As we move into the summer of 2016, I am struck by how "hot" the Nonprofit Organizations Committee has been this year.

Bad puns aside, our members have certainly been busy. We started the year with a reprise of the ever popular webinar series *Nonprofit Law for the "Non" Nonprofit Attorney* in January. At our Spring meeting in April (in Montreal) we learned that this series is about to spawn a book to be published sometime in 2017 and it is looking likely that a special program using that book will be presented at the 2017 Spring meeting in New Orleans. Our committee and subcommittee meetings were filled with vigorous discussion on a variety of topics ranging from bankruptcy protection for Catholic dioceses to how very experienced business lawyers who do not regularly practice nonprofit law tend to err when they take on nonprofit legal matters. Coming out of that meeting, J.J. Leitner of Davis Wright Tremaine solicited your experiences in resolving those sorts of errors through our listserv to analyze and report back to the committee.

We also have a small committee working on providing comments and recommendations to the ABA's Standing Committee on Pro Bono & Public Service on its suggestion for regulatory reform to more easily permit unclaimed class action funds to be paid over to access to justice organizations. That committee is focused on ensuring any regulatory reforms do not unnecessarily confuse or distort the *cy pres* doctrine as it continues to apply to charitable trusts. Anyone interested in participating can contact me.

Preparation for the annual Business Law meeting to be held September 8-10, 2016 in Boston has already begun. Our Committee's events will start Friday and run through Saturday. More details, registration links and the tentative schedule for the entire meeting can be found here: [http://www.americanbar.org/groups/business_law/events_cle/annual_2016.html](http://www.americanbar.org/groups/business_law/events_cle/annual_2016.html)

I am pleased that Lisa Hix of Venables has agreed to become our new chair of the Professional and Trade Associations Subcommittee and has planned a review of notable developments for the meeting. I have lengthened our Religious Organizations Subcommittee meeting because the thorough canvassing of important matters in that area led by Brendon Wilson (Caplin & Drysdale) always generates far more discussion than we have previously had time for. Alan Goldberger and Michael Malamut have been planning a presentation for the Athletic, Recreation and Affinity Organizations Subcommittee meeting on the impact on universities and other nonprofit educational organizations of unionization attempts by student athletes.

For the first time ever, I thought about posting this message on Facebook because the Committee's Program for the September meeting is *Chan-Zukerberg & Friends: Using Philanthrocapitalism to Accomplish Charitable Goals: Will Foundations Become an Endangered Species?* This will examine and perhaps act as a wakeup call to those of us working with the charitable sector, which will need to struggle with the manner high profile non-charitable organizations like the Chan Zuckerberg Initiative begin working in the areas which have largely been the preserve of charities or at least nonprofit organizations. What will the ability to do things charities cannot, divorced from much of the oversight and regulation that our sector labors under, mean to those left within that space and what lessons can be learned?

So please consider coming to the Boston meeting and reserve the evening of Friday, September 9, 2016 for the Nonprofit Organizations Committee dinner. Please note that this dinner is not included in the Section's list of dinners and more details of its location will be provided over the listserv. I would encourage
you to simply set aside that evening and then respond when the notice comes via the listserve.

As a reminder, we do make a conference telephone number available to all of you to join us remotely for most of the Committee/Subcommittee meetings. That information, together with a finalized schedule will be set out over the listserve to you closer to the September meeting date. This of course reminds me to ask you to check that you are signed up to receive emails over the listserve. To sign up to the listserve, just send an email to bl-nonprofit@mail.americanbar.org. Please also remember that each of the Subcommittees have their own separate listerves, which you need to sign up for separately.

I am also interested in whether any of you believe another method of communication (some form of social media?) would be useful in addition to the listserve. If any of you would like to be involved in working with ABA staff in setting up something like that for our Committee, please contact me.

I look forward to meeting or hearing from you.

David Tang
Chair, Nonprofit Organizations Committee

Decision 2016: Political Campaign Activities by Nonprofit Organizations in the U.S. and Canada - Rules, Limitations, and Reporting Obligations

At the ABA Business Law Section Spring Meeting in Montreal in April, the Nonprofit Organizations Committee co-sponsored with the Government Affairs Committee a panel on the issues raised by nonprofit involvement in political campaign activities, including legal compliance such as reporting obligations and tax-exemption considerations.

