

Responsive Philanthropy

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Supporting Litigation and Legal Advocacy: The Lessons of *Citizens United*

Over the past four decades, conservative legal groups – funded by a handful of allied foundations and individual and corporate donors – have mounted a strategic effort to win social and policy change through the legal system. And those patient, long-term efforts have begun to bear fruit. In just the past few years, the courts have moved decisively to the

right, upending long-settled law in cases involving gun rights, affirmative action and the power of Congress to pass laws protecting workers and the environment.

Perhaps their most striking success in recent years was the Supreme Court's 2010 ruling in *Citizens United v. Federal Election Commission*. A closely divided court held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions. In striking down a key provision of the Bipartisan Campaign Reform Act of 2002 (commonly known as McCain-Feingold), the court tossed aside a longstanding ban on corporate spend-

By John F. Kowal

ing in election campaigns. The court also ruled that independent expenditures by corporations would not lead to corruption – or even the appearance of corruption. That conclusion, stated as a matter of law, unloosed a torrent of secret political money, and gave rise to the SuperPACs that helped make the 2012 election campaign the most expensive in American history.

How did conservatives achieve these successes? They did it by spurring innovative thinking about the law, by mobilizing their constituencies around a concrete legal vision and by moving those ideas into the public discourse.

(continued on page 13)



challenging grantmakers
to strengthen communities

A Message From the Executive Director



Dear Readers,

The second half of 2012 was extremely challenging for me emotionally as several people close to me passed away. While each death was tragic and affected me differently, each also reminded me of how precious a gift life is, and that we must make the most of each day we are alive. In my contribution to this issue of *Responsive Philanthropy*, I make a case for why our philanthropic sector would benefit from a greater sense of urgency. My piece is titled “What America Needs Now from Foundations.”

In “Supporting Litigation and Legal Advocacy: The Lessons of *Citizens United*,” John F. Kowal looks at the strategies adopted by the conservative movement to achieve significant changes to the legal system, moving the courts to the right. How did they do this? And what are the lessons for philanthropy as it seeks to support efforts to overturn and mitigate the fallout from *Citizens United*?

Peter Pennekamp and Anne Focke write about “community democracy” as an approach to supporting public policy and social change. In “Challenge and Hope: Philanthropy and Community Democracy,” they provide concrete actionable insights that can help foundations achieve better results from their grants.

During the past year, mission investing has gained traction in the philanthropic community. In “Boosting Philanthropic Impact Through Mission Investments,” Tracy Kartye shares the story of the Annie E. Casey Foundation’s history and experience with mission investing to demonstrate that it can be an effective tool for foundations to leverage resources in support of their missions.

Finally, check out this issue’s Member Spotlight, which features the Bauman Foundation, a D.C.-based grantmaker that funds nonprofit advocacy for systemic change.

We envision *Responsive Philanthropy* to be an important resource on important issues affecting our sector today. And we can’t do it without your help. Send us a note at readers@ncrp.org to tell us how we’re doing, share story ideas and make suggestions for improvement.

Thank you for your continued support of NCRP.

Sincerely,

Aaron Dorfman
Executive Director

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What America Needs Now from Foundations

By Aaron Dorfman

“We have also come to this hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God’s children.”

– Rev. Dr. Martin Luther King Jr., 1963

This year marks the 50th anniversary of the March on Washington, during which Dr. King invoked a “fierce urgency of now.” Today, half a century later, one might expect America’s grantmaking institutions to feel a similar sense of urgency; unfortunately, only a few demonstrate that they do.

Our nation is changing.

Changing demographics are remaking America. According to the 2010 census, non-Hispanic whites comprised 63.7 percent of the U.S. population, Latinos were 16.4 percent, blacks were 12.6 percent and Asians were 4.8 percent. The changing racial demographics of the electorate played an enormous role in the outcome of the 2012 presidential election, with overwhelming support from black and Latino communities going for President Obama. People of color will comprise a majority of

our population by 2042, and increasing numbers of people report being of mixed race or of two or more races.

Racial demographics are not the only way our nation is changing, however. Marriage equality has recently gained broad acceptance and there are record numbers of women in Congress, demonstrating that attitudes are changing, too.

We are witnessing a power struggle.

Related to the changes our nation is experiencing, there is a power struggle going on between the few and the many, between wealthy elites and average Americans.

Not too long ago, just a few trusted news outlets curated the news and a small stable of anointed pundits interpreted events for the populace. Traditional media continues to become increasingly monopolistic, with only six companies controlling its major outlets. But now, thanks in large part to technological advances, a plethora of news choices exist for those with access to technology. There are thousands of bloggers with on-line followings large and small, and every citizen with a smart phone can be a journalist. One need only consider the important role played in the presidential election by the hidden camera phone video of Mitt Romney’s infamous “47 percent” comments to understand how much things have changed. But the technological divide, which is closely associated with class differences, con-

tinues to stymie equitable access to emergent electronic media.

