

# Understanding AB 624

by Rick Cohen



If one California state legislator has his way, his state may soon compel some foundations to let the public know the extent to which their work touches people of color, gender minorities and low-income communities.

State Assemblyman Joe Coto has proposed a bill, known by its legislative number AB 624,<sup>1</sup> which has energized foundations to come out swinging against the notion of compulsory reporting by foundations on the diversity of their own makeup and of their grantmaking. The lessons learned from this still unfolding legislative battle might be useful in a future dialogue on the question of promoting more racial/ethnic equity in organized philanthropy.

The legislation challenges foundations to their core. Whom do foundations serve? How will philanthropy address racial and social inequities? Whether or not it passes into law, AB 624, warts and all, raises important issues that foundations have often addressed through largely unproductive expressions of caring commitment to diversity.

## Foundation Support for Racial Equity Lags

There is little debate that racial/ethnic minorities have not garnered significant proportions of foundation grantmaking. The Applied Research Center's 2004 *Short Changed* report described the increasing gap between the growth of overall U.S. foundation giving and the proportion targeted to racial/ethnic minorities, noting that among "organizations that promote justice and equity for immigrants and established communities of color...funding streams for many such organizations have been reduced to a trickle in recent years."<sup>2</sup> Within philanthropy, racial/ethnic affinity groups of foundations have for decades decried shortfalls in grantmaking to their constituencies, generating data such as in a recent report from Asian Americans Pacific Islanders in Philanthropy (AAPIP) underscoring the disparity between an AAPI population that accounts for 4.5 percent of the U.S. population but only 0.4 percent of foundation grantmaking.<sup>3</sup>

In 2005, the Berkeley-based Greenlining Institute generated a diversity report card of sorts on foundations, *Fairness in Philanthropy*, examining the 2002 grantmaking of 49 foundations to minority-led organizations, defined as groups "whose staff is 50 percent or more minority; whose board of directors is 50 percent or more minority; and whose mission statement and charitable programs aim to predominantly serve and empower minority communities or populations."<sup>4</sup> The institute followed up the next year with a second study, *Investing in a Diverse Democracy*,<sup>5</sup> with an eye toward responding to foundation and other criticisms of Greenlining's research methodology.<sup>6</sup>

The Greenlining Institute has a 15-year history of efforts to increase investment in low-income and minority neighborhoods. Nationally known for its challenges to banks' redlining practices, Greenlining has crafted community reinvestment agreements with major financial institutions such as Wachovia and Merrill Lynch. It has similarly challenged other corporations and government agencies on their attentiveness to racial/ethnic diversity, generating "diversity scorecards" on bank boards, the University of California medical school faculty and the partners of California's 20 largest law firms.

Greenlining's follow-up report concluded that a sample of "national independent foundations" gave only 14.7 percent of their 2004 grant dollars and 7.7 percent of their total grants to minority-led organizations in 2004. California foundations awarded 4 percent of grant dollars and 11.7 percent of total grants (led by the California Endowment's 19.6 percent and 22.5 percent).<sup>7</sup> Some funders in the Greenlining sample, such as the Gordon and Moore Foundation, were said to have made no grants to minority-led organizations, and overall totals would have been greatly reduced were it not for the \$535 million grant of the Bill and Melinda Gates Foundation to the United Negro College Fund.<sup>8</sup>

The 2005 report, meanwhile, caught the attention of Assemblyman Coto. Under his leadership, the state's Black,

Latino, and Asian/Pacific Islander legislative caucuses convened a hearing on the topic with testimony from officers of four California foundations.<sup>9</sup> Subsequently, Coto introduced the legislation calling for mandatory racial/ethnic reporting on foundation grants, much to the consternation of the California and national foundation sectors, which have been stridently opposed to the measure.

As currently drafted, AB 624 applies only to California-based foundations, including private, corporate and so-called “public operating foundations” (which may or may not include community foundations) with assets over \$250 million. At this writing, the legislation has passed the California House but remains under consideration by the Senate.

There is wide agreement that there are major concerns about philanthropic attention and commitment to racial equity in grantmaking and operations. But the growing debate is whether AB 624 is a workable approach that helps the sector make progress toward increased racial equity or whether it sidetracks philanthropy into unproductive data collection and administrative requirements.

