Authoritarianism in US State Politics and its Impact on Nonprofit Civil Liberties

Beth Gazley, Indiana University-Bloomington (link to bio)
Jennifer Alexander, University of Texas at San Antonio (link to bio)

Abstract

Across the globe, there has been a selective closure of civic space but also a responding increase in scholarly research on authoritarianism's impact on civil society organizations. We take a framework for describing authoritarian strategies used against nonprofits outside the U.S. and apply it to the current context of U.S. conservative state policies. We compile an inventory of U.S. state laws and executive actions, and a case study based in Texas, to explain how new state policies reflecting the present partisan "culture wars" are being used to restrict nonprofit service and advocacy space. We conclude by suggesting that U.S. nonprofit scholars should pay closer attention to their downstream effects of American authoritarianism, given the possible impacts on nonprofit civil liberties and behavior.

1. Introduction

Civil society work has always involved organizing marginalized voices, such as settlement houses serving undocumented immigrants in the 19th century and the wave of Progressive reform that followed into the 20th century. So, some part of civil society work has also involved hard decisions about operating on the margins of illicit work to deepen democracy and further social change. But the current context for new restrictions on civil society activity is unique.

Across the globe, there has been a selective closure of civic space driven by factors such as climate change, global geopolitical instability, and a gradual rise in authoritarianism and right-wing populism (Biekart et al. 2023; CIVICUS 2023; Freedom House 2019). In the wake of weakening support for democratic principles, right-wing populist governments have strengthened their control by limiting dissent among civil society actors. The resulting dynamic has been variously referenced as "civil society capture" (Moder and Pranzl 2019), "democratic backsliding" (Bermeo 2016), "shrinking space for civil society" (Anheier and Toepler 2019), and a "third wave of autocratization" (Lührmann and Lindberg 2018).

The capacity of governments to impose restrictions on civil society is widely documented in unstable democracies but repressive efforts have substantially increased in the established democracies of Western Europe and the United States since the 1990s (Arvanitopoulos 2022; Eikenberry 2019). Democracy indicators have been declining worldwide, including in Europe and North America (CIVICUS 2023; Gorokhovskaia et al. 2023). And these trends matter to civil society organizations because democracy indicators are linked to associational activity (Fung 2003). However, little of this research has yet addressed the possibility that autocracy has already reached America's door and that we have already transitioned from "liberal democracy" to "defective democracy" at least in some parts of our political system (Cassani and Tomini 2019). When the lens focuses on more radical forms of organizing, such as through social movements, the scholarship becomes even more scarce (Mati et al. 2016).

This question becomes even more complex in a federalist system when some levels of government have delegitimized associational activity that is still promoted at other levels. This paper focuses on the actions of conservative U.S. states to limit civil society activity through statutory and executive authority. We focus mainly on state action because states are the most active regulators of nonprofit activity, and because states have an outsized impact on local government-nonprofit interactions through the doctrine of "preemption".

This article offers a snapshot of the present US situation in three sections. We begin with a literature review explaining nonprofit civil liberties in the U.S. legal context, and we introduce a framework developed outside the U.S. to test on the U.S. experience (van der Borgh and Terwindt 2014). Next, we provide a descriptive analysis of the scope and impact of U.S. state laws and executive actions that have been used against associational activity. We argue that how scholars are observing authoritarian reaction against nonprofits outside the U.S. is quite similar to how it can be observed within the U.S.

Third, we offer a case study describing the experience of Texan nonprofits attempting to provide immigration services, which we use to illustrate the ways in which the state government of Texas has sought to constrain the influence of a range of direct service and advocacy nonprofits supporting immigrants' needs. The article concludes by asking some forward-thinking questions about how researchers might study the way these constraints change nonprofit work, for example, by motivating nonprofits to be less transparent in how they carry out their work.

2. Literature Review: U.S. State Civil Liberties Restrictions and Their Implications for Nonprofits

The past decade has seen a wave of scholarly publishing on American nonprofit policy advocacy. However, at the risk of oversimplifying this rich field of work, we observe that most of the scholarship focuses on advocacy strategy from the nonprofit perspective. Much less focus is placed on how the policy landscape has changed in reaction to advocacy, or its subsequent implications for nonprofit civil liberties. Scholarship applying Young's (2000) three forms of nonprofit-government interaction has been most robust regarding "complementary" and "supplementary" activities, with less interest in "adversarial" relations. This current imbalance occurs despite an older policy literature observing that public policymaking always runs the risk of restraining interest group mobilization (e.g., Lowi 1964).

2.1 The Constitutional framework for U.S. nonprofit civil liberties

We use the term "nonprofit civil liberties" to describe the constitutional rights of speech, petition, religious freedom, assembly, protection from unreasonable search and seizure, free press, and fair trial embedded in the U.S. Constitution (especially in the Bill of Rights and 14th Amendment). Many of these rights extend to nonprofit corporations as well as individual citizens because courts recognize that institutions protect the civil liberties of the people they represent (Silber 2018; Blair 2015). Altogether, they offer nonprofits a broad if incomplete guarantee of protection from government oppression and censorship. They offer, for example, a right to privacy for nonprofit donors and members, because organizing support for a nonprofit is viewed

as a protected expressive activity (*NAACP v. Alabama, 357 U.S. 449*, 1958*; Albertson v. SACB 378 U.S. 70,* 1965; *Americans for Prosperity Foundation v. Bonta 594 U.S. __, 2021*).

