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# How to Protect Your Nonprofit From Controversial Donors

By Jim Rendon

*Chronicle reporter*

SPENCER PLATT/GETTY IMAGES

In May 2019, the Metropolitan Museum of Art announced it would no longer accept donations from members of the Sackler family whose wealth is tied to the sale of opioids.

In March 2018 the artist Nan Goldin, who struggled with a three-year-long addiction to the painkiller OxyContin, staged a protest at the Metropolitan Museum of Art in New York. Her group, Prescription Addiction Intervention Now, or PAIN, dumped medicine bottles with labels reading "Prescribed to you by the Sackler family" into the reflecting pool at Temple of Dendur in the museum's Sackler Wing.

The Sacklers, who have been donors to cultural institutions around the world, own Purdue Pharma, which developed and sold OxyContin.

The company has been sued by thousands of cities and counties as well as most states over the crisis of opioid addiction and overdose deaths. Members of the Sackler family are also named in the lawsuits.

Goldin's group has kept up the pressure for more than a year at the Met and at other museums. This May, the Met announced it would no longer accept money from the Sacklers. However, the museum refused to remove the family's name from the wing, which was built with a gift made long before the company began producing opioid painkillers.

Donor controversies are popping up at many nonprofits. Sometimes donors once considered desirable, like the Sacklers, have become toxic. In other instances, groups have pursued contributions from deeply problematic individuals, and now, thanks to some activist groups, the

whole idea of what is acceptable is shifting, and nonprofits are struggling to catch up.

This summer, new charges were lodged against financier Jeffrey Epstein, who had been convicted of a sex crime with a minor in 2008. He faced new allegations of continued and extensive sexual abuse of minors. This month, the influential head of MIT's Media Lab resigned over his decision to accept gifts from Epstein that he later tried to hide.

Earlier this year, activists from the collective known as Decolonize This Place staged a series of protests at the Whitney Museum of American Art that resulted in board member Warren Kanders's resignation. Kanders was targeted because he owns a company that makes tear gas that was used on migrants at the southern border.

The group wants the public to be an equal part of the decision-making process at organizations that receive government grants and tax-deductible donations. It also calls on organizations to stop allowing rich people to burnish their reputations by donating large sums to cultural institutions and urges these groups to rethink their need for such big donations.

Amin Hussein, a core organizer with Decolonize, says people are more aware of racism, wealth disparities, and sexism than in the past, and many institutions are unaware of the inconsistencies that people see among their donors, board members, and mission. Nonprofits, he says, are "out of touch with what's happening on the street."

Some institutions are listening. "We have an obligation to answer [the protesters]," says Daniel Weiss, CEO of the Metropolitan Museum of Art. "We do not, however, run scared and say, 'Oh no, we better do something before they show up the next time.'"

Instead, the museum should consider the facts, he says, develop its own viewpoint and then "engage thoughtfully with them and others as to why our view is what it is."

Fundraising scandals are not uncommon, but this moment is different, says David Allyn, vice president of Graham-Pelton, a nonprofit consulting firm. More organizations are competing for a finite pool of dollars, and more wealthy people with questionable motives are seeking status through philanthropy at a time when social media has become a central means of communication.

"The social-media environment is attack first, think about the complexity later," he says. "All of those factors combined are putting enormous stress and strain on nonprofit organizations."

### **Dig Deeper to Vet Donors.**

No one can mitigate all risk associated with fundraising — it's impossible to predict donors' behavior or to know everything about a donor — but there are steps organizations can take that will help.

Many large nonprofits employ prospect researchers who uncover as much as they can about potential major donors before they make a gift. Apra, which represents those researchers, has about 2,000 individual and institutional members. Researchers consider a broad range of information — how potential donors made their money, whether they actually have the money to contribute, and which other institutions they have given to. They also look at public court documents.

Robin Rone, the organization's president, says that her members are starting to research prospective donors more extensively as a result of these scandals. They are digging into family backgrounds to understand the historic nature of a potential donor's wealth. And they are monitoring the media more closely to identify news stories that may affect the donor.

"When you get a handful of big, really ugly, difficult cases, organizations look harder at what their due diligence practices are," she says.

And for researchers, it can be tricky to determine what might constitute a conflict or raise a red flag. "An organization doesn't often write down a list of things that they are and are not OK with, so there's really a lot of gut and intuition that comes into vetting," says Lindsey Nadeau, the director of research and relationship management in the development department at George Washington University. "We do work that's grounded in data science, but we also do work that is grounded in intuition."

### **Develop gift-acceptance policies based on your values.**

Organizations can struggle to determine who is and who is not an acceptable donor: The issue is far from simple. Some groups may steer clear of money they deem tainted — some charities once refused Rockefeller donations on moral grounds, says Leslie Lenkowsky, professor emeritus at Indiana University.

But other groups may be more open to controversial supporters. "If taking money from a donor that some might regard as less than righteous enables an organization to fulfill its mission properly, that deserves a certain amount of respect, especially if there are procedures in place to review these gifts before they're accepted," he says.

Experts say that groups should have detailed gift-acceptance policies that outline which kinds of gifts are acceptable and which are not, what may constitute an unacceptable donor, and even what to do when a donor becomes tainted. But few organizations have such comprehensive policies, says Paul Dunn, a professor of business ethics at Goodman School of Business at Brock University.

Even the Met, which revamped its gift-acceptance policy in May, when it stopped taking money from the Sacklers, does not broach these thornier issues in its publicly available policy.

Gift-acceptance policies tend to focus on issues that are easier to spell out in black and white — things like the kinds of gifts an organization will or won't take and broad rules such as not allowing donors to have a say in staffing, for example.

