



# Markkula Center

## for Applied Ethics

*at Santa Clara University*

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### Controversial Donors

### *A Guide to Ethical Gift Acceptance*

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# A Guide to Ethical Decision Making for Nonprofits

Jeffrey Epstein and the Sackler family are the most recent names in the news about controversial donors and what nonprofits should do about them. Donors become controversial based on how they make their money or due to their personal behavior.

Some argue that the source of a contribution is irrelevant and nonprofits should take money from any and all donors--controversial or not--as [Mother Teresa](#) did. But the majority of nonprofits and the public do not adhere to this philosophy, and nonprofits struggle to make ethical decisions about problematic gifts.

Making ethical decisions requires sensitivity and a practiced method for exploring the ethical aspects of a decision to weigh the relevant considerations. Ultimately, the final decision rests with the nonprofit organization, but nonprofits would benefit by starting their process of ethical decision making by using a framework for potentially problematic gifts.

The [Markkula Center for Applied Ethics' framework](#) for ethical decision making provides crucial guidance for nonprofits to develop a framework for their own organization. This framework is tailored for decision makers such as members of the board of directors, fundraising officers, and others working in development in an organization.

## 1. Identify the ethical issue

Accepting or keeping a gift from a donor that made money or behaved in objectionable ways raises an ethical issue for nonprofits. For example, making money from a business that exploits children as factory workers may leave a person with plenty of funds to donate--but it also raises an ethical issue: is it right to take funds that came about from exploiting a vulnerable group's labor to turn a profit? Advocates for working conditions and child labor protections would say no and fundraisers, nonprofit managers, and board members should be sensitive to the fact that these types of gifts raise ethical issues.

It can be difficult to recognize ethical issues in gift acceptance in part because nonprofit fundraisers often discuss charitable donations in terms of size and contribution to an annual revenue goal, and may not intuitively scrutinize the source of the donation. All gifts should be assessed in terms of whether they are objectionable or defensible from an ethical perspective--not just in terms of whether they are sizable or small from a financial perspective.

## 2. Get all of the facts.

- a. **Consider the interest of individuals and groups with a stake in the outcome.**

The categories of stakeholders that nonprofits need to consider in decision making are generally consistent across the sector. These stakeholders are the nonprofit itself, including employees and volunteers; donors, past and present; those who use the nonprofit's services; and the public. The specific nature of these stakeholders and the significance of their interests is different for each nonprofit.

The Metropolitan Museum of Art's decision to stop taking donations from the Sackler family, who is linked to the opioid crisis through their company Purdue Pharma, illustrates the challenge of fully appreciating all of the nonprofit's stakeholders.

In March of 2019, several major museums decided to stop taking donations related to the Sackler family. Britain's National Portrait Gallery returned a \$1.3 million gift and the Tate Museum and the Guggenheim Museum refused any additional gifts from the family. The Metropolitan Museum of Art did not take action in March and was met with [protests](#), including one in which participants threw pill bottles into a major exhibit and engaged in a "die-in," generating negative press coverage. In May, the Met announced its decision that it would no longer take donations from the Sackler family.

In the press release, the Met also announced that they had [amended their gift acceptance policy](#) by consolidating decision making on gift acceptance and *allowing for consideration of the impact of the gift on the public interest*. In explaining its decision with respect to the Sackler family, the president stated: "...on occasion, we feel it's necessary to step away from gifts that are not in the public interest, or in our institution's interest."

Consideration of what is in the public interest is relevant not only to the public as a whole, but to donors, museum goers, artists, employees, and volunteers. Consideration of the public interest implications of the Sackler gift allowed the Met to best pursue its mission in light of its stakeholders.

### **b. Ask whether some stakeholder's concerns are more important than others and why. Consult with stakeholders.**

The identity of the stakeholders and how they are valued by the nonprofit can impact the decision on whether to accept or keep a donation.

Martin Shrekli was a young executive who, shortly after buying a pharmaceutical company, increased the cost of cancer and AIDS drugs dramatically, raising the cost of one life-saving drug for pregnant women, cancer patients, and people with AIDS over 5,000 percent. As part of his philanthropy, he donated \$15,000 to Community Solutions, an organization helping homeless people, and \$1 million to his high school alma mater, the Hunter College High School (HCHS). In response to Shrekli's price increases of certain drugs, Community Solutions returned the gift, but HCHS did not. The nature of the stakeholders and their concerns impacted these organizations' decisions.

