

The Future of Philanthropy in Florida

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"And besides, what right has the State, or those called upon to administer a charity, to dictate conditions to its founder? Those conditions may seem to us foolish fancies; we may deem ourselves far more competent to establish such as will secure the general object, but it is not ours to say. When we see fit to create such a foundation out of our own fortunes, we shall be at perfect liberty to show our wisdom, but it is out of place in administering the fortunes of others."

— *State v. Adams*, Missouri Supreme Court (1869)¹

Introduction

If it's your money, you should be allowed to spend it as you see fit, shouldn't you?

Most Americans would agree you should have the freedom to dispose of your assets as you please. That's the very essence of America.

If you're feeling charitable and want to donate to the local opera house, that's your business. If you want your money to be devoted to a particular charity or other cause, that's your call, too. And if you want your money to be spent on specific causes after you die, that's also your prerogative.

But activist groups beg to differ as they challenge your freedom to choose how to spend your money. They argue that *they* should have a say in how your money is spent. If they prevail, they would undercut the idea of

voluntary philanthropy and compromise the property rights of donors.

"These groups, representing political activists and special interests, have developed a social theory to justify the claims they make on philanthropists' money," according to Capital Research Center President Terrence Scanlon. "According to them, philanthropy betrays its highest ideals unless it gives them grants."²

The argument for the approach Scanlon criticizes was laid out in "Criteria for Philanthropy at Its Best," a report issued in March 2009 by the National Committee for Responsive Philanthropy (NCRP). The report argues that the best philanthropy finances "advocacy" and "community organizing" groups that know how to "contextualize" issues of race, gender and class while working for social and policy changes to overcome "structural barriers" to equality.³ This study examines some of the issues raised by this assault on the principles undergirding philanthropy.

The Roots of the Challenge

We've heard NCRP's politically correct perspective before. Former U.S. Labor Secretary Robert Reich has complained that too much philanthropy is devoted to "culture palaces," including "operas, art museums, symphonies and theaters."

Donations to such institutions "aren't really charitable

contributions,” he argues. And because tax agencies are failing to receive taxes on the donations, according to Reich’s zero-sum calculation, “this gap has to be filled by other tax revenues or by spending cuts, or else it just adds to the deficit.” Some contributions are better than others, he reasons.⁴

The report from the NCRP – which counts the Tides Foundation, Woods Fund of Chicago, Catholic Campaign for Human Development (CCHD), and ACORN affiliate Project Vote among its members⁵ – is no mere pie-in-the-sky proposal. Already, there are groups that not only want to put its ideas into effect but that want the government to enforce them in detail.

For instance, in California a group called the Greenlining Institute argues that any grants made by a philanthropic foundation should be subject to government oversight because foundation assets are tax-exempt and, therefore, “public.” The public is “subsidizing” the foundation by not taxing its endowment, so the government has the right to decide whether the foundation is making the right kind of charitable contributions.

Using this argument, in 2008 Greenlining persuaded a California state legislator to introduce a bill (AB 624) that would require large foundations to collect and publicly disclose the extent to which their grant-making served minority-led and community-based groups. Some California-based foundations protested that it was sufficient that current law already required private grant-makers to give a specific percentage of their endowment to registered charities. But other foundations bowed to Greenlining’s demands. As the price of withdrawing the legislation, nine major foundations promised to provide a fuller public accounting of their grant-making and affirmed their commitment to “diversity” in grant-making. They pledged a reported \$30 million in additional grants to minority-led and community-based groups.

A “Greenlining” Initiative in Florida

Now a Florida group is trying to replicate Greenlining’s California success in the Sunshine State. Greenlining accomplished its financial feat by threatening to have the California Legislature enact a law forcing charitable foundations to publicly disclose the race, gender, and ethnicity of their board trustees and the boards and staff of their nonprofit grant recipients.⁶ It’s but a stone’s throw from mandatory race, gender, and ethnicity reporting to government directives on how charities should distribute their funds.

