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DONOR PREFERENCES AND THE CRISIS IN PUBLIC INTEREST LAW

Jeffrey Kosbie*

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INTRODUCTION

Public interest law (“PIL”) remains in a state of perpetual crisis today. The legal needs of the poor and underrepresented dramatically outstrip the resources of legal aid and civil rights organizations. Legal aid offices across the country decline half of the requests that they receive because of insufficient resources, and this does not count the many people who never seek access to an attorney.¹ Low-income households are able to obtain legal aid for less than 20% of their legal needs.² Even when aid programs exist, problems arise because of failures of coordination.³ Cause-oriented nonprofits, like the American Civil Liberties Union (ACLU) and National Association for the Advancement of Colored People (NAACP), report working in a legal and political climate that is increasingly hostile to claims of minority rights.⁴ These organizations prioritize only the worst violations of minority rights.⁵ As a result, public interest lawyers routinely report that they pay insufficient attention to many serious violations of rights because of their limited resources.⁶

Prominent voices within the organized bar increasingly recognize the failure of the legal profession to provide meaningful access to justice.⁷ When individual legal needs go unaddressed and systematic violations of civil rights go without response, these voices agree that

1. See LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9-12 (2009). There is one legal aid lawyer for every 6,415 low-income people in the U.S., compared with one lawyer for every 429 people in the general population. See *id.* at 19.

2. See *id.* at 13–18 (discussing unmet legal need by household).

3. See REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT 21 (2011) (“At the national level and within most states, civil legal assistance is organized much like a body without a brain: it has many operating parts, but no guiding center”).

4. See Scott L. Cummings, *The Future of Public Interest Law*, 33 U. ARK. LITTLE ROCK L. REV. 355, 367–69 (2011) (discussing conservatism); see also David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209 (2003) (arguing that efforts to de-fund public interest law are part of broader conservative political assault).

5. See Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2053 (2008) (reporting on strategic decision-making at PILOs).

6. See Catherine R. Albiston & Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 L. & SOC. INQUIRY 62, 85–88 (2014) (finding that funding restrictions limit the ability of PILOs to pursue certain claims).

7. See Scott L. Cummings, *Empirical Studies of Law and Social Change: What is the Field? What Are the Questions?*, 2013 WIS. L. REV. 171, 174–75 (2013) (describing convergence of attention on problems of access to justice).

the legal profession is failing in its stated professional obligations.⁸ Over the past decade, organizations including the Department of Justice, the American Bar Association, the American Bar Foundation, the Legal Services Corporation, and the Stanford Center on the Legal Profession have studied the problem of access to justice.⁹ While these reports focus on different questions and use different methodologies, they all point to a severe lack of knowledge about the actual organization of public interest law as a fundamental challenge to developing reform proposals.¹⁰ These organizations uniformly agree on the importance of more research on the delivery of public interest law to inform ongoing debates over how to improve access to justice.¹¹ In particular, several key studies agree that “how public interest law is financed affects the kinds of cases that can be pursued and their likely social impact. A deeper understanding of financial constraints and opportunities in different practice contexts is therefore critical to effective reform.”¹²

This article answers the call for more research on the organization of public interest law. It provides the first comprehensive study of individual donors.¹³ The modern public interest legal organization (“PILO”) relies heavily on foundations and individual donors.¹⁴ But studying donors directly is difficult because it requires gaining access

8. *See id.*

9. *See* DEBORAH L. RHODE, ACCESS TO JUSTICE: AN AGENDA FOR LEGAL EDUCATION AND RESEARCH (2013) (Consortium on Access to Justice Report); SANDEFUR & SMYTH, *supra* note 3.

10. RHODE, *supra* note 9, at 532–33. According to one recent study, the lack of research on legal aid is at least partially due to high costs and low rewards for legal scholars. *See id.* at 542–44.

11. *See* SANDEFUR & SMYTH, *supra* note 3, at ix (emphasizing lack of previous data); Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights From Theory and Practice*, 36 *FORDHAM URB. L.J.* 603, 605 (2009) (emphasizing “the importance of systematic evaluation” to improve public interest litigation); Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 *HARV. L. & POL’Y REV.* 83, 85 (2013) (identifying “New Measurement” movement in research on pro bono).

12. Cummings & Rhode, *supra* note 11, at 605. *See also* Albiston & Nielsen, *supra* note 6, at 88–92 (comparing funding models and PILO structures based on random sample of all PILOs); Rhode 2008, *supra* note 5, at 2053–58 (discussing sources of funding based on study of major PILOs); Scott L. Cummings & Ann Southworth, *Between Profit and Principle: The Private Public Interest Firm*, in *PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION* 183 (Robert Granfield & Lynn Mather eds., 2009) (arguing that the need to make a profit constrains private firms based on study of hybrid private-public firms); Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. REV.* 1, 116–34 (2004) (revealing how big firm pro bono programs focus on cases that will not create conflicts for the firm).

13. To the best of my knowledge, no previous research reports on direct surveys of donors.

14. *See* Rhode, *supra* note 5, at 2054.

to them. PILOs invest substantial resources in maintaining donor relations and place high priority on maintaining donor privacy.¹⁵ They are understandably reluctant to give researchers access to their donor lists.¹⁶ In lieu of direct access to donors, past research has focused on the PILOs themselves.¹⁷ This research highlights the ongoing tension between achieving organizational priorities and retaining donors.¹⁸ PILO leaders largely agree that, at least in theory, strategic priorities should be independent of donor preferences.¹⁹ Nonetheless, they admit that donor preferences have at least some impact on which of their priorities they can work on.²⁰ Donor preferences also can affect cause-oriented PILOs in more subtle ways. For example, the need for measurable outcomes to present to donors can inhibit work on more complex problems with less discrete solutions. Grassroots organizing and coalition building can also suffer when they are not as visible as high profile litigation. Finally, PILOs might duplicate some efforts as they race to achieve the same goals and attract the same donors. Because of the multiple ways that donors could influence public interest law, any full discussion of the future of the industry requires more insight into donor motivations.

I surveyed donors to the National Center for Lesbian Rights (NCLR) as part of a broader research project on the history of the major Lesbian, Gay, Bisexual, and Transgender (LGBT) legal organizations.²¹ In this article, I present two central findings from the survey. (1) Most donors draw clear distinctions between NCLR and its sister organizations.²² But donors vary in what distinctions they consider important and how they describe NCLR. NCLR is variously described as an LGBT organization, a lesbian feminist organization, and a social justice organization. (2) Donor interests are complex and contradictory.²³ Most donors see NCLR as promoting some version of

15. See *infra* Part II (discussing challenges to accessing donors for this article).

16. In addition to privacy concerns, PILOs also avoid soliciting donor feedback too frequently.

17. See Rhode 2008, *supra* note 5; see also Albiston & Nielsen, *supra* note 6.

18. See Rhode, *supra* note 5, at 2052–53 (emphasizing conflict from point of view of PILO leaders); see also Roger Alan Stone, *The Mass Plaintiff: Public Interest Law, Direct Mail Fundraising and the Donor/Client*, 25 COLUM. J.L. & SOC. PROBS. 197, 235–37 (1992) (discussing historic examples of tension between donors and cause-oriented PILOs).

19. See Rhode, *supra* note 5, at 2052 (“Conservative as well as liberal groups were committed to having strategy drive funding, not the other way around”) (internal quotations omitted).

20. See *id.* at 2052–53.

21. See *infra* Part III (describing research).

22. See *infra* Part IV.B (reporting on survey results of NCLR’s reputation with donors).

23. See *infra* Part IV.C (identifying contradictory ways that donors describe goals and priorities).

their interests. However, they do not expect NCLR to adhere to a narrow understanding of their self-interest. Donors have a more nuanced understanding of public interest law than is sometimes imagined. They expect NCLR to continue to pursue and build upon its core goals, even when those goals are personally less important to them. They are also more supportive of new work that is seen as in line with NCLR's existing core goals. The challenge for NCLR is that donors do not all agree on what the core goals are.

These findings have important implications for what work gets funded. As past research suggests, some issues and cases drive more donor support than other issues. Visibility is particularly important in this respect. NCLR donors might expect and reward the organization for its critical work on issues like racial and economic justice, but they also primarily expect the organization to do more visible “mainstream” LGBT rights. I argue that these findings offer organizations tools for building donor engagement and support for a broader range of work. Visibility is a malleable wedge, and organizations can expand donor support for key issues by educating and interacting with donors to increase their understanding. These findings help us address questions relevant to the broader project of building the PIL industry: How do donors understand “public interest”? Do their interests align with other key stakeholders in the PIL industry? How can cause-oriented PILOs expand their donor support? How can donor interests be used to promote cooperation rather than competition across the PIL industry?

Past research underscores the importance of studying donors to PILOs. Most importantly, scholars routinely argue that funding sources affect the delivery of public interest law.²⁴ The PIL industry includes lawyers in both nonprofit and private practice settings.²⁵ On the nonprofit side, public interest includes cause-oriented PILOs and legal aid to the poor.²⁶ On the private side, it includes pro bono services and hybrid private-public firms.²⁷ The meaning and goals of “public interest law” in these different sites is largely shaped by the different sources of funding that they rely upon.²⁸ Based on this mosaic of public interest law, scholars argue that reform efforts must include the whole

24. See Albiston & Nielsen, *supra* note 6.

25. Sometimes government lawyers, including those in the Department of Justice or Public Defender's offices, are included in the PIL industry. See Scott L. Cummings, *The Pursuit of Legal Rights—and Beyond*, 59 UCLA L. REV. 506, 526 (2012) (diagramming PIL industry).

26. See *id.*

27. See *id.*

28. Cf. Scott L. Cummings, *Privatizing Public Interest Law*, 25 GEO. J. LEGAL ETHICS 4, 7–8, 34 (2012) (identifying how necessity of generating profit shapes meaning of public interest in private plaintiff-side firms).

industry.²⁹ Public interest is an umbrella that includes somewhat divergent goals: legal aid to the poor, social justice, civil rights, cause advocacy, and professional obligations of individual lawyers.³⁰ Different sites of public interest law are better suited to these various goals.³¹ Any comprehensive reform proposals need to address the structure of the industry as a whole.³² In order to make meaningful comparisons, we need to understand how all the relevant stakeholders interact.³³ Cause-oriented PILOs are considered the most able to engage in large-scale impact litigation.³⁴ This article confirms this flexibility, but identifies informal constraints imposed on PILOs by donors. By filling this gap in our knowledge, this article contributes to future efforts to improve access to justice and the delivery of public interest law.

This article proceeds in five parts. Part I surveys the history and present structure of public interest law, showing how it has changed over time. While this article focuses on cause-oriented nonprofits, it is important to understand the differences in public interest law as it operates in government-funded legal aid, hybrid private-public firms, and pro bono. Understanding these other sites is important to this article for two reasons. First, by identifying the restrictions on these other sites, the article identifies what legal needs are not being met. To the extent that we think these unmet legal needs are best served by donor-funded nonprofits, we need to understand donor preferences. Second, services are most effective when they are coordinated across organizations. Cause-oriented nonprofits refer cases to legal aid offices and private firms. They also frequently co-counsel cases with private firms or with pro bono support.

Part II introduces key concerns raised in ongoing reform proposals aimed at improving the PIL industry. This Part focuses on concerns over how to balance the demands of community accountability with the traditional role of the lawyer. It also discusses proposals for expanding the number of lawyers involved in public interest work. Parts I and II identify several key concerns that the remainder of the article will address, including time spent on fundraising, accountability, and

29. See Cummings & Rhode, *supra* note 11, at 637-51 (identifying potential reforms across different public interest practice sectors).

30. See Cummings & Rhode, *supra* note 11, at 619-28 (describing goals of different sectors of PIL industry).

31. *Id.*

32. See Albiston & Nielsen, *supra* note 6, at 88-92 (evaluating different funding models in context of structure of whole PIL industry).

33. See Rhode, *supra* note 5, at 2076.

34. See *infra* Part I (discussing development of PIL industry and constraints on different industry sectors).

potential cooperation and competition between PILOs.

Part III introduces the survey and its results. It includes a detailed discussion of survey methods and a demographic and charitable-giving profile of respondents. The survey included a mix of open and closed-ended questions asking about donors' personal preferences, reasons for supporting NCLR, and comparing NCLR to other organizations.

Part IV analyzes the responses to these questions. These findings support the article's core arguments that donor preferences are complex and not easily reduced to self-interest. This analysis also shows that donors describe NCLR as an LGBT rights organization, a lesbian feminist organization, and a social justice organization. To NCLR's staff, these identities are mutually constitutive—each one is a necessary part of what the organization does—but donors may prioritize one or more of these identities over others.

Part V builds on this analysis by identifying lessons for cause-oriented PILOs. In particular, this Part argues that donor engagement can be a powerful tool to increase community accountability.

Ultimately, this article cannot answer the question of whether the donor-funded model is the best way to promote social-justice lawyering. Largely, this question misses the point. Achieving meaningful social justice will require harnessing the possibilities offered by different sites of public interest law. This article probes the pitfalls and opportunities of the donor-funded PILO.

I. HISTORY AND STRUCTURE OF PIL INDUSTRY

This article shows how donor preferences affect the politics of public interest. It grapples with big questions of whether and how donors constrain the work of cause-oriented PILOs. Before getting into those important issues, we need some background on the history and structure of the industry. What we see today is a larger and more sophisticated PIL industry than ever before. Individual organizations have grown and professionalized, the number and types of organizations has grown, and the sources of funding have grown. But much of this funding comes with restrictions on the types of work that PILOs can do. Many of the key battles in the development of the PIL industry have been related to tensions over what work should get funded first, and what work should get funded at all.

A. History of Modern PIL Industry

The tension between the interests of funders and public interest lawyers predates the modern PIL industry. Long before the ACLU and NAACP became household names, their leaders fretted over how to remain true to their radical goals while also attracting the support of

donors to fund their work.³⁵ When they were founded in the early years of the 20th century, they had little precedent for how to use litigation to support a major social movement.³⁶ Through their early decades, both organizations struggled with limited resources and hostility from the organized bar.³⁷ As they secured more reliable funding, they developed into organizations that could support long-term impact litigation campaigns. Their funding shaped their work in important ways. In the case of the NAACP, major grants enabled the development of the organization's famous campaign to end school desegregation.³⁸ While important for the organization's growth, these grants also had the effect of limiting resources available for other legal strategies.³⁹ At the ACLU, internal debates pitted free speech purists against those who would refuse support to Communists and the Ku Klux Klan.⁴⁰ ACLU lawyers leaned towards an absolute vision of freedom of speech, taking controversial cases on behalf of unpopular speakers.⁴¹ But they sometimes took these cases on narrow grounds, and the ACLU struggled to retain members who disagreed with its positions.⁴² Eventually, however, the ACLU became a national organization as it attracted more members based on its willingness to take these tough cases.⁴³

Even after the ACLU and NAACP succeeded as established PILOs, they remained exceptional until the 1960s. The first organized legal aid offices in the United States opened in the late nineteenth and

35. See Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207, 218–21 (1976) (tracing ACLU and NAACP roles in history of public interest law).

