



GENERAL

Favorite FPLG Posts: First Half of 2023

07.11.23 | Linda J. Rosenthal, JD



“Our readership isn’t easily pigeonholed into one or another narrow audience category,” we wrote just after New Year’s Eve as we named our favorite posts of 2022. “We choose an ‘eclectic range of topics.’”

The For Purpose Law Group blog is now beginning its tenth year. We’ll continue to follow the “...unifying thread” that runs through the almost 800 posts to date. It’s the “...common belief of the nonprofit community that philanthropy serves a vitally important role in today’s society. It must be strengthened and supported however possible. In part, that means promoting compliance with the rules governing tax exemption as well as other obligations imposed by law; for example, on account of the employer-employee relationship or the duty to avoid injury to third parties.”

But it also “... means taking an interest in sector-wide trends, challenges, and controversies. And it’s an invitation to advocate for government and public policies that bolster the charitable community and its beneficiaries.”

The Selections

With that thought, let’s begin this retrospective with a January post showcasing the importance of understanding nonprofit advocacy with a broad brush and overcoming the “fear of lobbying.”

- **[A 501\(c\)\(3\)s Effective Local Lobbying \(January 27, 2023\)](#)**

“There are a million and one reasons why charities — 501(c)(3) organizations specifically — don’t lobby,” according to an article on January 26, 2023, in *The NonProfit Times*. In [Local Lobbying Is Permitted And Financially Effective](#), *NPT* chose San Diego-based [Serving Seniors](#), as its “simple and powerful example” of how to aggressively harness the perfectly legal avenue of local advocacy.



Central to the mission of aiding “low-income seniors on the brink of losing a place to live,” Serving Seniors conducted and published “an eye-opening survey” documenting that “an alarming number of the area’s older adults spend more than 50% of their income on housing.” See [Senior Homelessness: A Needs Assessment](#) (September 2021).

Then they “transitioned from this public-education and advocacy phase to legislative outreach for urgent government help.” The result: The “game-changing” [Pilot Shallow Rental Subsidy Program](#), unanimously approved by the San Diego County Board of Supervisors in September 2022.

It’s premised on the notion that even a “relatively small amount” can provide the “...cushion to prevent eviction and homelessness....” Beginning early in 2023, the program has provided eligible seniors with a \$500 rental subsidy.” Early reports show it’s working and popular; see [‘I didn’t think I’d ever be homeless’: San Diego shelter bridges seniors to affordable, permanent housing](#) (May 3, 2023) Sarah Alegre, *Fox5 News*.

The *NonProfit Times* points out that “...only 2.5% of charities report being actively engaged in lobbying activities, according to Internal Revenue Service data” But, “lobbying is one of the most important ways nonprofits can empower the communities and people they serve” and “[i]t is arguably, [one of the single most effective ways](#) that nonprofits can advance their mission.”

- [Charities in the Courtroom 2.2: WW Two Art Claim With a Twist \(Part One\)](#) (February 2, 2023); [Charities in the Courtroom 2.2: WW Two Art Claim With a Twist](#) (February 9, 2023)

“America’s art museums ... are certainly no strangers at their local courthouses.” They regularly litigate many routine matters and also deal with high-profile disputes like emotionally charged union-organizing drives and controversial “deaccessioning” proposals.

But a new lawsuit filed in New York state court in January 2023 has grabbed considerable attention from the major national media as well as arts publications. It’s about a painting called [Woman Ironing](#), created by Pablo Picasso in 1904 during his Blue Period. Considered a masterpiece, it has been prominently featured since about 1978 in the Thannhauser Gallery of the Solomon R. Guggenheim Museum.

But this story begins over one hundred years earlier in Germany. In 1916, Karl Adler, a wealthy German-Jewish industrialist, bought the Picasso from one of Munich’s leading (and also Jewish) gallery owners, Heinrich Thannhauser.

Two decades later came [The Nuremberg Laws](#) and [Kristallnacht](#). Karl Adler had little choice but to sacrifice the painting at a fire-sale price in 1938 as he and his family fled for their lives. The buyer was Justin Thannhauser, who had taken over his father’s art business on the older man’s death in the mid-thirties.

