REGULATING CHARITABLE CROWDFUNDING

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ABSTRACT

Charitable crowdfunding is a global and rapidly growing new method for raising money to benefit charities and individuals in need. While mass fundraising has existed for hundreds of years, crowdfunding is distinguishable from those earlier efforts because of its low cost, speed of implementation, and broad reach. Reflecting these advantages, it now accounts annually for billions of dollars raised from tens of millions of donors through hundreds of Internet platforms, including Charidy, Facebook, GoFundMe, and GlobalGiving. Although most charitable crowdfunding campaigns raise only modest amounts, on occasion a campaign attracts tens of millions of dollars in donations. However, charitable crowdfunding also has its downsides. Donors may misunderstand how the beneficiaries will use the funds raised or a campaign that unexpectedly goes viral may overwhelm a small charity or greatly exceed an individual’s needs. There have also been instances of outright fraud, as well as concerns raised about money laundering and terrorist financing.

Existing laws relating to charitable solicitations and charities more generally have either uncertain or limited application to charitable crowdfunding. Broader fraud and money laundering laws may apply to the worst abuses, but government officials rarely invoke these usually criminal statutes. The challenge faced by regulators is therefore whether and how to modify existing laws to address the downsides of this new activity without unduly inhibiting the generosity that charitable crowdfunding encourages. This challenge is made more difficult by the lack of information regarding both the positive effects and downsides of crowdfunding. Finally, existing scholarship relating to charitable crowdfunding focuses on either the motivations of donors or tax implications instead of addressing this regulatory issue, even as governments are developing proposals to address this activity.

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This Article reviews the existing, incomplete information regarding charitable crowdfunding and theories for regulating in the face of uncertainty to develop recommendations for addressing this new and growing phenomenon. Given we know very little about the positive and negative effects of charitable crowdfunding, and given that any harms are likely modest, primarily financial, and often readily cured, I recommend that regulators should at this time only take two modest steps. First, they should require notification of designated beneficiaries to help ensure funds raised reach those beneficiaries. Second, they should require notification of regulators, but only for the small subset of campaigns that cross a relatively high threshold, to provide information about the scale and growth of charitable crowdfunding and help resolve any problems that arise with the largest campaigns. I therefore disagree with initial steps taken by some regulators to impose more comprehensive consent and administration requirements on many or all charitable crowdfunding campaigns because such requirements are unnecessary hindrances on this new and innovative way of encouraging generosity, given there is little evidence of widespread problems and any potential harm is almost certainly relatively small and easily remedied if it occurs.

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INTRODUCTION

Crowdfunding – the raising of funds directly from the public through an Internet platform – is a rapidly growing phenomenon.1 Yet when it comes to whether and how governments should regulate crowdfunding, scholars have for the most part ignored the type of crowdfunding that first arose.2 That type is donation-based crowdfunding, where fundraisers receive in return for their contributions only expressions of gratitude, the warm glow from having been altruistic, and similar intangible benefits.3 This type of crowdfunding is more accurately labelled charitable crowdfunding because it appeals to the generosity of potential fundraisers by highlighting the ability of their contributions either to aid one or more individuals experiencing financial hardship or to

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1 See infra Section I.A.
2 See Claire Ingram Bogusz, Crowdfunding across research fields: an overview and suggestions for future investigation, in HANDBOOK OF RESEARCH ON CROWDFUNDING (Hans Landström, Annaleena Parhankangas & Colin Mason eds., 2019) 23, 26; infra notes 38-41 and accompanying text.
support a charitable organization.⁴

Recent events demonstrate the increasing importance of charitable crowdfunding. As the coronavirus pandemic swept the world, people launched hundreds of thousands of crowdfunding campaigns to help individuals and organizations hurt by the disease.⁵ Crowdfunding also played a prominent role in the wake of the killing of George Floyd in Minneapolis, including not only campaigns to help arrested protesters but also to provide bail for the police officer charged with murdering Mr. Floyd.⁶ In the wake of the attack on the Capital, a fellow officer launched a GoFundMe campaign to aid the family of murdered officer Brian D. Sicknick.⁷ At the same time, participants in “Stop the Steal” events, including the January 6th rally in Washington, D.C., used crowdfunding to fund their travel and other expenses.⁸

Before the coronavirus pandemic, the largest single charitable crowdfunding effort appears to have come in the wake of the Australian wildfires, when entertainer Celeste Barber made a public appeal that eventually raised more than AU$50 million for the North South Wales Rural Fire Service & Brigades Donation Fund.⁹ A close second was a crowdfunding effort in the wake of

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⁹ See The Australian Centre for Philanthropy and Nonprofit Studies (ACPNS), In the Matter of the New South
Hurricane Harvey striking the mainland United States, when American football star J.J. Watt launched an online fundraising campaign to help people affected by the hurricane with a stated goal of raising $200,000.\textsuperscript{10} Within weeks, the campaign had raised over $10 million, and over the next year, it raised $41.6 million in total, which the Justin J. Watt Foundation distributed to eight other charities involved in relief efforts.\textsuperscript{11} Both of these campaigns have recently been eclipsed by the crowdfunding campaign to benefit the CDC Foundation’s efforts to combat the coronavirus pandemic, which has raised more than $51 million.\textsuperscript{12}

GoFundMe, which may be the most well-known charitable crowdfunding platform, reported that as of 2019 more than $9 billion had been raised since 2010 on its website through more than 120 million donations.\textsuperscript{13} This is almost double the amount GoFundMe reported it had raised through 2017, and more than 75 times the amount raised in its first several years of existence.\textsuperscript{14} GoFundMe currently hosts campaigns based in 19 countries,\textsuperscript{15} and there are many other websites that host similar efforts around the world.\textsuperscript{16} While public participation data is difficult to obtain, a 2016 Pew Research Center report found that 22 percent of all United States adults had contributed to support a crowdsourced fundraising project, with more than two-thirds of those having done so

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Charitable crowdfunding also has its downsides. The speed with which a well-publicized tragedy may generate substantial donations can overwhelm some recipients. For example, this reportedly happened in the wake of both the 2020 George Floyd-inspired racial justice protests and the 2016 Pulse Nightclub shooting in the United States. Or if the recipient is a charity with legal limitations on its activities, the funds may only be usable for those activities even though donors may have intended that the funds be used for other activities, as happened with Australian wildfire campaign. The amount of funds raised may also exceed the identified need, raising the question of what should happen to the excess funds. And there are occasional reports of outright fraud.

This new, growing method for charitable giving and its potential downsides raise two key regulation questions. First, how, if at all, do existing laws relating to charitable fundraising apply to charitable crowdfunding? And second, should existing laws be modified either to relax limits that unnecessarily inhibit charitable crowdfunding or to impose new requirements to prevent misunderstandings, misuse, and fraud? While commentators in some jurisdictions have sought to answer the first question, and a handful of government officials and uniform law bodies have begun considering the second question, this Article is the first comprehensive consideration of

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18 See Paul Brinkmann, State fines nonprofit $1,000 for violations Officials: GLBT Center failed to give funds to Pulse victim’s family, ORLANDO SENTINEL, Feb. 14, 2017; Kelly Smith, Facing criticism, Minnesota bail nonprofit flooded with donations after George Floyd killing says it’s “scaling up,” STAR TRIBUNE, June 12, 2020.


20 See Blake Scott, Comment, Save That Money: Ensuring Donations Received through Crowdfunding Are Properly Protected, 10 EST. PLAN. & CMTY. PROP. L.J. 395, 397 (2018).

21 See, e.g., Death of girl in China triggers calls for better crowdfunding supervision, THE STRAITS TIMES, May 26, 2018, https://www.straitstimes.com/asia/2018/05/26/death-of-girl-in-china-triggers-calls-for-better-crowdfunding-supervision (alleged failure of family to properly use funds raised for a child’s eye cancer treatment); Eli Rosenberg, A homeless veteran’s heartwarming story led to a $400,000 GoFundMe. Prosecutors say it was a lie, WASH. POST, Nov. 15, 2018; Nick Harding, From “abuse and heartache” to fraud, we investigate what happens when online fundraising goes wrong, THE SUN, Jan. 28, 2018, https://www.thesun.co.uk/fabulous/5402752/crowdfunding-katie-cutler-alan-barnes-germain-defoe/.

22 See infra notes 124-131 and accompanying text.

23 See infra notes 241-247, 256-259 and accompanying text.
Part I explains what exactly crowdfunding is and how charities and individuals use it to raise funds for people in need. Part I also highlights the paucity of publicly available data relating to charitable crowdfunding. Part II explores the laws relating to charitable fundraising and how their application to charitable crowdfunding is unclear at best. Part III then discusses how to adapt or extend these laws to specifically address charitable crowdfunding given the uncertain information regarding both its benefits and downsides.

Part III concludes by recommending that given this lack of information regulators should at this time only impose two requirements. First, they should require charitable crowdfunding platforms to notify beneficiaries of campaigns for their benefit and give them the option of opting out and so ending the campaign, to help ensure funds raised reach their intended beneficiary. Second, they should also require platforms to notify regulators of all campaigns that exceed a relatively high threshold to provide those governments with information regarding the scale and growth of charitable crowdfunding and to permit them to resolve problems more easily with the largest campaigns. However, regulators should not impose more burdensome consent and administration requirements, as some have already done or are considering doing, as theories relating to regulating in the face of uncertainty and the fact that the potential harms from charitable crowdfunding appear to be small, primarily financially, and usually readily cured argue against more burdensome regulation that could unnecessarily inhibit this new method for encouraging generosity. These recommendations are also consistent with data privacy, free speech, and Internet platform liability limitations that exist in some countries, while more aggressive regulatory measures might run afoul of such limits.

I. WHAT IS CHARITABLE CROWDFUNDING?

This Part first explains what is meant by “crowdfunding” as that term is used in this Article. It then describes existing scholarship relating to charitable crowdfunding, its history, and the three forms of charitable crowdfunding: crowdfunding for a charitable organization; crowdfunding for one or more specific individuals in financial need; and crowdfunding for a cause. It also provides an overview of the available data regarding the magnitude and growth of charitable crowdfunding and its downsides.
A. What is Crowdfunding?

“Crowdfunding” refers to raising funds from the public for a particular venture through an online platform, such as GoFundMe, Indiegogo, Kickstarter, or Patreon.\(^\text{24}\) The scale of crowdfunding is difficult to estimate because private companies operate crowdfunding platforms and government oversight is limited. Estimates of the number of crowdfunding platforms vary widely, ranging from 600 globally for platforms of all types to more than 3,500 just for charitable crowdfunding.\(^\text{25}\) Similarly, estimates of the amount of money flowing through these platforms also vary significantly. For example, the Fundly crowdfunding platform estimates that crowdfunding had raised $34 billion globally as of 2020.\(^\text{26}\) In contrast, an article on the Statista website estimates that the market size of crowdfunding worldwide was slightly over $10 billion in 2018 and will grow to $28.8 billion by 2025.\(^\text{27}\) The World Bank in 2013 estimated that global crowdfunding would grow to between $90 and $96 billion by 2025.\(^\text{28}\) And reliable estimates of the number of projects that seek crowdfunding and of contributors who support them are also difficult to obtain, although the Crowdfunding Center has tracked more than 740,000 projects globally since the beginning of 2014 that had attracted over 66 million backers.\(^\text{29}\) But regardless of the exact figures,


there appear to be hundreds if not thousands of crowdfunding platforms, hosting hundreds of thousands of projects, supported by millions of contributors, who provide billions of dollars collectively. And those flows appear likely to significantly increase, even if they will still be relatively small compared to, for example, the close to $90 trillion invested through global stock markets as of the end of 2019.30

There are usually up to five sets of parties involved in a crowdfunding campaign: the individual or other entity organizing and promoting the campaign; the online platform hosting the campaign; a third-party payment processor handling the funds raised by the campaign; the individuals and other entities who provide funding; and the individual or charity beneficiary(ies) (who could be the same as the organizer).31 The funds typically flow from the donors to the third-party payment processor, who then distributes them either to the organizer (who in turn distributes them to the beneficiary if they are not themselves the beneficiary) or directly to the beneficiary, depending on the platform’s policies.32 A small portion of the funds raised usually go to the platform and the payment processor as fees for their services.33

Commentators generally divide crowdfunding into four different types based on what funders receive in return for their contribution: equity, debt, reward, and donation.34 The first three types provide some type of return to the person donating to what is usually a business venture – an equity

31 See Parhankangas et al., supra note 24, at 2-3.
stake, a promise to repay the contributed funds (with or without interest), or another incentive (for example, free access to music if the venture is a band or free beta access if the venture is a video game).\footnote{See Bradford, supra note 3, at 16-27.} A donation crowdfunding campaign is, as the label suggests, one where the funder is being asked to give without any tangible return.\footnote{See supra note 3 and accompanying text. Donation crowdfunding is sometimes also referred to as peer-to-peer fundraising. Marie Crittal & Judith Herbst, New technologies, in GIVING AUSTRALIA 2016: LITERATURE REVIEW 208, 210-11 (Wendy Scaife, Myles McGregor-Lowdnes, Jo Barraket & Wayne Burns, eds. 2016).} For the reasons already discussed, donation crowdfunding is better characterized as charitable crowdfunding and so the latter label will be used in this Article.\footnote{See supra note 4 and accompanying text.}

### B. The Study and History of Charitable Crowdfunding

Much has been written about equity, debt, and reward crowdfunding, especially the extent to which securities laws do or should apply to the first two types\footnote{See, e.g., Kirstene Baillie, Regulation of Crowdfunding in the UK: Past, Present . . . and Future, 20 BUS. L. INT’L 147 (2019); Bradford, supra note 3; Georg Gutfleisch, Prospects for Future EU Legislation of Crowdfunding and Initial Coin Offerings, 37 BANKING & FIN. SERV. POL’Y REP. 4 (2018); Thomas Lee Hazen, Crowdfunding or Fraudfunding – Social Networks and the Securities Laws – Why the Specifically Tailored Exemption Must Be Conditioned on Meaningful Disclosure, 90 N.C. L. REV. 1735 (2012); Christian Hofmann, An Easy Start for Start-ups: Crowdfunding Regulation in Singapore, 15 BERKELEY BUS. L.J. 219 (2018); Chen Li & Yu Qianqian, Unravelling China’s Gradual Approach to Equity Crowdfunding Regulation, 8 AM. U. BUS. L. REV. 119 (2019); Anne Matthew, Crowd-Sourced Equity Crowdfunding: The Regulatory Challenges of Innovative Fintech and Fundraising, 36 U. QUEENSLAND L.J. 41 (2017). See generally Dana Brakman Reiser & Steven A. Dean, SE(c)(3): A Catalyst for Social Enterprise Crowdfunding, 90 Ind. L.J. 1091, 1102 (2015) (noting “[a] growing literature” about “the optimal regulator approach” to equity crowdfunding).} and contract law does or should apply to the last type.\footnote{See, e.g., Tanya M. Marcum & Eden S. Blair, Over- and under-Funding: Crowdfunding Concerns of the Parties Involved, 16 DEPAUL BUS. & COMM. L.J. 1, 12-15 (2017).} There has been much less attention paid to charitable crowdfunding, and almost all of the academic consideration has focused either on non-legal issues, such as the
motivations of funders and fundraisers, or on the tax consequences for the participants. But as Orly Lobel has noted, there is no question that tax laws should fully apply to Internet platforms and their activities and so the only question with respect to taxation is how those laws apply. This Article addresses different and arguably more difficult questions: not only how but whether and to what extent consumer protection type laws, such as those relating to charitable fundraising, should apply to charitable crowdfunding. While a few practitioners have considered this issue, they have focused on how existing laws may – or may not – apply to charitable crowdfunding. They have therefore not addressed whether and how existing laws should be modified in light of this new activity.