The enormous spending during the presidential campaign illustrates this power struggle, too. On one hand, elites invested unbelievable sums in their chosen candidates. They were supplemented by the actions of conservative groups such as the American Legislative Exchange Council (ALEC) and Karl Rove’s Crossroads GPS. At the same time, President Obama raised hundreds of millions of dollars from small donors contributing less than \$200 each. As it turned out, the elites and their allies didn’t get a very good return on their investments. Indeed, Rove’s success rate was barely 1 percent.

The Occupy movement put a sharp focus on this power struggle with its 99 percent versus 1 percent messaging. The “Tea Party” activists seem to be in a similar power struggle with more establishment-oriented elements of the Republican Party.

Inequality is one of the greatest threats facing our nation.

Our nation is facing many threats – climate change, gun violence, unbridled corporate influence on elections. Yet, I think many of us would agree that rising inequality is at or near the top of the list.

Income inequality is the highest it has ever been. According to the Congressional Budget Office, over the past 30 years, the top 1 percent of earners has more than doubled its share of total U.S. earnings, while the

New and Renewing Members

Barr Foundation

Blue Shield of California Foundation

Communities for a Better Environment

Edward W. Hazen Foundation

George Gund Foundation

Justice at Stake

Kresge Foundation

National People's Action

San Francisco Foundation



bottom 80 percent takes home a decreased share. According to the Economic Policy Institute, CEO pay has risen 725 percent since 1978, which is 127 times faster than increases in worker pay during the same time period. Even business-friendly publications like *Forbes* and the *National Journal* acknowledge that inequality is a threat to our nation.

Disparities persist and remain a threat.

As the economy continues to recover, the unemployment rate for blacks remains persistently high. In October 2012, while unemployment for the entire population dropped to 7.9 percent, it actually rose for blacks to 14.3 percent, according to the Bureau of Labor Statistics.

According to the Centers for Disease Control, “The health disparities between African Americans and other racial groups are striking and are apparent in life expectancy, death rates, infant mortality and other measures of health status.” The CDC also notes similar disparities for Latinos and for other non-white groups.¹

What can we do about it?

How can we in the philanthropic sector contribute to expanding American democracy to include everyone? What can we do to address inequality and make a meaningful contribution to a changing nation?

Foundations and other institutional grantmakers have a unique opportunity to make a difference, to be relevant in this moment. To maximize impact, given the current reality, foundations would be wise to do three things: 1) target grantmaking to ensure it benefits those who need it most; 2) invest more heavily in advocacy, community organizing and other activities that change the way things are done; and 3) side unequivocally with those who have the least wealth, power and opportunity.

Target grants to ensure they benefit those who need it most.

Many grantmakers seek to benefit entire communities; they want to help everyone, and that’s laudable. But to ensure everyone benefits, grantmaking strategies need to be targeted, because some strategies will help certain groups yet leave others behind. Universal programs are limited in their impact if their strategies do not explicitly address the conditions of the most underserved and marginalized among us.

This concept is called *targeted universalism*: We have universal goals but use targeted means to achieve them. An important truth is that when a targeted grantmaking strategy succeeds in helping lift up a group of people who have been marginalized or left out, it helps not only that group but also has ripple effects that benefit the broader community.

NCRP’s latest research shows that U.S. foundations are making some progress on this. Our report *The State of Giving to Underserved Communities*² indicates that about 40 percent of grant dollars is specifically intended to benefit one or more marginalized groups, such as women and girls, the elderly or the poor. This is up slightly from our prior analysis.

Larger foundations tend to be more targeted than smaller foundations, and one out of every six foundations devotes more than half its grant dollars to benefit the underserved. The data suggest that, while we are clearly making progress, we have substantial room for growth.

Is 2013 the year that more foundations will seek to ensure that those who need it most actually benefit from grants?

Invest more heavily in advocacy, community organizing and activities that affect change.

We all know that philanthropic dollars are extremely limited in relation to the

often complex problems foundations are seeking to address. So if we hope to have any serious impact on the most pressing issues of the day, we must strategically leverage the funding we have at our disposal.

A report NCRP released last year, *Leveraging Limited Dollars*,³ shows that for every dollar invested in advocacy, community organizing and civic engagement, communities reaped \$115 in benefits across myriad issues. These strategies are among the best available to foundations seeking to make a significant impact.

Our research shows that only about 15 percent of grant dollars is devoted to social justice strategies like these, in spite of the significant leverage factor. One promising sign, however, is that the number of foundations devoting at least 25 percent of grant dollars to these strategies is on the rise. A list of field leaders is available in *The State of Social Justice Philanthropy*.⁴

Side with people who have the least wealth, power and opportunity.

Some foundations claim to be neutral. But Nobel peace prize laureate Archbishop Desmond Tutu offered a great observation about neutrality when he said: "If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality."⁵

America needs foundations that are willing to directly confront disparities and inequality. Part of how this can be done is by funding in the ways described above. But it also relates to the public policy positions that foundations and their trade associations take.