The panel included:

- Eric Gorovitz, Adler & Colvin, San Francisco, CA
- Amy Kellogg, Harter Secrest & Emery LLP, Albany, NY
- David P. Stevens, Gowling WLG, Toronto, Ontario
- Kenneth J. Young, Buerger, Moseley & Carson, PLC, Franklin, TN

The panel was chaired and moderated by Megan Christensen of Manatt, Phelps & Phillips, LLP, Washington, D.C.

The panelists provided a summary of U.S. tax law governing political activities by Section 501(c)(3) public charities. Ken Young began the session by explaining the fundamentals of nonprofit governance in the U.S. Eric Gorovitz then introduced participants to the specific U.S. tax rules that define permissible engagement by public charities in public policy advocacy, particularly with respect to elections. Amy Kellogg discussed the application of U.S. federal, state, and local campaign finance rules to such activities, and David Stevens discussed the Canadian approach to similar issues.

All of the meeting materials, including materials for this panel, have been posted
online and are available to Business Law Section members. To access the materials, login through your ABA membership and see the Spring Meeting website.

Nonprofit Athletic, Recreation and Affinity Organizations Subcommittee

By Alan S. Goldberger, Chair

The Nonprofit Athletic, Recreation and Affinity Organizations Subcommittee of the ABA Business Law Section's Nonprofit Organizations Committee recognizes that "sports law" has become a legal specialty unto itself. Those attorneys involved in the nonprofit sector of sports and recreational organizations often face a different universe of legal issues than counsel for professional athletes, team and leagues.

With that in mind, our Subcommittee's goal (no pun intended) is to advance knowledge of the significant body of codified and case law defining the legal parameters of regulating sports and participants; and to develop awareness of sport specific regulation as applied to interrelated areas of the law, including torts, contracts, administrative procedures, associations and corporations, antitrust, labor law, intellectual property, taxation, and criminal law.

At the upcoming Annual Meeting of the Business Law Section in Boston this Fall, our Subcommittee meeting will feature a panel of attorneys discussing two recent National Labor Relations Board decisions that impact college and high school sports. Please join us in Boston for: "A Flying Wedge? The 'Union' of Sports Law & Labor Law in Intercollegiate and Interscholastic Athletics."

The legal high hurdles of representing nonprofit sports organizations, governing bodies, leagues, municipal recreation agencies, school athletic departments and related organizations present unique challenges to attorneys who may not be conversant with the environment of the sports entities. To help meet these challenges, our Subcommittee plans to build upon past programs and develop new programs. With a membership of 75+ and growing, the Nonprofit Athletic, Recreation and Affinity Organizations Subcommittee will reconvene in Boston this Fall. Speaking and publishing opportunities abound. You can join our sports law "team" today. Contact Al Goldberger, Chair at 973-301-1900 or alan@RefLaw.com.

New Attorney General Enforcement Powers in California

By David A. Levitt, Adler & Colvin, San Francisco

Effective January 1, 2016, California adopted regulations addressing enforcement of the California Supervision of Trustees and Fundraisers for Charitable Purposes Act. The regulations significantly increase the Attorney General's enforcement powers and the potential consequences for any entity required to register with the Attorney General's Registry of Charitable Trusts that fails to make certain key filings.

The new regulations include the following:

- **Registration will be automatically suspended if certain events occur**, including a registrant's failure to file required periodic written reports with the Attorney General for three consecutive years or the suspension or revocation of the organization's corporate status by the California Secretary of State.
- The Attorney General may refuse to renew the registration of any registrant that, among other things, has failed to file a document with the Attorney General as required by law.
- A registrant whose registration has been suspended or revoked may...
not distribute or expend any charitable assets without the written approval of the Attorney General.

- The Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets to another charitable organization or into a blocked bank account.
- **Directors, or any person directly involved in distributing or expending charitable assets, may be held personally liable** in a civil action brought by the Attorney General for distributing charitable assets in violation of the above regulation.

These regulations apply to out-of-state organizations that are required to register with the California Attorney General because they hold property in California for charitable purposes or are doing business in California.

