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## Nonprofit Champion | June 26, 2023

### Federal

## Major Supreme Court Decisions Expected This Week

The U.S. Supreme Court is set to issue decisions this week in its remaining cases of the 2022-2023 term. Those cases concern some of our country's most controversial issues, including race (whether colleges may take affirmative action for racial diversity in admissions – see below), religion (whether employers must accommodate an employee's request to not work on Sundays for religious reasons – [Groff v. DeJoy](#)), personal rights (whether Colorado's law prohibiting businesses that serve the public from discriminating based on sexual orientation violates a business's First Amendment rights – [303 Creative LLC v. Elenis](#)), student debt relief (the legality of President Biden's student debt cancellation program – see below), and political power (the legitimacy of an obscure legal theory known as the "independent state legislature" that would limit the ability of state courts to review elections law matters and give state legislatures near-total authority – [Moore v. Harper](#)).

- **Affirmative Action:** Two cases involving institutions of higher education admissions, one a charitable nonprofit and the other a public university,

challenge the practice of using race as a factor in admissions. To reach this result, the Court would have to overturn numerous precedents going back more than 40 years. Friends of the court briefs from the [NAACP](#), the [National Asian Pacific American Bar Association](#), the [College Board](#), and many others strongly oppose efforts to undo decades of progress on equality and consider doing so as a repudiation of lived experiences of discrimination and exclusion. A reversal would likely result in widespread disruption of admissions policies and practices, and could extend to aspects of public and private employment matters relating to diversity, equity, and inclusion. ([Students for Fair Admissions, Inc. v. Harvard College](#), and [Students for Fair Admissions, Inc. v. University of North Carolina](#))

- **Student Debt Cancellation:** The Supreme Court consolidated and agreed to expedite two cases questioning whether the Secretary of Education had statutory authority to cancel federal student loan debt of \$10,000 per borrower and up to \$20,000 for borrowers with Pell Grants. A federal judge in Missouri dismissed a case brought by six states; the Eighth Circuit Court of Appeals did not reverse, but simply issued an injunction to maintain the *status quo* until the appeal could be fully presented. Separately, two student loan borrowers sued to block the relief plan. A federal judge in Texas vacated the plan; the Fifth Circuit refused to stay the lower court's block on the plan but also has not reached the merits on appeal yet. The Administration agreed to delay implementation of the plan and extended the pandemic-related moratorium on student loan payments until after the Supreme Court rules. A high court ruling preventing the debt cancellation from going into effect would, among other things, create confusion for everyone, including charitable nonprofit employees who are relying on loan forgiveness under the separate Public Service Loan Forgiveness program not involved in these cases. ([Biden v. Nebraska](#) and [Department of Education v. Brown](#))

## Learn More:

### Affirmative Action (pending)

- [What Could Colleges Do Without Affirmative Action?](#), Scott Jaschik, *Inside Higher Education*, June 20, 2023.
- [How the Supreme Court's decision on affirmative action may change the future of college](#), Bianca Quilantan, *Politico*, June 22, 2023.

## Student Debt Cancellation (pending)

- [What's at stake as the Supreme Court weighs student loan debt forgiveness](#), Annie Nova and DeLon Thornton, *CNBC*, May 19, 2023
  - [Student Loan Rollercoaster and How It Impacts Nonprofit Workers](#), Tiffany Gourley Carter, National Council of Nonprofits, Nov. 27, 2022.
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## Charitable Giving Plummets in 2022

Total charitable giving from individuals, foundations, businesses, and bequests dropped by 3.4% in current dollars and 10.5% relative to inflation last year, according to the annual [Giving USA report](#) released last week. Donations from individuals fell by 6.4 percent (a decline of 13.4 percent when adjusted for inflation). Total giving fell to just under \$500 billion last year. According to the report, this is just the fourth time in forty years that donations did not increase year over year. This news is especially troubling in light of the challenges nonprofits face that include workforce shortages and decreasing revenue sources.

From a public policy perspective, the report highlights the critical importance of Congress passing the Charitable Act ([S. 566/H.R. 3435](#)), which would reestablish and expand a [non-itemizer or universal charitable deduction](#). Congress had adopted the non-itemizer option on a temporary basis for 2020 and 2021. The new data show the huge drop off when that law expired. Restoring a non-itemizer deduction would help offset the reductions in individual philanthropy by encouraging more people to give more generously to the work of charitable nonprofits. Specifically, the Charitable Act would create an above-the-line tax deduction for non-itemizers who make charitable contributions. The deduction would be capped at one-third of the standard deduction (about \$4,600 for individuals and \$9,200 for couples).