If foundation leaders spend their time lobbying exclusively against any change to the charitable deduction but are silent on possible cuts to services for the poor or mitigating our



regressive tax system, whose side are they really on?

We need foundations that are not myopically focused on the trees but instead see the entire forest and act accordingly. Our nation needs foundations that take policy positions based on what is good for the people and causes that foundations care about, rather than what is good for the wealthy donors who create foundations.

Conclusion

Homelessness, poverty, climate change, lack of quality health care, disparate access to quality education ... These are among the numerous pressing issues facing our nation and the world. My hope for 2013 is that grantmakers approach their work with the same "fierce urgency of now" that Dr. Martin Luther King spoke of 50 years ago. If they do, philanthropy will be more effective and relevant, and we'll all be better off. ■

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

Notes

1. See CDC website, www.cdc.gov.
2. Niki Jagpal and Kevin Laskowski, "The Philanthropic Landscape: The State of Giving to Underserved Communities," (Washington, D.C.: National Committee for Responsive Philanthropy, 2012), <http://www.ncrp.org/files/publications/PhilanthropicLandscape-Stateof-GivingtoUnderservedCommunities.pdf>.
3. Lisa Ranghelli, *Leveraging Limited Dollars: How Grantmaking Achieve Tangible Results by Funding Policy and Community Engagement* (Washington, D.C.: National Committee for Responsive Philanthropy, 2012), <http://ncrp.org/files/publications/LeveragingLimitedDollars.pdf>.
4. Niki Jagpal and Kevin Laskowski, "The Philanthropic Landscape: The State of Social Justice Philanthropy," (Washington, D.C.: National Committee for Responsive Philanthropy, 2012), <http://www.ncrp.org/files/publications/PhilanthropicLandscape-StateofSocialJusticePhilanthropy.pdf>.
5. William P. Quigley, *Ending Poverty As We Know It: Guaranteeing a Right to a Job at a Living Wage* (Philadelphia, PA: Temple University Press, 2003) p. 8.

Challenge and Hope: Philanthropy and Community Democracy

By Peter Pennekamp and Anne Focke

As I was handcuffed and the police were placing me in the backseat of a squad car with protestors and loggers all around screaming at each other, I looked across the clearing to an old logger standing with his chain saw hanging limp from his hand with complete horror on his face. At that moment I knew I stood with him. How had things come to this?"

This incident, relayed by Don Banducci, founder of the Yakima Corporation and an environmental activist at the time, is a tale from the “timber wars” that gripped the Pacific Northwest 20 years ago. In this story, national timber interests and environmental organizations waged a policy battle in which local communities often became their proxies. The price paid, in a sense the war’s collateral damage, was increased

poverty and income disparity within individual communities and the entire multistate region.

Like all public and NGO leaders in the region at the time, directors on the board of the Humboldt Area Foundation (HAF) found themselves trying to serve a region riven by anger, economic dysfunction and growing despair. The question was how to help make a difference.

COMMUNITY DEMOCRACY

Beginning in the midst of the timber wars the HAF adopted, and over the past 20 years refined, a course of action designed to support what it now refers to as “community democracy,” which we define as:

Grassroots engagement where people uncover, activate and energize their community’s own as-

sets, take responsibility for their formal and informal decision-making processes, and further their ability to work constructively with conflict and difference.¹

A thread that runs through Don Banducci’s story and other resource-based conflicts in the region up to the present day is this: However unevenly, people have found ways to work together both within and across community lines of various types – environmentalists and loggers, Native Americans and commercial fisherman, low-income people and policymakers. A very long path still lies ahead, but examples of improved results from a supported community democracy are gaining traction as an effective approach to public policy and systems improvement.

The initial assumptions of HAF and its partners as they first entered the fray of regional discord have held up over time, even as they have been refined and built upon:

- The tension generated by community disagreement or crisis can be the source of energy and opportunity to construct solutions.
- The “right” or “successful” corrective course of action has to make sense to motivated community members who take responsibility for making it happen; expert opinions and data, while absolutely essential, are secondary.
- Lasting solutions come from neighborhood and community residents who come together motivated more



by ending damage to the community than by their differences, and who take responsibility for creative and inclusive solutions.

Through organizational policy, the HAF confirmed its belief that responsibility for change resided unequivocally in the hands of community members willing to work with those with whom they disagreed without demonizing them, never overriding a community-led decision (unless it was illegal) as long as the people affected by the decision were authentically involved as equals.

Early efforts, while gritty and in hindsight not very sophisticated, led to a cascade of energetic, highly adaptive and increasingly open networks and effective collaborations that continue to grow through good financial times and bad.

