NATIONAL COUNCIL OF NONPROFITS
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UPDATE

2015 – 2016

The Years in (P)Review

In January 2016, the National Council of Nonprofits published "2015-2016: The Years in (P)Review." In it, we drew on the policy threats and opportunities that nonprofits faced in 2015 to inform our forecasts for 12 issues in 2016. The following updated version of that report looks back at what the National Council of Nonprofits and our networks encountered this past year as policy advocates for nonprofits at the local, state, and federal levels. This exercise is important for all nonprofit leaders because the policy realm never completely ends or begins with a flip of the annual calendar page. "What's past is prologue." For that reason, this version keeps the original forecasts in the 12 issue areas, adding an ***UPDATE*** at the end of each that highlights selected developments from the past year.

Clear and Present Dangers

1. Taxes, Fees, PILOTs: Nationwide, we see a consistent trend of state and local governments, eager for new revenue, trying to take resources from tax-exempt nonprofits by seeking to impose taxes and fees, or demanding payments in lieu of taxes (PILOTs). The Maine and North Carolina Legislatures considered several proposals to grant cities greater power to assess nonprofits new taxes or fees or to create a task force to study the issues; none of the bills passed. North Carolina lawmakers also narrowly rejected a measure that would have capped the value of the sales tax exemption for larger nonprofits, while Alabama imposed new registration requirements on nonprofits exempt from the state sales tax. In Philadelphia, the newly elected Mayor promised new spending on the campaign trail that he wants to fund by demanding "voluntary" PILOTs from local nonprofits.

It is essential that nonprofits that receive tax exemptions recognize that the exemption is part of the social compact between governments and nonprofits and that the compact is a relationship that must be maintained. *Can your nonprofit afford to take $15,000 - $100,000 away from your mission every year to instead pay new taxes, fees, or PILOTs to your state, county, city, and/or school district? Is your board prepared to raise that much more money each year?*

UPDATE: Facing a desperate budget crisis, **Louisiana** imposed sales taxes on many nonprofits during a special session, only to repeal the new taxes in the regular session, but requiring the affected nonprofits to make annual disclosures on the value of the sales tax exemption. Wisconsin raised the thresholds before nonprofits must collect sales taxes. Minnesota came close to exempting all charitable nonprofits from sales taxes, but the bill was pocket vetoed by the Governor.

2. Challenges to Nonprofit Property Tax Exemptions: Property owned and operated by nonprofits for charitable purposes is exempt from property taxes in all 50 states. Threats to property tax exemptions come in many forms from all branches of government: state and local legislative bodies trying to rewrite the rules, executive branch tax assessors seeking to reclassify exempt property, and judges trying to legislate from the bench. For instance, last June a New Jersey tax court judge gained national attention when he revoked the long-standing property tax exemption of a major hospital, ruling that in his view nonprofit hospitals of today do not look like charity hospitals of the past and thus no longer deserved tax exempt status. He expressly challenged the New Jersey Legislature to change the property tax law if it disagreed with him. The Legislature did just that – disagreed with the judge – by considering legislation that reaffirms the property tax exemption for nonprofit hospitals, while also imposing new fees on the health care institutions that would generate additional revenue for communities in which the hospitals operate. The Governor pocket-vetoed the bill, setting off a new round of legislation and debate.

While the judge's decision in New Jersey was unprecedented, reconsideration of the property tax exemption is becoming common across the country. In early 2015, Maine's Governor made national news by proposing the repeal of tax exemptions for some nonprofit properties; a proposal the Legislature soundly rejected. But, Connecticut granted municipalities the power to tax certain new properties acquired by a nonprofit university or specific hospital systems. Pennsylvania continues to struggle with a 2012 Commonwealth Supreme Court decision on the standards for property tax exemption, leading to legislation proposing a constitutional amendment. Montana is now requiring nonprofit property owners to reapply for their exemption(s) early this year. Montana, Wyoming, and other states continue to review tax exemptions and the trade-offs of community benefits.

Is your nonprofit prepared to make the case for how the community in which you work is better off because of your organization?