36. *Id.*

37. See SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU (1999) (history of ACLU funding challenges); Cummings, *supra* note 28, at 11–19 (history of hostility by the organized bar).

38. See MARK TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950 (1987). Explaining the same shift to school desegregation, Risa Goluboff, details how cases on behalf of labor and unions became less attractive as the NAACP focused on doctrinal opportunities for school desegregation cases. See Risa Goluboff, "Let Economic Equality Take Care of Itself": The NAACP, Labor Litigation, and the Making of Civil Rights in the 1940s, 52 UCLA L. REV. 1393, 1455–59 (2005).

39. See TUSHNET, *supra* note 38, at 1-20 (describing early development of school segregation campaign and shift away from issues including economic empowerment, mob violence, and criminal justice).

40. See WALKER, *supra* note 37, at 115–19.

41. In the 1940s, the ACLU did take an official anti-Communist position. See *id.* at 130. By 1954, it reversed this position. See *id.* at 208–14.

42. See *id.* at 115–214 (detailing the ACLU's successful debates within the ACLU between 1933 and 1954, including compromises and members lost).

43. See *id.* at 330 (discussing the ACLU's successful fundraising following its controversial defense of a Nazi march in Skokie, Illinois).

early twentieth centuries.⁴⁴ These offices were small, typically funded by local communities.⁴⁵ They provided legal services to at least some people who could not otherwise afford them, but they did not address larger policy issues.⁴⁶ Public interest, at this time, meant case-by-case charity on behalf of needy clients. Along with these local legal aid offices, the ACLU, and NAACP, individual lawyers practiced what might be called public interest law.⁴⁷ Through a mix of charity and for-profit cases, these lawyers supported poor and underrepresented communities with legal services.

New sources of funding in the 1960s spurred the growth of a public interest law industry, transforming the ad hoc activity of individual lawyers into a web of new organizations.⁴⁸ Most importantly, the Federal Legal Services Program was established in 1965 through the Office of Economic Opportunity.⁴⁹ With this massive infusion of federal funding, legal services offices spread across the country and began to attract highly credentialed lawyers who addressed the problems of the poor as a group.⁵⁰ In the early years of the federal program, funding “explicitly went beyond providing basic legal services to seek systematic law reform on behalf of the poor.”⁵¹

The Ford Foundation played an equally critical role in the growth of the public interest law industry. Initially, the Foundation invested in community legal aid offices.⁵² By 1970, it expanded its grant-giving focus to include cause-oriented PILOs.⁵³ Taking the ACLU and

44. See JACK KATZ, POOR PEOPLE’S LAWYERS IN TRANSITION 34 (1982); Albiston & Nielsen, *supra* note 6, at 63–64.

45. See Albiston & Nielsen, *supra* note 6, at 64.

46. See *id.*

47. Kenneth Mack argues that when we tell the history of civil rights based on lawyers who worked at the NAACP, we miss the long history of individual black lawyers who struggled to create a professional identity as civil rights lawyers. See KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 6–9 (2012); See Albiston and Nielsen, *supra* note 6, at 64.

48. See PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 42 (Burton A. Weisbrod, Joel F. Handler & Neil K. Komesar eds., 1978) [hereinafter PUBLIC INTEREST LAW] (conceptualizing “public interest law” as an industry); Rabin, *supra* note 35, at 224–36 (comparing public interest law movement of the 1970s with earlier law reform efforts); see also Cummings, *supra* note 25, at 508; Louise G. Trubek, *Public Interest Law: Facing the Problems of Maturity*, 33 U. ARK. LITTLE ROCK L. REV. 417, 417–19 (2011).

49. See Albiston & Nielsen, *supra* note 6, at 64–65.

50. See KATZ, *supra* note 44 at 65–67 (describing shift from low-status “legal aid” lawyers who provided a “day-in-court” to the poor to higher-status “legal services” lawyers who addressed systemic policy issues affecting the poor); Albiston & Nielsen, *supra* note 6, at 65 (explaining that legal services offices eventually served almost every county in the U.S.).

51. Albiston & Nielsen, *supra* note 6, at 65.

52. See *id.* at 64–65.

53. See *id.* at 65.

NAACP as models, Ford funded a range of new organizations, each with a small legal staff committed to impact litigation to advance a specific cause.⁵⁴ Finally, Ford funded several key studies of public interest law. Focusing on themes of social justice, unmet legal aid, ethical obligations of the organized bar, and economic viability, these studies provided the intellectual framework to support the emergent industry.⁵⁵ By the close of the 1970s, PILOs became an institutionalized feature of the American legal profession.⁵⁶

Since then, the growth of public interest law has been tremendous. No exact figures on the size of the public interest legal industry are available, but rough estimates are possible. A ground-breaking 1975 study surveyed the legal profession at the time to demonstrate that the public interest legal organization occupied a defined niche.⁵⁷ This study identified eighty-six public interest legal organizations.⁵⁸ Using a similar definition of public interest legal organization, another study of the PIL industry in 2000 estimated that there were slightly over 1,000 organizations.⁵⁹ Because neither study attempted to identify every PILO,⁶⁰ these figures are not directly comparable. Nonetheless, they illustrate the dramatic growth in the industry over the past several decades.

54. See *id.* (Ford Foundation role in growth of PIL industry); Rabin, *supra* note 35, at 228-29 (variety and characteristics of organizations funded by Ford Foundation); Ann Southworth, *What is Public Interest Law?: Empirical Perspectives on an Old Question*, 62 DEPAUL L. REV. 493, 496-97 (2013) (ACLU and NAACP as “earlier models” for new PIL field).

55. There were at least five key studies. See FORD FOUNDATION, PUBLIC INTEREST LAW: FIVE YEARS LATER (1976); JOEL F. HANDLER, ELLEN JANE HOLLINGSWORTH & HOWARD S. ERLANGER, LAWYERS AND THE PURSUIT OF LEGAL RIGHTS (1978); GORDON HARRISON & SANFORD M. JAFFE, THE PUBLIC INTEREST LAW FIRM: NEW VOICES FOR NEW CONSTITUENCIES (1973); PUBLIC INTEREST LAW, *supra* note 48; Rabin, *supra* note 35, at 228-329, 236; see also Trubek, *supra* note 42, at 418-19 (arguing that these studies provided the intellectual justification for the PILO).

56. See Albiston & Nielsen, *supra* note 6, at 63-71 (discussing history of public interest law). Scott Cummings argues that the Ford Foundation and the federal legal services program “transformed” the public interest law movement. See Cummings, *supra* note 4, at 355.

57. See PUBLIC INTEREST LAW, *supra* note 48, at 49-60. This study was not meant to identify every PILO in existence at the time.

58. See *id.* at 50.

59. Nielsen and Albiston identified 4,588 organizations that potentially met their definition of public interest legal organization. More detailed research on a random sample of 1,200 of these organizations found that 22.5% actually met their definition of public interest legal organization. Based on this rate, they estimated a little over 1,000 organizations. See Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 N.C. L. REV. 1591, 1605-06 n. 65 (2006).

60. Even with adequate resources, this task would be near impossible because of disagreements over exactly which organizations should count. See *id.* at 1601-03; see also Cummings & Rhode, *supra* note 11, at 605-06 (discussing definition of “public interest”).

As the industry grew, it also shifted. Comparing the results of the 1975 and 2000 studies, Nielsen and Albiston identified several key changes in the industry. First, organizations were larger on average in 2000, employing more attorneys and total staff and having larger operating budgets.⁶¹ Second, by 2000, PILOs adopted modern management techniques including larger support staffs relative to their legal departments.⁶² Third, PILOs in 1975 were more likely to work on single issues but by 2000 were more likely to work on multiple issues and provide multiple services.⁶³ Finally, in 2000, more PILOs relied heavily on government funding for their organizational budgets.⁶⁴ This funding came with increased restrictions on the activities of PILOs. When Congress created the Legal Services Corporation (LSC) in 1974, it ensured the survival of federal funding for legal aid to the poor but simultaneously began restricting how those funds could be used.⁶⁵ The Reagan administration further restricted LSC-funded organizations from engaging in any form of political advocacy.⁶⁶ By 1996, Congress further restricted what kinds of cases LSC funds could be used for.⁶⁷ These restrictions prevented LSC-funded organizations from taking class actions and other high-impact cases, and also curtailed their ability to participate in administrative and policy reform.⁶⁸ They also prevented LSC-funded organizations from using *any* source of funding for these cases.⁶⁹ At the same time, courts also began cutting back on the availability of attorney fees for civil rights cases.⁷⁰

61. Nielsen & Albiston, *supra* note 59, at 1606.

62. *Id.* at 1608.

63. *Id.* at 1615.

64. *Id.* at 1616-17.

65. The Nixon Administration dismantled most of the OEO, but legal aid survived because of pressure from the organized bar. See Albiston & Nielsen, *supra* note 6, at 65; see also A. W. HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 22-30 (2007); Earl Johnson, *Justice and Reform: A Quarter Century Later*, in THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES 9 (Francis Reagan et al., eds., 1999), for more historical depth.

66. Albiston & Nielsen, *supra* note 6, at 66.

67. These new restrictions included a ban on representing aliens or incarcerated people, as well as prohibitions on class action lawsuits or participation in administrative rule making. See Luban, *supra* note 4, at 221.

68. *Id.*

69. See *id.*

70. See Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. REV. 1087 (2007) (finding that judicial attacks on attorney fees have restricted what cases are brought). In addition to restricting when fees were available, courts increasingly allowed defendants to include a waiver of fees in a settlement offer. These waivers defeat the purpose of the attorney fees statutes and create divergent interests between attorneys and their clients. See Luban, *supra* note 4, at 241-45.

B. Public Interest Law Inside Cause-Oriented Nonprofits

When Ford and other funders turned to cause-oriented public interest law in the 1970s, they used the ACLU and the NAACP as models of successful public interest organizations.⁷¹ Based on these models, the new organizations focused on elite-led, impact litigation strategies.⁷² As more organizations claimed to be “public interest,” the label was increasingly seen as a way to legitimate work on behalf of a cause or a group of people.⁷³ This growth of public interest law was embedded in the broader contemporaneous explosion of the nonprofit sector.⁷⁴ Nonprofits were increasingly involved in the delivery of social services that were previously the domain of the government.⁷⁵ By the 1980s, conservative and libertarian organizations began to label themselves as public interest law firms.⁷⁶ Today, PILOs work on an ever-expanding number of issues.⁷⁷ Because these cause-oriented organizations focus directly on changing social policy, they are often considered the core of the public interest movement.⁷⁸

These nonprofits receive most of their support from foundation grants and individual contributions. In a survey of major public interest legal organizations, Deborah Rhode found that foundation support and individual contributions make up the bulk of their income.⁷⁹

71. See Rabin, *supra* note 35, at 228–31; Trubek, *supra* note 42, at 417–19.

72. See Thomas Miguel Hilbink, *Constructing Cause Lawyering: Professionalism, Politics, and Social Change in 1960s America* (May 2006) (unpublished Ph.D. dissertation, New York University) (on file with author).

73. See Ann Southworth, *What is Public Interest Law?: Empirical Perspectives on an Old Question*, 62 DEPAUL L. REV. 493, 495 (2013).

74. See Peter Dobkin Hall, *A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600-2000*, in *THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 32 (Walter W. Powell & Richard Steinberg eds., 2006).

75. See *id.*

76. See ANN SOUTHWORTH, *LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION* 10–14 (2008); STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT* (2008) (telling history of conservative public interest law).

77. See Rhode, *supra* note 5, at 2032–33.

78. Cf. *id.* at 2029–32 (justifying survey focus on “the nation’s leading public interest legal organizations”).

79. See *id.* at 2054. Rhode studied “nonprofit tax-exempt groups that attempt[ed] to use law to achieve social objectives.” She included “the nation’s largest and well-recognized public interest legal organizations,” along with a sample of smaller organizations. 51 of 57 organizations that she contacted participated in the survey. *Id.* at 2029–30. In their more comprehensive study of the PIL field, Albiston and Nielsen similarly identify the importance of foundation grants and individual contributions but find that government funding provides the largest share of organizational budgets. Albiston & Nielsen, *supra* note 6, at 76–77. This difference reflects the role of federal legal services funding. Poverty organizations were far more likely than others to accept Legal Services Corporation funding and to rely on federal funding for a substantial percent of their budget.

Foundation support accounted for a mean of 37% of organizational budgets and individual contributions were 28%. For over half of the organizations (58%), individual contributions made up at least 40% of their budget.⁸⁰ These statistics likely underestimate the importance of individual donors to the operation of nonprofit PILOs. The foundation grants that make up a slightly larger percentage of their budget also typically come with more limitations than individual donations.⁸¹ Foundations typically refuse to fund ongoing operating expenses, preferring new issues and new projects.⁸² Demands for accountability metrics often steer foundations away from support for complex social problems, where outcomes are more difficult to measure.⁸³ This restricts the availability of grant funding for innovative projects that integrate litigation and other strategies in new and flexible ways.⁸⁴ Compared to these foundation grants, individual contributions come with fewer restrictions. PILOs also encourage donors to commit to recurring donations, explaining that even small monthly donations play a key role in stabilizing an organization's budget.⁸⁵

Because they rely so heavily on foundations and private contributions, directors of major PILOs report spending an average of 38% of their time on fundraising.⁸⁶ Directors complain that this is “too much” time when they compare it to advancing the substantive mission of their organizations, but they also explain that it is “not enough” time with respect to the never-ending funding needs of their organizations.⁸⁷ Attracting donors has become a more fraught process as more organizations compete for the same dollars.⁸⁸ One way PILOs respond to this challenge is by carving out a niche to distinguish themselves from other similar organizations. Most obviously, NCLR needs to attract donors who might give to a range of other LGBT legal organizations.⁸⁹ In addition, potential NCLR donors might also give to

Id. at 78–80. The most prominent organizations—those that Rhode focused on—tend to focus on impact litigation.

80. Rhode at p. 2055; *Id.*

81. See Albiston & Nielsen, *supra* note 6, at 90 (comparing constraints of foundation grants with other funding models).

82. See Rhode, *supra* note 5, at 2056–57.

83. See Cummings & Rhode, *supra* note 11, at 630–36 (discussing challenges for public interest presented by use of “measurable outcomes” and pro-business orientation in corporate giving).

84. See *id.*

85. Corporate giving and attorneys' fees, the only other two substantial sources of funding, are also less consistent and/or come with their own restrictions. See Rhode, *supra* note 5, at 2054–58.

86. See *id.* at 2058.

87. See *id.*

88. See *id.* at 2033.

89. See Jeffrey Kosbie, *Contested Identities: A History of LGBT Legal Mobilization*

LGBT community or political organizations, as well as organizations focusing on women's rights, civil rights, or other similar issues. This creates a set of twin challenges. PILOs must maintain a consistent reputation around a set of core principles in order to attract and retain donors. At the same time, they must continue to innovate and remain responsive to emerging social issues and donor concerns.⁹⁰ As Part III discusses in more detail, NCLR staff can readily explain how they meet these challenges. What is less clear is how donors perceive the organization and which other organizations they compare it to.

