

Because Fundraising Isn't Challenging Enough –
**Spanning Recent Global Changes in
 The Law Impacting Philanthropy**


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The Annual Review of Recent Court Cases.
 Tax Court Decisions, Administrative Law, and
 other Legal Developments in Fundraising and
 Philanthropy Around the World



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Overview

- Why Is This Stuff Important to Talk About?
- Since the Pandemic Began...
 - Court Cases, Tax Court Cases, Legislative News, Other Legal Developments
 - The Rise (and Fall) of Cryptocurrency
 - The Growth of (and Increasing Challenges to) Donor Advised Funds
 - Wealth Screening v. Donor Data Privacy Protection Post-GDPR
 - The State of Conservation Easements
 - Crowdfunding Platforms

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Why Is This Stuff Important?

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Why Is This Stuff Important To Talk About?

- The world of fundraising and philanthropy is changing.
- Attitudes and priorities of individuals and families are changing.
- Access to corporate philanthropy is changing.
- Opportunities for grants from public foundations is changing.
- Advances in technology are creating changing conditions.
- And...
- The law is changing how – and what – we do in fundraising.

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Spanning The...

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Cryptocurrency, NFTs and Charitable Giving

- Topics:
 - How to Donate Cryptocurrency and Other Digital Assets to Charity
 - The U.S. IRS rules and regulations regarding:
 - Valuation.
 - Certified Appraisals
 - Contemporaneous Gift Substantiation Documentation
 - Non-fungible tokens (NFTS)
 - Unique asset for charitable giving

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Donor Advised Funds - California


Calls for Reforms and Change

- More than \$1.0 trillion is currently invested in donor-advised funds.
- A call for reform is emerging in California:
 - CalNonprofits seeks regulatory reform. Its goal is to achieve tax fairness and fraud prevention.
 - California seeks to be the first state to enact transparency in the administration of Donor-Advised Funds.



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Donor Advised Funds - California

- California legislators have introduced bills to:
 - Increase transparency regarding Donor Advised Funds
 - Establish distribution requirements
- They have reported strong opposition to their efforts.
 - Commercial Donor Advised Funds sponsoring organizations.
 - Community Foundations.



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Donor Advised Funds - California

- A coalition has been created to take on reform of Donor Advised Funds, called *Initiative to Accelerate Charitable Giving*.
- Its views:
 - That a few ‘common-sense reforms’ could significantly increase the flow of resources to working charities from private foundations, donor-advised funds, and individuals.
 - That existing laws deliver significant tax breaks upon initial funding, but do not provide sufficient incentives or requirements to ensure that these funds will ever be distributed to working charities.



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Donor Advised Funds - California

- Its goals:
 - To promote ‘common-sense’ reforms
 - To increase and accelerate funding for America’s charities.
 - To ‘make sure’ philanthropic dollars reach working charities and the communities they serve.




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Donor Advised Funds - California

- Three objectives:
 - **For private foundations**, close loopholes to ensure distributions qualifying for the payout requirement are available for use by working charities; and incentivize greater payouts by reforming the excise tax.
 - **For donor-advised funds**, adopt measures to make sure that accounts are distributed to working charities within a reasonable period of time.
 - **For individuals**, incentivize greater giving by making the non-itemizer charitable deduction a permanent part of the federal tax law.



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Donor Advised Funds - California

- Members of the Initiative to Accelerate Charitable Giving include:
 - Ford Foundation
 - Hewlett Foundation
 - Kresge Foundation
 - Minnesota Council of Nonprofits
 - Telluride Foundation
 - Wallace Global Fund
 - WK Kellogg Foundation




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Donor Advised Funds - FY2024 Federal Budget

- In the FY2024 Federal Budget proposed by the President, it includes a provision that would modify private foundation minimum distribution requirement by disqualifying two particular kinds of distributions that are currently permissible in counting toward a private foundation's minimum distributions:
 - Grants from private foundations to Donor Advised Funds
 - Compensation and other payments to foundation insiders




