptance of civil liberties for a much larger array of groups than ever before in American history: for women, for members of racial minorities, for the disabled, for those who group themselves in the LGBT community, for adherents to a continuously widening array of religions, for people of every distinct national origins. Movements aiming to cut back on those rights threaten nonprofit autonomy. One basic need is to shore up public understanding of, and commitment to, the most generous understanding of civil liberties.

Clearly nonprofits are encountering financial pressures associated with the Great Recession. And there is no doubt that nonprofits will always be under pressure to use resources efficiently. But current economic conditions have so far affected nonprofits less than most other segments of the economy. As I noted a moment ago, nonprofit employment actually grew through 2009. In light of the impact of the Great Recession and of the Great Divergence in the incomes of the poor and rich,<sup>10</sup> America's relatively stable, relatively well-off, tax-favored nonprofits certainly must keep in mind the economic pressures faced by others.

The Great Divergence in incomes of the rich and poor is itself responsible for some of this challenge. Between the early 1940s and the early 1980s, a period that includes much of the most rapid recent phase of nonprofit growth, the richest 10% of American families took home about a third of all income. The term "Great Divergence" describes the rapid recent rise of that share to fully half of all income. Income inequality is important to nonprofits, because so many of them cover their costs by catering specially to their most affluent patients, students, ticket-buyers, and users of services for the young, the handicapped, and the elderly.<sup>11</sup> Their most affluent customers often pay a full price that covers some of the cost of services provided to others, and some of the most affluent are also important donors. In return for their support, more affluent donors receive the acknowledgement of thanks, and often of greater attention. Their preferences influence the services that nonprofits can offer. But in the increasingly intense competition for affluent customers, nonprofits run the risk of alienating ordinary folks and raising costs above what taxpayers will subsidize.<sup>12</sup> While the richest 5% can fairly easily manage the increasingly high costs of health care, college, and the arts, the great majority of American incomes have stagnated or declined in real terms over the past 20 years or more. Churches and other faith-based organizations struggle. These realities pose big challenges to all nonprofits.

The fact that nonprofit organizations now rely to a considerable extent on federal funding increases the threat to their autonomy. The nationalization of government policy relating to health and welfare, to scientific and medical research, and increasingly to education as well, has brought many benefits, especially to disadvantaged citizens in what in 1960 were the poorer regions of the United States. Nationalization also means that Congress and the federal courts now have many tools with which to affect nonprofit activity. Needs are great, and the federal budget is under pressure. Terms and conditions can be attached to grants. Organizations can be, and are, required to meet specified standards of accreditation and licensing, and to follow generally accepted accounting principles. Vouchers can be made available only for very specific services, or packages of services. The great importance of vouchers through Medicare, Medicaid, rent supplements—and of subsidized student loans—also gives the federal government greatly increased influence over the character of the markets for the services that nonprofits offer.

These are not theoretical concerns. In its 1991 *Rust v. Sullivan* decision, the U.S. Supreme Court held that Congress can attach very stringent requirements to funding programs. In the new form 990, the IRS has asked nonprofits to provide detailed information about their internal governance arrangements—arrangements that can vary sharply to accord with different religious beliefs. The recently passed health reform act envisions requiring hospitals to conduct extensive periodic assessments of need in their communities; it also envisions requiring hospitals to submit elaborate reports on relationships between hospital staff and board members and each of their thousands of suppliers of goods and services.<sup>13</sup> Governments have many enforcement tools: not only threats to nonprofit status, but fines, exclusion from voucher, contracting, and grant programs, the simple delay of payment. And political battles over government policy can and do incidentally interrupt the flows of fund for reasons unrelated to nonprofit policy.

We can expect that legislatures will continue to come under pressure to limit nonprofits' freedom of action. In the U.S. we have a widespread agreement that the aims of the Ku Klux Klan, of Al Qaeda, and of organized crime are illegitimate. We also agree, I think, that old patterns of discrimination along lines of race, gender, and other distinctive qualities should truly end. And that we should find ways to assure everyone of access to health care, education, and social support. But nonprofits are most valuable when they provide services in value-laden fields that attract strong, even violent, debate. Not infrequently, debate occurs in the absolute terms advanced by adherents of many different religious traditions. To maintain their autonomy, nonprofits will have to work very hard to provide services efficiently and effectively. And all of us will have to work hard to balance competing claims to autonomy and regulation.

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## End Notes

<sup>1</sup> <http://www.irs.gov/charities/charitable/article/0,,id=175418,00.html> (February 7, 2011).

<sup>2</sup> See the report of the National Center for Charitable Statistics, "THE NONPROFIT SECTOR IN BRIEF," most recent edition, 2008, providing data through 2005, at <http://nccs.urban.org/statistics/quickfacts.cfm> (February 7, 2011). This publication excludes most employment in churches and other houses of worship, as well as employment in mutual benefit organizations. For estimates that include those aspects of the nonprofit sector, see Lester M. Salamon, *America's Nonprofit Sector: A Primer* Second Edition (New York: The Foundation Center, 1999).

<sup>3</sup> See Lester M. Salamon and S. Wojciech Sokolowski, “Employment in America’s Charities: A Profile,” (Baltimore, MD: Johns Hopkins Center for Civil Society Studies, 2006), available at <http://www.ccss.jhu.edu/index.php?section=content&view=16&sub=104&tri=99> (February 7, 2011).

<sup>4</sup> <http://www.ccss.jhu.edu/index.php?section=content&view=51> (February 7, 2011).

<sup>5</sup> Norman J. Silber, *A Corporate Form of Freedom: The Emergence of the Nonprofit Sector*. (Boulder, Colorado: Westview, 2001). Also germane is Stanley N. Katz, “The Legal Framework of American Pluralism: Liberal Constitutionalism and the Protection of Groups,” in Wendy F. Katkin, Ned Landsman, and Andrea Tyree, eds., *Beyond Pluralism: The Conception of Groups and Group Identities in America* (University of Illinois Press, 1998), pp. 1-27.

<sup>6</sup> Colin B. Burke, “Nonprofit History’s New Numbers (and the Need for More),” *Nonprofit and Voluntary Sector Quarterly* 30 (2) (2001), pp. 174-203.

<sup>7</sup> David C. Hammack, “Nonprofit Organizations in American History: Research Opportunities and Sources,” *The American Behavioral Scientist* (Vol. 45 No. 11, July 2002, pp. 1638-1674).

<sup>8</sup> National Center for Charitable Statistics, “THE NONPROFIT SECTOR IN BRIEF,” *op. cit.*

<sup>9</sup> <http://www.gpoaccess.gov/eop/2009/B31.xls> (February 7, 2011).

<sup>10</sup> This is the overall argument of David C. Hammack, editor, *Making the Nonprofit Sector in the United States: A Reader* (Bloomington: Indiana University Press, 1998).

<sup>11</sup> Emmanuel Saez, “Striking it Richer: The Evolution of Top Incomes in the United States (Updated with 2008 estimates),” July 17, 2010, <http://elsa.berkeley.edu/~saez/> (February 7, 2011).

<sup>12</sup> A certain level of special treatment was generally accepted through the postwar decades. But as the rich have grown much richer than everyone else, the level of special treatment they expect has risen. Harvard’s endowment, even after a big decline, exceeds \$25 billion; universities boast student recreation pavilions that cost scores of millions; nonprofit hospitals value art collections in the millions; and HBO shows a film in which Jamie Johnson, the young heir to the R.W. Johnson fortune, shows how private schools and colleges cosset children who are *Born Rich*. For *Born Rich* see <http://www.imdb.com/title/tt0342143/>; the Cleveland Clinic celebrates its art collection at [http://my.clevelandclinic.org/art/default.aspx?wt.mc\\_id=1039&utm\\_campaign=art-redirect&utm\\_medium=offline&utm\\_source=redirect](http://my.clevelandclinic.org/art/default.aspx?wt.mc_id=1039&utm_campaign=art-redirect&utm_medium=offline&utm_source=redirect); Stanford University celebrates the \$26 million makeover of its Maples Pavilion basketball facility at <http://www.gostanford.com/facilities/stan-maples.html>. Especially notable because its author wrote not for *Rolling Stone* but for the *Wall Street Journal* is Daniel Golden, *The Price of Admission: How America’s Ruling Class Buys Its Way Into Elite Colleges—and Who Gets Left Outside the Gates* (Crown Publishing, 2006).

<sup>13</sup> For an extended discussion of the struggle to persuade the affluent to help build community hospitals at the beginning of the twentieth century, see David Rosner, *A Once Charitable Enterprise: Hospitals and Health Care in Brooklyn and New York, 1885-1915* (Princeton: Princeton University Press, 1982).

## Public Policy and Nonprofits: The Legal Landscape

Evelyn Brody

### I. INTRODUCTION

This paper sketches out the U.S. legal framework governing the relationship between governments and nonprofit organizations, and explores some narrow, topical issues and challenges. Two overarching principles should be kept in mind. First, the law is a relatively weak force influencing the behavior of nonprofits. Proponents of reform should think carefully about whether they really want a new law, as opposed to enforcement of the laws we already have, or, often better, improved voluntary practices. Second, a challenging question for researchers is whether we are now in a “post-sectoral” era. That is, the concept of “the nonprofit sector,” clearly a successful organizing device for research in the last 30 years, might need to yield to more nuanced studies.<sup>1</sup> To what extent does it make sense to craft public policy for religious, educational, hospital, social service, cultural, and advocacy organizations under a single legal umbrella?

### A. Major Sources of Public Policy

Nonprofits feel the effects of public policy from four broadly construed sources:

1. The nonprofit organization is a creature of **state organic law**. The choice of form—as trust, corporation, unincorporated association, L3C (low-profit limited liability company), or something as yet unimagined—affects the nonprofit’s governance structure and conduct, ability to raise capital, and, possibly, available purposes and eligibility for tax exemption.
2. Governments (at both the federal and state level) explicitly or implicitly embed policies in their requirements for **tax-favored treatment**. Notably, as described below, the federal income tax system polices the nonprofit/public border through the limitations on lobbying and political activities, and polices the nonprofit/business border through the prohibition on private benefit and the Unrelated Business Income Tax (UBIT). More broadly, the relative benefits of being a charity rise and fall with the individual income tax and estate tax rates (affecting the “cost” of deductible contributions and the value of untaxed/nondeductible volunteering of time, and the benefits of tax-exempt bond financing) and the corporate tax rates (affecting, e.g., the benefits of saving and endowment). At the state and local level, the requirements for property tax exemption typically follow a narrower conception of charitable ownership and use—often tied to reducing the burdens of government.
3. **Regulated industries**—notably, hospitals, universities, nursing homes, childcare, and other servers of vulnerable populations—operate under requirements that apply regardless of ownership or nonprofit status.

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<sup>1</sup> See Peter Dobkin Hall, *Inventing the Nonprofit Sector and Other Essays on Philanthropy, Voluntarism and Nonprofit Organizations*, (Baltimore: Johns Hopkins U. Press, 1992).

4. Conditions of **government funding**—in a web of regulatory agencies at the federal, state, and local levels—can appear in requirements of general applicability (e.g., requirements for audited financial statements or nondiscrimination in employment) or tailored to the specific contract.

## B. Accomplishments of the U.S. Framework

Before turning to threats and challenges from current and potential public policies, it is crucial to recognize the extraordinarily accommodating U.S. framework for nonprofit activity. **The First Amendment’s protections of speech, religion, and expressive association** are just the beginning. Beyond the Constitution, the sector historically has enjoyed public support to operate **autonomously** across a broad spectrum of purposes, all as conceived by diverse (and sometimes contesting) private parties to benefit the public.

Not to be overlooked in producing an economically flourishing nonprofit sector is the availability of reliable and comparable data resulting from a **standardized accounting system** for nonprofit financial reporting and—as much as nonprofits might bemoan the annual burden—the **I.R.S. Form 990**. Separate from reporting to regulators, **public disclosure** in and of itself has become a key regulatory tool: One can now obtain, online and anonymously, Forms 990 (finance and governance), charitable solicitation reports (fundraising costs), and election filings (donors to political activity). Even if most donors do not examine these, their public availability can boost public confidence. Of course, in contrast to audited financial statements, the information presented on many filings is self-reported. Even if accurate, these filing are not always easy to comprehend and interpret—the summary cover page of the 2008 redesigned Form 990 is intended especially for members of the media as well as potential donors.

Beyond the recent focus of state attorneys general and IRS on **nonprofit governance**, attention to “self regulation” by the sector itself—notably, the Panel on the Nonprofit Sector—not only can improve the governance of individual nonprofits, but also strengthens the reputation of the sector as a whole.

## II. THREATS FROM LEGAL “REFORM”

### A. The Two-Edged Sword: Key Myths of Nonprofit Organizations

Under organic and tax law, a charity must satisfy the requirement that it be organized and operated for a public purpose. But “public” in this context is not a synonym for “governmental.” (See also the debate over whether charitable assets are “public money.”<sup>2</sup>) Misconceptions might trace, in part, to the public’s ignorance of the legal definition of “charity.” Within the sector—and at the conference—the almost exclusive use of the term “nonprofit” to refer just to charities could be an attempt to avoid these misleading connotations.<sup>3</sup>

<sup>2</sup> See Evelyn Brody & John Tyler, *How Public Is Private Philanthropy? Separating Reality from Myth* (Philanthropy Roundtable Monograph, Washington, D.C.: June 2009), available at [www.philanthropyroundtable.org/files/Public\\_Private%20Monograph\\_high%20res\\_Final.pdf](http://www.philanthropyroundtable.org/files/Public_Private%20Monograph_high%20res_Final.pdf).

<sup>3</sup> *Id.*

Indeed, public policy threats to nonprofits—whether generally or in narrow cases—can often be traced to one or more consciously or unconsciously held “key myths.”<sup>4</sup> At the same time, though, live by the myth, die by the myth—sometimes charities benefit from having the public believe these! With examples of recent policy proposals, the four seemingly indestructible myths hold that all nonprofits are and should be:

### **1. Supported largely by donations and volunteer-run**

- \* Every year, when the Forms 990 are filed, the press is filled with news stories of high compensation paid by local nonprofits, often with the implication that “market” wages should be much lower than in the business sector. See also proposals to impose public-sector salary caps on the compensation of nonprofit executives in A.4, below.
- \* Emphasis on public disclosure of (if not limits on) overhead and fundraising costs or percentages. Compare the pressure on the Red Cross after 9/11 to distribute every penny to the victims and their families.
- \* For financially distressed charities, the desire to treat donated (and sometimes other) assets as restricted to use for charitable programs and thus not available to sell to pay creditors.<sup>5</sup>
- \* Having significant donations is a key factor in states with multi-factor tests for property-tax exemption.

### **2. Non-profit-making (not just non-profit-distributing)**

- \* New hybrid corporate forms—L3C, B corporation, etc.—and possibly favorable tax treatment.
- \* Not being operated for profit is a key factor in states with multifactor tests for property-tax exemption.

### **3. Democratically governed (and offering the public a say in governance)**

- \* Mandated public disclosure of the Forms 990 and other filings.
- \* Legislative proposals that foundations disclose the demographics of board members and employees, and the percentage of grants going to “underserved communities.”
- \* Proposals to impose public-sector salary caps on the compensation of nonprofit executives. (See A.4, below.)

<sup>4</sup> See also Evelyn Brody, *Agents Without Principals: The Economic Convergence of the Nonprofit and For-Profit Organizational Forms*, 40 *New York Law School Law Review* 457-536 (1996); Evelyn Brody, *Institutional Dissonance in the Nonprofit Sector*, 41 *Villanova Law Review* 433-504 (1996); Evelyn Brody, *Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption*, 23 *Journal of Corporation Law* 585-629 (1998); *Accountability and Public Trust*, in *The State of Nonprofit America* 471-98 (Lester M. Salamon, ed.) (Brookings Institution Press and the Aspen Institute, 2002).

<sup>5</sup> See Evelyn Brody, *The Charity in Bankruptcy and Ghosts of Donors Past, Present, and Future*, 29 *Seton Hall Legislative Journal* 471-530 (2005) (Symposium Issue on Bankruptcy in the Religious NonProfit Context).

- \* Pressures to increase foundation payout or to limit life of foundations.<sup>6</sup>
- \* Proposal by the staff of the Senate Finance Committee's 2004 White Paper to impose a maximum board size of 15 on nonprofit corporations.
- \* Increased expectations of donors and others in governance, and push for private standing to sue to enforce fiduciary duties and use of restricted gifts.

#### 4. Complements to government (particularly, income-redistributing<sup>7</sup>)

- \* Proposals to extend public employee salary caps to the compensation of executives of government-funded nonprofits (if not to all exempt organizations).<sup>8</sup>
- \* Minimum charity care requirement for nonprofit/tax-exempt hospitals.
- \* Calls for educational institutions to increase spending from endowments, targeted to needs-based scholarships.
- \* Lessening the burdens of government is a key factor in states with multifactor tests for property-tax exemption.
- \* Parochialism of regulators:<sup>9</sup> What is the proper role of the attorneys general, courts, and legislatures in change in charitable purpose of corporate charity? Moving assets out of state?

#### B. Can They Do That? The Doctrine of “Unconstitutional Conditions”

Neither a government contract nor tax exemption is a constitutional right; thus, the government may impose conditions on the contract or favored tax treatment. However, accepting the attached strings to permitted speech and other behaviors and practices can raise serious mission-related issues for nonprofits. These conditions also raise a legal question<sup>10</sup>—

<sup>6</sup> See Evelyn Brody, *Charitable Endowments and the Democratization of Dynasty*, 39 *Arizona Law Review* 873-948 (1997); Evelyn Brody, *Charities in Tax Reform: Threats to Subsidies Overt and Covert*, 66 *Tennessee Law Reviews* 687 (1999).

<sup>7</sup> See the sophisticated discussion in John Colombo, “The Role of Redistribution to the Poor in Federal Tax Exemption for Charities,” presented at *Shades of Virtue: Measuring the Comparative Worthiness of Charities*, Annual Conference of the National Center on Philanthropy and the Law, New York University (October 29, 2009, New York, N.Y.).

<sup>8</sup> See Stephanie Strom, *Lawmakers Seeking Cuts Look at Nonprofit Salaries*, *N.Y. Times* (July 26, 2010). Her first example is a provision included in New Jersey's recently passed budget, limiting amounts paid to CEOs from state social-service contracts by nonprofits with budgets over \$5 million. She adds: “The cap, based on a formula that also applies to for-profits providing such services on behalf of the state, is part of a broader effort by Gov. Chris Christie to rein in salaries on state workers.” CEOs with higher salaries would face cuts, or the nonprofit would be required to fund the excess portion with private funds. Susan K. Livio, *N.J. Chris Christie Aims to Cap Salaries of Nonprofit Group Executives to \$141K*, *Star-Ledger*, April 25, 2010.

<sup>9</sup> See Evelyn Brody, *Whose Public?: Parochialism and Paternalism in State Charity Law Enforcement*, 79 *Indiana Law Journal* 937-1036 (2004).

<sup>10</sup> See Evelyn Brody, *Entrance, Voice and Exit: The Constitutional Bounds of the Right of Association*, 35 *U.C. Davis Law Review* 821-901 (2002).

but the outer limit imposed by the Constitution has only begun to be explored by the Supreme Court.<sup>11</sup>

The Court generally allows the state to demand the waiver of otherwise available constitutional rights—notably, the rights of free speech and association—but only with respect to the funding or subsidy provided directly by government. For example, the government may prohibit a charity from engaging in lobbying with contract funds, but may not prohibit the charity from lobbying with its other funds. Similarly, Congress may include in the requirements for federal tax exemption under Internal Revenue Code § 501(c)(3) a limit on the right to engage in lobbying and a prohibition on political campaign activity—because of the right of the (c)(3) to set up an affiliated 501(c)(4) to engage in the desired speech.<sup>12</sup> By contrast, the “unconstitutional conditions” cases “involve situations in which the government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program.”<sup>13</sup>

A current trigger point for constitutional litigation involves **churches** and other religious organizations, over such issues as Charitable Choice, discrimination against gays and lesbians in hiring, and discrimination in social service provision under government contracts (e.g., organizations that refuse to place foster children or adoptees with gay couples).<sup>14</sup> We could expect First Amendment challenges under the doctrine of unconstitutional conditions to arise if the following policies were adopted:

- \* A condition that a nonprofit organization that enters into government contracts or enjoys tax exemption must change how it structures or governs itself—say, by limiting the **maximum size of its board or by capping executive salaries**—could impinge on the nonprofit’s rights of expressive association.