Whatever the motivations of those pushing the Greenlining-backed legislation, California-based founda-

tions didn’t want to take the chance that their ability to make their own decisions could be taken away from them. Rather than have to comply with an arbitrary law that could open the door to more government interference in their affairs, the affected California foundations promised to do better and gave Greenlining money to go away. The *Wall Street Journal*’s editorial board described the Greenlining approach as “racial extortion” and a “race-baiting money grab.”⁷

Of course, caving in to pressure groups never placates them, and now this California-style attempt at interference with philanthropy has arrived in Florida. Indeed, it’s now fair to ask whether race and gender quotas for charitable foundations and nonprofits could be in the works for the Sunshine State. The answer is potentially “Yes.”

At least that’s the plan of the Florida Minority Community Reinvestment Coalition (FMCRC). The group’s board chairman and public face is Al Pina, a transplanted Arizonan who describes himself as “a community reinvestment mercenary.”⁸

Mr. Pina, who boasts about his forceful techniques, seemingly has convinced himself that he is a David fighting financial Goliaths. “I was inspired by Robert Kennedy and how he stood up to the mafia. He stood up to the bullies. I like anybody who stands up to bullies.”⁹

Mr. Pina believes that people of a specific race take better care of other members of the same race than outsiders. “No one can convince me that United Way provides better service directly to minorities than a minority-led organization,” he said. “We’re in the trenches. There is no way that [non-minorities] can connect and have more traction and effect than organizations with leaders who live in those communities day in and day out.”¹⁰

The FMCRC describes its “mission” as follows:

“Our goal is to empower low-income and minority communities by attracting investments for health, education, home ownership, employment, and minority entrepreneurship using a holistic advocacy approach. FMCRC is being developed in partnership with the Greenlining Institute of California.” (www.greenlining.org)¹¹

The group describes its “purpose” as follows:

“To identify market-based growth opportunities in minority communities through research, education, policy development/advocacy and programs that will lead to a paradigm shift in the approach of inner-city

community economic development for minority communities of Florida.”¹²

A 501(c)(3) nonprofit organization, FMCRC has received \$210,000 from banks’ charitable foundations since 2005. Specifically, FMCRC accepted grants from Citigroup Foundation (\$100,000), Wells Fargo Foundation (\$100,000), and Wachovia Foundation (\$10,000).¹³ Strangely, in its 2007 tax return filed with the Internal Revenue Service, the tax-exempt nonprofit lists its headquarters as an address in Colts Neck, New Jersey.¹⁴

The FMCRC wants foundation grants to be allocated according to a sort of spoils system. The group draws inspiration from the Greenlining Institute, its larger and better established counterpart. Orson Aguilar, associate director of the Greenlining Institute, explained during a radio interview how such a redistribution system might work:

“We think that foundations have a lot of power in society today. So what we want is to make sure that foundation dollars are reaching our communities so that we can be active decision-makers, discussion-makers, that we can be voters, that we can influence the democracy that we live in. So that’s basically what we’re asking for, equal opportunities, equal dollar amounts.”¹⁵

According to the FMCRC, there is a “gap” in foundation philanthropy in Florida “that not only affects minority families and communities, but all of Florida.” Mr. Pina made this statement in the preface to “Philanthropic Investment in the Sunshine State,” a December 2008 report that FMCRC commissioned its much larger ideological counterpart, the Berkeley, California-based Greenlining Institute, to prepare. Among the report’s assertions:

“With the emerging global economy, resources will become more limited in scope and nature for minority communities and businesses. Florida is a state in which minority nonprofits are decreasing services, due to budget shortfalls, when such services are needed to be expanded to meet greater social need. This in turn allows poverty, unemployment, crime and drug abuse to take a greater hold on underserved minority communities in Florida.”

Although it would probably come as news to philanthropies across America that they’ve somehow forgotten to try to reduce poverty and crime, Mr. Pina evidently disagrees,

asserting that “[f]oundations must play a leadership role in reversing poverty and crime in our communities.”¹⁶

“One of the most pressing challenges currently facing the foundation sector is the need to factor diversity into its impact metrics and giving priorities,” the Greenlining report asserts. It continues:

“As the population of our country becomes more diverse, it is important that minority-led nonprofits thrive in order to create empowerment for minority communities. Foundations play a critical role in the success of these organizations; by investing in them foundations would give these organizations more opportunity to grow and fulfill their missions.”

A table on page 4 of the report shows Florida’s 10 largest foundations (as measured by assets) and the percentage of grants given by those foundations to minority-led organizations. And here’s the rub. While most Americans would think “minority-led” means something along the lines of “headed or run by a member of a minority group,” the study’s authors – a Greenlining “summer research associate” and two interns, according to page 6 -- offer a definition seemingly calculated to skew the results.

