

1 Introduction

From Alexis de Tocqueville's (1969) well-known chronicle of the United States in the early 1800s, *Democracy in America*, we know that associational, or nonprofit, activity, is a long-standing feature of American culture. And, with the nonprofit sector currently employing approximately 10 percent of the nation's private (i.e., nongovernmental) workforce, behind only "retail trade" and "accommodation and food services" and ahead of "manufacturing," this sector remains an important part of the nation's economic and social life today (Salamon and Newhouse, 2020). With the sector's importance and its general popularity with the public, it is not surprising that in recent decades sector leaders have managed several important public policy victories at the federal level (e.g., the enactment of the mandate that nonprofits paid with federal funds should receive at least some reimbursement for overhead expenses) and fended off a few serious attacks on sector interests (e.g., proposals to cap the deductions that can be itemized by wealthy taxpayers).¹

However, at the same time that nonprofit leaders have achieved some advocacy successes, they have also been frustrated by their inability to advance sector interests even further, including in the face of the damage to sector interests sustained by the passage of the 2017 Tax Cuts and Jobs Act (TCJA) that is described in this Element.

Why has this important and generally popular nonprofit sector not done better in its public policy advocacy efforts? To address this puzzle, this Element examines the recent history and contemporary practice of federal-level, nonprofit sector-wide advocacy, defined as the work done by nonprofits, and especially national, nonprofit infrastructure organizations and national charities, to advocate on issues that apply to a broad cross section of the charitable (i.e., 501(c)(3)) portion of the nonprofit sector, spanning nonprofit health, education, human service, and other subsectors.² As discussed further in Section 3, among these federal, sector-wide issues that are of concern to nonprofit leaders are tax breaks for charitable donations and regulations concerning nonprofit lobbying and engagement in elections.

¹ On the sector's popularity, an Independent Sector (2021) report indicates that in 2021, 84 percent of survey respondents said they are confident in the ability of nonprofits to strengthen American society, and 57 percent of the public trusts nonprofits to do what is right. Trust in the nonprofit sector remains higher than in some other institutions in the United States, including government and the media, but has generally declined over the last decade as it has for many other institutions. See also various annual reports on the Edelman Trust Barometer (Edelman, various years). For another discussion of the nonprofit sector's recent policy record, see Abramson (2016).

² Nonprofit infrastructure organizations support other nonprofits by improving their effectiveness and representing them in the policymaking process. For more on nonprofit infrastructure organizations, see Abramson and McCarthy (2012).

Federal-level, nonprofit sector-wide advocacy is currently dominated by five, major, national, nonprofit infrastructure groups – the Council on Foundations (COF), Independent Sector, National Council of Nonprofits, Philanthropy Roundtable, and United Philanthropy Forum – and they sit at the center of this analysis (see Section 2 for short descriptions of the five organizations). So too do several of the major national charities, such as United Way Worldwide, Jewish Federations of North America, and the YMCA of the USA, whose policy staffers have also taken an active role in promoting policies related to charitable giving. Several ad hoc and long-standing coalitions, such as the Charitable Giving Coalition and Leadership 18, involving many of the organizations named above in this paragraph, have been an additional important feature of the advocacy landscape.

The Element is based on telephone interviews, averaging about one hour in length, with thirty-nine individuals – twenty-one with current or former staff or consultants to national, nonprofit infrastructure organizations or other national charities, ten with current or former congressional staff, and eight with state-level advocates. One individual was interviewed three times, two individuals were interviewed twice, and on two occasions two individuals were interviewed together. We assigned interviewees to one of the two categories – nonprofit or congressional staff – based on their primary perspective during their interviews. Note that several interviewees have had significant experience in both nonprofit and congressional staff positions, and were difficult to place in only one of the two categories. Interviewees were promised anonymity to encourage their candor in discussing their own and their colleagues' advocacy activities, and so are not quoted by name in this Element. In addition to interviews, we drew on published papers from national infrastructure organizations and journalistic accounts of nonprofit sector-wide advocacy generally and of advocacy related specifically to the 2017 TCJA and congressional action in 2020 around COVID-19 relief and economic stimulus.