Many nonprofit missions rely on the right to protest and to engage in political advocacy. These are constitutional liberties embedded in the Due Process Clause of the Fourteenth Amendment, and in the First Amendment's triple rights to "freedom of *speech*"… and "of the right of the people peaceably to *assemble*, and to *petition* the Government for a redress of grievances" (Bresler et al. 2016; Inazu 2012; emphasis added). It would be easy to assume the rights of any group or club, secular or religious, to gather members in public or private spaces for expressive purposes of any kind are settled rights. But Inazu (2012) observes the absence of the phrase "associational rights" within the U.S. Constitution leaves organized civil society behavior subject to majoritarian will and makes organizing activity by dissenting groups vulnerable to government restrictions. In other words, in the interval between when a citizen asserts their expressive rights to the point when they organize a group of like-minded people, a constitutional protection may disappear. Without this "associational right", collective action falls short of an expressive "right" and therefore can be regulated. Likewise, the American ideal that "pluralism and dissent are among our nation's deepest cultural commitments" becomes no more than a moral argument (Inazu 2012, p. 152).

Applying an example to clarify the point, a nonprofit library may host a "drag queen story hour" as an expressive activity, with a strong expectation of constitutional protections. But the same library may not organize a peaceful *public* demonstration to advocate for its expressive rights without anticipating efforts within jurisdictions antagonistic to its cause to limit the place, timing, and nature of such a demonstration.

This gap in rights matters because civil society organizations are inextricably bound to humanity's efforts to assert their civil liberties and offer on a global scale a frequent vehicle for organizing collective efforts (Alexander, Elías, and Hernández 2023). So even where nonprofit free expression rights have not become settled legal matter, nonprofits help to organize the individuals who can claim those rights (Blair 2015). Nonprofits serve as an "essential barrier between the individual and the state, fortifying the elements of individual freedom" (Bresler et al. 2016, p. 1096). But as their numbers and organizing capacity grows around the globe, so too does the backlash by policymakers.

2.2 Political backlash to associational activity

Claims to civil liberties have always generated political backlash. Arguably, however, the nature and origins of this backlash have been more studied than the downstream consequences for civil society (SoRelle and Fullerton 2023). Goss (2010) applies Skocpol's (1992) notion of "policy feedbacks" to argue that pressure on governments by external policy actors can generate new public policies which subsequently restructure future political processes – and by extension, future political rights. When the government's reaction becomes an effort to constrain external policy advocacy, it has a direct effect on nonprofits as political actors. There are also subsequent implications for individual civil liberties, particularly for marginalized and disenfranchised groups who may rely heavily on specific kinds of associational activities such as mass mobilization to assert their rights.

Goss (2010) and Skocpol (2003) also argue that decades of U.S. policymaking have succeeded at constraining the space for nonprofit political engagement and directing civic engagement toward non-political "service" activities. And in fact, the amount of political advocacy reported by U.S. nonprofits currently appears to be at an all-time low (Faulk et al. 2023).[1] Yet at the same time, there has been an increase in the past decade in mass mobilization around social causes, from the upsurge in reproductive rights demonstrations, to new labor union activism, to the increase in racial justice and police reform protests organized around the Black Lives Matter movement.

As a result, states have doubled down on their efforts to curb activism through an array of new laws restricting public advocacy and organizing. Efforts were especially strong in 2021, but extend further back, and continue today. While the count varies across sources and methods, observers agree that the number of bills introduced has been unprecedented (Benavidez and Tager 2020; Brown and Lacy 2021). We next introduce a framework for examining this trend.

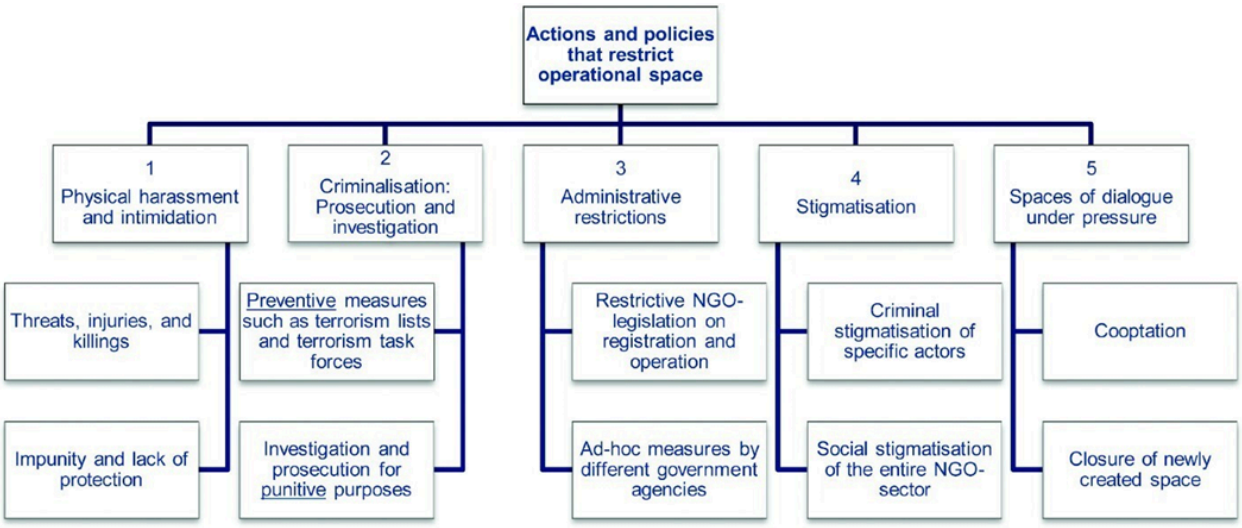
2.3 Frameworks for understanding conservative state actions

There is a remarkable lack of civil society scholarship dedicated to identifying the ways in which liberal democratic governments such as the United States can repress adversarial organizations.[2] Even less is known about the strategies that nonprofits employ to defend human and civil rights (van Wessel 2023). Drawing on research conducted in four countries with relatively young or transitional democracies where civil society organizations have faced political backlash, van der Borgh and Terwindt (2012) generated a typology of actions and policies used by states to restrict what they refer to as the "operational space" of civil society organizations (Figure 1).

Figure 1. Actions and policies that restrict political space (van der Borgh and Terwindt 2014).