Greenlining’s difficult-to-meet standard holds that “a minority-led organization” is one in which

- 50 percent or more of the organization’s staff consists of minorities,
- 50 percent or more of the organization’s board of directors consists of minorities, and
- The mission and programs of the organization are aimed predominantly towards communities of color.

It’s worth noting that of the 10 foundations examined in the study, only one, the Jessie Ball DuPont Fund, agreed to participate in the study and so the data sets throughout the brief report are riddled with holes. Not one of the 10 philanthropies is deemed to be a bona fide “minority-led organization.” Presumably, information on grant recipients is easier to find because the report indicates that six of the philanthropies gave money to “minority-led organizations.”

The question of whether these private grant-makers help minorities isn’t even examined in the report. The only thing that matters to the Greenlining Institute is the race and ethnicity of the foundation’s staff, directors, and grant recipients.

Greenlining appears to have begun with preconceived

notions and then set out to validate them. It has done so before. In two of its own studies, “Fairness in Philanthropy” (2005) and “Investing In a Diverse Democracy: Foundation Giving to Minority-Led Non-Profits” (2006), Greenlining previously arrived at the conclusion that there was a “dramatic philanthropic divide” between “minority-led non-profits” and “non-minority led non-profits.”

But the Statistical Assessment Service (STATS) of George Mason University strongly criticized the methodology Greenlining employed in the Florida foundation study. The study suffers from “an unrepresentative sample,” “a very low response rate,” and “a problematic definition of ‘minority-led’ that makes it very difficult for nonprofit organizations to qualify.”

Moreover, STATS indicated that the report is undermined by problems “which include both factual errors and statistical methods—in the data analysis.” Of the four findings presented in the report, “two contain errors of fact, and two are based on questionable statistical applications.”

After listing a series of other major problems with the study, the STATS report states that “the difficulties enumerated in this report need to be addressed before such research can aspire to social scientific validity.”¹⁷

Journalist Matthew Continetti has previously questioned Greenlining’s flawed line of thinking, particularly the idea that for an organization to be “minority-led” is has to be *dominated* by members of minority groups.

Continetti notes that because African Americans, Hispanics, and Asians combined currently comprise only around one third of the total U.S. population, the 50 percent or more figure is “ridiculously high” and not representative. “You could have a foundation whose chairman was a minority, or whose board and staff were both 49.99 percent minorities, and it still wouldn’t qualify as a ‘minority-led organization’ in the Greenlining Institute’s view.”¹⁸

Origins of the Greenlining Institute

The Berkeley, California-based Greenlining Institute is not well known in philanthropic circles. However, the advocacy group had a 2007 budget of \$4,344,601 and had a hefty endowment of \$20,504,667 at the end of 2007.¹⁹ Greenlining’s objective is to pressure politicians and the California business community to back “community reinvestment” in low-income and minority neighborhoods.

The Greenlining Institute is the offshoot of the Greenlining Coalition, a statewide umbrella group of leaders of the African-American, Asian-American/Pacific Islander, and Latino communities founded in California in

1971. Greenlining is a political first cousin to adherents of radical community organizer Saul Alinsky and the nationwide activist group known as the Association of Community Organizations for Reform Now (ACORN), which claims to represent low-income families. The Coalition saw itself as a group devoted to organizing and mobilizing low-income and minority groups. Its mission was to fight “redlining.”

The Greenlining Institute has enjoyed tremendous success in convincing the business community to do what it wants. Just like ACORN, it uses the Community Reinvestment Act (CRA), which amounts to a financial affirmative action program, as a political and financial cudgel. In order to ensure that banks extend credit to low-income communities, the CRA forces banks to lend money in the same communities from which they receive deposits.

According to the *American Banker*, a daily newspaper that covers the financial services industry, “Greenlining uses the potential profitability of investing in lower income communities as an argument for banks to sign community reinvestment deals. To date [i.e. 2005], the group has negotiated commitments of more than \$2.4 trillion under the Community Reinvestment Act of 1977.”²⁰

The CRA helped to change the way U.S. financial institutions operate. Although it didn’t cover all mortgages, the statute opened the door for community organizers to weaken lending standards. To seek a race-based kind of social justice, CRA prohibited banks from concentrating on loans to more affluent, creditworthy markets, a business practice now known by the pejorative term “redlining.”