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## Worth Reading

- [Giving USA 2023: The Annual Report on Philanthropy for the Year 2022](#), a publication of Giving USA Foundation, 2023, researched and written by the Indiana University Lilly Family School of Philanthropy. Available at [Giving USA](#). The full report will be released to subscribers on July 11.

- [Giving USA Report Shows Concerning Drop in Giving, Charitable Giving Coalition Urges Congress to Pass the Charitable Act](#), Charitable Giving Coalition, June 20, 2023.
  - [It's Real: Charitable Giving Plummeted Last Year](#), Amy Silver O'Leary and Tim Delaney, Nonprofit Essentials, June 21, 2023.
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## Federal *FastView*

- **Clarifying Energy Tax Credits Available to Nonprofits:** The IRS and Treasury Department released [temporary regulations](#) regarding direct payment of energy credits enacted in the Inflation Reduction Act of 2022 (IRA) and will soon provide guidance on transferable energy credits available to nonprofit building owners. The IRA permits tax-exempt entities and others to claim new energy efficiency tax credits via “elective pay,” informally known as “direct pay.” The [newly released FAQ](#) explains that “elective pay” allows “entities that would otherwise be unable to claim these credits because they do not owe federal income tax, to benefit from some clean energy tax credits by treating the amount of the credit as a payment of tax and refunding any resulting overpayment.” Nonprofits can claim elective/direct pay for the Credit for Alternative Fuel Vehicle Refueling/Recharging Property (IRA Sec. 30C), the Commercial Clean Vehicle Credit (Sec. 45W), and Energy Credit (Sec. 48), among others. The IRS and Treasury are continuing to work on regulations implementing the changes made to [Code Section 179D](#) which will now permit building owners, including tax-exempt organizations who construct or increase energy efficiency of existing buildings by at least 25 percent, to claim or transfer a tax deduction.
- **Expanding Individuals Considered Employees:** Reversing a Trump-era ruling, the National Labor Relations Board (NLRB) issued a decision involving a nonprofit arts organization that restores a stricter standard for determining which workers are employees as opposed to independent contractors for union organization purposes. The Trump-appointed NLRB had elevated the role of “entrepreneurial opportunity” in its analysis of independent contractor status, making it more likely to exclude from some labor protections those individuals who had the opportunity for economic gain or loss through their work. The new ruling in the [Atlanta Opera, Inc.](#) case restores the precedent set during the Obama Administration that expands the number of workers eligible to vote in

union elections.

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## ***Worth Reading***

- [Wigging Out: The NLRB Overturns Another Trump-Era Test and Returns to a Stricter Independent Contractor Standard](#), Robin L.S. Burroughs and Samantha L. Furman, Venable Law Firm, June 16, 2023.
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## ***Worth Watching***

- [The Business Model for Nonprofits with Government Funding](#), Nonprofit Financial Commons, June 20, 2023.

## **State and Local**

# **States Alter Government Grants and Contracting Rules**

States continue to pass laws this year to improve governmental grants and contracting practices, although some measures could make it more challenging for nonprofits to carry out their missions. In **Oregon**, the Legislature recently passed and sent to the Governor important legislation to establish a [Task Force on Modernizing Grant Funding and Contracting](#). The two-year task force is designed to develop recommendations for improvements in the following areas: living wages for employees of nonprofit organizations, uniform application procedures for grants, and mechanisms for ongoing review and evaluation of grantmaking and procurement processes.

**Florida** enacted the [Fiscal Accountability Bill](#), a measure that requires nonprofits receiving state funds to make public certain documents detailing where and how state dollars will be used. The legislation, which is more narrowly drafted than originally introduced, seeks to prevent the abuse of public trust committed by the [Florida Coalition Against Domestic Violence](#). In **North Carolina**, the Governor vetoed a bill that seeks to [prohibit state agencies from offering workplace trainings](#)

covering specific topics related to race and gender equity. Under the bill, nonprofits that offer trainings to state employees would no longer be able to include content on topics related to equity, diversity, and inclusion in these trainings. The Legislature is expected to override Governor Cooper's veto next week.

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## Trend Spotting: Employment Legislation

Several states enacted employment legislation that impacts charitable nonprofits this year. **Alabama** Governor Ivey signed legislation that temporarily (through mid-2025) [exempts overtime pay](#) from gross income and state income tax. **Colorado** enacted a law that [expands the permitted uses of paid sick leave](#) to include bereavement and caring for a family member whose school or place of care has been closed due to weather or loss of power, heat, water, or other unexpected occurrence. **Maine's** Governor signed into law a measure [mandating a study on expanding child care](#) in the state, including identifying mechanisms for overcoming obstacles. An earlier version of the bill would have required larger employers receiving state funds or tax credits to provide child care. In **Vermont**, the Legislature overrode the Governor's veto of a bill that [addresses child care shortages](#) by increasing the reimbursement rates for child care providers and increasing the income threshold that allows families to not be charged with co-pays.