[1] The same argument has been made on an international scale by the International Center for Non-Profit Law (2008).

[2] For an exception to this gap, see the Nonprofit Quarterly articles emerging from a partnership with the Protect Dissent Network (for example, https://nonprofitquarterly.org/series/protecting-protest-we-need-all-hands-on-deck/)



More recently, Simsa (2019) developed a similar analytic framework for western democracies, identifying four steps used by right wing, populist governments to restrict "the potential scope of action of critical segments of civil society", amass power, and close down dissent (Simsa 2019, p. 1). Simsa (2019, p. 1) notes in the context of Austria that civil society organizations a government views as too critical or independent are often among the first targets, and that authoritarianism can be "a creeping process of often small steps", beginning with manipulation of the public narrative to delegitimize nonprofit work the state opposes. Both Black Lives Matter and antifa activists, for example, have been called "terrorists" and "extremists" by state politicians (Los Angeles Times, Dec. 2, 2020; Pratt August 28, 2023), and this is not new language – it mirrors the same language used by Southern state politicians against organizers in the earlier U.S. Civil Rights movement.

Although the non-U.S. examples include many specific experiences not relevant to the U.S. context, such as the activities of paramilitary gangs or truth commissions, we view the framework itself as relevant to the U.S. experience with conservative states. The following tactics have been identified as means to suppress critical nonprofits: (1) violence in the form of physical threats, intimidation and harassment, denial of state protection (van der Borgh and Terwindt 2012), (2) criminalization of particular activities and "investigation for prosecution and punitive purposes" (van der Borgh and Terwindt 2012), (3) use of bureaucratic power to delay or restrict action, including refusal to allow nonprofit registration or loss of registration, (4) delegitimating, negative labeling and stigmatizing narratives, including polarizing narratives that establish a "we vs. they" logic (Simsa 2019; van der Borgh and Terwindt 2012), and (5) restricting and reshaping political dialogue in civic space by silencing actors through cuts in funding, and/or cooptation by transferring support to nonprofits that convey preferred messages (Moder and Pranzl 2019; Simsa 2019; van der Borgh and Terwindt 2012).

Simsa (2019) focuses broadly on how civic space is restricted by not only the government, but also among organized political forces vying for power. Relevant to the current political environment are the characteristics of right-wing populist groups: authoritarian, nationalistic, anti-pluralist, and racist (Loch and Norocel 2015) and the use of polarization to justify authoritarian measures (Levitsky 2017). Right-wing populist groups seek to delegitimate critical

segments of civil society through narratives that create a polarizing "we vs. they" dynamic intended to assert one group's claim to power as the "true representatives" of the people (Muddle 2004; Müller 2017); by restricting participation in political debates and legislation and finally, a roll-back of civil rights (Simsa 2019).

Dynamics driving an erosion of democracy in the US conform in several respects with Simsa's (2019) assertion that right wing governments are inclined to curtail democratic rights. This point draws our attention to the emergent role of state governments as the guiding force shaping national policy and their established authority to define who can participate in government and under what circumstances (Grumbach 2023). In fact, states held absolute authority over the franchise and were able to restrict political and civil liberties with impunity until after the Civil War (Du Bois 1935; Foner 1988). They hold the constitutional authority to administer elections, pass legislation that determines who can vote, enforce the laws and manage the carceral state. In recent years, several conservative states have passed legislation to restrict and suppress the vote, and gerrymandered electoral districts, resulting in lower voter turnouts (Caughey and Warshaw 2018). In *Laboratories Against Democracy*, Grumbach (2023) documents "democracy-restricting" activities occurring over the past decade, resulting in a significant downturn in measures of democracy in Republican controlled states.

3. Data and Methods

This article has two empirical approaches. We first organize a list of state laws that may impede nonprofit civil liberties. Our main source was the International Center for Nonprofit Law "U.S. Protest Law Tracker". We also relied on media sources, the First Amendment Watch program at New York University, the Center for Media and Democracy, the commercial site *legiscan.com*, and other sources. Table 1 displays the results. We exclude state preemption laws from this table as being too numerous and widespread, and we exclude executive authority such as line-item veto power, or emergency declarations, for similar reasons.

Secondly, we offer a case study of one state's experience. The case study is based on primary data drawn from 16 semi-structured interviews conducted via zoom with executive directors and staff of immigrant serving nonprofits between January and March, 2024. Organizations selected were engaged in advocacy, humanitarian aid, civil rights, or legal services for immigrants in the state of Texas. In addition to interviews, we drew on secondary sources in the form of newspaper articles, television news, press releases, and the websites of Governor Abbott and Attorney General Paxton.

Research participants were selected using a snowballing technique, beginning with established contacts in San Antonio and progressively reaching out across the state to other participants who were recommended by previous interviewees. We interviewed two reporters and attempted to interview personnel for the City of San Antonio and Bexar, but both declined. All interviewees spoke on the condition of anonymity.

We interviewed subjects until we had gathered enough narrative data to indicate similarities and differences among their responses and patterns that emerged in how they understood organizational challenges vis-à-vis the state. Interviews lasted between 45 and 90 minutes, were

semi-structured, and included questions regarding mission and challenges in the current environment. Interviews were transcribed and distributed to interviewees to check for accuracy and to be certain that our understanding of their comments conformed with their own.

4. Analysis and Discussion: State Laws Restricting Nonprofit Activity

The U.S. state laws restricting nonprofit activity that we include address both the right to "assembly" by restricting organizing strategies, and also other forms of collective action (the right to "petition"). These are displayed in Table 1. Applying the framework of van der Borgh and Terwindt (2014), these laws begin with **physical intimidation** not only by police forces and other state actors, but also laws that allow fellow citizens to harass activists with impunity. In the U.S., activists have filed an "unprecedented" number of lawsuits claiming excessive force by police during racial justice demonstrations (Oladipo 2023). Physical intimidation can also occur by weaponizing the arrest process, raiding homes, jailing activists, and denying them bond, as it has during the extended opposition to a planned police training facility in Atlanta from 2021 to the present (Pratt 2024; Pratt 2023). Additionally, five states have passed laws (and 21 additional states have attempted laws) that offer qualified immunity to police or to motor vehicle operators who injure protestors, which in effect weaponizes motor vehicles against organizing activity (Fearnow 2021).