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Donor Advised Funds – Other Issues

- Treatment of Donor Advised Funds in other countries.
 - Australian laws, rules, and regulations




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Universal Charitable Contribution Tax Deduction

- In March 2023, a renewed effort was initiated in the U.S. Congress to create a universal charitable contribution income tax deduction for non-itemizing taxpayers
- A coalition of eleven U.S. Senators introduced a bill to “amend the Internal Revenue Code of 1986 to modify and extend the deduction for charitable contributions for individuals not itemizing deductions.”








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Universal Charitable Contribution Tax Deduction

- **The Proposed Legislation:**
- Senators James Lankford (R-OK) and Chris Coons (D-DE) are the lead sponsors of the [Charitable Act](#).
- Co-sponsors to date include: Catherine Cortez Masto (D-NV), Marco Rubio (R-FL), Maggie Hassan (D-NH), Raphael Warnock (R-GA), Susan Collins (R-ME), Amy Klobuchar (D-MN), Gary Peters (D-MI), Tim Scott (R-SC), and Jeanne Shaheen (D-NH).








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Universal Charitable Contribution Tax Deduction

- The Details:
 - This legislation is designed:
 - NOT to be just a short-term provision.
 - To make a *permanent* change to the Internal Revenue Code §170 , effective for taxable years beginning after December 31, 2022.
 - To give all U.S. taxpayers who donate to charities, houses of worship, religious organizations, and other nonprofits entitled to tax-deductible charitable contributions the opportunity to deduct their donations from their federal income taxes without regard to whether they itemize their deductions.








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Universal Charitable Contribution Tax Deduction

- The Details:
 - This legislation is designed:
 - To provide a higher cap that the pandemic-era cap of \$300 per individual (\$600 per married couple filing jointly).
 - The cap would be set at one-third of the standard deduction
 - The 2023 standard deductions are \$13,850 for individual filers and \$27,700 for married joint filers.
 - The charitable contribution deduction would be capped at ~\$4,500 for individuals and ~\$9,000 for married joint filers.






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Universal Charitable Contribution Tax Deduction

- Co-Sponsor Sen. Jean Shaheen (New Hampshire):
- *“Charitable donations are a lifeline for many nonprofits, helping to keep doors open and continue much-needed services for local residents. As our communities continue their recovery from the pandemic, it’s critical that we ensure non-profit organizations on the frontlines assisting families are supported....”*
- *“...Our legislation would make an overdue, commonsense change to offset the effects of the 2017 tax law, which weakened funding options for non-profits nationwide.”*




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Universal Charitable Contribution Tax Deduction

- *Will this be the year?*
- *There’s unprecedented wide support:*
 - The Bill’s endorsements include:
 - National Council of Nonprofits
 - The Leadership18
 - The Charitable Giving Coalition
 - Independent Sector
 - Nonprofit Alliance
 - Association of Fundraising Professionals
 - United Philanthropy Forum
 - National Philanthropic Trust
 - Jewish Federations of North America.
 - YMCA
 - United Way Worldwide
 - Goodwill Industries
 - American Heart Association.




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Universal Charitable Contribution Tax Deduction

- Suzanne McCormick (YMCA of the USA):
- *“Nonprofits need tools like the nonitemizer deduction proposed by the Charitable Act to meet growing and changing community needs. As expected, the universal charitable deduction enacted temporarily during the height of the pandemic unlocked more giving. Making the deduction permanent will provide an ongoing incentive to increase giving and also will counteract inflation.”*




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Universal Charitable Contribution Tax Deduction

- *The Data:*
 - The short-term extension included in the March 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides some data to consider:
 - 29% — 42 million taxpayers — took advantage of the deduction in 2020.
 - Their total charitable contribution deductions: \$10.9 billion (Average = \$260).
 - 24% of these taxpayers had an adjusted gross income of <\$30,000.




