

# 38<sup>th</sup> Annual Nonprofit Organizations Institute

## January 20-22, 2021 • Live Webcast

**Wednesday Morning, Jan. 20, 2021**

### **Presiding Officers:**

**Tomer Inbar**, Patterson Belknap Webb & Tyler LLP - New York, NY

**Megan E. Bell**, Patterson Belknap Webb & Tyler LLP - New York, NY

8:15 am	<b>Welcoming Remarks</b>
8:30 am 1.25 hrs	<b>Nonprofit Sector Update, Part I</b>  Hindsight is 2020! Reflect on the wild year that was, and how it affected nonprofits. Turning the page, hear about the outlook for tax legislation affecting the nonprofit sector in the 117th Congress and the current regulatory environment. Also explore the impact of the new Supreme Court majority on tax statutes and regulations, and what that may mean for nonprofits now and for many years to come.  Christopher Arneson, U.S. Senate Committee on Finance - Washington, DC Alexander L. Reid, Morgan, Lewis & Bockius LLP - Washington, DC
9:45 am	<b>10-Minute Break</b>
9:55 am 1.00 hr	<b>MASTER CLASS A: Governance and Fiduciary Issues for Charitable Organizations in the Age of Crisis</b>  This panel will consider prudent nonprofit decision-making in a period of crisis such as the COVID-19 pandemic. Topics include the decision-making boundaries between and among the board, board committees, and management; the role of formal delegations of authority to manage rapidly changing circumstances; the use of enhanced endowment draws, lines of credit, furloughs, cash-flow analyses, and iterative budgeting to manage shut-downs and other revenue challenges; the establishment and maintenance of morale and good will among staff, board members and other volunteers; and the reassessment of policies and procedures in anticipation of the next crisis.  Katherine Karl, The Humane Society of the United States - Washington, DC John Sare, Patterson Belknap Webb & Tyler LLP - New York, NY James P. Joseph, Arnold & Porter Kaye Scholer LLP - Washington, DC
10:55 am	<b>45-Minute Break</b>

### **MASTER CLASS A: DISCUSSION BREAKOUTS (Select One)**

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#### **A1: Investment Fiduciary Issues**

11:40 am  
0.75 hr

**The Essential Elements of a Fiduciary's Duties in Managing a Charity's Investment Portfolio and Advanced Considerations During Economically Challenging Times**

Understand the essential elements of the fiduciary duties applicable to the management of a charitable organization's investment portfolio, including under the Uniform Prudent Management of Institutional Funds Act, and explore advanced considerations arising during economic downturns. Being prepared for an economic downturn involves unique considerations for the fiduciaries responsible for overseeing a charity's investment portfolio. Delve into common real world scenarios and practical considerations, including borrowing from endowments or otherwise restricted funds and temporarily adjusting appropriations from endowments.

Kathleen (Katie) Gerber, Thompson & Knight LLP - Dallas, TX  
Danika Hudik Mendrygal, Mendrygal Law, PLLC - Dallas, TX

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**A2: General/State Law Fiduciary Issues**

11:40 am  
0.75 hr

**Governing in Crisis Mode: General/State Law Fiduciary Issues**

An internal crisis such as a finance director embezzling millions or an external crisis such as a global pandemic can create extremely challenging conditions for nonprofit organizations. Directors and officers must maintain fiduciary duty obligations as they govern through the crises. Review applicable fiduciary duties and hear tips for stewarding your organization through the storm.

Susan K. Staricka, Staricka Law, PLLC - Austin, TX  
Nicola Fuentes Toubia, Fuentes Toubia, PLLC - Houston, TX

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**A3: Fundraising and Gift Acceptance**

11:40 am  
0.75 hr

**Fundraising, Gift Acceptance, and Donor Relations: Now vs. Before**

As a result of the pandemic, nonprofits have been forced to creatively adapt fundraising models and ways to connect to donors. Discuss how the rapid pivot in fundraising has challenged the nonprofit's ability to respond to constantly-changing COVID-19 restrictions, complex regulatory regimes, donor fatigue and completely novel approaches that push legal and tax boundaries.

Jonathan S. Blum, Polsinelli PC - Dallas, TX  
Sara Hall, ALSAC/St. Jude Children's Research Hospital - Memphis, TN

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**A4: Bankruptcy and Restructuring**

11:40 am  
0.75 hr

**Bankruptcy and Restructuring**

Practical considerations for nonprofits impacted by their own financial distress or the financial distress of key partners (including donors, suppliers, and contract counterparties).