Charities have of course long engaged in fundraising efforts designed to generate financial support from the public. For example, the first civil case in Australia arose because supplies had

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43 Id.


gone missing that had been purchased for a young couple and their child using funds received through a media and nobility-driven public fundraising campaign.\textsuperscript{46} During the Civil War the United States Sanitary Commission raised funds from the public to help the wounded, and in the decades after the war there were fundraising campaigns in the United States to help the starving in Ireland, to build the Statute of Liberty, and to combat the massacres of Armenians.\textsuperscript{47} But as Brian Frye has highlighted, perhaps the example from this period that is most similar to modern charitable crowdfunding was the chain letter campaign to support a memorial to assassinated United States President William McKinley, which generated donations from hundreds of thousands of people at the beginning of the twentieth century.\textsuperscript{48} Like today’s charitable crowdfunding, this chain letter campaign was a spontaneous one promoted by uncompensated individuals acting voluntarily, which relied on the altruism of donors alone, used a communications method with low transaction costs, and generated numerous, mostly relatively small donations.\textsuperscript{49}

However, charitable crowdfunding is distinguishable from these previous mass charitable fundraising efforts, particularly in terms of cost, speed, and reach. With respect to time and monetary costs, even a chain letter campaign requires collecting names and addresses, copying letters, addressing envelopes, and paying for postage. In contrast, charitable crowdfunding requires only creating a webpage, which can easily be done on any of the numerous charitable crowdfunding platforms, and sharing that webpage via often already existing social media networks.\textsuperscript{50} In terms of speed, a campaign organizer can accomplish all of the tasks required to launch a campaign in a matter of minutes.\textsuperscript{51} In addition and thanks to modern means of transferring

\textsuperscript{46} See Cable v. Sinclair, [1788] NSWSupC 7 (Austl.), https://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1788/cable_v_sinclair/; Kable/Holmes First Fleeter 1788, http://www.fellowshipfirstfleeters.org.au/henry_kable.htm (London newspapers and Lady Codagan driven public subscription that yielded 20 pounds to purchase goods for the couple, only to have those goods be found missing upon arrival of the relevant ships in Sydney). My thanks to Myles McGregor-Lowdnes for bringing this case to my attention.

\textsuperscript{47} See ZUNZ, supra note 45, at 44-45; Parhankangas et al., supra note 24, at 1.


\textsuperscript{49} Id.

\textsuperscript{50} See, e.g., GOFUNDME, CREATING A GOFUNDME FROM START TO FINISH, https://support.gofundme.com/hc/en-us/articles/36001992627-Creating-a-GoFundMe-From-Start-to-Finish- (encouraging sharing campaign through Facebook and email).

\textsuperscript{51} See, e.g., GOFUNDME, https://www.gofundme.com (“Simple setup. You can personalize and share your GoFundMe in just a few minutes.”); GOFUNDME, supra note 50 (steps required to start a GoFundMe crowdfunding campaign).
funds, donations can start arriving in a matter of seconds. Finally, even the smallest campaign can reach every online individual and entity in the home country of the crowdfunding platform, and many platforms accept donations from residents of multiple countries. Of course, most campaigns are likely only seen by individuals who are in the social media networks of the organizer, but on occasion a campaign goes viral. For example, an individual who met a struggling teenager decided to launch a GoFundMe campaign (“Chauncey’s Chance”) to raise $250 to buy a lawnmower for the teen’s planned landscaping business; the teen’s story attracted local and eventually national media interest, raising almost $350,000 over three months.

The combination of these differences means that one person, often not associated with the beneficiary, can now replicate the type of far-reaching fundraising campaign that previously took both significant funding and time. And charitable crowdfunding campaigns also can take advantage of techniques that fundraisers have long known help drive donations, including the ability to put a human face on the appeal and so counter the declining public trust in institutions of all types. Crowdfunding campaigns are also often led by individuals who are either personally known to the giver or are celebrities – such as Celeste Barber or J.J. Watt – which also helps establish trust.

As always where there are significant amounts of money, there are those who would seek to enrich themselves. When it comes to charitable fundraising, most such frauds are likely relatively small in scale, such as when individuals impersonate charity volunteers or set up fake fundraising accounts for a brief period. Nevertheless, at least in the United States fundraising abuses are the

52 See, e.g., supra notes 15-16 and accompanying text.
54 See DAN BUSBY DONOR-RESTRICTED GIFTS SIMPLIFIED 80 (2007) (appeals by individual charity workers for support from family and friends are “an effective alternative to other fund-raising methods because of the greater connection between the donor and the self-supported worker”); Deborah A. Small, George Loewenstein & Paul Slovic, Sympathy and callousness: The impact of deliberative thought on donations to identifiable and statistical victims, 102 ORG. BEH. & HUMAN DECISION PROCESSES 143. 143-45 (2007); see, e.g., Tara Bahrampour, Now anyone can easily send items to a U.S. refugee family’s home, thanks to one woman’s ‘mama bear instincts,’ WASH. POST, Mar. 26, 2018; see generally Beth Breeze & Wendy Scaife, Encouraging Generosity: The Practice and Organization of Fund-Raising across Nations, in THE PALGRAVE HANDBOOK OF GLOBAL PHILANTHROPY 570, 590 (“[t]rust is a motif raised often in the data”), 593 (importance of building and maintaining trust for fundraising) (Pamela Wiepking & Femida Handy eds., 2015) [hereinafter PALGRAVE HANDBOOK].
55 See supra notes 9-10 and accompanying text.
most common area of enforcement actions reported by state officials that oversee charities.\(^5^7\) And sometimes more significant amounts are involved. For example, the U.S. Navy Veterans Association, a fraudulent charity, raised approximately $100 million in the United States, almost none of which went to its purported charitable activities.\(^5^8\) In addition, in countries where this is permitted there are many charities employing for-profit fundraising companies that retain eighty, ninety, or even all the funds raised to cover their costs and fees.\(^5^9\)

It is well established in international human rights law that a corollary to the right of association is the right to seek monetary and other support for associations, including charities.\(^6^0\) At the same time, governments have a legitimate interest in ensuring that such fundraising is not deceptive and that resources raised are used for the purposes claimed in the appeals, not only to protect donors but also to protect the reputation of the charitable sector and society more generally.\(^6^1\) In other words, governments have a legitimate interest in protecting the reasonable expectations and trust of donors, including regarding the dedication of their contributions to the purposes for which they were given.\(^6^2\) And while non-Internet based fundraising from the public has a long history, the technological advantages of Internet crowdfunding – its low cost, high speed, and broad reach –


make it particularly challenging for regulatory purposes.\textsuperscript{63}

Even more than with crowdfunding generally, data regarding the scale of charitable crowdfunding is incomplete and inconsistent.\textsuperscript{64} For example and as already noted, GoFundMe reports it had raised more than $9 billion through 2019,\textsuperscript{65} and Facebook reports that as of early 2020 it had helped people raise more than $3 billion for nonprofits.\textsuperscript{66} One research report states that three charitable crowdfunding platforms in China raised $3.83 billion in 2017 alone.\textsuperscript{67} At the same time and for unknown reasons, Fundly estimates that as of 2020 only $5.5 billion had been raised through both charitable and reward crowdfunding in the entire world and through all platforms.\textsuperscript{68} And the Cambridge Centre for Alternative Finance estimated there was only approximately $639 million in charitable crowdfunding globally in 2018, but acknowledged that it may have significantly underestimated the actual volume.\textsuperscript{69}

What is clear is that while likely in the billions of dollars annually and growing rapidly, charitable crowdfunding still represents a relatively small portion of total giving. For example, in the United States approximately $450 billion was given to charitable organizations in 2019 or roughly two orders of magnitude greater than all U.S.-sourced charitable crowdfunding.\textsuperscript{70} Global giving figures, whether to charities or to individuals in need, are not readily available, but at least in a handful of countries – notably Canada, China, and the United Kingdom – giving to charitable organizations exceeds ten billion (US) dollars annually.\textsuperscript{71} There do not appear to be any reliable

\textsuperscript{63} See Parhankangas et al., supra note 24, at 1; infra notes 51-53 and accompanying text.

\textsuperscript{64} See, e.g., Michele J. Young & Ethan Scheinberg, The Rise of Crowdfunding for Medical Care: Promises and Perils, 16 JAMA 1623, 1623 (2017) (“[o]wing in part to virtually no regulatory reporting standards for crowdfunding portals, robust data on the frequency and scope of medical crowdfunding are limited”).

\textsuperscript{65} See supra note 13 and accompanying text.

\textsuperscript{66} Naomi Gleit, People Raise Over $2 Billion for Causes on Facebook, FACEBOOK (as updated Feb. 6, 2020, 9:15 AM PT), https://about.fb.com/news/2019/09/2-billion-for-causes/.

\textsuperscript{67} Pingyue Jin, Medical crowdfunding in China: empirics and ethics, 45 J. MED. ETHICS 538, 539 (2019).


global figures for how much individuals give directly to other individuals based on financial need.

The limited data regarding the geographic distribution of charitable crowdfunding indicates that China and the United States have the largest concentrations of such efforts. But charitable crowdfunding is certainly not limited to these countries. Significant charitable crowdfunding has been documented in Ireland, Japan, the United Kingdom, and many other countries. In addition, some U.S.-based charitable crowdfunding platforms are focused on helping people outside of the United States. As for the number of charitable crowdfunding platforms globally, there do not appear to be any reliable, relatively recent estimates. And any such estimates would likely be quickly out-of-date, as platforms emerge, merge, and disappear with some frequency. For example, GoFundMe has recently taken over several other charitable crowdfunding websites.

As detailed in this Part, charitable crowdfunding can in turn be divided into crowdfunding for


72 See Jin, supra note 67, at 539 (in 2017, almost $4 billion raised on three Chinese charitable crowdfunding platforms); P2PMarketData, Crowdfunding in the Americas: USA, Canada, Latin America & the Caribbean (June 26, 2019), https://p2pmarketdata.com/crowdfunding-americas/ ($290 million in 2017 donation-based crowdfunding in the Americas, almost all of which was in the United State given it represented 96.5% of all crowdfunding in that part of the world); P2PMarketData, Crowdfunding in China: A Look at the World’s Largest Market (July 12, 2019), https://p2pmarketdata.com/crowdfunding-china/ ($140 million in 2015 donation-based crowdfunding, with total crowdfunding of all types tripling by 2017). But see CCAF, supra note 69, at 43 (for 2018, reporting almost half of global charitable crowdfunding as in the United States but almost none in China).

73 Laura Slattery, GoFundMe, the crowdfunding site no one should need, targets European growth, THE IRISH TIMES, Feb. 25, 2019 (more than €30 million donated by Irish users of GoFundMe since 2016), https://www.irishtimes.com/business/media-and-marketing/gofundme-the-crowdfunding-site-no-one-should-need-targets-european-growth-1.3803841.


75 See CCAF, supra note 69, at 65 (£39.6 million in donation-based crowdfunding in 2016, triple the amount for the previous year).

76 See, e.g., CCAF, supra note 69, at 43 (2020) (reporting donation-based crowdfunding in every major geographic area of the world except China).


78 But see Theim, supra note 25 (more than 3,500 social giving crowdfunding platforms in 2017).

79 GoFundMe, YouCaring is now part of GoFundMe, https://www.gofundme.com/c/youcaring (“GoFundMe has now consolidated GiveForward, Generosity, and YouCaring”).
a charitable organization, crowdfunding for one or more individuals in financial need, and crowdfunding for a cause, although the last form tends to quickly morph into one or both of the other two forms. The differences between these categories may lead to significant differences in how relevant laws apply to them, as Part II will detail.

C. Crowdfunding for a Charitable Organization

One common form of charitable crowdfunding is a campaign to raise funds for a particular charitable organization (a “charity”), usually in order to address a particular need or support a particular project. The Australian wildfire effort mentioned earlier is an example of this type of campaign, as the funds it raised went to a charitable trust. So was one effort to help victims of Hurricane Harvey, for which the funds raised went to the Justin J. Watt Foundation, a nonprofit corporation recognized by the U.S. Internal Revenue Service as tax-exempt under section 501(c)(3) of the Internal Revenue Code. Many charities also crowdfund through their own websites, but the focus of this article is on crowdfunding done through third-party platforms because, for reasons detailed below, such crowdfunding raises the most significant regulatory questions.

Some platforms, such as Classy and Facebook’s Social Good platform, focus specifically on charities by recruiting them to raise funds for themselves. Other platforms, such as GoFundMe, focus on recruiting campaign organizers, whether they are charities that want to raise funds for
themselves or individuals who want to raise funds for a particular charity.\footnote{See, e.g., \texttt{GOFUNDME}, \texttt{MAKE A DIFFERENCE WITH FREE NONPROFIT FUNDRAISING}, \url{https://www.gofundme.com/start/charity-fundraising}; Jason Vissers, \textit{6 Platforms That Do Crowdfunding For Nonprofits}, \texttt{MERCHANT MAVERICK BLOG} (July 30, 2019), \url{https://www.merchantmaverick.com/6-platforms-that-do-crowdfunding-for-nonprofits/}. GoFundMe has also launched a separate, charitable arm. \textit{See} \texttt{GOFUNDME.ORG}, \url{https://www.gofundme.org/}.} A third set of platforms, which include GlobalGiving and PayPal’s Giving Fund, focus on attracting donors by trying to provide them with as broad a menu of potential charity recipients as possible.\footnote{See \texttt{GLOBALGIVING}, \texttt{ABOUTUS}, \url{https://www.globalgiving.org/aboutus/}; \texttt{PAYPAL GIVING FUND}, \url{https://www.paypal.com/us/webapps/mpp/givingfund/home}.} Finally, some platforms, such as Citizinvestor, ioby, Neighbor.ly and Spacehive, are known for doing “civic crowdfunding” in that they support projects that “specifically provide service to communities.”\footnote{Stefan Katzenmeier, \textit{The supply side: profiling crowdfunding}, in \textit{HANDBOOK OF RESEARCH ON CROWDFUNDING}, \textit{supra} note 2, at 122, 125; \textit{see also} Renko et al., \textit{supra} note 40, at 252-54 (listing crowdfunding platforms).} Illustrating the diversity of the crowdfunding field, there are also platforms that have more narrow foci; for example, DonorsChoose allows donors to “contribute to classroom projects that need material, equipment or travel expenses.”\footnote{\texttt{LILLY SCHOOL OF PHILANTHROPY}, \textit{supra} note 5.}

The Lilly School of Philanthropy at Indiana University has begun tracking charitable crowdfunding campaigns on four platforms (GoFundMe, GlobalGiving, Charidy, and Indiegogo) that it has identified as the most active based on a review of more than 20 platforms.\footnote{\texttt{GoFundME}, \texttt{WHY GOFUNDME CHARITY}, \url{https://charity.gofundme.com/c/why-gofundme-charity}. GlobalGiving provides statistics for its overall activity, but there does not appear to be any readily available public aggregate data for Charidy or Indiegogo. \textit{See} \texttt{GLOBALGIVING}, \url{https://www.globalgiving.org/} (over 26,000 projects benefitting nonprofits with over a million donors); \texttt{LILLY SCHOOL OF PHILANTHROPY}, \textit{supra} note 5.} Self-reported data from GoFundMe states it has hosted millions of campaigns, although it does not provide separate figures for campaigns to benefit charities as opposed to campaigns to benefit individuals.\footnote{\texttt{GOFUNDME}, \texttt{WHY GOFUNDME CHARITY}, \url{https://charity.gofundme.com/c/why-gofundme-charity}.} Similarly, Facebook – which is not included in the Lilly School list – reports over 45 million people have donated to or created a fundraiser on Facebook.\footnote{Gleit, \textit{supra} note 66.} But in contrast to the astonishing success of the prominent examples noted earlier, the limited data available indicate that most charitable crowdfunding efforts raise only modest amounts. For example, one source reports that the average amount raised by a crowdfunding campaign to benefit a charity was only $9,238 as of 2018.\footnote{\texttt{NP SOURCE}, \textit{supra} note 17.} A recent study found that the average contribution to a GoFundMe campaign from a single donor was only $67, and that was the highest average of four charitable crowdfunding
platforms studied. And other data reveal even lower figures with respect average amounts raised per campaign.

Nevertheless, the Australian wildfire, Hurricane Harvey, and CDC Foundation campaigns are not unique in raising millions of dollars for a charity. Other campaigns, particularly ones associated with well-know, tragic events, have enjoyed similar success. For example, two of the top three GoFundMe campaigns in 2018 were associated with an existing charity from their start: the over $22 million raised for the Time’s Up Legal Defense Fund housed at the National Women’s Law Center that grew out of the #MeToo movement, and the over $10 million raised for the official Stoneman Douglas Victims’ Fund housed at the Broward Education Foundation. The third top fundraising campaign, for the families impacted by the Humboldt Broncos bus crash involving a Canadian junior hockey team that killed 16 people and injured another 13, was not initially associated with a charity but a charity was eventually created to handle distributing the funds raised.

D. Crowdfunding for One or More Individuals in Need

Another common form of charitable crowdfunding is a campaign to raise funds for a specific individual or group of individuals with an identified need that exceeds their financial capacity. It appears the most common campaign along these lines is to cover significant medical expenses.