Within the world of cause-oriented PILOs, there are some funding-related differences worth noting. Conservative and progressive PILOs report receiving the same types of funding, but conservative organizations receive a greater percent of their funding from private contributions.⁹¹ They are less likely to be subject to funding-related restrictions on class actions, attorney's fees, and representing nonindigent clients.⁹² Conservative organizations are also significantly less likely to have attorneys funded through outside fellowships.⁹³ These results may have implications for how donor preferences matter. On the one hand, donor preferences may be more important to progressive organizations. Private donations potentially offer the least restricted funding available to these organizations. On the other hand, donor preferences may present informal restrictions on the work of conservative organizations. Understanding how these preferences restrict the work of cause-oriented PILOs is important because they are not as clearly identified as the formal restrictions in government funding and foundation grants.

C. Public Interest Law Outside of Cause-Oriented Nonprofits

Along with cause-oriented nonprofits, legal aid, pro bono, and private public firms make up the public interest law industry. Nonetheless, "public interest law" takes on different meanings in each of these settings. Each of these settings depends upon unique institutional structures. These structures enable certain types of public

and the Ethics of Impact (June 2015) (unpublished Ph.D. dissertation, Northwestern University) (on file with author) (discussing interactions between major LGBT legal organizations).

90. Cf. Brayden G. King et al., *Identity Realization and Organizational Forms: Differentiation and Consolidation of Identities Among Arizona's Charter Schools*, 22 ORG. SCI. 554 (2011) (arguing that charter schools must claim to be new and innovative while also maintaining their identity as charter schools).

91. See Albiston & Nielsen, *supra* note 6, at 80–81.

92. See *id.* at 83–84. Conservative organizations are not more likely to be subject to restrictions on lobbying, however.

93. See *id.* at 80.

interest law while inhibiting others. By paying attention to these other settings and in particular how they differ from cause-oriented nonprofits, we get a better sense of who the key stakeholders are and where the gaps are in the public interest law industry.

1. Legal Aid

Before the birth of the contemporary public interest legal movement, legal aid consisted of small local organizations devoted to providing legal assistance to the indigent.⁹⁴ Today, legal aid continues to primarily include these poverty law organizations. Legal aid offices offer services in well-defined categories of cases. While the exact services vary by office, they generally include issues like domestic violence restraining orders, child custody, eviction defense, housing conditions, employment discrimination, and access to government-funded social services. In addition to poverty law, legal aid includes nonprofit organizations that provide services to target populations, such as people with disabilities, survivors of domestic violence, or people with HIV/AIDS. Even when legal aid providers target specific populations, they still generally restrict their services based on income cutoffs.⁹⁵ Legal aid offices also typically restrict eligibility for services based on geographic residence.⁹⁶

When the federal legal services program was created in the 1960s, it provided the bulk of funding for most of these organizations.⁹⁷ Federal funding remains important today, but state and local funds have displaced federal funds as the largest share of their budgets.⁹⁸ This stands in contrast to cause oriented nonprofits, which rely more heavily on private contributions from individual donors and grants.⁹⁹

While legal aid offices do critical work to represent individual clients in court, they continue to be woefully underfunded and unable to meet all of even the “most serious” needs of the unrepresented.¹⁰⁰ Moreover, restrictions on their funding prevent them from using many of the legal tools that cause-oriented PILOs rely on in their work.¹⁰¹ For

94. *Supra* Part I.A.

95. *See id.* at 83–84 (explaining that many non poverty law organizations face similar restrictions on their services).

96. Nielsen and Albiston explain that state and local funding provides the largest share of these organization’s budgets today. *See* Nielsen & Albiston, *supra* note 59, at 1616. These local funding sources impose geographic limitations on which clients an organization can represent.

97. *See* Albiston & Nielsen, *supra* note 6 at 64–65.

98. *See* Nielsen & Albiston, *supra* note 59, at 1616.

99. *See* Rhode, *supra* note 5, at 2054–56.

100. *See* DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 1, at 14.

101. *See* Albiston & Nielsen, *supra* note 6, at 88–92 (comparing restrictions on different types of PILOs).

example, legal aid offices could create programs designed to improve the delivery of legal services to the chronically homeless, but they could not bring class actions affecting the homeless or participate in regulatory debates for social services that affect the homeless.¹⁰² Thus, legal services and cause-oriented organizations share goals of access to justice, but they take very different types of cases to accomplish this goal. While cause-oriented PILOs evaluate cases based on their likelihood of setting new precedents that will benefit a broad group of people, legal services offices focus on the most efficient delivery of direct services to poor and underrepresented clients.

2. *Private Firm Pro Bono*

The organized bar in the United States has long had an uneasy relationship with legal aid.¹⁰³ Some version of legal aid is consistent with the classic image of the lawyer as a professional gatekeeper, protecting the rule of law.¹⁰⁴ Competing with this is the image of the lawyer as a hired gun, advocating for their client's interests. When seen as hired gun, the interests of paying clients were often in tension with demands for legal aid. The creation of the federal legal services program in the 1960s presented a particularly prominent challenge to the professional authority of the organized bar to define the terms of legal aid.¹⁰⁵ The American Bar Association offered only tentative support to the new federal programs.¹⁰⁶ As the federal government began to cut back on legal services in the 1980s, the private bar stepped in to argue that volunteer-based pro bono programs were an ideal alternative to government-funded legal aid.¹⁰⁷ Private pro bono programs defined legal aid in narrow terms of volunteer services to poor clients, rather than through the broader ideologies of access to justice that defined the early federal legal services program.¹⁰⁸ The institutionalization of voluntary pro bono programs at big firms allowed the ABA and the organized bar to resist calls for mandatory pro bono requirements for lawyers.¹⁰⁹ Pro bono programs also provided other benefits to private firms, including recruitment, training, and retention of top law students; exposing lawyers to new views and

102. Cf. Luban, *supra* note 4, at 221 (detailing government-imposed restrictions on legal aid).

103. See Cummings, *supra* note 28, at 11–19 (discussing history).

104. *Id.*

105. See *id.* at 15–17 (detailing reactions of the organized bar).

106. See *id.*

107. *Id.* at 18.

108. See *id.* at 17–18.

109. See Cummings, *supra* note 28, at 31.

perspectives; and improving the public image of big firms.¹¹⁰

Today, PILOs rely heavily on pro bono assistance from the private bar. This assistance represents a tremendous resource: the nation's 200 largest firms reported 4.75 million hours of pro bono assistance in 2014.¹¹¹ A 2005 study estimated the value of pro bono services at \$246 million.¹¹² 80% of major PILOs report extensive or moderate reliance on pro bono assistance.¹¹³ In addition to co-counseling cases, PILOs refer out some cases that they cannot handle themselves.¹¹⁴ However, pro bono collaborations create particular challenges for PILOs. The most common challenge is that pro bono volunteers often lack relevant substantive experience and require more supervision from PILO staff.¹¹⁵ In addition, associates at private firms may face pressure not to take certain types of cases—especially employment, environmental, or consumer cases—or to prioritize work for billable clients over pro bono cases.¹¹⁶ Finally, private firms sometimes try to claim credit for pro bono cases.¹¹⁷

Taken together, the evidence confirms that pro bono programs contribute substantially to the public interest law industry. However, pro bono is based on a particular understanding of public interest. Pro bono programs typically equate the “public interest” with free legal services. The scattershot nature of service delivery and ill-defined nature of social goals means that these programs might do more to satisfy individual lawyers' sense of ethical duties than to achieve meaningful social justice. More radically, some critics charge that the legal profession should have an ethical duty to refuse socially unjust cases on behalf of powerful clients—a duty that the profession avoids by claiming pro bono programs relieve them of any other

110. See Cummings, *supra* note 7, at 108–13.

111. See *Pro Bono Report 2015: Treading Water*, The AMERICAN LAWYER, July 2015, <http://www.americanlawyer.com/id=1202730400870/Pro-Bono-Report-2015-Treading-Water>.

112. See Rebecca L. Sandefur, *Lawyers' Pro Bono Service and Market-Reliant Legal Aid*, in PRIVATE LAWYERS AND THE PUBLIC INTEREST 95, 96–98 (Robert Granfield & Lynn Mather eds., 2009).

113. See Rhode, *supra* note 5, at 2070.

114. *Id.*

115. See *id.* at 2071–72.

116. See Steven A. Boutcher, *Lawyering for Social Change: Pro Bono Publico, Cause Lawyering, and the Social Movement Society*, 18 MOBILIZATION 179 (2013); Cummings, *supra* note 7, at 116–134 (employment, environmental, and consumer cases often create conflicts of interest with private firms' other clients. Even in the absence of formal conflicts, firms are reluctant to be seen “on the other side” of a business issue.); see also Rhode, *supra* note 5, at 2071–72 (discussing from perspective of PILOs seeking pro bono assistance).

117. See Rhode, *supra* note 5, at 2070–71.

responsibilities.¹¹⁸

3. Private Public Hybrid Firms

Private involvement in the public interest law industry does not only take the form of pro bono legal aid. A substantial number of hybrid private public interest firms also play a key role. These firms represent plaintiffs in areas including labor and employment, environmental, consumer protections, securities fraud, and personal injury. While a commitment to some version of the public interest is often part of these firms' stated goals, they also have to make a profit.¹¹⁹ These firms have grown in response to the demand for legal aid, providing an alternate economic and professional model to the nonprofit.¹²⁰ Lawyers at these hybrid private-public firms typically have similar backgrounds to their counterparts in nonprofit PILOs, with individual lawyers often moving between practice settings during their careers.¹²¹ Unlike their counterparts in nonprofits, lawyers at private firms define their professional identities around traditional professional norms of legal skill and zealous advocacy.¹²² Their professional reputation is defined around being a zealous advocate for individual clients' rights, not around systemic change to promote social justice.

These hybrid firms are closer to cause-oriented nonprofit PILOs than the pro bono programs of big law firms. However, case selection at private public firms differs from nonprofit PILOs in some key ways. Most importantly, these firms need to generate a profit.¹²³ They do so by taking a share of the damages awarded in cases, as well as attorney's fees when available.¹²⁴ While they sometimes take on riskier cases with no clear profit potential because of their social importance, they offset risky cases with profit-generating cases that enforce well-defined violations of the law.¹²⁵ Along with accepting or declining

118. See Russel G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 381 (2001).

119. See Cummings & Southworth, *supra* note 12, at 184–86. While recognizing the tension between profit and public interest, some scholars argue that “public interest” should be defined to include profit-making activity. See Kathryn A. Sabbeth, *What's Money Got to Do With It?: Public Interest Lawyering and Profit*, 91 DENV. U. L. REV. 441, 447–52 (2014) (criticizing definitions of public interest that treat it as a market exception).

120. See Cummings & Southworth, *supra* note 12, at 183–84.

121. See *id.* at 184.

122. See Cummings, *supra* note 28, at 7-8, 34. Private public firms also offer lawyers greater autonomy and larger salaries than nonprofits. See *id.* at 73–74.

123. See *id.* at 8–9.

124. See *id.* at 65.

125. A study of one private-public firm found that half of its docket was comprised of “bread-and-butter” employment lawsuits challenging illegal discrimination or wage-and-hour violations, where recovery was more predictable. See *id.* at 63–66.

cases at least partially based on their ability to generate profit, private firms sometimes decline particularly large-scale litigation that will stretch firm resources too thin.¹²⁶ Case selection is also driven by a looser sense of social justice, rather than by a specific cause as at most nonprofits.¹²⁷ Thus cases generally need to fit within the social justice umbrella to be accepted, but they do not need to advance a particular issue or set of goals. Once cases are accepted, any broader social goals drop out and case management is entirely client-centered.¹²⁸ These features of case selection at private public firms do allow them to take on many important, precedent-setting cases.¹²⁹ However, they also prevent these firms from developing long-term impact litigation campaigns like their nonprofit counterparts.

II. PROPOSALS FOR IMPROVING THE PIL INDUSTRY

So far, Part I traced the history and structure of the modern PIL industry. Part II now turns to existing criticisms and reform proposals. In particular, this Part focuses on reform proposals dealing with improving PILO accountability and expanding the size of the PIL industry. Donors are a key constituency affecting both of these goals. This Part situates the findings of this article in a broader ongoing discussion about the role of the PIL industry in promoting access to justice.

A. Improving PILO Accountability

In the traditional practice of law, lawyers are accountable to their client. The lawyer's primary duty is to be a zealous advocate for the interests of their client.¹³⁰ But lawyers at cause-oriented PILOs take on more than just the representation of their individual client. They identify with their cause and consider themselves accountable to a broader community.¹³¹ Many definitions consider this service to

126. *Id.* at 67

127. *See id.* at 35.

128. *See Cummings, supra* note 28, at 43–47.

129. Private firms have argued key civil rights cases dating back to the early 20th century. *See Cummings & Southworth, supra* note 12, at 189.

130. The rules of professional conduct do impose restrictions on the means of advocating for a client. For example, a lawyer cannot knowingly allow a client to falsely testify in court. *See MODEL RULES OF PROF'L CONDUCT* R. 3.3 (2013). Within these ethical constraints, a lawyer is supposed to do everything that they can to advance their client's interests. Critics argue that lawyers should have a greater professional duty to discourage clients from pursuing socially unjust actions. *See, e.g., Pearce, supra* note 118.

131. *See Corey S. Shdaimah, Intersecting Identities: Cause Lawyers as Legal Professionals and Social Movement Actors, in CAUSE LAWYERS AND SOCIAL MOVEMENTS* 220, 220, 222 (Austin Sarat & Stuart A. Scheingold eds., 2006) (finding that many lawyers at PILOs identify as activists first and lawyers second).

broader goals to be the foundation of public interest law. Thus, the quality of public interest law is measured not only by winning cases for individual clients but also by advancing the interests of a community.

There are two central questions that emerge with respect to accountability. First, who should make decisions about litigation strategy? Second, what mechanisms will promote accountability? Both of these questions are about the lawyer-client relationship. The traditional view of legal ethics is that the lawyer should choose the legal arguments but that the client should make all substantive decisions about the case. This model does not cleanly fit the world of cause-oriented public interest lawyers, who are also interested in broader social causes.¹³² Should cause-oriented public interest lawyers also act as social movement leaders, helping to identify appropriate legal goals for the movements that they support? Should they defer entirely to the demands of their individual clients? The demands of a community? How should public interest lawyers define what the interests of the community even are? An ongoing literature within public interest law considers these questions. There is broad agreement on the principle of accountability, but disagreement over what accountability means and how to measure it. Despite some speculation on how donors affect accountability, there is little actual data on this important question.

