

**ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN**

**CHARITIES SYMPOSIUM
ALBANY, NY
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A little about us . . .



New York State Attorney General

Eric T. Schneiderman

***“OUR JOB AS A REGULATOR ISN’T
JUST TO GO OUT AND CATCH BAD
GUYS, IT’S ALSO TO HELP THE
GOOD GUYS CONDUCT THEIR
BUSINESS EFFICIENTLY AND
EFFECTIVELY.”***

NONPROFITS



NY NONPROFITS-ECONOMIC AND SOCIAL ENGINE

- 18 % of private sector New York work force; 1.3 million employees (Office of State Comptroller 12/16 report)
<http://www.osc.state.ny.us/press/releases/dec16/120716.htm>
- 80,000 organizations in state; 5000 in Capital Region
- Capital Region: 80,000 employees (NYCON Hopkins study)
 - Between 2003 and 2013-13,000 new nonprofit jobs; 7200 net government jobs lost
 - \$3.1 billion in wages paid per year

PROTECTING AND SUPPORTING NONPROFIT SUCCESS

- Supporting donor generosity
- Protecting charities' assets and endowments
- Protecting charities' independence
- Protecting charities' reputations
- Holding professionals accountable

Supporting Donor Generosity

- Changes in donation methods and patterns
- Role and Importance of respect for donor intent
- Supporting development efforts
- How donor can make a difference
- Encouraging and supporting gifts
 - Wills providing charitable remainders
 - bequests
 - cy pres (“as near as possible”) responsibilities
 - Social media giving

“Philanthrocapitalism”

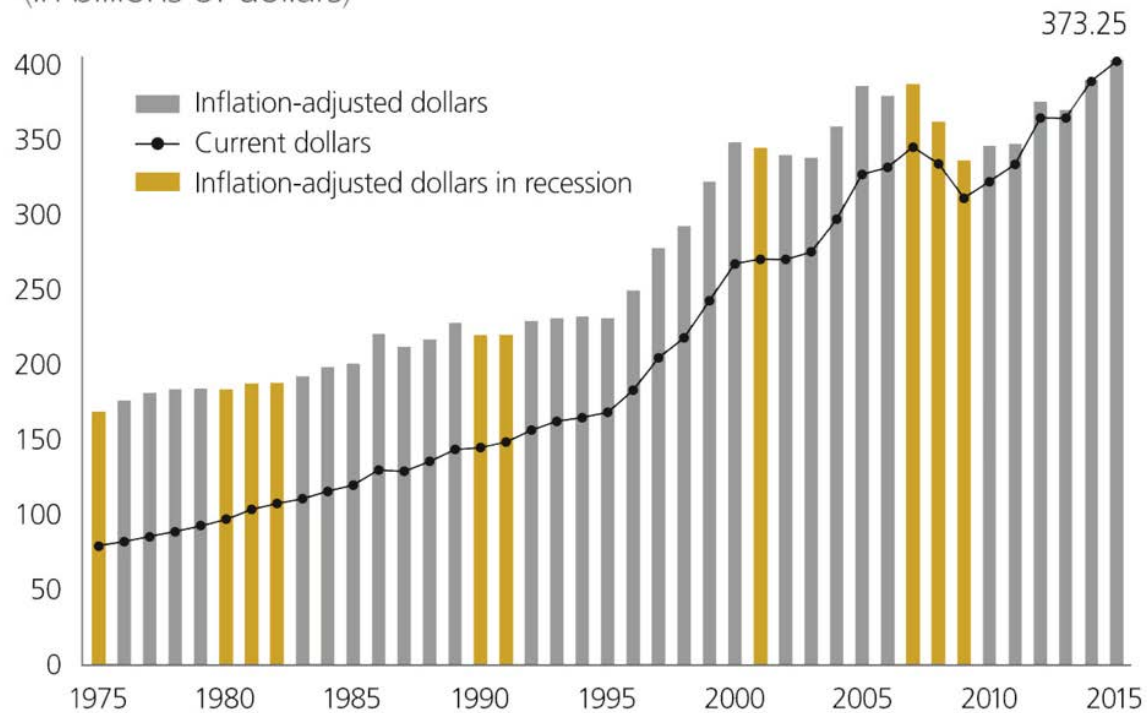
- Gates, Zuckerberg, Bloomberg, Soros, Buffet
- Metrics, effective organization
- Michael Green-Philanthrocapitalism: How Giving Can Save the World(2009) hyperagents-individuals who can do what would otherwise take a social movement
 - vs.
- Gary Jenkins-philanthrocapitalism has “amplified the voices of those who already weald substantial influence, access, and power.”

