

# In Their Own Words

## Foundation Trade Association CEOs Brief Their Members on Issues Inside the Beltway

By Aaron Dorfman

*In September 2008, Tim Walter, president and CEO of the Association of Small Foundations, and Steve Gunderson, president and CEO of the Council on Foundations, presented a session titled “Inside the Beltway: Legislative Update” at ASF’s National Conference in Denver, Colo. The session drew a large crowd that engaged the panelists and the audience in a lively conversation.*

*I thought that this session provided an interesting glimpse of how trade associations like the ASF and COF talk about government regulation, often focusing on protecting the interests of their members. Below are excerpts of Walter’s and Gunderson’s remarks at different points during the session, and the corresponding NCRP perspective, which focuses on protecting the interests of the public, of nonprofits and of underserved communities.*

### GOVERNMENT REGULATION OF PHILANTHROPY

**Gunderson:** I think we are ready for one of the most significant public policy discussions affecting our sector probably since 1969. ... There’s going to be a new administration, there’s going to be a new tax bill and I think that tax bill is going to come very soon.

...

**Walter:** The last few years of skirmishes, which have been about philosophy and making different foundations spend down and sort of left-right battles—that’s nothing like what we’re about to come up against, which is the federal government making a case for why the charitable sector is really being held under a microscope. .... Basically, the federal government is a starving wolverine and it’s going to try and eat anything in sight. We need to be aware that it isn’t about if you’re doing a good job or not, are you helping poor people or not, are you helping the right folks? This is just going to get down to money. It is a different game. You can be intellectually right, you can have the best studies to show that philanthropy is the most important tool for delivering social value in the country, but you’ve got to go up against the Senate Finance Committee and the Ways and Means staff, and their job is to get money to fund the federal government.

...

**Gunderson:** Senator Grassley is not against philanthropy. He’s against philanthropy that is used for personal gain. What we have to do is prove to the Senate Finance Committee, and prove to him, that those abuses in the field have been addressed. People have asked me,

“When are we going to get the next round of congressional regulation of philanthropy?” And I tell them, “You tell me when we’re going to get the next front page cover story on someone abusing their philanthropic trust for personal gain, and I’ll tell you when we’re going to get the next round of regulation.”

...

**Walter:** Democratic politicians generally view grantmaking and public policy often through [a lens that asks who benefits]. Are we supporting the opera or are we supporting youth arts in distressed schools? Who is benefitting from the charitable exemption? Are we supporting private schools for the wealthy or public schools for all income groups? This is the lens through which Democratic policymakers view their work in philanthropy. ...

The assembly bill at the state level [AB624 in California] actually is a preview of conversations that we expect to come out of Capitol Hill as well. ... There is an interest in who is getting the money, who are you helping? This is, plain and simple, a fact of “welcome to a democracy.” This is part of what we live in. You just have to recognize that is part of the game. It is a political game, it is democracy, and the government plays to the populous and they are the ultimate arbiters of who makes the laws. You have to get in the game.

...

**Gunderson:** What I am willing to make very clear, in where the Council is, is that in exchange for that tax exemption, we did make a commitment to use [our foundations’ dollars] for a charitable purpose, not for a per-

sonal purpose and not for a profit purpose. Now, that's all the law says, and we at the Council have been very clear: We will oppose any legislative mandate directing where and how philanthropic dollars will be used. At the same time, we are very active in encouraging our members to engage in voluntary leadership on issues of diversity and transparency. We take a hard line on legislative mandates—we're opposed to them. We take an equally active line on promoting voluntary activities.

...

**Walter:** I believe the federal government has the authority, and they have demonstrated the authority over the years, to say when they will partner with a philanthropist and when they will not. By you accepting tax exemptions, you have taken on the federal government as a partner. Granted, depending on the years of the tax breaks, when the tax exemption came in they may have been a majority partner or a minority partner, but they're in your tent and you've got to deal with it.

...

**Gunderson:** What happened in California is moving across the country so get ready. We know that there are investigations by Greenlining of grantmaking in New York, Illinois, Pennsylvania and Florida, and there may be a couple other states. We know this issue is going elsewhere, so be aware and be prepared.

...

**Gunderson:** Senator Baucus is an appropriate advocate for Montana. You've all heard of the technology divide; he talks about the philanthropic divide. I come from rural America and as you see, the Council has been very active in promoting philanthropy in rural areas. Where the senator and I disagree, and he knows this, he wants us to redistribute philanthropy and I don't support that. I want to grow philanthropy.

