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Crowdfunding: Manna from Heaven or Disaster in the Making?

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I. Introduction to Crowdfunding.

Crowd-fund-ing: the practice of soliciting financial contributions from a large number of people, especially from the online community.¹ The term has multiple applications, and is not limited to raising funds for individual causes. The concept of crowdfunding began as a business concept for entrepreneurs and entities to raise capital as well as offer and sell securities.² The term is generally credited to Michael Sullivan, a Technologist/Strategist who coined the word on August 12, 2006. “Many things are important factors, but funding from the ‘crowd’ is the base of which all else depends on and is built on...[C]rowdfunding is an accurate term to help me explain the core element...”. Prior to 2006, charitable and entrepreneurial platforms were being developed but no generally accepted term for this type of web activity was being used.

Raising funds online began as a concept to attract potential investors to fund new business ideas, but the concept of crowdfunding was soon adopted by individuals and groups with a particular charitable cause (referred to by one online platform as “compassionate crowdfunding™”³). These “personal story” projects can provide much needed help for persons with disabilities or potential disabilities, but can unknowingly create serious consequences for those currently receiving public benefits. Though crowdfunding websites have been extremely successful in helping friends, family, and even strangers raise substantial funds for vital causes, they typically fail to educate their users on the possible adverse implications of fundraising for an individual beneficiary who is receiving public assistance. There are few warnings to creators of crowdfunding campaigns to inquire about a beneficiary’s public benefits or information on how the fundraising efforts can be conducted in a manner which does not affect eligibility. The role of the crowdfunding company is to create the platform for easy giving, not to evaluate the effects of donations or pass judgment on the cause.

There has also been a recent trend to use crowdfunding websites to generate funds to pay for legal fees. In 2015, two students from Chicago State University sued the university in forma pauperis (“IFP”) raising federal and state law claims based on the university’s reaction to the

¹ *Crowdfunding*. Merriam Webster. www.merriam-webster.com/dictionary/crowdfunding.

² *Id.* In April 2012, Congress passed the “Jumpstart Our Business Startups Act” (JOBS), which allows cost-effective access to capital for companies of all sizes.

³ *What is Crowdfunding*. You Caring. <https://www.youcaring.com/crowdfunding>.

students' on campus activism.⁴ The university sought to dismiss the action based on the existence of a crowdfunding site, which had raised almost \$2,000 in donations, created by the students to raise money for legal expenses.⁵ The court found that even though the amount of funds raised exceeded the cost of the filing fees, at the time the IFP affidavit was signed, the students were still impoverished given their overall financial situations.⁶ In another case from 2015, a crowdfunding campaign raised \$110,000 for a defendant charged with a felony.⁷ The court denied the defendant's motion for release pending sentencing, finding that he was a flight risk because he potentially had access to the crowdfunding money.⁸ Interestingly, there is even a crowdfunding website dedicated to raising money for legal expenses.⁹

Individuals or organizations who choose to donate to a crowdfunding campaign should understand some of the realities of their generosity, including:

- The donor has no control over the donated funds once the transaction is completed;
- In most cases there is no income tax deduction unless the beneficiary is a qualified charitable organization and the donations are not intended to benefit specific or named individuals;
- The donor has no authority to request an accounting of how the funds are ultimately distributed;
- The creator of the campaign has no responsibility to report on the end result;
- It may not be easy to verify the authenticity of the appeal or to identify fraud in a new campaign; when fraud is discovered, donors may be repaid if there are funds available; and
- Recipients of public benefits may be unaware that crowdfunding donations may be considered to be income for eligibility purposes.

⁴ *Bailey v. Bd. of Trs. of Chi. State Univ.*, 2015 U.S. Dist. LEXIS 8337 (N.D. Ill. Jan. 26, 2015)

⁵ *Id.* at *5.

⁶ *Id.* at *11.

⁷ *United States v. Smith*, 2015 U.S. Dist. LEXIS 123121 (E.D. Wash. Sep. 15, 2015)

⁸ *Id.*

⁹ FundedJustice.com

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