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When Donor Meets Purpose

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When Donor Meets Purpose

Atinuke O. Adediran

ABSTRACT

This Essay addresses a gap in law and the Restatement of the Law Charitable Nonprofit Organizations regarding the relationship between a charitable nonprofit's donors and its purpose. I argue that charitable nonprofits can align their purposes with the personal or professional identities of their donors, and it may be in the best interest of some charities to do so. Charities whose purposes are to address racial or economic inequality should seriously consider aligning their donor identity with their purpose as a way of improving their legitimacy in the communities they serve, and to reach previously untapped sources of funding.

AUTHOR

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INTRODUCTION

Year Up is an antipoverty 501(c)(3) nonprofit charity whose purpose is to close the economic opportunity gap by providing urban young adults with career training, support through higher education, and professional opportunities.¹ Year Up's clients are mostly young adults of color. The nonprofit charity raises more than \$80 million annually from donors and an additional \$80 million in fees from corporate partners that host its interns.²

The mass protests of 2020 urged many nonprofits and other institutions to reflect on the relationship between their organizations' leaders and the identities of their stakeholders. For many companies and nonprofit organizations, this revealed a lack of racial and ethnic diversity among employees, executives, managers, and boards of directors.³ Year Up went a step further than most organizations by also considering the relationship between its donors and its purpose. "We asked ourselves: Why is it that our donor base is mostly white people, and how could we deepen our connection to our African American donors?"⁴ In response, Year Up established the Black Opportunity Alliance, an affinity group of Black individuals that engage Black people in philanthropy to support Black and other minority communities.⁵

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1. Year Up Home Page, <https://www.yearup.org> [<https://perma.cc/GEU2-Q5HV>].
 2. Drew Lindsay, *One Response by Fundraisers to Racial Reckoning: An Affinity Group for Black Donors*, CHRON. PHILANTHROPY (Mar. 30, 2022), <https://www.philanthropy.com/article/one-response-by-fundraisers-to-racial-reckoning-an-affinity-group-for-black-donors> [<https://perma.cc/T5HB-WQ7G>].
 3. See, e.g., Melissa Repko, 'What We See Is a Moment Here': Walmart CEO Doug McMillon Said Nation's Corporate Leaders Must Advance Racial Equality, CNBC (June 5, 2020, 12:03 PM), <https://www.cnbc.com/2020/06/05/walmart-ceo-doug-mcmillon-said-ceos-must-advance-racial-equality.html> [<https://perma.cc/3V5W-83PX>]; Beth Kowitt, *Companies Are Missing a Critical First Step When it Comes to Progress on Diversity*, FORTUNE (Mar. 5, 2021, 5:30 PM), <https://fortune.com/2021/03/05/dei-data-corporate-diversity-equity-inclusion> [<https://perma.cc/8MC7-ZAQN>]; Nicole Wallace, *The Nonprofit World Tackles Equity and Racial Justice*, CHRON. PHILANTHROPY (Jan. 19, 2021), <https://www.philanthropy.com/article/the-nonprofit-world-tackles-equity-and-racial-justice> [<https://perma.cc/5U4P-3TV5>].
 4. Lindsay, *supra* note 2.
 5. The Black Opportunity Alliance includes individuals who annually donate funds ranging from \$250 to \$5000 (or more) towards Year Up's mission. The Alliance therefore accommodates both small and large donors. This move goes beyond "participatory grantmaking," where a foundation's constituents participate in how funding is distributed. Year Up instead sought to change the face of its donor pool. See DAVID J. MAURASSE, PHILANTHROPY AND SOCIETY 131–33 (2020). Private foundations can also consider changing the face of not only their leadership but of the individuals and groups that contribute to foundation funding.

Whether a charity ought to connect the sources of its funds to its purpose raises ethical, legal, economic, and social questions.⁶ Like the law it reports, the Restatement of the Law Charitable Nonprofit Organizations (Restatement) does not address the relationship between charitable purposes and the identity of donors. The Restatement does, however, address the distinction between assets held for investment purposes and those held to accomplish a charitable purpose.⁷ A charity will often sell assets that are unrelated to its purpose for the proceeds but retain related assets that advance its purpose.⁸ Donors can also advance a charity's purpose simply by providing assets related to that purpose.