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General Data Protection Regulations (GDPR)

- Topics:
 - Background
 - Update on GDPR applications and issues
 - Impact on wealth screening
 - Impact on U.S. data privacy & protection laws
 - Outlook



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Data Privacy - Virginia

The Commonwealth of Virginia has become the 2nd state in the US to adopt a data privacy law.

- Unlike both California's law and the European Union's GDPR, the **Virginia Consumer Data Privacy Act** does not give Virginians a private right of action
 - They cannot file suit claiming violations and infringements.
 - Instead, the Attorney General of Virginia is solely responsible for enforcing the data privacy law.



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Data Privacy – 4th State: Utah

- To date, four states have adopted comprehensive data privacy laws:
 - California
 - Virginia
 - Colorado
 - Utah
- Connecticut Likely to Become Fifth State to Enact a Comprehensive Consumer Privacy Law



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Data Privacy – Congressional Action

U.S. Congress has recently released a draft of a Federal Privacy Law.

- The likely intent of a federal law would be to pre-empt the various state laws.
- **Outlook:**
 - Whether a federal data privacy law would apply to charitable organizations (as GDPR is applicable to charities in the European Union).
 - To date, the state laws have excluded/exempted charities and other nonprofits.



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Data Privacy – United Kingdom

- Now outside the scope of the European Union’s GDPR, the United Kingdom is preparing to adopt its own data protection reform.


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Data Privacy – GDPR – Case Law

- During the time since GDPR became effective in 2018, a body of regulatory action and case law has developed within the European Union.
- As a consequence, further GDPR regulations are likely to emerge from the court cases and administration of existing regulations.


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Charitable Gifts of Conservation Easements

- Topics:
 - The protected-in-perpetuity rule.
 - Impact of retained rights
 - Charitable contribution substantiation issues:
 - Valuation
 - Appraisal.
 - Contemporaneous Written Acknowledgement.
 - The future of Syndicated Conservation Easements



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Charitable Crowdfunding

- *Charitable Fundraising Platform – A Definition:*
 - *Any person, corporation, unincorporated association or other legal entity that uses the internet to provide an internet website, service, or other platform to persons, and performs, permits, or otherwise enables acts of charitable solicitation to occur.*
 - *A number of activities are included. Specifically:*


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Charitable Crowdfunding

- **Charitable Fundraising Platform:**
 - Lists or references by name recipient charitable organizations to receive donations or grants made by donors who use the platform.
 - Permits persons who use the platform to solicit donations for or recommend grants for recipient charities via peer-to-peer charitable fundraising.
 - Permits persons who use the platform to select recipient charitable organizations to receive donations or grants made by a platform, platform charity, or other third-party person, based on purchases made or other activity performed by persons who use the platform.





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Charitable Crowdfunding

- **Charitable Fundraising Platform:**
 - Lists or references by name recipient charitable organizations to receive donations or grants made by the platform based on purchases made or other activity performed by persons who use the platform.
 - Provides to charitable organizations a customizable internet-based website, software as a service, or other platform that allows charitable organizations to solicit or receive donations on or through the platform, including through peer-to-peer charitable fundraising.








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Charitable Crowdfunding

- **What is NOT Charitable Crowdfunding:**
 - A charitable organization’s own platform that solicits donations only for itself.
 - A vendor that solely provides technical or supportive services to a charitable fundraising platform so that the charitable fundraising platform can function and operate, including vendors used for hosting or domain services, security certificates, internet access, internet applications, or digital payment processing.
 - A sponsoring organization of donor-advised funds that solicits donors to open donor-advised fund accounts or similar accounts, receives recommendations from donors on charitable organizations that may receive grants of funds previously contributed to the sponsoring organization by the donor.