UPDATE: Property tax exemption was – by far – the **hottest issue area** of 2016. In January, an Illinois court struck down a law that laid out clear rules on how nonprofit hospitals can demonstrate community benefit and earn the exemption from property taxes; the state Supreme Court is expected to rule on the issue in 2017. **Massachusetts** nonprofits and foundations successfully fought off three significant challenges: a four-year tax on new property bought and taken off the tax rolls (stripped from bill), assessments against nonprofits operating in "community benefits districts" (line-item vetoed), and a "right of first refusal" power for local governments when nonprofits seek to sell or change the use of property (removed in negotiations). Neighboring **Connecticut** overcame a triple threat this year: a bill to levy an unrelated business income tax on increases to higher education endowments that exceed $10 billion (Yale University), one to deny tax exemption on individual properties of large colleges and universities that generate rent and ticket income, and another that sought to make nonprofit hospitals liable for property taxes if their executive compensation exceeds $500,000 per year. Rhode Island considered, but rejected a measure that would have empowered local governments to charge nonprofits up to 50 percent of what their property tax bill would be if the property were taxable.

Nonprofits have done more than just defend against similar challenges. A bill in **Michigan** sought to clarify the law on nonprofit property tax exemption to improve consistency of application by county tax assessors; there are more than 130 cases of nonprofits defending their exemptions from assessor interpretations. A bill in New Jersey goes to the root cause of the challenge in the Princeton case by prohibiting individual taxpayers from filing property tax appeals challenging the assessment or exempt status with respect to the property of others.

3. Fiscal Challenges and Budget Gimmicks: When politicians delay substantive action to bicker and posture on fiscal matters, their communities and local nonprofits suffer the consequences. This pattern continues into the New Year in both Illinois and Pennsylvania, where neither state has enacted a budget for half a year, forcing nonprofits there to bear increased, uncompensated workloads and suffer substantially delayed reimbursements. The same often is true in the case of budget shortfalls, such as in Alaska, Connecticut and Delaware, Kansas, Louisiana, and Massachusetts. Fiscal "crises" also arise as the result of budget gimmicks, such as spending caps and so-called taxpayer bill of rights (TABOR) amendments to state constitutions that limit the power of legislators to address current needs by restricting state spending growth based on arbitrary formulae. A spending cap that has guided budget decisions in Connecticut since the early 1990s was recently deemed unenforceable in a formal opinion issued by the state Attorney General. This past November, voters in Colorado had to expressly instruct the Legislature to retain $66 million in marijuana sales tax receipts because the state revenues grew faster than that state's TABOR formula – the rate of inflation and population growth. On the other hand, Washington State voters approved a new budget gimmick that lowers the state sales tax unless the Legislature gives voters the chance to vote on a constitutional amendment that would impose a two-thirds super-majority requirement for laws or other ballot measures that would raise taxes.

UPDATE: The **Illinois** budget crisis has remained the worst in modern history, with state lawmakers failing to adopt a budget for the 2016 Fiscal Year, finally passing a temporary measure through the end of 2016, and adjourning in early December without adopting a budget for the state beginning January 1, 2017. The **Pennsylvania** budget crisis officially ended after 10 months when the Governor signed spending bills, but the impact on the work of nonprofits continues. Several states across the country currently find themselves with growing revenue shortfalls and others anticipate deficits in the upcoming fiscal year.

4. Attempts to Limit Charitable Giving Incentives: As in 2013, nonprofits across the country last year confronted legislatures questioning the value of tax deductions for donations to charitable works. Legislators in Hawai`i, Kansas, Maine, North Carolina, and Vermont mounted efforts to cap, modify, or repeal state charitable giving incentives, whether motivated by a need to close a budget gap or to generate revenue to pay for politically popular tax cuts. With the exception of Maine, where the giving incentive was the only loss in a long list of anti-nonprofit bills, the nonprofit communities were able to defeat these proposals by demonstrating that state charitable giving incentives are essential to the wellbeing of the citizens of the states and that repeal of the incentives is not cost effective.

Will 2016 present similar budget gap/tax cut demands that put charitable deductions at risk, and will local nonprofits rally together to present a united front in support of the communities they serve?

UPDATE: 2016 began with high hopes that **Maine** would again remove a cap on charitable donations, as had been enacted in 2014. But, alas, the bill did not come to pass. States have generated high activity on this issue in odd-numbered years of 2011, 2013, and 2015, so the nonprofit community should prepare for renewed activities in 2017.