This Essay posits that it may be in the interest of a charity to treat fundraising as a substantive method of advancing purpose. Under this framing, the fiduciaries of Year Up operated within their fiduciary duties pursuant to § 2.04 of the Restatement when they established the Black Opportunity Alliance, and they continue to do so as they attempt to align the racial composition of the organization's donors with the organization's purpose as a charity serving urban youth of color. Year Up and similarly situated charities can align their donors with their purpose as a goal secondary to fundraising and financial outcomes. Moreover, it is likely that establishing the Black Opportunity Alliance will further increase the charity's assets as it taps into a new funding source. Tapping into the Black community through fundraising can also have a positive impact on Year Up's legitimacy in the communities it serves.

This Essay proceeds in two Parts. Part I starts by addressing the meaning of charitable purpose and its relationship to profits and investments. It then briefly discusses the importance of racial and ethnic diversity among the managers and fiduciaries of charitable nonprofits. Part II argues that the fiduciary duty of loyalty permits intentionally aligning donors with a charity's purpose. It stresses the importance of doing so as a way of gaining legitimacy in the communities that these charities serve. Part II also suggests that aligning donors with purpose can be in the best interest of some charities. It also examines some of the potential drawbacks of connecting donors with purpose and how to overcome those challenges.

6. See IAN MURRAY, CHARITY LAW AND ACCUMULATION: MAINTAINING AN INTERGENERATIONAL BALANCE 3 (2021).

7. RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGS. §2.04 cmt. c, at 115 (AM. L. INST. 2021) [hereinafter RESTATEMENT].

8. See *id.* at 115–116.

I. RACIAL DIVERSITY, PURPOSE, AND INVESTMENTS

Subpart A of this Part addresses the Restatement’s definition of purpose, its relationship to profits and investments, and the missing link to donors. Subpart B addresses the importance of racial and ethnic diversity in charitable nonprofits.

A. Relationship Between Purpose, Profits, and Investments

Section 1.01 of the Restatement defines a charity as a legal entity with “exclusively charitable purposes, established for the benefit of indefinite beneficiaries, and prohibited from providing impermissible private benefit.”⁹ A charity’s purposes are the ends a charity pursues, which must be charitable.¹⁰ Section 1.01 continues, “[c]haritable purposes include: the relief of poverty, the advancement of knowledge or education, the advancement of religion, the promotion of health . . . and other purposes that are beneficial to the community.”¹¹ A comment to the Section elaborates, “[c]haritable purposes [can] evolve over time to reflect the varying conditions, characters, interests, and needs of society and different communities.”¹²

The purpose of a nonprofit charity therefore seems straightforward. It requires some valid charitable purpose that involves serving the public good—and openness for those interests to evolve over time.

Though scholars of charitable nonprofits have written extensively about the purpose of charitable nonprofits, discussions about charitable purpose have been less pronounced outside academia.¹³ This differs from the broad conversation surrounding a corporation’s purpose, which has been debated by both academics and corporations since the 1930s and is still a live issue today.¹⁴ The question of how a corporation’s purpose relates to profit maximization has been of particular relevance recently. Developments in Environmental Social

9. *Id.* § 1.01(a).

10. See Adam Parachin, *What Does It Mean to ‘Act Charitably’?: Revisiting the Purposes and Activities Distinction in Charity Law*, in CHARITY L.: EXPLORING THE CONCEPT OF PUB. BENEFIT 17 (Daniel Halliday & Matthew Harding eds. 2022).

11. RESTATEMENT § 1.01(b) (AM. L. INST. 2021).

12. *Id.* § 1.01 cmt. d.

13. See, e.g., Susan N. Gary, *Is it Prudent to be Responsible? The Legal Rules for Charities That Engage in Socially Responsible Investing and Mission Investing*, 6 NW. J. L. & SOC. POL’Y 106 (2011); RESTATEMENT § 1.01 (AM. L. INST. 2021) and accompanying texts.

14. Atinuke O. Adediran, *Corporate Accountability and Worker Empowerment*, 69 UCLA L. REV. DISC. 178, 191 (2022).

and Governance (ESG) investing,¹⁵ the Business Roundtable’s Statement on the Purpose of a Corporation,¹⁶ and the existence of Public Benefit Corporations¹⁷ and Certified B Corporations¹⁸ collectively suggest that the business sector has pivoted into thinking about and trying to incorporate purpose into profit.