The second category, **criminalization** of associational rights, has been possibly the most active area for U.S. conservative states. We address these state efforts in two categories: anti-protest laws, and laws of preemption. Table 1 displays examples of state anti-protest laws.

Table 1. State laws that restrict nonprofit civil liberties

Law	Placement in van der Borgh and Terwindt framework	States and status[a]	Example that can apply to nonprofit associational activity
Anti-protest: "critical infrastructure"	Criminalization	Passed: AL, AR, GA, IN, KS, KY, LA, MS, MO, MT, NC, ND, OH, OK, SD, TN, TX, UT, WI, WV	PERSON defined: "An individual, trust, estate, corporation, partnership, limited partnership, limited liability partnership, limited liability company, or unincorporated nonprofit association having a separate legal existence under state law." (Alabama Code 13A-7-4.3; amended 2022 via SB17). Vicarious liability: "an organization that, acting through an officer, director, or other person serving in a managerial capacity, knowingly compensates a person for engaging in conduct occurring on the premises of a critical infrastructure facility is liable to the property owner … for damages arising from the conduct." Texas Code B.4 adds Section 424, via HB 3557 in 2019

Anti-protest: locations, costs, clothing	Spaces of dialogue under pressure	Passed: AL, AZ, FL, MS, ND, OK, SD, TN, UT Pending: AK, MN, MO, NJ, NY, TN, WA, WV	“Written approval from the Chief of the Capitol Police or the Commissioner of the Department of Public Safety shall be required before any event occurs which will take place on any street or sidewalk immediately adjacent to any building or property owned or occupied by any official, agency, board, commission, office or other entity of the State of Mississippi, or which can reasonably be expected to block, impede or otherwise hinder ingress thereto and/or egress therefrom.” Mississippi Code Section 45-1-19, amended by SB2343 in 2023. Oklahoma HB 1674: an organization found to have "conspired" with individuals who are found guilty of certain offenses--including "unlawful assembly," "riot," "incitement to riot," refusing to aid in the arrest of a "rioter," and remaining at the scene of a "riot" after being ordered to disperse--will be fined ten times the maximum amount of fine authorized for the individual's offense.
Anti-protest: “riot”	Stigmatisation, Criminalization	Passed: AR, FL, NC, ND, SD, TN, WV Pending: GA, NJ	Creates civil liability for “riot boosting”, defined as “a person or organization” that "does not personally participate in any riot but directs, advises, encourages, or solicits other persons participating in the riot to acts of force or violence." SB 189 Note: A constitutional challenge to the law resulted in a settlement agreement in which the law will not be applied to organizations engaged in peaceful protest, but the law is still on the books. ICNL
Anti-protest: driver or police immunity	Physical harrassment and intimidation	Passed: FL, IA, MO, OK, WV Pending: NJ	Felonizes the acts of any person who “directed, advised, encouraged or solicited other persons, who participated in the riot to acts of force or violence” and offers qualified immunity to “a motor vehicle operator who unintentionally causes injury or death …while fleeing from a riot.” Amends 21 O.S. 2011, Section 1312 via HB 1674 (2021).
Anti-protest: Racketeering	Criminalization, Stimatization	Passed: OK Pending: GA, LA	Defines a racketeering “enterprise" as “any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking”. Defines “unlawful assemblies” as a new “racketeering activity”. Oklahoma Code

			22 O.S. 2011, Section 1402, amended by HB 2095 in 2021.
Anti-protest: bail funds	Administrative restrictions	Pending: GA	Adds riot, inciting to riot, unlawful assembly, racketeering to list of offences requiring bail, and stipulates "no more than three cash bonds may be posted per year by any individual, corporation, organization, charity, nonprofit corporation, or group in any jurisdiction. Every individual, corporation, organization, charity, nonprofit corporation, or group that purports to be a charitable bail fund with the purpose of soliciting donations to use for securing the release of accused persons shall be required to submit to the same requirements as any professional surety company." Amendment to Chapter 6, Title 7 of Georgia Code, via SB 63.
Domestic terrorism (threat or support)	Criminalization, Stigmatization, Intimidation	Passed: AL, AK, AZ, AR, CA, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, MA, ME, MI, MN, MO, NV, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, VT, VA, WA Pending: WV	"Prohibits knowingly committing a specified offense with intent to intimidate or coerce a civilian population; influence government policy by intimidation or coercion; affect government conduct by intimidation or coercion; or retaliate against a civilian population or government for a policy or conduct… The offense is a Class Y felony, which is punishable by a minimum of ten years in jail with a maximum of life." (Arkansas Code 5-54-201 to 5-54-210, amended)
Organizational free speech: Defamation	Criminalization, Intimidation	Pending: FL	Makes it easier to sue a nonprofit representative for "defamation" and provides a "venue for damages for a defamation or privacy tort based on material published, exhibited, or uttered on the Internet.". Florida HB 757.

[a] The list of states with "passed" and "pending" legislation is based on the ICNL website as updated by the Center for Media and Democracy site and web searches by the authors. The "pending" list is less accurate. The "passed" list has been verified but does not include judicial suspensions. Please also note that a longer list of states attempting but failing to pass similar laws is not included.

Anti-protest laws. As of 2024, 22 U.S. states have passed multiple anti-protest laws, or expanded existing laws with more severe sanctions. As per van der Borgh and Terwindt, this group of laws has *preventive* and *punitive* dimensions. First, they attempt to *prevent* public protest by increasing criminal penalties (such as raising misdemeanor charges to felonies) and by categorizing claimed breaches of the peace in the inflammatory language of "domestic terrorism"

(Williams and Aaronson 2019). In some instances, federal agencies have also backed aggressive state action against environmental activism by labeling it "extremist" and "anarchist" (Brown 2023).