Largest Private Foundations by Assets

- Gates Foundation \$42.3
- Ford Foundation 11.2
- Kamehameha Schools 11.1
- Getty Trust 10.5
- RW Johnson Fdn. 9.5
- Hewlett Fdn 8.7
- WK Kellogg Fdn 8.2
- Lilly Endowment 7.7
- Moore Fdn 6.4
- Packard Fdn 6.3
- Mellon, MacArthur, Pew, Bloomberg, Helmsley, Rockefeller, 6 others between \$3-6 billion

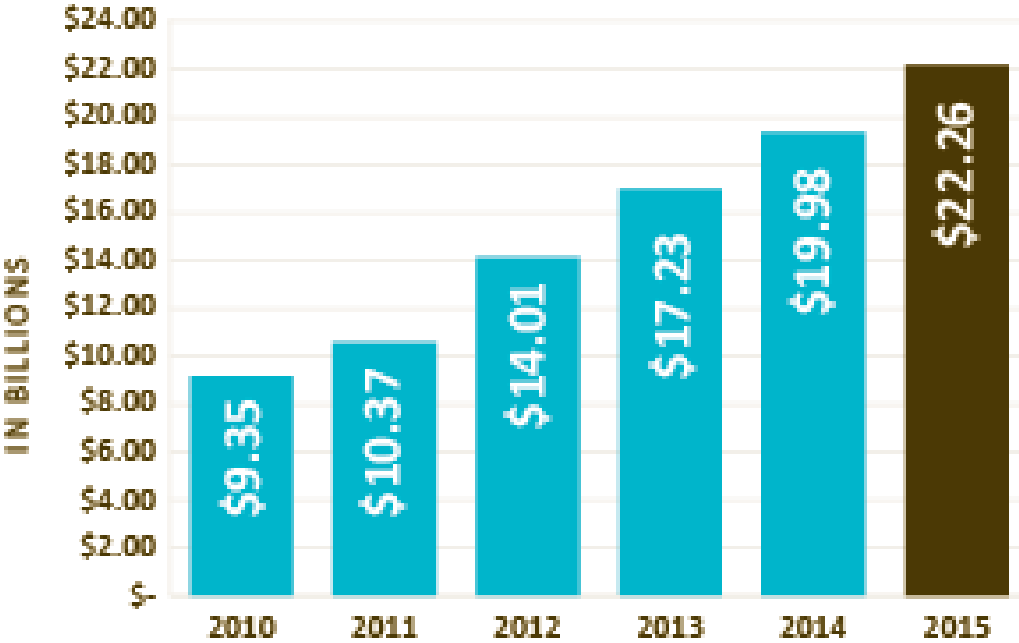
GIVING

Total giving: 1975–2015
(in billions of dollars)

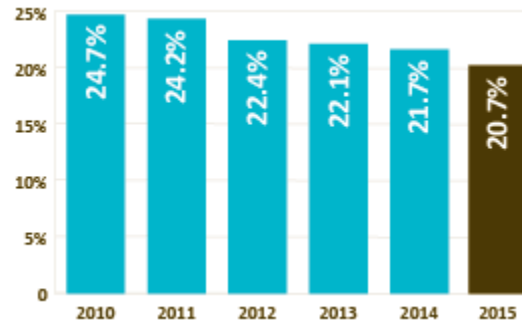


SOURCE: Giving USA Foundation | *GIVING USA 2016*

GIVING TO DONOR-ADVISED FUNDS



% OF Donor-Advised FUNDS DISTRIBUTED TO CHARITIES



Protecting Charities' Assets and Endowments

- Investing wisely-New York Prudent Management of Institutional Funds Act (NYPMFA)-written investment policy, delegation(<https://www.charitiesnys.com/pdfs/nypmifa-guidance2011.pdf>)
- Reviewing wisely-IRS 990 filings, independent auditor reports, management letters
- Responding to crises and bad acts
- Sunrises (new projects) and sunsets (time to discontinue or merge old activities)
- Protecting restricted endowments

Bad Things Happen to Good People

- With IRS 990 data, much more visible to public and regulators this year
- Common (bad) reactions:
 - We can't tell our members
 - We can't tell our towns and villages
 - We can't tell the public
 - We can't tell the Comptroller
 - Let's just hope no one notices
 - He is a good guy who made some mistakes
 - Give the embezzler the chance to resign quietly

Do you know this man (photo from Putnam Daily Voice)?