Perhaps because nonprofit charities are by default driven by purpose and not by profit, there is a tendency to take for granted the fundamental question about an organization’s purpose and how purpose relates to a charity’s funding sources. The responsibilities of fiduciaries in choosing activities to advance purpose, the role of donors and funding sources, and the interaction of the two have not been deeply considered.¹⁹

The notion of advancing purpose has become more prevalent in the corporate context, with the 2019 Business Roundtable positing that corporations share “a fundamental commitment to all . . . stakeholders,” and not just to the maximization of profits.²⁰ Since 2019, ESG investing by corporations has skyrocketed with \$143 billion in new capital in the fourth quarter of 2021 alone.²¹ The law does not prevent corporate fiduciaries from engaging in ESG investing as a commitment to their stakeholders.²²

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15. See, e.g., *Sustainable Investing*, BLACKROCK, <https://www.blackrock.com/institutions/en-us/solutions/sustainable-investing> [<https://perma.cc/V7RQ-FEVP>]; Larry Fink, *Larry Fink’s 2022 Letter to CEOs: The Power of Capitalism*, BLACKROCK (Mar. 24, 2022), <https://www.blackrock.com/corporate/investor-relations/larry-fink-chairmans-letter> [<https://perma.cc/GV6D-QUG8>]. ESG investing refers generally to an investment strategy emphasizing the environmental or social impacts of an organization’s practices or products. Investors and a wide range of stakeholders seek to align their activities with an expression of their values, whether political, ethical, or social. And ESG is a label signifying some level of attention to issues beyond the purely financial. Elizabeth Pollman, *The Making and Meaning of ESG 26* (Eur. Corp. Governance Inst. Working Paper Series in Law, Working Paper No. 659, 2022).
 16. *Business Roundtable Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE, <https://www.businessroundtable.org/purposeanniversary> [<https://perma.cc/96PJ-EXY4>].
 17. See generally, Michael B. Dorff, James Hicks & Steven Davidoff Solomon, *The Future or Fancy? An Empirical Study of Public Benefit Corporations*, 11 HARV. BUS. L. REV. 113 (2021).
 18. Michael R. Littenberg, Emily J. Oldshue, & Brittany N. Pifer, *Delaware Public Benefit Corporations—Recent Developments*, HARV. L. SCH. F. CORP. GOVERNANCE (Aug. 31, 2020), <https://corpgov.law.harvard.edu/2020/08/31/delaware-public-benefit-corporations-recent-developments> [<https://perma.cc/SK2A-GNQZ>].
 19. See Daniel Halliday & Matthew Harding, *Introduction*, in CHARITY LAW: EXPLORING THE CONCEPT OF PUBLIC BENEFIT 1 (Daniel Halliday & Matthew Harding eds. 2022).
 20. Adediran, *supra* note 14, at 191.
 21. Sanjai Bhagat, *An Inconvenient Truth About ESG Investing*, HARV. BUS. REV. (Mar. 31, 2022), <https://hbr.org/2022/03/an-inconvenient-truth-about-esg-investing#:~:text=As%20of%20December%202021%2C%20assets,13%25%20in%20U.S.%20based%20funds> [<https://perma.cc/44NF-X96F>].
 22. See RESTATEMENT § 2.04 cmt. e(3) (AM. L. INST. 2021); Susan N. Gary, *Best Interests in the Long Term: Fiduciary Duties and ESG Integration*, 90 UNIV. COLO. L. REV. 731, 796–97 (2019).

Like corporations, charitable nonprofits also sometimes wish to make investments that center ESG.²³ The Restatement addresses the relationship between ESG investing and the respective purposes of nonprofits:²⁴ “The law does not require a charity’s investment policies to advance the charity’s substantive purpose or to avoid investments that are inimical or contradictory to the charity’s purpose.”²⁵ The Restatement does not explicitly prohibit a charity from advancing its substantive purpose through its investments, even if the investments are predicted to result in financial loss.²⁶ Indeed, scholars have argued that the duty of loyalty does not require fiduciaries to exclude investment considerations that go beyond strictly financial interests if they serve the charity’s purpose.²⁷

How then are these principles applicable to the relationship between a charity’s purpose and their donors? Do nonprofit fiduciaries have a duty to consider how their donors and purpose are aligned? If the law does not require this alignment, might the law prevent a charity from aligning its donors with its purpose? The donor and purpose relationship are about the charity’s legitimacy in the eyes of beneficiaries, and potentially its longevity as an organization with a particular purpose. I consider these questions in Part II below.