The *punitive* dimension attempts to increase the financial costs of protest. For example, Alabama SB 152 allows municipalities to charge demonstrators for the cost of policing a demonstration. A cluster of additional laws passed after the Keystone XL Pipeline protests in 2015-2017 sometimes assign vicarious liability to the organizing entity. Of the 20 U.S. states prohibiting protests near gas and oil pipelines, the majority extend penalties beyond individuals to the organizations who support them. For example, Montana HB 481 holds vicariously liable "an entity or person that compensates or provides consideration to someone for trespass." In short, an environmental justice organization can plan a public protest, train and advise participants in non-violent peaceful protest strategies, do their best to enforce this expectation, but be charged with liability if one individual goes off-script and breaks the law.

This strategy to intimidate associational activity has been noted. For example, North Dakota's HB 1304 attacks individual expressive rights by criminalizing the wearing of masks and hoods "while committing a crime". In the case of a similar Oregon bill (introduced and defeated in 2020) that reclassifies as a felony the act of covering one's face during a public protest, the International Center for Nonprofit Law (2023) observes that vagueness of the definition of "riot" and notes the potential "chilling effect" such bills could have "on nonviolent protesters who want to remain anonymous or use a mask to make a political or social statement."

As of 2010, 33 states have RICO laws that could be used to intimidate nonprofit organizations (Floyd 2011). A sign of things to come may be reflected in Georgia, where the Attorney General has used Georgia's Racketeer and Influenced Corruption statute in a way that legal observers describe as "unprecedented" (Pratt September 7, 2023). In 2023, the board members of a 501(c)(3) bail fund, and a legal observer acting in an official capacity for another charity, along with 57 additional people, were indicted under the state's RICO statute, with trials currently pending (Pratt September 7, 2023).

The charges revolve around a loose network of racial justice and environmental groups opposing a police training facility. Because sabotage of public property occurred, Georgia is using the law to claim that any coordinated action among individuals opposing government action is tantamount to a "conspiracy" to commit violent acts, and that even indirect support or peaceful actions become criminal actions when any member of the "enterprise" commits a crime (Fulton County Superior Court 2023). The indictment is also noteworthy in weaponizing the values of "collectivism" and "mutual aid" against the indicted community organizers (Fulton County Superior Court 2023). A similar law in Ohio (HB 109, 2021) criminalizes providing "material support" to demonstrations. Observers note that "such a provision could potentially be used against nonprofits that offer 'Know Your Rights' trainings for protesters" (Benavidez et al. nd).

Laws of preemption. States have the constitutional power to legislatively preempt (i.e., overrule) the ability of local municipalities to protect and serve local citizens as they see fit. Traditionally, preemption was intended to create consistent legal and regulatory codes within a state. However, recent application of these laws of preemption have a right-leaning tilt (Jackman 2013).

Goodman et al. (2021, p. 148) describe this era as the "New Preemption", characterized by partisan and punitive measures as state legislatures trend more ideologically conservative and municipalities trend more liberal, causing the two sides to "see each other as political adversaries". In one analysis of the 2001-2017 period, Swindell et al. (2018) argued that nine in ten of state preemption laws restricted rather than expanded local government action.

Briffault (2018) offers a thorough description of this landscape, which includes bans in Mississippi and Texas against "sanctuary city" declarations, a nearly national prohibition on local government firearms regulation, and new laws from the majority of formerly Confederate states prohibiting removal of war memorials. Omitted from Briffault's analysis given their recency are preemption laws to protect local police budgets. In the wake of the *Dobbs v. Jackson* ruling, red and blue states alike are also actively codifying preemption laws about abortion access, with unequal and uncertain implications for charitable health care. Additional preemption laws limiting local government policy discretion have been directed against drag performances, bathroom equity, fracking restrictions, puppy mill restrictions, voting rights expansions, consumer credit protection, and anti-discrimination ordinances (see for example SoRelle and Fullerton 2023). Nonprofits are involved in all of these policy issues as service providers or advocates.

Briffault (2018) also uses the term "punitive preemption" to describe a state strategy involving fines, penalties, and decertification of charitable status, or defunding and removing oppositional local government managers from office. Not addressed by Briffault (2018) but an important consideration for social movement organizers is the idea that state preemption rights also extend to referendum access and voting rights. Twenty-four of the U.S. state legislatures have clawed back or never allowed ordinary citizens to organize ballot initiatives through petitioning (National Conference of State Legislatures n.d.).

Preemption also involves executive action, known as "executive preemption" (Goodman et al. 2021). In Georgia, Governor Kemp declared a "State of Emergency" to extend policing powers during the protests of the Atlanta police training facility. Texas Governor Abbottt withheld state grant funds from counties with sanctuary policies, extending the impact of this political war to all of the local charities dependent on state funds for health, veteran, and family services (Briffault 2018).

This effort to use preemption as a political weapon appears to be intensifying. Efforts have been made in Florida, Oklahoma, and Texas to pass what Briffault (2018, p. 2007) coins a "nuclear preemption" statute, which prohibits all local regulation of "businesses, professions, and occupations". These laws, at times, also extend the ability of members of the public to initiate complaints against local government officials. Legal observors also note the efforts by conservative states to litigate their preemption efforts *up the ladder,* through challenges to the Supremacy Clause and attempts to nullify federal laws on a raft of issues including immigration, healthcare, marijuana use, voting rights, and firearms sales (Raynor 2015).