### Geographic Conundrum

What’s more, the bill is caught in a geographic no-man’s land: focused on grantmaking to racial/ethnic communities and organizations, but potentially excluding major categories of grantmakers (community foundations) in the state; examining grantmaking by large California-based foundations, including those whose giving is national rather than state-focused, but not necessarily by national foundations making grants in California; and excluding the racial/ethnic dimensions of international grantmaking, no less relevant to questions of racial justice than foundations’ in-state and out-of-state grantmaking. The legislation exempts community foundations with more than \$25 million in assets.

Nonetheless, for legislation concerned substantially with foundation *grantmaking* to racial/ethnic minorities, the exclusions of community foundations and the inclusion of large-asset operating foundations that make few grants leaves out many large foundations making grants to California organizations. Even with the very large foundation sector in the state, seventeen of the top 50 (and three of the top ten) grantmakers to California nonprofits are not located in California, notably the Bill and Melinda Gates Foundation

(Washington state), the Annenberg Foundation (Pennsylvania), the Ford Foundation (New York) and the Robert Wood Johnson Foundation (New Jersey), among others.<sup>10</sup> Many of the large private and corporate foundations that would likely be mandated to comply with the statute operate nationally rather than simply within the state, so that a particular foundation might make substantial grants to minority-led organizations outside of the state and almost none in the state.

### Mandated Foundation Reporting

The scope of AB 624 has been whittled down in its journey through the California legislature, but as of March 2008, the bill still called for reporting on the number of grants and percentage of grant dollars awarded to:

- ▶ organizations serving ethnic minority communities and lesbian, gay, bisexual, and transgender communities;
- ▶ organizations where 50 percent or more of the board members or staff are ethnic minorities or are lesbian, gay, bisexual, or transgender, and
- ▶ predominantly low-income communities.

The bill also wants foundations to report on the number and percentage breakdowns of their own board and staff race and gender. Covered foundations would be required to post the reports on their Internet websites and include them in their published annual reports under the label “diversity.”

Foundations in California and nationally have reacted sharply to these reporting requirements, suggesting that the data collection would be costly and burdensome, redirecting funds that could have gone to these population groups to pay for the administrative tasks of compliance with the

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legislation. Others have said that this reporting requirement represents an improper invasion of government regulation over private funds, forgetting that foundation assets are tax-exempt dollars, entrusted by the public to foundations’ stewardship and distribution for the public’s benefit. Still others hint darkly that the enactment of AB 624 will spur foundations to pack up and move out of California in search of a foundation-friendly version of Delaware’s negligible corporate reporting and oversight.

The AB 624 opposition sounds a recurrent theme that the legislation’s required reporting would be an invasion of the

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privacy of grantmakers and grant recipients. In practice, however, many foundations routinely require grant applicants to report on their racial/ethnic composition. It is not difficult to find grant application formats that indirectly or directly ask

applicants to report on their board/staff

diversity. For example, the “common grant application” format used by Grantmakers of Western Pennsylvania specifically asks

applicants to list officers and directors for their “diversity spread (age, gender, race),”<sup>11</sup> and the common grant application form used by Associated Grant Makers, the regional association in Massachusetts, includes a “diversity data form” spreadsheet for classifying board members, management staff, support staff and volunteers as Asian, Black, Latino(a), white, or other.<sup>12</sup>

In truth, foundations have resisted nearly every reporting effort as burdensome, unnecessary, and costly, from the requirements of the Tax Act of 1969 through the development and mandate for public disclosure of the Form 99PF. Foundations furiously fought the prospect of increased reporting and vilified the members of Congress promoting the bolstered regulatory oversight. In retrospect, however, they would have to acknowledge that the 1969 standards resulted in less self-dealing abuse and higher levels of foundation grant distributions.

### Parallel to Mortgage Disclosure Measure?

The supporters of AB 624 cite a different legislative precedent for the mandatory reporting requirements of the legislation. This year is the 30th anniversary of the Community Reinvestment Act (CRA). Three decades ago, banks were adamantly opposed to the enactment of CRA, warning of dire consequences for residential lending practices, but today, major banks begrudgingly accept CRA as a positive contribution to banking practices and appropriate governmental oversight. Preceding CRA by a couple of years, the Home Mortgage Disclosure Act (HMDA) provides the statistical basis for making CRA into a potentially useful tool.

Greenlining and Coto cite HMDA, a tool used by Greenlining for much of its successful CRA work, as a “good example” for comparison to the requirements of the California bill,<sup>13</sup> but is it really?