PRINCIPLES OF COMMUNITY DEMOCRACY

HAF learned valuable lessons from the work and repeatedly adjusted its practice. These lessons can be organized around five principles:

- **Dynamics of Difference.** Community democracy is strongest when people are working constructively across differences.
- **Community Assets.** Communities hold untapped assets, and the potential for successful strategies to create change exists in every community.
- **Community Commons.** Clearly identifiable and accessible community commons are essential; democracy happens in places where people feel safe enough to venture across boundaries of difference.
- **Time and Convergence.** Community democracy flourishes according to its own time frames, and productive change requires that disparate but interconnected efforts align and



that the time frames guiding them converge.

- **Essential Infrastructure.** Community democracy needs reliable staging grounds; the availability of tools and supports determines to a large degree who can and cannot engage civically.

CHANGE COMES AT THE SPEED OF TRUST

The role of organized philanthropy is woven throughout the stories that elaborate on each of the principles in *Philanthropy and the Regeneration of Community Democracy*. The following is just one excerpt from the paper, in this case describing some of the dilemmas that the principle of “time and convergence” poses for foundations.

Beyond the many differences that exist within a community itself, discrepancies between a foundation’s expectations and what a community process might deliver can be extreme. Harold Richman, founder of Chapin Hall, a policy research center at the University of Chicago, observed that expecting community interests and actions to converge with foundation expectations and time frames is where place-based “investments”

by large foundations most often fail. The dynamics of learning, disagreement and decision-making within a large foundation (and many smaller ones) are fundamentally different from the dynamics in a community. Large foundations tend to reward timeliness and predictability, traits that rarely produce systems change.

In 1995, the James Irvine Foundation took an interest in the Humboldt region’s economic crisis and the open process that the HAF and others were using to ensure that the solutions would be “owned” by the community. HAF accepted a \$1.25 million grant, in equal installments over five years, roughly one-third of the length of the first stage of a regional effort. Irvine supported our intention to develop a plan through a broad community process that would determine and implement the ultimate course of action. One year into the plan a significant but unsurprising disagreement between the two foundations emerged. A newly-hired Irvine program officer required the development of what she considered a concrete action plan for Year Two. As a result, HAF representatives traveled to Irvine’s offices to suggest returning the grant rather than breaking trust with our communities and the process already underway.

Irvine made the decision to extend the risk they believed themselves to be taking and honored the original terms. After a somewhat tense period, positive results started to roll in from the community-led process, and the relationship between the two foundations warmed up again.

The problem between the two foundations was a lack of syn-

chronicity. It could be seen as one of differing expectations about when and how community-controlled results would be achieved. A large foundation has an internal, hierarchical process that works on a different “clock” from the one that guides an unpredictable, self-structuring community.

This and the other illustrative stories show how organized philanthropy, large or small, became more flexible and accomplished better results than standard practice would have produced.

IMPLICATIONS FOR PHILANTHROPY

Philanthropy faces both powerful opportunities and dilemmas when it joins with community members as they take responsibility for the change they want. To establish a new role in civil society, philanthropy must recalibrate itself to fit within community democracy. It has to support the time and space needed to encourage the innovations that Americans can achieve when they work together based on interest and passion.

Philanthropy’s role can include developing the civic capacity of com-

munities, adopting and respecting horizontal relationships, advancing citizen agency, maintaining impartiality, providing infrastructure that works to equalize participation, using philanthropy’s inherent flexibility and moving beyond traditional grantees.

Philanthropy has a powerful opportunity to become a staging ground for the regeneration of community democracy because of its nascent flexibility and the potential variety of its resources. Community philanthropy, best known in the form of community foundations but not limited to them, can, with deep commitment, honesty and hard work, become the commons needed for communities to thrive. Some embedded private and family foundations also can play this role. And, through partnerships with these community institutions, larger private foundations can support the generation of authentic change that they have often tried to impose without success. ■

This article is based on “Philanthropy and the Regeneration of Community Democracy,” a Kettering Foundation occasional paper written by Peter Pen-

nekamp with Anne Focke and published in December 2012. The paper explores what the Humboldt Area Foundation learned through 20 years of intentional experimentation, learning and adjustment undertaken in concert with local, national and international colleagues and partners. The paper is available at: <http://the-commons.kettering.org/news/philanthropy-and-the-regeneration-of-community-democracy/>.

Peter Pennekamp is executive director emeritus of the Humboldt Area Foundation, which he served from 1993 to 2012.

Anne Focke is a consultant who works both independently and as senior advisor with the Giving Practice of Philanthropy Northwest.

Notes

1. Peter Pennekamp and Anne Focke, “Philanthropy and the Regeneration of Community Democracy,” (Kettering Foundation: December 2012), <http://the-commons.kettering.org/news/philanthropy-and-the-regeneration-of-community-democracy/>.

Community improvement requires two strands of investments: one is in good programs and the second is in the non-programmatic dimensions of change such as community capacity and civic infrastructure. Our understanding of the non-programmatic elements – which Peter Pennekamp calls “community democracy” – has lagged behind our program knowledge and has been stuck in the realm of the abstract, the conceptual and the academic. His new paper unpacks the notion of community democracy and defines it in actionable terms. It gives concrete examples of how one region of the country has built community democracy, and it identifies tangible outcomes from those investments.