Examples of "doing business" in California by foreign corporations include:

- soliciting donations in California by mail, by ads in publications, or by any other means from outside of California (that satisfy the constitutional "minimum contacts" test);
- holding Board meetings of the charitable corporation in California;
- maintaining an office in California of the charitable corporation; and
- conducting charitable programs in California or having officers or employees who work here.

"Doing business" in California generally does not include merely making grants to grantees in California or maintaining financial accounts or investments in an office of a financial institution in California. Also, certain types of organizations are not required to register with the Attorney General (e.g., nonprofit religious organizations, educational institutions, and hospitals), and these new regulations therefore may not apply to them.

**For out-of-state organizations operating in California**, we do not yet know whether under certain circumstances the Attorney General would attempt to reach activities or assets located outside of the state. While there may be legal and practical limits to the Attorney General's jurisdiction, the new regulations do not seem to limit the Attorney General's authority.

Nonprofit organizations subject to the California Attorney General's jurisdiction should stay up-to-date with their required state filings. In addition, grantmakers may wish to pay attention to prospective grantees located in California, both to confirm that they are in good standing at the time of a grant and also to ensure that they are aware of their filing obligations in the future, given the possibility that a grantee could be prohibited from expending the grantor's funds.

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**National Updates**

*By Megan A. Christensen, Manatt, Phelps & Phillips, LLP, Washington, DC*

**IRS Finalizes PRI Regulations**

On April 21, 2016, the IRS issued Final Regulations, effective on or after April 25, 2016, under Section 4944 of the Internal Revenue Code ("IRC") to finalize new examples of program-related investments ("PRIs") by private foundations. The final regulations make few changes to the proposed regulations originally issued in 2012.

Section 4944 imposes a 10% excise tax on private foundations that make investments in a manner that jeopardizes the carrying out of the foundation's exempt purposes. Additionally, a separate 10% excise tax is imposed on any "foundation manager" (e.g., officer, director, trustee) who knowingly participated in such "jeopardizing investment." Additional taxes may be imposed if the action is not timely corrected. An exception is provided for PRIs -investments the primary purpose of which is to accomplish one or more exempt purposes, and no significant purpose of which is the production of income or appreciate of property.
The 2012 proposed regulations added nine examples to the nine examples that existed previously to demonstrate, *inter alia*, that PRIs may accomplish a variety of exempt purposes, may fund foreign activities, may have a high rate of return, and recipients of PRIs may be persons that are not within a charitable class, provided that the recipients serve as conduits through which the private foundation accomplishes exempt activities. The IRS adopted the proposed regulations with only a few changes to Example 11 (sales of vaccines developed using private foundation funds at fair market value to those who can afford to pay such prices), Example 13 (IRS removed language regarding liquidation of stock received as part of a loan upon a business becoming profitable), and Example 15 (elimination of language regarding natural disaster with respect to loans to poor individuals in a developing country and expansion of the loans to a group of individuals rather than two specific individuals).

**IRS Releases New Form 990-N Submission Website**

On February 29, 2016, the IRS advised that Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ, should now be submitted through the IRS website rather than the Urban Institute's website. A short one-time registration is still required.

Form 990-N is used by small, tax-exempt organizations whose annual gross receipts are normally $50,000 or less. Form 990-N requires only eight pieces of information: (i) employer identification number; (ii) tax year; (iii) legal name and mailing address; (iv) other names used by the organization; (v) name and address of principal officer; (vi) website address, if any; (vii) confirmation that the organization's gross receipts meet the filing threshold for the form; and (viii) if applicable, statement that the organization has terminated or is terminating. Although no penalty is assessed for late filing of Form 990-N, organizations that fail to file the form (or any required series Form 990 (990, 990-EZ, or 990-N)) for three consecutive years will automatically lose tax-exempt status.

**PATH Act Requires 501(c)(4) Organizations to Provide Notice**

Under new IRC Section 506, added by the Protecting Americans from Tax Hikes (PATH) Act of 2015, organizations formed to be exempt from federal income tax as social welfare organizations described in Section 501(c)(4) must notify the IRS that they are operating under Section 501(c)(4) within 60 days from the date of establishment. This is effective for organizations formed after December 18, 2015, and certain organizations existing on that date that had neither applied for written determination of recognition as a Section 501(c)(4) organization nor filed any of the series Forms 990. However, the IRS issued Notice 2016-09, which provides that the due date is extended for organizations subject to the reporting requirement until at least 60 days from the date that forthcoming temporary regulations are issued. No penalties will be applied to 501(c)(4) organizations that submit the required notice by the date provided in the regulations. Under Section 506, the notification must include: (i) the name, address, and taxpayer identification number of the organization; (ii) the date on which it was formed; (iii) a statement of the organization's purpose; and (iv) a reasonable user fee to be imposed by the IRS.