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The Home Mortgage Disclosure Act of 1975 compels banks to provide loan data so that regulators and the public can determine whether financial institutions are meeting the housing credit needs of their communities, generating a “picture of how geographic lending patterns vary depending on the income status and/or racial/ethnic make-up of

neighborhoods.”<sup>14</sup> Advocacy organizations such as Greenlining, ACORN and others use HMDA data to determine if banks have engaged in racial discrimination or neighborhood-based redlining, challenging bank applications for mergers and acquisitions.

The HMDA parallel with AB 624 is tenuous. HMDA is predicated on measuring financial institutions’ provision of credit to the end recipients, minority or low-income families and neighborhoods, based on an analysis that historic redlining practices have harmed racial/ethnic population groups and communities. HMDA does not concern itself with minority-led financial institutions or lending intermediaries. An HMDA corollary to AB 624 would examine bank investment in the less than 200 minority banks counted by federal regulators.<sup>15</sup>

While many of the minority banks are committed to reinvesting in their communities, not all are necessarily top-level CRA performers. Overall, the minority banks’ loan denial rates for minorities appear to be not much different than other banks’, suggesting that programs to create and support minority banks and data collection and CRA-type “report cards” per se are insufficient for overcoming built-in biases in the ways banks do business. The fact of being a minority-owned bank does not mean that the lending practices will necessarily be *significantly* more community-oriented than the practices of other banks.

### Strategically Funding Minority-Led Nonprofits

However, like minority-led nonprofits, the challenge of minority banks is that for the most part, they are poorly capitalized compared to their mainstream competitors and sometimes compelled to be cautious about risks that larger, better capitalized organizations might be able to absorb. The challenge for foundations is to provide strategically targeted funding that builds the technical, financial and managerial capacities of minority-led nonprofits to strengthen their capacities for advocating for racial/ethnic justice.<sup>16</sup> A strategic approach would ensure that foundations prioritize funding and technical assistance for minority-led organizations, but even

more broadly to ensure that whatever organizations serve minority populations are held accountable to them.

Therein lies the problem of AB 624's emphasis on foundation grantmaking to minority-led organizations. For example, a foundation might make substantial grants to organizations whose governing boards or staff are minority, but the organizations might not actually have much or any program emphasis on serving racial/ethnic minorities. Moreover, grants that go to organizations entirely opposed to the racial/ethnic priorities of the Greenlining Institute and many of the top foundations in California would count in the racial/ethnic column.<sup>17</sup> Perhaps the most powerful example of this would be a grant to African American anti-affirmative action activist Ward Connerly's California-based American Civil Rights Institute (whose slogan is "race has no place in American life or law").<sup>18</sup> Lacking attention to the content of foundation grantmaking, AB 624 would be counting grants to organizations whose missions have little bearing on or whose politics might be adverse to racial/ethnic equity. The same content and strategy questions would apply to conservative or self-dealing organizations. In other words, the racial justice content of the grantmaking or the grant recipient organization is not a relevant factor in the legislation, nor is the recipient's organizational accountability.<sup>19</sup>

AB 624 does not offer "good" or "bad" grantmaking benchmarks and does not mandate foundations to make grants to racial/ethnic communities or to minority-led organizations, but the measure implies a value judgment. In foundation grantmaking as well as bank lending, the measure should be not simply which intermediaries receive funding; it should be whether the funding empowers communities to redress institutional and societal inequities. Philanthropy needs a more robust set of measures tied to affirmative strategies for promoting racial equity than what might be generated through the self-reporting called for by the proposed legislation.

### **The Importance of Metrics**

Some philanthropic leaders see AB 624 as a burdensome proposal that would subject foundations to a compulsory accounting of their voluntary contributions to racial equity. They see this as reason enough to oppose the bill. But people who hold this view may be failing to acknowledge that their

campaign against AB 624 is actually doing the bidding of more conservative forces – forces that these same moderate and liberal foundation leaders have opposed in the past.