The third category, **administrative restrictions**, involves what van der Borgh and Terwindt (2014, p. 61) describe as both formal and *ad hoc* efforts to restrict the legal space for civil society activity, such as by denying charitable status to organizations. Texas Governor Abbott's

withdrawal of state funds from nonprofits can be viewed as an *ad hoc* effort. But on the whole, this kind of government restriction has been quieter in the U.S. context, possibly due to states' continued willingness to recognize nonprofit activity under the expansive federal tax law. But the actions that other countries have taken should be noted, to recognize them should they occur in the U.S. They include, potentially, governments delaying responses to nonprofit administrative requests, other forms of "de-funding" charitable activity, and exercises of bureaucratic power and red tape.

For example, a bill (SB 63) is pending in Georgia that if signed by the Governor, would revoke the rights of charitable bail funds to post cash bail more than three times each year. This is an example of administrative restriction on charitable purposes. As Georgia State Representative Tanya Miller observed, "What is most scary about this bill is the criminalization of churches and religious institutions that have historically been on the front lines of social justice and civil rights justice for black and brown people in this country" (Pritchett 2024; Legend and Simonson 2024).

The fourth group of state actions involves attempts at **stigmatization** of associational activity. Van der Borgh and Terwindt (2014, p. 59) note the close connection between this group and the first, that of **criminalization** of civil society activity. Both involve state efforts to stereotype certain groups and depict them as threats. They note that "stigmas can legitimize acts of criminalization" and also stigmatize those who have been arrested and jailed (p. 60). The rhetoric of conservative U.S. states around labor, racial justice, and environmental justice movements clearly follows this pattern (Pratt August 28, 2023).

The fifth category of state action involves putting **spaces of dialogue under pressure**. These are the "invited spaces" (van der Borgh and Terwindt 2014; p. 62) which democratize public policy by offering opportunities for voice and participation. Van der Borgh and Terwindt are mainly interested in "insider/outsider" dynamics related to collaborative policymaking. Here we note the over-sized role of the American Legislative Exchange Council (ALEC), a 501(c)(3) nonprofit on the favored list of conservative state legislatures and where many of these laws originated from model legislation.[3] We also note the influence of powerful groups such as the firearm, alcohol and tobacco industries which operate through nonprofit trade associations and sometimes succeed in using the state preemption process to reduce local government regulation of their industries (Goodman and Hatch 2023). Finally, we also note the energetic efforts by nonprofit Fraternal Orders of Police, National Sheriffs' Association, and local "police foundations" to advocate for anti-protest laws (Gibson 2022).

But we also include here a group of state laws we view as "venue control" laws. These laws constrain the available public space for free expression. For example, they criminalize protests at government buildings (Mississippi SB 2343) and on sidewalks (rather than just in roadways) (Tennessee HB/SB 8005). They expand the definition of "unlawful assembly" (Oklahoma HB 2095) or restrict rights of assembly by imposing curfews (Indiana SB 198). Inazu (2012)

[3] A small sample of relevant legislation originating from ALEC includes the "Critical Infrastructure Protection Act" (2018), which targets environmental protests against natural gas pipelines, the "Protecting Everyone's Constitutional Rights Act" (2020), which protects police officers against claims of excessive force, and the "No Sanctuary Cities for Illegal Immigrants Act" (2010), which restricts local governments' ability to offer services to migrants. https://www.alecexposed.org/wiki/ALEC_Exposed

observes that public order-related laws that restrict associational activity may be constitutionally defensible given the government's constitutional responsibility to only protect peaceable assembly. But at the same time Inazu (2012) fails to observe that when a conservative state retains the right to define "peaceable", every protest against state policy quickly becomes a "riot".[4]

5. Case Study: Government Regulation of Immigrant-Serving Nonprofits in Texas

A local examination of these laws' impact is useful in understanding in detail how they affect nonprofit operation. This case study begins with a brief background on immigration in Texas and then identifies ways the state government has limited the impact of immigrant-serving nonprofit organizations and also how nonprofits have responded in accordance with the frameworks of van der Borgh and Terwindt (2014) and Simsa (2019).

5.1 Background

It is difficult to grasp the complexities of migration and the meaning of a humanly constructed boundary without accounting for the history of this region. As late as 1846, Mexico claimed Texas as well as New Mexico, Arizona, Utah, Nevada, California, and small portions of several other western states. The population of south and central Texas has been, and continues to be, predominantly Latino. Overall, Texas is home to over five million immigrants, more than one in every six residents, 64% of whom were born in Latin America or the Caribbean (American Immigration Council 2024). An estimated 33% of the immigrant population in Texas is undocumented.

Immigrants are central to the economy of Texas: they make up 23% of the labor force and are heavily represented at both the lower end (agriculture, construction, hospitality) and upper end (education, healthcare, technology, engineering) of the labor market (American Immigration Council 2024). They contribute over $38.4 billion in taxes and over $180 billion in consumer spending in Texas per annum (American Immigration Council 2024). Allegations that immigrants are a criminal element bringing corruption, disease, and drugs dates to the earliest waves of immigrants arriving in the US, and even to the beginning of recorded human history. However, national and state data indicate that undocumented immigrants do not increase property or violent crimes (Abramitzky, Boustan, Jácome, Pérez and Torres 2023; Light, He and Robey 2020). In fact, conviction, and arrest rates for both legal and undocumented immigrants fall well below those of native-born US residents (Abramitzky, et al. 2023; Light, He and Robey 2020).

In 2020, migration across the US/Mexico border surged to an unprecedented 200,000 people per month driven by a combination of factors, including political turmoil, violence, and climate change; it was a dramatic uptick from the 50,000 per month observed between 2010-2018. The demographics of immigrants crossing the southern border also shifted to include a higher

[4] This exact point is at issue with respect to Florida HB 1, an "anti-protest" bill that was stopped by the federal Eleventh Circuit due to a "vague and overbroad" definition of "riot" (First Amendment Watch 2023).

percentage of families and unaccompanied minors, and a diversification in origin nations (Passel and Krogstad 2023).