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<sup>11</sup> See John Simon, Harvey Dale & Laura Chisolm, *The Federal Tax Treatment of Charitable Organizations*, in *The Non-profit Sector: A Research Handbook* 267-306, at 276 (Walter W. Powell & Richard Steinberg, eds., 2d ed., Yale University Press, 2006) (“Because governmental conditions on benefits may reach further than direct government proscriptions, and because any level of government—federal, state, or local—may impose them, the much-needed clarification of the parameters of the unconstitutional conditions doctrine is likely to require years if not decades of additional litigation and scholarship.”).

<sup>12</sup> *Regan v. Taxation With Representation*, 461 U.S. 540 (1983). As a result, charitable activity—including advocacy activity that does not amount to lobbying or political activity—can be supported by tax-deductible charitable contributions, but the (c)(4)’s lobbying activity will not.

<sup>13</sup> *Rust v. Sullivan*, 500 U.S. 173, 197 (1991). This case upheld federal rules prohibiting federally funded family-planning programs from providing abortion counseling, because the grantee “can continue to perform abortions, provide abortion-related services, and engage in abortion advocacy . . . through programs that are separate and independent from the project that receives Title X funds.” *Id.* at 196.

<sup>14</sup> See also, e.g., Stephanie Strom, “Religion-Based Groups Protest Restrictions in Bill,” *N.Y. Times*, Aug. 25, 2010 (“More than 100 religion-based organizations are protesting a provision in pending legislation that would prohibit them from receiving federal money if they consider a job applicant’s religion when hiring.”).

- \* If Congress passes the **DISCLOSE bill** in response to the Supreme Court’s decision in *Citizens United* (recognizing the free speech rights of corporations), will the requirement to make public the names of the donors to (501(c)(4) nonprofits engaged in political speech be upheld?

### III. LONG-TERM CHALLENGES

#### A. Demographics

Population changes obviously will affect needs and thus particular nonprofits—and the policy responses. These include age of clientele (with pressures on health care from an aging population), race (and interest in race-defined policies), country of origin (and legal status of immigrants), age of workers (and demand for retirement benefits) and distribution of employment (and types of jobs); income distribution (and its effects on tax collections), religion and religiosity (including levels of generosity of money and time), household composition (educational and other needs of children; focus on LGBT issues), and geographic population distribution (urban/suburban/rural, as well as regional, demands). As the characteristics of populations change, so might support for certain types of charities and their demand for certain types of governmental programs and tax benefits (e.g., education tax credits).

#### B. Pressures on the Border Between Nonprofits and Government

While these long-term changes could affect the relationship between governments and the nonprofit sector, the financial pressures on governments alone could produce fallout on nonprofits. Consider the extreme budgetary stress on all levels of government. Where will the money come from to fund government service? (We’ve already seen the failure of governments to pay bills on time for contracted nonprofit services.)

- \* Will the public accept **higher taxes or a different mix of taxes**? Will nonprofits be shielded or asked to contribute?—for example, state and local tightening of property-tax exemption and increased use of payments in lieu of taxes (**PILOTS**).<sup>15</sup>
- \* Will the answer to public acceptance of higher taxes differ depending on the level of government—federal, state, local? If the **relative economic strength of different levels of government changes**, will that change how governments contract with nonprofits for the delivery of services?
- \* Will governments adopt **means testing** for benefits from entitlement programs? If yes, will the safety-net programs cover their costs? Will hospitals be able to save their tax-exemption (income as well as property tax)?

<sup>15</sup> See, e.g., Evelyn Brody, “All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt than Others”, 44 *New England Law Review* 621-732 (Symposium Issue on Tax-Exempt Organizations and the State: New Conditions on Exempt Status) (2010); Evelyn Brody, “Payments in Lieu of Taxes: “Contributions,” Say the Towns; “Extortion,” Say the Schools”, *Chronicle of Higher Education*, Feb. 1, 2010 (invited commentary for special feature on “Towns, Gowns, and Taxes”).

### C. Pressures on the Border Between Nonprofits and Business

The already porous border between nonprofits and business is being squeezed, from both directions. Taxable businesses continue to complain about unfair competition from tax-exempt nonprofits. From the other side, we see efforts for new organizational forms (and proposals for favorable tax treatment) for socially worthy activities organized as limited-profit enterprises.

- \* Even under current law, nonprofits sometimes prefer to use for-profit affiliates to carry out “related” (i.e., charitable) commercial activities in taxable form for a strikingly long list of reasons.<sup>16</sup> For example, a university that does not expect to receive donations for or earn much profit from a distance-learning venture might want to conduct the activity free of limits on certain forms of incentive compensation and the obligation to make public disclosures.
- \* If L3Cs, B corporations, and other hybrids become hard to distinguish from taxable businesses, what impact will this have on the tax-favored treatment of “**commercial**” **nonprofits**—notably, nonprofit hospitals and universities (or particular activities they engage in)?<sup>17</sup>
- \* From the other direction, see **congressional unhappiness with for-profit schools**. But compare the decision to take federally subsidized student loans back from commercial lenders (direct student loans).

### IV. Wish List of Improvements?

During the rest of this Conference, we discussed how the public policy treatment of nonprofits might change. Some legal reforms could produce benefits to society, as well as to charities (see, notably, the recent near-universal enactment of UPMIFA, which liberalizes the legal grip on endowment spending.) Other changes might occur to the detriment of particular charities but benefit the sector as a whole. In the legal context, we floated the following issues, among others:

- \* Policies could **differentiate among subsectors** (e.g., nonprofit hospitals) or **among clientele** (e.g., targeting subsidies to antipoverty charities). Any move to make distinctions between or among charities obviously creates winners and losers. Would the sector as a whole, though, be better off if, say, nonprofit hospitals lost their tax exemption (as did the Blues in 1986)—that is, are nonprofit hospitals distorting the public’s perception of and willingness to support the rest of the sector?

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<sup>16</sup> See C. Eugene Steuerle, “When Nonprofits Conduct Exempt Activities as Taxable Enterprises” (Emerging Issues in Philanthropy Seminar No. 4, Urban Institute and Hauser Center for Nonprofit Organizations, 2001), available at [www.urban.org/url.cfm?ID=310254](http://www.urban.org/url.cfm?ID=310254).

<sup>17</sup> See Evelyn Brody, “Business Activities of Nonprofit Organizations: Legal Boundary Problems”, in *Nonprofits and Business* 83-127 (C. Eugene Steuerle & Joseph J. Cordes, eds.) (Urban Institute Press 2009).

- \* **Proliferation of nonprofit organizations** is both healthy and worrisome. Should public policy encourage collaboration and merger? Beyond the issues raised in our discussions, legal questions include: Should we encourage those nonprofits created to respond to a particular crisis or event to form for a limited rather than perpetual life? Should state or tax regulators require board training? Should new exempt organizations have their tax status reviewed after 5 years?
- \* Is talk of new legislation aimed at perceived abusive governance practices and behavior a substitute for the need for **increased funding for enforcement**?
- \* **Income-tax and government-spending** changes could inadvertently help or hurt nonprofits. Notably, the federal tax system might see higher income-tax rates and the return of estate tax. (This has an aspect of fiscal federalism, since revenue sharing indirectly includes federal transfers to the states whose residents itemize their deductions for charitable contributions and state and local taxes paid.) Tax and spending programs might evidence a continued shift to demand-side subsidies (like the current structure of Medicare, education tax credit, and other “vouchers”) that are “redeemable” at nonprofit or for-profit (or governmental) providers. Of course, policy changes can also be intentional—think of the IRA rollover or the proposal for adopting a counter-cyclical private-foundation payout requirement.

## Economic Issues and the Policy Research Agenda for Nonprofit Organizations

Dennis R. Young

### Overview

The economic vitality and effectiveness of nonprofit organizations in the United States are inextricably linked to public policy in multiple, important ways. Broad areas of public policy relevant to the economic health and mission effectiveness of nonprofits include tax policy; policy associated with direct government funding of nonprofit services; policy addressing the funding of nonprofits' capital needs; policy influencing the ability of nonprofit organizations to grow and expand their programs; policy addressed to the compensation of nonprofit personnel; policies influencing competition and collaboration among nonprofits and between nonprofits, business, and government; and policies defining new forms of enterprise whose purposes intersect with those of traditional nonprofit organizations. In all of these areas, new research can illuminate the effects of alternative policies more clearly and help in formulating and implementing effective policy change.

### Tax Policy

Various parts of federal, state, and local tax code significantly influence the efficacy of nonprofit organizations. Perhaps the most examined area of nonprofit-related tax policy is the impact of income tax rates on giving behavior. Economists divide the effects of tax rates on giving into “income” and “price” effects, where the price of giving is one minus the marginal tax rate. Thus, higher tax rates are expected to increase giving due to the price effect but reduce giving according to the income effect. There is some agreement based on analysis of cross-sectional data that the price effect is stronger than the income effect; that is, the price elasticity of giving is larger (in absolute terms) than the income elasticity of giving. Recent panel studies of these effects have added nuance, with some evidence that donors react more quickly to tax price changes and more slowly to income changes (Vesterlund, 2006), raising the issue of whether short term changes in tax rates merely shift giving behavior over time rather than significantly altering its magnitude (see Randolph, 1995). New experimental research methods in economics promise greater understanding of giving behavior associated with other tax policy parameters, including the potential impacts of government matching programs or the use of tax credits instead of deductions.

Perhaps a more contentious area of tax policy affecting nonprofits is the federal estate tax which has been phased out gradually through 2010 but is scheduled to be reinstated unless new legislation is passed. Nonprofit-related policy research issues include examining the effects on charitable revenues of phasing out the estate tax or changing its parameters (tax rate and estate value exemption level). In general, bequest giving can be understood to increase with the size of an estate (the wealth effect) and decrease with the price of giving (increase in the tax rate). Research generally indicates that the price effect is stronger than the wealth effect such that an increase in the estate tax encourages charitable giving, and repeal of the estate tax significantly reduces charitable bequests as well as life time giving (Rushton, 2010). Alternatives to the present estate tax include replacing the tax deduction for charitable bequests with tax credits

and replacing the estate tax entirely with an inheritance tax (Steuerle, 2005). Future research on these alternatives could make important contributions to understanding the impacts on nonprofits of prospective policy changes in the estate tax.

Finally, an interesting feature of U.S. tax exemption policy is the fact that gifts of money and material property are deductible from income taxes while the value of giving time, i.e., volunteering, is not. This is an important issue if only because the value of volunteer labor donated to U.S. nonprofits is commensurate in magnitude with that of monetary donations (Wing, Pollack, and Blackwood, 2008). Presumably this asymmetry in tax policy leads to inefficiencies in resource allocation, as the price to the donor of giving money or material gifts is lower than the price of giving an equally valuable quantity of labor. As well, possible inequities include favoring higher income donors, who have relatively more discretionary income, over lower income or less intensively employed volunteers, who have relatively more time. One policy-relevant question for nonprofits is what impact a policy change allowing deduction from income taxes of the value of volunteering would have on net resources available for nonprofit production. This is a complex research question, not only from the viewpoint of donor and volunteer behavior, but also because the net value and costs to nonprofits of garnering and using financial and other material contributions are very different from those associated with employing volunteers (Leete, 2010).

A tax policy of basic importance to nonprofits is their exemption from a corporate profits tax. Related to this exemption is the unrelated business income tax (UBIT) which taxes nonprofits on commercial revenues unrelated to their missions. The nonprofit-related policy research issues associated with these tax policies include whether they influence entrepreneurs when they select the corporate form of their ventures, and the degree to which the UBIT influences the kinds of activities which nonprofit organizations undertake. All other things equal, one expects higher corporate tax rates and lower UBIT rates to shift activity from for-profits to nonprofits. Moreover, one would expect nonprofits to engage in UBIT tax avoidance behaviors such as shifting of costs to taxable activities and broadening the definition of charitable mission. Existing research appears to confirm these effects but provides limited evidence of their magnitudes (Rushton, 2010). Given the growing importance of earned revenue in nonprofit income portfolios, future research on these issues could have important implications for policy intended to regulate nonprofit commercial behaviors.

Many nonprofits benefit from exemption from local property taxes, although the magnitude of such benefits varies widely according to a nonprofit's location and the degree to which it relies on real property relative to other inputs to production. For example, universities and art museums are clearly more reliant on large, expensive physical plants, often in high value locations, than are social service agencies or environmental organizations. In recent years, as local governments have become harder pressed for revenues, property tax exemptions have been increasingly challenged. Research on the economic impacts of property tax exemption on nonprofits and local governments and communities is relatively undeveloped (Sjoquist and Stoycheva, 2010). Important empirical policy research questions include how much revenue is actually lost by government as a result of nonprofit property tax exemptions; how nonprofits use their tax exemption benefits to modify the quality, quantity, or price of their services or their choice of technologies; how property tax exemption affects the decisions of nonprofits to

own or rent their physical plants; how the exemption influences where nonprofits locate their operations; how much land they use relative to other inputs; what market shares they capture relative to for-profit businesses; how decisions to incorporate as nonprofits vs. for-profits are affected; and how local property values (and hence government revenues) are impacted. Policy alternatives to the nonprofit property tax exemption include payment-lieu-of-taxes (PILOT) programs, and direct government subsidy programs meant to influence nonprofits' location decisions. Study of the benefits and costs of such alternatives, relative to conventional nonprofit property tax exemptions, could have important implications for both nonprofit operations and financial well-being, and for the fiscal health and effectiveness of local governments.

### **Direct Government Funding of Nonprofit Services**

Direct government funding support of nonprofits is twice as large, overall, as charitable funding, although this varies widely by field of service (Toepler, 2010). Arguably, therefore, policies that determine direct government flows of funds to nonprofits are at least as important as tax exemption policies that influence charitable giving. (Note, both of these types of policies involve direct costs or revenue losses to government as well as increases in funds for nonprofits.) The growth of the nonprofit sector in the U.S. since the 1960s can be largely attributable to the expansion of programs financed by government but delivered through private, largely nonprofit firms. Indeed, the so-called “hollowing of the state” has gone hand in hand with the engagement of nonprofits as the delivery agents for public services.

The expansion of government funding has been a mixed blessing for nonprofits, fueling their growth but sometimes threatening their autonomy and creating new fiscal stresses. The nature of these tensions and stresses needs to be better understood so that government funding policies can be better tuned to the needs of nonprofit organizations and to the overall effectiveness of public service delivery systems.

Direct government funding of nonprofits takes place through a variety of mechanisms including “supply-side” funding via grants and purchase of service contracts, as well as “demand-side” funding through vouchers and other kinds of consumer subsidies. One important research question is what the impact has been on nonprofits of the (continuing) trend from supply-side to demand-side subsidy programs. One difference is the nature of competition which nonprofits face. With demand-side subsidies nonprofits compete directly for consumers, while with supply-side programs nonprofits compete for the favor of government systems and officials. The costs of doing business, i.e., transactions costs, vary by type of regime. So do the likely outcomes such as market shares won by different types of nonprofit organizations (e.g., large vs. small) or by nonprofits relative to for-profits. Other possible differences include the degree of risk of “mission drift” as nonprofits appeal to different environmental pressures-conformity to governmentally defined program goals on the one hand and the demands of the commercial marketplace on the other. Finally, alternative financial risks may also be associated with different modes of government funding, including short term cash flow problems associated with alternative government payment and reimbursement mechanisms, and longer term profit and loss issues linked to government policies that determine what proportion of costs government funds are intended to cover.

In short, government funding can exacerbate as well as relieve nonprofit fiscal stress. As the “tools of government” (Salamon, 2002) become more diverse and nuanced, and as government continues to look to the private sector for service delivery capacity and leveraging of private resources, substantial benefits lie in research that investigates the impacts of these tools on the viability and effectiveness of nonprofit organizations. Over the years, scholars have developed better conceptual understandings of the multifaceted nature of government-nonprofit funding relations but empirical work is lacking (Toepler, 2010) and remains far from what is needed to improve government funding policies affecting nonprofits.

### **Financing Nonprofit Capital Requirements**

Nonprofit organizations raise capital in a variety of ways including grants from foundations, corporations and government agencies, borrowing from lending institutions, bond financing, and accumulation of internal surpluses (Tuckman, 1993). Nonetheless, nonprofit organizations are especially challenged in attracting resources to finance their capital needs, particularly in view of their exclusion from equity markets. In many fields nonprofits are undercapitalized (Salamon, 2006), inhibiting their abilities to grow, maintain, and enhance their key assets including physical plants and human capital, compete with for-profit competitors where growth requires easy access to capital financing, and have sufficient reserves to maintain economic health in periods of economic uncertainty and instability.

Various proposals have been offered to give nonprofits better access to capital funding, including expansion of program-related investments by foundations, creation of social stock markets or other kinds of financial intermediaries, more extensive use of partnerships with business and government, nonprofit investment tax credits, and other innovations (Salamon, 2006; Sonenstein and Velasquez, 2009). Public policy changes would be required to accommodate some of these new strategies. Certainly, nonprofit capital requirements could be more explicitly recognized in public policy, for example by establishing new governmental funds or tax incentives designated specifically for nonprofit capital projects. A government program that encouraged experimentation with new mechanisms of capital financing for nonprofits by foundations, corporations, and government agencies, could be coupled with a research agenda to evaluate the success of these new mechanisms and encourage the widespread adoption of successful strategies.

### **Scaling Up**

Contemporary interest in the phenomena of social enterprise and social entrepreneurship has put the spotlight on innovative approaches to addressing societal problems, spanning a wide spectrum of projects from nonprofit commercial ventures that employ people with criminal records (Greyston Bakery) to public/private partnerships to build modern playgrounds in low income neighborhoods (Ka-Boom) to new services that assist students in low income school districts to apply to college (College Summit). The apparent success of some of these ventures has raised the issue of “going to scale,” i.e., how can successful (mostly nonprofit) ventures be expanded so that they can have maximum social impact (Aubry, 2004)? Indeed, the concept of going to scale has reached the level of national policy, with the White House office of Social

Innovation and Participation recently sponsoring its first round of Social Innovation Fund grants to selected organizations chosen for their potential to build on their initial successes (Economist, 2010).

The rationale of public policy designed to stimulate the expansion of particular nonprofit innovations is based on little research and is not without controversy. For example, it is not clear that the nonprofit sector lacks effective mechanisms of its own for the expansion of successful approaches. Nonprofits expand in a variety of ways including direct growth of particular enterprises, agglomeration of similar programs into networks of federations or associations, and replication of successful models through franchise-like arrangements (Young and Faulk, 2010). Many successful, fully scaled nonprofit programs have developed in these ways, including Ys, Girl Scouts, United Ways, Goodwill Industries, and religiously affiliated networks of health care and social service organizations, without governmental direction or even support. To the contrary, there is little evidence that a government sponsored “industrial policy” that tries to pick winners and losers in the nonprofit sector will be more successful than the traditional decentralized evolutionary process that has characterized much of the development in the sector to date. Indeed, such a policy is potentially fraught with problems of its own, including potential political favoritism as well as errors of judgment. To the contrary, however, there is substantial evidence that government funding per se has been a significant factor in sector growth (Toepler, 2010).

Existing research on the nature of growth in the nonprofit sector over time is limited, and an expansion of this research could help inform future public policy decisions related to the issue of going to scale. Moreover, the present experimentation with nonprofit industrial policy designed to promote the scaling up of social innovations should be welcomed as an opportunity for rigorous research to evaluate if this explicit approach to stimulating the expansion of innovations judged to be initially promising is in the end efficient and effective.

### **Compensation of Nonprofit Employees**

Public policy does not directly determine the labor compensation practices of nonprofit organizations; these are generally left to the autonomy of nonprofits themselves, through their boards of directors and senior management. Nonetheless, nonprofits are vulnerable to public scrutiny of their compensation practices, especially of their most highly paid personnel, since compensation of these individuals must be reported on 990 tax forms and is subject to examination by the IRS. Moreover, from time to time, proposals to limit compensation of top nonprofit executives enter public debate, including media coverage that can be severely damaging to an organization’s reputation and the public trust placed in it.