B. Importance of Racial Diversity in Charitable Nonprofits

Charitable nonprofits are important institutions, many of which serve marginalized and vulnerable populations. From hospitals to universities, homeless shelters to soup kitchens, legal services to civil rights organizations, and women’s rights organizations to reentry programs, charitable nonprofits are at the forefront of society’s most challenging social and economic problems.²⁸ Many of these institutions were established with the ideals of inclusiveness and to empower the communities they serve.²⁹ While this Essay goes beyond the identity of donors to address other ways of aligning fundraising with purpose, it

23. RESTATEMENT § 2.04 cmt. e(3) (AM. L. INST. 2021).

24. *Id.*

25. *Id.*

26. *Id.* The Restatement does not take a position on whether a charity may make investments that serve social justice ends unrelated to its purpose if the investment would jeopardize the financial standing of the charity.

27. See e.g., Gary, *supra* note 13, at 129; Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 385–86 (2020) (arguing that ESG investing does not generally violate fiduciaries duties).

28. See generally, Atinuke O. Adediran, *Nonprofit Board Composition*, 83 OHIO ST. L.J. 357, 420 (2022).

29. *Id.*

pays particular attention to the alignment of a charity's purpose with the selection of donors from racial and ethnic groups that reflect the intended beneficiaries of the charities' services.

Many nonprofit charities lack racial and ethnic diversity in their leadership.³⁰ Scholars have argued that diverse leadership would allow charities to better understand client needs, assess efficacy, imbue cultural competence, and prevent myopic "groupthink" that can hamper nonprofit governance.³¹ Racial diversity influences institutional decision making by introducing unique perspectives that positively compel development of a nonprofit's mission, often in ways that enhance inclusivity and accessibility.³² Research also shows that people of color can better perceive discrimination than white individuals. For example, a Pew Research Study found that Black individuals are significantly more likely than white individuals to acknowledge that race plays a role in hindering or advancing a person's life prospects.³³ Black individuals are far more likely to point to racial discrimination as an impediment to Black progress than white individuals, while white individuals are more likely to identify family instability as a major obstacle for Black progress.³⁴

The lack of racial diversity among fiduciaries in charities is particularly salient because of the disconnect between purpose and representation. Charities are critical institutions in the contemporary struggle for racial equity.³⁵ They

30. *Id.* at 415–416.

31. See Faith Rivers James, *Nonprofit Pluralism and the Public Trust: Constructing a Transparent, Accountable, and Culturally Competent Board Governance Paradigm*, 9 BERKELEY BUS. L.J. 94, 120–25 (2013); Melanie B. Leslie, *Helping Nonprofits Police Themselves: What Trust Law Can Teach Us About Conflicts of Interest*, 85 CHI.-KENT L. REV. 551, 564 (2010).

32. See David A. Brennen, *A Diversity Theory of Charitable Tax Exemption—Beyond Efficiency, Through Critical Race Theory, Toward Diversity*, 4 PITTSBURGH TAX REV. 1, 16–18 (2006); *Why Diversity, Equity, and Inclusion Matter for Nonprofits*, NAT'L COUNCIL OF NONPROFITS, <https://www.councilofnonprofits.org/tools-resources/why-diversity-equity-and-inclusion-matter-nonprofits> [<https://perma.cc/2A9R-2VA3>] (collecting resources that highlight the strategic benefits of diverse leadership at nonprofits); Adediran, *supra* note 28.

33. See Juliana Menasce Horowitz, Anna Brown & Kiana Cox, *Race in America 2019*, PEW RSCH. CTR. (Apr. 9, 2019), <https://www.pewresearch.org/social-trends/2019/04/09/race-in-america-2019/> [<https://perma.cc/87GW-QNQB>] (describing the disconnect between perceptions of racism and race relations by racial minorities and white Americans).

34. Atinuke Adediran, *Racial and Ethnic Diversity Is Lacking Among Nonprofit Leaders—But There Are Ways to Change That*, CONVERSATION (Jan. 13, 2022, 8:03 AM), <https://theconversation.com/racial-and-ethnic-diversity-is-lacking-among-nonprofit-leaders-but-there-are-ways-to-change-that-174490> [<https://perma.cc/V4H9-W2DZ>]; Atinuke O. Adediran, *Racial Allies*, 90 FORDHAM L. REV. 2151, 2161 (2022).