The Element largely covers new ground that is not addressed in the existing literature. This study takes a historical approach in contrast to many nonprofit research projects that employ social science methods.³ Studies of nonprofit advocacy are increasing, but many analyses focus on advocacy by individual nonprofit organizations or on advocacy for subsector interests in fields such as healthcare, education, and the arts.⁴ On nonprofit sector-wide advocacy, the work of historian Peter Dobkin Hall is relevant, especially his 1992 book, *Inventing the Nonprofit Sector*, but Hall's work does not cover the most recent

³ Social science papers dominate the content of the nonprofit research field's major journal, *Nonprofit and Voluntary Sector Quarterly*.

⁴ For a recent review of research on nonprofit advocacy, see Suarez (2020).

decades of sector-wide advocacy. Alan Abramson's 2016 article in *Nonprofit Policy Forum* describes the major obstacles to nonprofit sector-wide advocacy, but is a shorter treatment that does not contain the discussions of advocacy strategies and tactics and case study details that are included in this Element. A 2021 paper by Williams and Doan, also in *Nonprofit Policy Forum*, focuses largely on the evolution of one important advocacy organization, Independent Sector.

This Element also makes a significant contribution in its analysis of the friction between two models of nonprofit advocacy, one emphasizing nonprofits' public-interest orientation and the other highlighting nonprofits' attention to their own private, particular organizational interests. That is, one of the central tensions that defines the nonprofit sector in the United States is that it is organized around the promotion of the public good and yet relies on voluntary institutions with their own distinct organizational concerns.

This tension is especially evident in nonprofit sector-wide advocacy, the efforts of the nonprofit sector to advocate on issues that apply to a broad cross section of nonprofit organizations, spanning nonprofit subsectors. On the one hand, many nonprofit advocates regard their advocacy efforts as uniquely characterized by the attempt to promote the public interest. On the other hand, this advocacy can also be understood as no different from that of other trade associations promoting their own particular interests. The story of the continuing tension between the "public good" and "trade association" models of nonprofit advocacy is a central feature of this Element.

In focusing on issues that apply to all or almost all nonprofits, the Element does not address nonprofit subsector policy issues, such as those related exclusively to health, education, or arts nonprofits. Although it does not completely ignore work done at the state and local level or directed toward federal agencies, its concern is largely federal-level, nonprofit sector-wide advocacy targeting Congress within the last decade and a half.

The Element chronicles the development of the current nonprofit sector-wide advocacy landscape. It begins by introducing major, federal, sector-wide advocates, including the "Big Five" advocacy organizations, and noting the broad range of issues considered by nonprofit advocates to be sector-wide; it sketches out the current state of resources devoted to nonprofit sector-wide advocacy by the organizations most active in engaging those issues and describes the tactics and strategies advocates deem most effective, with a particular emphasis on developing and coordinating "grasstops" local champions of nonprofit sector-wide issues. It then considers the two, distinct conceptions of nonprofit sector-wide advocacy – the first which understands nonprofit sector advocates as constituting interest groups, similar to those representing the institutional

interests of business-related industry groups, and the second which regards nonprofit sector advocates as engaged in a distinctive enterprise, based on the principle that, unlike other industries, nonprofits' primary interest is the public good.

Next, the Element discusses the challenges faced by nonprofit sector-wide advocates in cultivating champions and in navigating partisanship. It then chronicles one of the most significant developments in the recent history of nonprofit sector-wide advocacy: the fracturing of a centralized advocacy infrastructure and the growth of informal, issue-based coalitions, exemplified by the Charitable Giving Coalition. It then details two, short case studies in which many of these dynamics are exhibited: sector-wide advocacy during the TCJA, and advocacy in relation to congressional stimulus legislation in response to the coronavirus pandemic. Next, it briefly considers sector-wide advocacy in relation to campaigns for philanthropic reform. It ends with a discussion of recommendations for strengthening nonprofit sector-wide advocacy and brief reflections on what current dynamics suggest about the future of this advocacy.