Derrick Bell identified the concern of accountability and divergent interests in his seminal 1976 article.¹³³ Bell argued that traditional models of legal ethics failed to identify potential conflicts between public interest lawyers and the communities that they represent.¹³⁴ NAACP lawyers saw school desegregation as the touchstone of improved educational opportunity for black children. Local communities, on the other hand, often considered desegregation less important than increasing resources for their local schools.¹³⁵ The

132. The problem of accountability plays out differently in other public interest law sites. See COREY S. SHDAIMAH, *NEGOTIATING JUSTICE: PROGRESSIVE LAWYERING, LOW-INCOME CLIENTS, AND THE QUEST FOR SOCIAL CHANGE* 28–29 (2009) (finding that progressive lawyers make different compromises around accountability depending upon the availability of resources and their relationships with their clients); Ann Southworth, *Collective Representation for the Disadvantaged: Variations in Problems of Accountability*, 67 *FORDHAM L. REV.* 2449 (1999) (comparing accountability issues in representation of individual poor clients and organizations); see also Cummings and Rhode, *supra* note 11, at 643–46 (arguing for reconceptualization of pro bono that measures its benefits by social change rather than individual case outcomes).

133. See Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976).

134. *Id.*

135. Bell particularly focuses on disagreements over integration and educational quality in Boston, Detroit, and Atlanta. See *id.* at 482–87.

NAACP's impressive string of court victories assured some degree of formal legal equality and decrees of integration.¹³⁶ Bell argued, however, that this formal legal equality did not translate to educational improvements for most black children.¹³⁷ Would a campaign focused on improving the schools that black children attended have achieved better educational opportunities than one focused on desegregation? Should the NAACP lawyers have been the ones to make that decision? At its most extreme, Bell's argument might be taken to be that prominent civil rights lawyers objectives (desegregation) ran counter to those of the communities that they represented (educational quality).

Later research paints a more nuanced picture of these accountability concerns. Even within the NAACP, lawyers did not all agree on whether to focus on desegregation or educational quality. NAACP lawyers in Atlanta were more willing to compromise on desegregation, taking a pragmatic approach to civil rights that they thought would provide more tangible benefits to the local black community.¹³⁸ Similarly, lawyers at other major cause-oriented PILOs frequently disagree on legal goals and strategies.¹³⁹ As with the NAACP, much of this disagreement is about accountability: what the community wants and how to achieve that. Moreover, these debates do not only take place inside the walls of nonprofit PILOs. Disagreements over accountability and professional obligations also spill out to the broader legal profession.

Outside the NAACP, individual black lawyers struggled with reconciling the goals of civil rights and the professional expectations of the legal profession.¹⁴⁰ Accountability issues also arise as lawyers engage with social movements. PILOs frequently enter coalitions with non-legal social movements and community organizations.¹⁴¹ How they arrange these coalitions and the role of the PILO in the coalition varies widely.¹⁴² Non-lawyer social movement activists also debate the law on their own, pushing back against the decisions of cause-oriented public

136. *Id.*

137. *See id.* at 515-16.

138. *See* TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 358-60, 431-42 (2011) (arguing that NAACP lawyers in Atlanta adopted a pragmatic approach to civil rights in contrast to the national office).

139. *See* Kosbie, *supra* note 89 (describing dissent between lawyers at the major LGBT legal organizations).

140. *See* MACK, *supra* note 47 (highlighting stories of individual lawyers).

141. *See* Rhode, *supra* note 5, at 2067-69.

142. *See* Anna-Maria Marshall, *Social Movement Strategies and the Participatory Potential of Litigation*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 164 (Austin Sarat & Stuart A. Scheingold eds., 2006) (describing different relations between lawyers and communities).

interest lawyers.¹⁴³ Across multiple PILOs, movements, and time periods, accountability remains a central concern of public interest lawyers. However, it emerges in a wider variety of forms than simple divergence between elite lawyers and the communities that they represent.

In addition to interest divergence, the funding of public interest law can create accountability concerns. These concerns are not unique to public interest law. The Model Professional Rules of Conduct include the provision that a lawyer must not accept payment from a third party if it will influence the lawyer's professional judgment in a case.¹⁴⁴ In the context of public interest law, these conflicts arise in several ways.¹⁴⁵ Most relevant to this article, the preferences of donors and grant-making agencies can conflict with the goals of a PILO.¹⁴⁶ Legal ethics prevent public interest lawyers from following donor preferences over client wishes in specific litigation. But legal ethics do not prevent a PILO from choosing which cases to take, which plaintiffs to represent, which lawyers to hire, or which programs to develop based on donor preferences. Directors of major cause-oriented organizations admit to facing precisely this kind of pressure from donors.¹⁴⁷

Many scholars writing about accountability issues have suggested strategies to address and minimize the consequences of divergent interests.¹⁴⁸ More radical critiques reject the possibility that the traditional model of public interest law can ever be accountable to the communities it is supposed to benefit.¹⁴⁹ Central to these criticisms is the claim that the elite-dominated practice of public interest law diverts

143. See Christopher W. Schmidt, *The Sit-Ins and the State Action Doctrine*, 18 WM. & MARY BILL RTS. J. 767 (2010) (arguing that student sit-ins were based on students' understandings of constitutional law); but see Gwendolyn M. Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda*, 47 U.C. DAVIS L. REV. 1667 (2014) (finding that social movement organizations are largely responsive to media coverage of PILO activity).

144. See MODEL RULES OF PROF'L CONDUCT R. 1.8 cmt. (2013).

145. PILOs often rely on attorney's fees for at least part of their work. When fees are only available for certain types of work, are capped at a certain amount, or are included in a settlement agreement, the lawyer's interest in fees can diverge from the client's interest in representation. See Luban, *supra* note 4, at 241–45.

146. See Stone, *supra* note 18, at 235–37.

147. See Rhode, *supra* note 5, at 2056–58.

148. See Cummings, *supra* note 25, at 525–48 (tracing development of more complex PILOs that address some of these concerns); Richard Abel, *State, Market, Philanthropy and Self-Help as Legal Services Delivery Mechanisms*, in PRIVATE LAWYERS IN THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 295, 301–06 (Robert Granfield & Lynn Mather eds., 2009) (comparing how the market, self-help, philanthropic activity, and state aid respond to community concerns).

149. See GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 1–10 (1992).

resources from grassroots efforts and disempowers communities.¹⁵⁰ Moreover, judicial victories fail to create meaningful change on the ground and may even harm the communities they are supposed to benefit.¹⁵¹ Using terms like rebellious lawyering,¹⁵² community lawyering,¹⁵³ and critical lawyering,¹⁵⁴ critics have developed a new model of lawyering that emphasizes community empowerment as its central goal.¹⁵⁵ Decision-making is collaborative, and the public interest lawyer uses their understanding of the law and politics to facilitate grassroots efforts.¹⁵⁶ Rather than using the traditional tools of law reform, community lawyering suggests an ethics of disobedience to a legal structure that perpetuates inequality.¹⁵⁷

Some authors take this criticism a step further and reject the viability of the nonprofit organizational model.¹⁵⁸ These critics argue that nonprofits necessarily put decision making in the hands of the elite

150. See Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994); Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363 (1993) (illustrating how community lawyering empowers clients in a way that traditional public interest law does not); Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 31 (2011) (arguing that even successful impact litigation leaves communities as marginalized as they were before).

151. See MICHAEL KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004) (arguing that judicial victories often generate social and political backlash); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 336–43 (2008) (identifying constraints on the role of the judiciary in social change); DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* 19–27 (arguing that formal legal equality does little to address structural inequality); URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY & LESBIAN LIBERATION* 4–6 (1995) (describing victories as creating an illusory “virtual equality”).

152. See LOPEZ, *supra* note 149.

153. See Ancheta, *supra* note 150.

154. See Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49 (1991).

155. For applications of the community lawyering model to other contexts, see Sammer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008) (law school clinics); Jessica Feerman, *Creative Prison Lawyering: From Silence to Democracy*, 11 GEO. J. ON POVERTY L. & POL’Y 249 (2004) (prisons); Marc Tizoc González, *Cluster Introduction: Education and Pedagogy: Counter-Disciplinarity in the Critical Education Tradition in LatCrit Theory*, 8 SEATTLE J. FOR SOC. JUST. 107 (2009) (LatCrit legal theory); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000) (poverty); Stephanie Tai, *Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice*, 6 ASIAN L.J. 189 (1999) (environmental justice).

156. See Milner S. Ball, *Power from the People*, 92 MICH. L. REV. 1725 (1994).

157. See Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 89 TEX. L. REV. 635, 637–39 (2012) (contrasting the traditional ethical imperative of fidelity to the law with the community lawyering imperative of fidelity to community).

158. See Dean Spade, *Trans Law Reform Strategies, Co-Optation, and the Potential for Transformative Change*, 30 WOMEN’S RTS. L. REP. 288, 299 (2008).

rather than the socially marginalized.¹⁵⁹ The funding sources for nonprofits are seen as particularly problematic. Critics assume that nonprofit cause-oriented PILOs will pursue a narrow range of issues in order to attract the attention of foundations and individual donors.¹⁶⁰ How accurate is this assumption? Part III of this article challenges the characterization of donors' interests as drawing nonprofits away from the community that they serve. Donor preferences do create some problems of accountability. Visibility is particularly important to many donors. But donor interests are not monolithic. Many donors are deeply invested in a broad range of social justice issues that affect a broad range of the community. Donors are active members of the communities that cause-oriented PILOs represent, and deeper engagement with them offers opportunities for accountability and community education. Thus while traditional cause-oriented PILOs cannot engage in the sort of grassroots mobilization that community lawyering demands, their criticisms are overstated.

B. Increasing the Number of Public Interest Lawyers

In addition to increased funding, growth in the PIL industry depends upon increasing the number of lawyers interested in providing public interest law. These proposals focus on expanding the pipeline for new lawyers. They play hand-in-hand with more traditional proposals that focus on increased federal and state funding for legal aid, decreased restrictions on government aid, increased availability of attorney's fees in civil rights cases, and better measurement and reporting of pro bono in private firms.

Law schools are increasingly investing resources in providing training and opportunities for public interest law.¹⁶¹ Nonetheless, pathways into private practice remain far easier to access. As a result, many students give up on public interest aspirations during their law school careers.¹⁶² Some of these students will take jobs in the public interest sector later in their careers, but many will remain in private practice.¹⁶³ Addressing this law school pipeline for new public interest lawyers will improve both the quantity and quality of public interest law by encouraging more, highly-skilled lawyers to participate.

159. *Id.* at 299-301.

160. *See id.* at 301-02.

161. *See* Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563, 1566-69 (2002).

162. *See id.* at 1566.

163. *See* RONIT DINOVITZER, NAT'L ASS'N FOR LAW PLACEMENT, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 54 (2004) (finding that three years after entering the job market, less than half of new lawyers had any job changes and lawyers at the largest law firms had the fewest changes).

Mechanisms that facilitate the pathway into private practice include summer associateships, easy access to career counseling and on campus interviewing, and strong alumni networks. In addition, law schools fail to provide adequate training in the skills required for public interest law. Law school clinics provide the primary training mechanism for public interest law. In 2013–14, law schools reported an average of seven clinics per school.¹⁶⁴ Over half of law schools reported that demand for clinics has gone up over the past three years, and 58.5% of law school clinics had fewer spots than students seeking access.¹⁶⁵ Increasing clinic availability, career counseling, and other public interest career support services would make the pathway to public interest law easier for law students.

Pipeline issues also emerge as law students enter the job market. Law students who survive law school with their public interest commitment intact may face a shortage of entry-level jobs in public interest law. Training entry-level lawyers is particularly challenging for PILOs, given their funding challenges.¹⁶⁶ In addition, graduating law students face financial pressure to take higher paying private-sector jobs. In 2014, the National Association for Law Placement found that the median entry-level public interest salary was \$46,000 compared to a median of \$125,000 at private firms.¹⁶⁷ These differences are particularly stark for graduates of top law schools, who typically face both higher debts and the promise of larger salaries in private practice.¹⁶⁸ Given these pressures, many graduates who enter private practice report that the ability to pay-off educational debt played a role in their career decision.¹⁶⁹ However, new public interest lawyers report debt levels equal to or greater than lawyers in other practice settings.¹⁷⁰

164. ROBERT R. KUEHN & DAVID A. SANTACROCE, 2013–14 SURVEY OF APPLIED LEGAL EDUCATION 7 (2015).

165. *Id.* at 13, 18 (noting 54% of law schools had increased demand and only 12% had decreased demand).

166. External fellowships for new public interest lawyers help alleviate some of these startup costs. The more prominent national fellowships include the Skadden and Equal Justice Works Fellowships.

167. Compare NAT'L ASS'N FOR LAW PLACEMENT, 2014 PUBLIC SECTOR AND PUBLIC INTEREST ATTORNEY SALARY REPORT (2015), with NAT'L ASS'N FOR LAW PLACEMENT, 2014 ASSOCIATE SALARY SURVEY (2015).

168. Gita Z. Wilder, NAT'L ASS'N FOR LAW PLACEMENT, LAW SCHOOL DEBT AMONG NEW LAWYERS 13–15 (2007) (comparing debt and median salaries by school ranking); Ronit Dinovitzer, NAT'L ASS'N FOR LAW PLACEMENT, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 44 (2004) (comparing salaries by practice setting and school ranking). Despite these salary pressures, graduates of top law schools make up the majority of new public interest lawyers. *See id.*

169. *See Wilder, supra* note 168, at 18 (finding that lawyers in private practice rank salary to pay off debt as more important than lawyers in other settings).

170. *See id.* at 16–17. Loan Repayment Assistance Programs help alleviate some of this

While this suggests that debt-to-salary ratios do not deter many graduates who are committed to public interest, debt burden may be a greater concern for new lawyers who are starting families and/or who live in expensive geographic locations.¹⁷¹ Taken together, the evidence suggests that debt and salary levels may impact who chooses to pursue a career in public interest law, but that there is no simple relationship between debt and salary requirements.¹⁷²

While the pipeline for new public interest lawyers is peripheral to this article's core concerns with donor preferences, I raise it here to make the point that addressing the larger issues of access to justice requires taking into account multiple stakeholders. Donors play a key role in shaping the public interest world that new lawyers will enter. Future work on how to expand opportunities for lawyers to get involved in public interest work should more explicitly consider how to engage donors.

III. SURVEY DESIGN

Given what we know about the challenges facing the PIL industry, particularly with respect to funding, it is surprising how little we know about the role of donors in funding cause-oriented PILOs. In response, this article introduces data from an original survey of donors to the National Center for Lesbian Rights. The survey was completed in August 2014 as part of a larger research project on the history and development of the major LGBT legal organizations.¹⁷³ The larger project included interviews with over seventy-five LGBT rights lawyers and activists and data from over 160 boxes of organizational records.¹⁷⁴ During the course of this larger project, NCLR agreed to distribute a survey to its donors. Two research questions guided the survey design: (1) How do donors differentiate between different LGBT legal organizations, and (2) how do donors respond when a PILO changes its goals and strategies? With an increasing number of

pressure. Loan repayment assistance programs are offered by many law schools, state governments, and employers.