35. See, e.g., William Foster & Darren Isom, *Endow Black-Led Nonprofits*, STAN. SOC. INNOVATION REV. (2022), https://ssir.org/articles/entry/endow_black_led_nonprofits [<https://perma.cc/N8N6-R9XV>]; Anne Price & Jhumpa Bhattacharya, *BIPOC Nonprofit Leaders Deserve Better From Philanthropy*, NONPROFIT Q. (Dec. 16, 2021),

provide services for marginalized and vulnerable communities, and their leaders make important decisions about resource allocation that significantly affect these groups.³⁶

While the academic literature has addressed the lack of racial and ethnic diversity in charitable nonprofits,³⁷ it has not addressed whether the racial and ethnic diversity of donors should align with a charity's purpose and, if so, how to accomplish this goal. This subject is important for two reasons. First, donors can wield significant decision making power that can influence a charity's direction. Second, a charity's funding sources are often tightly connected to its leadership. Donors often sit on boards of charities and regulate the focus of nonprofits through restrictions placed on funding. A lack of racial and ethnic diversity in a charity's donor pool, particularly as it aligns with the organization's purpose, can negatively impact the direction and purpose of the organization.

II. WHEN DONOR MEETS PURPOSE

The fiduciary duty of loyalty requires the fiduciary of a charity to: (a) act in good faith and in a manner the fiduciary reasonably believes to be in the best interests of the charity in light of its purpose; (b) reasonably address situations that involve the potential for self-dealing in which the interests of a fiduciary or related person may conflict with the interests of the charity; and (c) seek court application of the doctrine of *cy pres* or the doctrine of deviation when such relief is appropriate.³⁸

The duty of loyalty does not expressly address the relationship between a nonprofit's donors and its purpose. The Restatement does address, however, that donors have an impact on the direction of a charity's purpose.³⁹ Donors also have "extensive power to impose specific restrictions on the management, investment,

<https://nonprofitquarterly.org/bipoc-nonprofit-leaders-deserve-better-from-philanthropy> [<https://perma.cc/FU6N-GZYC>]; Dana Thompson, *Lawyers as Social Engineers: How Lawyers Should Use Their Social Capital to Achieve Economic Justice*, 26 MICH. J. RACE & L. 1, 6 (2021).

36. See Judith L. Miller, *The Board as a Monitor of Organizational Activity: The Applicability of Agency Theory to Nonprofit Boards*, 12 NONPROFIT MGMT. & LEADERSHIP 429, 430 (2002).

37. See generally, Adediran, *supra* note 28; Young-joo Lee, Note, *The Color of Nonprofit Leadership: Nonprofits With a CEO of Color*, 33 NONPROFIT MGMT. & LEADERSHIP 1 (2022).

38. RESTATEMENT § 2.02 (AM. L. INST. 2021).

39. *Id.* § 2.04 cmt. e(4) (AM. L. INST. 2021) (noting that, subject to the intent of a donor, a charity shall consider the charitable purposes of the organization and the purposes of the fund); Adediran, *supra* note 28, at 415. See generally, Atinuke O. Adediran, *The Relational Costs of Free Legal Services*, 55 HARV. C.R.-C.L. L. REV. 357 (2020) (showing the influence of law firm donors on nonprofit purpose and mission).

and expenditure of their donations.”⁴⁰ Thus, while the Restatement does not explicitly have a provision on donors and purpose, it implicitly makes the connection.

Two factors are relevant to this reading of the Restatement. The first factor as noted in Part I.A, is that the fiduciaries of a charity owe their duties to the purposes of the charity, rather than any specified beneficiaries.⁴¹ The second factor is that the Restatement adopts the best interests standard of the duty of loyalty to charities in light of their purposes, rather than the sole interest standard traditionally used for trusts.⁴² The Restatement follows the best interests standard in the revised Model Nonprofit Corporation Act,⁴³ because charities conduct operations, programs, and activities rather than function like private foundations that primarily invest funds and make grants.⁴⁴ Under the sole interest standard for trusts, a trustee must administer the trust solely in the interest of its beneficiaries, and not in the interest of any third person or for motives other than the accomplishment of the purpose of the trust.⁴⁵ In contrast, a charity’s fiduciaries can consider motives other than the sole consideration of the interest of specified beneficiaries under the best interests standard.⁴⁶

Taking these two factors together, I make two observations. First, the law does not prohibit a charity from seeking to align its donors with its purpose. This is straightforward and consistent with the literature on charitable nonprofits’ ESG investing discussed in Part I.A. Second, a charity’s fiduciaries may, at a minimum, have a strong incentive to align a charity’s donors with its purpose if doing so is in the best interest of serving the charity’s purpose.⁴⁷ This observation requires additional analysis.