5. Nonprofit Independence: The Syrian refugee crisis at the end of 2015 was only one example of states seeking to treat charitable nonprofits as subsidiaries of government, and not as independent community-based problem solvers dedicated to the public good. The Governors of Indiana, Texas, and other states ultimately were forced to back down from their demands that nonprofits not provide humanitarian assistance in relocating refugee families into their states. Sadly, discriminatory treatment of nonprofit contractors is common. New York's Legislature tried to impose workplace violence procedures on nonprofit, but not on for-profit, contractors; the Governor vetoed the bill. New York City considered, but has so far rejected, a call to impose politician-style financial disclosure requirements on some nonprofits (but not on for-profits) that are paid to provide services on behalf of local government. The New Hampshire Legislature perennially considers a bill to require mandatory board training for nonprofits receiving a certain amount of "publicly supported funds," without proposing equal treatment of for-profits. Louisiana actually passed legislation invading the boardroom of a nonprofit domestic violence coalition by mandating internal procedures and imposing a "tell your legislator" penalty that invites additional intrusion into internal operations.

What can nonprofits do to disabuse policymakers of the notion that charitable nonprofits are somehow subsidiaries of government or lack the necessary expertise and acumen to operate without overbearing oversight of elected officials? What will it take for government officials to recognize that nonprofits that provide services on behalf of governments under contracts and grants should be seen as more akin to for-profit roadbuilders and suppliers and less like government agencies and instrumentalities?

UPDATE: The disregard for the independence of nonprofits and foundations continued in 2016. **Connecticut** will require the UCONN Foundation to report finances and donors to the General Assembly once its endowment exceeds $1.5 billion. Starting in January, **Oregon** nonprofit (but not for-profit) employers with government contracts/grants, must follow a new set of government-only whistleblower policies and procedures.

On the very positive side, the nonprofit and philanthropic communities in **California** and throughout the country came out in force to defeat the so-called California "warning label" bill that would have forced every nonprofit in the country seeking funds in the state to put a link on its home page – plus a disclosure on all other solicitation materials -- directing potential supporters to the California Attorney General's Office, which was instructed to provide information about charities, consumer rights and protections, and charity research resources. The bill would have put nonprofits at the mercy of an elected partisan's changing views on what's "appropriate" on such things as overhead, compensation, and advocacy – as well as which charitable causes are worthy.

A bill in **Oklahoma** also would have violated nonprofit independence and constitutional rights by prohibiting animal rights nonprofits from soliciting contributions in the state that are intended to be used on programs or functional expenses outside the state or for "political purposes" inside or outside the state. The Oklahoma measure (and a copycat version of the bill in Missouri) were not enacted.

See, **Stop the Spread of State Laws That Trample on Charity Rights**, by Tim Delaney (*Chronicle of Philanthropy*, April 8, 2016).

Opportunities Abound

6. Payment for Nonprofit Indirect Costs: The "overhead myth" may not yet be dead in private philanthropy, but nonprofits across the country can expect 2016 to be a year in which their organizations can earn due respect and reimbursement for their indirect costs under government contracts and grants. Throughout this past year, nonprofits and governments learned of the game-changing impact of the federal grants reforms known as the Uniform Guidance. Among other things, the new rules expressly require pass-through entities using any federal funds (typically states and local governments, as well as some larger nonprofits) and federal departments/agencies to reimburse a nonprofit for the reasonable indirect costs it incurs in performing services on behalf of governments. Illinois was the first state to expressly incorporate the cost principles and indirect cost mandate into state procurement law. In November, Los Angeles County modeled the way for other local jurisdictions to begin implementing new federal rules and improve collaboration between governments, nonprofits, and foundations by directing County staff to ensure that nonprofits are more properly paid for the services that the county contracts with them to provide. Major systems changes take time for the cultures of nonprofits, foundations, and governments to catch up; 2016 promises to be a big year for nonprofits in this regard.

What can your nonprofit or foundation do to take advantage of the Uniform Guidance and spread the word to others? What steps can state and local governments take now to fully implement the new rules and secure their promise of greater efficiency, reduced bureaucratic waste, and fair treatment? The answer to these questions and more can be found at the National Council of Nonprofits website.

UPDATE: Association boards of directors are joining in the action. Last fall, the board of the North Carolina Center *for* Nonprofits adopted a resolution committing the organization to collaborating with governments, foundations, and nonprofits to advance full implementation of the OMB Uniform Guidance. In August 2016, the board of **Philanthropy New York** issued official statements calling on New York State and City to comply with the Uniform Guidance when federal dollars are in the funding stream and to extend the indirect cost reimbursement mandate to government grants and contracts that are funded solely with non-federal dollars.