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94 Katzenmeier et al., supra note 3, at 134.
95 See DonorsChoose, See our impact nationwide since our start in 2000, https://www.donorschoose.org/about/impact.html (average donation size for new donors of $52; average cost of funded K-12 education project of $534); Monroe, supra note 53 (average GoFundMe campaign, which presumably includes both campaigns for charities and for individuals, earns less than $2,000).
98 See Fei Gao, Xitong Li, Yuan Cheng & Yu Jeffrey Hu, Ladies First, Gentlemen Third! The Effect of Narrative Perspective on Medical Crowdfunding 12 (2019) (largest medical crowdfunding platform in China had collected as of September 2018 $1.4 billion from more than 340 million donors to help more than 800,000 patients), https://ssrn.com/abstract=3376215; Jin, supra note 67, 539 (three Chinese charitable crowdfunding platforms raised $148 million in 2015, with more than half of the donations for medical causes; the total amount raised by these platforms increased to $3.83 billion in 2017); Tong Wang, Fujie Jin, Yu (Jeffrey) Hu & Yuan Cheng, Early Predications for Medical Crowdfunding: A Deep Learning Approach Using Diverse Inputs 2 (2019);
Other common reasons for these campaigns are poverty, as exemplified by the (allegedly fraudulent) Pay It Forward campaign to help a homeless veteran.99 These campaigns may be organized by the person in need, a family member, a friend, a neighbor, a stranger who is moved by the plight of the needy individual, or by an organization or other group.

Quantitative data regarding crowdfunding for individuals is particularly difficult to obtain, as GoFundMe and other platforms that host such campaigns tend to also host campaigns benefitting charities and to not differentiate among these two types when reporting aggregate or average campaign information.100 For example, while GoFundMe reports total contributions since its funding of over $9 billion from more than 120 million donors, it does not report how those figures break down between campaigns for charities versus campaigns for individuals.101 However, most campaigns for individuals are likely modest in size, as the average GoFundMe campaign reportedly raises less than $2,000 from a couple dozen donors.102

As with campaigns raising funds for charities, the individual beneficiary or beneficiaries often are aware of the campaign and at least implicitly consent to it, but sometimes a campaign is launched without their consent or even knowledge.103 GoFundMe even has a process by which a purported beneficiary who learns about a campaign launched on their behalf can either be formally designated the beneficiary or report the campaign to GoFundMe.104 There appear to be no data regarding the extent to which campaigns – whether well-meaning or fraudulent – are launched without the consent or knowledge of the individual beneficiaries.

Individuals have of course always sought help for themselves or for others. What makes crowdfunding different is the ability to ask for financial help not only from people already known...
to the person organizing the campaign or whoever they encounter on the street but also from the entire online world, at minimal cost.\textsuperscript{105} While this greatly expands the potential support base, it also means that most potential supporters have no easy way to verify the authenticity of the stated need or whether the donated funds are in fact used to address that need.

\textit{E. Crowdfunding for a Cause}

Some crowdfunding efforts start out as efforts to raise funds for a cause such as Black Lives Matter, #MeToo, or building a border wall between the United States and Mexico. As a practical matter, such efforts become a campaign to raise funds for a particular organization that supports the cause at issue or a number of campaigns to raise funds for individuals in need, or a combination of the two, since an abstract cause cannot actually receive any funds. For example, the largest 2018 campaign on GoFundMe was for the Time’s Up Legal Defense Fund that grew out of the #MeToo movement and was housed at the National Women’s Law Center.\textsuperscript{106} Numerous other crowdfunding efforts under the #MeToo banner raise funds for women’s rights groups of various stripes, while at the same time numerous individuals have launched their own crowdfunding efforts to raise funds to help deal with their personal #MeToo situations or projects relating to the #MeToo movement.\textsuperscript{107} A similar pattern exists with Black Lives Matter.\textsuperscript{108}

As for the GoFundMe effort to build a border wall, it became an effort to raise funds for a U.S. tax-exempt nonprofit that has committed to help build that wall, although the nonprofit was actually tax-exempt as a social welfare organization under section 501(c)(4) of the U.S. Internal Revenue Code instead of as a charity under section 501(c)(3).\textsuperscript{109} (The main effect of this difference

\textsuperscript{105} See Claire Ingram Bogusz, \textit{Crowdfunding across research fields: an overview and suggestions for future investigation, in Handbook of Research on Crowdfunding, supra} note 2, at 23, 25 (lowered costs for both campaign organizers and funders).


\textsuperscript{109} See Mariana Alfaro, \textit{After GoFundMe refunded donations to a “Fund the Wall” campaign, people sent the}
is that donations to this campaign were not tax deductible for the donors as charitable contributions.\footnote{See 26 U.S.C. § 170(a)(1), (c) (2018).} Donative campaigns focused on specific causes therefore collapse into the other two categories because someone has to actually receive the funds raised, and so crowdfunding for a cause will not be discussed separately in the remainder of this Article.

\section*{F. Downsides of Charitable Crowdfunding}

The growing popularity of charitable crowdfunding and the widely publicized examples of successful campaigns illustrate the ability of this new form of fundraising to encourage generosity. For example, Brian Frye argues that charitable crowdfunding helps solve some “charity failures” in the United States that result from the inability of the current federal charitable contribution deduction to subsidize donations from lower income donors.\footnote{Frye, supra note 41, at 159.} At the same time, numerous commentators and news stories have highlighted various downsides. These include misunderstandings, misuse, and outright fraud. The potential for organizers to launch campaigns without the consent or even knowledge of the beneficiary may also raise concerns.

Perhaps the most comment criticism of charitable fundraising is that often individuals launch campaigns with high expectations, only to have the reality that most campaigns raise modest amounts crush their dreams.\footnote{See Monroe, supra note 53 (“most [GoFundMe] efforts fizzle without coming close to their financial goals”).} For example, a couple in the United States with limited financial resources launched a GoFundMe campaign to raise the $72,000 they estimated they would need to sustain themselves in the wake of the wife’s pancreas transplant, sharing intimate details of their lives, only to have the campaign max out at $1,645.\footnote{See id. (Laila & Richard Roy’s story).}

A related problem is that even a wildly successful campaign can lead to unexpected negative results. For example, in the wake of the Humboldt Broncos bus crash in Canada, a dispute arose among the families of the victims over how the millions of dollars raised should be allocated, which took months to resolve.\footnote{See MacPherson, supra note 97; Funds to Start Being Distributed to Families of Humboldt Broncos, CANADIAN PRESS, May 17, 2018, https://www.iheartradio.ca/newstalk-1010/news/funds-to-start-being-distributed-to-families-of-humboldt-broncos-1.3827275; Susan Phillips, Good news after Humboldt: How a $15 crowdfunder turned nasty & got quickly resolved, PANL PERSPECTIVES (Nov. 9, 2020), https://carleton.ca/panl/story/how-15-million-humboldt-crowdfunder-that-turned-nasty-got-quickly-resolved/.} And after the 2016 Pulse Nightclub shooting in the United States
the GLBT Community Center of Central Florida that raised more than $500,000 in contributions was fined for registration violations and criticized for a volunteer allegedly mishandling funds.\textsuperscript{115} Or a campaign may raise an amount that significantly exceeds the need sought to be addressed, raising questions about how excess funds should be used.\textsuperscript{116} This is not a new problem in the fundraising area, as often particularly compelling situations such as well-publicized natural disasters, mass shootings, or terrorist attacks attract more donations than required to help the affected individuals.\textsuperscript{117} But while in the past it has usually been sophisticated and well-resourced organizations that have found themselves in this situation, with charitable crowdfunding a small, under-resourced organization or even a single individual can find themselves wrestling with this problem. For example, in China a mother raised money to help treat her daughter’s eye cancer, but allegedly ended up using the funds to treat her son’s cleft palate after her daughter died, leading to authorities requiring her to return the remaining funds to the fundraising platform.\textsuperscript{118} And finally, high profile tragedies may result in hundreds of fundraisers to help those affected, with limited information distinguishing them.\textsuperscript{119}

It is not only organizers and beneficiaries who may misunderstand the likely results for a campaign. Donors may also misunderstand what their contributions are supporting, even if organizers do not intend any deception. For example, the Australian wildfire campaign provided that the funds would go to a charitable trust that a court found had limited purposes, primarily to provide funds to fire brigades in order to purchase or maintain fire-fighting equipment and facilities, provide training, or provide other resources needed for the their volunteer-based fire and emergency service activities.\textsuperscript{120} The court therefore rejected the trust’s request to transfer funds to other charities, to fund interstate rural fire services, or to help animals affected by the wildfires, despite the vague solicitation language of the campaign and the requests from many donors for their contributions to be used for the latter purposes.\textsuperscript{121} Similarly, after George Floyd’s murder

\textsuperscript{115} Brinkmann, supra note 18.
\textsuperscript{116} See Scott, supra note 20, at 397.
\textsuperscript{119} See, e.g., Scams and waste loom as charity millions donated after Orlando nightclub shooting, CHICAGO TRIBUNE, Aug. 27, 2016.
\textsuperscript{120} See ACPNS, supra note 9, at 3-4.
\textsuperscript{121} Id. at 4-5.
many people donated to the Black Lives Matter Foundation through GoFundMe – including in some instances employees of prominent companies such as Apple, Google, and Microsoft based on encouragement from their employers – only for both the donors and their employers to learn later that the Foundation was not part of the BLM movement but instead had been formed (a number of years earlier) to support police department/community relations.122 And donors may not understand that while donations that go directly to a charity may provide certain tax benefits, donations that go directly to help a specific individual or individuals generally do not.123

And the speed with which a charitable crowdfunding campaign can be established and its broad reach may attract organizers who intend to deceive.124 In the wake of worldwide media coverage of the Australian wildfires, the Australian Competition and Consumer Commission reported having received 425 reports of bushfire scams, many relating to crowdfunding campaigns.125 And one of the largest charitable crowdfunding frauds to date appears to have been the “Pay It Forward” effort launched in 2017 to benefit a homeless veteran in the United States who had allegedly helped a woman who had run out of gas on a highway, which raised more than $400,000.126 But after a dispute arose relating to the use of the funds, prosecutors brought theft charges, alleging that the story was a sham.127 And prosecutors allege that the effort to fund a border wall between the United States and Mexico was fraudulent because organizers told donors that all of the funds raised would go toward wall construction when in fact some contributions when to compensate or pay for personal expenses of the beneficiary nonprofit’s leaders.128

Crowdfunding may be particularly vulnerable to fraud, money laundering, and even terrorist

124 See Brandee R. Hancock & Monika N. Turek, Risks and Abuses of Crowdfunding for Charity. EXEMPT ORG. TAX REV., Aug. 2016, at 105, 107 (examples of funds not reaching the identified beneficiary); Nathaniel Popper & Taylor Lorenz, GoFundMe Confronts Coronavirus Demand, N.Y. TIMES, Mar. 26, 2020 (GoFundMe estimates less than 0.1 percent of campaigns are fraudulent); GoFRAUDME, http://gofraudme.com/; supra note 51 and accompanying text (GoFundMe speed of setup).
financing given the low barriers to entry for campaign organizers and current uncertain and limited regulation.129 Yet data regarding the extent of crowdfunding-related fraud, money laundering, and similar illegal activities, much less specifically relating to charitable crowdfunding, is generally lacking.130 In addition, the incomplete and limited data collected so far indicates that crowdfunding fraud is relatively rare.131 But of course part of the reason for the low level of observed fraud may be limited incentives to detect fraud in the first place.132 For example, the relatively small amount given by most donors means that individual donors probably have little motivation to try to detect and report fraud.

Finally, at least some platforms allow organizers to launch a campaign without the consent or even knowledge of the beneficiary, which also may raise issues.133 In one prominent example, the PayPal Giving Fund – itself a charity – had to resolve a legal dispute with regulators arising from allegations that it received donations donors thought would go to certain charities but that the Fund allegedly redirected to other charities without informing either the donors or the originally designated charity.134 The resolution required the Fund to be more forthcoming with donors about

130 See Parhankangas et al., supra note 24, at 1, 16 (limited research relating to “the negative side of crowdfunding”).
132 Tenca & Franzoni, supra note 129, at 333,
where their donations go and to also report data to fundraising regulators in the United States. \textsuperscript{135}

While a charity that disapproves of a campaign could ask the crowdfunding platform not to allow the use of its name or logo, the organizer could easily start a new campaign either on the same platform or another one, again without the charity’s knowledge or consent. While presumably most charities would be more than happy to have individuals volunteering to raise funds for them, some might not, especially if the individuals are unsavory or use questionable appeals. In addition, a given charity might prefer to have more control of its fundraising both to avoid platform and processor fees that reduce the net donations it receives and to collect information about donors so it could target them for further appeals. This would be especially true if the charity is concerned that the funds raised may never actually reach it. Similar concerns may arise for individual beneficiaries.

So while examples of charitable crowdfunding downsides certainly exist, at this point the information available is primarily if not almost entirely “anecdata.” \textsuperscript{136} The questions this Article addresses – how current law does and should regulate charitable crowdfunding – therefore need to be answered with very limited information regarding the extent of these downsides.

II. CURRENT REGULATION OF CHARITABLE CROWDFUNDING

\textit{A. Laws Governing Charitable Fundraising}

While the relevant rules vary significantly across jurisdictions, as this Part will detail, governments generally regulate charitable fundraising using three types of laws. \textsuperscript{137} The first and most obvious type are laws that specifically regulate charitable solicitation, including by imposing registration, reporting, and other requirements. The second type are other laws that regulate charities or nonprofits more generally but may affect fundraising because they either restrict the


\textsuperscript{136} The first law review article mention of the term anecdata appears to have been in 1989, when it was attributed to Professor Don Herzog. Kim Lane Scheppelle, \textit{Forward: Telling Stories}, 87 Mich. L. Rev. 2073, 2073 & n.3 (1989).

\textsuperscript{137} See generally ECNL, \textit{supra} note 60, at 18-22; Bruce R. Hopkins, \textit{The Law of Fundraising} 86-88 (5th ed. 2013) (United States).
use of donations received or require certain fundraising practices for organizations that want to claim various legal benefits. The third type are broadly applicable laws that may be implicated by problematic behavior relating to charitable fundraising, particularly consumer protection, fraud, and money laundering laws. This Section describes each of these bodies of law and how they apply to charitable fundraising, with an emphasis on the United States because its residents are the largest source of contributions for charities.\textsuperscript{138}

1. Charitable Solicitation Laws

Direct regulation of charitable solicitation varies widely between jurisdictions, ranging from non-existent to “strongly prescriptive and involved.”\textsuperscript{139} Countries with laws specifically addressing charitable solicitation may apply those laws to the charities themselves, to for-profit companies that assist charities in their fundraising, or both.\textsuperscript{140} Those laws usually require registration and public financial reporting.\textsuperscript{141} Less frequently, those laws impose substantive restrictions such as limiting the purposes for which fundraising can be done,\textsuperscript{142} who can do fundraising,\textsuperscript{143} or limiting the proportion spent on fundraising or administrative costs overall.\textsuperscript{144} In some countries the ability of legislators to impose requirements on fundraising may be limited by

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\textsuperscript{138} See supra notes 70–71 and accompanying text.

\textsuperscript{139} Breeze & Scaife, supra note 54, at 584; see also id. at 590 (“[a] range of countries report the lack, or only a nascent system of capturing fund-raising activities and costs”); REGULATING CHARITIES: THE INSIDE STORY (Myles McGregor-Lowndes & Bob Wyatt eds., 2017) [hereinafter REGULATING CHARITIES] (comparing laws relating to charities for five common law jurisdictions); REGULATORY WAVES: COMPARATIVE PERSPECTIVES ON STATE REGULATION AND SELF-REGULATION POLICIES IN THE NONPROFIT SECTOR 18 (Oonagh B. Breen, Alison Dunn & Mark Sidel eds., 2016) [hereinafter REGULATORY WAVES] (case studies of 16 jurisdictions); International Center for Not-for-Profit Law, Domestic Fundraising, https://www.icnl.org/our-work/domestic-fundraising (reports on the legal framework for fundraising and philanthropy in a variety of countries and regions).

\textsuperscript{140} See, e.g., ECNL, supra note 60, at 19 (regulation of charities in some European countries); 45-46 (regulation of for-profit entities involved with charitable fundraising in some European countries); Fishman, supra note 56, at 14-15 (most states in the United States require registration and reporting by both charities and for-profit entities involved in charitable fundraising).

\textsuperscript{141} See, e.g., ECNL, supra note 60, at 27-28 (some European countries require pre-solicitation applications, others require pre-solicitation notification), 41 (many European countries have reporting requirements); Fishman, supra note 56, at 14 (most states in the United States require registration and reporting).

\textsuperscript{142} See, e.g., ECNL, supra note 60, at 24-25 (most European countries allow fundraising for any nonprofit purpose, but some limit appeals to charitable purposes).

\textsuperscript{143} See, e.g., ECNL, supra note 60, at 25-27 (most European countries allow charitable fundraising by all nonprofits, with some also allowing such fundraising by for-profit entities or individuals, and natural persons who fundraise may have to meet certain minimum requirements).

