

## Opening remarks

### Introduction

Thank you so much Bill, for that kind introduction. I would also like to thank Adam Meyerson and the Philanthropy Roundtable for inviting me. It's a great pleasure to be here and I'm looking forward to a lively debate this morning.

Discussions about public accountability for foundations and institutional grantmakers have flared up periodically for decades. I'm going to make a case this morning for three specific regulatory changes that will help foundations better serve the public interest and achieve their own goals.

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For example, the government requires labeling of our food products with nutritional information and they also require certain practices in the preparation of foods in order to protect public health. They don't regulate the carbohydrate content of our food, or the amount of protein that has to be in a frozen pizza, but the government does require food manufacturers to provide that information to the public. And some individuals use that information to make better choices.

It's also clear from recent events that deregulation of the financial sector had disastrous consequences for our country and our economy. None other than former chairman of the Federal Reserve Alan Greenspan admitted two weeks ago "that he 'made a mistake' in trusting that free markets could regulate themselves without government oversight."

So does regulation get overdone sometimes and stifle freedom and innovation? Of course it does. But when done properly, regulation has tremendous benefits.

So how does this apply to foundations – some of the most loosely-regulated institutions in the country?

### Why should we regulate foundations in a free society?

Foundations and other institutional grantmakers play a small but vital role in sustaining the American civil society sector. So why even bother regulating foundations? I would argue that there is one compelling reason why grantmakers must be held to high standards. Foundation dollars are partially public dollars, and the public is therefore entitled to know that its contributions are being used wisely. In a free society, all people should enjoy full liberty to donate to whatever causes they choose. But that doesn't mean the government should subsidize all types of spending or giving. The subsidies provided to foundations create a strong rationale for proper regulation of philanthropy.

Now I'm sure Ms. Higgins will argue to the contrary, but there can be no doubt that the public subsidizes the activities of foundations. Most donors get a substantial tax

deduction when they contribute to their foundations. Additionally, foundation endowments are allowed to grow essentially exempt from taxation. By some estimates about 45% of foundation assets are actually contributed by the public. The government forgoes substantial revenue to grant preferential tax treatment to foundations, and that revenue could ostensibly be used to meet societal needs. The public then has to bear the burden of that lost revenue.

While in a strictly legal sense foundation dollars are private dollars, in a moral context and a public policy context, foundation dollars should be viewed as partially public dollars. Foundations and the public are partners in pursuit of the common good, and foundation trustees are the stewards of these dollars. The great American industrialist and philanthropist Andrew Carnegie recognized this. He viewed the wealthy as temporary stewards of community wealth, describing the millionaire as a “trustee for the poor, entrusted for a season with a great part of the increased wealth of the community.”

So in light of these factors, proper regulation of philanthropy should be focused on two things: 1) preventing abuses of philanthropy for personal gain and 2) improving the practice of philanthropy to maximize the return on investment for the donor and the public.

#### Preventing abuses of philanthropy for personal gain

First, let's consider abuses. Unfortunately, there have been and continue to be abuses of philanthropy for personal gain, most of which never get prosecuted. Everyone here is familiar with the series the *Boston Globe* ran in 2003 that documented many of those abuses. One of my personal favorites was Paul Cabot admitting that he used more than \$200,000 of his foundation's money to pay for his daughter's wedding. I'm sure we all agree that this abuse of the public trust is reprehensible.

Self-regulation to prevent abuses isn't sufficient. The bad actors just opt out of the system, and watchdogs don't have the resources necessary to do a thorough job. Regulation by the media doesn't work very well either.

So there are two regulatory changes that need to be made to curb abuses.

The first is that we need tighter rules to combat self-dealing. IRS regulations have left a huge loophole for private foundations to exploit, which is why most of the abuses from the *Globe* series went unprosecuted. The activities were wrong, but technically legal. Taxpayers shouldn't be subsidizing personal enrichment, and so we need to tighten the self-dealing rules.

The second regulatory change we need is improved oversight by the IRS and by state attorneys general. Both are woefully understaffed and underfunded and simply cannot look into very many cases where abuse is suspected. The excise tax levied on foundations should be reduced and all funds generated by that tax should be dedicated to oversight, as was the original intent. There is no defensible rationale for Congress taxing foundations and sucking those dollars into the general Treasury.