Some argue that nonprofit compensation practices should not be subject to governmental regulation (Pallotta, 2008) because such policy restricts the ability of nonprofits to attract the best possible talent. Others point to the potential losses of trust and support from alienated donors and volunteers deriving from excessive compensation practices. Studies of nonprofit labor markets have identified various differential patterns of compensation between nonprofits and for-profits, for different industries, gender, and worker qualifications (Preston and Sacks, 2010; Leete, 2006). Research specifically focused on executive compensation indicates that

organizational size is a determining factor on the level of pay; beyond that there are differences among nonprofit industries, with those industries more resembling businesses and featuring higher intersector executive mobility tending to compensate nonprofit executives more generously (Oster, 1998). The intensity of public concern and the relative sparseness of research suggest this as a potentially important area of nonprofit-related policy research, especially if such research points the way to effective guidelines or benchmarks around which a public consensus, and concomitant regulatory policies, can be developed.

### **Nonprofit Competition and Collaboration**

Alternative rhetorics vie for the attention of policy makers and philanthropic funders on the question of whether there are too many nonprofits and whether nonprofits should be encouraged to consolidate or compete. Some argue that the proliferation of nonprofits is unsustainable and that collaboration and consolidation are in order. However, others call for nonprofits to engage in entrepreneurship and market-based programming as the basis of innovation for new solutions to social problems, implicitly endorsing competition. It is interesting that the same arguments for competition and against monopoly in the for-profit sector appear to apply to nonprofits—incentives for cost minimization, quality enhancement and innovation associated with competition vs. the dangers of restricted output and higher prices, and losses of quality and internal efficiency associated with monopoly (Irvin, 2010). Yet, in the nonprofit sector, the arguments for competition are often reversed, with critics citing duplication of services, failure to achieve scale economies, dilution of philanthropic resources, and failures of coordination, as reasons to favor mergers, alliances, and collaborations.

These different viewpoints imply different policy thrusts. The former would suggest higher entry barriers for new nonprofits, government funding targeted to larger entities and to collaborative arrangements, and efforts to scale up existing nonprofit enterprises. The latter would suggest lower barriers to entry, vigorously competitive bidding for public contracts, demand side subsidy arrangements, encouragement of start-ups and application of anti-trust policy to the nonprofit sector.

Research on competition and consolidation in the nonprofit sector is relatively undeveloped (Young and associates, 2010). Various texts extol the virtues of collaboration, some analysis has been done on the possible virtues of nonprofit monopoly, and some research has addressed the issue of competition between nonprofit and for-profit organizations (Brown, 2010). These efforts have been piecemeal, on a few subsectors where reasonable data is available, but relatively little empirical work has been done even to measure the degrees of competition and concentration of activities and resources in the broader nonprofit sector.

A serious program of research on nonprofit sector competition would identify the geographic scope of various kinds of markets (e.g., paid labor, volunteers, funding, services) in which nonprofits compete with one another and with for-profit and public agencies, it would test measures of competition and concentration parallel to those conventionally applied in for-profit markets, and it would link these measures of competition with indicators of nonprofit performance in different fields of nonprofit service. Such a research program would also develop better theory of nonprofit competition and collaboration so as to discern the

competitive motivations of nonprofits, the role of funders in encouraging sector consolidation or fragmentation, and the implications of monopolistic and collaborative practices for quality, effectiveness, and efficiency in various parts of the nonprofit sector.

### **New Forms of Enterprise**

Scholars and nonprofit leaders have long been preoccupied with the “blurring of the boundaries” of the nonprofit sector, beginning with worries about so-called “vendorism” as reflected in purchase of service and contract arrangements between nonprofits and government (Smith and Lipsky, 1993), and later fears about commercialization of the nonprofit sector (Weisbrod, 1998). The most recent wave of concerns about blurring are centered on “social enterprise,” including complex public/private partnerships and the emergence of new legal forms of organization such as Community Interest Companies in the U.K. and B corporations and L3C’s in the U.S. The development of new hybrid legal forms may be viewed as a challenge to traditional nonprofits—both to nonprofits’ continuing viability and the ways in which they can potentially use these new forms to advance their own missions. (For example, the L3C is, in part, conceived as a vehicle for foundations to expand their program-related investments.)

Research on the nature, role, performance, and viability of hybrid forms is still in its infancy (Billis, 2010). We need to better understand how they are best governed, how they balance private and public goals, how they potentially compete with traditional nonprofits for resources such as funding, service markets, and volunteer and paid labor, and how they fit into the overall constellation of organizational entities addressed to problems of social concern. A particularly interesting question is whether some of the new forms are even viable over the long term. For instance, social purpose businesses are for-profit entities that are supposed to balance social goals and profits, attract social investors, but plow profits back into the enterprise without providing investors with net financial returns (Gidron, 2010). Is such a form even viable over the long term, will it thrive, or will it tend to regress in its operation toward either a traditional nonprofit or a conventional for-profit business?

Answers to these questions are important for public policy. Should government be creating, funding, and utilizing new hybrid forms, or should it focus its efforts on conventional nonprofits? Should the markets in which nonprofits participate be opened up further to these new forms? Should oversight, regulation, and tax exemption policies for nonprofits be redirected toward more sector-neutral mechanisms that focus on intent, performance, and governance procedures, rather than ownership, non-distribution of profits, and sector designation? A research effort designed to understand the benefits and costs of employing the new forms, and their long term stability and viability, would help inform these policy questions.

### **Closing Comment**

The resource challenges now facing nonprofit organizations in the U.S. are inextricably tied to public policy. Over the past 40 years economists, management scholars, and other social scientists have established a growing body of research on the economic structure and behavior of nonprofit organizations within the present policy context. Existing research provides numerous insights into the impact of public policy on the economic viability and performance of nonprofit

organizations, but this research is still sparse and limited in its capacity to inform policy making on many key issues. Research on the impacts of taxation policy on giving behavior is probably best developed, while research on nonprofit competition or on new forms of social enterprise seem least robust. Opportunities abound for research on various economic dimensions of nonprofit sector operation which have the potential for informing policy deliberations and ultimately improving public policy as it impacts the effectiveness of nonprofit organizations.

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*Papers from Session 2*  
**“The View from the Federal Level”**

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**Critical Issues and Changes in Policy and the Nonprofit Landscape**

Howard Husock

Any reflection on the evolving relationship between the United States federal government and nonprofit sector can logically touch on an exceptionally wide range of areas. Universities are affected by changing rules and appropriations for research grants. Nonprofit hospitals are strongly affected by the “reimbursement” rates paid for medical care by the Medicare and Medicaid programs for the elderly and poor, respectively, and will be affected by recent health insurance reform legislation. National service-related grants supporting Americorps volunteers at hundreds of local nonprofit organizations are slated to grow sharply through the Serve America Act.

In contrast, in terms of sheer magnitude, the fascinating change playing out in the relationship between the federal government and so-called “social entrepreneurs” who have started what are judged to be effective new nonprofits to provide social services to the disadvantaged, may not be of evidently equivalent importance. After all, the new White House Social Innovation Fund, established to use federal funds to match private philanthropic monies to assist the growth of effective organizations, has started out with just \$50 million in grants to 11 organizations.

Yet the establishment of this fund suggests significant questions about the relationship between government and not-for-profits, particularly those which provide services designed to improve the lives and prospects of the less advantaged. Those questions include such matters as how to judge performance and whether philanthropy is appropriately joined to public appropriations.

It has prompted notable process questions—for instance, as to whether the grant-making deliberations and evaluations should be “transparent.” All these are important matters. Nonetheless, the advent of the Social Innovation Fund raises a deeper, more fundamental, indeed first-principle question about government and the nonprofit world. It involves what can be characterized as the quest for universal and high-quality provision of service—the goal that all those who would benefit from assistance and cannot themselves pay for such services, will be able to receive them, no matter how limited their income and where they might live. Indeed, the predicate of the fund, indeed the predicate of government involvement in the private, nonprofit social service sector, might be described as “small is not beautiful.” This is the belief that programs which are limited in scope and scale should, to be truly successful, find ways to reach many more who might benefit from their services; that the best way to effect such an outcome is to augment the reach of specific organizations and their approaches, and that the most practical way to do so is through public funding.

In other words, we are drawn to consider a government role in the social service realm precisely because of the belief that services should be universal in their reach. That is to say that if a

philanthropic effort is effective but limited in scale, it is inadequate and we should do better. We should seek the ways and, particularly, the means to extend its reach, whether through expansion or replication. Lately, we are calling this going to scale, and it is through the Social Innovation Fund that the White House is seconding the idea that this should be encouraged and, indeed, has begun placing bets on organizations thought to have the capacity to do so.



Without a doubt, the goal of assuring universal reach in social programs is a powerfully attractive one. On a practical level, there is the frustrating reality that programs which appear to be effective—whether in preparing disadvantaged children for school, helping military veterans adjust to post-service life, assisting immigrants adjust to American life, or any number of other areas—do not have the financial resources to reach all those in need. It is hardly illogical to conclude that the deeper pockets of government could close or even eliminate such gaps.

Much more broadly, the Innovation Fund is heir to powerful arguments that would have a government role in supplementing or even supplanting the nonprofit sector as the mark of a just society. T.H. Marshall, in “Class, Citizenship and Social Development,” conceptualized public social services as the product of “the entire citizen body organized in a great mutual aid society. All contribute, and all are entitled to receive benefits. There is no longer any distinction between the privileged and the unprivileged.”<sup>1</sup> Put another way, this view would have it that publicly-supported social services are a significantly-improved version of those services that stem from private philanthropy and voluntary action—both because of the entitlement to receive and the terms of such receipt.

In many contemporary observers, one senses a profound frustration with the apparent limits of the voluntary, philanthropically-supported social service sector. It is said to be driven too much by a zeal for novelty, influenced by personal whim. It is easy to conclude, as Thomas Tierney of the Bridgespan consulting firm has observed, that too often, “a problem requiring a \$1 million solution gets a \$100,000 solution.”<sup>2</sup> That is, too many of those who could benefit from assistance of various sorts will, it is thought, simply go unserved. The deep pockets, then, of government would seem a logical way to extend the reach of service, or, to remedy what Lester Salamon has famously characterized as “voluntary failure”.

Questions arise, however, not as to whether the universal provision of social services is theoretically just, but the extent to which it is either practical or appropriate. In this regard, there are a number of reasons to be skeptical, ranging from the ways in which receipt of government funds must inevitably change the operations of nonprofits, to the ways in which local conditions vary.

Indeed, these constraints and others lead me to contend that, as attractive as the goal of universal high-quality service provision might seem, realism demands we recognize that it may not be either achievable nor desirable. We must consider the possibility, in fact, that the likely result

<sup>1</sup> T.H. Marshall, *Class, Citizenship and Social Development*, Chicago, University of Chicago Press, 1963, p. 347

<sup>2</sup> Thomas J. Tierney, “How Philanthropy Shortchanges America,” The 2009 William E. Simon Lecture (New York, NY: Manhattan Institute for Policy Research, December 3, 2009).

of government-supported scaling are programs which provide broad but mediocre services, and that highly localized but prominent programs may, ironically, have greater reach. That recognition, in turn, leads to alternative conclusions about the best ways to reach or influence the greatest number.



Our consideration of the implications of a new federal involvement with the nonprofit social service sector—one which includes judgment as to which organizations are effective and financing which follows—must be cognizant, to start, of the fact that we are not dealing with a tabula rasa. Indeed, any discussion of scaling, and government support for nonprofit social service providers, will be naïve if it does not take stock of how much of such appropriations have, in fact, been made over the past generation, and how such spending has worked out.

Although historically American charitable entities were intensely local and largely if not totally independent of even local government, that picture changed dramatically beginning in the 1960s. Indeed it changed to the point that in their definitive 1991 book, *Nonprofits for Hire*, Steven Rathgeb Smith and Michael Lipsky would write, “In contrast to the traditional image of government and nonprofits as two independent sectors, the new relationship amounts to one of mutual dependence.”<sup>3</sup> A full accounting of government support for the nonprofit social service sector is beyond the scope of this paper but it is indisputably large. For instance, in fiscal year 2011, the Administration for Children and Families, an agency of the federal Department of Health and Human Services, will spend \$58.8 billion on social services; virtually all of it will be disbursed to state or county governments that in turn will contract with nonprofits. In contrast, Giving USA reports that all charitable giving on such programs—including food, shelter, and others directly serving those in need—totaled just \$27.1 billion in 2009. As Smith and Lipsky put it, “Today governments contract for whole programs and even create providers where they otherwise do not exist.”<sup>4</sup>

In this context, we must ask both a series of important questions: Why have so-called social entrepreneurs felt a need to start new, independent organizations to help the disadvantaged? Why have previously-funded organizations not been effective? And will the expansion of federal support to a new generation of social service providers lead to better results?

It is logical to conclude that new organizations have been established because of an understanding that previous efforts have fallen short. Indeed, a number of the organizations which were selected for Social Innovation Fund support seek to ameliorate the same social problems—such as job training, workforce readiness and public health, for instance—for which public funds have been previously appropriated. There is, moreover, good reason for those concerned about the prospects for the disadvantaged to be frustrated with the results of previous government-supported initiatives. Consider, for instance, Head Start, the signature social program of the 1960s, and of the contract welfare state. This potently-named program to help disadvantaged

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<sup>3</sup> Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting*, Cambridge, Harvard University Press, 1993, p 4

<sup>4</sup> Smith and Lipsky, p 9

preschool children close their school readiness gap before they begin pre-kindergarten, has truly gone to scale. It can now be found in all 50 states. But the program shows little clear benefit.

A January 2010 report by the federal Department of Health and Human Services, titled *Head Start Impact Study*, compared Head Start participants to a control group. The study found that virtually all gains in vocabulary, math, and other skills realized by Head Start children had dissipated by the time they completed the first grade. Isabel Sawhill of the Brookings Institution and Jon Baron of the Coalition for Evidence-Based Programs have characterized the results as demonstrating that the program “had almost no effect on children’s cognitive, social-emotional, or health outcomes at the end of 1st grade.”<sup>5</sup> These disappointing results in the 2010 study were not a fluke. Sawhill and Baron go on to note more broadly that “this is the 10th instance since 1990 in which an entire federal social program has been evaluated using the scientific ‘gold standard’ method of randomly assigning individuals to a program or control group. Nine of those evaluations found weak or no positive effects.”

To be sure, part of the federal spending on this array of social programs goes directly to government providers or even to for-profit firms rather than to nonprofits. But much, if not most, of it has been channeled through the once-independent nonprofit sector. Why has this significant investment in what we are now calling scaling not borne fruit? One must consider the likelihood that there are dynamics inherent in a regime of social services provided under government contract that lead to mediocre results. Smith and Lipsky, after closely examining the “transformation of nonprofit service delivery” that took place in 30 major nonprofit agencies in four northeastern states as a result of the “advent of government funding,” are unequivocal in their view that government contracts have, in and of themselves, implications for management.

“Government,” they write, “gradually influences the behavior of nonprofit contracts to accept its practices and preferred policies.”<sup>6</sup> In the authors’ view, the administrative regime that inevitably follows with the acceptance of the public’s money changes the nature of the services provided: “As nonprofit service providers are forced to be more business-like, they become more rule-bound and more intent on the bottom line of fiscal health *at the expense of responsiveness.*” (Emphasis added.)

Surely, however, government investment—on a matching basis with studied philanthropic gifts—directed toward innovator-managers with a track record of good results can lead to a different outcome. One cannot rule out the possibility, of course. Nor, clearly, can we rule out the strong likelihood that many privately-funded social service organizations themselves employ poor management practices and are not effective. Indeed, a productive future research agenda could include work seeking to determine whether non-governmentally funded organizations are, in fact, ever disciplined by their boards for poor management and inadequate results—and whether poor results actually lead to their going out of business, as it were.

But it is also worth revisiting the essential insight of Smith and Lipsky, that government appropriations inevitably change management practice. This is not because government is not desirous of good outcomes, but because it has a profound accountability relationship with

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<sup>5</sup> Isabel Sawhill and Jon Baron, “We Need a New Start for Head Start,” *Education Week*, Mar. 3, 2010.

<sup>6</sup> Smith and Lipsky, p 45

taxpayers who are not themselves making the decision about where to direct their dollars (in contrast to charitable donations) and who must be assured that monies will not be misdirected, especially for personal use. That inevitable and, indeed, entirely appropriate concern, in turn, leads to the need for government monitors to look for the reassurance that comes with process—protocols which demand reporting, reporting which burdens and redirects the energies of the organizations.

Further, the subtle change likely to occur in organizations also risk making such organizations less attractive to the additional cadre of leader-managers which expansion, especially, to additional cities, will require. If there are to be programs modeled on the widely-respected Harlem Children’s Zone, after all, there will be a need for one, two, many Geoffrey Canadas. Funding will hardly guarantee effective management. Indeed, the need to spend appropriated funds in a timely way will create pressure simply to get started. Nor can we rule out the possibility that organizations will come forward to seek government monies simply because of their availability—not because the organization has previously specialized in the purpose for which the grant was conceived.



Contrast these challenges with the approach of the organization Volunteers in Medicine. Starting in 1992, it has helped establish 80 locally-run free medical clinics, staffed by volunteer physicians and nurses, in 30 states. Construction funds are raised locally; the national organization does not seek replication per se—but rather responds to inquires from local champions who become aware of the model and wish to bring it to their municipality. The clinics, it’s worth noting, will continue to be important even as health care reform takes effect; they frequently serve undocumented immigrants who will not be reached by that law. Another notable organization which has proven to have broad reach without itself scaling is the Boston-based Beacon Hill Village, which pioneered the concept of “aging in place” for the low-income elderly. It did so by linking them to a variety of forms of assistance without required that they relocate. The organization’s how-to manual has sparked nationwide imitation and adaptation. In the interest of full disclosure, I should note that both of these organizations have won the Manhattan Institute’s social entrepreneurship award, which I help to administer.

It is true, to be sure, that these neither these clinics nor “villages” are likely to reach all those who might need the sorts of services they provide. But the inherent difficulties in “scaling up” through government funding suggest we may need to replace the goal of universal service provision with that of locally-rooted organizations, perhaps inspired by examples from elsewhere but adjusted for local conditions and which, by their own actions, promote norms both of behavior and of forms of assistance. At the turn of the 20<sup>th</sup> century, for instance, there were more than 400 locally-based settlement houses across the United States, assisting that era’s immigrants’ adjustment to America, virtually without government involvement. There is no reason to believe that even this extensive network—an example of replication but not scaling—reached all the millions of immigrants of that day. However, its organizations both assisted those who passed through their doors and, to my point, established cultural norms both for immigrants and the native born; norms that immigrants deserved to be welcomed and that, with the right tools, they could advance, socially and economically.

Indeed, in this new era of large-scale immigration, one wishes for such a network, one which reminds us of Jeffrey Braddach's point that "the objective is to reproduce a successful program's results, not to slavishly recreate every one of its features."<sup>7</sup> But results may not even be contingent on serving all those who might stand to benefit. Just as law enforcement authorities must depend on the essential law-abidingness of the vast majority of the populace, and the IRS must similarly depend on the vast majority of Americans voluntarily to pay their taxes, so can we think of effective social programs not as failures for not reaching more who might benefit from their services, but as norm-setters which will both inspire the establishment of additional organizations providing similar services and, through the example of neighbors, the disadvantaged themselves to take action to improve their own prospects.



Ultimately, in others' words, the most effective form of scaling is cultural change. And that is less likely to stem from billions more in federal appropriations than through establishment and celebration of effective local programs and their replication—with local adjustments—by those who find them inspiring. This may imply, among other things, tax rates low enough such that funds for philanthropy are more readily available (although it is true that high tax rates coupled with a generous charitable deduction could have a similar effect). It is worth recalling, in this regard, the words of Lord Beveridge who, although the architect of the British welfare state, did not see it as crowding out all other forms of assistance. In his classic, "Voluntary Action,"<sup>8</sup> he envisioned, rather, a "human society (that) may become a friendly society—an Affiliated Order of branches, some large and many small, each with its own life in freedom, each linked to all the rest by common purpose and by bonds to serve that purpose."