See

http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs.html. The federal government offers forgiveness of federal loans for graduates who work in public interest law for over ten years. *See id.*

171. *See* Rhode, *supra* note 5, at 2059–62. PILO directors also report only minor recruiting and retention difficulties related to salary and debt levels. *See id.*

172. *See* Wilder, *supra* note 168, at 19.

173. *See* Kosbie, *supra* note 89.

174. For a full list of interviewees, *see id.* at 325–30. Records were stored in several locations: publicly available archives, organization's internal files, and individual lawyer's files. For more detail, *see id.* at 331–34. In addition to interviews and organizational records, this research also included case law research and other historical research.

PILOs, more organizations work in any given area and many work in entirely new areas.¹⁷⁵ This proliferation is beneficial insofar as organizations can specialize and identify unmet legal needs. Working in coalitions, these organizations can also address larger, more complex issues. However, this proliferation also means more fighting for funding and resources.¹⁷⁶ PILOs invest substantial time and money in branding. Similar organizations try to carve out their own niche, showcasing how they are unique amongst their peers.¹⁷⁷ Despite this branding, it is possible that donors still think of all LGBT rights organizations as essentially the same.

Initial survey design was completed between August and October 2013. The author worked with NCLR development staff and consulted past survey research on LGBT populations to develop appropriate demographic and substantive questions. The final survey (see Appendix for full text) included closed-ended questions on donor preferences and perceptions of NCLR. In addition, it included four open-ended questions asking donors to describe NCLR and its goals.¹⁷⁸ After fully vetting and testing the survey, the author worked with NCLR development staff to finalize survey wording and choose an appropriate date to distribute the survey.¹⁷⁹

NCLR sent an invitation to participate in the survey via email to all donors who had given in the past thirty-six months.¹⁸⁰ They emailed the initial invitation on August 12, 2014, and emailed a follow-up invitation on August 27, 2014 to all donors who did not respond to the first invitation.¹⁸¹ Between these two invitations, 148 donors began the

175. See Rhode, *supra* note 5, at 2033.

176. See *id.*

177. See Kosbie, *supra* note 89 (discussing with respect to LGBT rights legal organizations); see also King, *supra* note 90 (discussing with respect to nonprofit organizations in general).

178. Answers to open-ended questions provide richer descriptions and more nuance than closed-ended questions. They also capture responses that the survey designer may not have anticipated. Closed-ended questions, on the other hand, create quantifiable data for comparisons. They force respondents to address specific issues.

179. Several volunteers who were not affiliated with NCLR or with the survey design team agreed to take test versions of the survey. These test-runs identified minor technical issues, suggested minor changes to question wording, and confirmed that expected time to complete the survey was about ten minutes.

180. The survey was designed in Qualtrics online survey software and hosted on Northwestern University's servers. NCLR sent an email to its donors with a link to a page on NCLR's website describing the survey. From that webpage, donors could click an anonymous link to take them to the survey. The survey did not collect respondents' names or other identifiable information. The author never had access to any donor information.

181. The second invitation went to any donors who did not click on the survey link in the original email. This includes donors who opened the original email but did not click through to the survey, but it does not include donors who opened the survey webpage but did not actually take the survey.

survey and 103 donors completed all survey questions.¹⁸² This equates to 14% response rate for beginning the survey and a 10% response rate for completing the survey.¹⁸³ Unless otherwise indicated, statistics reported include all collected responses to a given question.

NCLR confirmed that the response rate for this survey was substantially higher than their normal response for internal donor feedback.¹⁸⁴ Moreover, nothing suggests that preferences and motivations of survey respondents differ in any meaningful way from non-respondents. However, respondents are likely more engaged with NCLR on an ongoing basis. For example, 30% of respondents reported attending five or more NCLR events in the past three years.¹⁸⁵ These more engaged donors are particularly important to this article's argument that cause-oriented PILOs can use donor interactions to promote greater accountability. Where possible, the article draws statistical generalizations from the survey data.¹⁸⁶ Even where statistical generalizations are not possible, these data profile a group of highly engaged donors and are probative of the major concerns driving their support.¹⁸⁷

A. Demographic Profile of Donors

Before launching into an analysis of donor preferences, it is helpful to have a profile of survey respondents. Overall, respondents are whiter, more liberal, more educated, have higher incomes, and are more LGBTQ than the general population. 93% of respondents chose White as their race.¹⁸⁸ Only 2% chose Black, and 4% chose Latino.¹⁸⁹ In comparison, 13.3% of the U.S. population is Black and 17.6% is Latino.¹⁹⁰ In California (where many NCLR donors are concentrated),

182. The original solicitation went to about 1,500 donors.

183. The researcher has no data suggesting that respondents differ in any significant ways from non-respondents.

184. 29% opened the first email invitation, which was substantially better than NCLR's typical open-rate of 18%.

185. 19 respondents reported attending 5–10 events, and 10 respondents reported attending 10 or more events. 98 respondents answered this question.

186. The survey data for this article are based solely on donors to NCLR. There is no basis to generalize from these data to donors to other cause-oriented PILOs. Given that many donors to NCLR do also donate to other cause-oriented PILOs, responses to this survey are probably similar to responses that would be collected at other organizations. *See infra* notes 197-211 and accompanying text (discussing where else they donate).

187. The open-ended questions in the survey are particularly important here. Open-ended questions provide richer data than closed-questions and do not rely on the same sort of statistical sampling.

188. 91 out of 98 responses to this question. Respondents could choose multiple responses. Only four respondents chose more than one category for race.

189. 2 out of 98 respondents (Black) and 4 out of 98 (Latino).

190. U.S. CENSUS QUICK FACTS (2015),

6.5% of the population is Black and 38.8% is Latino.¹⁹¹ Respondents are far more likely than the general population to have completed higher education. While only 32% of the general U.S. population has a B.A. or higher, 94% of survey respondents do.¹⁹² Median household income for respondents was over \$150,000.¹⁹³ Only 11% made at or below the U.S. median household income of \$53,482.¹⁹⁴ Respondents also skew more liberal than the general population, with 50% reporting their political views as “very liberal,” 38% reporting “liberal,” 12% reporting “moderate,” and none reporting conservative views.¹⁹⁵ Respondents are geographically concentrated in California, near NCLR’s headquarters in San Francisco. 55% of respondents live in California, and 38% of respondents live in the San Francisco Bay Area.¹⁹⁶ The remaining respondents are distributed across the entire U.S. Not surprisingly, donors are also more likely to identify as female and/or LGBTQ than the general population. 82% of respondents identify as female, 4% as transgender, 7% as gender nonconforming, and only 13% as male.¹⁹⁷ Similarly, 82% of respondents identify as lesbian, 11% as gay, 4% as bisexual, 6% as queer, and 6% as heterosexual.¹⁹⁸ Finally, many respondents are actively engaged in NCLR, beyond just writing a check. 54% of respondents attended at least one NCLR event in the past three years, with 31% attending three or more.¹⁹⁹ Respondents also follow NCLR’s news. 71% report often

<http://quickfacts.census.gov/qfd/states/00000.html>.

191. U.S. CENSUS QUICK FACTS (2015),

<http://www.census.gov/quickfacts/table/PST045215/06,00>.

192. In 2014, 31.95% of the general population aged 25 years or older had a Bachelor’s degree or higher. See U.S. CENSUS, EDUCATIONAL ATTAINMENT (2015), <https://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html>. 25 out of 100 respondents have a Bachelor’s degree, 6 have at least some graduate/professional school, and 63 have a graduate or professional degree. *Id.*

193. 52% (48 of 93 answering this question) chose the top household income category, greater than \$150,000.

194. Median U.S. household income between 2010 and 2014. See U.S. CENSUS QUICK FACTS (2015), <http://quickfacts.census.gov/qfd/states/00000.html>.

195. 100 respondents answered this question.

196. Based on zip codes. California residence defined as the range of 900xx-961xx. Bay Area residence defined as zip codes starting with 94xxx.

197. These categories are not mutually exclusive. Several respondents did choose more than one category. Of 98 respondents answering this question, 80 identify as female, 13 as male, 4 as trans, and 7 as gender nonconforming. None identified as intersex or as another gender identity.

198. Respondents could also choose multiple categories for this question. Of 94 responses to this question, 77 identify as lesbian, 10 as gay, 4 as bisexual, 6 as queer, and 6 as heterosexual. None chose other. The low response rate on bisexual is particularly striking, given that general population surveys suggest more people identify as bisexual than lesbian or gay.

199. 55 out of 101 respondents to this question attended at least one event. 19 attended 3–5, 10 attended 6–10, and 2 attended 11 or more.

or always reading NCLR newsletters, and 89% report often or always reading NCLR emails.²⁰⁰

Taken together, these donor demographics seem to confirm some of the concerns of radical critics of the traditional nonprofit impact litigation model.²⁰¹ If donors are primarily interested in seeing their own interests represented, then major impact organizations like NCLR would only work on behalf of the most well-to-do segments of the LGBTQ community. While this article confirms that this is a potential concern, it also challenges the conventional wisdom on this point. The survey analysis reveals that donor preferences are more complicated than a narrow vision of their self-interest. Donors support NCLR partially for their own benefit. They also support NCLR because it does work to benefit other segments of the LGBTQ community.

B. Charitable Profile of Donors

Many of the respondents have a long history of supporting NCLR. Almost 75% have donated to NCLR for at least five years, with 38% donating for over 10 years.²⁰² 36% of respondents donated more than \$1500 in the last year, and 21% donated less than \$100.²⁰³ Most respondents expected to give the same amount to NCLR this year (78%), with 14% planning to give more and only 7% planning to give less.²⁰⁴

As might be expected, most respondents did not only give to NCLR. Only 11% reported no donations to other LGBT organizations, and only 4% reported no donations to non-LGBT nonprofits.²⁰⁵ On the flip side, 30% reported donating over \$1500 to other LGBT nonprofits, and 46% reported donating over \$1500 to non-LGBT nonprofits.²⁰⁶ Human Rights Campaign (HRC) was the most common other LGBT organization that respondents supported.²⁰⁷ Lambda Legal and National Gay and Lesbian Task Force (NGLTF) both also received substantial

200. 31 out of 100 respondents said that they often read NCLR newsletters, and 40 said that they always read them. For emails, 39 said often and 50 said always. NCLR's website and twitter/blog posts were also followed but not as heavily.

201. See *supra* notes 157-69 and accompanying text (discussing radical criticisms).

202. 72% of respondents (99 of 137) donated 5+ years. 52 donated 10+ years.

203. 51 of 141 respondents donated over \$1500 in 2013. 30 donated less than \$100.

204. 109 of 139 respondents plan to give the same in 2014 as in 2013. 20 plan to give more and 10 plan to give less.

205. 16 of 140 respondents reported no donations to other LGBT organizations. 5 of 135 reported no donations to non-LGBT nonprofits.

206. 42 of 140 respondents reported over \$1500 to other LGBT organizations in 2013. 62 of 135 reported over \$1500 to non-LGBT nonprofits in 2013.

207. 59 respondents said they give to HRC. This is 42% of the 140 respondents who answered the question about donations to other LGBT organizations.

support.²⁰⁸ Gay & Lesbian Advocates & Defenders (GLAD), Transgender Law Center, the ACLU LGBT Project, Gay and Lesbian Alliance Against Defamation (GLAAD), and the Trevor Project were all supported by 9–14% of respondents.²⁰⁹ Other common LGBT organizations supported include Horizons Foundation, Lyon-Martin Health Services, AIDS Lifecycle, Southern Poverty Law Center, and Frameline.²¹⁰ Despite supporting this impressive range of other organizations, 66% of respondents reported that NCLR is the most important organization to them.²¹¹ These figures suggest that donors support NCLR for different reasons. Some donors might concentrate their giving on Bay Area LGBT organizations. Other donors might focus on political, cultural, health, youth-specific, or lesbian-specific organizations. NCLR might fit into any one of those donation patterns.

IV. DONOR PREFERENCES AND SUPPORT FOR CAUSE-ORIENTED PILOS

This Part turns to the heart of the article's analysis: how donors understand the work of cause-oriented PILOs. The survey reveals surprising nuance and complexity here. Most importantly, the article debunks the image of donors as a monolithic entity. Some donors describe NCLR exclusively as an LGBT organization and celebrate its commitment to same-sex marriage. Other donors describe it as a lesbian feminist or social justice organization, never mentioning same-sex marriage. Even individual donors embrace potentially contradictory goals. The same donors can describe NCLR as a radical social justice organization and a mainstream LGBT organization, despite the ambiguity created by the tension between these descriptions.

We can make sense of this ambiguity by borrowing some concepts from organizational theory. *Organizational identity* refers to a shared understanding of what an organization does.²¹² It is a sort of narrative

208. 42 respondents (30%) gave to Lambda Legal and 34 (24%) to NGLTF.

209. Number and percentages of respondents giving to each organization: GLAD (14, 10%), ACLU (19, 14%), TLC (18, 13%), GLAAD (14, 10%), The Trevor Project (12, 9%). The survey asked about support for all of these organizations by name.

210. The survey did not specifically ask about these organizations, but respondents filled them in the other box. All of these organizations were named by several respondents.

211. 75 of 114 answers to this question (this number is likely inflated by both selection and response bias. Selection bias means that donors who consider NCLR very important were more likely to answer the survey. Response bias means that respondents might be more likely to answer in a way that will be pleasing to NCLR. Nonetheless, this statistic still suggests very strong support for NCLR amongst its donors vis-à-vis other LGBT organizations.

212. See Stephen M. Engel, *Organizational Identity as a Constraint on Strategic Action: A Comparative Analysis of Gay and Lesbian Interest Groups*, 21 *STUD. IN AM. POL. DEV.* 66 (2007).

that defines “who we are” and “what we do.”²¹³ Organizational identity can almost be thought of as a tangible thing.²¹⁴ It takes on a life of its own, independent of the individuals involved. Mission statements are recorded, staff are hired to fill key goals, relationships are built with allies, and expertise is built on the organization’s core work. In this way, identities are very real. Successful organizations tend to retain their core identity, even when they modify their goals.

Identities fill competing functions. On the one hand, they define an organization as similar to others of its “type.” This involves *organizational mimicry*. If most cause-oriented PILOs have both a litigation director and an executive director, then new cause-oriented PILOs are likely to adopt that staff structure. This mimicry happens for two reasons. First, mimicry might confer legitimacy, especially for new organizations attempting to establish their credentials. If all other cause-oriented PILOs have a litigation director and executive director, then adopting that structure makes a new organization look legitimate. Second, mimicry reduces the risks involved in developing new organizational forms. Even if the litigation director / executive director structure is not the best for every organization, it is a tested model. Because of this mimicry, we should expect organizations to look similar to others of their type. On the other hand, organizational identity can also carve out a niche to distinguish an organization. This niche defines how they are different from others of their type.

This article argues that NCLR’s identity includes several clusters. NCLR is a lesbian feminist, LGBT, progressive, and social justice organization. Its internal staff structure, mission statement, relationships with allies, and expertise all reflect these different clusters.²¹⁵ Just like organizational identity is quasi-independent of the organization, these clusters are quasi-independent of each other. Most of the time, they are mutually constitutive. “Social justice” is part of what it means to be “lesbian feminist.” But they can move in different directions. “Social justice” might suggest different priorities than “LGBT” or “lesbian feminist.” Some donors might consider one cluster more important than the others. Donors might disagree over which clusters are or should be part of NCLR’s identity.