The CRA gave federal bureaucrats discretionary authority to make trouble for banks that failed to lend enough money to “underserved” minority communities. The Greenlining name is a play on the unlawful practice of “redlining.” Green means “go.” The Institute wants banks to give a green light to loans in these areas instead.

Florida Activists Emulate the Greenlining Model

The FMCRC has learned from Greenlining how to use the CRA to accomplish political objectives and raise money. On Oct. 14, 2009 Mr. Pina wrote to Federal Reserve Board chairman Ben Bernanke to demand an audit of SunTrust Bank under the CRA for its alleged “continued horrific record of compliance.”²¹ Earlier in the year he threatened a hunger strike if Bank of America refused to accede to his demand that it lend more money to his favored constituency.²²

The FMCRC has tried to bring legislation similar to

that pushed by Greenlining to the Florida Legislature, but he hasn't gotten far. Telegraphing his own low expectations, Mr. Pina said in late 2008 that the Florida Legislature's "extreme right-wing methodology" would make it difficult to press his issue. Instead, for the time being he said he planned to focus his efforts on convincing Congress to act.²³

The FMCRC was inspired by California Assembly Bill 624, a piece of legislation introduced in early 2008 by Assemblyman Joe Coto. Championed by Greenlining, AB 624, the proposed "Foundation Diversity and Transparency Act," would have forced foundations' grant decision makers to make public disclosures specifying the race, gender, and ethnicity of their board trustees and the boards and staff of their grant recipients.²⁴

On Jan. 29, 2008 the California Assembly passed AB 624 on a 45-to-29 vote. The legislation would have compelled "every private, corporate, and public operating foundation" with "assets over \$250 million" to make unprecedented public disclosures. It would have required public disclosure of the "race, gender, and sexual orientation" of each foundation's board of directors.

The legislation also would have required public disclosure of "the number of grants and percentage of grant dollars" awarded to groups "serving specified communities," and of "the number of grants and percentage of grant dollars" awarded to groups "where the grantee's board of directors and/or staff" belong to "specified groups."

In addition, the legislative language would have compelled foundations to disclose the quantity of "business contracts" and "grants and grant dollars" given to groups "specifically serving African-American, Asian-American, Pacific Islander, Caucasian, Latino, Native American, and Alaskan Native communities, lesbian, gay, bisexual, and transgender communities, and other underrepresented communities."

A legislative staffer at the time said the use of the word "specifically" could create a potential minefield for grant-makers. Said the staffer:

"The inclusion of the word 'specifically' strongly suggests that rather than being able to include broad, community-based organizations which indirectly serve the affected communities in their reporting, entities will need to give funds to particular groups which themselves determine that they serve a particular community, lest any entity be charged with either filing its reports incorrectly or failing to serve specified communities... The explicit addition of this one-word amendment to the bill will by itself invite litigation in future years."

Another provision added to AB 624 would have required that foundations include the number of grants and percentage of grant dollars "awarded to predominantly low-income communities" in their public disclosures.²⁵

As Heather R. Higgins, president of the Randolph Foundation, wrote in a *Wall Street Journal* opinion article, under the legislation a foundation that makes a grant to a group dedicated to protecting sea otters could find itself second-guessing whether it is serving the right constituency. Or the Latina director of a community organization might wonder whether she can better her chances of getting a foundation grant if she puts a person of a particular race, gender, or ethnicity on her board.

"The bill," Higgins noted, "has been rightly criticized for its potentially crippling costs: fewer funds and greater bureaucratic burdens for the thousands of charities served by charitable foundations." Policy makers "should understand what a disincentive – and an injustice – it would be for the government to micromanage private charity to favor a preferred political agenda, thereby turning private funds into public funds by diktat."²⁶

The legislative staffer in California echoed the observations of Higgins: "This is a shakedown by the left of foundations and the charitable community. When you start with groups that have 'assets over \$250 million,' there is only one way to ratchet it, and it is downward. [The bill] will be expanded to reach most foundations. And then it can go nationwide."²⁷

On June 23, the day a California State Senate committee was supposed to consider the legislation, Assemblyman Coto pulled the bill because 10 of California's largest foundations had suddenly agreed to come up with a "multi-million, multi-year" investment in minority communities.