—Anne Kubisch, Director
Roundtable on Community Change, the Aspen Institute

Boosting Philanthropic Impact Through Mission Investments

By Tracy Kartye

For more than 60 years, the Annie E. Casey Foundation has worked to improve outcomes for vulnerable children and their families. Our objective to see low-income families achieve financial stability and raise healthy, well-educated children in stable permanent families in supportive communities requires a tremendous amount of resources.

The foundation has always exceeded the minimum payout requirement of 5 percent, but it was not until the late 1990s that we decided to explore social investing as a way to put even more of our assets to work for our mission. It was no small feat to convince key staff that the potential financial and social returns generated through the portfolio would be worth the additional complexities that would come with the accounting, due diligence, tax and other challenges.

Ultimately, in 1998, the foundation's leadership came to believe that the potential payoff in mission investing outweighed the risks and authorized up to \$20 million of the endowment for program and mission-related investments that improve the lives of vulnerable children and their families. This watershed moment in the foundation's history effectively established the commitment to use more of our endowment in pursuit of our mission without compromising the foundation's future.

However, it was one thing to make the commitment and something entirely different to implement it. In many ways, Casey's initial experience reflects the norm. We made few investments in the first five years: the learning curve

was steep, the available resources were few, and the hurdles were significant.

At its core, the Annie E. Casey Foundation's trustees and senior leadership believe that we must employ all of the tools available to philanthropy and as much of our assets as possible to achieve our mission – all without jeopardizing the foundation's sustainability. Social investing represents one such tool. Although it took time to develop

our approach, the first few investments – mission-related deposits, loans to community development financial institutions, and an investment in a community development venture fund – convinced the trustees that this was a viable strategy for the foundation, and in 2003, they formally carved out an allocation of \$100 million for social investments.

With this commitment came a renewed energy and focus. The foundation hired staff dedicated to making social investments and placed them in the investment unit because we chose to invest from the endowment rather than the grant budget. Social investment staff were charged with sourcing and underwriting investments in direct collaboration with program grantmaking staff who are experts in such areas as education, juvenile justice and child welfare, community redevelopment, asset building and workforce development. This approach requires significant collaboration but ensures a willingness to take on substantial risk for investments that are closely aligned with the foundation's mission, despite our high underwriting standards.

In 2010, the allocation was increased to \$125 million, almost 5 percent of the endowment, in large part because of an ability to demonstrate the effectiveness of the model. We have established processes and systems that allow us to identify investment opportunities aligned with our mission, monitor the investments and evaluate both our financial and social impact performance.

Philanthropy
can be effective
and creative
when it comes to
using more assets
toward achieving
social good ...

Today, the portfolio is diverse and emphasizes Casey's priorities with commitments of more than \$100 million across seven different foundation program areas, including investments that support affordable housing development and community facilities; job creation through micro and small business financing, and development of services that will ultimately improve outcomes for vulnerable children (see Figure 1). These investments have raised more than \$680 million in co-investment and leverage, not including the \$45 million in guarantees that have leveraged a total of \$130 million, primarily in support of the redevelopment of an East Baltimore neighborhood.

From a financial return perspective, the portfolio has met and at times exceeded expectations. The foundation has been willing to use its balance sheet in creative ways: investing deposits in financial institutions, debt, equity or even guarantees in financial intermediaries, and in some cases directly in projects all with below market to market rate financial return targets.

The careful underwriting and structuring of each investment has resulted in strong financial performance with realized losses of less than 1 percent

and a current one-year return of about 1 percent overall. In fact, in 2008, the social investment portfolio had the highest return of any endowment asset class and our estimated five-year return is on target, at 3.4 percent. The portfolio has proven to be very stable because the majority of investments are loans to community development financial institutions (CDFIs). CDFIs are private institutions dedicated to delivering responsible, affordable lending to help low-income, low-wealth and other disadvantaged people and communities join the economic mainstream. For Casey, investing through CDFIs has proven to be effective because they increase program impact by leveraging co-investments and revolving funds for multiple projects – and more importantly, they develop lasting infrastructure to convey capital in geographies or program areas that will last far beyond the term of a Casey social investment.

As each investment is made, Casey investment and program staff work closely with the investee organization to establish social impact metrics and goals, which are measured annually. A number of different impact indicators are tracked, the most common of which are included on the following chart,

which provides a snapshot of key indicators and progress toward achieving the portfolio's social impact objectives. For example, our expectations around jobs and quality child care have been exceeded and our investments continue to support the creation of affordable housing in targeted places.