2 Major, Federal, Sector-Wide Advocacy Organizations

Much of the advocacy on federal, nonprofit sector-wide policy issues discussed in this Element was conducted by five national nonprofit infrastructure organizations: Independent Sector, the National Council of Nonprofits, the Council on Foundations the Philanthropy Roundtable, and the United Philanthropy Forum. The following are short descriptions of these “Big Five” advocates, as some of our interviewees referred to them, along with some other coalitions and organizations that are important sector-wide advocates.

2.1 Independent Sector

Independent Sector (IS) was established in 1980 with the mission of serving as a “vital meeting ground” that brings together foundations and corporate giving programs, which might also belong to the COF, with other nonprofit organizations. Today, IS's membership totals approximately 465 grant makers and grant seekers, including the Ford Foundation, Bill and Melinda Gates Foundation, William and Flora Hewlett Foundation, YMCA of the USA, Boys & Girls Clubs of America, and United Way Worldwide, for example. Today, IS's strategic priorities include advancing the health of the nonprofit sector; building a community “to ensure all people thrive”; and, especially relevant for this Element, advocating on sector-wide, nonprofit public policy issues. The organization reported 2022 spending of \$11.0 million to advance these goals. During most of the period covered in this Element, IS was led by Diana Aviv and Dan

Cardinali, with Akilah Watkins becoming IS's new president and CEO in January 2023.⁵

In response to new restrictions on foundations imposed by the 1969 Tax Reform Act, John D. Rockefeller III and other philanthropic leaders sought ways to bolster the foundation community and protect it from future policy attacks. To do so, these leaders supported the establishment in the mid-1970s of the Commission on Private Philanthropy and Public Needs (the Filer Commission), led by John Filer, CEO of the Aetna insurance company, which undertook a comprehensive assessment of the nonprofit sector. In its work, the Filer Commission supported the notion that foundations and the more popular, service-providing nonprofits from all subsectors were part of one nonprofit sector, a perspective that offered beleaguered foundations some of the cover and protection they sought (Abramson and McCarthy, 2012).

An important commission recommendation called for the establishment of a quasi-governmental body as “necessary for the growth, perhaps even the survival of the sector as an effective instrument of individual initiative and social progress” (Filer Commission report quoted in Abramson and McCarthy, 2012). When both government and philanthropic leaders balked at creating a new entity with official links to the government, a new private organization, Independent Sector, was formed through the merger of the National Council on Philanthropy and the Coalition of National Voluntary Organizations. The need to respond to critical public policy challenges posed by Reagan administration policies in the early 1980s and hostile hearings led by Senator Charles Grassley in the 2000s led to the strengthening of Independent Sector as an important advocate on sector-wide issues (Abramson and McCarthy, 2012).

Because of its membership and funding base and perhaps as a trade-off for becoming a strong voice on sector-wide issues, throughout much of its history Independent Sector has been seen as a voice especially of big, national nonprofits and foundations and as working to defend the nonprofit sector as it already exists (Williams and Doan, 2021). According to this critique, Independent Sector has shortchanged local, reform-oriented, social justice organizations in much of its policy and other work.

2.2 National Council of Nonprofits

The National Council of Nonprofits (the National Council or NCN), formerly the National Council of Nonprofit Associations (NCNA), was established in 1989 as a “network of networks” that brings together the nation's state and regional nonprofit associations, which themselves are membership

⁵ <https://independentsector.org/>

networks. Today, the National Council's network includes more than 50 state nonprofit associations and similar organizations representing 25,000 diverse nonprofits around the country. The National Council of Nonprofit's 2022 spending for its policy and other work totaled \$2.2 million. In recent decades, the National Council has been led by Audrey Alvarado and, since 2008, by Tim Delaney.⁶

While Independent Sector has been seen as representing big nonprofits – and foundations – and especially focusing its work at the federal level, the National Council's constituency tilts toward small and medium-sized nonprofits in local communities, and the organization supports and undertakes advocacy and lobbying at the local, state, and federal levels to strengthen nonprofits.

