

Protecting the Private Property Right of Charitable Giving

Testimony before the House Committee on Business & Industry

by The Honorable Arlene Wohlgemuth, Executive Director

America is the most generous nation in the world. In fact, the United States gives far more through private giving than any other country in the world. Americans contributed \$303.75 billion in 2009 which includes individual, foundation and corporate giving.¹ Total giving declined only 3.6 percent from the 2008 giving level of \$315 billion and 3 percent from \$321 billion in 2007 in spite of a deep and prolonged recession in 2008 and 2009.² Americans still gave generously in an economy that saw a loss of 48.3 percent in the value of the S&P 500 Index between March 2007 and February 2009.³

As a percentage of their income, Americans donate more than twice as much to charity as the next closest nation, the United Kingdom. A study completed by *Philanthropy UK* shows that the United States' percentage of giving by gross domestic product totaled 145 billion pounds, while the UK's giving levels were only 14.9 billion pounds. The two closest countries to that were Germany and the Netherlands, with 11.3 billion pounds, and 2.9 billion pounds.⁴ If you combine those three countries, the U.S. still gives more to charity by 115.9 billion pounds, or roughly \$186 billion.⁵

Three-quarters of all giving came from individuals who contributed \$227.41 billion to a variety of causes from their local churches and synagogues to soup kitchens, hospitals, animal shelters and colleges. Foundations are a large part of charitable giving, making up 13 percent of the total in 2009 or \$38.44 billion.⁶

Texas is no exception. There are 4,078 charitable foundations in Texas (5.4 percent of all foundations in U.S.).⁷ Total giving in Texas from these foundations is \$2.47 billion annually.⁸

There are many reasons why Texans give to charitable organizations, but most of them are for personal reasons. For example, if a family or loved one is stricken with a disease or illness, it is not uncommon for that family to begin donating to those causes or to create a foundation for research and treatment for that particular disease. When a successful businessman sees that schools in his area are under-performing, he gives to boost the curriculum or to start a charter school for at-risk kids. Foundations are formed when a wealthy family wants to leave a legacy to better their community by providing health care to the poor or college

scholarships. This giving is a personal choice that Texans make when they are deciding how they can give back to the communities that have helped them achieve success.

The ability to give one's earned income, to whomever one sees fit, is a fundamental part of private property right.

However, this freedom is under attack by a group in California, the Greenlining Institute.⁹ In particular, they are pushing states to pass legislation that would force donors, board members, and employees of private, charitable organizations to disclose everything about themselves publicly. The complete list of disclosures required under their proposal is race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, and political party registration.¹⁰

The result of this proposal would be the elimination of privacy in charitable giving. This level of disclosure would eliminate the privacy of donors, causing them to think twice before making charitable gifts. Many would likely consider the infringement of their privacy too great and decide not to donate at all.

But the goal of this proposal goes beyond simple transparency. As Terrence Scanlon, President of the Capital Research Center explains, "Their goal was to make it easier to impose philanthropic grant quotas in the future by forcing charities to publicly disclose sensitive information such as the race, gender, socioeconomic status, and sexual orientations, of its employees, officers, directors, trustees, and members."¹¹

The Greenlining Institute's own website states that its goal is to "democratize philanthropy" by "engaging government officials to advance policies and regulations."¹² The goal stated on their website—entitled "funding the new majority"—indicates that the purpose for tracking this data is to increase grant percentages and dollars to certain initiatives.¹³ In order to re-direct these funds, private foundations would no longer get to pick the recipients of funding based on merit or their own internal evaluations.

When donors are less able to choose the recipients to their charity, the zeal to give diminishes, or halts altogether. The subsequent decline in private philanthropy will force more Texans to

turn to the state and federal government or aid. As has happened in Europe, the numbers of private charitable contributions will diminish.

The ramification of diminished private giving is an increased cost to the state for funding all of the work that private charities and private trusts currently cover. In addition to the monetary cost to the state budget, the potential loss of citizen involvement in the needs of the community would change the character of the state.

There has already been a legislative push to pass these bills. The first one was in California. The Greenlining Institute succeeded in pushing legislation (California AB 624) to the brink of final passage. The legislative sponsor withdrew the measure when the foundations affected agreed to make “size-

able contributions to causes that bore the Greenlining seal of approval.”¹⁴

The second attempt was in Florida. The Florida Legislature was not caught off guard, however, and they passed legislation that is substantially similar to HB 3573. The legislation ensured that charitable giving is protected in Florida.¹⁵ Many believe this will inspire more charitable giving in Florida and attract more foundations to do business within the state.

HB 3573 ensures that the privacy of donors, as well as employees and board members of non-profits and charities, remains private. By doing so, the Legislature will protect the ability of Texans’ to use their property as they see fit and privately exercise their generous philanthropic nature. ★

¹ Data from Giving USA Foundation (2010).

² Ibid.

³ Ibid.

⁴ “Charitable Giving in the UK and USA,” *Philanthropy UK* (2006).

⁵ Ibid.

⁶ Data from Giving USA Foundation (2010).

⁷ *Foundation Yearbook: Facts and Figures on Private and Community Foundations*, The Foundation Center (2008).

⁸ Ibid.

⁹ Thomas Perrin, *2010 Florida Legislative Report*, Florida Philanthropy Foundation, James Madison Institute.

¹⁰ California AB 624. 2009.

¹¹ Terrence Scanlon, “Florida Law Strikes Blow for Philanthropic Freedom,” *Washington Legal Foundation* Vol. 18 No. 5 (15 Oct. 2010); see also Matthew Vadum, “The Future of Philanthropy in Florida,” POLICY BRIEF, No. 5 (Dec. 2009).

¹² The Greenlining Institute, *Programs Overview: Democratizing Philanthropy*.

¹³ Ibid.

¹⁴ John Gizzi, “Race and Gender Quotas for Nonprofits: How California Bill AB 624 Threatens Foundation Philanthropy,” *Foundation Watch* (July 2008).

¹⁵ Caroline Preston, “Florida Adopts Legislation to Protect Foundations’ Autonomy,” *The Chronicle of Philanthropy* (1 June 2010).