\textsuperscript{144} See, e.g., ECNL, supra note 60, at 40 (some European countries limit administrative and/or fundraising costs); Breen, supra note 61, at 118, 139 n.4 (Ireland, New South Wales, and Canada (latter through tax laws)).
other legal provisions, such as free speech protections.\textsuperscript{145}

The locus of regulatory authority for charitable fundraising varies widely, depending on the
country.\textsuperscript{146} In many countries, regulation is primarily by state, provincial, or other sub-
governments and so varies within the country.\textsuperscript{147} As detailed below, the United States falls into
this category.\textsuperscript{148} But in some other countries, there is a national registration requirement for
fundraising – so a uniform standard applies countrywide, at least in theory – that is administered
in part at the local level.\textsuperscript{149}

In jurisdictions with little or no specific regulation of charitable solicitation or fundraising,
agencies sometimes issue voluntary guidelines. For example, in Canada federal tax authorities has
issued a detailed “Guidance on Fundraising” addressing everything from proper categorization of
expenses to governance best practices.\textsuperscript{150} In the United Kingdom the relatively new Fundraising
Regulator has issued a voluntary “Code of Fundraising Practice” applicable to both charities and
third-party fundraisers.\textsuperscript{151} This is also true in Hong Kong, which while part of China has a distinct
set of voluntary fundraising guidelines for charities.\textsuperscript{152}

In addition, in many countries there are efforts at self-regulation by charities themselves,
sometimes alongside (or in tension with) government regulation or guidelines and sometimes in

\textsuperscript{145} See, e.g., Barber & Farwell, supra note 61, at 315 (attempts by United States jurisdictions to limit
administrative and fundraising costs foreclosed by court free speech decisions).

\textsuperscript{146} See, e.g., ECNL, supra note 60, at 29-30 (regulatory authority in European countries includes national, regional
and local, and hybrid models).

\textsuperscript{147} See, e.g., Thomas von Hippel, Nonprofit organizations in Germany, in COMPARATIVE CORPORATE
GOVERNANCE OF NON-PROFIT ORGANIZATIONS 197, 220 (Klaus J. Hopt & Thomas von Hippel eds., 2010) (Germany);
Myles McGregor-Lowndes, Introduction, 23 VOLUNTAS 734, 734 (2012) (Australia). See also Mark Sidel, State
Regulation and the Emergence of Self-Regulation in the Chinese and Vietnamese Nonprofit and Philanthropic Sectors,
in REGULATORY WAVES, supra note 139, at 92, 110 (China localities experimenting with regulation of fundraising).

\textsuperscript{148} See infra note 156 and accompanying text.

\textsuperscript{149} See Henrietta Grönlund & Anne Birgitta Pessi, Giving in Finland: The Multidimensional Role of Giving in a
Context of a Changing Welfare Model, in PALGRAVE HANDBOOK, supra note 139, at 155, 159-60; Chulhee Kang,
Erica Yoonkyung Auh & Younghye Hut, Giving in South Korea: A Nation of Givers for the Population under Public
Assistance, in PALGRAVE HANDBOOK, supra note 54, at 426, 432.

\textsuperscript{150} See Susan D. Phillips, Canadian Leapfrog: From Regulating Charitable Fundraising to Co-Regulating Good
Governance, 23 VOLUNTAS 808, 819-20 (2012).

\textsuperscript{151} See FUNDRAISING REGULATOR, supra note 80; see also Alison Dunn, Eddies and Tides: Statutory Regulation,
Co-Regulation, Self-Regulation in Charity Law in Britain, in REGULATORY WAVES, supra note 139, at 21, 27; Sir
Stuart Etherington, Reflections on Modernizing and Reforming Regulation, in REGULATING CHARITIES, supra note
139, at 59, 69-71; Richard Fries, Toward Regulation: Modernizing the Original Charity Commission, in REGULATING
CHARITIES, supra note 139, at 17, 30 (Charity Commission for England and Wales authority over fundraising although
no specific statutory provisions); Lindsay Driscoll, The Reforming Regulator, in REGULATING CHARITIES, supra note
139, at 37, 43 (same).

\textsuperscript{152} Elaine Chan & Wai Fung Lam, Giving in Hong Kong: A Growing Sector Evading Regulation, in PALGRAVE
HANDBOOK, supra note 54, at 369, 373.
the absence of government action.\textsuperscript{153} Without going into the numerous details, the exact relationship between self-regulation and government regulation varies significantly among countries.\textsuperscript{154} These efforts generally rely on voluntary participation and so usually only reach a portion of charities engaged in fundraising.\textsuperscript{155}

In the United States, regulation of charitable solicitation is primarily by state governments, with almost all states and the District of Columbia having enacted charitable solicitation registration and reporting laws.\textsuperscript{156} As others have documented, state charitable solicitation laws vary significantly.\textsuperscript{157} In most but not all states, there are laws that apply directly to charities that ask the public for donations, either directly or through a for-profit vendor.\textsuperscript{158} Some states also or instead impose obligations on for-profit companies that help charities raise funds, which can

\textsuperscript{153} See, e.g., ECNL, supra note 60, at 22 (Scandinavia and some Western European countries rely primarily on self-regulation, while in the United Kingdom, Ireland, Southern European countries, and some Central and Eastern European countries self-regulation operates alongside government regulation).


\textsuperscript{155} See, e.g., Breen & Carroll, supra note 153, at 194 (slow adoption of self-regulatory best practices by charities in Ireland). See generally Breen, supra note 61, at 122-23; Gugerty, supra note 154.


\textsuperscript{157} See FREMONT-SMITH, supra note 83, at 373-74; Nathan Dietz, Putnam Barber, Cindy Lott & Mary Shelly, Exploring the Relationship between State Charitable Solicitation Regulations and Fundraising Performance, 8 NONPROFIT POL’Y FORUM 183, 184 (2017); Fishman, supra note 56, at 14-15.

\textsuperscript{158} See Dietz et al., supra note 157, at 195-98 (third and ninth columns in table of state charitable solicitation laws).
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include both commercial or professional fundraisers who contact the public to ask for donations and handle donated funds and also fundraising counsel who advise charities on fundraising campaigns but do not make solicitations or handle donations.\(^\text{159}\) Some state laws also apply to commercial co-venturers, that is for-profit companies that do a joint appeal with a charity (e.g., “For every car sold, our dealership will give $X to Charity Y!”).\(^\text{160}\) A few states lack any laws explicitly aimed at charitable fundraising.\(^\text{161}\) Finally, state laws are supplemented in many cities and counties by local government rules relating to charitable fundraising.\(^\text{162}\)

That said, the U.S. laws share some common characteristics. First, they are generally limited to imposing registration and reporting obligations on the covered entities,\(^\text{163}\) primarily because of constitutional free speech protections that limit the ability of states to impose any more burdensome requirements.\(^\text{164}\) Second, they are riddled with exceptions, including for churches, alumni associations, and membership organizations only soliciting their members.\(^\text{165}\) Third, while it is relatively simple to comply with the requirements for any given jurisdiction, in the aggregate the burden of complying with these requirements can be quite significant for a charity with donors in many states and localities.\(^\text{166}\) For this reason there are a number of specialized vendors who will, for a fee, handle the registration and reporting requirements in multiple jurisdictions.\(^\text{167}\) Also in part for this reason, the states have worked to create a Unified Registration Statement that can be used in multiple jurisdictions and are working on creating an online Single Portal that would allow covered entities to register and report in multiple jurisdictions simultaneously.\(^\text{168}\)

\(^\text{159}\) See Dietz et al., supra note 157, at 195-98 (second, fourth, and seventh columns).


\(^\text{161}\) See Dietz et al., supra note 157, at 195-98 (Arizona, Idaho, Montana, Nebraska, and Wyoming).

\(^\text{162}\) See Mead, supra note 62.


\(^\text{164}\) See infra notes 359-360 and accompanying text.

\(^\text{165}\) See FREMONT-SMITH, supra note 83, at 373-74; see also ECNL, supra note 60, at 28-29 (exceptions in some European countries).

\(^\text{166}\) See Esposito, supra note 160, at 475-76.


2. Other Charity and Nonprofit Laws

Many countries require charities or nonprofits more generally to register and report information with one or more government agencies regardless of their fundraising practices.\(^{169}\) These rules may include certain requirements with respect to financial practices.\(^{170}\) Implicit and sometimes explicit in these requirements is the possibility that those agencies will investigate and sanction alleged diversions of funds from the stated purposes of the organizations, especially if the diversion is to individuals or for-profit entities that have substantial influence over the organization.\(^{171}\)

Many countries also provide tax benefits to charities or nonprofits more generally, and their donors, and in some of these countries regulation of charitable solicitation is tied to the receipt of tax benefits.\(^{172}\) For example, in Austria nonprofits that register with the Ministry of Finance so that donors may deduct their contributions are required to limit their costs for administering donations (which does not include fundraising costs) to 10 percent or less.\(^{173}\) In Germany tax regulators and the courts have taken the position that fundraising costs must not be excessive for an organization to qualify for tax exemption.\(^{174}\) In Mexico no more than five percent of donations may be spent on administrative costs (which may include fundraising costs) by tax-exempt organizations, leading many organizations not to seek tax-exempt status.\(^{175}\) And in Macedonia the laws governing

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\(^{169}\) See, e.g., ECNL, supra note 60, at 19 (England and Wales, Ireland, and Hungary); Khaldoun AbouAssi, Giving in Lebanon: Traditions and Reality in an Unstable Environment, in PALGRAVE HANDBOOK, supra note 54, at 338, 345; Franziska Bieri & Nevan T. Valev, Giving in Bulgaria: A Nonprofit Sector in Transition, in PALGRAVE HANDBOOK, supra note 54, at 118, 124; Sharilyn Hale, Giving in the Caribbean: Building upon Cultures of Generosity to Strengthen the Nonprofit Sector, in PALGRAVE HANDBOOK, supra note 54, at 88, 93; Kang et al., supra note 149, at 432 (South Korea); Una Osili & Çağla Ökten, Giving in Indonesia: A Culture of Philanthropy Rooted in Islamic Tradition, in PALGRAVE HANDBOOK, supra note 54, at 388, 392; Sidel, supra note 133, at 102-03 (China); Wang Xinsong, Liu Fenaqin, Nan Fang, Zhao Xiaoping & Zhang Xiulan, Giving in China: An Emerging Nonprofit Sector Embedded within a Strong State, in PALGRAVE HANDBOOK supra note 54, at 354, 358.

\(^{170}\) See generally Carolyn Cordery, Regulating Small and Medium Charities: Does It Improve Transparency and Accountability, 24 VOLUNTAS 831 (2013).

\(^{171}\) See, e.g., Lindsay Driscoll, The Reforming Regulator, in REGULATING CHARITIES, supra note 139, at 37, 43 (Charity Commission for England and Wales); Richard Fries, Toward Regulation: Modernizing the Original Charity Commission, in REGULATING CHARITIES, supra note 139, at 17, 30 (same); Irina Mersianova, Lev Jakobson & Irina Krasnopolskaya, Giving in Russia: The Difficult Shaping of the New Nonprofit Regime, in PALGRAVE HANDBOOK, supra note 54, at 249, 254. Some European countries have explicit laws requiring that collected funds only be used for purposes designated at the time of collection. See, e.g., ECNL, supra note 60, at 40.

\(^{172}\) See, e.g., David Lasby & Cathy Barr, Giving in Canada: Strong Philanthropic Traditions Supporting a Large Nonprofit Sector, in PALGRAVE HANDBOOK, supra note 54, at 25, 30; infra notes 173-176 and accompanying text.

\(^{173}\) Neumayr, supra note 153, at 105.

\(^{174}\) von Hippel, supra note 147, at 221.

\(^{175}\) Michael D. Layton & Valérie Mossell, Giving in Mexico: Generosity, Distrust and Informality, in PALGRAVE...
fundraising activities only apply if the donor and recipient want to obtain donation-related tax benefits. 176

In the United States, oversight over charitable assets is primarily in the hands of state governments. 177 In every state and the District of Columbia, either the attorney general or another state official has authority to oversee the use of assets dedicated to charitable purposes. 178 That said, the federal government also plays a role in this oversight because of the tax benefits provided to almost all nonprofits and particularly charities. 179 But only rarely have federal tax authorities used that role to challenge fundraising practices. 180 And the U.S. Internal Revenue Service has held there are no tax-related restrictions on tax-exempt charities engaging in online fundraising, 181 although charitable crowdfunding platforms do not themselves qualify for tax exemption. 182

The authority for oversight of charitable assets originally came from the common law but is now codified in many United States jurisdictions. 183 In some but far from all states this authority has been used to require registration and reporting by entities holding assets for charitable purposes. These requirements are distinct from any applicable charitable solicitation registration and reporting requirements.

3. Generally Applicable Laws

Many other types of laws may apply to charitable fundraising. 184 The most relevant for
purposes of this article are those laws designed to protect consumers\(^{185}\) and to combat fraud.\(^{186}\) Also relevant are laws designed to combat money laundering and terrorism financing, which governments have applied when the fundraiser is allegedly using the purported fundraising to launder funds from or to support illegal activities.\(^{187}\)

a. Consumer Protection Laws

Essentially every country has some form of consumer protection laws.\(^{188}\) Some, perhaps most, of these laws arguably apply both to appeals for donations by charities\(^{189}\) and to Internet transactions.\(^{190}\) In the United States, many jurisdictions provide that violations of charitable solicitation laws are also violations of consumer protection laws, although it is unclear to what extent regulators actually invoke the sanctions available under the latter laws.\(^{191}\) A recent European Commission report assumed that “donation/reward [crowdfunding] campaigns have traditional consumer law remedies at their disposal.”\(^{192}\)

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\(^{189}\) See *supra* note 185.


\(^{192}\) *Gabison, supra* note 185, at 20 n. 120.
b. Fraud Laws

Essentially every country also has laws targeting fraud – that is, obtaining something economically valuable from another party through deceptive means. Such laws are typically written broadly enough to include fraudulent charitable solicitations, and so can be applied to individuals or organizations that lie about how funds obtained will be used. Such situations may even lead to harsher sanctions that other kinds of fraud, presumably because of the diversion of funds from charitable purposes.

In the United States, in addition to state fraud laws that may apply to fraudulent charitable fundraising the federal government oversees for-profit entities involved in charitable fundraising, primarily through the Federal Trade Commission (“FTC”). The FTC’s statutory authority is limited to for-profit entities. However, even with this limited authority the FTC has on occasion pursued actions against both for-profit vendors and “sham” charities involved in allegedly fraudulent charitable solicitations, justifying its pursuit of the latter entities on the ground that sham charities are not true nonprofits and so within its reach. Because it usually takes these actions in cooperation with state authorities, the frequency of such actions may be limited because of the amount of inter-governmental coordination required.

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193 See generally ACFE, REPORT TO THE NATIONS: 2020 GLOBAL STUDY ON OCCUPATIONAL FRAUD AND ABUSE 59-60 (2020) (analysis of more than 2500 occupational fraud cases from around the world, with 59% reported to law enforcement and none reporting the reason for not reporting as being the fraud was not a crime under local laws); Joseph Lanuti, Note, Mail and Wire Fraud, 56 AM. CRIM. L. REV. 1151 (2019) (United States national laws).
194 See, e.g., United States v. Smith, 133 F.3d 737, 740-41 (10th Cir. 1997) (fraud conviction under United States law for soliciting donations for a charity deceptively).
195 See, e.g., U.S. SENTENCING GUIDELINES MANUAL § 2B1.1(b)(9) (sentence enhancement for engaging in illegal fraud relating to charitable solicitations).
196 See FREMONT-SMITH, supra note 83, at 424–25; Fishman, supra note 56, at 34-35.
199 See supra note 198.
c. Money Laundering and Terrorism Financing Laws

Especially in the wake of 9/11 and the rise of ISIS, governments have increasingly investigated charities for possible ties to criminal activity and terrorism.\textsuperscript{200} In some countries restrictions on charitable funding imposed purportedly because of terrorism or other national security concerns have arguably in fact been imposed to stifle dissent or for other less legitimate reasons.\textsuperscript{201} But well-respected organizations, such as the Financial Action Task Force, have also raised concerns about charitable fundraising and specifically crowdfunding being used to move financial resources to individuals or entities that in turn support terrorism.\textsuperscript{202} While concerns about such ties predate crowdfunding, some commentators have highlighted the potential use of crowdfunding for supporting terrorism or other forms of money laundering, since an on-its-face innocuous project – whether charitable or otherwise – could easily be used to make illegally obtained funds appear to be from a legitimate source.\textsuperscript{203}

B. Application to Charitable Crowdfunding

This Section considers to what extent the laws previously described apply to crowdfunding to benefit a charity and crowdfunding to benefit a specific individual or set of individuals. With respect to each type of crowdfunding it also considers proposals developed in a variety of countries relating to regulation of this new type of charitable fundraising. Finally, this Section considers a particularly difficult legal question that arises in the context of almost all online activity – to what extent geographically limited governments have personal jurisdiction to apply their rules to parties engaged in geographically ambiguous online activity.

\begin{footnotes}
\item[201] See Mayer, \textit{supra} note 60, at 1217-19; \textit{supra} note 62.
\end{footnotes}
1. Crowdfunding for a Charity

It would be easy but incorrect to assume that charitable crowdfunding is automatically subject to charitable solicitation laws. In some but not all countries this is the case when the organizer of a campaign is the benefitting charity itself (whether the campaign is hosted on the charity’s own website or a crowdfunding platform), as long as the laws directly regulating charitable solicitation do not depend on the means used to communicate the solicitation. In these instances, the only significant legal issue that tends to arise is whether the Internet-based solicitation results in sufficient contacts to provide personal jurisdiction over the charity for a given government regulator.