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Charitable Crowdfunding - California

- In September 2021, the California legislature passed, and Gov. Newsom signed into law, [Assembly Bill 488](#), “Charitable organizations: charitable fundraising platforms and platform charities” (2021-2022).
- The law became effective January 1, 2023, in part.
 - Registration and other requirements are delayed to January 2024, pending promulgation of final regulations.






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Charitable Crowdfunding

- The first-of-its-kind-in-the-nation regulation of charitable crowdfunding.
- The new and amended statutes were the result of several years of negotiation among government regulators, lawmakers, nonprofit leaders, academic and professional experts, the crowdfunding industry, and other stakeholders.
- It is a complex law and transforms the operation of charitable fundraising platforms and platform charities.



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Charitable Crowdfunding

- The law and regulations in effect provide that Charitable Fundraising Platforms and Platform Charities must:
 - Ensure compliance with the law's good standing requirements for charities; only charities permitted to operate or solicit in California may engage in charitable crowdfunding; the Attorney General maintains a naughty n' nice list.
 - Maintained donations in a separate account from other funds belonging to a Charitable Fundraising Platform or Platform Charity.
 - Make disclosures that prevent the likelihood of donor deception or confusion, when applicable, identify fees charged to the donor, and report how long it will take to convey donated funds to the recipient charity.


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GoFundMe Campaigns

- Since January 2020, 175,000 COVID-19-related GoFundMe campaigns were created.
- These campaigns have raised \$416 million. Average = \$2,400.
- While giving to a GoFundMe campaign seems a charitable thing to do, the contributions are likely not tax-deductible.
- Campaign organizers need to exercise care regarding messages and disclosures to donors – and, the tax implications of contributions.


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Estate & Gift Planning

- Topics:
 - Estate & Gift Tax Changes
 - Federal
 - States
 - Income Tax Updates
 - Massachusetts
 - Secure Act 2.0
 - Cryptocurrency and Legacy Giving


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Tax Law: Charitable Giving & Federal Estate Tax

In 2023, the exemption amount for federal estate & gift tax is \$12,920,000.

- This exemption adjusts for inflation in 2024 and 2025 (Tax Cuts and Jobs Act)
- But, the law will sunset on December 31, 2025
 - Congress will need to act to extend it or adopt a new plan

On January 1, 2026, the exemption amount will drop back to its pre-TCJA level: \$5,000,000.

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Tax Law: Charitable Giving & Federal Estate Tax


Impact:

- This pending change in the exemption amount offers charitable gift planners a window **over the next 30 months** to work with High-Net-Worth donors.
- Building substantial charitable gifts into their estate plans **now** can offer donors a simple way to be sure the size of their estates will be below the taxable threshold in now and in the future.
- Even if Congress acts in some way, the donors would have created generous legacy gifts for their favorite charities – and, will have lowered - or even eliminated – their exposure to federal estate and gift tax liability.








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Tax Law: Charitable Giving & Federal Estate Tax

Key Thing:

- The calculation of a donor's taxable estate takes into consideration the total fair market value of all the donor's assets less deductions allowed under the law. Testamentary gifts to charity are deductible.




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Tax Law: Charitable Giving & Federal Estate Tax

Key Thing:

- A plan focused on financial, estate, and philanthropic interests that aims to create a taxable estate of no more than \$5,000,000 can include both charitable gifts pledged and paid over the next several years and testamentary gifts payable at the time of the donor's death.
- While a married donor likely will look to include distributions to the surviving spouse as part of the estate plan, charitable giving still offers a creative taxwise way to plan for the change in the exemption amount.

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Tax Law: Charitable Giving & Federal Estate Tax

Let's assume the taxpayer has a taxable estate of \$12,920,000 that includes no provisions for testamentary charitable giving.

Taxable Estate:	\$12,920,000
In 2023, Federal Estate Tax =	\$ 0
In 2026, Federal Estate Tax =	\$ 3,168,000

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Tax Law: Charitable Giving & Federal Estate Tax

Now, let's consider a plan in which the taxpayer with a taxable estate of \$12,920,000 includes a trust for spouse and a charitable bequest.