Coto acknowledged that pressuring those wealthy charities had been the goal of his legislative proposal all along. There was "evidence that the level of investment by these foundations in minority communities was inadequate compared to the level of investment they are making elsewhere," he said. By prevailing on foundations "to shed some light on their investments," Coto said it was his hope that "they would then be in a position to make greater investments."

The foundations that acceded to pressure, including the William and Flora Hewlett Foundation, Annenberg Foundation, David and Lucile Packard Foundation, Ahmanson Foundation, Weingart Foundation, and The California Endowment, issued a joint statement repeating their commitment to minority causes and promising annual reports proving their efforts. "By the end of 2008,

we plan to announce a comprehensive set of grant-making activities, which we expect to be overall in the multi-million dollar range and over several years,” they said.

Conclusion

But not all large California foundations signed on to the statement. Richard Atkinson, a member of the Koret Foundation’s board and president emeritus of the University of California, strongly criticized the Coto legislation. Atkinson said that the measure was an “intrusive attempt to redirect the distribution of charitable dollars away from legitimate nonprofits” to others “anointed as more ‘worthy’ by the state.”²⁸

Atkinson is correct. Along with FMCRC, the Greenlining Institute is pushing for so-called economic democracy. Greenlining uses redistributionist shorthand, claiming it stands for “democratizing philanthropy.”²⁹

Although the idea that donors should control their own funds is well established in American law, some groups want to undermine the legitimate property rights of donors in order to promote their vision of “social justice.”

However, it’s not their money, after all. Going back centuries, it has been the view that government should intervene only when a bequest is immoral, unlawful, or is rendered obsolete or impossible to attain, and then a probate court should reach a decision that comes closest to the donor’s intent.³⁰

American philanthropy doesn’t need to be “democratized.” Fortunately, the American Legislative Exchange Council (ALEC) is aware that the Greenlining movement’s attack on philanthropic freedom (and its repeated challenges to prudent lending practices) could spread from California to other states. Indeed, Greenlining groups are already seeking to replicate their California successes in New York State. In response, ALEC is circulating the draft version of a document titled “Principles for Model State Laws to Encourage Philanthropic Creation and Operation,” which ALEC members may access through the organization’s website.

Florida’s state officials should take a close look at the situation because, as this study has demonstrated, the Greenlining movement is already active in Florida. Moreover, that is not surprising; Florida is a bellwether state and is home to many residents who have achieved financial success thanks to the state’s vibrant economy or who have retired here after achieving financial success elsewhere.

Many of these financially successful individuals have been quite generous in their philanthropy, giving to a wide variety of charities and causes that enrich the state’s

quality of life. However, most also strongly value their right to distribute their philanthropy as they see fit. Therefore, in an abundance of caution, the state government ought to take appropriate action to safeguard the future of philanthropy in Florida.

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Endnotes

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The Future of Philanthropy in Florida

Talking Points

1. A basic principle undergirding philanthropy in a free society is respect for the wishes of the donor.
2. Respect for the donor's intent is now being challenged in California and several other states by groups affiliated with the "greenlining" movement.
3. "Greenlining" is a term adopted to in apposition to "redlining," a practice (now illegal) in which some banks literally drew red lines on maps to limit risky real-estate loans in neighborhoods where crime, urban decay, and other factors led to falling property values and, thus, increased the odds of defaults.
4. The greenlining advocates' stated goal is to ensure that what they deem a proportionate share of banks' lending and philanthropists' giving goes to groups led by certain minorities.
5. To ensure that the greenlining movement's goals are met, its advocates have sought the enactment of laws at the state and federal level.
6. Greenliners also have pressured federal financial regulators to penalize charitable foundations and financial institutions that fall short of complying with the greenlining movement's goals.
7. The greenlining movement, fresh from achieving a degree of success in California — where several large philanthropic foundations acceded to its demands — is now active in Florida.
8. Aware that the greenlining movement's attack on philanthropy and on prudent lending practices could spread to other states, the American Legislative Exchange Council is circulating the draft of "Principles for Model State Laws to Encourage Philanthropic Creation and Operation," which can be accessed by ALEC members.

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