For Community Solutions, Shrekli's behavior in raising drug prices directly impacted their clients, whom they valued most highly. The nonprofit's leaders discussed the issue

and decided to [return the gift](#) stating: “[w]e serve people who depend on access to AIDS meds every day, and as an organization I don’t think we can keep this money.” In this case, the donor’s business actions potentially harmed the clients’ interests and were in conflict with the nonprofit’s mission.

HCHS decided to [keep the gift](#) of \$1 million. Some alumni and students, both groups with a stake in the outcome, urged the high school to return the gift. But HCHS did not, saying that they had undertaken a “thorough review” with the Hunter College Foundation alumni and others and concluded that the best decision was to keep the money. The funds would be used to improve the school and help with expenses for those who could not pay. In this case, the nonprofit identified and listened to its stakeholders, weighed their interests and concluded that accepting the funds did not contravene the nonprofit’s mission and values.

Universal approval of particular outcomes is an implausible standard. Ethical decision making in such cases involves the organizations doing due diligence to identify those parties most interested in the decision of whether to keep the problematic gift, and evaluating the stakeholder concerns in making the decisions to keep the gifts to reach a publicly defensible conclusion.

### **3. Identify possible options and evaluate them with the lens of the organization’s mission and values.**

Nonprofits define their work through their mission statement and the principles that guide nonprofits should be reflected in their statements of values. A nonprofit working toward its mission is paramount as the mission is the basis for a nonprofit gaining tax-exemption. The public effectively subsidizes nonprofits with the understanding that these tax exempt organizations will maximize their contribution to the public good through fulfillment of their missions. In addition, nonprofits present and publicize mission and values to all of their stakeholders. There are [other ethical approaches](#) that may be used as ethical lenses, but an organization’s mission and values should be primary.

Most of the larger nonprofits follow the [best practice](#) of having a gift acceptance policy with a provision stating that the nonprofit may elect to refuse gifts that are not consistent with the nonprofit’s mission or values. Whether the policy is in place or not, when making a decision about a potentially problematic gift, nonprofits should use their mission and values as the ethical lens when evaluating their options when faced with a controversial gift.

#### *Options*

##### *i. Refuse the gift.*

Refusing the gift means declining to accept the funds offered. If an organization compares their mission and values to the behavior and actions of the donor and finds that the donor has acted in direct opposition to the organization’s mission and values,

which is being echoed by key stakeholders, then the organization has an ethical obligation to decline to accept the gift. Otherwise, the organization is no longer acting in adherence with its mission, which is its primary duty.

*ii. Return the gift.*

In some cases, accusations and convictions or other confirmation of wrongdoing take place after a gift has been accepted, and there was no way to know that these accusations and convictions would arise. For someone who has no past record of embezzlement, for instance, figuring out that this person is embezzling funds may not be within the capacity of any fundraising team, no matter how robust. Nonprofit organizations often must act in conditions of informational asymmetry, where the donor purposefully hides relevant context in hopes that the gift will be accepted. When such behavior comes to light, however, nonprofit organizations are not in a position to continue to plead ignorance as the basis for keeping the gift as planned.

If an organization's mission, values, and stakeholders' interests are all contradicted by the donor's actions and wrongdoing, then the organization has an ethical obligation to return the gift, if there are funds remaining. If there are not funds remaining, the organization does not have an obligation to raise more funds simply to return the equivalent amount, but must act transparently, making clear how the funds were used and the timeline of funds being accepted before the accusations and confirmation of these accusations came to light.

*iii. Retain the gift.*

If an organization's mission, values, and stakeholders do not identify an issue with accepting a donation, even if the donor has either earned the money through potentially objectionable means or has a problematic past, there may not be a need to take further action--other than drafting a public statement to explain this process publicly. For example, someone who has worked at an oil company while a major oil spill took place may seek to donate to an education technology nonprofit. If the mission and values of the education technology nonprofit are still upheld and stakeholders are aware but do not find the donor's professional history concerning from the perspective of developing education technology for students, then it would be ethical for the organization to retain the gift. The same may not be true for an environmental nonprofit, which would have different stakeholders and a distinct mission to consider when assessing the gift.