When crafting a gift-acceptance policy, examine your values, says Dunn, and work from there to ensure that you accept only the gifts that are in line with your mission. "If your value is to just accept money because you'll do good with it, well, fine. Then that's your value," he says. "But if your value is being consistent with your beliefs about what is best for society, then you may have to turn away some large donations."

Which donors are deemed acceptable can vary a lot from group to group and place to place. For example, Monsanto is a generous and controversy-free sponsor in St. Louis, says Brent Benjamin, director of the Saint Louis Art Museum and president of the Association of Art Museum Directors. But in other parts of the country, the company might be controversial because it manufactures herbicides and produces genetically modified seeds.

At the Met, Weiss does not plan to make any big changes to the kinds of gifts the museum accepts. It will not screen donors based on politics, for example. "We're not going to start subjecting people to some kind of litmus test. But there is a threshold. We will not accept gifts from known criminals. We would not accept gifts from organizations whose mission is antithetical to ours," he says.

"On the other hand, it's not so clear where you draw that line. So each institution has to sort that out in a way that's consistent with its mission," he adds.

And nonprofits shouldn't be afraid to turn down some donations, says Michael Glickman, the former director of the Museum of Jewish Heritage. He has turned down many gifts before. Sometimes the needs of the institution and the individual are not a good fit, he says. For example, he has never accepted a gift that allows a donor to control hiring. But turning down a gift can be tougher than soliciting one, he acknowledges. "Hopefully you are not destroying the relationship."

### **Larger organizations should expect greater scrutiny.**

Public interest and media attention can vary significantly depending on the size of an organization or how the donor is recognized.

For example, the Hasty Pudding Institute of 1770, a Harvard University theater troupe, listed a gift of \$50,000 or more from the Jeffrey Epstein VI Foundation on its 2014 donor list. And tax filings from Gratitude America, another Epstein foundation, show that the theater group received \$50,000 in 2016.

According to the *Harvard Crimson*, Epstein appeared on its 2018 list of donors, too. After *Crimson* reporters contacted the group, the page listing was deleted from its website and replaced by a 2019 donor list that did not include his name. Hasty Pudding's donor lists from 2015 through 2018 are not available on the Internet Archive.

Representatives from the Hasty Pudding Institute did not return emails seeking comment.

Large organizations tend to face much greater scrutiny. The Smithsonian Institution was pressured over its relationship with recently deceased billionaire David Koch, who served on the advisory board of its National Museum of Natural History. In 2015, nearly 150 scientists signed on to a letter asking science museums to cut ties with the fossil fuel industry and with Koch, who supported groups that question climate science.

Koch stayed on the board, and his ties to the Smithsonian remain very public even after his death. The museum recently opened its David H. Koch Hall of Fossils — Deep Time.

In an emailed statement, the Smithsonian said that it is reviewing its gift-acceptance policy and that its exhibits are based on peer-reviewed science. It also has a vetting process for "gifts from donors whose reputation, mission, values, or programs are inconsistent with or may appear to be inconsistent with the reputation, mission, values, or programs of the Smithsonian."

Koch's gift was reviewed and approved.

### **Construct naming agreements with great care.**

The most public kinds of donor relationships — when a name graces a building or an exhibit — can draw the biggest backlash. As a result, some groups are starting to change their naming agreements. Some are limiting naming rights to 20 or 30 years. In 2011, the Smithsonian changed its policy to limit rights to just 20 years, for example.

Jeffrey Tenenbaum, chair of the nonprofit organizations practice at the law firm Lewis Baach Kaufmann Middlemiss, who has counseled nonprofits for 20 years, says organizations should consider how to protect themselves if a current or past donor becomes problematic. In agreements for naming rights, and even corporate sponsorships, Tenenbaum would like to see nonprofits propose language that would allow them to back out of naming-rights obligations or other public acknowledgments if the donor does something far outside the bounds of acceptable conduct. The language can be focused on the very worst kinds of behavior, he says.

Without a clause like that, organizations may not be able to remove the name of even a terrible offender without risking a lawsuit. Or they might have to return the money if they choose to remove the name. (He does not recommend including language that would obligate a group to return funds under some circumstances as that could negate the tax-deductible status of the donation.)

However, such a request could alienate donors. "I think it becomes wildly challenging to be able to have a conversation with the funder that talks about their morality at a time when you are asking them to do something generously and with their own resources," says Glickman.

But Tenenbaum says it can be a starting place for a conversation between the donor and the institution about what to do if something does go wrong and could help both parties come to an agreement that works for everyone. And it may ultimately help the institution. "If you negotiated pretty good provisions in your gift agreement, you're going to have a lot more options at your disposal," he says.

### **Leaders have to make tough calls.**

Ultimately, questions and concerns about donors' behavior and their potential to inflict damage on beloved public institutions are subjective and even personal for nonprofit leaders.

The Met's Weiss, speaking for himself, not his museum, says that ethics should drive fundraising. "I would never, ever hesitate about turning down money if it's not consistent with who we are," he says.

He is amazed by revelations about institutions, particularly large ones, that accept money from donors with deeply problematic histories. "It's stunning to me. It isn't worth it," he says. "I think that, frankly, is a failure of leadership any time an institution does that."

*Jim Rendon is a senior writer who covers nonprofit leadership and fundraising for the Chronicle. He recently wrote about how low pay hurts nonprofits and workers and about the challenges that nonprofit leaders of color face. Email Jim or follow him on Twitter .*

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1255 23<sup>rd</sup> Street, N.W.  
Washington, D.C. 20037