In considering the incentive to align donors with purpose, it is useful to return to Year Up, the nonprofit whose purpose is to close the economic opportunity gap by providing young people of color with opportunities. Its

40. RESTATEMENT § 2.04 cmt. e(4) (AM. L. INST. 2021).

41. *Id.*

42. *Id.* § 2.02.

43. *Id.*

44. *Id.*

45. Schanzenbach & Sitkoff, *supra* note 27, at 400.

46. *See id.* at 422.

47. Even if a charity’s purpose is not economic or racial equity, a charity whose values include addressing racial or economic inequality may also invest assets in seeking a more racially diverse donor pool. There is a strong argument that this is in the best interests of the charity because doing so favorably influences fundraising, board recruitment, diversification, and connection with the community served. While it is beyond the scope of this Essay, a charity may also choose to separate from or avoid donors because the donors’ values are contrary to the charity’s purpose.

move to establish the Black Opportunity Alliance is within the legal bounds of the duty of loyalty. Year Up, like some other charities, may have a stronger incentive to align its donors with its purpose because it is in the best interest of the charity to do so. Moreover, seeking a diverse range of donors that includes people of color is in the best interest of a charity whose purpose is addressing systemic economic or racial inequality for four reasons: First, doing so is a direct means of meeting the charity's purpose as it engages communities of color by helping youth from those communities. Second, doing so enhances the charity's legitimacy in the communities it serves. "An organization is legitimate if it represents the interests or identities of different constituencies in the community."⁴⁸ In other words, an organization gains legitimacy when its actions are perceived to be desirable, proper, or appropriate.⁴⁹ Often when charitable nonprofits seek donors and supporters, they consider legitimacy in the eyes of the state, professional groups such as law or medicine, wealthy individuals, and institutional gatekeepers.⁵⁰ But gaining legitimacy in the eyes of the communities that the charity serves—whether achieved through the charity's choice of board memberships or donors—can be crucial for the longevity of its work in those communities.⁵¹ Third, from a fundraising perspective, having more donors is a good thing. There are many advantages to having wide-spread sources of financial support rather than relying on a few "secure" sources.⁵² Protection against loss of funding due to recessions or other influences is a primary advantage. Fourth and relatedly, a charity can better protect against donor influence on its purpose if it has a diversified funding portfolio.⁵³

Aligning donors with purpose is not limited to organizations that address economic, institutional, or other forms of inequality. Consider a charity with a scientific purpose seeking to align its donors with its purpose by expanding its donor pool to include scientists, just as it might choose to fill its board with scientists who can bring financial, social, and human capital to the charity.⁵⁴ A charity with a religious purpose might also choose to have donors from religious backgrounds, just as it might want to have leaders from those backgrounds to

48. Rikki Abzug & Joseph Galaskiewicz, *Nonprofit Boards: Crucibles of Expertise or Symbols of Local Identities?*, 30 *NONPROFIT & VOLUNTARY SECTOR Q.* 51, 52 (2001).

49. David L. Deephouse & Suzanne M. Carter, *An Examination of Differences Between Organizational Legitimacy and Organizational Reputation*, 42 *J. MGMT. STUD.* 329, 331 (2005).

50. See David L. Deephouse & Mark Suchman, *Legitimacy in Organizational Institutionalism*, in *THE SAGE HANDBOOK OF ORGANIZATIONAL INSTITUTIONALISM* 54–55 (Royston Greenwood, Christine Oliver, Roy Suddaby, & Kerstin Sahlin eds. 2008).