**NCRP comment:** *It's perfectly legitimate for elected officials*

## Upcoming Events

**October 27-29, 2008**

*Cleveland, Ohio*

### **TRANSFORMING PHILANTHROPY: OGF ANNUAL CONFERENCE**

*Presented by the Ohio Grantmakers Forum*

NCRP executive director Aaron Dorfman will be presenting at the Tuesday sessions **Smart Philanthropy: Deliberations on Strategic Grantmaking** and **Exploring Grantmaker/Grantseeker Relationships**.

**November 7, 2008**

*Naples, Fla.*

### **STRENGTHENING OUR FREE SOCIETY: 2008 ANNUAL CONFERENCE**

*Presented by the Philanthropy Roundtable*

NCRP executive director Aaron Dorfman will be in a debate with Heather Higgins, President of The Randolph Foundation, on **"Public Accountability for Private Foundations: What is the Role of Government in Policing Our Boardrooms?"**

**November 20-23, 2008**

*Philadelphia, Pa.*

### **ARNOVA ANNUAL CONFERENCE**

*Presented by the Association for Research on Nonprofit Organizations and Voluntary Action*

NCRP's senior research associate Lisa Ranghelli will be presenting on the results of the Grantmaking for Community Impact Project in New Mexico and field director Melissa Johnson will discuss results of a recent study on new foundation strategies to improve society.

**A complete listing of events is available at [www.ncrp.org/events\\_calendar/index.asp](http://www.ncrp.org/events_calendar/index.asp).**

to ask who's benefiting from philanthropy. It's also legitimate and in the public interest for them to require certain disclosures. We agree that when a foundation accepts a tax exemption, it accepts the public and the government as partners. The alarmist reactions by foundations and their trade associations to AB624 were overblown. If we take redistribution of philanthropic dollars off the table, marginalized communities never will get their fair share, and our entire society will suffer as a result. Growing philanthropy is good, but foundations should make funding for underserved communities, broadly defined, a higher priority than they currently do. We applaud ASF and COF for the work they do to encourage their members to voluntarily do more to serve marginalized communities, and we hope they will expand those efforts. We also acknowledge that policymakers have a right to encourage voluntary action or to regulate foundations to help ensure that the public is benefiting sufficiently from philanthropy.

#### FOUNDATION LOBBYING

**Walter:** On your seats is a memo from Adler & Colvin, probably the top San Francisco law firm that deals with charities and foundations. In the course of AB624, the ASF public policy committee and I started brainstorming around restrictions against foundations lobbying on issues that were not technically self-defense issues. For instance, most of the ASF members could not call up their policymakers and complain about AB624 because the bill was only directed at foundations with \$250 million in assets and up. So if you're at \$20 million, how do you call your legislator and say: "This is a dumb idea. Fewer foundations will be funded in California. I don't care if it doesn't apply to my foundation; it's just a dumb idea." You weren't allowed to do that. We decided to really start pushing into this area a bit more. We pushed the law firm; we pushed and pushed them. Their fifth recommendation, which is in this memo, is that if you work for free for the foundation the penalty for lobbying is a tax on your expenditure. If you didn't spend any money on it, then there's no penalty. ... If you're doing it on your time or you're not paid, go nuts. Is that what the law says? I don't know. I want you to be a little careful, but there's your legal memo from Adler & Colvin.

**NCRP comment:** *This memo is an important new development. Foundations have been told they cannot lobby except in self defense, and that appears now not to be*

*true. Wouldn't it be great if foundations used the political clout of their trustees to lobby in this fashion in favor of poverty reduction efforts, or to support a legislative initiative of one of their grantees? ASF and COF have consistently encouraged their members to provide grants to support advocacy efforts by nonprofits. As a strong proponent of nonprofit advocacy, I hope that the trade associations will expand their efforts in this arena, but this legal opinion takes it a step further. While it is disappointing that this memo was commissioned for the purpose of helping foundations combat regulation, it clearly represents a real opportunity to promote lobbying by foundation trustees on important social issues of concern to the broader community. I hope ASF and COF will vigorously promote the same kind of action, and encourage foundation trustees to work in partnership with their grantees in support of legislative initiatives initiated by the grantees.*

#### EXCISE TAX

**Gunderson:** The other issue that is picking up some speed right now is the excise tax. Ever since we've had an excise tax, there has been the question of: Do we penalize people for giving more money one year when they go back to their standard the next year? When you have the payout requirement, the truth is, if you were not paying all this money in excise, wouldn't that money go into philanthropic services? It would have to. Wouldn't the public be better off [without the excise tax]? [You're] absolutely right about that. The Council adopted as our position the repeal of the excise tax. It's become very clear that's a non-starter—it has to be revenue-neutral.<sup>1</sup> The Council of Michigan Foundations [commissioned a study to find out] what would be a revenue neutral excise tax. That study literally came out a week ago. ... A revenue-neutral excise tax, according to Cambridge Associates, is 1.32 percent. So, would you support getting rid of all the difficulty and the complexity of the issue, having a 2 percent and a 1 percent? Would you support a 1.32 percent flat rate excise tax in order to get something changed? Congress is telling us that if it's not revenue neutral, it's not going to happen.