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<sup>7</sup> Jeffrey Braddach, "Going to Scale", Stanford Social Innovation Review, April 1, 2003

## Reflections on the Federal Level View: Critical Issues and Changes in Policy and the Nonprofit Landscape

Pat Read

I appreciate this opportunity to share with you some of my personal reflections on policy decisions facing Congress and the administration in the coming years where greater research and data is needed to support more informed, effective advocacy by the nonprofit and philanthropic sector. These comments reflect my personal experience and observations, rather than a statement from Independent Sector. I hope these comments will lead to a more substantial look at how we can build a stronger partnership between the research community and the advocates who want to advance public policies that will support a more positive environment for successful contributions by our community to the seemingly intractable problems facing our nation and the world.

**The Federal Budget and Tax Policy:** The agenda for Congress and the administration will be dominated in the coming years by strong debates over what services government should support or provide and how to raise the revenues required to pay for those services. We are all aware of the vast amounts of data and countless studies by economists throughout the political spectrum on the dire state of our federal finances which paint an even more disastrous fiscal future unless Congress reexamines our tax structure and methods of financing the operations of the federal government, cuts back on spending programs, and restructures mandatory (or entitlement) programs such as Medicare and Social Security to reduce rapidly escalating costs. Yet few, if any, of these studies address how the federal government works with nonprofit organizations to deliver services the American people have come to expect from our government, and there is little data available to the electorate, including those who work for or support the work of nonprofits, to help them understand the costs and benefits of various options for restructuring the tax code, changing spending programs, and adjusting Social Security and Medicare.

The bipartisan National Commission on Fiscal Responsibility and Reform is scheduled to release later this year its recommendations to Congress for policies that will help bring the budget closer to balance and restore fiscal stability. While I am not sanguine about the possibility that these recommendations will be part of a comprehensive, thoughtful process for tax reform, there will be congressional debate on these issues in the coming years and it is likely that some of the recommendations—or variations of them—will make their way into legislation. Serious engagement by the nonprofit and philanthropic community in the effort to create a more positive fiscal future for all will require more information and understanding of how these options will affect our organizations, those who work for us and support our work, and those we serve.

**Incentives for Giving:** Debates over budget and tax policy have already raised questions about how tax incentives to encourage charitable giving really work, the extent to which they increase giving, and the benefits to different kinds of organizations and causes from the resulting gifts. There have been studies by scholars at Indiana University's Center on Philanthropy and others about the perceptions of high-net worth individuals about their giving patterns and the effects of tax policy and incentives on their contributions, yet these studies tend to tell us more about

the attitudes and motivations for giving than they do about actual giving behaviors once those donors have consulted with financial advisors.

In his first budget proposal to Congress, President Obama proposed limiting the deductions that the wealthiest taxpayers could take for charitable contributions, mortgage interest, and local taxes in order to pay for health care reforms. That proposal stirred a firestorm of debate in the charitable community that reflected strongly divergent perceptions about the importance of tax deductions as a motivation for giving between organizations with a high reliance on charitable giving and those that are more reliant on government funding. Strong arguments were made about the principle behind offering tax deductions for charitable giving—a principle which also supports the extension of those tax incentives to all taxpayers whether or not they itemize deductions on their annual tax returns. Yet the absence of current data has hindered our community's ability to develop a clear, reasoned position based on the implications of proposed changes for specific types of organizations and causes.

Another pending battle about an important incentive for giving, the estate tax, will also require better data about the extent to which the estate tax influences charitable bequests and giving during the donors' lifetime to reduce the tax liabilities on their estates. The Internal Revenue Service has released data about charitable contributions claimed on estate tax returns filed over eight of the past nine years in which the estate tax was significantly reduced until its one-year elimination in 2010, and we need comprehensive analysis of this data by researchers to inform the current and coming debates about how best to restructure the estate tax after it returns to 2001-2002 exemption levels and tax rates at the beginning of 2011.

Congress is still considering whether or not to reinstate a variety of tax incentives for giving that expired at the end of 2009, including the IRA Rollover and enhanced tax benefits for donations of food inventory. Although we have heard from a surprising number of older Americans who would like to make contributions from their retirement accounts to charitable organizations and are holding back because they don't know whether those gifts will increase their tax liability, there is virtually no data on how many gifts have been generated by this incentive since its initial enactment in 2006 or the types of organizations that have been the primary beneficiaries of those gifts. Representatives of Feeding America and other nonprofits report that some businesses have continued to make food donations throughout this year on the assumption that Congress would reinstate that tax incentive, yet we have not yet been able to gather reliable data on the extent to which this is happening and what will happen to those donors should Congress fail to reinstate this provision retroactively.

Without better data and a clear understanding of the impact various changes in the structure of tax incentives might have on giving, our community is left to argue for policy positions on the basis of anecdotal evidence and emotions. That data is essential to inform a reasoned discussion about the possible impact of the proposed changes and to make better determinations about the value of these incentives when weighed against their cost to the federal treasury. This would include studies that examine the attitudes and perceptions of legal and financial advisors to high net-worth households, and economic models that give us reliable estimates of how possible changes to the incentives will actually impact the resources available to support the work of nonprofit organizations in serving communities.

**Impact of Programs Offered by Nonprofits:** There has been substantial debate about whether donors as a whole rely on data about the impact of a nonprofit's programs in making their giving decisions. Nonetheless, there have been increased calls by elected officials, their staff, and the broad electorate for better evidence about the impact of programs offered by government, often in partnership with nonprofits, as they consider where to make spending cuts and where to make further investments. There has been considerable progress by nonprofits working in specific areas of activity to document not just the outputs of their work, but the outcomes in terms of progress toward their desired goals and changes in people's lives, yet there is little evidence of the combined impact of the nonprofit and philanthropic community on the quality of life in America and the world, nor do we have clear data on the role of our organizations on our nation's economy.

A recent gathering of Catholic Charities USA advocates from around the country emphasized the need for such data, and the transformative legislation they are proposing includes several pilot projects where data about what works in helping households move out of the spiral of poverty and dependence on the social safety net to full participation in the economic life of our communities. Independent Sector has been engaged in a major pilot project, "Charting Impact," to develop a common framework and language that nonprofit organizations can use to measure and communicate the effectiveness of their efforts to achieve lasting, meaningful change. More needs to be done to gather and analyze these and other efforts to chart the impact of our work not just for the use of our own organizations in refining and improving our work, nor simply for donors who are asking these important questions. Rather, this information will be essential for effective participation in debates over where public resources should be directed to achieve the results tax payers and elected officials desire.

**Nonprofits and Foundations as Employers:** While economists have declared that the economic recession has ended, that perception is not shared by most Americans—particularly those who are faced with foreclosure or short sales of their homes, and those who are among the growing ranks of the unemployed and underemployed. The discussions in Congress and the administration regarding appropriate measures to address economic recovery, job creation, and other incentives to help employers support their employees have largely disregarded the role of nonprofits and foundations as employers. Strong advocacy efforts based on equity arguments and close consultation with tax specialists about methods of permitting tax-exempt employers to access benefits and incentives offered to taxable employers resulted in some achievements on health care reform and minimal job creation incentives provided through the HIRE Act (which allows employers to forgo their share of certain payroll taxes for new employees that meet specific criteria). There is conflicting data about the number of employees in the tax-exempt sector and the specific subsectors (e.g., education, health care, social services, arts and cultural institutions, etc.) in which they work, and little broad information about the wages and benefits provided by nonprofit and foundation employers collectively, which will hamper advocacy efforts to recognize and include tax-exempt employers in the consideration of other incentives and assistance to provided to for-profit employers.

The Center for Civil Society Studies at the Johns Hopkins Institute for Policy Studies has issued a number of important studies on nonprofit employment based on data from the national

Quarterly Census of Employment and Wages program administered by the U.S. Bureau of Labor Statistics. Congressional staff, notably staff of the Joint Economic Committee and the Joint Committee on Taxation, rely on data from the Census Bureau's American Community Surveys which sometimes do not align with the Center for Civil Society Studies' reports. We have also heard consistent questions from congressional staff about the reliability of data on nonprofit employment given the differing treatment and definitions of tax-exempt organizations in labor and employment studies conducted in different areas of the federal government.

**Access to Credit and Capital:** In 2008, Independent Sector heard from a growing number of our members about the growing crisis in delays in issuing reimbursement payments for services provided under contract with state and local governments. We pursued a number of different options for applying funds from the Troubled Assets Relief Program (TARP) to provide low-cost emergency loans to nonprofits awaiting such reimbursements and ultimately were unable to find a workable solution that could garner the necessary support from the administration and Congress. Although the problem of slow reimbursements on government contracts has existed for many years, the nonprofit and philanthropic community was largely caught off guard by the severe economic downturn and the drastic contraction in available credit. Substantial work has been done by the Nonprofit Finance Fund and others to gather information about the need for capital investments and the lack of access to such investments by nonprofits, and this remains an area where more data and solutions are needed.

Congress and the administration remain focused on the need for investments in small business, with little or no attention to the need for investment in the nonprofit community to spur our economy and job growth. For example, President Obama recently signed into law the Small Business Act that provides a community banking loan fund that is designed to increase loans to small businesses and although that bill does not expressly exclude nonprofits from receiving loans through that provision, it does not mention nonprofits other than as possible sources of loans and assistance to small business.

**Support for and Engagement in Advocacy:** Much has been written about the importance of engagement in policy advocacy, voter education, and voter registration by nonprofit organizations and the need for greater philanthropic support of such activities. Current laws restricting the extent to which foundations can support such activities and the levels at which 501(c)(3) nonprofits can engage in advocacy have created apprehension and resistance to this work by the boards, staff, and donors to nonprofits. Widespread perceptions by members of Congress and their staff that nonprofits should not engage in lobbying and advocacy have been reinforced by recent highly-publicized investigations of ACORN and the prosecution of Jack Abramoff, who utilized some nonprofit organizations to carry out improper lobbying activities. Congress and the administration continue to impose restrictions on the advocacy activities that nonprofits that receive government funding may engage in with private funding (e.g., AOSI v. USAID case involving the requirement that recipients of funds under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 adopt an organization-wide policy opposing "sex work" while they work to stop the spread of AIDs), and lobbyists for nonprofit organizations are subject to the same harsh restrictions on work in the administration and conversations with executive branch officials as lobbyists for for-profit interests. These battles,

and the desire by the nonprofit and philanthropic community to mount pro-active efforts to increase opportunities for engagement in and support of advocacy efforts by nonprofits and foundations, will require greater data and analysis about the extent to which nonprofits and foundations currently engage in such activities and the obstacles they encounter that inhibit greater engagement.

**Defining Charity and the New Hybrid Organizations:** The health care reform law enacted earlier this year includes some changes in the requirements for nonprofit hospitals to retain their tax-exempt status and calls for states to create new “insurance exchanges” that may take the form of a government agency or nonprofit entity. These new exchanges will be involved in commercial activity and complex financial transactions more commonly associated with for-profit businesses. At the same time, there has been an increase in new entities that represent hybrids of for-profit businesses to attract private investors and nonprofit organizations that work to achieve charitable purposes. These developments, along with other changes in the requirements credit unions must meet to receive and retain tax-exempt status, are likely to lead to continuing examinations and possible changes in the rules and definitions for tax-exempt organizations eligible to receive tax-deductible contributions, and the possible creation of new categories of exempt organizations.

**Government Support for Capacity Building:** Executive branch agencies of the federal government offer a number of different programs to build the capacity of their grantees, yet little is known about the nature of and the dollars allocated to such programs, nor does there appear to be much coordination among these efforts between the various federal agencies that operate them. More important, there is little research to support advocacy efforts to increase government support of such programs based on the success of these programs and how they have contributed to the effectiveness of the services offered by the nonprofits participating in such programs.

**Getting the Right Information in the Right Form at the Right Time:**<sup>1</sup> In an excellent analysis, Klaus von Grebmer notes that policy research will only accomplish its goals if the results of the research are communicated in a timely, clear, and succinct manner to policy makers and those who influence them. Research results are often published in academic journals in a manner that is unread and impenetrable for policy advocates and busy elected officials and their staff. As we move forward with the research agenda we will be discussing in this symposium, I hope we will give some attention to ways that researchers could work more closely with communications specialists and policy advocates to insure that the results of their work reach both elected officials and the community of policy advocates who can utilize those results to make more informed policy decisions. Grebmer argues that success in turning policy research into policy decisions requires translating clear, current data into brief fact sheets and reports that are accessible—in form and content—to policy advocates to deliver to policy makers at the appropriate time and manner based on the policy maker’s background, perspective, and political views.

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<sup>1</sup> This phrase is drawn from a paper by Klaus von Grebmer, “Converting Policy Research into Policy Decisions: The Role of Communications and the Media” released by the International Food Policy Research Institute. A version of this paper was published in *Economic Reforms and Food Security in South Asia: The Role of Trade and Technology*, S.C. Babu and A. Gulati, editors. The Haworth Press, Binghamton, NY, 2005.

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*Papers from Session 3*  
**“The View from the State Level”**

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**State Level Issues and Challenges Facing the Nonprofit Sector**

Deborah A. Auger

The charge for this working paper was to examine the present state of state public policies (administrative and legislative) and ways they support or inhibit the vitality of the nonprofit sector; to gauge current strengths that could be built upon, and critical weaknesses that need to be addressed. Also to reflect upon and highlight what we need to understand but currently don't—to point out where research could illuminate understanding as a means to ensure a healthy future for the nonprofit sector.

This session centers on conditions and issues at the state level. And it is a modern day truth that the state level has perhaps greatest importance in terms of “on the ground” street-level impacts on nonprofits. First, the longstanding trend toward devolution of public policy from the national to state government level has meant that states are now the central site where key discretionary choices about content of U.S. social services, health, and environmental policy are made. Second, as a consequence of partisan gridlock at the national level, states have become the new locus of responsibility for contending with emergent domestic policy issues, like immigrant services, elder home care, etc. And third, it is at the state level that the joint administrative service delivery relationship between nonprofits and state government is most deeply and irreversibly (in at least the near term) intertwined.

My argument is that future of nonprofit sector (or at least its most substantial and essential “charitable services” part) will rise or fall on our ability to identify and coax forward a set of policies—and more fundamentally *a new relationship* with the state government—in which nonprofits serve both as fully enfranchised administrative partners, and empowered, independent, politically-effective policy forces, who are afforded the respect and understanding of state officials that they merit. Following are priority areas in need of attention and action:

**Priority I. Develop and Secure Adoption of New Partnership Models for the State-Nonprofit Working Relationship; including Reforms in Administrative Policies Governing Service Contracting, New Sector-Spanning Organizational Structures, and State Adherence to Mutual Accountability-Centered Standards of Practice**

This item, along with the others espoused in this working paper, stems from findings of the Delaware Forward Together Project—a multiyear Research/Action initiative initially funded by the Jessie Ball duPont Fund. The project involved in depth research and cross-sector dialogues designed to explore and help reduce sources of tension in the working relationship between the state's two major human services agencies and the state's nonprofit human service providers.

Arguments for the Need for New Partnership Paradigms are premised on the following project findings:

- a deep and deepening mutual interdependence among state and nonprofit agencies, which is unlikely to be reversed in coming years. In Delaware, more than 38% of the operating budget of our state “Children’s Department” funds was spent on contracted services to smaller (e.g. non-hospital or university-based ) nonprofit entities; in our larger state Department of Health and Social Services the figure was 56%. On the nonprofit side, more than a quarter of the operating revenues of non-hospital, non-university human service nonprofits came from state government sources, and the number and diversity of state contracts nonprofits held was continuing to grow. State agencies are adding more and more new service contract streams. Asked what would happen if nonprofits were unwilling or unable to provide these services, 46% of state respondents indicated they were unwilling or unable to bring these services back “in house”.
- though often unacknowledged, nonprofits are now de-facto financial cosponsors of state public human services, whose support is now critical to their continuation. In Delaware, nonprofits are believed to bring to the table approximately 25% of the funding support for the state programs in which they serve as contract providers— via state-imposed matching requirements, conscious state “under-compensation” for delivered services, state contracting policies disallowing nonprofit administrative expenditures, etc. These policies are driven in part by a shocking lack of understanding on the part of state agencies about their nonprofit service partners. For example, many high tier state actors interviewed told us they knew that they were not covering nonprofits’ full cost of services in their contracts, but that they weren’t particularly concerned because “nonprofits can readily go out and get grants from local foundations to fill in the gap”.
- despite the fact nonprofits are helping to financially sustain critical state services, nonprofits are closed out of critical policy discussions about future service planning (cutbacks or expansion of services), have no real role in advising or providing feedback on administrative mechanisms and processes used for joint service arrangements (including key technology choices that impact nonprofit staffing and financial outlays), and no input on the “street level” validity, reasonableness, and costs associated with state agency-elected performance measures on which new “performance-payment” systems are based.

Findings from Delaware’s Forward Together Project have helped lead to a broader soon-to-be released national study by the Urban Institute’s Center on Nonprofits and Philanthropy and the National Council of Nonprofits (NCN), which finds that things have gone from bad to worse. State administrative policies and practices have moved from paternalistic to oppressive to exploitive. Delayed contract processing, months-long lags in payments for services rendered, and load-shedding are now commonplace, putting nonprofit service providers at financial risk.

So if this is the current state of affairs, what remedies are called for and what might an alternative look like? How do we change the current administrative policies governing the government-nonprofit human service framework at the state level? I'd contend we currently haven't fully developed these models, and research should help to gather "what works" from pockets of field practice where reforms are being experimented with. But aside from that, there are steps that can and should be taken. Devise New Practice Models that eradicate exploitation, foster nonprofit empowerment, and strengthen common ground, for example:

**1) Replace "race to the bottom," low-bid-driven, arms-length, market-style contracting policies with new more flexible "collaborative contracting" forms, that acknowledge a more equal partnership.** Some partnership-oriented shifts in contracting practices are currently underway that should be explored for their potentials (e.g. contracting changes being advanced by the Bloomberg administration in New York City; David Van Slyke's work on relational/stewardship contracting; some of e-grant partnerships in Michigan and elsewhere; initiatives underway in Delaware, and Hennepin County, Minnesota). In some states this may involve campaigns to modify current state procurement laws.

**2) Secure Crafting and State-by-State adoption of new State-Nonprofit Partnership Compacts or "Rules of Engagement".** These compacts take the form of agreed upon documents that specify fair and open operating principles or ground-rules for state-nonprofit joint service arrangements. This is in the same vein as the national Voluntary Sector Compact Initiative established in the U.K., and similar subnational efforts now being cultivated in France. In the U.S., Delaware is following in the footsteps of the Illinois Donors Forum in establishing and promoting a recommended set of Partnership Principles, that produce mutual accountability by setting fair and ethical standards of practice for both sides.

**3) Promote New Mechanisms Institutionalizing Nonprofit Voice in High Tier State Administrative/Policy Forums.** Of potentially greatest long-term value (but more challenging among the options) is seeking establishment of 50 new nonprofit liaison appointments at the gubernatorial level in each state, in order to provide a nonprofit "voice at the table" when critical cabinet-level choices that impact the sector are made and vetted. Other noteworthy mechanisms involve creation of statewide cross-sector human service planning councils to offer a forum for exchange on central issues in the human services relationship, and to contend with "hot-button" issues, especially around service shifts and cutback planning. These planning councils can reduce hierarchical presumptions on the part of state agencies and provide a greater sense of peer-to-peer partnership. Their efforts hold potential to produce more orderly and less abrupt and damaging transitions for nonprofits, as state government copes with fiscal uncertainties.

## **Priority II. Urgently Bolster and Embolden State-Level Nonprofit Public Policy/Advocacy Capacities**

Much of the direct public policy/advocacy work of the nonprofit sector has taken place either at local level (where dynamics of the policy process are more readily understood, and political actors seem more approachable), or at national level, where large national nonprofits have informed and mobilized local affiliates to exercise their policy muscle. But nonprofits have historically

had a far weaker presence at the state level, (though NCN has been diligently working to reverse that). State capitals are often located distant from major metropolitan areas where nonprofit presence is strongest. Coupled with less detailed media coverage, state legislative actors then seem more remote and invisible to nonprofit staff and boards.