7. Reforming the Government-Nonprofit Contracting & Grantmaking Process: The nonprofit sector as a whole (although not all nonprofits) earns 32% of its revenue by performing government contracts and grants. But, as documented in the last several years, the related "systems" for government-nonprofit grants/contracts are largely outdated and unnecessarily burdensome for all parties. So it's exciting to see legislators in **North Carolina** follow the lead of Illinois, New Jersey, and others in considering measures to streamline government-nonprofit contracting. A North Carolina bill seeks to provide relief to nonprofits by preventing duplicative monitoring of nationally-accredited nonprofits providing mental health, developmental disability, and substance abuse services through state grants and contracts. Lawmakers there could also call for a comprehensive study of bureaucratic red tape that nonprofits experience when they provide public services through state grants and contracts. Earlier in 2015, the Kentucky Legislature voted unanimously to create the Government Nonprofit Contracting Task Force, with multiple seats at the table for nonprofits, for the purpose of identifying ways to eliminate redundant, unreasonable, or unnecessary laws, regulations, or policies that negatively affect nonprofit government contracting or funding. Contracting and grantmaking reforms are expected to be high on policy agendas in 2016 as state and local governments, preferably in collaboration with nonprofits, revise statutes, policies, and procedures to implement grants reforms in the federally-mandated Uniform Guidance.

Opportunities in the policy arena abound – *every day* – when individuals committed to the mission of a nonprofit ask themselves this simple question: ***Who can I talk to today to advance our mission?***

UPDATE: State associations of nonprofits moved ahead in reforming grantmaking procedures and practices in 2016. In Colorado, policymakers created a procurement working group to study ways to improve the state procurement code, and specifically call for subject-matter experts from nonprofit organizations to participate actively. Legislation enacted in North Carolina reduces redundant monitoring and reporting requirements for some nonprofits with national accreditation. Kentucky's government-nonprofit contracting reform task force got underway this summer and issued important recommendations in mid-November.

8. Creating New Giving Incentives: In 2015, nonprofits not only drove back most efforts to curb charitable giving incentives (see number 4, above), but they promoted new ones as well. And that momentum continues. North Dakota increased the tax credit for contributions from corporations to nonprofit institutions of higher or secondary education. Colorado considered the creation of a state tax credit to promote endowments at nonprofits and community foundations. Indiana passed a similar proposal last year, limited only to community foundations; a similar bill is pending in Ohio. Connecticut increased the amount of tax credits that may be donated by businesses to support neighborhood assistance, and Minnesota considered a bill to create an early education tax credit for donations to "qualified foundations."

Are there opportunities in your state to expand giving to the work of charitable nonprofits in communities?

UPDATE: Arizona extended to April 15 the deadline for making charitable donations, credited to the prior tax year. Colorado expanded the number of nonprofits included in the state's tax return voluntary checkoff program. Thanks to effective advocacy by nonprofits and foundations in West Virginia, the legislature renewed the Neighborhood Investment Program for five years and increased the program amount.

9. Stand for Your Mission through Everyday Advocacy: Opportunities in the policy arena abound – *every day* – when individuals committed to the mission of a nonprofit ask themselves this simple question: *Who can I talk to today to advance our mission?* Sometimes the opportunity is simply to explain how a policy – whether set by a business, government, or others – gets in the way of the greater good. Sometimes the need arises to promote the mission by speaking up against bad ideas (see numbers 1-5, above). Reports, such as these from California, Maine, and Utah, provide excellent data to demonstrate the economic impact of the nonprofit community at large. A very powerful tool for advancing mission is the engagement of boards, as made easy through the **Stand For Your Mission** initiative. The campaign, launched in late 2014 and widely distributed last year, is designed to raise awareness – specifically among nonprofit board members – that being an external advocate for the nonprofit's mission is an *expected* role for every board member. The tools in the campaign help to unleash the full potential of nonprofit organizations to advance their missions in their local communities by engaging board members more directly as advocates on behalf of their organizations.

UPDATE: See Advocacy in Action for a real-time example of board's advancing missions through advocacy: Board Advocacy on the OMB Uniform Guidance: Taking on Governments to Promote Nonprofits and Communities (*Nonprofit Advocacy Matters*, August 22, 2016).