These include conservative nonprofit and philanthropic groups such as the Philanthropy Roundtable and the Alliance for Charitable Reform that have been outspoken in their opposition to AB 624. Some member foundations of these umbrella groups have funded Connerly's organization and have supported Connerly's Racial Privacy Initiative, which spawned the 2003 California ballot measure known as Proposition 54. This proposal would have banned state government from collecting information about race, ethnicity or national origin except in very limited circumstances. Although Proposition 54 failed, the American Civil Rights Institute did succeed in rolling back some aspects of affirmative action in Michigan and Washington as well as in California. Connerly recently announced efforts to place similar rollback voter initiatives on the ballot in Colorado, Arizona, Missouri, Nebraska, and Oklahoma.<sup>20</sup>

### **Contradiction on Data Collection**

A survey of California foundation program officers and interviews with foundation executives found that three-fourths expressed concern about Proposition 54's implications for foundation strategies, investment priorities and impact measurements.<sup>21</sup> Even more said that they take race, ethnicity and national origin into account when making grants. The case for philanthropy's collection and dissemination of racial/ethnic

data from grantees has been made repeatedly by leading foundations such as the Annie E. Casey Foundation<sup>22</sup>, the Ford Foundation and many others. Yet, in an apparent contradiction, many of the California foundations that fought against Proposition 54 now vigorously oppose AB 624. They do not acknowledge that the very data they find useful for grantmaking – and that, by opposing Proposition 54, they have actively defended – can and should be collected from foundations and made available to the public.

Although three California grantmaker associations have promised the California legislature that they will conduct research to find ways of strengthening grant support to minority-led organizations, these assurances feel disingenuous. Rather than engaging the process, recognizing the legitimacy of the concerns behind the California bill and designing a

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muscular approach to metrics for racial/ethnic equity in foundation grantmaking, these associations are buying time.

The Leadership Conference on Civil Rights succinctly expressed the rationale for opposition to Proposition 54 – and why foundations should be aware of the implications of their opposition to AB 624: “Without data collection, [Proposition 54] would damage the state’s ability to address disparities by race and ethnicity in discrimination and hate crimes, health care and disease patterns, and educational resources and academic achievement.”<sup>23</sup>

Whatever the shortcomings of AB 624, foundations should not be let off the hook when it comes to determining who benefits from their nearly \$40 billion in annual grantmaking and whether the grantmaking contributes to racial/ethnic equity and social justice. They should be standing up for robust and meaningful data collection to help the sector advance the causes of racial and ethnic equity and justice. Instead of eschewing racial/ethnic metrics, they should support efforts to ensure that philanthropy is held accountable for what it delivers to critical societal needs in return for its control of federally tax-exempt funds.

### A Wake-Up Call?

The future of AB 624 is anything but certain. Foundations opposing the bill have placed op-eds in major California and national newspapers and distributed letters to California legislators. It is nearly impossible to find public statements from foundations that favor the measure. As in 2003, when the foundation sector vigorously lobbied Congress against the Charitable Giving Act of 2003, a bill that would have altered the composition of private foundations’ 5 percent minimum “payout” requirement to exclude foundations’ administrative

costs, grantees have been reticent to say much – if anything – that might be perceived by their funders as challenging them on a fundamental precept of philanthropic freedom from oversight and regulation. The anti-AB 624 foundations have hired heavyweight California public policy lobbyists to work the halls in Sacramento to convince the legislature to reject the legislation or send it back to committee for refinement and improvement. If that doesn’t work, the lobbyists could persuade Governor Arnold Schwarzenegger (R) to veto the measure.

The bill seems destined to falter at some level of the policy-making process, at least in the short run. But what then? Will the issues behind AB 624 be buried under an avalanche of consultant studies, foundation pro-diversity declarations and a few strategically placed grants?

In California, Assemblyman Coto might be inclined to revisit the legislation to see if there is a way to reengineer the bill to achieve a more practical, better-targeted approach for determining the extent to which the state’s foundation community is contributing to racial equity. At the federal level, it is conceivable that fellow Californian U. S. Representative Xavier Becerra (D) might push for a philanthropic commitment to racial equity more muscular than the usual foundation testimonials. (Becerra has already expressed concern about the extent to which foundations – and in fact, the charitable sector overall – respond to the needs of racial/ethnic groups and low-income populations.)<sup>24</sup> The issues raised by AB 624 are not likely simply to fade away. The foundation sector would be well advised to view AB 624 as a powerful wake-up call.

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- Fairness in Philanthropy: Part I: Foundation Giving to Minority-Led Nonprofits* (Berkeley, CA: Greenlining Institute, November 2005), p. 7.