*iv. Retain the gift, but devote it to efforts to address the social problem the donor's actions contributed to or created.*

Ethics is about doing what is right for society, not just for a private organization or individual. There is a compelling argument to be made that what is best for society is not for controversial donors to hoard their funds, and that a better place for their funds is in the nonprofit sector, specifically to provide services and support for communities

victimized by their actions. In some cases, this amounts to a nonprofit not returning the problematic gift to the donor and dedicating the funds to a different sector that offers services for people affected. If, for example, a donor participated in a scheme to make medications prohibitively expensive for impoverished patients which comes to light after an organization has accepted the donation, one ethical option would be to give the funds to another organization that aims to provide affordable access to healthcare and treatment for the specific community that the donor negatively impacted.

#### **4. Which option best addresses the situation? Make a decision and test it.**

In making a decision with respect to a problematic gift, a nonprofit should consider how outsiders might view the decision and think about how it will be portrayed by the media. If a nonprofit has followed the framework, they should have a well-reasoned, defensible position to explain their decision.

Nonprofits should also consider how the decision can be implemented with the greatest care and attention to the concerns of all stakeholders.

#### **5. Act and reflect on the outcome.**

Reflection helps inform the next decision and allows this process to become a practiced mechanism for ethical decision making, both for individual decision makers and for institutional history.

Controversial donors can make it challenging for nonprofit organizations to fulfill their missions. When public scrutiny focuses on a controversial donor and ignores the contributions of the organization to communities--while also making future donors wary of offering support and alienating stakeholders--organizations may find themselves wondering whether the controversial donation was worthwhile at all. At the same time, nonprofit organizations inevitably need donor funds, and it is rare for a donor to be completely free of potential controversy. The goal of the ethical framework above is to provide nonprofit organizations with a set of steps to utilize when assessing donors, and to offer a vocabulary for how they might begin to justify decisions to refuse, return, or retain a gift.

# Case Studies

## A University Donor With a Checkered Former Employer

Consider the case below. Apply the framework to reach a decision about whether you would accept the gift in question. Then, explain how you would justify your decision to stakeholders.

A STEM-focused university has just kicked off a new campaign for the current year. The target is unprecedented for this particular university, but the goal is to push hard to expand the university in an effort to serve more students who seek to enter STEM fields. You join the university's fundraising team largely because of your belief in the university's mission, vision, and values. Specifically, you're pleased to see that this university aims to help diversify STEM, starting with accepting a diverse group of students from historically underrepresented backgrounds.

One afternoon, you receive a call from a donor who identifies as a retired employee of a financial group that is well-known--for a troubling reason: this financial group was in the news during the 2008 recession and admitted to predatory lending practices. You immediately remember the intense outrage when the financial group said publicly that they targeted single moms since the financial group's leader at the time said, "They wouldn't know better than to take the loan."

The donor on the phone worked at the company and retired before any of these issues arose, however. At the same time, the donor's name is associated with the financial group. The donor tells you that they would not only like to make a donation this year, but plans to make ongoing donations in an effort to give back to the community.

Does it make a difference that the donor was not with the financial group during the 2008 controversy?

If a prospective student's mother informed you that she was targeted by this financial group during the recession, would that change your position?



# An Anonymous Benefactor for a Homeless Shelter

*Consider the case below. Apply the framework to reach a decision about whether you would accept the gift in question. Then, explain how you would justify your decision to stakeholders.*

Homelessness and housing instability are on the rise, and nonprofits that attempt to address the housing crisis are struggling to meet demand for services. You are one of five staff members at a nonprofit organization that offers shelter to families with young children. Most residents of the shelter have been evicted and have nowhere to go due to soaring rent costs in the area.

Your role is not exclusively focused on fundraising, but part of your position involves external relations and responding to inquiries to build relationships. Your background is not in fundraising, and you're largely learning on the job.

You receive a call from a donor who tells you her name but urgently asks to remain anonymous for the purposes of any notes or logs you create. She wishes to remain anonymous because she has been recently implicated in a corporate embezzlement scam, and a trial is pending. The alleged corporate embezzlement scam took place overseas, and has been covered in the global business press for months.

You recognize her name from the coverage, and start to hesitate about whether it would be wise to continue speaking with her. She senses this, and quickly explains that she has resigned from the corporation and is trying to get her assets in order. She feels terrible about what has happened overseas, and she is uncertain of what her punishment will be once the trial concludes. She knows she would like to arrange to make a gift as quickly as possible to an organization doing great work for the community--which is why she is calling you.