Brian P. Guiney, Patterson Belknap Webb & Tyler LLP - New York, NY  
Jeffrey E. Sher, Fizer Beck - Houston, TX

12:25 pm

**Break for Lunch—Presentations Resume at 12:55 p.m.**

**Wednesday Afternoon, Jan. 20, 2021**

**Presiding Officer:**

**Megan E. Bell**, Patterson Belknap Webb & Tyler LLP - New York, NY

12:55 pm  
1.00 hr

**MASTER CLASS B: Hard Don't, Soft Don't: Activity-Based Issues and Pressure Points**

A practical guide to navigating common operational issues. Consider varied activities and operations - grants and direct programmatic activities, strategic transactions, compensation arrangements and more - through both a legal and reputational lens. Gain insight on policies and procedures that promote organizational compliance, resilience and nimbleness.

Philip Hackney, University of Pittsburgh School of Law - Pittsburgh, PA  
Michelle Michalowski, PwC - Washington, DC  
Maura L. Whelan, Simpson Thacher & Bartlett LLP - New York, NY

1:55 pm

**15-Minute Break**

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**MASTER CLASS B: DISCUSSION BREAKOUTS (Select One)**

**B1: Public Charity Considerations**

2:10 pm  
0.75 hr

**Public Charity Considerations**

Public charities regularly navigate a variety of legal and reputational issues when making operational and strategic decisions. Consider operational and strategic issues related to a charity's disqualified persons, its sources of support, and its relationships with other entities and its constituencies, through a compliance lens.

Laura E. Butzel, Patterson Belknap Webb & Tyler LLP - New York, NY  
Edward T. Chaney, Schell Bray PLLC - Chapel Hill, NC

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**B2: Private Foundation Considerations**

2:10 pm  
0.75 hr

**Private Foundation Considerations**

Private Foundations face unique challenges with compliance issues. Learn how to navigate the hard don'ts and soft don'ts for maximum flexibility, with a focus on taxable expenditures, private benefit, self-dealing and reputational risks.

Erica Guyer, The Rockefeller Foundation - New York, NY  
Katherine E. Kurtzman, Ernst & Young LLP - Chicago, IL

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**B3: Compensation**

2:10 pm  
0.75 hr

**Compensation Pitfalls and Traps**

Examine both common and complex issues in nonprofit compensation, including establishing reasonable compensation, compliance with new Section 4960, and COVID-related impacts.

Bridget M. Weiss, Arnold & Porter Kaye Scholer LLP - Washington, DC  
James F. Wynn II, Quatt Associates - Washington, DC

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**B4: Form 990/990-PF and Considerations**

2:10 pm  
0.75 hr

**Forms 990 and 990-PF: Practical Considerations**

While the 990's reporting relating to tax edicts ("hard don'ts") occupy less than 10% of the Form, the bulk of the 990 (and parts of the 990-PF) explores the filer's management practices and a wide array of its activities. The latter arenas are readily mined by the press, IRS and state regulators, and community stakeholders, and that reality informs the often-ignored "soft don'ts" that this session will address.

Jody Blazek, Blazek & Vetterling - Houston, TX  
Eve Borenstein, Harmon, Curran, Spielberg & Eisenberg, Washington, DC - Eve Rose Borenstein, LLC, Minneapolis, MN

2:55 pm

**Adjourn**

**Thursday Morning, Jan. 21, 2021**

**Presiding Officer:**

**Tony Fundaro**, Philanthropy Southwest - Dallas, TX

9:00 am  
1.00 hr

**Nonprofit Sector Update, Part II: The Stimulus Programs and Beyond**

The COVID-19 crisis and the associated economic down turn left nonprofits with reduced resources and greater need for their services. It also exposed glaring gaps in our health and economic safety nets that may provide a roadmap for future philanthropic efforts and community interventions. As federal aid programs rolled out, it was unclear to many where nonprofits fit in. Review federal assistance provided to nonprofits in 2020, discuss changes that may be forthcoming in 2020, and consider what the future holds for federal subvention beyond the tax law.

Dean A. Rosen, Mehlman Castagnetti Rosen & Thomas - Washington, DC  
Doug Varley, Caplin & Drysdale, Chartered - Washington, DC

10:00 am

**10-Minute Break**

10:10 am  
1.00 hr

**MASTER CLASS C: Commerciality**

How are non-profits intersecting with corporations and capital markets in new ways (via limited partnerships, joint ventures, investments and platforms to aggregate capital) designed accelerate impact and attract mainstream capital outside of philanthropy?