However, many if not most crowdfunding campaigns are not organized by the benefitting charity but instead by an individual who supports the charity without being directly affiliated with it. Charitable solicitation laws, usually enacted before widespread public use of the Internet, often impose requirements both on the charity seeking funds for itself and on other parties that are compensated to help the charity raise funds, such as paid professional fundraisers and fundraising consultants. But in the typical charitable crowdfunding situation, the individual organizer is not compensated and so would not fall into any of these categories. It therefore appears that charitable solicitation laws generally will not apply to individuals who organize a campaign to benefit a specific charity if they are uncompensated and not acting as agents of the charity. Some jurisdictions do require that an individual soliciting funds to support a given charity or the platform hosting such a campaign receive the permission of the charity in advance of doing so. However,

See ADELSTEIN & BORIS, supra note 156, at 5-6 (90 percent of states in the United States regulate Internet fundraising by charities); Carly Leinheiser, The Nonprofit Practitioner: What Keeps You Up at Night, 20141027P NYCBAR 38 (Oct. 27, 2014) (“[f]undraising activity that occurs online constitutes a ‘solicitation’ for purposes of state charitable solicitation laws”); Maloney & Rosenthal, supra note 44, at 5 (“[c]haritable solicitation laws . . . define the term ‘solicit’ broadly, and this broad definition includes internet fundraising” (citations omitted)). But see ECNL, supra note 60, at 27 (“Except for France, none of the [European] countries covered by this report require permission for online fundraising.”); Lauren Simpson, Charitable Solicitations in the Digital Age: Crowdfunding, Social Media, and Compliance/Best Practices (Outline), 20181029P NYCBAR 217 (Oct. 29, 2018) (in the United States, “the determination of when online fundraising triggers registration [under charitable solicitation laws] is still fairly ambiguous”).

See infra Section II.B.3.

See Hammond, supra note 44, at 13-14; supra notes 140, 159 and accompanying text.

it is unclear to what extent this requirement is enforced, especially given that typically only the
government – not the charity – is able to do so.\textsuperscript{208}

Of course there are other parties involved in a charitable crowdfunding campaign that may
receive compensation. Both the crowdfunding platform and its third-party payment processor(s)
fall into this category. Crowdfunding platforms of all types commonly charge a five percent fee,
although some only do so if the campaign reaches its goal, and GoFundMe does not currently
charge any platform fees.\textsuperscript{209} In addition, payment processing fees tend to be several percent, plus
a nominal per transaction fee.\textsuperscript{210} For example, GoFundMe uses WePay, a division of Chase Bank,
and PayPal as two of its payment processors, and they charge 2.9 percent plus $0.30 per
transaction.\textsuperscript{211} In addition, GoFundMe uses a charity, PayPal Giving Fund, to collect and distribute
funds donated when the organizer designates a specific charity to have funds paid directly to it (as
opposed to funds being received by the organizer, who then pays the identified charity, a model
that GoFundMe also permits).\textsuperscript{212} In this situation the PayPal Giving Fund creates a donor advised
fund that holds the funds until the charity meets certain due diligence requirements that the Fund
imposes; if a charity fails to do so, the Fund is free to instead contribute the funds to a different
charity, as the “advice” of the donors to contribute to the specified charity is not legally binding.\textsuperscript{213}

PayPal Giving Fund is registered and files reports with at least some United States jurisdictions,
which is not surprising given some U.S. jurisdictions subject charity intermediaries to

United States jurisdictions report requiring the charity permission), 17 (11 of 31 jurisdictions report requiring the

\textsuperscript{208} See NASCO, \textit{supra} note 207, at 23 (only 17 of 41 United States jurisdictions responding had engaged in any
enforcement activity arising out of crowdfunding, and of those only three involved fundraisings for a charity without
its permission).

\textsuperscript{209} See, \textit{e.g.}, \textsc{GoFundMe}, \textsc{Free Fundraising}, \url{https://www.gofundme.com/c/free-fundraising (no platform fee)}; \textsc{Indiegogo}, \textsc{Fees \\& Pricing for Campaigners: How Much Does Indiegogo Cost?}, \url{https://support.indiegogo.com/hc/en-us/articles/204456408-Fe\-s-Pricing-for-Campaigners-How-much-does-Indiegogo-cost- (five percent platform fee)}; \textsc{Kickstarter}, \textsc{Fees for the United States}, \url{https://www.kickstarter.com/help/fees (five percent platform fee only if campaign successful)}; \textsc{Patreon}, \textsc{Pricing}, \url{https://www.patreon.com/product/pricing (five percent platform fee, with higher fees in exchange for additional services)}.

\textsuperscript{210} See, \textit{e.g.}, \textsc{GoFundMe}, \textit{supra} note 209 (2.9 percent plus $0.30 per transaction); \textsc{Kickstarter}, \textit{supra} note 209
(3.0 percent plus $0.20 per pledge, with higher amounts for pledges under $10); \textsc{Stripe}, \textsc{Pricing}, \url{https://stripe.com/pricing (2.9 percent plus $0.30 per transaction)}.

\textsuperscript{211} See \textsc{GoFundMe}, \textit{supra} note 209; \textsc{WePay}, \textsc{GoFundMe Case Study (2017)}, \url{https://go.wepay.com/uploads/CaseStudyGoFundMe.pdf}.

\textsuperscript{212} See \textsc{GoFundMe}, \textsc{Choosing a Fundraiser Type}, \url{https://support.gofundme.com/hc/en-us/articles/203603984-Choosing-a-Campaign-Type}.

regulation.\textsuperscript{214}

So while the definitions of the for-profit participants that are subject to charitable solicitation laws tend to be broad, it is still generally unclear whether either the crowdfunding platforms or their third-party payment processors fall within them, at least in the United States.\textsuperscript{215} For the platforms, this is in part because they do not control the campaigns, determine which charities will benefit from them, or handle the funds raised.\textsuperscript{216} At least some of the platforms are aware of this ambiguity, as they have taken steps to create as strong a position as possible that they are not subject to these laws.\textsuperscript{217} For example, GoFundMe includes in its terms of service a section titled “The Services are platforms: We are not a Broker, Financial Institution, Creditor or Charity” and also a “No Solicitation” section that states GoFundMe does not itself engage in any soliciting.\textsuperscript{218} At the same time, some jurisdictions take the position that the platforms do fall into one of these regulated categories.\textsuperscript{219} As for the third-party payment processors, they may be able to generally avoid registration, reporting, and other requirements because they do not play any role in asking for donations or developing the crowdfunding appeal.

If charitable solicitation laws generally do not apply (or their application is uncertain) to individuals organizing crowdfunding campaigns to benefit charities, or to the platforms that host such campaigns and their third-party payment processors, or to the charities benefitting since they are not making or directing the solicitations, are there other charity laws that may apply to one or more of these parties? As noted above, most jurisdictions around the world have general charity


\textsuperscript{215} See, e.g., Hammond, supra note 44, at 13-16; Leinheiser, supra note 204; Mosher & Campbell, supra note 34, at 40; Simpson, supra note 204; see also GiveForward, Inc. v. Hodges, Civil No. JFM-13-1891, 2015 WL 4716046, at *16-17 (D. Md. 2015 Aug. 6, 2015) (identifying but not reaching issue).


\textsuperscript{217} See Takagi, supra note 216.

\textsuperscript{218} GOFUNDME, GOFUNDME TERMS OF SERVICE, https://www.gofundme.com/terms.

\textsuperscript{219} NASCO, supra note 207, at 12 (19 of 41 United States jurisdictions reported regulating platforms when a charity organizes a campaign to benefit itself, although only 11 did so if the platform did not charge a fee), 17 (eight jurisdictions reported regulating platforms when an individual organizes a campaign to benefit a charity, although only if the platform is compensated).
or nonprofit laws that impose various requirements, particularly with respect to registration, reporting, and handling of assets.\textsuperscript{220} These laws usually would apply to the beneficiary charity, but subject to the important caveat that they would apply only to the extent the charity falls within the personal jurisdiction of the government imposing any particular set of rules. They also would apply to any intermediary charity, such as PayPal Giving Fund, again subject to a personal jurisdiction caveat, which the Fund appears to recognize.\textsuperscript{221} But the individual organizer, platform, and for-profit third-party payment processors would usually not be reached by these laws since these entities generally are not charities or another type of nonprofit.

It is also unclear to what extent more general consumer protection laws apply to crowdfunding for a charity unless they explicitly relate to charitable solicitation, especially since such laws are normally targeted at situations where a consumer buys something as opposed to making a donation.\textsuperscript{222} On the other hand, it appears that fraud laws would reach charitable crowdfunding involving intentional deception.\textsuperscript{223} But authorities may be reluctant to invoke these laws in many situations because they tend to be criminal laws and so both carry relatively severe penalties and require the government to satisfy a high burden of proof to obtain a conviction.\textsuperscript{224} Finally, governments could invoke money laundering or terrorism financing laws, but only in situations where the funds involved are from or going to criminal or terrorist activities (and again subject to the reluctance arising from the severe penalties and high burden of proof that comes with these typically criminal laws).

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The bottom line is therefore that for crowdfunding campaigns organized by an individual to support a specific charity, generally only charity or nonprofit laws clearly apply (as opposed to charitable solicitation laws), and then only to the beneficiary charity and, if there is one,  

\textsuperscript{220} See Mosher & Campbell, \textit{supra} note 34, at 40-41; \textit{supra} Section II.A.2.

\textsuperscript{221} See \textit{supra} note 214

\textsuperscript{222} See, e.g., Mosher & Campbell, \textit{supra} note 34, at 40-41 Takagi, \textit{supra} note 216. \textit{But see supra} note 185 (possible application of such laws).

\textsuperscript{223} See, e.g., Mosher & Campbell, \textit{supra} note 34, at 41 (United States); \textit{supra} note 21 (examples of fraud investigations in several countries). \textit{See generally} Lanuti, \textit{supra} note 193, at 1151 (in the United States, national mail and wire fraud laws “have often been used as a stopgap to enable prosecution of new forms of fraud until Congress enacts more particularized legislation”).

\textsuperscript{224} See NASCO, \textit{supra} note 207, at 23 (as of 2017, charity regulators from only four United States jurisdictions (out of 41 responding) reported making a criminal referral for fraud arising out of crowdfunding).
intermediary charity but not the organizer, platform, or third-party payment processor. While in fraud, money laundering, or terrorism financing situations government regulators could invoke the usually criminal laws prohibiting such behavior, high burdens of proof and severe penalties may deter the invocation of those laws except in egregious situations. So crowdfunding for a charity and the parties involved with it are, for the most part, arguably not reached by the most relevant current laws in most jurisdictions.

Some charity regulators have addressed this lack of coverage by issuing non-binding, voluntary guidance. For example, in the United Kingdom the Financial Conduct Authority has issued guidance stating that its existing payment services rules apply to platforms that facilitate charitable crowdfunding, but does not otherwise appear to regulate this form of crowdfunding, and the Fundraising Regulator has also provided a list of voluntary best practices for platforms. In France a general crowdfunding decree is not compulsory for charitable crowdfunding, but charities may apply it to their crowdfunding practices. In the United State, the FTC provides cautions to individuals considering donating to a charitable crowdfunding campaign but does not impose any specific rules.

Some of the crowdfunding platforms that host campaigns to benefit charities have developed and touted self-regulatory measures to address this lack of coverage. For example, GoFundMe has what it claims is the “highest level of safety,” including a policy to protect donors and beneficiaries in which it promises to refund donations of up to $1,000 per donor per campaign for any “misuse” and also to transfer up to $25,000 in collected but undelivered funds to an intended beneficiary. Misuse is defined as a failure by the organizer to deliver funds to the beneficiary, a

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225 This conclusion is consistent with more general conclusions of other commentators. See, e.g., A.F. Cicchiello, Harmonizing the Crowdfunding Regulation in Europe: Need, Challenges, and Risks, J. SMALL BUS. & ENTREPRENEURSHIP (forthcoming), 8 (2020) “in most European countries, crowdfunding forms based on donation and reward remain unregulated”), https://www.researchgate.net/publication/332624136_Harmonizing_the_crowdfunding_regulation_in_Europe_need_challenges_and_risks.
227 FUNDRAISING REGULATOR, supra note 80, at 78-81.
228 See ECNL, supra note 60, at 38.
campaign description that is intentionally misleading to donors, or if the organizer or beneficiary is charged with a crime relating to misrepresentations made in their campaign. This policy has led to GoFundMe refunding donors not only in allegedly fraudulent situations, but also in other problematic situations, such as a case where $17,000 was raised for the hospitalization and funeral of an infant but the father was ultimately charged with murdering her. In another situation, the organizer planned to return more than $14,000 in donations to help a family seen sleeping on a Chicago subway when the family did not satisfy the GoFundMe documentation requirements for transfer of the funds. And for the border wall building campaign, it was actually GoFundMe that forced the organizer to set up a nonprofit to receive the funds raised – and receive permission from every donor to redirect their contributions to the nonprofit – when the campaign both failed to come close to its goal and GoFundMe learned that the federal government could not legally accept the funds raised.

But these efforts have not satisfied everyone, as illustrated by the GoFraudMe website that is critical of GoFundMe’s policies. Furthermore, not all platforms have similar policies. For example, Facebook, Fundly, and JustGiving lack donor guarantee or protection policies, although they may have internal review procedures in place to filter campaigns. And at least one platform that hosted campaigns to benefit charities is now under government investigation in the United States for allegedly failing to transfer donated funds to the identified beneficiaries. Finally, in addition to the self-regulatory activities of the platforms, at least one association of nonprofits in the United States has taken it upon themselves to urge all platforms to follow certain best

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233 See id.
236 See Mihir Zaveri, GoFundMe to Refund Border Wall Donations After Fund-Raiser Falls Short, N.Y. TIMES, Jan. 11, 2019.
Despite these self-regulatory efforts, several governments have enacted or have considered enacting laws specifically targeting crowdfunding for a charity. For example, in France a regulation that imposes certain requirements on “crowdfunding intermediaries” applies to charitable crowdfunding platforms as well as other types of crowdfunding platforms. But Spain in contrast has explicitly excluded charitable crowdfunding from the reach of its crowdfunding rules, and the European Union has similarly only considered a code of conduct with respect to charitable crowdfunding while considering legislation for other forms of crowdfunding. In the wake of the wildfires in Australia, the government there is considering legislation to create a fund to collect and monitor funds raised to aid affected individuals and animals, whether directly or through an intermediary charity or other organization. But that legislation would only apply to this particular situation, not charitable crowdfunding more generally. And in the United States, the California legislature has for several years considered bills that would create rules specifically applicable to charitable crowdfunding. The most recent version would have required that platforms hosting campaigns for specific charities to register and file regular reports with the state’s Registry of Charitable Trusts, would have treated those platforms as trustees for charitable purposes, and would have generally required a charity’s written consent before funds could be solicited for its benefit. However, for the most part it appears governments have yet to enact or even consider legal rules specifically designed for crowdfunding to benefit a charity.

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241 See, e.g., NASCO, supra note 207, at 26 (charity regulators in some United States jurisdictions favor a new uniform law to address charitable crowdfunding).

242 ECNL, supra note 60, at 38.

243 Id.

244 See ECNL, supra note 60, at 18; European Commission, Inception Impact Assessment, Legislative proposal for an EU framework on crowd and peer to peer finance, file://C:/Users/lloy6/Downloads/090166e5b61525a3.pdf (limited to crowdfunding that provides a financial return).