Yet the state level is precisely where many of the most critical future policy decisions impacting the sector's activities, opportunities, and missions will be made. States hold discretion over key facets of major federal programs, and maintain significant control over key housing, planning, employment, and quality of life issues. But adding even greater immediacy to the need for bold and effective nonprofit public policy skills is the impending national and state legislative redistricting decisions that will be rendered by state policy makers over the next 12-18 months.

These critical policy decisions will not just have short term impacts, but will irrevocably shape national and state public policy making for the next decade and perhaps beyond. Add to this the fact that corporate, banking and real estate interests have long dominated state politics. And, if current experience at the national level is any indication, the new devastating impacts of the Citizens United ruling promise to have the effect of further tilting the state-level playing fields in ways that inflict long term disadvantage on the interests of the nonprofit sector and those they serve.

This is NOT a matter of limited numbers. Given that we have 1.5 million nonprofits according to the Urban Institute's most recent 2010 report, and given the scope of associated staff, board, volunteers, and clients who should be able to rally to nonprofits' cause, we should wield A LOT more political clout than we do. While recent years have seen a small rise in 501(c)(3) and private foundation interest in the topic, we are still far from feeling the might of our numbers.

The nonprofit sector has been hampered by confusing state and national lobbying regulations, misperceptions of nonprofit board members (who still tell me in nonprofit management trainings that nonprofit lobbying is illegal), and unenlightened grantmaker attitudes that dissuade nonprofits from undertaking important policy work. (See Bass, Arons, et.al. *Seen But Not Heard*, 2007; Salamon and Gellar, "Nonprofit America: A Force for Democracy," 2008). These are now coupled with tremendous ground-level political disillusionment, cynicism, and hopelessness in the sector.

What needs to be done?

**1) First, stave off emerging state or local regulatory restrictions on advocacy and lobbying that would have a further chilling effect on public policy work of small and midsized nonprofits** (e.g., a proposed Los Angeles municipal lobbying ordinance would have required any nonprofit staff member who had as little as five contacts with local officials in one year to register publicly as a lobbyist); as resources allow, seek simplification and standardization of the current patchwork of lobbying and advocacy regulations that confuse and hinder nonprofit lobbying efforts.

**2) Escalate Foundation commitment and financial support for advocacy roles of their grantees.** A 2008 study by Lester Salamon found lack of resources and foundation disapproval of grantee advocacy to be two major barriers to nonprofit public policy engagement. In this environment, I would contend, foundations should not just *avoid discouraging* nonprofit advocacy work, but should be *proactively mandating public policy capacity building* and creation of action plans for all their grantees. While recent progress has been made in advancing foundation awareness and activism on the nonprofit advocacy front, far more needs to be done. (For one recent attempt to remedy foundation aversion to advocacy see CLPI and the Council on Foundations “Toolkit for Community Foundations,” 2010.)

**3) Launch a multilayered wholesale state-by-state campaign to advance nonprofit public policy engagement;** a kind of Marshall Plan to grow nonprofit skills, create permanent institutional capacities, and embed commitment to public policy into the day-to-day work of nonprofits. Our historical pattern of using “one shot,” limited-impact advocacy training is no longer adequate to the challenges the sector faces. We need instead major investment in more sustained, cumulative, and mutually-reinforcing, multiphase “public policy capacity-development” initiatives; ones that provide nonprofits with appropriate training, but couple it with ongoing “coaching” and technical support, toolkits for use by boards and volunteers, and development of nonprofit-to-nonprofit peer mentoring systems. The Center for Lobbying in the Public Interest, with the help of the Michigan Council of Nonprofits’ former state policy director Erin Skene, has begun to craft what such a multifaceted effort might look like.

**4) Ensure that every major nonprofit management training program, and every major university nonprofit affairs curriculum, incorporates nonprofit public policy engagement as a part of its core instructional program;** this means development of effective new advocacy curricula, compelling teaching cases, and role-playing/competency-development exercises that demystify advocacy and bring participants face-to-face with elected officials. This will go a long way to ensuring that nonprofit leaders fully understand the democratic roles and responsibilities of nonprofit entities, and how they can be carried out effectively.

**Priority III. Build Essential State-Level Knowledge About How Fiscal Crisis-Driven State Budgetary Choices Are Impacting and Reshaping the Nonprofit Sector; Assemble Data that Informs State Budgetary and Fiscal Policy Choices by Advancing Awareness of Nonprofits’ Role and Import within that State**

Bludgeoned by the national economic meltdown, state governments in all 50 states are now collectively facing a protracted state budget crisis virtually unprecedented in severity and scope. Having already closed a cumulative \$174.1 billion budget gap in their FY 2010 budgets, comparable-sized state budget gaps will be layered on top of that for at least FY2011 and FY2012. And while economists assert the Great Recession has ended, the state fiscal crisis is projected to worsen, as federal stimulus funds that have masked the depth of the state budget shortfalls dry up. According to National Governor’s Association, even under positive economic scenarios, deferred infrastructure and state pension fund investments, along with escalating demands on state services, mean that states’ budget conditions are not expected to recover to pre-crisis levels until near 2022. It’s a bleak picture and one of enormous consequence to nonprofits.

Capturing real-time knowledge and understandings about the consequences of budgetary choices being rendered by state policy makers is of ***immediate and pragmatic importance for the health and vitality of nonprofits***, in that state policy makers' chosen mix of budget cuts and new tax revenues will have varied but direct and immediate impacts on nonprofits' fiscal health and activities. Nonprofits involved in state contracting and partnership arrangements may face sudden loss of contract streams, or find themselves pressed to pick up essential programs and services state policy makers opt to cut; nonprofits may be increasingly subjected to the subtle but fiscally harmful shifts in administrative practices detailed in this paper's opening sections, like deeper underfunding of nonprofit contract costs, delayed payments, imposition of ill-tested performance payment systems, or state failure to pay for nonprofit services rendered.

Moreover, ***all nonprofits will be significantly impacted*** in some way by wrenching state budget choices, even those who receive no direct funding from government. Tax base shifts and new state revenue streams can alter any nonprofit's donative income flows. Nonprofits may themselves face new tax or tax-like fees imposed by state and local government (e.g., Baltimore's nonprofit "energy tax;" "streetlight fees" proposed in Minneapolis, PILOTs initially sought in Pittsburgh, proposals for rolling back nonprofit sales tax exemption in Kansas).

Further, pressures placed on the state's grantmakers by key state governmental actors may end up redirecting philanthropic resources toward support of governmentally-driven initiatives (like the U.S. Department of Education's "Race to the Top" Grant Initiative) or state economic redevelopment, at the expense of traditional philanthropic priorities. These changes leave serious gaps in our knowledge base. We need to be able to identify, systematically aggregate, and assess the impacts of state budget actions on nonprofits, and put that data into the hands of state policy makers, nonprofits, and their stakeholders.

But I would argue that the impacts resulting from state policy makers budget choices are, in another way, of ***even larger and more compelling long term consequence for the nonprofit sector***. We are in the midst of a historic transition in state government. The state government that emerges in the aftermath of the decade-long state financial crisis will look very different from the state government that existed when we entered it. Given intimate influences across the sector border, the nonprofit sector that emerges in the aftermath of the state financial crisis will look very different from the nonprofit sector as it stands today. The accretion of small individual changes made year to year, state by state, budget line by budget line, along with nonprofit responses to those changes, will serve to restructure the nation's nonprofit sector in ways we cannot yet begin to fully comprehend. And yet the future strength and vitality of the nonprofit sector hinge on our ability to anticipate those changes and the new challenges they represent.

What does this suggest we need to do?

**1) Establish and Sustain a MultiState, MultiYear Research Initiative to Track Impacts of the State Budget Crisis on Nonprofits—An Initiative Equal in Scope and Scale to the Magnitude of Changes Underway.**

This kind of research initiative, to be most productive, must have three dimensions; it must:

- **Track Changes and Impacts on a State-by-State Basis**—we must fill our current information gap by providing timely, direct, nonprofit-focused, state-by-state analysis, and it is imperative that we start now. This calls for rapid assembly of a decentralized national research capability, by mobilizing teams of researchers in different states who are familiar with both state government and nonprofit sectors; charging these researchers with gathering and providing systematic but real-time information on state-level developments, documenting changes, and providing analysis that gives a sense of emerging “on the ground” impacts *on nonprofit work* of the policy choices reflected in the state budgets. (There currently exist state budget tracking initiatives through the Center on Budget and Policy Priorities and other national organizations, but these are not focused exclusively on assessing in-depth nonprofit-sector impacts). The findings of the state-by-state research could and should be publicized in the form of “State Policy Briefs” directed to state nonprofit associations, state and local United Ways, state policy makers, and the public in order to help inform policy debates at the state government level.
- **Assemble a National Picture of State Budget Impacts on Nonprofits and Philanthropy**—While individual state data are important, we need to gather data of sufficient state-to-state comparability to allow us to get a handle on the breadth and complexity of the sweeping changes that are occurring around the country. This calls for a structured and coordinated cross-state research effort capable of offering valid state-by-state comparisons, and of aggregating information in a way that allows us to distill a national picture of how state policy choices are collectively reshaping the work of the sector—how state actions are altering the financial health, the organizational landscape, the aggregate activities of the nation’s nonprofit sector. We also need to be able to assemble insights that build a picture on a subsector level (how state actions are impacting arts vs. human services, vs. environmental subsectors; how they are recasting the balance among sectors); and we need to generate understanding of how state actions are reshaping state grantmakers’ philanthropic behavior and priorities.

This kind of a coordinated national effort might follow a model similar to that pursued in projects like the Assessing the New Federalism Project (conducted by the Urban Institute and the Rockefeller Center at the State University of New York at Albany), which came into being during a time of tremendous change in the shape of federal-state relations. Launching a similar effort to analyze the impacts of state retrenchment on nonprofits and philanthropy would enable us to gauge the overall well-being of the nonprofit sector, and identify where new national initiatives might be needed.

- **Employ This Knowledge to Envision the Restructured Nonprofit Sector that Will Emerge by 2022, and the Big Challenges That Lie Ahead**—The usefulness of this type of research venture is gauged not only by how it contributes to current understandings, and ongoing policy dialogues, but by how well it can help us anticipate and respond to future needs. Periodic convenings of the state “nonprofit impact research teams”

can help to collectively unearth deeper insights that would be lost in shorter term, smaller scale projects, and identify the directions of evolution in the sector in a way that helps us understand where there are enduring reconfigurations of nonprofit roles, responsibilities, and relationships. This kind of long-term, large scope initiative can help us not only pinpoint the big changes the sector is experiencing, but also envision the contours of the nonprofit sector of the future, anticipate its challenges, and prepare responses for the period ahead.

## **2) Supply State Policy Makers with Pertinent Readily-Understood Data on Their State's Nonprofit Sector and Its Contributions as a Backdrop to Policy Choices**

Multifaceted research of this type will prove most useful in an immediate and pragmatic sense, if it is supplemented by data provision that educates state legislators/governors in ways that help them understand what's at stake – help them anticipate the consequences of their choices. In my experience, while state legislators might know nonprofits in their district and value them individually (especially at election time), they are relatively uninformed about the overall importance of their state's nonprofit sector, and of its role in the state's economy. Legislators often labor under misconceptions about nonprofits' operations and responsibilities, and about the sector's philanthropic institutions. We would do well then to supply state policy makers with studies that help educate them more fully on these counts. One critical example would include the value of production of state nonprofit sector economic impact studies, that help state legislators understand how a dollar spent in the nonprofit sector is amplified in the state's economy, and how cuts in nonprofit support reverberate in a similar but negative way. The business community provides this kind of information to state legislators all the time; we need to do so in the nonprofit sector as well. Another example would be state-level reports that could respond to the widespread legislative perception that in the face of state budget cuts, philanthropy can fill the void. It would be useful to have individual state data assembled in ways that illustrate what the current philanthropic load is and might be under different economic conditions, and that demonstrates how philanthropy (as it is currently structured) simply cannot readily replace lost tax dollars. In 1996, the Twentieth Century Fund supported a report entitled "What Charity Can and Cannot Do," in the face of that period's governmental challenges. Similar reports might form a useful portfolio of knowledge needed to educate state legislators today.

## Questions We Need Answered About the Nonprofit Sector

Kyle Caldwell

### The Issue

Nonprofits, while a vital and active component of a healthy democracy and vibrant economy are nonetheless hurting—perhaps past the breaking point. How will nonprofits survive, maintain our social safety net, and hold us true to our values in a democracy while navigating this new economic maelstrom? The answer may rest in our ability to better understand where nonprofits need to go in the future, how they will transform, and what new ways of doing business will be needed to survive and thrive. For the sector to get to those answers, we will need more information on how nonprofits currently work and their impact.

### Background (What do ya' know?)

Our nation's nonprofit sector is vital to our future as a democracy. Nonprofits, especially 501(c)3 charities, are providing some of the most vital services our communities need—health care, housing, food assistance, education, environmental preservation, elderly care, early childhood care, civic engagement, and so much more. Nonprofits serve as the conscience for our democracy. Nonprofits advocate for the rights of those unable to express themselves. Nonprofits call for openness and transparency in our government, and speak to power when unjust laws and policies are foisted upon our citizenry.

While essential to maintaining the integrity of our democracy, nonprofits are also economic engines. In a state where 85% make annual contributions to charities and over 50% of the adult population volunteer, Michigan is a highly philanthropic state (Michigan State University Institute for Public Policy and Social Research, 2009). The nonprofit sector is a major employer where one in ten workers were employed by a nonprofit in 2008. The state's nonprofit sector generated \$108 billion in annual overall economic activity (Public Sector Consultants, 2009). What's more, in the face of the greatest recession since World War II, Michigan's nonprofit sector was one of the few growing elements in the state's economy (Public Sector Consultants, 2010), with 2.69 percent job growth and 14.7 percent increase in wages.

While nonprofits are vital, they are also struggling to meet their missions. From the beginning of the nation's recession (although Michigan has been in some form of economic downturn since 2002), Michigan nonprofits have struggled to meet the escalating demand for services while cutting costs to keep in line with declining revenues.

In 2008, some 300 Michigan nonprofits were surveyed to determine the critical issues they faced. Over 70% reported an increase in demand for their services, and 94% of those reported that the change was due to the economy. What's more, 80% expected the rate of need to rise. One important concern expressed by an overwhelming majority (96%) was the belief that demand for core human services would grow over the next year while over half expected financial and in-kind resources to decline (Johnson Center at Grand Valley State University, 2008).

There are other alarming trends. Nonprofits in Michigan are finding that delays in government payments are causing a crisis of cash flows and long-term financial organizational instability. Some reported delays in government reimbursements lasting as long as 90 days. Especially hard hit were nonprofits in the human services subsector (Johnson Center at Grand Valley State University, 2009). Local and state governmental bodies across the country are looking to local charities for tax revenue to help balance large structural budget deficits. In some cases, government entities are calling for the relaxing or outright repeal of nonprofit charitable status for nonprofits (National Council of Nonprofits, 2010).

### **Basis for Our New Questions (Not much, you?)**

It is against this backdrop of economic pressures nonprofits are working to find response strategies and new ways of doing business to not grow, but merely to survive! Unfortunately, not enough is known globally about how nonprofits operate, what impact they have as a sector, and the basic management needs they have in common that might help nonprofits effectively adapt. Some topics around which we need to know much more include the following.

#### Nonprofit Effectiveness

It is unclear how the nonprofit financial model(s) work in communities and how they impact local communities and economies. At the height of the recession (considered by some to have ended nearly a year ago [Mantell, 2010]), nonprofits were experiencing overwhelming financial difficulty while foundations and corporate giving programs were declining. This negatively impacted the ability of nonprofits to provide services not only because of declining revenues from government, foundations, corporations, and individuals, but also due to the inability of charities to leverage capital markets for credit (Lester M. Salamon, 2009).

Why was access to credit so difficult? Anecdotal accounts in Michigan, especially in the three counties surrounding Detroit, point toward a trend of “red zoning” by the banks—labeling the businesses in the communities as too risky for loans, bonds, and credit. On the other hand, nonprofits are governed to be risk adverse and in some cases, to loathe both short- and long-term debt. **Overall, there is too much that we don’t know about the overall financial business models of nonprofits and the external pressures on their ability to sustain themselves.** This impedes the sector’s ability to develop smart and strategic nonprofit capacity building initiatives to help nonprofits adapt and it impairs the sector’s ability to engage lending institutions to free up credit and generally explore investment opportunities.

Management of a nonprofit is, in many ways, as complicated as managing any for-profit business. What’s more, the aforementioned financial constraints force nonprofits to run leaner operations in terms of human and financial capital. Nonprofit chief executives are often required to know and understand many of the rules and regulations, and perform several management functions that would normally be spread across several positions with deeper expertise than those operating in for-profit or larger organizations. In addition, because of their charitable status, 501(c)3 nonprofits have the added burden of being experts in their state (Michigan Nonprofit Association, 2010) and federal regulatory boundaries and accountabilities in order to maintain

their tax exemption. **We need to better understand and recognize the complicated nature of nonprofit management and the skills, knowledge, and expertise necessary for leaders to run effective nonprofits.**

Many nonprofits partner with local, state, and federal governmental bodies to provide vital services to communities. Depending who you ask, government partnerships cover only 70 to 60 cents for every dollar spent to provide contracted services. This creates an odd burden on nonprofits. While in the past, philanthropy and charities would serve as the laboratories that government would later replicate and scale, today the opposite seems to be true. Nonprofits are expected to find matching funds to secure public funding, then forced to scale back their reliance on public funding over time—the periods of which seem to be shortening. We need to better understand this dynamic and determine if it is the most effective way to address community challenges. **Do we know how much money is granted to nonprofits by government and how much other money those public funds leverage from organized philanthropy and individual donors? Is there the capacity for nonprofits to scale what government incubates?**

If we believe that Michigan's nonprofit sector is not unique to that of other states with regard to economic impact, then we can generally infer that other states' nonprofits serve as economic engines and major employers. The fact that we don't know if that is true is a major gap in our knowledge. **We must understand the economic impact of the nonprofit sector overall.** A major opportunity to leverage the capacities of the nonprofit sector as a tool to re-employ those currently out of the workforce may pass us by. We need to assess data on nonprofit employment so that we can make recommendations on how to recruit and retain talent and get people back to work.

### Nonprofit Impact

The nonprofit sector is, to put it mildly, diverse. In Michigan alone there are more than 47,000 nonprofit organizations including all-volunteer charities, foundations, service organizations, trade associations, and the list goes on. Within those types of nonprofit legal structures, there are a wide variety of “subsector” organizations focusing on a myriad of issues including the arts, culture, environmental preservation, public safety, human services, education, economic development, government accountability, etc. This diversity of structure and purpose make tracking and aggregating results difficult. **Nonetheless, we need to collect and publish data on the impact of nonprofits in ways that clearly explain the unique role(s) nonprofits play in our communities.**

For-profit organizations have profits, sales, margins, and market share to explain and track their successes. Nonprofits share some of those elements, but also have dissimilar goals driven by mission. Therefore, while a nonprofit can have business qualities, nonprofits are not just businesses—they are mission institutions. The absence of a tracking, measuring, and communication system for mission-driven nonprofits impedes our ability to express value in deep, meaningful ways. What's more, without this common knowledge, lawmakers are continually misunderstanding the core purposes for charitable status. This is borne out in the recent actions of the legislatures of New York, Hawaii, and local government officials in Boston,

where measures to restrict charitable giving and impose new taxes on nonprofits have been introduced to help balance state budget deficits.

Nonprofits also serve as the conscience for our communities. National organizations like Common Cause, OMB Watch and Citizens Against Government Waste advocate for the work of government to be open, transparent, and accountable.

Local nonprofits often serve the same role by advocating for their missions and engaging their lawmakers to ensure they are informed and accountable. This important “watch dog” role is not tracked, measured, nor communicated effectively across the nonprofit sector. While few would discount the vital role of ensuring integrity in a vibrant democracy, there is insufficient public understanding of this role. New case law like *Citizens United v. Federal Election Commission* may radically change the landscape for nonprofits advocating and lobbying government. **We need to understand the role and impact of nonprofits in advocacy and lobbying and the impact of laws and regulations that constrain those roles.** This could also include understanding the role of nonprofits in other forms of civic engagement including voting, U.S. Census, and redistricting.