Despite Justin’s own dilemma of being Jewish in Nazi Germany, the younger Thannheiser escaped Germany, fleeing to Paris and then to America with a great deal of art loot. Afterward, he prospered enormously and became a major art philanthropist. It did not go unnoticed, though, by many observers that Justin Thannheiser managed to be at the right place at the right time in pre-WWII Germany with ready cash to acquire an unusually high number of art pieces from desperate sellers.



Several years ago, the great grandson and other relatives of Karl Adler learned the circumstances of the 1938 “fire sale.” They allege it was not a fair, arms-length sale. They now want the Picasso back from the Guggenheim or compensation based on its current fair market value, estimated currently at about \$100-200 million.

This fascinating case spanning continents and generations “highlights how and why even the most prestigious arts institutions around the world continue to be ensnared, so many decades after the end of the Second World War, in contentious and complicated ownership and possession battles over art treasures.”

How is it possible that “... the restitution of art stolen or sold under duress during the Nazi regime continues to be a hot-button issue....” for American museums and galleries? Are there not time-bar defenses available? The answer: Several years ago, the United States Congress enacted a special, short-term, statute-of-limitations exception to allow litigants to raise such (otherwise “stale”) disputes. It sunsets in 2027.

- **[Philanthropy Thought Leaders: The Future in a “New Light” \(March 28, 2023\)](#)**

“When a storm subsides,” visionary commentator Rebecca Solnit reminded us three years ago in the earliest days of the pandemic tempest, “the air is washed clean of whatever particulate matter has been obscuring the view, and you can often see farther and more sharply than at any other time...” See [The Impossible Has Already Happened](#) (April 7, 2020) *The Guardian*.

This language has shaped observations and advice from [The Monitor Institute](#), the social-impact consulting unit of [Deloitte LLP](#). Researchers undertook a comprehensive research study titled [What’s Next for Philanthropy in the 2020s](#). See [Final Report \(2021\): Seeing Philanthropy in a New Light](#).

Ms. Solnit predicted that “...we may ... feel free to pursue change in ways that seemed impossible while the ice of the status quo was locked up.” She wrote, aspirationally, that when the crisis is over “[w]e may have a profoundly different sense of ourselves, our communities, our systems of production, and our future.”

Earlier this year, in the prestigious *Stanford Social Innovation Review (SSIR)*, the Monitor Institute team published a series of follow-up essays in January through March 2023 titled [What’s Next for Philanthropy](#). The continuing theme: It’s time for urgent and transformative change.

- **[Dysfunctional Nonprofit Boards: Key Warning Signs \(April 6, 2023\)](#); [Dysfunctional Nonprofit Boards, Continued \(April 13, 2023\)](#); [The Third Warning Sign of a Dysfunctional Nonprofit Board \(April 19, 2023\)](#)**

In [Eight Signs Your Board Might Be Dysfunctional](#) (February 2022, republished April 2023), two experts from the Center for Effective Philanthropy (CEP), President Phil Buchanan, and VP Kevin Bolduc, distill and dispense their long-time experience with operating nonprofits or foundations going “off track.” They’ve seen too many boards “that are disinterested or dysfunctional, creating distorted power dynamics, wasting precious resources, and landing on approaches that do not fully reflect the needs and solutions that communities see for themselves.”



In this April series, we discuss these important observations, point by point. “When boards work well,” say the authors, “they help organizations focus, strengthen their work, reinforce values of equity, and provide advice, energy, resources, and inspiration.” But, “[w]hen boards don’t work well, ... they can kill momentum toward important social progress.”

- [*New Treasure Trove of EO Guidance \(April 25, 2023\); More About the New EO Technical Guides \(May 4, 2023\)*](#)

Over many decades, the IRS had created and published a large library of research aids and training tools for its own Exempt Organizations (EO) specialists as well as for the general public.

Unfortunately, this vast treasure trove of information was hard to find.

The General Accountability Office, a few years ago, whose job it is to help the government operate more efficiently, recommended scooping it all up, bringing it current, and presenting it “in a more manageable, user-friendly, single-source.” And that’s exactly what happened, culminating in the release beginning in 2021 of the first batches of individual titles of the brand new “Exempt Organizations Technical Guide” series.