- 5 *Investing in a Diverse Democracy: Foundation Giving to Minority-Led Nonprofits* (Berkeley, CA: Greenlining Institute, Fall 2006), p. 3.
- 6 As a matter of disclosure, the National Committee for Responsive Philanthropy (NCRP), which this author served as executive director, was to have been a partner of Greenlining Institute in the implementation of the 2005 study. NCRP withdrew due to disagreements concerning the study's research methodology.
- 7 The California Endowment and the California Wellness Foundation, health conversion foundations, are both sizable funders of Greenlining's "Bridges to Health" organizing and advocacy effort (<http://greenlining.org/sections/view/bridgestohealth>).
- 8 Investing, p. 5.
- 9 The foundation representatives who offered oral testimony were from the James Irvine Foundation, the San Francisco Foundation, the California Wellness Foundation and the California Endowment, cf. <http://greenlining.org/documents/view/9>,
- 10 [http://foundationcenter.org/findfunders/statistics/pdf/03\\_fund\\_geo/2005/50\\_found\\_states/f\\_ca\\_05.pdf](http://foundationcenter.org/findfunders/statistics/pdf/03_fund_geo/2005/50_found_states/f_ca_05.pdf)
- 11 <http://gwpa2.org/commongrantapplication.pdf>, p. 4
- 12 [http://www.agmconnect.org/cpf/CPF\\_Diversity\\_Form.xls](http://www.agmconnect.org/cpf/CPF_Diversity_Form.xls)
- 13 Cited in a staff report prepared for the California Assembly Committee on Judiciary, January 15, 2008 ([http://info.sen.ca.gov/pub/07-08/bill/asm/ab\\_0601-0650/ab\\_624\\_cfa\\_20080114\\_104234\\_asm\\_comm.html](http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0601-0650/ab_624_cfa_20080114_104234_asm_comm.html))
- 14 Paul Huck, "Home Mortgage Lending by Applicant Race/Ethnicity: Do HMFA Figures Provide a Distorted Figure?", *Policy Studies* (Federal Reserve Bank of Chicago, October 2000), p.2
- 15 See *Minority Banks: Regulators Need to Better Assess Effectiveness of Support Efforts* (Washington DC: U.S. Government Accountability Office, October 2006), p. 7, for a count of minority banks.
- 16 The few foundations with strong commitments to building and supporting minority-led nonprofits appear to be devoted to crafting intentional strategies of funding and organizational development technical assistance. A good example is the Mary Reynolds Babcock Foundation which has been a consistent funder of minority-led nonprofits in the South ([http://www.allianceonline.org/events\\_and\\_announcements.ipage/alliance\\_regional\\_meetings.page/2002\\_regional\\_meetings.file](http://www.allianceonline.org/events_and_announcements.ipage/alliance_regional_meetings.page/2002_regional_meetings.file)).
- 17 With only two board members, as stated on its 2006 Form 990 (<http://www.guidestar.org/FinDocuments/2006/522/004/2006-522004697-03302dca-9.pdf>), one of whom is Ward Connerly, ACRI meets the AB 624 standard of an organization where 50% of the board members are minority.
- 18 <http://www.acri.org/about.html>
- 19 According to the ACRI 990, Connerly is paid by the organization as an employee and as a consultant in addition to other emoluments such as speaking fees. As others have noted, a substantial proportion of the organization's foundation fundraising goes to Connerly, cf. Rick Cohen, "Ward Connerly and a Small Lesson in Nonprofit Accountability", NCRP Blog (May 17, 2006), <http://www.ncrp.org/blog/2006/05/ward-connerly-and-small-lesson-in.html>
- 20 Peter Slevin, "Affirmative Action Foes Push Ballot Initiatives," *Washington Post* (March 26, 2008)
- 21 *Flying Blind: Proposition 54 & Philanthropy* (San Francisco: CompassPoint, 2003)
- 22 For example, *Eliminating Racial & Ethnic Disparities: A Funder's Discussion about Strategies and Resources* (Baltimore: Annie E. Casey Foundation, n.d.) and *Race Matters User's Guide* (Baltimore: Annie E. Casey Foundation)
- 23 [http://www.civilrights.org/campaigns/prop54/fact\\_sheet.html](http://www.civilrights.org/campaigns/prop54/fact_sheet.html)
- 24 Cohen, Rick. "A Conversation with California Congressman Xavier Becerra." *The Cohen Report* (<http://www.nonprofitquarterly.org/content/view/484/>)