Taxable Estate:	\$12,920,000	Taxable Estate:	\$12,920,000
In 2023, Federal Estate Tax =	0	Charitable Bequest:	\$ 3,000,000
In 2026, Federal Estate Tax =	\$ 3,168,000*	Trust for Spouse:	\$ 5,000,000
		Revised Taxable Estate:	\$ 4,920,000
		In 2023, Federal Estate Tax =	\$ 0
		In 2026, Federal Estate Tax =	\$ 0*

*Assumes exemption amount of \$5,000,000 and a marginal tax rate of 40%.

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Charitable Contribution Substantiation Rules

- Seems like an old story, not a topic for recent developments.
- But, things change and it actually is the subject of recent developments.
- Here's why:
 - The number of itemizers is down.
 - The number of U.S. IRS agents is up.
 - The chance of an audit has increased.
 - The U.S. IRS is looking more closely than ever at the strict standards for substantiation of charitable contributions.

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Charitable Contribution Substantiation Rules

- In 2022, there were enough judicial decisions to get our attention that focused on enforcing the "strict requirements" for a taxpayer's claim of an income tax deductions for charitable contributions.


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Charitable Contribution Substantiation Rules

- Implication:
 - **Donors** must be aware of the specific rules to avoid the loss of a charitable contribution income tax deduction.
 - The Contemporaneous Written Acknowledgement rule for gifts >\$250.
 - The qualified appraisal rules for non-cash gifts.
 - It is equally as important for **charities** that receive donations to review their gift receipt and reporting procedures. Charities need to do their part to comply with federal tax law to avoid creating the potential of U.S. IRS challenges to donors who claim charitable contribution deductions.



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Mandated Gifts


- Let's say that your organization has a set of policy statements included in the Board Manual that all board members receive upon their appointment to the Board.
- One of the policy statements explains:
 - Because funding sources are ever-curious about the financial support that the board members give to the organization,
 - For this reason, all board members are asked to make an annual commitment of [\$10,000] to the organization's annual fund.
- The amounts vary, but the prescription is not uncommon.



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Mandated Gifts

- Is the contribution by a board member made under such a mandate deductible for federal income tax purposes as a charitable contribution?
- In recent audits of individual returns, the U.S. IRS is reviewing the meaning of U.S. Internal Revenue Code §170's meaning of "gift" and "contribution" to determine the validity of a charitable contribution income tax deduction for mandated gifts by U.S. taxpayers.



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Mandated Gifts


- Key Thing:
 - A charitable contribution must have a proper **donative intent**; it must be made freely and without expectation of a benefit to or for the donor, or an expectation that something required of the donor would be satisfied by making the gift.
 - When a director on a charitable organization's board deducts as a charitable contribution an amount that the director gave to the organization because the organization – by policy, bylaw, or other mandate – required the contribution as a condition for service on the organization's board, is the requisite donative intent present?



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Mandated Gifts


- Recommendation:
 - Avoid the question entirely.
 - Framing the matter as a desire or a tradition but not a requirement or expectation offers the board member the opportunity to establish an appropriate donative intent.
 - Whether some board members opt out of giving is an issue that the organization would need to address in a way that avoids a conflict with the U.S. Internal Revenue Code.



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The Donors Disclosure Case

- Topics:
 - Background of the Case and the Issues.
 - Lower Courts
 - U.S. Supreme Court decision
 - First Amendment rights
 - Implications
 - For states
 - For charities



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United Arab Emirates

- Asking for funds by beggars and unlicensed charities violates strict UAE laws.
 - 2022 amendments have been adopted.
 - The country is committed to:
 - Preventing individual and organized begging for the purpose of stopping the use of such funds in financing terrorism.
 - Protecting the interest of the donors of funds.





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Discussion & Questions



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