

# THE CHARITY PROTECTION ACT

## FREQUENTLY ASKED QUESTIONS

### *What does this bill do?*

The Charity Protection Act is designed to create a predictable regulatory environment for charitable organizations. The bill brings transparency and accountability to any new filing or reporting requirements placed on charitable organizations by requiring that they first be approved through the legislative process. The bill also includes important exemptions for fraud and misuse, ensuring that state officials have proper oversight of the charitable sector. Similar legislation has been enacted in 13 states.

### *This Isn't a Problem in My State. Why Bother Passing Another Law?*

Most states require charitable organizations to register (usually with the secretary of state or attorney general) and provide annual reports on their activities. This information is critical to securing the public's trust in the charitable sector and helping state officials root out bad actors. However, there are a growing number of state officials requiring charitable organizations to disclose an increasing number of details about operations, governance, and grantmaking, including:

- In February 2021, the California Attorney General's office issued a survey to DAF sponsors located in the state or located elsewhere but registered in the state. The Attorney General's office demanded information regarding administrative and investment fees, grants made over the last three years, number of DAFs, assets in DAFs, payout policies, private foundation gifts to DAFs and DAF-to-DAF transfers. This mandatory survey covered a sweeping array of confidential financial data of DAF sponsoring organizations, which are themselves public charities, without any evidence of fraud or abuse. Every question in this survey is a potential opportunity for the state attorney general to impose new regulations on DAFs without going through the legislative process.

## TOPLINES

- **This bill helps our state attract and retain charitable organizations that meet the needs of our communities**
- **This bill protects charitable organizations so they can focus on their missions, rather than complying with arbitrary and unilateral mandates**
- **This bill provides transparency by ensuring that any new requirements on charitable organizations must first be deliberated and approved by the legislature**

## ***This Isn't a Problem in My State. Why Bother Passing Another Law? (Cont.)***

- Beginning in 2010, under then-state Attorney General Kamala Harris, California began requiring nonprofits operating in the state to submit unredacted copies of their IRS 990 Form Schedule B documents. This includes the names, addresses and amounts contributed by substantial donors to an organization. Although the sensitive information was not intended to be made public, leaks and technical failures of the office led to the exposure of donor information to the public. In a time of extreme social pressures and divisive debates about controversial issues, this exposure put donors in physical and financial danger and spurred lawsuits against the state. In 2021, the U.S. Supreme Court ruled against the California attorney general's office and their demand for major donor information from nonprofits in the state. In its *Americans for Prosperity Foundation v. Bonta* decision, the Court upheld donor privacy and concluded that California's bulk collection of donor information was unconstitutional.
- In Hawaii, the state Attorney General's office has subpoenaed documents relating to all of a nonprofit's financial accounts, simply because it opposed the construction of the Thirty Meter Telescope. The issue is the subject of ongoing litigation in the state and illustrates the overreach potential of state offices.
- Governors have demonstrated a willingness to overreach on nonprofit regulations as well. In 2018, then-governor Steve Bullock issued an executive order requiring entities bidding for state government contracts to disclose certain contributions related to issue advocacy. Fortunately, this order was rescinded by now-governor Greg Gianforte in Executive Order No. 3-2021.

Whether the attacks are coming from the legislative or executive bodies in a state, there is a clear, coordinated effort to restrict the charitable sector in unnecessary and damaging ways.

## ***What could happen if this legislation is not passed?***

America's charitable sector is vibrant, with a diversity of interests ranging from agricultural science, to curing rare diseases, and protecting endangered species. But without an affirmative signal from lawmakers, the charitable sector might prove to be a tempting target for those trying to turn private philanthropy into instruments of public policy. That was never envisioned by givers attracted by the flexibility, transparency, and predictability that exists in the charitable sector today.

Lawmakers must ensure any new requirements are closely scrutinized to ensure they are based on solid evidence of widespread need, rather than on anecdotes and rumors. When such burdens are sought by unilateral executive action, legislators have the responsibility to challenge the overreach that directly hurts the communities they represent.

There is no downside to passing this bill. But without it, there could be a chilling effect on the vital contributions of philanthropy in this state. New private foundations and charities may not emerge to solve community problems, and existing foundations could spend down their assets or move to other states with more favorable philanthropic protections in place.