### Understanding Local Nonprofits

The nonprofit sector has completed a tremendous amount of work to define the standards by which effective nonprofit organizations should operate. At the national level, Independent Sector has developed and published “The Principles Workbook: Steering Your Board Toward Good Governance and Ethical Practice.” In Michigan, several tools are offered local nonprofits to guide their management success including “Michigan Nonprofit Manual: Principles & Practices for Nonprofit Excellence in Michigan,” and “Advocacy Handbook.” These tools and materials are used all across the state to provide nonprofit capacity services.

Yet, there is no common record that tracks how (or even if) nonprofits are using the services they are provided, nor is there a common database of the level of nonprofit effectiveness based on their capacity building efforts. One might compare the records of capacity building to an uninsured person without a medical record. This person would have no record of their physical condition to know, other than intuitively, their health or danger signs to watch for during their life. Nonprofits could suffer some of the same consequences as those of a person without a medical record – poor performance, high risk behaviors, and inadequate preventive measures. **Local nonprofits need a system that helps them understand their nonprofit management strengths, weaknesses, and potential preventive measures.**

Some local nonprofits are also less visible in their communities than they need to be in order to survive. This goes beyond marketing and communication. Local nonprofits change the lives of those who cannot always provide and advocate for themselves, but that work is sometimes not communicated in ways that empower local communities to understand the full value of those nonprofits nor how those nonprofits might help lead important community change. **Without impact data collection of the work of local nonprofits that is broad, comprehensive, clear, and widely disseminated, communities will fail to realize one of their most valuable assets.**

## Summary

Nonprofits play vital roles in communities all across America and partner with other sectors, including government, to address local challenges. In these financially difficult times, nonprofits will need to transform and adapt to become even more effective, engaged, understood, and relevant if they are to survive as well as thrive. As a sector we must understand those roles, partnerships, and transforming roles, and how they work and don't work to serve the common good.

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*Papers from Session 4*  
**“The View from the Local Level”**

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**Local Government and Nonprofits**

Jon Pratt

Longtime Speaker of the U.S. House “Tip” O’Neill once declared that “All politics is local.” One could also say that all nonprofits are local somewhere, and that most nonprofit organizations have a local focus and are located and conduct their activities in at least one local government jurisdiction.

With 3,143 counties and parishes in the U.S., 18,443 city, town, and village governments, and 15,014 school districts, there is plenty of room for an assortment of relationships with nonprofits. These relationships run the gamut from cooperative to competitive and adversarial, on any number of activity areas and legal issues. **This overview looks at five interactions that give rise to policy issues and poses some beginning questions around:**

- collaboration
- funding
- health, safety, and law enforcement
- public decision making
- real property

**1. Collaboration**

A good starting point to understand relations between nonprofits and local governments is to look at the ways they work together and support common goals, making significant contributions to a community’s quality of life.

Local nonprofits constantly engage the same local residents as city and county governments. They frequently provide services or activities that local government can’t or have chosen not to, yet local governments still have a stake in their success. The extent of nonprofit-local government cooperation ranges on a broad continuum from close coordination, colocation, and commingled funds to parallel and autonomous activity in nearby spaces, such as:

- Nonprofit organized youth sports leagues in public parks
- Mentoring and club activities in public schools
- Arts and neighborhood festivals on public streets
- Concerts and Shakespeare performances in public parks
- Economic development promotion and small business counseling
- River and park cleanups

- Nonprofit domestic violence counselors located in city and county court houses
- Committees and task forces examining local problems or engaged in long range community planning

Most of these interactions are the outgrowth of an unsystematic, a la carte approach, with the partners sometimes not realizing the extent or the benefits of their symbiotic relationship. Baltimore is one of the few cities that has included consideration of nonprofit organizations as employers and economic generators in its economic development planning. City cultural affairs offices are most likely to tout local arts organizations, while the broad scope of other interorganizational relationships is less visible and understood. A useful mapping project would be to set out the density and variety of this constellation of relationships for a local community, or to compare and contrast this aspect of social capital across different communities.

- What are the factors that have allowed some communities to maximize the benefits of nonprofit-local government cooperation?
- What local government policies inhibit partnerships with nonprofits?

An example in this last category would be increasing indemnification requirements by local governments, requiring nonprofits that contract with a city or use city property to provide proof of insurance. While a \$1 million liability policy has been a standard requirement for years, Minnesota cities increased the requirement in stages to \$2 million, and Hennepin County is requiring that social service contractors buy separate policies for professional liability and errors and omissions—even for services not defined as a profession.

## 2. Funding

In an earlier time, city governments in the U.S. were the most likely unit of government to have a direct funding relationship with nonprofits. In the late 1800s, more than half of New York City's social welfare spending was delivered through charitable organizations, as the city coped with a huge influx of immigrants. By 2010 the relative role for most city governments diminished to a small share of the total flow of government dollars to nonprofits. Still, most cities pass along portions of federal funds from Community Development Block Grants, HUD grants, and providing some type of support for major cultural institutions. In 10 states, it is county governments that serve as the major funders of nonprofits, not the state directly, based on a state-authorized, but county-administered model for social service delivery.

- What are the differences in nonprofit contracting between state- and county-administered social services?
- What are the advantages and disadvantages of highly competitive contract relationships versus long-term partnerships?

A common question is whether it is the job of local government to support nonprofits, and whether they are even authorized to do so. Since local governments are authorized and structured according to state statutes, they are usually considered to only have the powers specifically delegated to them by their state government.

One attempt to clarify this authority came in Minnesota after the State Auditor advised a rural city not to contribute to a domestic violence shelter because no state statute specifically authorized this (unlike statutory references to 4H, Boy Scouts and Girl Scouts). In 2008 the Minnesota House and Senate passed the following legislative language:

*“A political subdivision of the state may make monetary or in-kind grants to any nonprofit organization qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if the grant is for a public purpose and is to support an educational, social service, health, or other charitable purpose.”*

Despite passing both houses nearly unanimously, the language was vetoed by Governor Tim Pawlenty, who frequently sparred with nonprofits, when he stated that:

*“Instead of granting local government officials the power to make charitable grants and contributions to nonprofits using taxpayer money, political subdivisions should be focusing on ways to lower property taxes. With lower property taxes and more money in their pockets, Minnesota taxpayers can decide for themselves which religious, charitable, or other nonprofit organizations they would like to support.”*

The funding relationship between local government and private citizens is complicated by the increasing use of what are sometimes called GONGOs—government organized nongovernmental organizations. One of the most popular fundraising strategies for public schools has been the formation of privately operated, nonprofit organizations established to assist public schools, with varying degrees of control by the public school authorities. Supplementary fundraising by local government officials was deemed unseemly in the Progressive Era, when local businesses felt they were being strong armed by uniformed police officers seeking voluntary contributions to the Policeman’s Ball, but the passage of time and budget constraints of the ‘80’s have eased many public qualms. School Board News noted in 1999 that “Shrinking tax revenues, budget cuts, a shift of state funds to poor districts, a fear of losing students to private schools, and parents’ rising expectations of what their children deserve are factors fueling the explosive growth of school foundations.”

Nationally, foundations are found in all types of schools and vary greatly in size, yet the average amount raised by most school foundations is only about .3% of a typical district’s budget. Now foundations and high profile donors are increasingly influential in school decision making, from Boston to Washington, D.C.. Facebook CEO Mark Zuckerberg’s \$100 million pledge to the long-troubled public schools in Newark leveraged political concessions from New Jersey’s governor and Newark’s mayor. For Washington, D.C.’s school system, foundations conditioned their pledges on keeping Chancellor Michelle A. Rhee in place. (Chancellor Rhee has now left that office).

- To what extent can private contributions displace political decision making and subvert democratic control of local government?

Another persistent question has been whether government funding of nonprofit organizations has the effect of discouraging or “crowding out” public willingness to donate to those activities. Could donors conclude that these activities are now the government’s job, so an individual’s perceived obligation is satisfied by having paid taxes? So for example, while Catholic Charities

and Salvation Army receive the majority of their funds from various government sources, this is not widely known. Like many nonprofits with government support, they emphasize the role of charitable giving and often the United Way in their communications.

To explore the “crowding out” effect on charitable giving, and to compare it to public knowledge of the extent of government funding of nonprofits, the Minnesota Council of Nonprofits began public opinion polling through the Minnesota Center for Survey Research on this question in 1997. At that time 16% responded that they would donate less to an organization which they knew received government funds, 9% would give more, and 75% said they would give the same. This result did not vary significantly by income group, education, or geographic location. Three groups that reported stronger crowding out motivations were males, republicans and renters—and these groups were also most likely to underestimate the percentage of government funding for specific organizations.

### 3. Health, Safety, and Law Enforcement

Local jurisdictions have a duty to serve and protect their residents, and carry this out in various ways that affect nonprofits, from food and traffic safety to parade permits, gambling enforcement and theft and fraud prosecutions. While most of the police and regulatory actions by local governments are administered in a general way for each person or entity in a jurisdiction, occasionally politically unpopular nonprofit organizations experience unwelcome attention and investigation, or are the targets of selective enforcement.

In a landmark cases clarifying nonprofit First Amendment rights, the suburban Chicago Village of Schaumburg adopted a municipal ordinance requiring that 75% of an organization’s revenues be expended for “charitable purposes” as a condition for a solicitation permit—a condition an environmental group with a door-to-door canvass could not meet. In *Village of Schaumburg v. Citizens for a Better Environment* (1980), the Supreme Court nullified the ordinance (and 30 similar state laws around the country that restricted charitable organizations to specific efficiency percentages) and rejected the argument that soliciting contributions was purely commercial speech, citing previous cases on canvassing by religious and charitable organizations.

While the Village of Schaumburg had an interest in protecting its citizens from fraud, its remedy was deemed an overly broad prophylactic measure. Instead, the court’s opinion suggested that making information about organizations publicly available was a preferred route. The court’s dicta urging public education spurred regulators and watch-dog groups to explore ways to better educate donors to get information about fundraising and administrative costs, eventually posting 990 information online as an accountability tool.

Applying the police power of the state to nonprofit organizations is most dramatic (and most frequently flawed) when it involves groups accused of plotting violent or antigovernment activities. Periodically throughout U.S. history, particular types of associations have been determined, rightly or wrongly, as threats to the Republic requiring active prosecution—including abolitionists, the Palmer raids of 1919-21, anti-racketeering investigations of labor unions, infiltration of the Civil Rights and anti-Vietnam War movements, White supremacists, animal rights activists, and Muslim charities after September 11th.

Some recent investigations of Muslim charities, activist and WTO, and political convention protest organizations are initiated by local law enforcement, with domestic terrorism surveillance carried out alongside state or federal agencies. Law enforcement has a very mixed track record distinguishing between lawful activities and unlawful activities by nonprofits, with very public arrests and seized computers on the front end followed sometimes years later by less public dismissals of charges and acquittals.

Charities have been accused of laundering and channeling funds for terrorism for the last 20 years, both in the U.S. and abroad. A recent report by the European Union's Financial Action Task Force on Money Laundering concluded that nonprofit organizations are "frequently" involved in terrorist financing—either as a means for direct fundraising for terrorist groups or as a cover to launder money in support of terrorism. The report, *Money Laundering Typologies*, warns charitable organizations that their foreign operations can be infiltrated by terrorists or supporters who divert the funds collected for proper purposes—often without the direct knowledge of the donors, staff, or management of the nonprofit organization itself.

High-profile indictments against nonprofits have been brought in Illinois (the Benevolence International Foundation, Chicago), Virginia (the Graduate School of Islamic Thought and Social Sciences and the International Institute of Islamic Thought, Herndon), and South Florida (the World and Islam Studies Enterprise and the Islamic Concern Project, Tampa).

U.S. nonprofits are subject to the legal presumption that they know about all of the activities of their foreign partner organizations. U.S. organizations that send funds for charitable activities in other countries are required to check the identity of their foreign partners against a list of terrorist organizations identified in Executive Order 13224 (and similar lists maintained by the U.N. and E.U.).

To help charities stay out of trouble, the U.S. Department of the Treasury issued "Voluntary Best Practices" for charities as part of its Anti-Terrorist Financing Guidelines, though many of the recommended practices will likely prove challenging to execute:

- Organizations should obtain the place and date of birth for key staff at the foreign recipient organization's principle place of business, as well as for board members and senior employees at the recipient's other locations.
- Organizations should verify that the financial institutions used by recipient organizations are not licensed in jurisdictions that lack anti-money laundering controls and oversight.
- The charity should "perform routine, on-sight (sic) audits of foreign recipient organizations whenever possible, consistent with the size of the disbursement and the cost of the audit."

- How are county and city police forces and prosecutors trained about the legal activities of nonprofit organizations?

#### 4. Public Decision Making

With such close proximity between local organizations and local government officials, it is easy for neighborhood groups and others to seek to influence decisions at the local level. While the expression "You can't fight city hall" was surely born out of frustration, it could be amended to "You can't fight city hall alone." More than any other level of government, city and school

officials get to know face-to-face the personal nature of the First Amendment’s “[R]ight of the people peacefully to assemble, and to petition the Government for a redress of Grievances.”

City managers report that they hope city council candidates have had some type of board or committee experience before they run for office so that they have participated in agenda setting, budgets, and meeting procedures—often in neighborhood organizations. It is interesting that, in larger cities, neighborhood organizations frequently take on the role of representing the neighborhood interests to the city on issues from responsiveness of city services to crime prevention—mirroring and sometimes contesting the role of elected representatives.

City funding further complicates the representation role of neighborhood groups, raising questions of autonomy and compliance. Local governments use community organizations to inform the public and seek input, but usually within spoken (and unspoken) parameters.

## 5. Real Property

### a. Tax Exemptions

The assets of public charities have grown significantly in the last two decades, and now exceed \$2.6 trillion (not including private foundations or religious congregations). Since land and buildings make up the largest part of these charitable assets, and are traditionally exempt from paying property taxes, changes in state and local property tax policy have major implications for nonprofits.

Like a nail that sticks up, the increasing real estate footprint of nonprofit organizations is attracting increased attention from tax assessors, city and county administrators, and other tax payers. What had been a low-grade, parcel-by-parcel conflict is developing into a larger struggle by local governments to protect their tax base to cover strapped city budgets. As a city council member explained last month in British Columbia, “We need a certain amount of money to run our city every year and what we don’t bring in from some properties we have to offload that onto other properties,” said Councilor Doug Macdonell of Coquitlam. “What they’re asking us to be exempt from is the same thing that everyone else pays for,” he said.

Defining what is exempt has implications for the tax bases of municipalities where a substantial portion of property is held by large nonprofit universities and hospitals, as well as by a large number of religious congregations, human services and arts organizations. While state constitutions and state statutes (along with judicial interpretations) establish what is eligible for exemption, local taxing authorities are usually in the position of administering the law, and determining which properties and uses qualify.

Evelyn Brody has thoroughly catalogued the changing definitions of charitable property tax exemption, and described how local governments have leveraged their assessing power to compel voluntary donations from nonprofit property owners, which is worth summarizing here.

In 1994 the popular mayor of Philadelphia, Ed Rendell, launched a “Voluntary Contribution Program” to seek funds from medical, cultural, and educational (universities) nonprofits in the city to help the city cope with a fiscal crisis. Philadelphia residents paid 12.3 percent of their income for local taxes in 1994, among the top 10 highest per capita and per family tax burdens in the U.S., while the assessed value of nonprofit property in the city grew from \$1.2 billion in 1963 to \$3.1 billion in 1993.

When nonprofits objected to the program’s first name, Payment-in-Lieu-of-Taxes/Services-in-Lieu-of-Taxes (PILOT/SILOT) Program, as admitting that these were taxable entities, the city changed the name to Voluntary Contribution Program. By 1995, 50 nonprofit institutions signed five-year agreements to make monetary contributions to the city and school district equal to 33 percent of the regular property tax rate, and were eligible to offset a third of this with services.

In five years the Philadelphia program generated \$28.7 million in cash and \$27.3 million in services from institutions including the American Law Institute, Episcopal Hospital, LaSalle University, and the University of Pennsylvania. In return, the city agreed not to contest the overall property tax exemption of any organization that signed the agreement.

Pennsylvania legislation and Supreme Court decisions defining “organizations of purely public charity” subsequently weakened Philadelphia’s hand in threatening tax exemptions, so the city now only collects \$600,000 per year. The city of Boston is considered to have the most successful PILOT program, initiated in 1983 (though the city has collected PILOTs since the 1930s). In 2009 the program collected \$8.4 million from educational institutions, \$5.4 million from hospitals, and \$700,000 from cultural institutions.

Apart from the definition battles over exemption, a new death by a thousand cuts is underway, not unlike airlines realizing they could charge passengers to check their bags or sit where they want. City governments are busy decoupling various city expenses from the property tax to create new fees as a means to increase revenue. Separate sewer, garbage collection, street assessments, police and fire, and most recently, street lighting fees, are separated and assessed to all property owners as a fee—whether exempt from the property tax or not.

- How are fees and assessments affecting the ability of cities to enhance their revenue from tax exempt property?

b. Zoning and property restrictions

While nonprofits are commonly seen as good neighbors and valuable contributors to local communities, when new or less popular uses are proposed, nearby landowners or an organization’s adversaries can seek to block a proposed use through a variety of stratagems, including zoning.

Nonprofit location disputes in 2010 have included:

- Planned Parenthood, Aurora, Illinois
- Church of Scientology in Sandy Springs, Georgia
- Crosspoint Inc (transitional home for people released from prison), San Antonio, Texas
- Center for Sexual Pleasure & Health, Pawtucket, Rhode Island
- Park51 (originally named Cordoba House and controversially referred to as the “Ground Zero mosque”, a planned 13-story Islamic community center and mosque to be located about two blocks from the World Trade Center site in Lower Manhattan), New York City.

In each situation local officials come under tremendous pressure to deny permits or zoning approval, or to require extra conditions—often from other organizations or newly formed citizens groups.

## Public Policy Toward Nonprofits: Local Government

Kirsten Grønbjerg

I have been asked to develop a “discussion starter” on two questions related to public policies toward nonprofits at the local level: (1) what are the most significant public policies issues and questions that nonprofits face at this level of government at this point in time? And (2) what research is needed to better understand and improve public policies at this level?

These are not easy questions to answer. In part that is because the relationship is very complex. As I show below, it involves a large and diverse set of governmental units and an even larger number of nonprofits. The relationship varies across units of local government and among jurisdictions within a given level of government. It is multidimensional, involving government spending, taxation, regulation, and policy making. It varies across fields of service. The relationship is also dynamic, as the current recession makes clear.

Nor is the influence unidirectional, with nonprofits at the receiving end of government policies. Rather, nonprofits and local government both respond to community demographic and economic conditions and both impact the communities in which they operate, while at the same time nonprofits also influence the actions and policies of local government.

The relationship between local government and nonprofits is also not well understood. It is only partially captured in the available records or observable trace elements and there has been very little systematic research on this topic. The first and so far only systematic effort dates back almost 30 years to an Urban Institute project directed by Lester Salamon, which sought to examine the impact of the Reagan budget cuts on nonprofits across 16 communities in the U.S. Perhaps equally important, the relationship between government and nonprofits in general is couched in ideological debates about the appropriate role of government in responding to social and economic needs (Grønbjerg and Salamon, 2002).

As I have thought about how to organize my arguments in this document, it is clear that there are several ways to approach these questions. I will turn to these shortly before highlighting some key public policy issues for nonprofits at the local level. Along the way I will also draw briefly on some of the broad ranging work we have been able to complete on the Indiana nonprofit sector and its community dimensions.<sup>1</sup> But first, I want to provide some context for the analysis that follows.