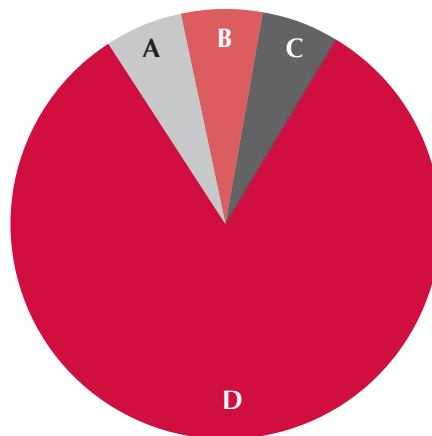
These impact indicators, however, tell only part of the story. As each investment is exited, we conduct a review and document impacts that are not evident from the impact metrics. For example, during the term of our investment in Home Funders Collaborative LLC, 2,121 units of affordable housing, including 684 units for extremely low income (ELI) families, were financed. The fund leveraged more than \$200 million in public and other private resources since 2003 to address the housing crisis for ELI families in Massachusetts. Also, these indicators do not capture the public policy and advocacy efforts of Home Funders that resulted in targeting more resources toward homeless and ELI families. Although Casey exited the fund when our loan matured because of shifting program strategies, Home Funders continues to finance the development of affordable housing in Massachusetts and advocate for policy changes that support low income families' ability to live in safe, stable and affordable housing.

At Casey, there is always a push to refine and better track the social impact results, but this is limited by what data can be obtained realistically and cost effectively. With each investment we exit and analyze, we attempt to identify lessons learned so that we can better target our investment capital and implement social impact targets that will have a measurable impact on positive outcomes for children and their families.

The foundation's commitment to utilize more of its assets for mission purposes has not been confined to our own activities. We have actively encouraged

FIGURE 1: SOCIAL INVESTMENT PROGRAM ALIGNMENT
Actual Based on Commitment (Millions) as of 9/30/12

- A. Access to Capital (MRD) \$5.9 – 6%
- B. Economic Development \$6.4 – 6%
- C. Child Welfare \$6.0 – 6%
- D. Housing & Community Development \$84.1 – 82%



Total Assets Committed: \$102,363,000

TABLE 1: KEY IMPACT METRICS OF ANNIE E. CASEY FOUNDATION'S SOCIAL INVESTMENTS

	Total Projected	Actual to Date (12/31/11)	% Achieved to Date	Projections Through
Charter school slots	6,300	2,065	33%	2016
Child care slots	175	329	188%	2011
Commercial space developed (sq ft)	2,174,082	472,982	22%	2039
Jobs created	4,293	7,631	178%	2017
Housing units developed	12,485	2,646	21%	2039
Affordable housing units developed	5,233	2,389	46%	2039
Small businesses financed	301	163	54%	2017

and supported other foundations in their efforts to do the same and have seen tremendous growth in the field since we got started. A 2010 Foundation Center survey found that one in 10 U.S. foundations were interested in increasing their use of program-related investments.

The resources available to help these foundations engage in mission investing have increased exponentially over the past 10 years, and this year the PRI Makers Network integrated with the More for Mission Campaign. This merger created a central point of information for foundations looking to access social investing resources regardless of their position within the organization. The resulting entity, the Mission Investors Exchange, currently boasts a membership of more than 200 foundations and affiliated organizations. MIE works with other affinity groups such as the Global Impact Investing Network, Council on Foundations and Confluence Philanthropy to make it easier for foundations, regardless of their missions and return objectives, to find resources, learn and ultimately connect with likeminded investors.

As foundations become savvier at mission investing, new tools and resources will need to be developed.

Foundations will have to manage tensions related to mission and geographic targets, financial return objectives and leverage goals. New resources and tools should facilitate deal sourcing and evaluating potential social impact, which can come with a new set of challenges. As mission investing becomes more standardized, it could conceivably be harder to find investments that fit narrowly defined mission and geographic targets. The demand for social investment capital also exceeds the supply of any one foundation, so it is increasingly important to find ways that make it easier to aggregate capital, which again can make it more challenging to find investments that fit the criteria of the foundation investor. Given the nascent stage of the field, there also needs to be more research and evaluation, like the Impact Investor Project, which will analyze the performance of impact funds and the standards of investors to clarify components of strong impact investments and inform development of new investment products and tools.

The case for mission investing is demonstrating that philanthropy can be effective and creative when it comes to using more assets toward achieving so-

cial good, and in fact can be more impactful by utilizing capital in the right way at the right time. For example, a mission investment can result in positive social outcomes when there is a source to repay the investment and the amount of capital needed to pilot, test and bring small projects to a broad or national scale exceeds the resources available in the foundation grant budget. The Casey Foundation strongly believes that loans or equity investments are sometimes smarter, more appropriate and more effective than grants to support mission-relevant organizations because they can buy time, reinforce business discipline, create internal capacity, build credibility and demonstrate market viability. They require more collaborative, synergistic and mutually accountable relationships, and are a practical way to put more charitable money to work for mission purposes.

With strong systems and investment policies, and constant pressure to improve impact measurement, mission investing ultimately can increase the amount of capital invested in ways that improve critical outcomes. ■

Tracy Kartye is director of social investments at the Annie E. Casey Foundation.