51. See Adediran, *supra* note 28, at 399.

52. See Brennen *supra* note 32, at 37.

53. See Adediran, *supra* note 28, at 367.

54. See *id.* at 389–99.

bring social and human capital to the organization.⁵⁵ In both of these examples, fiduciaries would be legally permitted to align their donors to their purpose if it is in the best interest of the charity. Indeed, it is difficult to argue that alignment would not be in the best interest of such charities who choose to make a connection between who they are and where they derive their funds.

But the context of racial and economic inequality pushes the best interest argument even further. Research suggests that donors of color are more likely to give to causes that address racial or social justice.⁵⁶ It is certainly in the best interest of a nonprofit charity to tap into additional funding sources where available.

There are however important considerations that may challenge the practicality of aligning donors with a charity's purpose. I will attempt to address three of these concerns and make suggestions to aid charities that are considering aligning donors with purpose.

First, it is easier for larger and more established charitable nonprofits to align their donors with their purpose than for smaller and less established charities to do so. Not every charity can establish a separate affinity group of donors to support its purpose, as seen in the Year Up example, or even have a consistent, racially diverse group of donors. Just as the Restatement notes that it would be difficult for some charities to implement policies that forbid or require particular investments because they do not have a say in their investment opportunities, so too would it be difficult for some charities to align donors with purpose.⁵⁷

Second, not having diverse leadership within a charity may make alignment difficult. Often, the first issue to consider is whether the organization is racially and ethnically diverse among its executives, boards of directors and staff.⁵⁸ It is conceivable that donors of color would have a hard time seeing themselves in an organization whose leaders and board members are largely white, and thus be less willing to contribute funding.⁵⁹

Third, some charities may be less inclined to seek diverse donors because of false assumptions about who the most valuable donors are and what they look like. For example, many legal charitable nonprofits believe access to coveted private unrestricted funding is more likely to come from white board members

55. See *id.* at 389–99.

56. LILLY FAMILY SCH. OF PHILANTHROPY, EVERYDAY DONORS OF COLOR: DIVERSE PHILANTHROPY DURING TIMES OF CHANGE 8 (2021) (basing findings on a nationally representative survey of 1535 households).

57. See RESTATEMENT § 2.04 (AM. L. INST. 2021).

58. See generally, Adediran, *supra* note 28.

59. Emily Haynes & Eden Stiffman, *How to Connect With Donors of Color*, CHRON. PHILANTHROPY (Mar. 3, 2020), <https://www.philanthropy.com/article/how-to-connect-with-donors-of-color> [https://perma.cc/YUK3-HDRV].

than from people of color, due in part to lack of access to social networks.⁶⁰ The result is that some charities may be less inclined to hire Chief Executive Officers (CEOs), recruit board members, or seek donors who are people of color because of concerns that doing so would negatively impact funding.⁶¹ Yet there is no empirical evidence to support this belief. Indeed, recent empirical evidence suggests the opposite—that is, having a more racially diverse CEO and board correlates with more access to private funding.⁶² Therefore, in the context of increasing a charity's donor pool to include people of color, loss of funding should be less of a concern. Moreover, even if investing in long-term fundraising goals involving diversifying a charity's donor pool causes short term reductions in funding, it would not violate fiduciary duties—particularly if doing so helps the charity to align its donors with its purpose.

CONCLUSION

In conclusion, the law does not prohibit a charity from seeking to align its donors with its purpose regardless of the financial outcomes for the nonprofit. In some cases, it is in the best interest of a charity for its fiduciaries to consider the relationship between the organization's purpose and its donors. Indeed, donor identity and purposes can be related, such as in the case of organizations whose purpose is to bridge racial and economic gaps and who, in fulfilling that purpose, seek out donors aligned with such goals. For those charities, seeking this alignment goes beyond raising funds. Donor identity can be directly related to what the charity does. Aligning donors with purpose is also important for legitimacy in the communities an organization serves. Alignment can increase a charity's funding by integrating previously untapped sources of funding and helping to create synergy between boards of directors and donors. Aligning donors with purpose extends beyond charities that address racial or economic inequality. Many charities can, and perhaps should, seek donors who align with their purpose because of their identity or expertise.

60. *Id.* This assumption makes sense theoretically and fundamentally as there is a profound wealth disparity between Black and White individuals and families in America. See generally, DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021).

61. See Adediran, *supra* note 28, at 417.

62. Atinuke O. Adediran & Yaron Nili, *Funding Nonprofit Diversity and Innovation* (unpublished manuscript) (on file with author).