

A.B. 624 (Coto): Foundation Diversity and Transparency Act

Background Statement

Legislation to Require California Foundations to Disclose Diversity Data

Foundation Diversity Disclosure: A Tool to Promote Greater Effectiveness of California Foundations

The Greenlining Institute is proposing “sunshine” legislation that would require large foundations operating in California to gather and disclose pertinent diversity data. This legislation does not require foundations to invest in minority communities, and it does not create racial quotas for grant-making and employment. This legislation is a simple attempt to get foundations to disclose key data related to diversity on an annual basis.

Why is this Legislation Important?

A.B. 624 is not the solution that will diversify foundations. But it is an important tool. Minority groups are expected to comprise fully half of the U.S. population by 2050. The failure to develop and standardize diversity best practices threatens the effectiveness and viability of foundations to achieve their missions. With a more systematic and measurable approach to diversity, foundations can better prepare themselves for the demographic changes ahead. Most importantly, foundations that embrace diversity will be able to produce a stronger impact on societal change. A.B. 624 will standardize how foundations in California track, gather, and disclose diversity data.

History of State Regulation on Foundations

Historically, state regulators devoted very little time, if any, to governing foundations.¹ This lack of regulation has led to an atmosphere of unaccountability by foundation insiders and the general public. In the past, foundation insiders were made to believe that government could not impose regulations upon their practices. In turn, the public has falsely assumed that foundations deal with rich people’s money anyway, and that in turn foundations can do whatever they want with that money. Slowly, state officials, and the general public are starting to ask tougher questions and demand more transparency from foundations.

States have been increasingly active in their governance of foundations. Recent cases of foundation misconduct in California and throughout the country have heightened the need for additional foundation oversight. These types of cases have led to several proposals by states to ensure more transparency and accountability from foundations.

There is also a growing awareness by the public that tax-exempt foundations should be held more accountable to the country’s growing diverse populations. Communities, especially those that represent the poor, immigrants, and minorities, often feel that foundations exclude them in their funding. Several reports have been released detailing the lack of diversity in foundation grant making. Most recently Greenlining has issued a report finding that only 3.6% of grant dollars from the nation’s top 25 private foundations go to minority-led organizations. Another study by the Foundation Center found that only 20% of funding is going to “minority serving” causes despite the fact that people of color make up over 50% of California’s population and a disproportionate percentage of the state’s needy.² If this trend continues, by 2040 communities of color will make up 70% of the state’s population but receive only 30% of foundation grants.

¹ State of Philanthropy 2006: State Regulation of Foundations. National Committee for Responsive Philanthropy, Washington D.C.

² Out of total funding from the state’s 50 largest foundations

There is not a study out there that says foundations are adequately serving the needs of minority communities

History of Diversity Disclosure in Other Industries

The positive impact of data collection and disclosure in corporate America is a good example of the benefits of greater transparency of diversity data.

The Home Mortgage Disclosure Act (HMDA) of 1975 is a good example. HMDA requires banks to submit diversity data related to home mortgage lending. HMDA disclosures have revealed wide disparities in the rates of approval in loan applications across racial and ethnic lines. This has led many lenders to strengthen their fair lending compliance programs and to expand their outreach to under served communities. Rather than contributing to direct discrimination, collecting and publicly reporting race and gender data has led to viable public and private partnerships to address this important issue. HMDA is consistently cited as enormously successful in facilitating home loans to communities of color.

There is also federal voluntary disclosure on employment practices for large corporations. Since this is voluntary, roughly half of the companies do not comply with this act. However, the corporations that do comply with the act are leaders in diversity practices. Corporation use this data to set employment goals, along with effective outreach and retention methods.

At the state level, the California Public Utilities Commission (CPUC) requires regulated utilities to disclose diversity of top employee management, along with data on supplier diversity. In addition, the CPUC holds an annual hearing to discuss diversity issues with its regulated utilities. This annual hearing by itself motivates CPUC regulated companies to respond with stronger diversity practices.

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Questions and Answers Legislation to Require California Foundations to Disclose Diversity Data

Q. Why Focus on Foundations?

A. Tax payers subsidize foundation practices at a rate of \$30 billion per year. Historically, government requires more accountability when they provide direct tax benefits to private entities. Foundations already report annually to the Attorney General. Independent, community, and corporate foundations play an important role in the U.S. landscape. Like banks and other corporations, foundations deal in investments. Rather than mortgages or business loans, foundation investments take the form of philanthropic grants. Grants from foundations must be understood as investments in people, ideas, and solutions to many of society's most pressing problems.

Foundation funding has long been critical to the capacity of nonprofit organizations to meet their missions. Foundations are in a unique position to help communities empower themselves and create solutions on critical social issues. Philanthropy is a growth sector of the U.S. economy that needs to be held accountable as it continues to grow in size and strength.

Q. Foundations are charitable institutions. Shouldn't we simply be grateful for the money they give?

A. Of course non-profit organizations are appreciative for financial contributions from foundations. But these foundation grants must be seen as investments rather than charity. Today, just as many corporations have frequently failed to invest in low-income and minority communities, many foundations are failing to invest in these communities. Foundations must be helped to recognize the win-win opportunities that can be derived from partnership with low-income and minority communities. There exists legitimate justification to request that foundations be more transparent especially when tax payers subsidize their operations.

Q. What if foundations choose to leave the state as a result of this legislation?

A. This question has been asked across every social movement in world history. There is always a cost and a benefit to everything we do. In this case, the status quo clearly has a cost. However, the benefits of responsive philanthropy are enormous. Some foundations will threaten to leave the state if this legislation passes. Only foundations with something to hide will probably consider relocating to another state. Unfortunately, arguments against this legislation are similar to arguments made by corporations when similar legislation was forced on them.

Q. Will foundations that have poor diversity statistics be accused of discrimination?

A. There is a consensus that poor diversity data alone does not constitute proof of discrimination. However, the data will dramatically demonstrate the need to do more to meet the funding needs of minorities. Available data can

challenge foundations to be more innovative, flexible, and even experimental in addressing the needs of diverse communities.

Data will help forge new and stronger relationships between foundations and community advocates. For example, after the passage of the Home Mortgage Disclosure Act (HMDA), lenders, and community groups began working more closely together to design new affordable mortgage products and programs. There was also a clear need for more counseling to help borrowers successfully navigate the mortgage transaction process and prepare them for the responsibilities of homeownership.

Q. Should community-based non-profit organizations publicly support this legislation?

A. There is a concern that foundations could retaliate by denying funding to groups that support efforts to hold foundations more accountable. While we do not think foundations will “blacklist” community groups that do support this legislation, we want to respect the feelings of respected community leaders who choose to remain silent on this issue.

Q. Have any other states required foundations to disclose diversity data?

A. No. California would be the first state to enact such legislation. Other states are expected to follow California’s lead if this legislation passes.

Q. Will this legislation create a more burdensome application process for non-profit organizations that apply for foundation funding?

A. No. Many foundations in California already request board and diversity data from applicants.

Q. What impact will this legislation have on the non-profit sector?

A. This legislation will indirectly put pressure on non-profit organizations to diversify their boards and staff. Considering the growing influence of the non-profit sector, this is a necessary and important goal.