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<sup>1</sup> This long-term project has involved (1) compilation and occasional updates of a comprehensive database of an estimated 60,000 Indiana nonprofits of all types (charities, churches, membership associations) drawn from a variety of listings, (2) a large (2,206 respondents) comprehensive survey of all types of nonprofits with special attention to nonprofits in 12 communities around the state, (3) two nonprofit surveys (charities and arts/culture organizations) on capacity building and technical assistance needs, (4) analysis of paid nonprofit employment (employees and payroll) over time by region and industry with comparisons to private sector and government employment (modeled in part on a series of similar state reports from the Center for Civil Society Studies at Johns Hopkins University), (5) survey of Indiana residents about their face-to-face involvement with nonprofits as employees, volunteers, or attendees at meetings or events, and a (6) survey of Indiana residents about their trust in local nonprofits, local business, and each of the three levels of government. For more information, see [www.indiana.edu/~nonprof](http://www.indiana.edu/~nonprof). Selected elements of these efforts have been replicated elsewhere. Our work is complemented by research efforts at the Center on Philanthropy ([www.philanthropy.iupui.edu](http://www.philanthropy.iupui.edu)) on giving and volunteering in Indiana.

## Basic Parameters

Let me start with some basic parameters for understanding local public policies and their implications for nonprofit organizations.

The Structure of Local Government. I begin by noting some obvious, but important, facts about local government that make it very difficult to answer the questions I was asked to address. First, there is a very large number of local governments in the U.S.—the count in 2007 stood at almost 90,000 (89,476 to be exact), ranging from a high of 6,994 in Illinois to only 19 in Hawaii and 134 in Rhode Island (the next lowest).<sup>2</sup> Adjusted for population, that amounts to about three governmental units per 10,000 residents for the U.S. overall, but it ranges from a low of .15 in Hawaii (and .46 in Maryland) to more than 42 per 10,000 in North Dakota.

Second, the majority (58 percent) of these units are traditional units of local government, such as counties, municipalities, towns, townships, and school districts. These units generally have an array of responsibilities (except perhaps for school districts), are (usually) governed by elected representatives, and are likely to be of most direct concern to nonprofits.

However, the remaining 42 percent consists of a bewildering array of special single-function districts, such as library, fire, housing, community development, soil and water conservation, mosquito abatement, and more, ranging from a high of 79 percent of all units of local governments in Colorado to a low of 13 percent in Minnesota. The functions of these districts are likely to be of direct concern to nonprofits that operate in closely related service fields, but they tend to be less visible to voters because they account for relatively small budgets and positions may be appointed rather than elected. Together, these two observations mean that the structure of local governments varies enormously from one community to the next.

Community Variations in the Nonprofit Sector: Not only does the structure of local governments vary enormously from one community to the next, so does the structure of the nonprofit sector. Our analysis of county-level differences in the density of nonprofit organizations for Indiana shows that the number of nonprofits per 10,000 residents varies between a high of 79 and a low of 38 for IRS-registered nonprofits (Grønbjerg and Paarlberg, 2002) and between 121 and 59 per for all nonprofits (including also churches and those incorporated in Indiana, but not registered with the IRS).<sup>3</sup>

By way of comparison, a similar effort for a fairly typical region of Denmark shows about 150 organizations per 10,000 residents (Ibsen, 2006). However, the composition differs considerably from the pattern in the U.S. (or at least the pattern we have observed for Indiana). There are more voluntary associations in Denmark, but fewer public benefit organizations and many fewer churches (reflecting the dominance of the Danish Lutheran church, which is operated under direct state control).

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<sup>2</sup> Unless otherwise noted, information on local government comes from U.S. Bureau of the Census, 2010, tables 417 (numbers and types of units), 443 (revenues), and 444 (expenditures).

<sup>3</sup> It is important to note that other analysis in the U.S. on the density of nonprofits by region usually considers only charitable filers, which in Indiana accounts for about 10 percent of all nonprofits (although they account for the bulk of nonprofit financial resources).

Our multivariate analysis shows that the density of IRS-registered nonprofits in Indiana is negatively associated with the extent of poverty and population diversity in Indiana counties, but positively related to education and middle-aged population (both of the latter characteristics are related to high propensity to volunteer). The density lags population changes, but is otherwise positively related to having a local employment base and being small, rural communities. Unfortunately, no similar national mapping of community variations in nonprofit density is possible because of the poor state of nonprofit databases. But the findings from Indiana suggest some interesting patterns.

Our analysis of paid nonprofit employment as a percent of total paid labor force (8.2 percent in 2005) also shows major variations across Indiana counties, ranging between a low of 0.7 percent and a high of 17.3 percent (Grønbjerg, Lewis and Campbell, 2007). We have not examined which community factors account for these variations, but the presence of major nonprofit institutions, such as universities, hospitals, and the like plays a major role.

Nor have we looked systematically at the extent to which there are community variations in the role that the nonprofit sector plays in securing quality of life and counteracting economic cycles. However, at the state level, about half of all employment in health care services and 70 percent in social assistance are accounted for by the nonprofit sector and nonprofit employment continued to grow during the 2001-2002 recession and as far into the current recession as we have data (through 2008).

As should be clear by now, the ways in which local governments impact and interact with the nonprofit sector are complex and not easily summarized.

### **Arenas and Conceptual Approaches**

I turn now to how one might go about thinking about the relationship between local government and the nonprofit sector. I have explored several approaches in my own work, although mainly at the national and international level. I highlight the most relevant issues here.

Government Spending. First, consider the fact that government and nonprofits interact in four major arenas.<sup>4</sup> In the *arena of government spending*, government policies impact nonprofit organizations indirectly by affecting the need for nonprofit services, but also directly since government funding is an important source of nonprofit revenues.

Moreover, these spending patterns vary greatly across fields of service, but empirical data to document and track spending patterns are hard to come by, especially at the level of local government. I still carry the scars from making the effort for the Chicago/Cook County region in the early 1980s as part of the early Urban Institute project (directed by Lester Salamon) to examine the impact of the Reagan budget cuts on nonprofits in the U.S.

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<sup>4</sup> For a more extensive discussion of each of these arenas, see Grønbjerg and Salamon (2002).

Appendix Table 1 shows the patterns we found for the Chicago/Cook Country region for 1982 for government spending in areas of interest to nonprofits (but excluding education, fire, police, streets, sanitation, and similar expenditures). Two conclusions are obvious. First, public spending in local communities involves a complex pattern of intergovernmental transfers and trickle-down effects from other levels of government. Thus the federal government accounted for 69 percent of the \$4.1 billion in public spending tracked for this effort, but 16 percent overall was federal funding that went to state government and 10 percent went to local government. As a result, the state controlled 40 percent of all spending (including 24 percent financed from state revenues) and local government controlled 22 percent, of which only 8 percentage points represented revenues originating at the local level. Almost half (48 percent) of the spending went to nonprofit organizations and another fifth (18 percent) to for-profits, with government delivering the rest (35 percent).

Second, there are enormous variations in these patterns across fields of activities. Thus, the federal government accounted for almost all spending in the areas of housing and community development as well as employment and training, but channeled almost all of those funds through local government, with nonprofits receiving respectively 4 and 22 percent of those funds. By contrast, arts and culture spending was funded and controlled almost entirely by local government with 26 percent supporting nonprofit organizations. Health and social services showed their own distinctive patterns with more shared responsibilities among all three levels of government and much greater reliance on nonprofits (54 and 45 percent respectively).

We don't know whether and how these patterns have changed since the early 1980s or how they now vary across communities. We do know that in the early 1980s, at least, they varied considerably across the 16 communities included in the Urban Institute project.

Most efforts to understand these patterns of public funding for nonprofit organizations have developed out of market models and rely on concepts such as market and government failures<sup>5</sup> to understand why the nonprofit, for-profit, and public sectors specialize in particular types of economic goods. Related efforts have examined why and how government becomes a purchaser of nonprofit services and focus on resource dependencies and the nature of transactions costs and benefits that come into play when such purchases take place.

Taxation. Government's impact in a second arena, *taxation*, is also both direct and indirect. It is indirect when nonprofits benefit from the deductibility of charitable contributions or bequests and direct when nonprofits are exempt from paying income, sales, or property taxes on their own operations. However, deductibility of contributions, effective tax rates, and nonprofit eligibility for exemptions vary over time and among jurisdictions. These tax policies also impact nonprofits differently depending on their fields of service and operational activities (e.g., whether they own facilities). Our empirical understanding of these issues is even more limited than in the arena of government spending, although we know that tax policies by local government (mainly property, but also sales taxes) are important for many nonprofits.

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<sup>5</sup> For a discussion of three broad models for understanding the relationship between government and nonprofits, see Smith and Gronbjerg (2006).

Regulation. A third arena of government nonprofit interactions, *government regulations*, is probably more important at the state and federal level. However, local governments play an important role in determining which nonprofits are eligible for property tax-exemption, the procedures under which they secure this status, and how they may use the property to preserve the exemption. Local governments may also impose various other regulations (e.g., permits for marches or for street closings for special events) that impact nonprofits in particular. Other regulations (e.g., smoking bans, minimum wage, building permits) affect other organizations as well in those communities. If there is a comprehensive mapping of local government regulations of interest to nonprofits, I am not aware of it.

Political Agendas. Finally, nonprofits are deeply engaged in the fourth arena of broader *policies* that governments pursue. Much of this occurs as public interest nonprofits seek to counteract powerful lobbying efforts by industry and other vested interest groups (some of which are also nonprofit). But much occurs also as nonprofit advocacy organizations duke it out in the culture wars over the many value-laden issues (abortion, gun control, gay marriage, death penalty) that have come to polarize our political landscape. As Cahn and Carbone (2010) observe in *Red Families v. Blue Families: Legal Polarization and the Creation of Culture*, these wars are framed by state differences in legal rules. However, they play themselves out in local communities and communities differ in how the rules impact them depending on their demographic, educational, and economic composition. These different impacts in turn are likely to serve as mobilizing forces for local governments as well as local nonprofits.

For these types of interactions, conceptual models related to social capital and civic engagement come into play. There is a rich literature on who is involved in a variety of collective and civic activities, how such involvements come about or how they change over time (see Putnam and related research). Some of these efforts equate social capital with nonprofit involvement, but there is also a growing literature on the role that nonprofits play in fostering civic engagement and social capital. For example, Sampson et al. (2005) find major shifts in types of collective action over time and that rates of such actions vary across local communities. More importantly, they find that community differences in collective action are not a function of traditional social capital indicators, such as social ties, neighborly exchanges, or group membership, but are best predicted by the density of nonprofit organizations.

The relationship between local government and nonprofits in this fourth arena extends a good deal beyond questions of how open government may be to the policy positions of particular advocacy groups or whether nonprofits promote civic engagement. There are, for example, many service fields where one would like to see careful planning and close collaboration between local government and community organizations. These include emergency and disaster response systems, human service delivery networks, policing, and neighborhood safety. Thus community responses to 911 and Hurricane Katrina demonstrated great variations in how local response systems work (or don't work) at the local level.

There is also considerable variation in non-financial relationships between local government officials and nonprofit organizations, reflecting personal characteristics of the individuals involved, the strengths of personal networks, and the organizational capacities of both local

nonprofit organizations and units of local government (see Gazley, 2008; Agranoff and McGuire, 2003). We hope shortly to have some survey data on the extent to which local government officials in Indiana are involved with nonprofits in their communities as volunteers, board members, and the like, and how they view the relationship between local government and the nonprofit sector.<sup>6</sup> We don't know much about these types of relationships.

We also don't have very good models for how routine service systems operate most effectively, despite a great deal of research on program evaluation across a variety of service fields at both national and local levels. In part, that is because program evaluation in areas of interest to nonprofit organizations is notoriously difficult to do well: control groups are hard to identify or create; causal models are not well developed; and programs may have only marginal impact. But it is also the case that most of the research has ignored (or sought to "control" for) the broader community and organizational contexts in which services are delivered.

That is an important limitation because it turns out that social outcomes are determined to a significant extent by neighborhood effects (Sampson, forthcoming) and by the ways in which service organizations structure routine operations, such as pick-up and drop-off policies instituted by day care centers (Small, 2009). While some of these elements are beyond the direct control of individual organizations, it behooves local government officials and nonprofit managers to consider their implications. Indeed, we need much better understanding of the conditions that promote or threaten collective efficacy at the community level because the working trust and shared willingness of people to intervene in achieving social control is critical for promoting community safety and most likely other types of social goods, such as quality education and clean environments (Sampson, 2004). There is also evidence that such collective efficacy depends on the density of nonprofits (Sampson, forthcoming).

### **Current Local Government Policy Issues and (More) Research Implications**

My analysis so far has highlighted broad dimensions for understanding public policy at the local level and how it impacts the nonprofit sector. I am much less certain that it is possible to talk about "local public policy *toward* the nonprofit sector," in part because the relationship goes both ways, but also because the structure of local governments varies enormously from one community to the next, as does the structure of the nonprofit sector, as I noted earlier. Thus what happens in one community may be very different from what happens in another.

We know little about the magnitude of these differences or what explains them, although there are partial hints in findings from a large survey of Indiana nonprofits in 2002, at the time of the previous recession (Grønbjerg and Child, 2004). We found some differences among Indiana regions in whether nonprofits reporting being impacted by a predefined list of public policy changes, even when controlling for other factors. However, many of those other factors are at least as important: nonprofits in the health and human services fields, large organizations, and those that rely on government for the majority of their funding are the most likely to say that policies changed (usually they became stricter), when taking all factors into account in multivariate analysis. The same factors also generally predict whether policy changes have an impact on nonprofits, with dependence on government particularly important. I expect that these patterns would still hold.

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<sup>6</sup> This work is designed to compare with similar research of elected officials in Danish local government.

In general, local government finances (including issues surrounding property tax exemption for charities) clearly present very significant challenges for nonprofits. Other issues concern how government funding for nonprofits is structured (grants, contracts or fees for services) and the strings attached to such funding. Local government policies related to civic engagement and the fall-out from the culture wars is likely to be important as well.

Finally, as I have hinted at already, there are a number of substantive policy fields where it would be good to have a careful mapping of the policy landscape at the local level. These include human services, the safety net, and economic development (given continuing high unemployment and structural transformations of local economies), health care (given health care reform), educational policies (given concerns about educational achievement, charter schools, and education vouchers), environment and natural resource issues (given climate change), and emergency and disaster response systems (given likely increases in the scale and impact of natural disasters and continuing threats of terrorism).

Fiscal Crisis. Local governments rely on a wide array of funding mechanisms for carrying out their activities. Overall, intergovernmental transfers (mainly from the state and federal government) accounted for \$476 billion (34 percent) of the combined \$1.4 trillion local government revenues in 2006, about as much (\$484 billion) as these units generated themselves from taxes. Property tax receipts by themselves accounted for 25 percent of total revenues, or \$347 billion, compared to 6 percent for sales taxes (\$79 billion) and only 2 percent for income taxes (\$28 billion, mainly from individuals rather than corporations, \$23 vs. \$5 billion). Charges and a variety of special fees make up the remaining 26 percent of aggregate revenues. However, the revenue profiles of local governments vary greatly from state-to-state as well as among jurisdictions within states.<sup>7</sup>

Expenditure patterns also vary greatly, but depend on the division of labor between the state and units of local government. Overall, most local governments spend the bulk of their revenues on education, accounting for \$525 billion, or 38 percent of all local government expenditures, but there are significant inter- and intra-state variations here as well.<sup>8</sup>

The current recession has hit local governments very hard. A 2010 report on city finances shows that revenues have lagged expenditures since 2007, with nearly 9 in 10 city finance officers reporting that their cities are less able to meet fiscal needs than the previous year (Hoene and Pagano, 2010). That is in part because many states have cut their support for local government (offset in part by federal funding through the American Recovery and Reinvestment Act of 2009), but also because local government revenue sources have suffered major losses. Sales taxes are particularly sensitive to economic cycles and were projected to

<sup>7</sup> Local government reliance on intergovernmental transfers as a percent of all revenues ranges between a high of 65 percent in New York and a low of 17 percent in Hawaii and 20 percent in Nebraska, or from \$4,541 per capita in New York to \$323 in Hawaii and \$910 in South Dakota. For property taxes, the range is between a high of 53 percent of all revenues in New Hampshire and a low of 9 percent in Arkansas and New York; on a per capita basis, the range is between a high of \$2,378 per capita for New Jersey and a low of \$266 in Arkansas.

<sup>8</sup> The percent of all local government revenues spent on education ranges from a high of 60 percent in Vermont to a low of zero in Hawaii and 28 percent in Tennessee (the next highest). On a per capita basis, local government spending on education ranges from a high of \$2,575 in Wyoming to a low of 1,218 in Tennessee.

decline by 5 percent from 2009 to 2010 on top of a 6.6 percent decline the previous year for cities included in the Hoene and Pagano survey.<sup>9</sup> Income tax collections, while also subject to economic cycles, were projected to increase by 1.8 percent.

Property taxes traditionally have been relatively stable sources of revenues for most local government and during the housing boom real estate taxes increased as housing values grew, allowing some local governments to expand services or undertake new initiatives. The end of the boom and the collapse of the housing market are now producing revenue losses for many units of local government. Indeed Hoene and Pagano (2010) report that property tax collections were expected to decline by 1.8 percent for cities included in the 2010 survey—the first time there has been any decline since at least 1996. The losses will grow as real estate assessments and tax receipts catch up with the declining housing market and as defaulting homeowners are unable or unwilling to pay their real estate tax. These developments will continue to have a major fiscal impact on local governments for several years to come.

As an example of the complexity of these issues, consider the case of the state of Indiana, where a state law in 2008 has managed to further aggravate the fiscal crisis for local government. The law (which was on the November 2010 ballot as a constitutional amendment—and passed) mandated caps on the property tax rate, below the level charged in many communities, and promised that the state would compensate for the loss by taking over the financing of local school corporations and welfare funds from an increase in the state sales tax rate.<sup>10</sup> But sales taxes are highly sensitive to economic cycles and the state has been forced to make significant budget cuts. Local governments across the state are now forced to make drastic cuts in education, public safety, and other key public services because of the triple whammy of dealing with the recession, cuts in property tax rates, and unfulfilled promises by the state.

The fiscal crisis is, then, the overwhelming context for understanding the current impact of local government policies on the nonprofit sector. Unfortunately, it is very difficult to find good, current, and comprehensive data on the fiscal conditions of local government, with the possible exception of cities, so we don't know the scope or impact of these factors. However, it seems clear from media reports that many units of local government are unable to respond effectively to existing community needs, let alone new needs created by the recession. Cuts at the state level and their own loss of revenues means that they have eliminated many existing services, thereby contributing to the growth of unmet needs. Indeed, 91 percent of city finance officers report spending cuts in 2009, including 67 percent reporting hiring freezes or layoffs.

The impact of these developments on nonprofits is difficult to document. We know that nonprofits rely on government funding to a significant extent, but there are intricate patterns of pathways and mechanisms by which government funding makes its way to nonprofit organizations (see Appendix Table 1). We don't know the specifics of these pathways or how the systems of intergovernmental transfers percolate down to local government and to

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<sup>9</sup> The picture is no less depressing at the state level, see McNichol, Oliff & Johnson, 2010.

<sup>10</sup> The 2008 law limited property taxes as of Jan. 1, 2010, to no more than 1% of the assessed valuation for residential homes, 2% for rental properties and farms, and 3% for businesses. For more details, see DeBoer, 2010.

nonprofit organizations in local communities, but consequences are likely to be significant. Not only are nonprofits faced with the challenge of addressing new unmet needs, but their ability to do so is reduced because their funding from government and most other sources (donations, user fees, or endowment earnings) has declined or is likely to do so.

Consequently, we need better understanding of the scope and consequences of government funding cuts on local nonprofit organizations. The last systematic effort to examine these issues occurred in the early 1980s when Lester Salamon and colleagues (including me in the Chicago region) examined the impact of the Reagan budget cuts on nonprofits in 16 communities across the U.S. But the cuts now are occurring under very different circumstances (at the state and local level, rather than at the federal level, at least so far) and for very different reasons, so the lessons learned from then may not apply.