2. Crowdfunding for an Individual

Charitable crowdfunding to benefit one or more specific individuals in need is, if anything, even less regulated than crowdfunding to benefit a charity. That is because not only is it generally uncertain whether the organizer, platform, and third-party payment processor are covered by the most relevant laws for the reasons already discussed, but there is no beneficiary charity or intermediary charity that would be reached by charity or nonprofit laws. Indeed, many jurisdictions in the United States specifically exclude efforts to directly benefit specific individuals, as opposed to charities, from the reach of their charitable solicitation laws, although often only if all proceeds are paid to the named individual and the organizers are not compensated for their services.248 One U.S. jurisdiction has explicitly disclaimed regulatory authority over crowdfunding to benefit an individual based on such an exemption.249 Another U.S. jurisdiction also did so, but with the caveat that raising money for a general charitable purpose as opposed to a specific individual would make the organizer subject to state charitable giving laws even if they were not raising funds for a charitable organization.250

That said, in a recent survey by the National Association of State Charity Officials (“NASCO”) found that of 41 U.S. jurisdictions responding (out of 50 states and the District of Columbia), 14 said they “regulate fundraising by individuals for individuals” even when the organizer does not benefit from the fundraising.251 Seven jurisdictions also stated that they regulate platforms hosting such campaigns, again presumably under their existing laws.252 However, it is unclear to what extent, if at all, those jurisdictions enforce their reporting and registration requirements against organizers or platforms.253

Other charity and nonprofit laws are usually not applicable to any parties involved with

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248 See, e.g., KAN. STAT. ANN. § 17-1762(c) (2020) (exemption if all fundraising functions are carried on by persons who are not paid for their services); MICH. COMP. LAWS § 400.283(a) (2020) (exemption if contributed turned over to the named beneficiary after deduction of reasonable costs if fundraising done by unpaid persons); N.Y. EXEC. LAW § 172-a(2)(c) (2020) (exemption if all proceeds are turned over to the specified individual beneficiary).
250 The Office of Minnesota Attorney General Keith Ellison, You Might be a “Charity” – Yes, You!, https://www.ag.state.mn.us/Consumer/Publications/RaisingMoney.asp.
251 NASCO, supra note 207, at 6.
252 Id. at 9.
253 Id. at 23 (only 17 out of 41 jurisdictions responding reported any enforcement action relating to crowdfunding).
crowdfunding to directly benefit a specific individual, since typically none of those parties are nonprofits. Fraud, money laundering, and terrorism financing laws can apply to this activity. But again, the high burdens of proof and severe sanctions associated with these usually criminal laws may deter governments from applying them except in the most egregious situations.

As was the case for crowdfunding to benefit a charity, in the absence of coverage by existing laws some governments have turned to voluntary guidelines or procedures. For example, in the United States the New York Attorney General has used her existing authority to create a voluntary alternate beneficiary form for charitable crowdfunding, or any other type of fundraising, that benefits a particular individual or set of individuals in need.\textsuperscript{254} On its face, the purpose of the form is to ensure that if the individual to be benefitted is not able for whatever reasons to accept the donated funds, there is an alternate beneficiary in place.\textsuperscript{255} However, one almost certainly desired additional consequence of the form is to provide the Attorney General’s office with information regarding efforts to raise funds to benefit an individual so that if any questions arise relating to a particular effort the office already has certain information, including the identity and contact information of the organizer. That said, it is unclear to what extent crowdfunders are voluntarily submitting this form.

And as was the case with crowdfunding to benefit a charity, in a few jurisdictions legal groups and governments have considered enacting laws specifically regulating crowdfunding to benefit an individual. For example, the Uniform Law Conference of Canada produced a Uniform Informal Public Appeals Act in 2012 that provided “[e]very informal public appeal [excluding appeals by registered charities] results in the constitution of a trust” and detailed rules governing the trust’s administration and termination.\textsuperscript{256} The Commission recently updated this uniform law,\textsuperscript{257} and at least one Canadian province has enacted it.\textsuperscript{258} The National Conference of Commissioners on Uniform State Laws in the United States is also considering a uniform law to addressing crowdfunding to benefit one or more individuals, which takes a different approach as it would

\textsuperscript{254} See STATE OF NEW YORK, CHARITABLE SOLICITATIONS FOR THE RELIEF OF AN INDIVIDUAL (CHAR017), http://www.charitiesnys.com/pdfs/char017.pdf.
\textsuperscript{255} See id.
\textsuperscript{258} See Phillips, supra note 114.
impose certain duties on the “fund manager” who manages a crowdfunded-appeal fund instead of creating a legal trust. But as with crowdfunding for a charity, it appears most jurisdictions have yet to even consider if and how this activity should be regulated.

3. Personal Jurisdiction Issues

Charitable crowdfunding also magnifies a legal issue that often arises with respect to charitable fundraising, particularly in countries where regulation of charitable solicitation is primarily at the sub-national government level. This is the issue of which government(s) has personal jurisdiction over the parties involved in a given charitable fundraising activity. For example, in the United States this situation often arises because a charity may be located in one state but solicit donations from the residents of one or more other states.

Solicitating donations over the Internet, including through crowdfunding campaigns, magnifies this issue because in theory such soliciting could generate donations from anywhere in the country or even from other countries. Some governments have therefore begun considering how best to resolve this issue. For example, in England and Wales, the Charities Act 2006 defined charitable fundraising broadly enough for its charitable fundraising laws to reach charitable appeals made by entities based outside of those countries but that reach their residents, including presumably Internet-based appeals.

Almost 20 years ago, NASCO issued suggested guidelines for regulating online charitable solicitation (the “Charleston Principles”). While the Principles do not specifically address

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259 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (NCCUSL), FUNDRAISING THROUGH PUBLIC APPEALS ACT (draft) (Mar. 2020), https://www.uniformlaws.org/viewdocument/march-2020-committee-meeting-draft?CommunityKey=fe27e013-21fa-4cdf-8a17-fb65d1534691&tab=librarydocuments
crowdfunding, they do provide that an entity domiciled outside a given state should still be required to register in that state solely based on its solicitation of contributions through a website if the entity either “[s]pecifically targets persons physically located in the state for solicitation” or “[r]ecieves contributions from the state on a repeated and ongoing basis or a substantial basis through its Web site.” This guidance is consistent with more general U.S. case law, which requires “minimum contacts” with a given jurisdiction before its laws can apply to an individual or entity, including when the activity at issue is over the Internet. But the Charleston Principles are non-binding, except in the few states that have officially adopted them, so in the United States resolution of this jurisdictional issue usually is based on more general statutes and case law.

The challenge of applying general personal jurisdiction principles to online activity, and particularly charitable crowdfunding, is that they tend to be based on physical location. For charitable fundraising, the location of the donors or potential donors is usually controlling, with governments asserting jurisdiction when in some way the fundraising is targeted at donors who physically reside within that government’s geographic jurisdiction. But charitable crowdfunding campaigns by their very nature tend to be “bread on the water” efforts, where the campaign website is promoted as widely as possible by the organizer without much consideration of where the recipients are physically located, especially since such promotion is often through online means such as social media. And at least under some personal jurisdiction precedents, merely making the website available to their residents is not enough to grant regulating authorities personal jurisdiction; some type of additional targeting of those residents or interaction with them is required. While governments could instead try to base jurisdiction on the physical location of the servers hosting the campaign or of the organizer, the first may be changed easily to avoid high regulation jurisdictions and the latter may be difficult to ascertain given the general lack of current

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264 Charleston Principles, supra note 263, § III.B.1.b.
266 See NASCO, supra note 207, at 22 (only five jurisdictions reported using the Charleston Principles to address jurisdictional requirements relating to regulation of third-party websites).
267 See Charleston Principles, supra note 263, § III.B.1.b; Liazos, supra note 261, at 1387.
268 See supra note 50 and accompanying text.
registration and reporting requirements for organizers.

III. FUTURE REGULATION OF CHARITABLE CROWDFUNDING

Part I demonstrated that charitable crowdfunding is a quickly growing, global method for individuals to financially support both charities and needy individuals. However, the exact extent of this new activity and its positive effects on giving are obscured by the limited availability of data about the number, size, and overall effects of campaigns. Similarly, while commentators have flagged examples of the various downsides and risks associated with charitable crowdfunding, there is even less data regarding their overall magnitude. Part II showed that the laws upon which most countries rely to regulate charitable fundraising, specifically charitable solicitation laws, other charity and nonprofit laws, and broader consumer protection, fraud, money laundering, and terrorism financing rules, have limited applicability to charitable crowdfunding, and particularly efforts to directly benefit needy individuals. While some jurisdictions have taken initial steps to address this lack of coverage, those efforts have been relatively few.270

The emergence of charitable crowdfunding therefore presents a question of if and how to regulate in the face of uncertainty. This is not a new situation even if arises here in a new context, as governments often face this question when considering an emerging trend, particularly one driven by new technology. This Part therefore first considers the theory of regulating the face of uncertainty. It then applies this theory to what we do know about charitable crowdfunding, including the limited reach of existing laws.

The result is a set of recommendations for modest requirements designed to increase the flow of information relating to such efforts so that beneficiaries and, to a limited extent, regulators, receive information needed to prevent likely abuses, but to avoid unduly inhibiting this new avenue for charitable giving. More specifically, I recommend requiring platforms to notify beneficiaries of all campaigns that receive donations for their benefit to limit potential harm to those beneficiaries and to help ensure donated funds reach them. I also recommend requiring platforms to notify regulators of the relatively few campaigns, whether to benefit a charity or an individual, that reach a relatively high threshold to help inform regulators about the scale and growth of charitable crowdfunding and to allow those regulators to resolve problems from arising with these

270 See supra notes 241-247, 256-259 and accompanying text.
largest campaigns. I recommend against stricter consent and administration requirements, as have been adopted or are under consideration by some jurisdictions, as unnecessarily burdensome. Finally, this Part considers several legal limits on regulation that may be relevant in many jurisdictions, including data privacy laws, free speech protections, and Internet platform liability limitations. I conclude that none of these limits should bar the adoption of the recommendations made here, although they may prevent more burdensome requirements.

A. Regulating in the Face of Uncertainty

The pervasive but not sole theoretical framework used by governments, especially in the United States, to determine if and how to regulate various activities is some form of cost-benefit analysis. 271 This is particularly true with respect to environmental, economic, and financial activity, although it has critics even in those contexts. 272 But even if a cost-benefit analysis framework is accepted as appropriate, it requires significant data to yield meaningful results, including with respect to the upsides and downsides of the activity, their monetary value, and the effect of different regulatory approaches on those upsides and downsides. 273 A threshold problem with applying this analysis to a new activity that has a limited track record, including one driven by new technology, is therefore the lack of such data.

Over-simplifying, there are two approaches to regulating in the face of such uncertainty that


273 See, e.g., Ackerman & Heinzerling, supra note 272, at 1557-60 (also including setting a discount rate for future costs and benefits); Matthew D. Adler & Eric A. Posner, Rethinking Cost-Benefit Analysis, 109 YALE L.J. 165, 177-87 (1999) (complexities of applying cost-benefit analysis).
mark the end points of a continuum of responses. One approach is the precautionary approach, sometimes referred to as the precautionary principle or the “better safe than sorry” approach, which scholars and regulators developed in the environmental law area\textsuperscript{274} but that has implications for many other legal areas.\textsuperscript{275} It calls for action at an early stage in response to a perceived threat, including in situations where the exact nature and magnitude of the threat is uncertain and so rigorous cost-benefit analysis is not practical.\textsuperscript{276} (Scholars also sometimes invoke it as an alternative to a cost-benefit approach, although arguably it is really a variation of this approach used in the face of uncertainty.\textsuperscript{277}) Not surprisingly, this approach is controversial,\textsuperscript{278} even in the environmental area where it originated and where the potential downsides of a failure to regulate could be catastrophic and irreversible.\textsuperscript{279}

The other approach is a laissez-faire one, where regulation waits on the accumulation of significantly more data (and may never occur, absent strong evidence that regulation is needed).\textsuperscript{280}

This is often the approach taken with new technology, usually justified by a desire not to unduly inhibit the development and spread of that technology.\textsuperscript{281} It also reflects a concern that regulatory choices are “sticky,” in that once made they may be difficult to change even if subsequent developments reveal they are problematic.\textsuperscript{282}


\textsuperscript{277} See Hahn & Sunstein, supra note 271, at 1500-02.


\textsuperscript{281} See, e.g., id.; Adam Thierer, Privacy Law’s Precautionary Principle Problem, 66 ME. L. REV. 467, 471 (2014).

\textsuperscript{282} See Carp, supra note 280, at 103-111 (limited ability of government branches to react and adapt quickly to
There are of course many options between enacting a comprehensive regulatory scheme and doing nothing. These options include requiring the use of the best available technology to limit costs, trying to create some type of private market to sort out the relative costs and benefits of an activity, or requiring disclosures to aid private actors to make better judgments with respect to an activity.\footnote{See, e.g., Ackerman & Heinzerling, supra note 272, at 1581-83 (options in the environmental area).} Choosing among those options is a complex process, but several factors tend to be considered. First and perhaps most importantly is the outer range of possible harm of either regulating or not regulating – that is, what, plausibly, is the worst case scenario either way, including whether it relates to public health and safety or only finances?\footnote{See generally Sunstein, supra note 279.} For example and as noted above, supporters of a strong application of the precautionary approach in the environmental context rely on the potentially catastrophic health consequences and even existential threat level of the worst environmental outcomes absent such regulation.\footnote{See id. at 843-44.} Another factor is how quickly relevant data may accumulate in comparison to how quickly the activity may spread or grow.\footnote{See Fenwick et al., supra 280, at 573-74.} For example, supporters of a laissez faire approach to new technology often emphasize that it takes time for new technology to gain adherents, and regulators can use the time during which new technology has limited effects to gather additional data before deciding if and how to regulate the new technology.\footnote{See, e.g., Alan Z. Rozenshtein, Wicked Crypto, 9 U.C. IRVINE L. REV. 1181, 1205 (2019) (recommending this approach to regulating encryption).} A third factor is the ease with which harms that actually occur can be ameliorated after the fact, if regulations to prevent them from occurring are not in place.\footnote{See Sunstein, supra note 279, at 860.} A fourth important factor is the extent to which there may be unexpected developments that could render any regulation enacted based on limited data ineffective or even detrimental.\footnote{See, e.g., Huddleston, supra note 275, at 18.}

As these factors indicate, any decision regarding how to regulate in the face of uncertainty is context sensitive. The next two Sections therefore consider how these factors and related considerations apply in the context of charitable crowdfunding. The first considers crowdfunding for charities and then crowdfunding for one or more needy individuals.
B. Regulating Crowdfunding for Charities

1. Beneficiary Charity as Organizer

The easiest case for regulating is when a charity uses crowdfunding to benefit itself. This is because many, perhaps most jurisdictions that have charitable solicitation laws do not differentiate when applying them based on the means by which the solicitation is communicated.290 When this is the case, those rules apply with equal force to online solicitation, including crowdfunding, and, most importantly, impose on the charity engaged in the soliciting the same registration, reporting, and other requirements that apply in any other solicitation context.291 And the same concerns that support the application of those laws to charities in other contexts (ensuring accurate information for potential donors, use of the funds collected consistent with those representations, and so on) also apply with equal force to charitable crowdfunding.

Platforms and third-party payment processors may also be reached by those rules if they apply to for-profit participants in charitable solicitation and the activities engaged in by these parties trigger those rules.292 However, such reach – which is uncertain293 – is likely not particularly important. This is both because a charity that organizes and receives the vast majority of the funds raised will be subject to the relevant rules and because there is no evidence that the for-profit participants try or are able to capture a large portion of the funds raised, which is the primary concern underlying requirements for for-profit participants.294 Indeed, to the extent it is unclear whether the for-profit participant rules include crowdfunding platforms and third-party processors, the rules should be clarified to exclude them because there is little if any evidence that they are in a position to overcharge charities given the number of platforms to choose among.295 And the lower cost, greater speed, and greater reach that crowdfunding provides to a charity should not affect the application of these laws to the charity for two reasons. First, they generally require

290 See supra note 204 and accompanying text.
291 See supra notes 204-205 and accompanying text.
292 See supra notes 140, 159 and accompanying text.
293 See supra notes 215-219 and accompanying text.
294 See Barber & Farwell, supra note 61, at 314-15; supra note 59 and accompanying text (high fundraising fees charged by for-profit companies).
295 See Carp, supra note 280, at 123 (new technologies may expose ambiguous terms and concepts in existing laws); supra notes 209-211 and accompanying text (platforms and payment processors charge relatively modest fees).
registration before any solicitation occurs.\textsuperscript{296} Second, they can be quickly enforced in situations where a charity fails to comply with them once regulators become aware of the charity’s failure, as tends to happen with the high profile crowdfunding efforts that attract the largest amount of donations.\textsuperscript{297}

The one difficult legal issue that can arise when a charity engages in crowdfunding to benefit itself is personal jurisdiction. However, charities almost always send follow-up solicitations to donors, which is usually sufficient to trigger personal jurisdiction over the charity for purposes of the charitable solicitation rules imposed by the government where those specific donors reside.\textsuperscript{298} So in practice it seems unlikely that personal jurisdiction will be a serious barrier to governments being able to apply their charitable solicitation laws to charities soliciting donations from their residents through crowdfunding.