But beyond preventing abuses of philanthropy for personal gain, should the government play any role in determining where the money goes or who benefits? That has been the most interesting regulatory question in recent years.

### Improving the practice and impact of philanthropy through increased transparency

Philanthropy is an under-performing national treasure. It's not making as much of a difference in the world as it could be or should be. I believe, and many policymakers agree with me, that the public isn't getting enough "bang for the buck" in exchange for the generous tax subsidies it provides to foundations and other institutional grantmakers. For every foundation that is thoughtful in its giving and maximizes the social benefit of its grants, there are other foundations that are not adequately stewarding the partially public dollars with which they have been entrusted.

The independence of foundations is or should be one of their most valuable assets, but most foundations don't really do much risk-taking. Instead, they practice patronage giving and give safe grants to large educational or cultural institutions.

There is no question, too, that a relatively small percentage of foundation giving is for the intended benefit of marginalized communities. A forthcoming NCRP analysis shows that only one dollar out of every three dollars granted by large foundations is for the intended benefit of marginalized communities, broadly defined. We counted grants for the intended benefit of economically disadvantaged populations, racial and ethnic minorities, women and girls, people with disabilities and seven other population groups that can be considered marginalized. And still, only one-third of foundations' grant dollars were seeking to benefit these groups.

When policymakers see these figures, they wonder why they are subsidizing activity that isn't directed towards pressing social needs.

Most of you in this room today probably do make it a high priority in your giving to benefit marginalized communities. For some of you, your values compel you to care for those less fortunate than yourselves. For others, you recognize that when you focus on helping the most vulnerable, society as a whole is better off. Unfortunately, many donors fail to recognize the broad social benefits achieved by focusing on underserved populations. Instead, they use their tax-privileged foundations to support institutions that primarily serve the elite.

NCRP did not endorse AB624, the noble but flawed California legislation that created such a stir. But increased mandated transparency is the third change in regulation that I think is needed at this time. If crafted properly, it will help foundations improve their effectiveness and their impact. Additionally, government and the public have a right to expect significant disclosure in exchange for the preferential tax treatment; they deserve transparency to help discern to what extent the subsidies afforded to foundations actually serve the public good.

New mandated disclosures should be enacted at the federal level and should apply to the vast majority of all grantmaking institutions.

Grantmakers should be required to disclose, at a minimum, three types of information that are not currently required: 1) information about the policies it maintains that promote ethical behavior; 2) demographic data; and 3) information about the types of grants it provides.

Transparency and reporting of this kind will help foundations think about where their dollars are really going and will help them benchmark their own practices against the practices of other foundations. It also opens foundations up to more scrutiny from the public and from policymakers. But any foundation worth its salt should be able to withstand public scrutiny about its giving and make a case for how the choices it makes are in the public interest. In the absence of mandated reporting, voluntary transparency of this sort is terrific, and many foundations have already taken steps towards this.

I recognize that many people fear that mandated transparency and reporting of this type is only a first step towards the government telling foundations where their dollars should go. But let me be clear – I don't believe that politicians should decide where foundation dollars go any more than I believe the government should mandate how much protein should be in a frozen pizza. The dangers of that kind of political meddling are too great, and the independence of foundations should be protected. That independence, after all, is what allows foundations to contribute most meaningfully to a vibrant democracy.

### Conclusion

In summary:

- Regulation, when done properly, is and has been hugely beneficial to society.
- Foundations should be regulated because of the generous preferential tax treatment they receive and also to help them maximize their impact.
- To prevent abuses of philanthropy for personal gain, we need to close the self-dealing loopholes and provide significantly more funding to the IRS and to state attorneys general for oversight.
- To improve the practice of philanthropy, we need significantly increased mandatory reporting and transparency on the federal level.

Regulation that helps protect the public trust and improve the practice of philanthropy is appropriate and, indeed, in the interests of both the public and philanthropists. Philanthropy is good. Additional regulation to prevent abuses and to increase transparency will make it even better.

Thank you.