The state nonprofit association movement gained momentum in the 1980s and 1990s with “devolution,” the push by the Reagan administration and its allies to shift policy authority from the federal to the state level (Reid, 1999; Abramson and McCarthy, 2012). According to nonprofit expert Dennis Young, federal devolution initiatives seemed “to be the same kind of catalyst for organizing nonprofits at the state level in the 1990s that congressional attacks on foundations in the 1960s were for galvanizing collective action by the sector at the national level” (Young, 1999, cited in Abramson and McCarthy, 2012). As state nonprofit associations emerged, many of them became part of Independent Sector's network. Eventually, however, Independent Sector declined to be the hub for these organizations, and they subsequently formed their own association, then called the National Council of Nonprofit Associations, in 1989 (O'Connell, 1997). Since then NCNA/NCN and Independent Sector have often been collaborators – and sometimes rivals – in their work as sector advocates.

2.3 Council on Foundations

The COF (the Council) is a national membership association that is a voice for its foundation members. The Council, which took its current name in 1964 but dates its origins to the 1949 establishment of the National Committee on Foundations and Trusts for Community Welfare, now counts over 850 members, including a mix of private foundations, community foundations, corporate grant makers, and other philanthropies. The Council, which reported 2022 spending of \$10.8 million, works to strengthen and encourage philanthropy, including through public policy advocacy, and increase public trust in foundations. In recent decades, the COF has been led by Dorothy Ridings, Steve

⁶ <https://www.councilofnonprofits.org/>

Gunderson, Vikki Spruill, and, since 2019, Kathleen Enright, the Council's current president and CEO.⁷

Reflecting its membership, the Council has largely focused its policy work on matters affecting its grant-maker members, leaving Independent Sector and other entities to take the lead in sector-wide advocacy affecting the large number of charitable nonprofits that are not foundations. The Council and some other elements of the infrastructure for the foundation community were established and reinforced at least in part because of the perceived need by foundations for a strong advocate for foundations in a policy environment that often seemed hostile to these entities. Through the 1940s, 1950s, and 1960s, foundations were often under attack for one reason or another, including by Senator Joseph McCarthy and his anti-communist allies who charged that foundations were facilitating un-American activities and by Congressman Wright Patman who argued that wealthy foundations were accumulating too much economic and other power (Hall, 1992).

While foundations avoided unfavorable legislation through much of this period of hostility, the 1969 Tax Reform Act (TRA) established some new constraints on foundations, including requiring a minimum payout of foundation assets; establishing a 4 percent excise tax on net foundation investment income, which was reduced in later legislation; and setting penalties for self-dealing in which foundation board members, members of a foundation donor's family, or senior foundation staff benefit from transactions with the foundation (Council on Foundations, no date). As noted in Section 2.1, in response to the 1969 TRA the often-maligned foundation community sought to wrap itself more tightly with the more sympathetic other elements of the charitable nonprofit community. This interest in developing a coalition of foundations and other nonprofits helped lead to the formation of Independent Sector whose members include both grant-making foundations and grant-seeking nonprofits (Hall, 1992).

Like some other associations whose value for networking purposes has been weakened by advances in technology that provide alternatives to in-person conferences as methods for connecting, the Council has had a decline in membership over the last decade, falling from around 1,800 members in the early 2010s to 800–900 members in the early 2020s (Abramson and McCarthy, 2012). Some of the decline is due to the departure of COF members to other infrastructure groups, with, for example, some foundation affinity groups and regional associations of grantmakers

⁷ <https://cof.org/>