These concepts provide leverage to support the article’s core arguments. First, donors can support NCLR for its identity, even when that identity does not directly benefit the donor. Second, donors can

213. See *id.*; see also Jane Ward, *A New Kind of AIDS: Adapting to the Success of Protease Inhibitors in an AIDS Care Organization*, 23 *QUALITATIVE SOC.* 247 (2000).

214. See Brayden G. King, *Organizational Actors, Character, and Selznick’s Theory of Organizations*, *INSTITUTIONS AND IDEALS* 149 (Matthew S. Kraatz ed., 2015).

215. See Kosbie, *supra* note 89.

have multiple inconsistent understandings of identity. Donors might agree that NCLR is an “LGBT” organization, but disagree on whether it is also a “social justice” organization. They might also compare NCLR to different types of organizations. Both of these findings support the argument that donors have complex understandings of public interest law, and that they do not expect direct representation of their interests for their donations.

A. NCLR’s Identity: History and Staff Descriptions

In November 1977, Berkeley Law graduate Donna Hitchens founded the Lesbian Rights Project (LRP) at Equal Rights Advocates (ERA).²¹⁶ As a project of ERA, the Lesbian Rights Project took on the former’s feminist philosophy and approach to social change.²¹⁷ LRP adopted a strand of lesbian feminism that saw all gender and sexual inequalities as interconnected.²¹⁸ When it was founded, LRP took almost any case “on behalf of a lesbian in which her sexual orientation is a predominant issue.”²¹⁹ By the early 1980s, LRP also took cases on behalf of individual gay men when they advanced the goals of the organization.²²⁰ In 1989, LRP split off from ERA, becoming the National Center for Lesbian Rights.²²¹ Over time, it expanded its official mission statement to include work on behalf of gay men, bisexuals, and transgender people. At each juncture, as it expanded its official mission, NCLR staff and donors recognized that the organization was already involved in the new work.²²² NCLR also expanded its geographic footprint beyond its San Francisco base, to the point that today it truly is involved in litigation and policy advocacy across the country.

In interviews with NCLR staff in 2013–14, all consistently described the organization as “lesbian feminist.”²²³ Staff also described NCLR as more willing to take chances and more committed to the most marginalized members of the LGBT community than other LGBT organizations. The organization dropped the term “lesbian feminism”

216. *See id.* at 114.

217. *See id.* at 116.

218. Thus, unlike other lesbian feminist organizations, LRP and NCLR never subscribed to the philosophy of lesbian separatism. *See id.* at 116.

219. Letter from Donna Hitchens to Lynn Berry, October 27, 1980 (on file with Cornell Library Archives, NGLTF Collection). The exception was that LRP would not take income-generating cases.

220. *See, e.g.*, Lesbian Rights Project Newsletter 2 (1984) (on file with author) (discussing a partner benefits case on behalf of two gay men).

221. *See* Kosbie, *supra* note 89, at 250.

222. *See* Kosbie, *supra* note 89.

223. *See id.* at 116 n.106.

from its official literature in 2005, but it continues to be part of their identity.²²⁴ This history is particularly important when we consider that almost half of survey respondents have given to NCLR for ten or more years.²²⁵ Some of the organization's most prominent donors today have supported it since its early days as the Lesbian Rights Project.²²⁶ Even for donors who joined more recently, the organization's history as a lesbian feminist organization continues to play a part in defining how it is perceived today. However, donor preferences are not static. Like the organizational staff, donor preferences have developed over time.²²⁷ Thus, this history provides important background to understand the complexity of donor preferences today.

B. NCLR's Identity: Reputation With Donors

In its official mission statement, NCLR defines itself as “[a] national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education.”²²⁸ Donors do not always describe it in the same terms. Donors used a rich variety of terms to answer the question, “[d]escribe who you think NCLR represents.”²²⁹ From their answers, we can identify several dominant patterns in how donors describe NCLR. The most common answers focused on NCLR as an LGBT organization. 61% of respondents included this language in their answer.²³⁰ This is not surprising, given NCLR's official mission statement which defines its work in almost these terms. The next most common answers described NCLR as representing lesbians and/or women. 32% of respondents used this language.²³¹ While these answers are not surprising, it is worth noting that NCLR has not represented only women for almost its entire history. It has a long history as a lesbian feminist organization, but this is not the same as representing only

224. *Id.*

225. *See supra* note 210 and accompanying text.

226. Because of the anonymity of survey data, I cannot confirm whether any survey respondents are in this group.

227. For example, Kate Kendell explained that when NCLR added transgender rights to its official mission, her conversations with donors confirmed their support. Interview Kate Kendell, Executive Director, NCLR, in San Francisco, Cal. (May 22, 2012).

228. NCLR Mission & History, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/about-us/mission-history/>.

229. This was the first substantive question of the survey, and the 13th question overall. By positioning this question before other substantive questions, the survey avoided priming donors to answer it in particular ways. Earlier questions dealt with frequency and history of donating to NCLR and other organizations.

230. 59 of 96 answers to this question.

231. 31 of 96 respondents.

lesbians or women. Also fairly common, 25% of respondents described NCLR as representing queers or the most marginalized in the LGBT community.²³² Finally, a smaller number of respondents described NCLR as representing some variation of everyone or everyone who is persecuted.²³³

While these numbers are interesting, it is even more interesting to examine their overlap. Because this was an open-ended question, many answers included more than one of these categories. “Queers” was co-present with “lesbians” in twelve answers, but “LGBT” was only co-present with “queers” in seven answers and with “lesbians” in nine answers. “LGBT” was co-present with “everyone” in four answers. “Everyone” was not co-present with “queers” in any answers and in only one answer with “lesbians.” These numbers are too small to draw any hard conclusions, but they are suggestive of ways that donors see these categories as aligning. “Queers” and “lesbians” are seen as more radical than the mainstream “LGBT” rights. Nonetheless, if asked directly, most donors would probably agree that NCLR represents all of these groups. These answers capture a high degree of nuance and understanding in how donors think about LGBT litigation. Donors do draw meaningful distinctions between different subgroups. To many donors, it is important that NCLR specifically represents “lesbians” or “queers,” and not just “LGBT people.”

Even more nuance emerges at the level of individual responses. In the category “LGBT,” the acronyms LGBT or GLBT were the most common.²³⁴ Some answers used “LGBTQ,” adding “queers” to expand a little on the group.²³⁵ Similarly, other answers started with LGBT but then added that NCLR focuses on groups like lesbians, trans people, or trans youth. Going in the other direction of generality, other answers added in families or allies to the LGBT group. Finally, some answers dispensed with the LGBT label all together and instead wrote general descriptions like “advancing our rights through litigation.”²³⁶ The other categories included a similar diverse range of answers. Several answers that focused on lesbians also acknowledged that NCLR’s work was broader than just lesbian issues. As one answer explained, “[I]esbians, although not exclusively...” Other answers in this category emphasized issues of social justice, such as “[w]omen identified people

232. 24 of 96 respondents.

233. 13 of 96 (13%) of respondents.

234. Most responses used these acronyms but some spelled out the groups.

235. Answers that included only the “LGBTQ” acronym with nothing more counted under the “LGBT” category. I only counted them under “queer” if they included a more explicit reference.

236. I treated these as an implicit reference to the “LGBT” category.

suffering from injustice.” “Queers” was the broadest category. While several answers explicitly used the label “queer,” others described “non-heterosexual[s],” “nontraditional sexualities,” or noted a “particularly strong understanding of race, gender, and class.”

Across all these categories, answers reveal striking heterogeneity in how donors describe who NCLR represents. On the one hand, there are several dominant patterns that donors agree on. On the other hand, within those categories donors have a range of more or less nuanced understandings of what it means to represent LGBT people, lesbians, or queers. More importantly, how donors describe who NCLR represents does not always line up with their own self-identity. Many donors describe NCLR as representing lesbians, LGBT people, or everyone. These donors almost surely count themselves in those categories. Other donors add that NCLR focuses on the most marginalized, or specifically named groups like trans youth. To these donors, it is important that NCLR represents a group that is broader than the individual donors. In at least some cases, donors appear to describe NCLR as primarily or exclusively representing a group that they do not personally belong to. This is easiest to see with the six respondents who self-identified as straight or heterosexual. Of these six, only one described a group that they might belong to: “people who care about justice for sexual minorities.” Even here, this respondent positions themselves as an ally to the core community. The other five straight-identified respondents described NCLR as representing the LGBT community. Of the ten respondents who self-identified as queer, only half described NCLR as representing queers. Self-identified queers might easily see themselves as also belonging in the categories of “lesbian,” “gay,” or “LGBT.” Nonetheless, this suggests at least a potential discrepancy. This also means that many of the 25% who described NCLR as representing queers might not self-identify that way. These disjunctures between individual identity and who NCLR represents support the article’s argument that donors do not expect NCLR to work in their narrow self-interest.

Another way to measure who NCLR represents is to examine the data on what other organizations donors support. As discussed above, almost all NCLR donors also give to other LGBT and non-LGBT organizations.²³⁷ In fact, donors give to an impressive range of other organizations.²³⁸ What is most striking about these data is the lack of any clear clustering of donations to other organizations. If donors support organizations that they consider similar to one another, then we

237. See *supra* Part II.B.

238. See *id.*

might expect to see clusters defined by shared characteristics. The lack of sharply defined clusters reinforces this article's argument that donors have many, often subtle reasons for supporting an organization.

Focusing on the three organizations supported by the most NCLR donors confirms this lack of defined clusters. For the most part, knowing that a survey respondent donated to one of these organizations offered little predictive value in what other organizations they also donated to. Human Rights Campaign (HRC), Lambda Legal, and National Gay and Lesbian Task Force (NGLTF)²³⁹ were supported by more NCLR donors than any other organizations. Donors to HRC gave to Gay and Lesbian Advocates and Defenders (GLAD),²⁴⁰ the ACLU, and Lambda Legal at about the same rates as all respondents.²⁴¹ However, donors to HRC appear to be slightly more likely than other survey respondents to give to NGLTF.²⁴² HRC and NGLTF are considered the two major national LGBT political organizations today.²⁴³ Nonetheless, they are often described as occupying distinct niches in the national political sphere.²⁴⁴ NGLTF is often described as more politically progressive and focuses on building movement infrastructure at the grassroots level.²⁴⁵ HRC focuses its attention at the national political level, using more moderate political strategies to gain access to traditional levers of government power.²⁴⁶ Perhaps most surprising then is that donors to both HRC and NGLTF supported local organizations at the same rates as all respondents.²⁴⁷ Not surprisingly, donors to Lambda Legal were also more likely to support the other major LGBT legal organizations.²⁴⁸ In fact, it is notable that this trend

239. More recently called the National LGBTQ Task Force.

240. More recently called the GLBTQ Legal Advocates and Defenders.

241. Comparing only respondents who made any donations to other LGBT groups. 15% (HRC donors) compared to 7% (HRC non-donors) gave to GLAD; 20% (HRC donors) compared to 10% (HRC non-donors) gave to the ACLU; and 40% (HRC donors) compared to 25% (HRC non-donors) gave to Lambda. However, only the Lambda-HRC comparison is statistically significant at $p < .05$ using Chi-Square test.

242. 39% (HRC donors) compared to 15% (HRC non-donors) gave to NGLTF. Statistically significant at $p < .01$ using Chi-Square test.

243. See Engel, *supra* note 212 (comparing NGLTF and HRC).

244. See *id.* (describing NGLTF and HRC as occupying distinct but complementary niches in the national political scene).

245. See John D'Emilio, *Organizational Tales: Interpreting the NGLTF Story*, in *CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS* 469 (John D'Emilio et al. eds., 2000) (describing NGLTF history).

246. See Engel, *supra* note 212.

247. 57% of all respondents supported a local organization. 58% of HRC donors and 56% of NGLTF donors supported a local organization.

248. Comparing only respondents who made any donations to other LGBT groups. 24% (Lambda donors) compared to 4% (Lambda non-donors) gave to GLAD; 26% (Lambda donors) compared to 9% (Lambda non-donors) gave to the ACLU. Both are significant at $p < .01$ using Chi-Square test.

is relatively unsubstantial.

Moving beyond the big organizations, donors named a wide range of other organizations that they support. Many of these were local, San Francisco Bay Area organizations. Others were specialized, dealing with lesbian health issues, LGBT film, HIV/AIDS healthcare, or various other issues. As with the big national organizations, no clear patterns emerged in which additional organizations donors supported. The range and variety of other organizations that NCLR donors support further confirms that donors draw nuanced and meaningful distinctions between many similar organizations.

Further complicating this, some donors likely support organizations precisely because they consider them similar. Lambda Legal and NCLR might both be meaningfully described as national LGBT legal organizations in this respect.²⁴⁹ But other donors likely support the same organizations because they consider them different. While Lambda and NCLR are both national LGBT legal organizations, some donors might support both because Lambda has a larger presence across the country, and NCLR has a longer history of supporting lesbian rights.

Another way to look at these data is to compare how donors describe who NCLR represents and what other organizations they support. If donors who described NCLR as representing “LGBT people” donated to a different subset of other organizations than donors who described it as representing “lesbians” or “everyone,” that would provide alternate evidence of clustering. As with the above analysis, there are no clear patterns in donations breaking down answers this way. At most, respondents who described NCLR as representing “everyone” were slightly less likely to donate to other national LGBT organizations. There were no notable differences in donation patterns between respondents who described NCLR as representing “lesbians,” “queers,” or “LGBT people.” If donors expected cause-oriented PILOs to work only in their own self-interest, we would expect to see more clustering by how donors describe NCLR. This lack of clustering further reinforces the argument that donors’ preferences are not directly reducible to self-interest.

C. NCLR’s Goals

Answers to what are NCLR’s goals were even more diverse.²⁵⁰

249. Confirming this point, one respondent described NCLR as an important companion to Lambda Legal in the fight for LGBT legal equality.