For the past two years, the Exempt Organizations and Government Entities Division of the IRS has been rolling out the first group of new documents in its [multi-year project](#) to overhaul and improve the agency’s guidance hub on the laws and procedures for tax-exempt organizations.

So far, an impressive 17 titles (of a projected 80 or so) have been released. [TG-0: Publication 5729 – Technical Guide Overview \[12-9-2022\]](#) is a 13-page road map to this important cache of newly organized and updated information.

Most recently, the IRS completed and released [TG 3-3: Publication 5781 – Exempt Purposes, Charitable 501\(c\)\(3\) \[3-20-23\]](#) 60 pp. PDF.

- [*Trending: Nonprofits Tossing Out Unsavory Names \(June 14, 2023\); More on Nonprofits Tossing Out Unsavory Names \(June 19, 2023\)*](#)

“Denaming” has become “... a way for cities and institutions for cities and institutions to [denounce or reckon with](#) contentious figures of the past.”

In the last few years, there has been an explosion of high-profile cases at the nation’s colleges and universities concerning the “honoring” of historical figures. For the most part, these previously prominent personages have not fared well at all when the dust settles in these complex deliberations.

Perhaps most remarkable of all is that this trend gained significant momentum beginning in the turbulent summer of 2020 even as the pandemic raged and campuses were shuttered.

Several weeks ago, the *San Francisco Chronicle*’s Rachel Swan told her readers about the [tricky dilemma](#) facing the University of California, Berkeley. After “more than a century and a half [cementing the reputation](#) of its [stellar] brand,” there is controversy bubbling up about the namesake of the institution – and, indeed, the entire city of Berkeley.



An 18th century Irish cleric – one George Berkeley, Bishop of Cloyne (1685-1754) – became world famous as a philosopher and poet. But he was also a slave owner and “espoused beliefs that, to modern sensibilities, are offensive and extreme”

Among the numerous locations and institutions around the world bearing his name is the University of California, Berkeley, and the city of Berkeley, California.

Bishop Berkeley had been dead for 100 years in the mid-1860s when California’s original land-grant university (the first campus of the UC System) and the town to be built around it were still in the planning stages. But his philosophical musings and poetry continued to attract admirers worldwide, including the founding trustees for this institution.

They were particular fans of Berkeley’s Verses on the Prospect of Planting Arts and Learning in America; its final stanza begins: “Westward the course of empire takes its way....” On a site visit to the stunning location one balmy day in May 1866, one of the trustees recalled and was so inspired by this poem that he suggested naming the entire project after the author. And that was that.

It’s not that people in California’s Bay Area are unaware of Bishop Berkeley’s beliefs and practices, or don’t care about the reputation of the namesake, but – well – it’s complicated. Suddenly, though, the actions of another university – a continent and ocean away – have stirred things up.

In April 2023, the Berkeley Library at Ireland’s oldest university, Trinity College Dublin, was “denamed,” notwithstanding the future Bishop of Cloyne’s strong ties with the institution as both a student and teacher. “After the Black Lives Matter movement and controversies at other college campuses in the US and UK, there has been a renewed focus on links to slavery,” according to the *Irish Times*. And so, at the particular urging of Trinity’s student body, the name was tossed.

So we watch and wait to see what, if anything, happens over here on America’s west coast, noting that, in January 2020, the name “Boalt Hall” was struck from the main building of the law school at UC Berkeley. The 19th-century honoree, John Henry Boalt, had decidedly unsavory connections.

There is a rapidly developing and impressive collection of resource materials to guide institutions of higher learning through these emotionally charged decisions as well as for the equally tricky process of “renamings.”

Conclusion

Stay tuned for the next six months of posts. We’ll begin – picking up on the importance-of-advocacy theme of our January 27th post – with a review of the latest news on the Public Service Loan Forgiveness Program (PSLF).

Just yesterday, the National Council of Nonprofits cited the PSLF as “an ideal example of how nonprofit advocates have advanced the underlying public policy, preserved the support of policymakers and the public, and worked to ensure the promise of earned loan forgiveness becomes a reality for millions of workers.” See *Preserving, Improving, and Promoting the Public Service Loan Forgiveness Program – For the Public Good* (July 10, 2023) *Nonprofit Champion* [“Effective advocacy comes in many forms, addresses diverse audiences, and requires the use of different skill sets over time....”]



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