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The Lessons of Citizens United

(continued from page 1)

Specifically, conservatives deployed five interlocking strategies to reshape understanding of the law and achieve concrete policy victories.

- 1) They supported legal policy centers and think tanks** to develop ideas to shape public discourse on legal topics and judicial decision making. These organizations provided a platform for the movement's public intellectuals and future leaders, whether fellows, academics or judges. By publishing their books and magazine articles, these organizations positioned them as credible experts in the press.
- 2) They commissioned innovative legal scholarship and social science research** to reframe the debate within the academy, shape judicial decisions and advance their campaigns on strategically chosen issues of public policy.
- 3) They established effective networks** to unite the conservative legal community around a shared vision of the law. The best known of these groups is the Federalist Society. These networks created vital personal connections and served as a training ground and pipeline for future leaders. They also provided a safe haven for judges and professors to connect to the world of activism.
- 4) They developed coordinated litigation and advocacy strategies** to advance conservative legal theories, spearheaded by conservative legal foundations and public interest law firms.
- 5) They focused on judges**, working tirelessly to populate the federal and state judiciaries with ideologically reliable nominees through Federalist Society vetting of federal judicial nominees during Republican administrations and sustained corporate investment in state judicial races to elect "business-friendly" jurists.

It is important to note that conservative legal groups don't merely advance their ideas below the radar through slow-moving court challenges. They partner with a sophisticated policy/media apparatus to identify a relatively small number of focus group-tested legal issues that resonate viscerally with their core constituencies.

Given this patient, long-term focus, it's no surprise that the courts – and the law – have moved steadily in a conservative direction. This threatens to constrain the ability of progressive foundations and nonprofits to advance their social justice missions. But how can the progressive community respond most effectively?

Again, *Citizens United* provides an illuminating case history as well as some signposts for the path forward.

Citizens United was no bolt out of the blue. It was the culmination of a careful, well-funded, decades-long effort to allow unlimited campaign spending by corporations and moneyed interests. As Eric Lichtblau reported in *The New York Times*, "The opening of the floodgates has been many years in the making, the result of a carefully waged campaign

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... to roll back Watergate-era campaign finance restrictions through attacks in Congress, in the courts, at the Federal Election Commission and in the court of public opinion." Brad Smith, former chair of the Federal Election Commission and co-founder of the Center for Competitive Politics, described it as "long-term ideological combat."¹

The campaign finance litigation effort, including the *Citizens United* case itself, was led by James Bopp Jr. of the James Madison Center for Free Speech in Terre Haute, Ind. Bopp has the backing of powerful allies, including the U.S. Chamber of Commerce, the Republican National Committee, the Right to Life Committee and the National Organization for Marriage. These organizations, along with other donors, contributed millions to the effort. And in the background, key conservative legal groups and scholars developed the legal theories and the public arguments to support a dramatic change in the law.

From the day it was issued, the *Citizens United* ruling has faced withering criticism. The decision is unpopular with the public, spurring outrage about how the system has been corrupted by special interests. Even lower court judges have piled on. The highly respected federal appeals judge Guido Calabresi, a former dean of Yale Law School, predicts *Citizen United* will not stand long: "Whether this will happen through a constitutional amendment or through changes in Supreme Court doctrine, I do not know. But it will happen."

Some believe the challenges *Citizens United* poses require an extraordinary response – amending the U.S. Constitution to reverse the court's ruling. But the constitutional amendment route is an arduous one, requiring two-thirds of Congress and three-quarters of state legislatures for passage. In the current, highly polarized political climate, this will be no simple undertaking.

In the meantime, there are other promising strategies to mitigate the

threat of excessive corporate political spending, such as reforming campaign finance and corporate governance rules to increase transparency of corporate political donations and giving shareholders a greater voice in business political activity. The Brennan Center for Justice and Democracy 21 also have offered a plan to boost the voice of small donors in federal elections through a public financing system based on New York City's successful small donor matching fund.

But those concerned about *Citizens United's* destructive impact should take a page from the conservatives' playbook. Conservatives have long understood the value of investing in legal infrastructure for the longer term. Progressives can do the same.

A handful of foundations and individual donors have already helped to

lead the way, supporting an emerging infrastructure of progressive legal organizations over the past decade. They fueled the rapid growth of the American Constitution Society, a progressive counterpart to the Federalist Society, and legal policy centers like the Brennan Center, Equal Justice Society and Constitutional Accountability Center.

THE WAY FORWARD

Perhaps the simplest and most effective way to overturn *Citizens United* ruling is to commit to a multi-year effort to replace it with a new legal framework that paves the way for necessary reforms to be enacted – and stay on the books.

The Brennan Center launched such an effort in the weeks following *Citizens United*. We convened the country's top constitutional legal scholars to launch

a jurisprudential drive to roll back *Citizens United*. This initiative will serve as the nucleus of an ambitious new effort to develop and articulate a compelling progressive jurisprudence for the 21st century. Many of these scholars have already published law review articles pursuing these new legal theories.