Susan H. Mac Cormac, Morrison & Foerster LLP - San Francisco, CA  
Ruth M. Madrigal, KPMG LLP - Washington, DC  
David A. Shevlin, Simpson Thacher & Bartlett LLP - New York, NY

11:10 am

**15-Minute Break**

**MASTER CLASS C: DISCUSSION BREAKOUTS (Select One)**

**C1: UBI and Sponsorship**

11:25 am  
0.75 hr

### **UBI and Sponsorship**

Know the difference; Is that sponsorship taxable or not?

Michaela J. Cromar, CliftonLarsonAllen LLP - Fort Worth, TX  
Caroline Waldner, Morgan, Lewis & Bockius LLP - Washington, DC

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## **C2: Joint Ventures**

11:25 am  
0.75 hr

### **Joint Ventures**

Joint ventures can be a great way to achieve economies of scale to reduce costs, try out a new program without taking on all of the responsibilities, or monetize underused assets. Address various available legal structures, tax implications, strategic negotiating points, and disclosures and reporting for joint ventures.

Ofer Lion, Seyfarth Shaw LLP - Los Angeles, CA  
Darren B. Moore, Bourland, Wall & Wenzel, P.C. - Fort Worth, TX

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## **C3: Complex Organizational Structures/Hybrids**

11:25 am  
0.75 hr

### **Complex Organizational Structures**

Discuss different arrangements involving both nonprofit and for-profit entities, reasons to consider a more complex structure, and managing the relationships between multiple entities. Review key tax and nonprofit legal issues as well as practical considerations that we have encountered in structuring and advising on these arrangements.

Samuel Greenberg, Ernst & Young LLP - Los Angeles, CA  
David A. Levitt, Adler & Colvin - San Francisco, CA

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## **C4: Impact Investing**

11:25 am  
0.75 hr

### **Impact Investing**

Using real-life examples, explore how key exempt org considerations affect structure, economics, and talent when investing for impact.

Brittany Cvetanovich, Ropes & Gray - Chicago, IL  
Kevin Saunders, Accion - Cambridge, MA

12:10 pm

**Break for Lunch—Presentations Resume at 12:40 p.m.**

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## **Thursday Afternoon, Jan. 21, 2021**

### **Presiding Officer:**

**Tony Fundaro**, Philanthropy Southwest - Dallas, TX

12:40 pm  
1.00 hr

### **MASTER CLASS D: Advocacy, Activism, and Equity**

Discuss issues confronted by public charities and their private foundation donors in supporting social movements and advocacy. Topics will include grantmaking related to racial justice and DEI efforts; advocacy and activism vs. lobbying and civil disobedience; and political activity, particularly in connection with 501(c)(3)/501(c)(4) coalitions.

Nishka Chandrasoma, Ford Foundation - New York, NY  
Kimberly Eney, The Fidelity Foundations - Boston, MA  
Christine L. Green, Leadership for Educational Equity - New York, NY

1:40 pm

### **15-Minute Break**

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## **MASTER CLASS D: DISCUSSION BREAKOUTS (Select One)**

### **D1: Funding Equitably**

1:55 pm  
0.75 hr

#### **Funding and Operating with a Focus on Diversity, Equity, and Inclusion (DEI)**

Discuss the ways private foundations and public charities can operate, fund, and invest with a lens toward supporting diversity, equity, and inclusion.

Zenna Elhasan, The Kresge Foundation - Troy, MI  
Kristy Bernard Tsadick, The William and Flora Hewlett Foundation - Menlo Park, CA

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### **D2: Activism and Engagement by Charities**

1:55 pm  
0.75 hr

#### **Activism and Engagement by Charities**

Explore the ways in which charities effectively engage in policy advocacy and activism, including: (i) structures that charities use to build and sustain issue advocacy movements (e.g., group rulings, chapter networks, collaborating with 501(c)(4) affiliates); (ii) the legal intersection between charitability and activism, focusing on civil disobedience in particular; and (iii) different types of activism (grassroots organizing, demonstrations, lobbying, and social media activism). Along the way, highlight the importance of risk mitigation strategies, and the ever-increasing role of social media in issue advocacy.

Diara M. Holmes, Loeb & Loeb - Washington, DC  
Andrew Schulz, New Venture Fund - Washington, DC

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### **D3: Election 2020 Lessons Learned**

1:55 pm  
0.75 hr

#### **Election 2020 Lessons Learned: Techniques and Activities**

The 2020 elections brought new challenges for exempt organizations seeking ways to be involved while complying with their tax exempt status. This session will cover issues such as operating affiliated 501(c)(3)s, 501(c)(4)s, and political committees; guidance for 501(c)(3)s working with non-501(c)(3) organizations; special compliance issues for virtual electoral efforts; and how the rules governing election-related activity apply to disputes about election results after election day.