2. Unaffiliated Individual as Organizer

The more difficult situation is when an individual who is unaffiliated with a charity organizes a campaign to benefit that charity. It is unclear how much additional giving is generated by such efforts, as opposed to simply shifting giving from other fundraising channels – that is, the benefit from this type of crowdfunding for charities is not known.\textsuperscript{299} It is also unclear to what extent this form of crowdfunding can lead to donor confusion, including with respect to whether tax benefits are available, or to appropriation of a charity’s name by an individual with whom the charity does not want to be associated.\textsuperscript{300} And it is unclear to what extent funds given do not actually reach the designated charity because of fraud, although there have been examples of this happening in a variety of ways, including through diversion by the organizer (when a platform pays funds directly

\textsuperscript{296} See Fishman, supra note 56, at 14.


\textsuperscript{298} See supra notes 264-267 and accompanying text.

\textsuperscript{299} See Crittal & Herbst, supra note 36, at 217; NASCO, supra note 207, at 24 (benefits of crowdfunding), 25 (unclear if crowdfunding for individuals is affecting traditional charities, negatively or positively, in United States); supra notes 93-95 and accompanying text.

\textsuperscript{300} See, e.g., NASCO, supra note 207, at 24 (problems of crowdfunding).
to the organizer\textsuperscript{301}, by the platform as allegedly occurred with NYCharities.org,\textsuperscript{302} by the third party payment processor as allegedly occurred with the PayPal Giving Fund,\textsuperscript{303} or even by the beneficiary charity if it is in fact a false charity or a front for criminal or terrorist activity.\textsuperscript{304} Relatedly, it is unclear how different forms of regulation – mandatory registration and reporting by one or more of the parties involved, other forms of disclosure to potential donors or regulators, or other requirements – may either unduly inhibit this new method of fundraising (imposing costs) or prevent fraud and similar bad results (providing benefits).\textsuperscript{305} For example, compliance with regulatory requirements may take time and money that could deter some organizers from launching legitimate campaigns or cause platforms and payment processors to increase their fees, reducing the flow of funds to beneficiaries. At the same time, regulatory requirements could reduce opportunities for donor confusion and prevent diversion of donated funds.

As noted previously, existing laws relating to charitable solicitation likely do not reach this type of fundraising and other charity and nonprofit laws are only applicable to the charity beneficiary or, if it exists, intermediary charity, which limit their effectiveness.\textsuperscript{306} Broader fraud, money laundering, and terrorism financing laws do apply, but only to intentional diversion scenarios and enforcement may be limited because of the criminal nature of those laws.\textsuperscript{307} And the potential for diversion, including of relatively significant amounts, is amplified by the low cost, high speed, and broad reach of these crowdfunding efforts – start a campaign, quickly collect what funds you can, and then disappear with the donations. Initial due diligence regarding organizers appears to often be minimal; for example, GoFundMe states that for campaigns based in the United States it only requires a Social Security number, mailing address, phone number, bank account, and being at least 18 years of age, although it may request more identifying information and documentation in some instances.\textsuperscript{308}

\footnotesize
\begin{itemize}
\item \textsuperscript{301} See, e.g., supra note 212 and accompanying text (GoFundMe).
\item \textsuperscript{302} See supra note 239 and accompanying text.
\item \textsuperscript{303} See supra notes 134-135 and accompanying text.
\item \textsuperscript{304} See supra notes 129, 202 and accompanying text, ECNL, supra note 60, at 64 (“[r]egulation should encourage the use of new fundraising methods rather than creating additional administrative burden . . . , which can limit their use”); Renée A. Irvin, State Regulation of Nonprofit Organizations: Accountability Regardless of Outcome, 34 NONPROFIT & VOLUNTARY SECTOR Q. 161 (2005) (jurisdictions that lack of registration and reporting regimes did not exhibit greater fraudulent activity or higher fundraising costs).
\item \textsuperscript{305} See supra Section II.B.1.
\item \textsuperscript{306} See supra notes 223-224 and accompanying text.
\item \textsuperscript{307} See GoFUNDME, STARTING A GOFUNDME REQUIREMENTS, https://support.gofundme.com/hc/en-us/articles/360001992667-Starting-a-GoFundMe-Requirements.
\end{itemize}
All that said, the factors identified earlier argue against a high level of regulation. First, the potential harm is both relatively modest and primarily if not almost exclusively financial. It appears most such campaigns are relatively small and so unlikely to result in much harm to donors or the purportedly beneficiary charities, although again data are very incomplete on this point. The fact that charitable crowdfunding is still a relatively small part of giving to charities, even if growing rapidly, also indicates the potential harm is modest (and that there is time to gather more data before it grows to become a large part of that giving, if it ever does). And the financial harm to donors may be alleviated by the platforms themselves, as some of them will repay donors in cases of fraud. Finally, the possible negative effects of regulation, including to what extent it might hurt efforts to use this new method of fundraising, argue against imposing significant regulation at this time. This contrasts with regulating charities that launch charitable crowdfunding campaigns for their own benefit, as they are already subject to both charitable solicitation and other charity laws because of their non-Internet fundraising and charitable nature.

However, this analysis suggests several gaps that regulators should consider addressing. One gap is the potential for confusion on the part of donors regarding how funds actually flow to the designated charity, including possibly through the organizer (which may affect available tax benefits) or a charitable intermediary (with the potential for diversion), and how they actually will be used by the recipient charity. Another gap is the harm to donors who contribute to campaigns hosted by platforms that do not always repay donors if there is apparent fraud. A third gap is the lack of a remedy for a charity that never receives funds given for its benefit, assuming it is capable of satisfying whatever reasonable due diligence requirements the platform or an intermediary may require to ensure the charity is legitimate, which may cause both financial and reputational harm to the charity. Finally, there is currently no easy means of determining how often actual illegitimate diversion occurs and in what amounts.

As for the first gap, most donors could probably care less how exactly the funds flow as long as all or almost all the funds given ultimately reach the designated charity. For example, the problem in the PayPal Giving Fund situation was not that the Fund was collecting a modest fee for its services but that it was actually giving donated funds to other charities without informing the

309 See supra notes 93-95 and accompanying text.
310 See supra notes 70-71 and accompanying text.
311 See supra notes 230-235 and accompanying text.
donors (or the designated charities). And existing receipting and similar substantiation requirements that most taxing authorities require should clear up any confusion about the tax benefits from donations, at least after the fact, for those donors who are may be eligible for such tax benefits.

Confusion can also arise with respect to the use of the donations. This might happen because of restrictions faced by the charity as occurred with the Australian wildfire crowdfunding campaign mentioned earlier. Confusion can also arise if the funds raised are much greater than anticipated or that the recipient charity is used to receiving, although usually both the appeal and the charity’s mission are broad enough to eventually allow for appropriate spending of the raised funds. For example, in the wake of protests relating to the police killing of George Floyd the Minnesota Freedom Fund received $30 million or 200 times its usual annual revenues and much more than needed to provide needed bail for protesters in Minneapolis; nevertheless, the nonprofit appears to have found other, appropriate uses for the funds, including bail-related advocacy efforts. So in both these types of situations the donations still went to charitable purposes because the recipient was a charity, although either narrower or broader ones than some donors may have anticipated. More importantly, this type of confusion is not unique to the crowdfunding context, which argues against adopting new regulations to address it absent a showing it is significantly more likely or more egregious in this context.

As for harm to donors if there is apparent fraud, the vast majority of donors appear to give relatively small amounts and so the harm to any particular donor is usually limited. In addition, platforms use their donor-repayment policies as a selling point; if they are correct that such policies give them a market advantage – and one of the most successful platforms, GoFundMe, appears to believe they do – then those platforms will, all other things being equal, come to dominate. This appears to be the trend even though at least in some jurisdictions that platforms may be protected from civil liability to donors for such diversions in most instances. In other words, market pressures may cause platforms to adopt sufficient remedies for donors. These facts therefore argue

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312 See supra note 134 and accompanying text.
314 See supra notes 120-121 and accompanying text.
315 See Smith, supra note 18.
316 See supra note 94 and accompanying text.
317 See supra note 231-232 and accompanying text.
318 See infra Section III.D.3.
against a need for regulators to address this gap.

The failure of a legitimate charity to receive funds designated for it is a more significant issue, even though the extent to which this happens (including for arguably non-fraudulent reasons, such as communication failures) is unclear. While in many, perhaps most cases the harm to the charity is limited because it is not relying on the donated funds and the amounts raised are relatively small and from a relatively few donors, it is certainly possible that some of the donations would have been sent via other avenues absent the crowdfunding campaign (and so are now lost to the charity), and of course some campaigns can result in a large amount of funds being diverted and involve many donors. In addition, at least some platforms do not offer to make the charity whole in this situation.\textsuperscript{319} But the lack of information regarding the extent of both these situations and the magnitude of the harm caused by them suggests caution in imposing new rules that would burden all crowdfunding for charities. This is particularly true given that the harm here is primarily financial and not to life or health.

A requirement that is already in existence in at least some U.S. jurisdictions that could address this gap is the obligation to receive the consent of the designated charity before raising funds for it.\textsuperscript{320} But there are several problems with this requirement. First, because it generally pre-existed crowdfunding it may be unclear who – the organizer, the platform, or the third-party payment processor – has this obligation. Second, it is unclear if and even how this requirement is enforced in the crowdfunding context,\textsuperscript{321} especially if it currently falls on the individual organizer who likely does not know about the requirement or feel particularly inclined to satisfy it for what probably is anticipated to be a small campaign. Third, it undermines one of the primary benefits of crowdfunding – the ability of a motivated individual to launch a campaign almost instantaneously.\textsuperscript{322} While most such campaigns will yield small amounts for the charity, it is often unknown which of them will go viral and turn out to be wildly successful. At the same time, the main advantage of this requirement is it makes the private party with the strongest reasons to ensure the funds go to the beneficiary – the designated charity – aware of the campaign, thereby creating a motivated monitor to prevent that diversion or any other harm to the charity without taxing limited regulator resources.

\textsuperscript{319} See supra notes 230-235 and accompanying text.
\textsuperscript{320} See supra note 207 and accompanying text.
\textsuperscript{321} See supra note 208 and accompanying text.
\textsuperscript{322} See supra note 51 and accompanying text.
These considerations suggest that instead of a consent requirement, regulators should impose a written (including electronically) notification requirement with a relatively short deadline after a campaign is launched, and with not the individual organizer but instead the crowdfunding platform obliged to provide the notice. Notification instead of consent means that a campaign’s launch would not be delayed, but the beneficiary charity would still be informed and could even request that the campaign be ended if for some reason the charity objects, perhaps because the organizer is nefarious in some way. Having the platform obliged to provide the notification would remove the burden from the millions of organizers that launch such campaigns and instead leave it with the hundreds of platforms, which could more easily create an efficient process for such notifications. The platform could even shift this responsibility to the third-party payment processor contractually if that turns out to be more efficient, which it very well could be given the processor will eventually have to arrange to have the funds transferred to the designated charity under any conditions (unless the platform permits transfer to the organizer). Finally, the beneficiary should have the right to opt-out by informing the platform in writing (including electronically) that they do not want the campaign to proceed on their behalf.

A notification requirement with an opt-out option will not fully prevent possible harm to charity beneficiaries. If an organizer receives the funds and then absconds with them, they may be long gone before the designated charity realizes what has happened and acts in response. But notification will make such frauds significantly riskier, likely deterring intentional fraud of this type. And if the platform itself is fraudulent, as allegedly has happened at least once, then it presumably will use a fraudulent third-party payment processor or handle funds itself to avoid sending the required notifications in the first place. But the failure to provide required notifications may lead to discovery, as if a designated charity learns about a campaign on that platform through another channel – such as a communication directly from a donor – it has a clear ground for a complaint to the relevant regulator (and the regulator has a clear ground for an investigation).

And if the charity is a false one, including if it is a front for criminal or terrorist activity, a legitimate platform likely would not discover this through notification, but only if it engages in some type of due diligence process. But it appears that as a matter of good customer relations most

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323 See supra note 239 and accompanying text.
platforms have internal processes to flag potentially fraudulently campaigns and stop them.\footnote{324 See, e.g., cases cited in supra note 230. But see Fishman, supra note 56, at 37-39 (limits of self-regulation).} So absent evidence that such diversions are common or involve relatively large amounts, it appears a regulator response beyond a notification requirement would be premature, especially if might inhibit the legitimate campaigns that may make up almost all existing campaigns.

However, required notification of the designated charity will not fully address the last gap – the lack of information regarding the extent of fraud and other diversions. Despite prosecutions in some high-profile cases,\footnote{325 See, e.g., supra note 128 and accompanying text (build the wall campaign).} it is certainly possible that many other fraudulent campaigns exist but for a variety reasons either never come to their attention or, when they do, are too difficult and costly to pursue given the lack of readily available information regarding these campaigns. And there will be some, perhaps many charities, that will not inform a platform or regulator even if they never receive funds from a campaign that has been brought to their attention because of other demands on their time and attention.\footnote{326 For consideration of the limited effects on donors of mandatory disclosures relating to charities, see Putnam Barber, Megan M. Farwell & Brian Galle, Does Mandatory Disclosure Matter? The Case of Nonprofit Fundraising, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3625800, at 19 (mandatory disclosures tend to reduce donations for charities with above-average fundraising cost ratio); Barber & Farwell, supra note 61, at 318-23 (likely limited effects on donor behavior from government mandated disclosures regarding charities).}

One possible response to this lack of information would be to require platforms (or third-party payment processors) to report suspected fraudulent campaigns to regulators. But such a requirement could easily have the perverse effect of causing these parties to reduce their fraud-prevention efforts, to reduce the number of fraudulent campaigns they report. That could especially be the case if these reports were subject to public disclosure and so could tarnish the reputation of a platform if it had to report a significant number of suspected frauds. A better alternative would therefore be to require platforms to report all campaigns over a certain threshold in terms of amounts raised – say around $10,000, which is both a significant amount absolutely and likely at or above the average campaign size\footnote{327 See supra note 93 and accompanying text.} – leaving it to regulators to then follow up with these significant campaigns as they deem necessary to detect possible fraud or other impropriety. This would limit the burden on platforms, and therefore legitimate campaigns, while bringing the largest campaigns to the attention of regulators. The platforms could also be required to notify organizers that they are providing this notification, which would likely encourage more care on the organizer’s part (and less actual fraud). While fraudulent organizers or fake charities might then
try to keep their campaigns below the reporting threshold, if they did so that would be beneficial because it would limit the potential harm from any given fraudulent campaign. This requirement would also have the added benefit of providing more data generally about this type of crowdfunding, which in turn would help regulators learn whether its apparent high rate of growth is continuing such that it is worth their time and effort to consider further regulation.\textsuperscript{328}

In countries where regulation of charitable fundraising is usually done at the sub-national level, such as in the United States, an additional question arises: should these recommendations be implemented at the sub-national level? The advantages of doing so include that they could be coordinated more easily with existing charitable fundraising regulation and that variations in the adoption of rules along the lines recommended here could provide useful information regarding the effects of different regulatory options. The disadvantages include the lack of uniformity could create confusion among organizers, donors, beneficiaries, platforms, and third-party payment processors and arbitrage opportunities for wrongdoers, who might seek the least regulated environment from which to operate. But if the charity notification and regulator reporting obligations rest with the platforms, it should be possible for these relatively sophisticated parties – after all, they program and operate software that tracks thousands if not millions of separate campaigns – to comply with the requirements of a variety of jurisdictions at low cost.\textsuperscript{329}

Relatedly, there would also be the question of which governments have jurisdiction over which campaigns, particularly if sub-national governments set the rules and so they vary within a given country. Donors may not be known to the charity beneficiary, especially because of the data privacy laws discussed below,\textsuperscript{330} so there will be no follow-up appeals to solidify personal jurisdiction over the charity, the platform, and the third-party payment processor. But the identification of the charity may be sufficient to grant personal jurisdiction over these parties to the government(s) that already has personal jurisdiction over the charity, either because of where the charity is legally formed or because of where it holds assets. Those governments should therefore have personal jurisdiction over the campaign and the parties involved with it. Since it appears that any harm to donors is likely to be small for each donor and is usually remedied by the platform, it also makes sense to focus on where the charity is organized and located as the

\textsuperscript{328} See Carp, supra note 280, at 141 (labelling this type of approach as a “planned adaptive” one).