**State Updates**

*By Emily Chan, Adler & Colvin, San Francisco, CA*

**California**

On April 21, 2016, Judge Manual L. Real for the U.S. District Court for the Central District of California granted the Americans for Prosperity Foundation's ("AFP") motion to permanently enjoin the California Attorney General from requiring AFP to file with the Registry of Charitable Trust a periodic written report containing a copy of its Schedule B to IRS Form 990. The court found the Attorney General's Schedule B disclosure requirement unconstitutional as-
applied to AFP. In his opinion, Judge Real stated that AFP had demonstrated that "the Schedule B disclosure requirement places [AFP] donors in fear of exercising their First Amendment right to support AFP's expressive activity," the effect of which is to diminish the amount of expressive and associational activity by AFP. This injunctive relief is the latest development in the litigation that began in late-2014 between AFP and the Attorney General regarding the Attorney General's request for an unredacted Schedule B as part of AFP's annual registration renewal. This decision likely will be appealed.

**Colorado**

**HB 16-1089**, introduced in the House earlier this year, was postponed indefinitely by the House Committee on Appropriations on May 5, 2016. The bill proposed to allow an individual taxpayer to claim an income tax credit for a contribution of money, securities, or property to an eligible endowment or institutional fund that is equal to 25% of the contribution. The bill defined an "eligible endowment or institutional fund" to mean an endowment fund or an institutional fund that belongs to a Colorado charitable organization and that is managed in accordance with the Uniform Prudent Management of Institutional Funds Act.

**Kentucky**

On March 23, 2016, Governor Matt Bevin signed **HCR 89** into law. This law establishes the Government Nonprofit Contracting Task Force to study government contract laws and procedures of the Commonwealth relating to nonprofit entities to increase accountability and efficiency in the government contracting process. The task force will study and report on the following issues: (1) the effect of current laws, regulations, and policies on government funding and procurement opportunities for nonprofit entities that contract with the Commonwealth; (2) any procedures that have been adopted in other states to facilitate a more timely, cost-effective, streamlined, and accountable process for nonprofits that contract with those state governments; and (3) the feasibility of eliminating any redundant, unreasonable, or unnecessary laws, regulations, or policies that negatively affect nonprofit government contracting or funding. The task force will submit a final report, along with recommendations and any proposed legislation, to the Legislative Research Commission and the Governor by October 31, 2016.

**Montana**

**HB 389** (enacted in 2015) requires nonprofit organizations and other tax-exempt property owners of tax-exempt real property in exempt status before 2014 to reapply for property tax exemption by submitting application form AB-30R by March 1, 2016. Earlier this year, the Montana Department of Revenue announced it had only received about 1,000 out of an estimated 6,000 to 7,000 in Montana that may be affected, such as schools and colleges, churches, parsonages, low income housing, veterans' clubhouses, community service and fraternal organizations, cemeteries, and land leased from a railroad by a nonprofit organization.

**Tennessee**

On April 27, 2016, Governor Bill Haslam signed **SB 1566** into law. The new law amends the current law relative to charitable solicitations. It specifies that educational institutions, which are exempt from registering with the division of charitable solicitations, includes institutions accredited by a recognized accrediting agency or has been approved to operate by a local board of education, the achievement school district, or the state board of education. This law also authorizes the Secretary of State to provide a 60-day extension, in addition to the initial 90-day extension that is permitted for good cause shown (as defined by state law), if the organization has been permitted additional time to file an exempt organization return with the Internal Revenue Service and upon submission of proof of such extension. This law takes effect July 1, 2016.
Article Writers Wanted

The Newsletter Editorial Board is seeking articles on nonprofit law subject matter to include in future newsletters. There is no length requirement. If you are interested in submitting an article, please contact:

- David Levitt at levitt@adlercolvin.com or
- Matthew Wright at matthew@mgwrightlaw.com