With the sudden rise in numbers of immigrants entering the state, Texas Governor Greg Abbott responded in March 2021 with "Operation Lone Star", a border security initiative intended to stop the flow of immigrants by militarizing the border and allocating funds for building barriers. Two months later, in an act of "executive preemption" and a remarkable interpretation of executive emergency powers, Governor Abbott declared the border region a "disaster", thereby empowering his office to reallocate $250 million of legislatively allocated funds for building a border wall, and funding for National Guard and police officers in the 50 counties located on or near the border. Observers also note that this policy change is a dramatic shift from an earlier, more business-friendly perspective acknowledging the state's reliance on immigrant labor. It began after state elections in 2014 where candidates representing social conservatism and nativist ideas won handily against business conservatives (Flahive 2021; Schecter 2002).

Subsequently, the Texas legislature passed SB4 which asserts the state's right to regulate immigration. In its most recent iteration, this law requires that Texas law enforcement agencies be engaged in the enforcement of immigration laws. SB4 makes it a state crime to cross the border illegally, allows police officers to inquire about an individual's residency status, permits state judges and magistrates to order the removal of noncitizens from the country, and would punish local law enforcement for not upholding these laws (*United States v. Texas, No. 23-50632, Fifth Cir.*).

Operation Lone Star and SB4 are not settled law and in fact are under judicial review because they challenge the Supremacy Clause of the US Constitution, which grants the federal government exclusive authority to regulate immigration. The federal government argues that state efforts to create and enforce immigration law interfere with federal law pertaining to entry and removal of noncitizens, conflict with US foreign relations, and generally complicate the U.S. enforcement of federal statutes (*United States v. Texas No. 24-cv-8; Feb. 29, 2024*). City and county governments have also objected to SB4 because it diverts local law enforcement efforts from community safety to an issue of federal jurisdiction. SB4 erodes trust between immigrant communities and local police, thereby generating a lack of resident cooperation and it encourages racial profiling. It complicates the enforcement of federal statutes because local magistrates and law enforcement officials lack training in related federal law, and it denies people who entered the state illegally the right to pursue asylum. If upheld by the U.S. Supreme Court, SB4 will set a precedent that encourages other states to consider legislation drawing local law enforcement into immigration enforcement and the assignment of harsh penalties for localities that do not comply.

5.2 Government tactics to capture civic space

As noted, van der Borgh and Terwindt (2014) outline five discrete categories of state action against civil society organizations. When documenting their occurrence in Texas, we found that state responses often meet several categories at once. For example, an effort by the state to *intimidate* a nonprofit may involve calling for an investigation (*criminalization*), threats to revoke registration or funding (*administrative restrictions*), and a delegitimizing public narrative

accusing the nonprofit of criminal activities (*stigmatization*). Moreover, state efforts to clamp down on nonprofits have put *spaces of dialogue under pressure* as they have affected relations between nonprofits and local governments as interdependent partners in service delivery. As the state has taken a strong authoritarian stance on immigration, it has not only affected immigrant-serving nonprofits, but also reshaped the civil society of border communities and reduced both interest and capacity of local government to partner with immigrant-serving nonprofits. Further, Texas has used both statutory and executive authority, applying both "punitive preemption" and "executive preemption" strategies.

The most frequently lodged accusations against immigrant-serving nonprofits by the state is that in some capacity they have encouraged, assisted in, or profited from, illegal immigration while being supported by U.S. tax dollars (García and Melhedo 2024; Molina 2022). Most of the nonprofits engaged in humanitarian care for immigrants are faith-based organizations with established histories in their communities. They provide food, shelter and clothing, or coordinate transportation to cities outside of Texas. Other nonprofits provide legal assistance, *pro se* legal representation, and community education. State efforts to curtail the activities of these immigrant-serving nonprofits has occurred through intimidation in the form of legal investigations, requests for records, and the frequent and unpredictable appearance of state police at their doors. The repeated presence of police in immigrant-serving spaces has had a chilling effect on nonprofit staff, volunteers, and people seeking assistance. An employee at a food bank in El Paso said, "Any employee here could be charged with smuggling. They are criminalizing humanitarian behavior, and it is making the organization toxic to the people who need it most."

Funding that supports immigrants, or immigrant-serving organizations directly or indirectly, has come under scrutiny, and nonprofit organizations receiving these funds risk being accused of criminal behavior in the press. In 2022, Attorney General Paxton launched an investigation into the Texas State Bar Foundation for possible misuse of charitable funds that "aid and abet a massive influx of illegal aliens" (Paxton 2022). In this case, the state had imposed a restriction on federal funding intended to support crime victims that passes through the state so that no funding could be used to support undocumented residents.

This order placed nonprofits in a conflict between the intended use of federal funds and the state's new requirement. "Given the scrutiny we are under, we structured our funding such that federal support for crime victims goes directly to the domestic violence shelter so we cannot be subject to accusations," said one executive director. Similarly, in 2022, four U.S. Congressional representatives wrote a letter to Catholic Charities U.S.A. accusing the nonprofit of violating federal law and misusing taxpayer funds. The letter informed Catholic Charities that they needed to reserve all documents related to expenditures submitted for reimbursement related to migrants, warning "Next Congress, we will continue to investigate your organization's role in facilitating the border crisis, your potential violations of federal law, and your misuse of taxpayer funds" (Clarke 2022).