We will enlist their participation in active cases before the courts, both to defend current campaign finance rules from continued assault and to chip away at the tottering edifice of *Citizens*

United. And we have partnered with the Open Society Foundations to convene social scientists to compile the needed research to refute the court's naïve assumption that expenditures made by supposedly independent SuperPACs pose no risk of corruption.

Put another way, the Brennan Center is working to “reverse engineer” the winning legal and factual case to convince the court to overturn *Citizens United* in the next few years.

The lesson for funders is that legal advocacy does not just happen in the courtroom. First, there needs to be funding for think tanks and scholars to incubate the ideas and policies necessary to persuade the courts, lawmakers and the public. Second, there needs to be support for the establishment of networking organizations so that ideas can be exchanged and personal ties formed. Third, there must be backing to craft a communications strategy that uses the media to not only confer legitimacy on ideas, but to broadcast them to the public. Fourth, there must be backing for efforts to ensure that sympathetic jurists and lawmakers are placed in office.

Nothing will happen overnight. But, as conservatives have shown in *Citizens United*, a sustained multipronged effort can bring about substantial change. It would be the most delicious of ironies if the true legacy of *Citizens United* was not a permanent distortion in politics due to big money, but as an inspiration for a successful counteroffensive. ■

John F. Kowal is vice president for programs at the Brennan Center for Justice at New York University School of Law.

Notes

1. Eric Lichtblau, “Long Battle by Foes of Campaign Finance Rules Shifts Landscape,” *New York Times*, October 16, 2010.



Bauman Foundation

Washington, DC

www.baumanfoundation.org

Est. 1987



An interview with the Bauman Foundation President Patricia Bauman and Executive Director Gary Bass.

NCRP: How has the Bauman Foundation's mission evolved since its inception?

PB & GB: Our guiding mission since 1987, regardless of the issues, remains support of advocacy for systemic progressive social change. In the early years, we focused on the intersection of health and environment. Starting in the 2000s, we added a focus on civic engagement through support for non-partisan voter registration, issue education, nonpartisan turnout of historically under-represented populations and election protection. More recently, we have engaged in efforts to bring fairness to federal tax and budget policies, regulatory protections and other policies that promote economic and social justice. As this evolution occurred, we held firm in our beliefs that:

- There is a need to redress disparities in wealth and power.
- Government has an affirmative role to assure equity, fairness and public protections, which may also serve as a counterforce to corporate power.
- Transparency of government and corporations can be a tool to achieve greater accountability and alter imbalances of power.
- Strengthening participatory democracy is essential.

NCRP: The Bauman Foundation focuses its grants on advocacy for long-term systematic changes. Why is the foundation's support of these strategies so important?

PB & GB: A robust civil society requires an active citizenry. Unfortunately, there are structural barriers to this ideal. The loudest megaphones usually belong to those with money and special access. While state and federal laws and policies can help, they also can exacerbate the problems, as voter suppression tactics and *Citizens United* demonstrate. We believe private foundations must help reduce these distortions – even when the system is wildly rigged – by funding advocacy and civic engagement. Strikingly, NCRP's empirical research verifies that such support also produces high returns on investment. We believe that supporting advocacy is a win-win with lasting results.

NCRP: What did the Bauman Foundation learn from its grantmaking leading up to the 2012 elections, and how might the election results impact the foundation's grantmaking going forward?

PB & GB: One example was the enormously successful effort to integrate technology and field mobilization. Field groups used tools for registering voters and measuring what actually moves them to vote. We were among the pioneers several cycles ago and we will continue to support such efforts as the technologies change and improve. We hope these non-partisan strategies will be supported more broadly by funders to allow groups to build upon their recent success. Furthermore, there needs to be experimentation with using micro-targeting tools developed for elections to modernize grassroots issue and policy advocacy. Funder collaboration, especially when it results in

strategic funding in amounts greater than what any one funder alone can do, is an important way forward.

The election results also demonstrated the importance of several other long-term major policy changes. First, we need to fix the electoral problems that were evident in 2012. Examples include the role of big money and the weaknesses in the electoral system (i.e., registration systems, accessibility to voting equipment, timing of elections and de facto voter suppression laws). To this end, we want to expand support for an enhanced virtuous circle that connects fair elections advocates to those working on progressive policy issues, in an effort to counter the vicious circle of income equality and special interest capture of government. Second, we need to build support for policies that generate greater government revenue at both the federal and state levels. By increasing taxes for the wealthiest individuals and corporations, we can pursue prosperity, rather than austerity, policies and invest in America's future. The alternative is gridlock that harms all our grantees and their issue campaigns.

The election results reinforced our belief in the "long game": long-term support over years or even decades for citizen engagement and advocacy. Yo-yoing from election to election – increasing funding in election years only to withdraw it in off-years – harms our grantees and weakens our effectiveness as funders. We must continue providing ongoing general operating support. ■

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