250. This question immediately followed “Describe who you think NCLR represents” in the survey.

Like the previous question, answers can be meaningfully grouped into several categories. By far the most common answer described NCLR's goals in terms of LGBT "equality" or ending "discrimination."²⁵¹ Most of these answers explicitly used the words equality and/or discrimination. Some also used the phrase "LGBT rights." In fact, seven respondents who described NCLR as representing lesbians specifically also described its goals in terms of LGBT equality. The focus on equality is not surprising, given the dominant legal language of equal protection and nondiscrimination. It does, however, lend support to critics of cause-oriented PILOs who argue that they can only hope to achieve legal equality rather than meaningful social justice. If donors think in terms of equality and nondiscrimination rather than social justice, then the work of cause-oriented PILOs might be so limited. However, answers to this question also show that donors understand the language of equality in more complex ways than suggested by the critics. For example, answers to this question included "equality under the law, a more fair and just society, liberation;" "full equality for all, working first from the base of those most at risk;" and "achieve lived equality for LGBT people." Others mentioned equality in specific areas, including immigration, housing, and employment. These answers also include elements of social justice and LGBT dignity, discussed more below. The overlap is important. It shows that "equality" is a rich concept for donors. It is not limited to a formal legal definition. Instead, it includes a broader range of ideas about social dignity and citizenship.²⁵²

A smaller percent of respondents described NCLR's goals in terms of social justice²⁵³ or human rights.²⁵⁴ Answers that invoked human rights often did not even name LGBT people. Several answers included a variant of "human and civil rights for all." Similarly, "social justice" answers did not always name LGBT people explicitly. They wrote in the language of broad social inequalities. Several named specific issues, such as jobs, housing, or healthcare. Notably, both of these categories broaden NCLR's goals beyond the LGBT community. It is not clear how meaningful the distinction between "human rights" and "social justice" is to donors. The language of social justice is often

251. 69 of 89 (78%) answers to this question. This also includes answers that used vague language about supporting LGBT people.

252. In a fascinating study, George Lovell finds that people wrote into the Justice Department in the 1930s using the language of equality and civil rights to describe every manner of social injury. Lovell's findings confirm that "equality" has a far richer meaning to the general public than its narrow legal definition. See GEORGE I. LOVELL, *THIS IS NOT CIVIL RIGHTS: DISCOVERING RIGHTS TALK IN 1939 AMERICA* pincite (2012).

253. 20 of 89 (22%) respondents.

254. 14 of 89 (16%) respondents.

used to describe a proactive agenda of eliminating social inequalities and providing meaningful social inclusion. It might connect LGBT issues to inequalities around race, gender, class, or immigration status. Human rights may or may not include these broader commitments. Finally, a small number of respondents used the language of “dignity,” “respect,” or “inclusion” to describe NCLR’s goals.²⁵⁵ While small, this group is important to note because this language explicitly goes beyond the promises of equality under the law. Dignity and respect invoked ideas of social belonging, rather than mere legal equality.

In addition to these four categories, 27% of respondents explicitly mentioned the law or the judicial system in their answer.²⁵⁶ In at least some cases, this descriptor appears to limit how respondents defined NCLR’s goals. For example, one respondent wrote “to change laws on state and national levels.” Other answers explicitly mention legal change as contributing to broader goals of social or political change. In many cases—both in answers that mention the law and those that do not—it is not clear how far respondents think of NCLR’s work as extending beyond litigation. Here again we see that some donors think of NCLR’s goals in fairly narrow terms of winning formal legal equality via major impact litigation. But many other donors think of NCLR’s goals in broader terms that often extend beyond the interests of individual donors.

The survey also included other questions on NCLR’s goals. Answers to these questions add even more depth to the picture of how donors think about the nuances of cause-oriented PILOs. One question asked donors to list the three most important things that NCLR has done in the past year.²⁵⁷ Not surprisingly, all of their answers could be grouped under the broad heading of “LGBT rights.” Along with LGBT rights, almost a quarter explicitly mentioned community outreach and education, and 16% mentioned social justice.²⁵⁸ A small number also included lesbian rights or visibility.²⁵⁹ As explained above, 32% of respondents describe NCLR as representing lesbians or women, and a large number donate to other lesbian-oriented organizations. In response to this question, we see even more nuance. While almost a third of donors define lesbians as part of the core constituency that

255. 7 of 89 (8%) respondents.

256. 24 of 89 respondents.

257. This question included three separate answer fields. As with all questions, respondents could skip filling in one, two, or all three fields.

258. 20 out of 82 mentioned community outreach. 13 out of 82 mentioned social justice.

259. 5 out of 82 (6%). Many of the general “LGBT rights” issues mentioned, such as partner benefits, marriage, or employment discrimination, would benefit lesbians. This category only includes answers that explicitly mentioned lesbian rights or visibility as distinct from broader LGBT issues.

NCLR represents, only a small number name lesbian visibility or empowerment as an important accomplishment in its own right. At a more general level, these discrepancies support the article's argument that donors to cause-oriented PILOs often have a deep and nuanced understanding of what the law can do. Donors bring multiple overlapping but also conflicting visions of legal and social change.

Turning to specific issues, almost all respondents listed same-sex marriage in NCLR's important accomplishments.²⁶⁰ Some listed marriage for all three accomplishments. Others listed marriage as part of a broader item, like relationship recognition or family. Still others listed a more specific marriage-related accomplishment, like winning the Utah case.²⁶¹ After marriage, school and youth related issues were the next most common item, included by over a quarter of respondents.²⁶² Several donors explicitly mentioned NCLR's "Born Perfect" campaign in this respect. Others listed its work fighting conversion therapy or on behalf of trans youth. Donors also listed a wide variety of other specific accomplishments, revealing an impressive knowledge of NCLR's work. About 10% each listed transgender rights, immigration and asylum, and rural LGBT issues.²⁶³ Smaller numbers listed racial justice, sports, elder law, and several other issues and individual cases.

The dominance of marriage in these lists is important to consider. This survey went out to donors in fall of 2014, at the same time that *Obergefell* and related cases were working their way through the Courts of Appeals on their way to the Supreme Court.²⁶⁴ The media already disproportionately focused on same-sex marriage to the exclusion of other LGBT issues,²⁶⁵ and with a Supreme Court case seemingly inevitable, this tendency was more pronounced than usual. Thus, it is hardly surprising that marriage would be forefront in donors minds when they answered this survey.²⁶⁶ Timing issues aside, marriage equality clearly resonates with a large percent of NCLR's major donors. Critics of the traditional nonprofit PILO model might seize on this as proof that nonprofits only benefit the already well to-

260. 72 out of 82 respondents (88%).

261. This answer refers to NCLR's involvement in *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014).

262. 27 out of 82 respondents (33%).

263. Transgender rights: 9 out of 82, 11%. Immigration and asylum: 8 out of 82, 10%. Rural project: 7 out of 82, 9%.

264. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

265. See Interview with Jon Davidson, Legal Director, Lambda Legal, in Los Angeles, Cal. (Aug. 24, 2013).

266. One donor explicitly acknowledged that their answer was likely influenced by the media attention to marriage.

do. In this formulation, marriage does little to address systemic inequalities around race and class. It does not address issues of healthcare, employment, or education.

This glib dismissal of marriage equality as the province of the rich obscures more nuanced understandings of marriage and its relation to the rest of NCLR's work. Most importantly, no respondents seem to think that securing marriage equality means NCLR should close up shop. They celebrate marriage equality as an important step, but see it as part of NCLR's broader ongoing work. Several donors mentioned that the visibility of the marriage issue could generate positive social change. Others included practical benefits for LGBT families, including burial rights for spouses. Donors positioned marriage alongside the gamut of NCLR's work, including employment discrimination, partner benefits, racial justice, youth issues, and transgender rights.

Answers to the next question, other issues that NCLR should work on, provides further evidence of this complexity in donor views. A large majority of donors did not identify other issues that NCLR should work on.²⁶⁷ Many went a step further, writing explicitly that there were no additional issues and "commend[ing] [NCLR] for the broad range of issues it already undertakes."²⁶⁸ Donors who did identify other issues typically focused on NCLR's core mission.²⁶⁹ Several wrote about lesbian-specific issues. One answer focused on "aging lesbians" and another wrote "more priority on issues that affect lesbians as lesbians/women, not the whole LGBT movement." Responses in this category also identified more work on transgender rights as important. A smaller number of respondents identified specific legal and political issues. These issues included nonpartisan political redistricting, religious freedom for LGBT families, and a focus on judicial nominees.²⁷⁰ In all of these cases, respondents noted how these issues tied into NCLR's work on LGBT rights. Finally, some respondents identified broader issues of social justice, including racial justice, mass incarceration, and jobs and housing.²⁷¹ These questions reveal that while high-profile issues like same-sex marriage are important to most donors, many donors also identify issues dealing with trans youth or racial justice. Turning to the next set of questions, the survey found that most donors

267. Only 42 respondents answered this question, in comparison with 82 answering the previous question. It is impossible to distinguish respondents who entirely skipped the question from those who read it but did not identify anything that NCLR should work on.

268. 17 out of 42 respondents who answered this question (40%).

269. 14 out of 42 respondents (33%).

270. 7 out of 42 respondents (17%).

271. 4 out of 42 respondents (10%).

support these broader issues when asked directly about them.

D. Allocation of Resources

In addition to the broad open-ended questions discussed above, the survey asked several closed-ended questions to gauge donor support for a range of specific issues. A large bank of questions asked donors to rank how important specific issues were to them individually, how important they were to NCLR, and how important they were to other LGBT organizations.²⁷² The largest discrepancies between respondents' individual preferences and their perceptions of NCLR's preferences were in the areas of sports, immigration, adoption and family, and transgender rights. Respondents ranked all four of these issues as somewhat less important to them personally than they were to NCLR.²⁷³ On all but transgender rights, respondents also ranked these issues as substantially less important to other LGBT organizations than to NCLR.²⁷⁴ These results are important because NCLR has long-standing programs in all four of these areas. NCLR actively promotes its work in these areas as one way to distinguish itself from similar organizations. These responses confirm that donors are aware of these fine-grained distinctions between organizations. They also suggest that donors do not only support organizations where their personal preferences line up perfectly with organizational priorities.

Answers to two other issues are worth noting for the comparisons between NCLR and other organizations. Respondents perceived almost no difference between NCLR's priorities and those of other LGBT organizations on HIV/AIDS.²⁷⁵ NCLR has never defined HIV/AIDS as a priority. Since the 1980s, it has argued cases on behalf of people with HIV, but when they support NCLR's other goals.²⁷⁶ Other LGBT

272. Earlier in the survey, donors were asked to identify which other LGBT organization they consider most important. If they answered that question, the survey asked them to compare NCLR to that organization. If they did not answer that question, the survey asked them to compare NCLR to "other LGBT organizations."

273. Respondents were asked to rank issues on a five-point scale, with answers of "Lowest Priority," "Low Priority," "Average Priority," "High Priority," and "Highest Priority." The survey converted these answers into scores from 1 to 5. Differences between average donor preferences and perceptions of NCLR preferences were sports (-.55), transgender rights (-.55), adoption and family (-.67), and immigration (-.38). All of these differences were significant at $p < .001$ using a paired-samples t test. Sports was also the only issue that respondents ranked as below "Average Priority" overall. Sports received an average score of 2.63, somewhere between "Low Priority" and "Average Priority."

274. Respondents ranked transgender rights as more important to NCLR than other organizations but with less difference. All differences significant at $p < .001$ using a paired-samples t test.

275. Mean difference of .03, not statistically significant.

276. For example, in the 1980s NCLR argued a child custody case on behalf of a father with HIV. See Lesbian Rights Project Newsletter 1 (Fall 1987) (on file with author)

organizations, on the other hand, continue to make HIV/AIDS a priority. This lack of perceived difference might reflect the lower visibility that HIV/AIDS work receives today. Respondents also perceived same-sex marriage as substantially more important to NCLR than to other organizations.²⁷⁷ NCLR has invested heavily in same-sex marriage work, so in some sense this is not surprising. But many other LGBT organizations have similarly invested heavily in this issue. This set of questions also provides further evidence that donors do not expect cause-oriented PILOs to act just in the donors' self-interest. Several of the issues that donors ranked as high priority potentially benefit most donors directly, including marriage equality,²⁷⁸ relationship recognition,²⁷⁹ ending government discrimination,²⁸⁰ and addressing state and federal policy questions.²⁸¹ Employment discrimination²⁸² and healthcare²⁸³ are also highly ranked but may be less directly important to many donors, given their high socioeconomic status.²⁸⁴ Finally, some highly ranked issues only directly benefit a small set of donors: racial justice,²⁸⁵ elder law,²⁸⁶ youth protection,²⁸⁷ and transgender rights.²⁸⁸ These questions show that when asked about individual issues, donors do support several issues that do not directly affect them.

However, there are limits to this support. A later question asked donors to rank how they would allocate resources between eight specific issues.²⁸⁹ This forced ranking prevented donors from saying everything is important. Consistent with earlier findings, "marriage equality" was ranked as most important by far more donors than any other issue.²⁹⁰ "Employment discrimination," "family and

(discussing case on behalf of "Artie").

277. Respondents describe NCLR as supporting same-sex marriage more than other organizations by a score of .59, significant at $p < .001$ using a paired-samples t test.

278. 4.0 on 5.0 scale.

279. 4.1 on 5.0 scale.

280. 4.1 on 5.0 scale.

281. 4.2 on 5.0 scale for federal policy and 4.1 for state policy.

282. 4.2 on 5.0 scale.

283. 3.9 on 5.0 scale.

284. *See supra*, Part II.A (discussing donor demographics).

285. 4.0 on 5.0 scale.

286. 3.8 on 5.0 scale.

287. 3.8 on 5.0 scale.

288. 3.5 on 5.0 scale.

289. There was a statistically significant difference in allocation of resources, $p < .001$ (Friedman Test).

290. 43 out of 98 responses to this question. On average, marriage equality was ranked 3.1 out of 8 issues. Interestingly, it was also ranked as least important by more respondents than "family and relationships," "employment discrimination," "youth and teens," "seniors," and "government discrimination."

relationships,” and “government discrimination” were also ranked as most important by a large number of respondents.²⁹¹ On the flip side, no respondents ranked “HIV/AIDS” as most important and only three ranked it in the top three issues. Over half ranked it as least important.²⁹² “Transgender rights” and “seniors” were also ranked as most important by few respondents and were, on average, ranked well within the bottom half of issues.²⁹³ A final set of questions asked donors if any of these eight issues were “not LGBT issues.” Even though HIV/AIDS and trans rights were ranked as less important in the previous question, there was virtual unanimity that they are LGBT issues.²⁹⁴ A substantial minority of respondents did say that “racial justice” and “sports” are not LGBT issues, and smaller numbers also said that “immigration,” “criminal justice,” and “elder law” are not LGBT issues.²⁹⁵ These closed-ended questions add further complexity and nuance to the open-ended questions. A large majority of donors do support NCLR’s work on issues like trans rights, youth protections, and racial justice. Many of them consider these issues as important parts of what NCLR does, but they also consider them less central than higher-profile issues like marriage equality.

The final substantive question in the survey asked donors to rank several factors as reasons for donating to NCLR.²⁹⁶ As with previous questions, answers reveal some donor self-interest and some broader motivations.²⁹⁷ Only a very small minority of donors explicitly make their self-interest a primary reason for donating. Though most donors expect that their self-interest will be at least partially served via the organization’s work, they expect the organization to focus first on its

291. All of these were ranked as most important by 16 respondents. On average, “employment discrimination” was ranked 3.2, “family and relationships” was ranked 3.7, and “government discrimination” was ranked 3.7. Only the difference between “marriage equality” and “family and relationships” was statistically significant at $p < .05$ using a Wilcoxon Signed Ranks Test. This means that “marriage equality,” “employment discrimination,” and “government discrimination” were statistically indistinguishable for importance.