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## Investing American Rescue Plan Act Funding in Nonprofits

Local governments around the country continue to release American Rescue Plan Act (ARPA) spending plans and report on how they have used those funds to support or partner with nonprofits. Somerville, **Massachusetts**, opened a [new round of funding](#) and will provide awards of up to \$25,000 for general operations – nonprofits must apply by July 31. In the [announcement](#), the Mayor spoke on the importance of supporting “behind-the-scenes expenses,” such as administrative costs, and that “by giving our nonprofit community help with operations, we can allow them to continue to grow and build on their invaluable work, making a tangible difference in the lives of our residents.” Also in Massachusetts, the City of Cambridge [launched a new application process](#) for nonprofits to receive up to \$150,000 to address financial

hardships. The city also held an [information session](#) and published a [guide](#) for prospective applicants. Nonprofits must apply by July 7 and provide documentation of economic damage and/or increased operating costs incurred since March 3, 2021.

County Commissioners in Pinellas County, **Florida**, have approved plans on how the county will allocate \$10.5 million from the County's [ARPA Nonprofit Capital Project Fund](#) to support 11 local nonprofits. The City of Bloomington, **Illinois**, announced that [\\$950,000 in ARPA funds](#) will go to five nonprofits, which will use their funds for initiatives like bolstering a rapid re-housing program, facilities improvements, and integrated social services. The city is scheduled to approve another \$150,000 in the coming weeks.

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## Pennsylvania Launches Charitable Nonprofit Caucus



With the help of the **Pennsylvania Association of Nonprofit Organizations** (PANO), four lawmakers announced the re-launch of the Pennsylvania Charitable Nonprofit Caucus – a bicameral, bipartisan group formed to support and promote the commonwealth's thousands of charitable nonprofit organizations. At the news conference, PANO Executive Director Anne Gingrich said, "This Nonprofit Caucus will provide a platform for all nonprofits – regardless of size – to be at the table to assist in developing solutions to the challenging issues we are all seeking to address." See

the [news release](#) and check out the [Caucus' new website](#). Note the signs in the pictures – Working Together for Good.

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## ***Worth Watching***

Remote video URL

- [Public Policy at MNA | Learn More About What We Do](#) (2:31), Michigan Nonprofit Association, June 16, 2023, showing how **Michigan Nonprofit Association** advocates for nonprofits and educates policymakers about the impact of charitable nonprofits.
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## **Numbers in the News**

### **10.5%**

The decrease in total charitable giving from all sources in 2022, adjusted for inflation, as compared to the year prior, amounting to \$499.3 billion, marking only the fourth time in four decades that donations did not experience a year-over-year increase.

**Source:** [Giving USA 2023: The Annual Report on Philanthropy for the Year 2022](#), a publication of Giving USA Foundation, 2023, researched and written by the Indiana University Lilly Family School of Philanthropy.

### **94%**

The percentage of child care workers who are women, including 14% who are Black and 24% who identify as Hispanic or Latino.

**Source:** [2023 Kids Count Data Book: State Trends in Child Well-Being](#), Annie E. Casey Foundation, Jun. 14, 2023.

## **Nonprofit Advocacy Events**

- Aug. 3, [Nonprofit Talent Summit](#), Momentum Nonprofit Partners (Memphis)



## Nonprofit VOTE Webinar

[Staying Nonpartisan for 501\(c\)\(3\)s](#)

Tuesday, July 11 | 2:00 pm ET

Staying nonpartisan is critical to any and all voter-engagement activities in which charitable nonprofits engage, whether you're launching a large-scale voter education campaign, registering voters, convening town hall meetings, and beyond. This free webinar is dedicated to helping nonprofits understand what's allowed.

[Register now.](#)

## Advocacy in Action

### The Power of Three

Workers installed a massive pedestrian bridge this spring in Manhattan, the result of a public-nonprofit-business partnership that raised funds, navigated red tape, and promoted the public good, while also generating tax revenues and raising property values. The partnership that accomplished the project, known as the [High Line Moynihan Connector Civic Project](#), may be noteworthy more because of where it occurred than the fact that actors in the three distinct sectors – government, charitable nonprofits, and business – were able to work so effectively together. Yet, the news really is just the most recent example of a unique nonprofit superpower: the Power of Three. That is, nonprofits that collaborate with the other sectors of the economy can achieve things that no one entity or even sector can accomplish.

[Read more](#)

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