\textsuperscript{329} Third-party vendors may also arise to assist with any notification requirements, as has occurred for charitable solicitation registration and reporting requirements. See supra note 167 and accompanying text.

\textsuperscript{330} See infra Section III.D.1.
jurisdiction with the most interest in imposing notification and reporting requirements to help ensure funds given to a particular charity in fact reach it. Finally, in the apparently rare situation of a fake charity that somehow evades the platform’s filters and still manages to attract a significant amount of funds, regulators still have the option of pursuing criminal fraud charges.

C. Regulating Crowdfunding for Individuals

Many jurisdictions do not currently regulate individuals who ask for donations to benefit themselves or other individuals.\textsuperscript{331} For those governments that have charitable solicitation laws written broadly enough to cover such activity, there is little evidence of enforcement or other indications of a willingness on the part of government officials to devote resources to applying them in this area.\textsuperscript{332} These decisions made sense in a world where such appeals almost always were limited to people who already knew the beneficiary and so had social or other non-legal means of sanctioning them if their appeals were deceptive in some way or the funds given were not used for the claimed need, with fraud laws as a backstop in the rare situation where intentional deceit led to a significant amount of contributions.

Crowdfunding changes this calculus because of its differences with respect to cost, speed, and particularly breadth. Now an individual can establish and publicize a campaign to benefit themselves or another individual at almost no cost, virtually instantaneously, and with the ability to reach any person in their nation and other countries covered by the platform they use. That said, the limited data available indicate most of these campaigns raise a modest amount from a relatively few donors who likely already knew the beneficiary.\textsuperscript{333} In other words, crowdfunding merely provides a more efficient way of accomplishing what the organizer could have done without the aid of a platform and which many if not most jurisdictions have decided either not to regulate or to only enforce any applicable regulations lightly for good reason.

However, it appears likely that the chance of hitting the jackpot in the form of significant donations in the aggregate from many donors, including some who have no previous connection to the beneficiary, is markedly greater for a crowdfunding campaign. This success may be

\textsuperscript{331} See supra notes 248-252 and accompanying text.
\textsuperscript{332} See supra note 253 and accompanying text.
\textsuperscript{333} See NP SOURCE, supra note 17 (an average of eight people donate to an individual crowdfunding campaign); supra notes 94-95, 102 and accompanying text.
predictable, for example where the beneficiary’s need arises because of a well-publicized terrorist attack or natural disaster. For example, one individual managed to raise almost $10,000 through a GoFundMe campaign (“Joanna Leigh Boston Hero”) based on her fraudulent claim of Post Traumatic Shock Disorder (PTSD) arising from the Boston Marathon bombing.\footnote{J.D. Alois, Women Pleads Guilty on Boston Marathon Scam. Used GoFundMe to Raise Donations, CROWDFUND INSIDER (Nov. 14, 2015, 10:35 AM), https://www.crowdfundinsider.com/2015/11/77322-women-pleads-guilty-on-boston-marathon-scam-used-gofundme-to-raise-donations/} Or it may come as a surprise to everyone involved, triggered by the campaign unexpectedly hitting a chord with the public or media, as happened with the Chauncey’s Chance campaign mentioned earlier that started with a goal of $250 and ultimately raised almost $350,000.\footnote{Monroe, supra note 53.}

This greater potential for fundraising success raises the stakes with respect to many of the same issues that can arise with crowdfunding for a charity: donor confusion, including with respect to the tax benefits from donating and how funds will be used if they exceed the beneficiary’s need; and diversion of funds from their stated use, whether inadvertently or intentionally. At the same time, there is even less data regarding the costs and benefits of imposing new regulatory requirements than there are with respect to crowdfunding for charities. For example, very little is known regarding how much the availability of crowdfunding increases individuals helping other individuals financially, as opposed to simply providing a more efficient route for assistance that would have occurred anyway. There are stories of situations where people who never would have been able to receive the funds they needed through their existing family and social networks were able to do so through crowdfunding, but how widespread those situations are is unknown.\footnote{See, e.g., id.}

Similarly, there is very little known about the extent of donor confusion, including arising from overly successful campaigns, or diversions of funds, although again anecdotes exist.\footnote{See Alois, supra note 334; supra notes 116-119 and accompanying text.}

Nevertheless, the fact that there is little evidence that the potential harms here are widespread and the fact that they are primarily if not almost exclusively financial, as oppose to relating to life or health, again caution against a precautionary approach. While less is known about the relative size of such crowdfunding compared to other avenues for supporting individuals in need, the limited data for giving to charities also indicates it may still be a relatively modest proportion, leaving time for regulators to gather more data.\footnote{See supra notes 70-71 and accompanying text.} As for curing potential harms, platform policies
that favor repaying donors when issues arise with a campaign generally apply equally to campaigns for individuals as to campaigns for charities.\footnote{339 See supra notes 230-232 and accompanying text.} Finally, imposing significant requirements on such campaigns may significantly deter the many well-meaning individuals who organize them, whether to help themselves or others.

As with crowdfunding for a charity there are several gaps in the limited to non-existent coverage of existing laws that need to be discussed. These include possible donor confusion, harm to donors if funds are diverted, the lack of a remedy for an individual beneficiary who never receives the funds given for their benefit, and lack of information about illegitimate diversions. However, when it comes to donor confusion, there appears to be little need to impose requirements on organizers, platforms, or third-party payment processors. This includes with respect to the tax consequences of donations, as taxpayer confusion about deductions is nothing new and tax authorities already have in place requirements to counter this concern.\footnote{340 See supra note 313 and accompanying text.}

That said, the excess donations problem may be of greater concern in this context than when a charity is a beneficiary. Both appeals to benefit a charity and the mission of the beneficiary charity are generally broad enough to absorb almost any level of funds once staffing and accounting shortfalls are addressed.\footnote{341 See supra notes 315 and accompanying text.} That is not necessarily true for a campaign to benefit the specific need of an individual, such as the common appeal for funds to cover the medical costs associated with a particular condition.\footnote{342 See supra note 98 and accompanying text.} And there is likely a significantly greater chance that the needy individual may die,\footnote{343 See, e.g., supra note 118 and accompanying text.} as compared to a charity beneficiary going out of existence.

Finally, the diversion issue is also a concern in this context, both because of the possible harm to the beneficiary and the lack of knowledge regarding the extent to which it occurs.\footnote{344 See supra notes 125-127 and accompanying text.} For example, as noted above the Boston Marathon bombing campaign to benefit a specific individual turned out to be fraudulent.\footnote{345 See supra notes 125-127 and accompanying text.} However, in that case the fraudulent organizer was also the beneficiary (and did not limit her fraud to the GoFundMe campaign but also extended to successful applications for assistance to a variety of funds set up for victims of the bombing).\footnote{346 Id.}
individuals to address these confusion, excess amounts raised, and diversion concerns. The problem with these proposals is that they impose a detailed set of legal requirements on all crowdfunding for individuals, which it is unrealistic for most organizers to know or to take the time to get to know, especially given that most campaigns are relatively small in size. It may be that the laws are only supposed to be applied in the breach – such as was the case with the Humboldt Broncos bus crash campaign that raised millions of dollars – but that is not how they are written. They therefore risk inhibiting the numerous small campaigns that up until now regulators have wisely chosen not to specifically regulate.

Given the modest extent of any potential harm at this point, the willingness of many if not most platforms to make harmed donors financially whole, and the unknown negative effect of imposing such requirements on all campaigns, a better approach would be to apply the same notification (with opt-out option) and reporting requirements recommended for crowdfunding for charities. As for notifying regulators, this notification requirement should be limited to campaigns that exceed a significant threshold – again, say something along the lines $10,000 – for the same reasons as noted for campaigns to benefit charities. In addition, such a threshold would limit notification not only to campaigns where substantial funds are at stake but likely would be a reasonably good proxy for the involvement of donors who do not know the beneficiary and so lack non-legal means of addressing either excess or diversion of funds situations. Doing so will again help regulators get a sense of the amount of crowdfunding for individuals and help them identify the campaigns where the most dollars are at stake, while keeping the burden on platforms (and through them on organizers and beneficiaries) relatively light. And requiring platforms to also inform organizers that they are providing this notification would encourage care on their part and discourage fraud.

One objection to this proposal is that it leaves the legal rules ambiguous for campaigns, particularly if the excess funds situation arises. That suggests for those countries where laws do not already exist to address excess fund situations there should be a channel created by which an organizer, if facing this situation, could legally resolve it. And certainly voluntary efforts, such as adopted in New York, to encourage the identification of alternate beneficiaries could be

347 See NCCUSL, supra note 259; ULCC, supra note 256; ULCC, supra note 257; see also Doyle v. Att’y Gen. [1965] 2 JIC 2201 (Ir.) (applying an “as near as possible to the original purpose” rule to determine permissible uses for funds raised to benefit an individual that exceeded that individual’s financial need).
348 See supra notes 256-259 and accompanying text.
349 See ACPNS, supra note 256.
encouraged. But that is a far cry from requiring such formal identification by all campaigns even though the vast majority – as best as can be known at this time – do not face this issue or from imposing detailed administration requirements as Canada’s uniform law and the draft United States uniform law recommend.

Finally, personal jurisdiction issues also arise in this context. The draft United States uniform law resolves these issues by making the organizer of the campaign – that is, the person who actually solicits donations – the focus, using their residence, place of legal formation, and principal place of business as the basis for the act applying. The problem with this resolution is the potential for regulatory arbitrage – an organizer seeking to avoid certain rules could move to or form in a jurisdiction that chooses not to adopt them. This would be particularly easy in countries, such as the United States, where the rules in this area are primarily adopted at the sub-national level. A better solution would be to focus on the residence of the beneficiary, as they are the party who ultimately is harmed by any failure to deliver funds, and their identity and location should be readily ascertainable by the platform.

D. Legal Limits on Regulating Charitable Crowdfunding

This discussion would not be complete without considering whether these recommendations are consistent with the limits on regulation of charitable fundraising, including charitable crowdfunding, imposed by other laws in the relevant jurisdictions. The most common such restrictions are data privacy laws, free speech protections, and Internet platform liability protections. For the reasons detailed below, none of these restrictions should interfere with the ability of a jurisdiction to establish modest notification (with opt-out) and reporting requirements. However, they may restrict the ability of regulators to enact stronger measures relating to charitable crowdfunding.

1. Data Privacy Laws

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350 See supra notes 254-255 and accompanying text.
351 See supra notes 256-259 and accompanying text.
352 NCCUSL, supra note 259, § 3(a) and Reporter’s Note.
353 See supra note 156 and accompanying text.
Many, perhaps most countries have data privacy laws that apply to Internet platforms, including crowdfunding websites.\textsuperscript{354} For example, in the European Union the General Data Protection Regulation, among other rules, “requires individuals to give explicit consent before a company or charity can process their personal data” and “requires a charity to receive prior consent from a donor to be contacted.”\textsuperscript{355} In the United States, the Stored Communications Act may protect crowdfunding-related information, including the identities of donors and transaction details.\textsuperscript{356}

Since the identity of the beneficiary of a charitable crowdfunding campaign – whether a charity or individual – is stated on the publicly available campaign webpage, as is the aggregate amount raised, data privacy laws should generally not prevent governments from requiring notification of the beneficiary about the campaign or notification of a government agency when a campaign exceeds a certain threshold in funds raised. But those laws may limit the ability of governments to require disclosure of donor information either to the beneficiary or to a government agency if the platform permits donor anonymity.\textsuperscript{357} In fact, at least one platform interprets the EU’s General Data Protection Regulation as requiring it to give donors the option of being anonymous to a charity beneficiary if either the donor or the charity are in the European Economic Area.\textsuperscript{358}

2. Free Speech Protections

Many countries also protect speech in ways that may include charitable fundraising. The


\textsuperscript{355} ECNL, supra note 60, at 17, 38; see Regulation (EU) 2016/679 (General Data Protection Regulation), https://gdpr-info.eu/; ECNL, supra note 60, at 20 (examples of nation-specific data privacy laws in Europe); Paul M. Schwartz, Global Data Privacy: The EU Way, 94 NYU L. REV. 771 (2019).


\textsuperscript{357} For charitable crowdfunding platform donor anonymity policies, see, e.g., CHARITY, HOW CAN WE HELP YOU?, https://www.charity.com/faq (stating that donors can remain anonymous, apparently for all purposes); FUNDLY, CAN DONORS CONTRIBUTE ANONYMOUSLY?, https://support.fundly.com/hc/en-us/articles/206307918-Can-donors-contribute-anonymously- (requiring donor identifying information to be visible to the organizer); GoFUNDMe, DONATING ANONYMOSLY, https://support.gofundme.com/hc/en-us/articles/203687114-Donating-Anonymously-(requiring donor names to be visible to organizers and beneficiaries); JUSTGIVING, DONATING, https://help.justgiving.com/hc/en-us/articles/200670401-How-can-I-donate-anonymously-or-hide-the-donation-amount- (permitting donors to remain anonymous unless the beneficiary is a charity, in which case their name is visible to the organizer).

United States has perhaps the strongest such protection under the First Amendment to its Constitution. Based on that constitutional provision, the Supreme Court has prohibited states from placing limits on the proportion of donated funds used to pay for fundraising or administrative costs, requiring soliciting charities to provide that information to potential donors unless requested by the potential donors, restricting agreements between charities and professional fundraisers, or giving significant discretion to government officials when a charity tries to register to solicit contributions. The First Amendment may also limit the ability of states to access non-public donor information.

Assuming United States law provides the strongest speech protection in this context, that protection does not prohibit requiring platforms to notify either beneficiaries or regulators about campaigns. This is evidenced by the fact that the Supreme Court has repeatedly upheld general registration and reporting requirements, as well as the ability of states to prosecute fraudulent speech in this context. However, more stringent requirements, such as requiring platforms or organizers to provide certain information to potential donors or to report donor information, could run afoul of such protections.

3. Internet Platform Liability Protections

Finally, many countries also limit or eliminate Internet platform liability for certain activities of platform users. Perhaps the most well-know of these laws is section 230 of the United States Communications Decency Act. This statute has been found to protect a platform from liability from claims by a purported beneficiary arising out of an allegedly fraudulent charitable

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362 See Madigan, 538 U.S. at 617-18 (fraudulent charitable solicitations not protected by the First Amendment).

crowdfunding campaign the platform hosted.\textsuperscript{364} However, at the same time a crowdfunding platform “can be liable for independent actions it took distinct from the fraudulent text.”\textsuperscript{365}

In theory such protections might prevent a government from being able to penalize a platform for failing to comply with even the modest notification requirements recommended in this Article, based solely on hosting a request for funds to further a charitable purpose. But this limitation can easily be avoided by having the first receipt of funds – whether by the platform or a third-party payment processor used by it – trigger any notification requirement. At least CDA Section 230, and likely similar protections in other countries, only limits liability relating to speech but not with respect to transactions.\textsuperscript{366} But again, more extensive regulation of charitable crowdfunding and particularly of the campaign speech itself, as opposed to the handling of funds, might be limited or prevented by such protections, unless they are modified.

CONCLUSION

Charitable crowdfunding provides a cheaper, faster, and more far reaching way to raise money for charities and individuals in need than past charitable fundraising methods. Yet as is the often the case with new technology, both its benefits and its downsides are difficult to accurately measure and so tend to be identified through anecdotes instead of through comprehensive data. For donors, organizers, and beneficiaries this can lead to confusion and unrealistic expectations. And for government regulators who may be particularly sensitive to the potential downsides, it can lead to proposals that unnecessarily burden all campaigns to prevent what may be relatively modest and often curable harms caused by a few.

This Article identifies what we know and do not know about the emerging global trend of charitable crowdfunding, the extent to which current laws apply to it, and what considerations should guide regulation of it. I conclude that with much still unknown but the potential harm being both modest and primarily financial, stringent regulatory requirements are not advisable because they could unnecessarily inhibit the growth of this new fundraising method and its positive effects on giving. Instead, governments should consider at this time imposing only two requirements on


\textsuperscript{365} GiveForward, Inc., at 13.

\textsuperscript{366} Edwards, \textit{supra} note 363, at 1670-71.
charitable crowdfunding platforms to improve information flows and so enhance self-regulation and regulator knowledge: notification of beneficiaries with an opt-out option; and, for larger campaigns, notification of regulators.

These recommended, incremental steps may be all that is needed to manage the downsides of charitable crowdfunding while not unduly limiting its growth and positive upsides. Or these steps may reveal over time that charitable crowdfunding is both becoming a more significant part of charitable giving and more prone to creating confusion, misuse, and diversions than current data indicate. If the latter situation arises, regulators could then consider additional legal requirements based on this new and more complete information. But until such time as information along these lines emerges, regulators should limit their interventions in this new activity so as not to unnecessarily constrain this new avenue for generosity.
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