Tax Exemption. We also know that the exemption from property taxes is important for some nonprofits (hospitals, universities, museums, churches, cemeteries) and that some communities house federal installations, state owned institutions, and major charitable facilities that don't pay property taxes. But there is no systematic information about which charities are exempt, the value of their exemption (let alone how carefully the properties are assessed), or how that compares to property owned by units of government, which also are not taxed. For some states, including Indiana, the information is not collected centrally and databases and assessment practices vary from one assessor to the next. We know even less about the value of exemption from sales taxes that many charities also benefit from and how the availability and use of both these exemptions vary across local jurisdictions.

Given fiscal constraints, however, it is no surprise that local governments have renewed their efforts to get major nonprofit institutions such as hospitals or universities to make payments or provide free or low-cost services in lieu of taxes (PILOTs and SILOTs). Indeed, some local governments in Indiana have begun to send property tax bills to charities traditionally exempted from paying such taxes (e.g., camps, housing development organizations, and cemeteries). It is an interesting question whether exemption from sales taxes will be next on the line (although the dollars involved are so small that it is probably not worth the political heat that would follow).

Even more interesting will be whether curtailing property tax exemptions will extend to traditional social service agencies and especially to local churches. If so, several key principles will have suffered major blows: that nonprofits (charities in particular) relieve the burdens of government (hence justifying their special tax treatment) and that the diversity of American society requires separation of state and church (a separation always much less complete in practice than in principle). For all of these issues, it would be good to have solid empirical evidence on which to base these discussions. We don't.

Funding Structures. Other issues concern how government funding for nonprofits is structured and the strings attached to such funding. We know that federal funding has undergone several important transformations since the 1960s (Grønbjerg and Salamon, 2002) and that many states have followed suit (and in some cases, led the way). One important

shift has been from (more or less) restricted grants to service contracts (many designed as performance contracts). The latter allow recipient organizations more flexibility in how the funding is used, but the funding is tagged to easily measured performance metrics and may reward efficiency more than effectiveness.

A second shift has been from producer subsidies (such as grants and contracts from government directly to nonprofits) to consumer subsidies (such as educational vouchers, dependent care tax credits, and deductible education or health expenses). The latter approach is favored by free market proponents who place a premium on consumer choice and producer competition. It is also preferred by those who would like to see government funding extended to churches and other sacramental organizations, since consumer subsidy mechanisms can more easily circumvent the constitutional separation of church and state. However, consumer subsidies force nonprofits to market their services to credit-bearing clients. Both shifts are likely to favor providers, presumably for-profit more so than nonprofit providers, which give priority to profit over mission and which select clients that are easy and cheap to serve (also known as cream skimming).

We don't fully know how effectively these transformations in the form and structure of government funding for nonprofits have percolated down to local government. To the extent that local governments use inter-governmental transfer dollars to fund service deliveries in areas of interest to nonprofits, we would expect the same trends to have developed here. Indeed, reports on contractual relationships managed by city and county governments show fairly widespread use of performance contract structures (Fernandez, 2007). However, local governments may have long-standing, close relationships to known and trusted nonprofit organizations and interact with them across a broad range of activities. It is therefore possible/likely that the relationships are a good deal more informal and flexible than they appear to be, especially in smaller communities. Again, we don't know whether that is the case.

We do know that some units of government have sought to impose special conditions on nonprofits receiving government funding. At various points in time, these have ranged from requiring government contractors to certify they were not doing business with South Africa and other pariah nations, provide domestic partner benefits to their employees, practice non-discriminatory hiring and firing policies, or limit executive salaries. But we have only anecdotal evidence on these types of requirements at the level of local government or how aggressively they are enforced.

The Rhetoric of Politics and Engagement. Finally, local governments can play an important role in promoting civic engagement and participation in community problem solving. However, as noted earlier, civic (or perhaps more accurately, uncivil) engagement in local communities seem to reflect in large part legal rules at the state level and how the rules play themselves out in local communities where people have to confront them in their daily lives. As Cahn and Carbone (2010, p. 4) notes, “[t]his dynamic of class and regional antagonisms, of a clash between religious and secular world views, of different symbolic and practical needs, offers enormous opportunities for shortsighted and cynical policies when it combines with partisan electoral politics.” If true, how do these forces play themselves out in local communities and to what extent are local elected officials and local government administrators captured in or by the culture wars?

Equally important, to what extent do local nonprofits fan the flames or calm the waters? What role do they play in developing, promoting, and preserving effective leadership in local communities? We know from a long series of community studies that they are important, not only in delivering key services, but in identifying community problems and mobilizing responses to them (Safford, 2009). They also provide opportunities for economic and political elites to interact in private clubs or as board members of key nonprofit institutions in the community. But how do these processes work and why are there differences among communities in the leadership role played by the nonprofit sector and in collective efficacy more broadly?

### Conclusion and Implications

Having confronted you with the complexity of the relationship between local government and the nonprofit sector (indeed, the combination of severe fiscal constraints and ongoing culture wars is not a cheerful prospect), let me emphasize again that identifying nonprofit research questions relating to public policy is particularly complex. Simply mapping them out is no easy task. Policies not only differ by level of government (federal, state, local) and among governmental jurisdictions (the 50 states plus territories and 90,000 units of local government), but they cut across branches of government (legislative, judiciary, administrative) and arenas of interaction (fiscal, regulatory, taxes, policy making).

There are also major challenges in thinking through conceptual frameworks for advancing our understanding of public policies and the impact on nonprofits, and even more so for understanding how nonprofits impact public policies. The three conceptual frameworks (market, mediating, institutional models) that Steve Smith and I outlined in *The Nonprofit Sector: A Research Handbook* (Powell and Steinberg, eds., Yale University Press, 2006) get at some of these dimensions, but go only so far in looking specifically at public policies.

However, let me suggest one important starting point: that we begin to unpack public policies and pay specific attention to how policies vary across policy fields, such as education, health, human services, environment, religion, international, arts and culture. As I noted earlier, there is a long list of substantive policy issues that are particularly important at the local level. And while some policies are generic across fields (e.g., IRS regulations pertaining to charitable status, state codes governing incorporation status, government fiscal conditions), there are so many important differences among fields that we ignore them at our peril.

We need a systematic effort to consider field dimensions. From my perspective, these dimensions fall into three broad categories: (1) Organizational dimensions, (2) sector dimensions, and (3) field specific dimensions. Organizational dimensions include (a) the nature of activities involved (technology, type of economic goods, professionalization); (b) organizational features (numbers, size, catchments, auspices, target populations, and location); and (c) degree of institutionalization (mix of resource dependency and professionalization).

Sector dimensions include attention to (a) the division of labor between the sectors (nonprofits, government, for profits, private households), including the emergence of blended forms; (b) political economy—government (extent and form of public spending, taxation

policies, regulatory policies, and policy domain interactions); and (c) political economy—market sector (market interactions such as transactions, market niches, and competition; mutual dependency; and policy domain interactions).

Finally, field specific dimensions include systematic attention to history and organizational ecology, demographic changes (of particular importance for some fields, such as health and education), economic development and technology, social stratification and inequality, and values and ethics (including ethical and religious foundations, but also the legitimacy of government, market and nonprofit sectors).

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## Brief Biographies of Presenters

### **David C. Hammack**

David C. Hammack is Haydn Professor of History and a member of the Faculty Council of the Mandel Center for Nonprofit Organizations at Case Western Reserve University. Among his several books are *American Foundations: Studies on Roles and Contributions*, edited with Helmut Anheier (2010); and *Making the Nonprofit Sector in the United States: A Reader* (1998, paperback 2000). His articles, including “The Quiet Revolution in the Nonprofit Sector: Law, Policy, and Commerce” *Nonprofit And Voluntary Sector Quarterly* (June, 2001), provide a comprehensive overview of the growth of the U.S. nonprofit sector. David is one of the leading authorities on and historians of the nonprofit sector in the U.S.



### **Evelyn Brody**

Evelyn Brody is a professor at Chicago-Kent College of Law, Illinois Institute of Technology, having visited at University of Pennsylvania, Duke, and New York University law schools. She teaches courses on tax and nonprofit law. She previously worked in private practice and with the U.S. Treasury Department's Office of Tax Policy. Professor Brody is the Reporter of the American Law Institute's ongoing Project on Principles of the Law of Nonprofit Organizations. She is also an Associated Scholar with The Urban Institute's Center on Nonprofits and Philanthropy, for which she edited the multidisciplinary volume *Property-Tax Exemption for Charities: Mapping the Battlefield* (Urban Institute Press, 2002). A prolific author of law review articles and book chapters, Professor Brody serves as an advisory board member of Columbia Law School's Attorneys General Charities Law Project and is on the board of directors of the BBB Wise Giving Alliance.



### **Dennis R. Young**

Dennis R. Young is Professor of Private Enterprise in the Andrew Young School of Policy Studies at Georgia State University, where he directs the school's nonprofit studies program. He is also President and founding CEO of the National Center on Nonprofit Enterprise. He is the author of many scholarly articles, and author or editor of several books on nonprofit organizations. From 1996 to 2005 he was Professor of Nonprofit Management and Economics at Case Western Reserve University, and from 1988 to 1996 he was Director of the Mandel Center for Nonprofit Organizations and Mandel Professor of Nonprofit Management, at that university. He is the founding editor of the journal *Nonprofit Management and Leadership* and the new electronic journal *Nonprofit Policy Forum*, and past president of the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA).



## Howard Husock

Howard Husock is Vice President for Policy Research at the Manhattan Institute, and director of its Social Entrepreneurship Initiative, as well as a contributing editor to *City Journal*. From 1987 through 2006, he served as director of case studies in public policy and management at the Harvard Kennedy School of Government, and as a fellow at the Hauser Center on Nonprofit Organizations. His publications include: *Government and U.S. Nonprofits: The Implications of an Expanded Federal Role* (The Philanthropy Roundtable, October, 2010; National Affairs (forthcoming); “Government Takeovers: Is Charity Next?,” *Townhall*, October 29, 2009; “Stock Market for Nonprofits,” in “The Politics of Philanthropy,” *Society*, March/April 2007; “Non-Profit and For-Profit: Blurring the Line,” *Chronicle of Philanthropy*, June 29, 2006. He is a graduate of the Boston University School of Public Communication and was a mid-career fellow at Princeton University’s Woodrow Wilson School of Public and International Affairs.



## Pat Read

Pat Read is the Senior Vice President for public policy at Independent Sector, where she leads efforts to shape legislation, regulations, and policies affecting the health and vitality of philanthropy and nonprofit organizations. She served as the Project Director for the Panel on the Nonprofit Sector, an independent panel convened by Independent Sector at the encouragement of the Senate Finance Committee to provide recommendations for actions by congress and the charitable community to strengthen the governance and oversight of charitable organizations. Prior to coming to Independent Sector in 2001, Pat served as executive director of the Colorado Association of Nonprofit Organizations (CANPO) for eight years. Previous positions include publications director and vice president of program services for the Foundation Center in New York City; executive director of the American Reading Council; and marketing and development director of the Feminist Press, a nonprofit literary publisher. She received her B.A. from Rockford College in Illinois and her M.L.S. from Columbia University.



### Deborah A. Auger

Deborah Auger is Associate Professor in the School of Urban Affairs and Public Policy at University of Delaware, where she also serves on the research staff of the Center for Community Research and Service. She specializes in the role of nonprofits in shaping and in delivering American social programs. For 10 years Auger headed the School's nonprofit leadership specialization. She has just completed a multiyear grant initiative called the Forward Together Project that seeks to improve the current working relationship between Delaware's state and nonprofit agencies in the human services. She serves on the editorial board of *Nonprofit and Voluntary Sector Quarterly*, and on the Board of the Center for Lobbying in the Public Interest in Washington, DC.



### Kyle Caldwell

Kyle Caldwell is the President and CEO of the Michigan Nonprofit Association (MNA), a statewide nonprofit focused on increasing the capacity of Michigan's nonprofits to serve, strengthen, and transform communities. MNA is a membership organization offering Michigan's nonprofits a variety of programs and services. Prior to leading MNA, Kyle served as President and CEO of the ConnectMichigan Alliance (CMA), a statewide organization focused on promoting and strengthening a life-long ethic of service and civic engagement through the support of community-building initiatives. CMA merged with MNA in 2007. Kyle has worked in the private and public sectors, including serving both Michigan Governors Engler and Granholm as the Executive Director of the Michigan Community Service Commission (MCSC). Kyle holds bachelor's and master's degrees from Western Michigan University, where he studied organizational communication.



**Jon Pratt**

Jon Pratt has worked in nonprofit organizations as attorney/lobbyist for an environmental organization (Minnesota Public Interest Research Group), regional director for an alternative foundation (the Youth Project), and as director for a coalition formed by nonprofits to reform corporate and foundation philanthropy (the Philanthropy Project). In 1987 he became director of the Minnesota Council of Nonprofits, an association of 1,900 organizations that sponsors research, training, lobbying, and negotiated discounts to strengthen Minnesota's nonprofit sector.

Jon has consulted with nongovernmental organizations on the development of NGO associations and services in Canada, Costa Rica, Czech Republic, Hungary, Poland, Serbia, and Turkey. Pratt has a law degree from Antioch School of Law, Washington, DC, and a Master's in Public Administration from Harvard University.



**Kirsten A. Grønbjerg**

Kirsten A. Grønbjerg holds the Efroymson chair in Philanthropy at the Center on Philanthropy at Indiana University and is Professor of Public and Environmental Affairs. A native of Denmark, she earned an undergraduate degree in sociology at Pitzer College in Claremont, CA, and M.A. and Ph.D. degrees in sociology at the University of Chicago. She is currently working on a major project to examine the scope and community dimensions of the Indiana nonprofit sector. An award-winning author, she is a member of a number of research committees on philanthropy, nonprofit organizations, social policy, and needs assessment, including the National Committee for Charitable Statistics at the Urban Institute, Guidestar, and Independent Sector, and is Past-Co-President of ARNOVA. She is also active in a number of human service organizations.

## Prominent Themes from the “Project Proposals”

One of the closing exercises of the Symposium was designed to further clarify and make more specific what research participants thought was most needed now to undergird the creation of better public policy to strengthen and guide nonprofits in useful service for the public good. We asked participants to describe particular research projects they would undertake—or like to see others undertake—for these purposes. Because the question was concrete and immediate, it may be revealing of the strongest interests of the group.

Specific project descriptions varied widely, but the projects suggested most often related to one of the eight following interests. The participants described research projects that:

1. Give policy makers more and better data on the contours, organizations, activities, and impacts of the nonprofit sector. What were described were various survey or census efforts that gave a fuller and more detailed picture of the scope and capacity of the sector. The participants especially want data that is: (a) more comprehensive, (b) more current, and (c) more refined by type and size of organizations.
2. Provide a clearer, better grounded, concrete understanding of how government funding for nonprofits changes the ways they operate, and affects the quality as well as quantity of programs, for better and for worse. These projects could be case studies or involve gathering and comparing larger data sets on how programs, operations, service outcomes, and financial results may vary depending on the introduction of government funding of different types or amounts, or for different purposes.
3. Inquire into state governments’ regulation of and relationships with nonprofits, and examine these matters in comparative as well as individual state frameworks. That is, how do approaches to establishing, regulating, and contracting with NP’s vary from state to state; and how do those differences affect levels and type of NP activities in different states?
4. Look more closely now at what new forms of “social purpose” or “social mission” organizations are emerging, and ask: How do these vary in form and function from older, traditional nonprofit forms, and from one another? How “different” are they? What roles are they filling? How are they being structured and regulated by state governments?
5. Probe and assess “the public’s” views of “The Value of Nonprofits”: What does the public think nonprofits are and do? What to they expect or want them to be and do? What values or purposes are they expected to serve?

6. Ascertain what can be known with confidence about if or how nonprofits create important public benefits, extending beyond the provision of specific services and/or giving voice to various constituencies. This research would assess and document what type and degree of impact nonprofits may have in building social capital and engaging persons constructively in civic life—or perhaps debunk that claim.
7. Appraise and examine the types and levels of policy advocacy nonprofits are engaged in now, and look closely at what factors appear to support or discourage advocacy activity by 501(c) (3)'s.
8. Consider closely the magnitude of demographic changes in the U.S., and examine closely the ways and degrees in which this is altering the character of the nonprofit sector. Study the questions of who is being served, by whom, and how well in relation to the growing ethnic, racial, and religious diversity of the larger society. Examine the degree to which nonprofits are engaging and effectively serving diverse communities; inviting and incorporating diverse leadership in their work; and developing ways to overcome their shortcomings and meet new opportunities and challenges in these areas?

Finally, there were a number of very interesting and possibly very useful projects that reached beyond the themes described here. For instance, one would propose to look for and document cases where nonprofit-government-business collaborations created to address community needs and opportunities are working really well at the local level, with the thought of outlining and disseminating models for such collaborations that might be borrowed and adapted in other communities. It is our hope that we will see some of these projects undertaken, perhaps in collaborations based in relationships formed at the Symposium.

## Participants in the Symposium

Alan Abramson  
Marcia Avner  
Jeffrey Berry  
Michael Cortes  
Aaron Dorfmann

Renny Fagan  
Suzanne Garment

Lynn Huntley  
Cindy Lott

Francie Ostrower  
Lester Salamon  
William Schambra  
Andrew Schulz  
Sandra Swirski  
John Tyler  
Diana Bucco  
Doug Sauer  
Claudia Herrold  
Deborah Auger  
Evelyn Brody  
Kyle Caldwell  
Kirsten Gronbjerg  
David Hammack  
Howard Husock  
Jon Pratt  
Patricia Read  
Dennis Young \*  
Elizabeth Boris ♦  
Tim Delaney \* ♦  
Les Lenkowsky ♦

Thomas Jeavons ♦ (Facilitator)

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Rick Cohen (Primary Recorder)  
Erwin De Leon (Small Group Recorder)  
Katherine LaBeau (Small Group Recorder)  
Trent Aaron Engbers (Small Group Recorder)

\* Unable to attend due to last minute circumstances.  
♦ Member of the Steering Committee

George Mason University  
Independent Consultant  
Tufts University  
University of Denver  
National Committee for Responsive  
Philanthropy  
Colorado Nonprofit Association  
New York State, Aide to Lieutenant  
Governor  
Southern Education Foundation  
Charities Regulation and Oversight  
Project / Columbia University  
University of Texas  
Johns Hopkins University  
Hudson Institute  
Council on Foundations  
The Philanthropic Collaborative  
Kaufmann Foundation  
The Forbes Funds  
NY Council of Nonprofits  
Ohio Grantmakers Forum  
University of Delaware  
Kent College of Law  
Michigan Nonprofit Association  
Indiana University  
Case Western Reserve University  
Manhattan Institute  
Minnesota Council of NP's  
Independent Sector  
Georgia State University  
The Urban Institute  
National Council of Nonprofits  
Indiana University

ARNOVA

## Acknowledgments

The development of a Symposium like the one documented here, and the report that flows from it, is a complicated task made possible only by the support and cooperation of a team of good people.

First, we noted before, but note here again, our gratitude to the Bill & Melinda Gates Foundation, the Kresge Foundation, and the C.S. Foundation for their support for this endeavor. That support included some wise advice and guidance from program staff in those foundations, as well as financing. We are grateful for both.

Second, this could not have happened apart from generous commitment of time, energy, and expertise of the Steering Committee for this project—specifically, Elizabeth Boris of the Urban Institute, Leslie Lenkowsky of Indiana University, and Tim Delaney of the National Council of Nonprofits. Their active contribution to shaping the symposium was vital, and their patience with and guidance to me as I developed this project and this report were invaluable. They played key roles in finding the right people to have in the room in Baltimore, in shaping the agenda for the Symposium, and in actually “steering” the Symposium, and suggesting adaptations in plans, as the event unfolded. In addition, this group, along with Marcia Avner—a participant who stepped in at the last moment to fill a gap—facilitated the small group discussions during the Symposium. Given the energy of participants and the diversity of their views, that was a challenging and critical task.

Third, I owe a debt of gratitude to Rick Cohen who did a masterful job of pulling together the wide ranging discussion at the Symposium to create the coherent core of the narrative report in this document. And he was ably supported by three remarkable graduate students—Erwin De Leon, Katherine LaBeau, Trent Aaron Engbers—who captured the insights and flow of the small group conversations.

Finally, I am grateful to Mary Kate Myers, our exceptional meeting manager at ARNOVA, who made all the logistics for the Symposium run smoothly.