She understands that more and more people are experiencing homelessness and housing instability, and so she offers a gift that would cover physically expanding the shelter and shelter amenities, and would also cover staff and a substantial portion of overhead costs for the next three years.

A gift of this size has never been offered to the shelter before, and would make a huge difference in the number of families served and the working conditions for staff members. She only asks that you never reveal her name, because she does not want her name associated with the gift.

Given that the embezzlement happened in a different country and was not about housing, does the donor's involvement in that scandal matter?

If the identity of the donor were one day revealed, would you use the same justification for your decision as if the donor remained anonymous?

Should nonprofit organizations accept gifts on the condition of anonymity?

## A Museum Meets a Controversial Employer

*Consider the case below. Apply the framework to reach a decision about whether you would accept the gift in question. Then, explain how you would justify your decision to stakeholders.*

A nonprofit art museum in a major metropolitan area in the US is looking at mid-year donations, and grows concerned that they are tracking far behind their annual goal. For the past few years, including the current year, they've seen donations dwindle due to other museums and arts-focused nonprofits opening in the area. This means that the museum will likely need to shrink their staff, and that will leave no one to focus on growing the museum's social media presence.

You are a senior member of the staff, and you listen to your team's concerns about how to build new relationships with donors in an increasingly saturated space. After the meeting, you go back to your office to strategize. Just then, you notice a message from a donor who is offering to provide full support for two full-time staff members, as well as a part-time employee for social media. This couldn't be more fortuitous, you think, and you begin to look into who the donor is.

A quick Internet search reveals that the donor's family has been recently accused of using child labor overseas, and not paying adult workers a living wage. The donor did not mention their family in the email offering a gift, and did not provide context about where the gift would come from.

The donor only said that they have regularly visited the museum, and that they wish to support the museum's mission to bring modern art to the community.

The investigation into accusations against the donor's family related to labor conditions is ongoing, you read. No one in the donor's family has admitted or denied the accusations as of today.

# Controversial Donors in the News

## Business Related

### David Radler

Paul Dunn, [When a Donor Becomes Tainted](#), Nonprofit Quarterly, March 21, 2010

### Martin Shrekli

[Homeless Charity to Return Donation by Notorious Entrepreneur Martin Shrekli](#), The Guardian, December 18, 2015

### Alfred Tauban

[Alfred Tauban, Billionaire Convicted of Price Fixing, Dies at 91](#), The Washington Post, April 17, 2015

## Sex Related

### Bill Cosby

[Bill Cosby's Image as Generous Philanthropist Falls under Shadow of Sexual Assault Allegations](#), Fox News, December 1, 2015

### Harvey Weinstein

Ruth McCambridge, [Weinstein Resigns from Robin Hood Board as Others Return His Donations](#), Nonprofit Quarterly, October 11, 2017

### Jeffrey Epstein

Russ Choma, [MIT Tried to Cover Up Donations from Jeffrey Epstein](#), Mother Jones, September 7, 2019

## Race Related

### John Schnatter

Courtney Han, [Purdue University Removes John Schnatter Name from Building, Offers to Return \\$8 Million Donation](#), ABC News, August 5, 2018

## **Donald Sterling**

Larry Gordon, [UCLA Cancels \\$3-million Research Gift from Sterling Foundation](#), Los Angeles Times, April 29, 2014

## **Business and the public interest**

### **Sackler Family**

Elizabeth A. Harris, [The Met Will Turn Down Sackler Money among Fury over Opioid Crisis](#), New York Times, May 15, 2019

## **Other misconduct and crimes**

### **John Eleuthère du Pont** (murder conviction)

John F. Bonfatti, [Villanova Mum on Renaming Pavilion du Pont Promised to Fund but Didn't](#), AP News, February 3, 1996

### **Bill and Nancy Laurie** (academic misconduct)

Stephanie Simon, [Benefactors Find Scandal Gave New Arena a Bad Name, Chicago Tribune](#), November 25, 2004

### **Lance Armstrong** (athletic misconduct)

Brent Schrotenbauer, [Livestrong Adjusts to Life Without Lance Armstrong](#), USA Today, May 4, 2016.