John Pomeranz, Washington, DC

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### **D4: Achieving an Equitable Workplace**

<p>1:55 pm 0.75 hr</p>	<p><b>Achieving an Equitable Workplace</b></p> <p>How do organizations create and maintain diverse, equitable and inclusive workplaces? What are best practices regarding recruitment, hiring, and retention of diverse employees? How can companies foster respectful workplaces?</p> <p>Connie L. Cornell, Cornell Smith Mierl Brutocao Burton, LLP - Austin, TX Katrina Grider, U.S. Equal Employment Opportunity Commission - Houston, TX</p>
<p>2:40 pm</p>	<p><b>Adjourn</b></p>

**Friday Morning, Jan. 22, 2021**

**Presiding Officer:**  
**Joyce Hellums**, Ernst & Young LLP - Austin, TX

<p>8:00 am 0.75 hr</p>	<p><b>Texas Legislative and Public Policy Update</b></p> <p>The 2021 Texas Legislature regular session will present unprecedented issues and challenges for the state’s leadership and elected officials and will impact nonprofit organizations, state associations, foundations and social service groups in various ways. Two veteran observers of the political and public policy scene will preview legislative, regulatory and policy developments.</p> <p>Richard W. Meyer, Attorney at Law - Austin, TX Ross Ramsey, The Texas Tribune - Austin, TX</p>
<p>8:45 am</p>	<p><b>10-Minute Break</b></p>
<p>8:55 am 1.00 hr</p>	<p><b>Year in Review</b></p> <p>Review current developments in the federal tax law concerning nonprofit organizations, with emphasis on recent legislation, proposed and final regulations, IRS rulings, and court opinions. Focus on qualification for tax exemption, application for recognition processes, private inurement and private benefit doctrines, public charity status, donor-advised funds, the commerciality doctrine, private foundation rules, governance, legislative and political campaign activity, unrelated business, joint ventures, charitable giving, and fundraising, with some constitutional law added.</p> <p>Bruce R. Hopkins, Bruce R. Hopkins Law Firm, LLC - Kansas City, MO</p>
<p>9:55 am</p>	<p><b>10-Minute Break</b></p>
<p>10:05 am 1.00 hr ethics</p>	<p><b>MASTER CLASS E: Cybersecurity During a Pandemic: What To Do Now To Help Protect Your Organization Against Cyberattack</b></p> <p>Organizational cybersecurity is a significant challenge in normal times. During the pandemic, with limited resources and geographically dispersed staff, including IT and information security personnel, the challenge can feel insurmountable. Discuss the current elevated threat landscape and ways in which nonprofits can improve and bolster their defenses to cyber-attacks, despite the ongoing workplace burdens associated with COVID-19.</p> <p>John E. Ansbach, Stroz Friedberg - Dallas, TX</p>

11:05 am

**15-Minute Break**

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## **MASTER CLASS E: DISCUSSION BREAKOUTS (Select One)**

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### **E1: Practical Issues around Data Protection**

11:20 am  
0.75 hr

#### **Practical Issues around Data Protection**

An overview of steps your organization can take to help protect your data, including practical tips on developing your action plan for responding to a cybersecurity breach.

Cheryl M. Burtzel, Spencer Fane LLP - Austin, TX

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### **E2: Liability Issues**

11:20 am  
0.75 hr

#### **Liability Issues**

Focus on liability related issues for non-profits, including Directors' and Officers' liability and COVID-19 related liability issues.

Ashley M. Hunter, HM Risk Group - Austin, TX  
Leslie C. Thorne, Haynes and Boone, LLP - Austin, TX

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### **E3: Work from Home/Cyber Commuting Issues**

11:20 am  
0.75 hr

#### **Cybersecurity and Data Protection Considerations in Work-From-Home Policies**

An overview of key issues to consider in developing or updating work-from-home policies as they relate to cybersecurity and data protection, including information fluidity, third party access to employee assets, Zoom and other platform security concerns, and more.

Jason Boulette, Boulette Golden & Marin L.L.P. - Austin, TX

12:05 pm

**10-Minute Break**

12:15 pm  
0.75 hr

#### **Investing in Equity Minded Leadership in Higher Education**

As we look to close racial, gender, economic and other equity gaps in higher education, we must also look to the role of leadership in meeting such aims. This session will cover how the Sloan Foundation is thinking about equity minded leadership and provide a sneak peek into forthcoming findings from a Sloan-funded study on the topic.

Lorelle L. Espinosa, Alfred P. Sloan Foundation - New York, NY  
Elizabeth Holcombe, University of Southern California - Los Angeles, CA

1:00 pm

**Adjourn**