292. 52 out of 98 responses (53%).

293. Only one respondent ranked “seniors” as most important, and five ranked “transgender rights” as most important. On average, “seniors” was ranked 5.3, and “transgender rights” was ranked 5.2. This difference was not statistically significant.

294. No respondents said transgender rights are not an LGBT issue, and only two said HIV/AIDS is not.

295. Numbers saying not an LGBT issue: racial justice (18), sports (15), immigration (9), criminal justice (9), and elder law (8).

296. Several demographic questions followed this question but no additional substantive questions.

297. The last substantive question asked respondents to rank several criteria as motivations for donating. This question was placed immediately before demographic questions but after all other substantive questions. This survey design was intended to trigger respondent reflection on issues raised in earlier questions.

goals, rather than on donors' own self-interest. These findings reinforce the article's argument that pressure from donors is only a moderate constraint on the ability of cause-oriented PILOs to experiment with service delivery.

Respondents ranked most of the factors fairly evenly, but three factors stood out as more or less important. "Willingness to pursue broad, transformative goals" was ranked as most important by more respondents than any other factor.²⁹⁸ Along with "work in coalition with other LGBT political and legal organizations," it was the most important factor to respondents.²⁹⁹ At the other end, "[r]esponsiveness to preferences and wishes of donors" was ranked as the least important factor by 45% of respondents.³⁰⁰ Only five respondents ranked it in the top four most important factors. Even if this result does not capture the extent that respondents see their own preferences captured in other factors, such as "broad, transformative goals," it seems counterintuitive that they only expect NCLR to be indirectly accountable to their preferences. Most respondents have been giving to NCLR for many years, and yet they rank responsiveness to their own preferences as the least important factor in their giving.³⁰¹ This makes sense in the context of how these donors describe NCLR's work. As this article previously discussed, donors see NCLR as a leader in the lesbian, LGBT, and social justice communities. They support NCLR because of that leadership. Their responses to this question suggest that they expect NCLR to be a leader on these issues, even when that means going against the wishes of individual donors. As one respondent explained in declining to identify anything else that NCLR should work on, "I'm sure they know the best priorities to work on with the resources they have."³⁰²

This question included several pairs of factors that were in direct tension: "Willingness to pursue broad, transformative goals" vs. "Willingness to pursue the small, incremental steps that add up to positive social change"; "Emphasis on representing the most marginalized members of the LGBT community" vs. "Emphasis on representing the goals of the majority of LGBT people"; and "Focus only on LGBT issues" vs. "Work in coalitions on broader issues of

298. Of 99 responses to this question, 24 ranked this most important. Only 18 respondents ranked this amongst the 3 least important factors.

299. "Transformative goals" got an average ranking of 3.8 out of 9, and "Work in coalitions" got an average ranking of 3.9. This difference was not statistically significant.

300. 45 of 99 respondents ranked this least important. 80 ranked it in the three least important factors.

301. See *supra* note 210 and accompanying text.

302. Answer in response to question: "Are there other important issues that you wish NCLR did work on?"

social justice.” As already discussed, “transformative goals” was the most common primary factor. However, “incremental steps” was ranked almost as important.³⁰³ Both of these were in the top three factors across respondents, suggesting many donors do not see these factors as in tension with each other. More interestingly, “focus only on LGBT issues” and “work in coalitions” also had similar average rankings.³⁰⁴ However, “focus only on LGBT issues” had a bimodal distribution of answers, with many respondents ranking it as most or least important.³⁰⁵ In contrast, there was no clear pattern in how respondents ranked “work in coalitions.” Finally, “representing the most marginalized” and “representing the majority” both had no clear pattern to their rankings.

V. LESSONS FOR CAUSE-ORIENTED PILOS

Donors constitute a key group of stakeholders for cause-oriented PILOs. Understanding their views on public interest law has been the central project of this article. The findings presented confirm the importance of taking donor preferences seriously. Donors’ interests do not always align with those of the organizations that they support. Critically, however, donors often tolerate and even support work that they are not personally invested in, when that work aligns with the core mission of the organization.³⁰⁶ More importantly, donors are not a monolithic group. Donors generally agree on and support an organization’s major goals, but they describe the organization and rank its priorities differently.³⁰⁷

Understanding the complexity of donor preferences is particularly important considering the tremendous growth in the PIL industry over the past thirty years. Individual organizations are much larger, and there are far more organizations involved.³⁰⁸ This means that organizations are in more direct competition with each other for fundraising dollars.³⁰⁹ This competition can offer organizations more opportunity and incentive to experiment with new goals, services, and strategies. In NCLR’s case, its donors are deeply loyal. Their support is

303. On average, “incremental steps” was ranked 4.3 in comparison to the 3.8 for “transformative goals.” This difference was not statistically significant.

304. There was no statistically significant difference between these factors.

305. 17% of respondents ranked this as the most important of nine factors, and 43% ranked it in the bottom two.

306. In the case of NCLR, for example, many donors were not personally interested in the organization’s work on sports. *See supra* notes 273, 295.

307. In the case of NCLR, almost all donors agreed on marriage equality as an important objective. But at least one donor described NCLR as not focusing on marriage.

308. *See Nielsen & Albiston, supra* note 59.

309. *See Rhode, supra* note 5, at 2076.

based on NCLR's long history of strong leadership as a lesbian feminist organization. This gives NCLR some flexibility to innovate, as donors are not directly measuring every new program. In particular, two findings stand out. First, donors respond positively to new goals and areas of work that expand upon an organization's core mission. In NCLR's case, donors embraced its newly created programs on rural issues and school bullying. They also described NCLR as an LGBT organization that focuses particular attention on lesbians and the most marginalized, reflecting NCLR's history of expanding its mission. Second, donors differentiate between similar organizations in important ways. Donors to NCLR described it as an LGBT organization, but they also identified several key issues where it was different from other LGBT organizations.

Donor preferences are also key to questions about how to improve the accountability of social justice-oriented legal organizations. The core of accountability is the concern that an organization should be responsive to the community that it represents. To critics, donor relationships threaten accountability because donors represent an alternate set of interests.³¹⁰ Here this article makes one of its biggest interventions. Typically, we think of donor outreach as a form of marketing. Keep the donors happy so that they continue to support the organization. A more beneficial way to think of this outreach is as an opportunity for community engagement. Donor outreach is not only about marketing, but also about education. Ideally, it is a two-way communication channel, with the nonprofit attuned to donor feedback. As we have seen, donor preferences reflect some degree of self-interest. While many donors are likely insulated from the concerns of the more marginalized members of the community, they are deeply engaged members of the community that a PILO represents. They are deeply invested in issues beyond their own self-interest. Many of them have extensive knowledge of the social, political, and legal issues facing the community and represent an important voice that PILOs should be in conversation with.

The major concern with the donor-funded nonprofit model is that donors' preferences come to replace community needs in determining goals. The findings presented in this article confirm that there is some basis for this concern. But the findings also refute the strength of this criticism. Cause-oriented PILOs rely heavily on individual donors for their primary funding, along with foundation grants.³¹¹ These donors—in the case of NCLR and likely in the case of most similar

310. See Spade, *supra* note 151.

311. See Rhode, *supra* note 5, at 2054.

organizations—come largely from a more privileged sector of the community.³¹² The survey findings confirm that donors recall work on big sexy issues, like same-sex marriage, more than issues like racial justice, poverty, and housing. At the same time, donors value NCLR's aggressive social justice agenda and its key work on less glamorous issues. For many donors, it is critical that NCLR's agenda is far broader than donors' own self-interests. Donors note the importance of NCLR issues like its rural project and its trans youth project. They almost uniformly reject responsiveness to donors as an important consideration in deciding where they donate.³¹³ This complexity does not reduce neatly to any statement about whether donors act only in their self-interest. Instead, the politics of donor interests are messy and complicated.

Taken together, these findings suggest that donors reward nonprofits that have a strong and consistent mission. They expect PILOs to focus on their mission more than their donors. There is some pressure towards homogeneity. Donors respond to high-profile litigation, like the same-sex marriage cases. Thus, it is no surprise that most major cause-oriented PILOs operate with the same basic structure.³¹⁴ However, focusing on these similarities obscures a lot of diversity. Donors also respond to engagement with local communities and work on particular issues that are not being addressed by others. They are receptive to experiments with delivering new and innovative services to underserved populations. Since we are unlikely to see a change in the necessity for donor-supported nonprofits, organizations are best served by building donor relations that not only promote fundraising but also improve the organization.

CONCLUSION

This article is rooted in the broader challenge of improving access to justice for ordinary Americans. While there are no simple answers to this problem, there are some promising trends. State and local governments continue to experiment with new programs to fund legal aid. By designating funding for particular issues or populations, such as affordable housing or the elderly, these programs can gain political support. Legal aid offices use these programs, along with a growing number of foundation grants, to experiment with new ways to conduct outreach and deliver services to relevant communities. The private bar

312. See *supra* Part II.A (detailing donor demographic profile).

313. See *supra* note 299 and accompanying text.

314. Hilbink argues that as the public interest law industry developed in the 1970s, a standard set of expectations emerged that included elite lawyers, impact litigation, and donor-supported nonprofit work. See Hilbink, *supra* note 72.

also increasingly embraces pro bono as a professional responsibility. New York state has gone as far as implementing a pro bono requirement for new attorneys seeking admission to the state bar. Young lawyers identify pro bono programs as a major consideration in their job search, and many of them remain committed to pro bono once they are in private practice. Private-public plaintiff-side firms also benefit from this increased interest in pro bono service. Many of them compete for the same elite candidates as the largest law firms.

Despite these positive trends, legal aid, private firm pro bono, and cause-oriented PILOs all operate in their own silos, largely independent of one another.³¹⁵ Better coordination will allow these organizations to capitalize on their individual strengths. For example, federal restrictions prevent legal aid offices from directly engaging in administrative advocacy. But the lawyers there develop valuable expertise in how administrative policies affect the lives of the poor. Better coordination will allow them to share that expertise. For cause-oriented PILOs, the lesson of this article is that donors have deep knowledge of the challenges facing their communities. Donors are not only aware of high-profile impact litigation. They are also invested in programs that promote education, coalition building, and grassroots outreach. By promoting more regular engagement with their donors, cause-oriented PILOs can increase their accountability to the communities that they serve and strengthen their role in promoting access to justice.

APPENDIX: SURVEY TEXT

Donation History

1. Approximately how much did you donate to NCLR in 2013? [Six options provided]
2. Approximately how much did you donate to NCLR in 2011, 2012, and 2013 combined? [Six options provided]
3. Do you expect to donate the same, more, or less to NCLR in 2014 as in 2013? [Three options provided]
4. How many years have you donated to NCLR? [Four options provided]
5. Besides NCLR, how much did you donate to other LGBT organizations in 2013? [Seven options provided]
6. What other specific organizations did you donate to? [Nine specific organizations, “a local community center or organization,” and “other” provided]
7. What other organization(s) did you donate to? [Open-ended]

315. See Nielsen & Albiston, *supra* note 59, at 1619 (describing “two PIL industries”).

question]

8. Which one of the LGBT organizations that you donate to is most important to you? [Answer choices provided based on previous responses]

9. Besides NCLR, which organization is most important to you? [Question only asked if NCLR chosen for previous question]

10. How much did you donate to non-LGBT nonprofit organizations in 2013?

Donor Preferences and Perceptions of NCLR

11. Describe who you think NCLR represents [Open-ended question]

12. Describe what you think NCLR's goals are [Open-ended question]

Survey directions: "LGBT organizations are constantly reassessing how they allocate resources between different issues. Allocating resources in one area means less in another area. For each issue listed below, please answer how high a priority it is to you, how high a priority you think it is to NCLR, and how high a priority you think it is to the other organization listed. These questions ask you to compare NCLR to another organization based on your previous answers." [For each issue in questions 13-28, respondents could choose "Lowest priority", "Low priority", "Average priority", "High priority", and "Highest priority" for themselves, NCLR, and whatever other organization they identified as most important to them.]

13. Marriage Equality

14. Relationship recognition (partner benefits and other legal protections in addition to marriage)

15. Adoption, custody, and other family issues

16. Racial justice

17. Employment discrimination

18. Healthcare and disability

19. Immigration

20. Elder law

21. Youth protection

22. Transgender rights

23. HIV/AIDS discrimination

24. Criminal justice and prisons

25. Sports

26. Government discrimination

27. Federal policy and legislation

28. State and local policy and legislation

29. Of the previous issues, are there any that you would describe as "not an LGBT issue"? (choose all that apply) [Selection boxes with

issues from questions 13-28]

30. List the three most important things to you that NCLR has done in the past year [Open-ended question with three answer boxes]

31. Are there other important issues that you wish NCLR did work on? [Open-ended question]

32. Please drag and drop to rank how you would allocate resources between the following. [“Government discrimination”, “Seniors”, “HIV/AIDS”, “Marriage equality”, “Transgender rights”, “Family and relationships”, “Youth and teens”, “Employment discrimination”]

33. Drag and drop to rank each of the following in how important of a factor it is in your decision to donate to specific LGBT organizations (NCLR and any other organizations that you donate to). [“Responsiveness to preferences and wishes of donors”, “Willingness to pursue the small, incremental steps that add up to positive social change”, “Emphasis on representing the most marginalized members of the LGBT community”, “Focus only on LGBT issues”, “Willingness to pursue broad, transformative goals”, “Constant innovation and experimentation with new ways to represent LGBT people”, “Work in coalitions on broader issues of social justice”, “Work in coalitions with other LGBT political and legal organizations”, “Emphasis on representing the goals of the majority of LGBT people”]

Demographic Questions

34. How do you follow NCLR’s news? [Rank how often you read each item as “Never”, “Sometimes”, “Often”, or “Always” for “NCLR newsletters”, “NCLR website”, “NCLR postings on facebook, twitter, or their blog”, and “NCLR emails”]

35. How many NCLR events have you attended in the past three years? [Five options]

36. How do you receive general news coverage? (Choose all that apply) [Nine options]

37. What is your age? [Seven options]

38. What is your race? (Choose all that apply) [Seven options]

39. What is your current gender identity? (Choose all that apply) [“Male”, “Female”, “Transgender”, “Gender nonconforming”, “Intersex”, “Other”]

40. [If “other” chosen above] Please describe your gender identity

41. How do you describe your sexual identity? (Choose all that apply) [“Lesbian”, “Gay”, “Bisexual”, “Queer”, “Heterosexual or Straight”, “Other”]

42. [If “other” chosen above] Please describe your sexual identity

43. What is your zip code?

44. What is the highest level of education you have completed?

[Seven options]

45. Including all sources, what do you estimate was your total household income last year? [Fifteen options]

46. What is your relationship status? ["Single", "In a committed relationship", "Commitment ceremony with no legal status", "Civil union or domestic partnership", "Married with legal recognition", "Separated", "Divorced", "Widowed", "Other"]

47. [If "other" chosen above] Please describe your relationship status

48. Which of the following best describes your political views? ["Very liberal", "Liberal", "Moderate", "Conservative", "Very conservative"]