Michael Klein, New York's Largest Fire Company Thief-Guilty Plea

March 7 2017

- 13 years of embezzlement by Mahopac VFD treasurer (2002-2015)
- Treasurer wrote 275 checks for more than \$5.7 million to his two businesses, Abbie Graphic Services and Buckshollow Emergency Equipment Corp.(clear conflict of interest, clear related party transaction in violation of NPCL)
- \$5.6 million
- 55 foot yacht, jewelry, home in Florida, antique fire truck
- Sentencing June 21

Mahopac VFD IRS 990

- 2014 Return \$2 million in revenue, \$2 million in expenses
- Signed by thief Mike Klein (treasurer and embezzler)
- Signed by preparer, CPA JER
- Did the organization become aware of a significant diversion of its assets during the year? No.
- Document meetings? No
- Conflict of interest policy? No
- Only two officers-no directors

Mahopac VFD IRS 990

No review was or will be conducted

No documents available to the public

BAD THINGS HAPPEN TO GOOD PEOPLE

- United Methodist Church of Manlius



John Osborn/Mary Meyer



2008

- John Osborn-volunteers as head of Finance Committee
- Mary Meyer, Attorney and CPA -volunteers as Treasurer
- Embezzled \$444,000 in endowment funds.
- Mary-3-9 years
- John-5-15 years
- Osborn-convicted of a similar scheme in 1992, when he was treasurer of the Camillus Housing Authority. He was sentenced to five years' probation and repaid the \$120,000.
- Mary disbarred 2014

Island Child Development Center

- State-funded Queens preschool for developmentally disabled
- State comptroller notifies executive director of planned audit
- When auditors arrived, ED quit and fled with records
- Auditors unable
- ED pled guilty to first degree grand larceny; awaiting sentencing
- Estimated loss-\$12.4 million
- Independent Auditor pled guilty; awaiting sentencing

PREVENTING EMBEZZLEMENT- MANAGING ACCOUNTS

- Segregation of duties in managing receipts and payments
- Restricted funds are identified, segregated, controlled
- checks and cash are banked regularly and promptly;
- check books are kept in a safe place;
- no one is pre-signing blank checks;
- there is a clear policy for the use of credit cards, the criteria for their application, issue, spending limits and security;
- dual authorization arrangements are put in place if making Electronic Funds Transfers (EFT), Automated Clearinghouse (ACH) Payments or electronic checks and transfers and other payments;
- only specifically authorized individuals are able to set up arrangements to make payments by standing order, direct debit or Electronic Funds Transfers (EFT) and Automated Clearinghouse (ACH) Payments. This authority should be limited to a small number of people with a list of authorized individuals drawn up and retained

Responding to Embezzlement

- Investigation of events
- Notice, engagement of board
- Communication strategy-internal, donors, external
- Referral for consideration of prosecution
- Insurance coverage and notice/claim to insurer
- Recovery from perpetrator
- Address risks going forward, needed policies and procedures with auditor
- If AG writes your institution, please respond

Protecting Charities' Independence

- Governance by boards-
- Conflict of interest disclosures- formal conflict of interest policy in bylaws
- Related party transactions records
- formal whistleblower policy consistent with requirements
- Independent Audit Committee (no member is employee of organization)
- Conflicts of interest or whistleblower determinations by “independent directors”
- Consideration of relationships with for-profit entities

New York's Approach to Independence-from Duty to Rule

- Primary regulation by private parties
- Positive obligations with consequences
 - Independent audit committee /work plan
 - Auditor/preparer
 - Loans to officers
 - Whistleblower protection
 - Compensation to officers

Protecting Charities' Reputations

- Searchable registration and reporting
- Guidance documents
(https://www.charitiesnys.com/guides_advice_new.html)
- Fundraisers (pennies for Charity Report; fundraiser project)
- Bogus charities (National Vietnam Veterans Foundation)
- Avoid use of charity name for unauthorized or unsupervised fundraising (clothing bins)
- Commercial co-venture activities
- Gift acceptance policies

Holding Professionals Accountable

- Attorneys
- Independent auditors
- Fundraisers, fundraising counselors

Attorneys' Ethical Duties (22 New York Code of Rules and Regulations Part 1200)

- Competence
- Diligence
- Communication
- Reporting up to Board
- Truthfulness

Auditor Duties

- Independence
- Opinion on financial statements
- IRS 990 certification
- Work papers supporting opinion
- professional obligation to make additional disclosures concerning illegal acts that have come to its attention to those charged with governance
- Professional obligation to report significant deficiencies and material weaknesses in internal controls identified during the audit

For-profit Fundraiser Duties (13 New York Code of Rules and Regulations 93)

- Registration of fundraiser
- registration of solicitors
- Delivery of fundraising contracts to AG
- Annual reports
- Accurate reporting on each fundraising campaign
- Disclosures to persons being solicited
- Truthtelling
- See our guidance:
<https://charitiesnys.com/pdfs/Hiring%20a%20Professional%20Fundraiser.pdf>

HOW WE WORK WITH CHARITIES

- Searchable Public Registry for charities information: www.charitiesnys.com
- How-to Guides for governance and operations: www.charitiesnys.com/guides
- Advice and assistance:
 - (212) 416 8401 or charities.bureau@ag.ny.gov