**Walter:** Why don't we back up just a little bit and explain? What Steve is referring to, for those of you who are somewhat new here, is that foundations pay a 1 percent or 2 percent excise tax<sup>2</sup> on their realized net gain for the year. So, you work hard with your tax plan and with your investment advisors and you go (continued on page 15)

## An Inside Look

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**LVM:** Movement building is gaining traction in the foundation sector. Foundations such as The California Endowment have begun to make significant investments in support of movement building efforts in California. We are engaging those foundations to discuss the challenges and opportunities of philanthropic support for movement building and how our work can inform the field.

We provide general support grants to allow organizations to strengthen their core work. Advocacy and organizing are the pillars of long-term social change. The *Equal Voice for America's Families* campaign demonstrated the benefits of advocacy and organizing and the role they can play in bringing about national change.

**NCRP:** How does MCF know that its overall grantmaking is making a difference? What does your evaluation process look like?

**LVM:** Marguerite Casey Foundation considers improvements in groups' organizational capacity; increases in the number of families served and/or engaged; refinements in organizations' strategic approaches, including maturing relationships with other organizations; and, of course, actual policy changes that positively affect low-wealth families as evidence that our investments are making a difference in the areas where our grantees are working.

The success of the *Equal Voice for America's Families* campaign—that is, the mobilization of so many families across the country around a specific set of policy areas—is further evidence of the impact of our support.

Our evaluation process includes surveys, interviews, written reports and data collection, periodic convenings, ongoing and direct communication, and analyses of research and news reports that cover the types of social change we hope to see. We are committed to an ongoing process that incorporates the rigors of solid program evaluation techniques without excluding the lived experiences of people working for change in their communities. ☺

You can view photos, videos and presentations from the National Family Convention on [www.equalvoice2008.org](http://www.equalvoice2008.org).

through this number crunching, and at about week 50 of your fiscal year you try to predict where your investment returns are going to come in and see how you make that adjustment [on your grantmaking.] There are other foundations who have, for instance, been incredibly generous due to a tsunami or a 9/11 event and who all of a sudden distribute, say, 10 percent in a given year and then it ruins their excise tax percentage for the next five years because they can never get back down to that 1 percent. This is just annoying. The excise tax was well-intentioned when it was put together but it's just annoying to a lot of trustees. So what Steve is actually saying is that the Council on Foundations board has given up on repeal of the excise tax. [At this point, a poll was taken of funders in the room. One hand was raised in favor of maintaining the variable tax; at least 75 were raised in favor of the flat tax at 1.32 percent; some did not vote.]

**Gunderson:** Originally, the excise tax was meant to pay for IRS enforcement. If I recall the figures correctly, the tax generates around \$500 million and we figure there's somewhere around \$50-75 million being spent on enforcement, so there's a lot of revenue that comes in that doesn't pay for IRS enforcement and I don't know that any of us are asking for \$500 million worth of enforcement. We'd rather put that money to work in communities. I think that's why this has become such an issue.

**NCRP comment:** NCRP supports reducing the excise tax to a flat 1 percent and advocates dedicating the revenue to a significant increase in the IRS budget for enforcement, as was intended when the excise tax originally was instituted. The variable tax rate truly is a disincentive for foundations to increase their payouts and should be changed. ☺

Aaron Dorfman is executive director of the National Committee for Responsive Philanthropy.

### NOTES

1. Revenue-neutral means that the federal government will not get more or less revenue as a result of the policy change.
2. Tax exempt private foundations usually are subject to paying 2 percent of their net investment income in the form of an excise tax. If a foundation's charitable distributions in one year exceed those of its average charitable contributions for the preceding five years, the excise rate drops to 1 percent. Because a foundation's excise tax is determined using its five-year average for charitable contributions, a spike from increased giving in one year usually increases its five-year average for giving. This often subjects a foundation to the 2 percent level for the next five years if it does not meet the higher payout level it had in one year.