10. Eradicating Ignorance: Let's face it, with all of the real threats and potential opportunities, the nonprofit community – board members, staff members, advisors, funders, volunteers, vendors, clients, and others – needs to do a better job of explaining to policymakers, news media, and the public what nonprofits do and how nonprofits operate. Proof that ignorance persists is a trio of bills from 2015. Legislators in South Carolina seriously considered "protecting" for-profit veterinarians from the charitable work of nonprofit animal shelters by prohibiting mobile nonprofit clinics from operating within seven miles of a for-profit animal hospital.
The Kansas Legislature almost passed a bill aimed at limiting the power of public-sector unions that would have blocked state employees from contributing to charitable nonprofits through payroll deductions, a proposal which could have resulted in a $1.5 million reduction in donations to United Way in the state. But the worst bill of the year actually passed, in Louisiana, where legislators targeted one nonprofit for extraordinary burdens, invading its boardroom and imposing a requirement that it report to individual legislators if a grievance procedure is instituted against one of their constituent organizations.

What bills will be introduced in 2016 that demonstrate ignorance of nonprofit operations, bias in favor of for-profits, or partisan motivations? And what can nonprofits be doing now (Hint: advocating, telling your story) to educate policymakers and others before a bad idea germinated into legislation?

UPDATE: New York approved a bill seeking to address political corruption scandals, but inadvertently swept the advocacy and research work of charitable nonprofits into a donor-disclosure regime. A legislator in New Jersey introduced a bill to limit the provision of services at nonprofit veterinary facilities to pets of individuals on public assistance. A similar protectionist bill in **South Carolina** (discussed above) was featured in a recent article that skewered the veterinarians for creating "an aura of misinformation, innuendo, hyperbole, distrust, charges, countercharges and increasing vitriol."

Swinging in the Balance

11. Employment Policy Issues: State and local governments are becoming more engaged in debates over employment standards in their communities. More than a dozen major cities, more recently Los Angeles and New York, have enacted minimum wage hikes that apply to some nonprofit and for-profit employers. The Governor of New York is proposing similar phased-in hikes across the state. Washington, DC is considering universal paid leave legislation that would impose a new one-percent payroll assessment on private-sector employers – including charitable nonprofits and private foundations – to provide covered employees with up to 16 weeks of paid leave. The nonprofit community typically is not of one mind on specific employment policy legislation because the proposals affect the work of and people served by charitable nonprofits differently, depending on each organization's mission and focus area. One consistent position, and indeed fundamental fairness, dictates that any changes in government-mandated employment policies should incorporate revisions to existing and future contracts and grants through which charitable nonprofits perform services in communities on behalf of governments.

When employment legislation is proposed in your state, will your nonprofit be prepared to make a mission-based analysis of how the measure would affect the people served as well as the ability of the organization to meet operational demands?

UPDATE: New York and Oregon legislatures enacted state minimum wage hikes over a period of several years. On November 8, voters approved minimum wage increases in Arizona, Colorado, Maine, and Washington State, as well as in numerous communities. New York also created a paid family leave program funded by employee payroll taxes and Vermont enacted a bill requiring employers of all sizes to provide employees five days of paid sick leave annually.

12. New Funding Mechanisms: Interest continues in new funding mechanisms such as social impact bonds (SIB) and pay-for-success (PFS) programs, even as the results have ranged from failure in New York, continued hope in Colorado, and mixed or disputed findings in Salt Lake City. Under a SIB or PFS arrangement, private investors put up the initial money to fund a social intervention or experiment, and the government repays the loan with interest only if pre-determined social outcome targets, or performance measurements, are met. Nonprofits have raised concerns that the focus on performance metrics can actually divert attention away from hard-to-measure, but still promising, policy and program changes, or that metrics chosen for a specific project could be so easy to reach that there is actually no risk to investors, a presumed hallmark of such programs.

Do new funding mechanisms "look better on paper than in reality" and violate the common-sense adage that "there's no free lunch," as one report recently declared, or is this a promising concept that is still being beta tested?

UPDATE: With much fanfare, Denver launched its Social Impact Bond Initiative focusing on permanent supportive housing. On August 22, the National Council of Nonprofits published Principles for Consideration of New Funding Mechanisms, designed for use by nonprofits, governments, foundations, and for-profit entities when considering launching pay-for-success initiatives, social impact bonds, or other new funding mechanisms. The seven principles will help parties contemplating alternative funding arrangements set expectations, aid in decisions about how to structure future partnerships – or to determine whether these funding mechanisms may not be right for a particular project or community.

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