In a recent high-profile case, Annunciation House, a Catholic-affiliated nonprofit that has provided hospitality, food, and medical care for asylum seekers and migrants in El Paso for nearly 50 years, was accused by Attorney General Paxton of being engaged "in the business of human smuggling," operating an "illegal stash house" and encouraging immigrants to enter the

country illegally (García February 23, 2024). In February 2024, Paxton's office requested client records from the Executive Director and gave the organization 24 hours to turn over documents. When Director García consulted with a judge as to what documents García was legally allowed to release and how much time he would reasonably be allowed to respond, Paxton interpreted the response as noncompliance and filed a countersuit to revoke the nonprofit's license and shut down their shelter (García and Melhedo 2024). In a subsequent hearing, District Court Judge Dominguez blocked the Attorney General's subpoena and rebuked him for his unreasonable demands. Dominguez suggested that "the Attorney General may want to shut down the network of migrant shelters for political reasons" (García March 11, 2024). Judge Dominguez noted,

> The Attorney General's efforts to run roughshod over Annunciation House, without regard to due process or fair play, call into question the true motivation for the Attorney General's attempt to prevent Annunciation House from providing the humanitarian and social services that it provides. There is a real and credible concern that the attempt to prevent Annunciation House from conducting business in Texas was predetermined" (García March 11, 2024).

The community response was resounding and affirmative. Vulnerable nonprofits are accorded legitimacy when publicly supported by nonprofits and democratic institutions in their civic space when under attack (van Wessel 2023). In this case, the mayor, a county judge, US Congressional Representative Veronica Escobar and countless El Paso nonprofits bore witness to the valuable work that Annunciation House does and excoriated the Attorney General for his actions in public statements to the press (Garcia February 23, 2024)

In effect, the state has waged a public war on immigrant-serving nonprofits through investigations and accusations of criminal behavior employing the media and the courts, with little demonstrated legal foundation. But this war has served two key purposes. First, it has provided state politicians with a presence in the conservative press outlets, allowing the stories to play to great effect in the national policy dialogue. Second, the repeated accusations of criminal behaviors lodged against immigrants-rights groups in the media and the courts have put immigrant-serving organizations on the defensive. Efforts to manipulate the public narrative and challenge organizational legitimacy threaten to undercut missions and organizational survival. As de Velazco, Director of Education and Advocacy for the Kino Border Initiative, said, "Their accusations are intended to raise doubts in the work we are doing" (Molina 2022). One executive director noted, "In civil litigation it's not about whether you're right or not but whether you have the ability to keep fighting. We don't want to have to take that fight to court, we don't have a robust legal fund." Another executive director added, "the AG's office is essentially engaged in 'death through litigation' because the intention of lawsuits is not to win the legal battle but to win the political war and most of us cannot afford to be sued."

These concerns are well founded. The Fifth Circuit Court of Appeal has provided the state with considerable latitude even when they agree that state actions are unconstitutional. They supported SB4 in a decision on March 4th, 2024, which the federal government is now appealing to the U.S. Supreme Court.

At this point, the political narrative in Texas of "immigrants as a criminal invasion" has taken on such force that few organizations would risk publicly posing an alternative perspective. The situation reflects Simsa's (2019) observation that state strategy of creating a polarizing "us vs. them" narrative puts dialogue under pressure and leaves immigrants rights groups on the losing side. In our interviews, we asked staff and directors how they would counter this narrative and generate support for what their organization is doing. Respondents said "It is nearly impossible to challenge the state's narrative right now. Nobody wants to *not* look strong on the question of the border." Another offered, "Immigrants are an easy target, they have no political power, so they are a convenient boogeyman." Yet another said,

> Any discussion of comprehensive immigration reform is always connected to border security. [But it would be a better policy discussion if we could] humanize these people. They come to the border, turn themselves into Customs and Border Patrol and spend the next six years of their lives working on citizenship. Come to a detention center -- you don't see people with mal intent.

5.4 Nonprofit responses to closing civic space

Nonprofit advocacy coalitions have helped local governments identify ways that they can assist undocumented residents and those in the process of seeking asylum. One example is the generation of enhanced identification cards that provide people with a necessary and legally recognized form of identification, including a photo, date of birth, and address. Identification is necessary for interactions with government, to establish utility services, and a host of other daily activities. Their most important purpose for immigrants rights groups is to disrupt the arrest-to-deportation pipeline, by reducing arrests, incarcerations, and deportations.

The enhanced identification (EID) card program established a unique partnership between the City of San Antonio and the County Library System because the IDs are not issued by the city since that database can be searched by the state and used for immigration purposes. Given SB4, there is concern that city information would be shared. The public library is an ideal organization to issue the cards because libraries protect patron identity as a matter of protecting First Amendment rights. San Antonio was the first city in Texas to generate enhanced library cards, followed by Dallas, San Marcos, Austin, and Houston. In order to expand support for the initiative, the immigrant advocacy coalition proposing the EID program to the city included other city residents in need of identification: homeless, people subject to domestic violence, the formerly incarcerated, and the elderly.

In addition, the nonprofit coalitions work with city officials in all major cities in Texas to educate them about their undocumented immigrant population. They provide data to the city and county on the number of people in the municipality facing deportation, the number of people lacking representation, how many people have children in schools and how many are long-term residents of the county.

5.5 Conclusion of case study

The state of Texas has engaged in an aggressive war against immigrant-serving nonprofits through the media and the courts, with the intention of delegitimizing them and restricting their capacity to serve immigrants. The polarizing narrative of Texans under invasion by criminal elements has had far-reaching effects. Local communities along the border have been subject to militarization and the enforcement of new laws that involve local police in immigration enforcement.

As Grumbach (2023) noted, it is federal policy that determines one's legal status as a citizen, but it is state policy that establishes the sense of inclusion as a community member. Police now have the option to ask community members their immigration status in routine encounters, resulting in the targeting of brown community members by police and an increase in racial profiling. In the two-year period between March 2021 when Governor Abbott signed "Operation Lone Star" and July 2023, there were 74 deaths and 189 injuries resulting from high-speed chases initiated by local police or state troopers enforcing the executive order (Bernal 2023). Moreover, a new Texas law passed in February 2024 increases the crime for transporting an undocumented person from two years to a mandatory 10 years. If the driver of a vehicle misrepresents the immigration status of someone in the car and it is interpreted by a police officer as an intent to conceal a crime, and the penalty increases to a 15-year mandatory sentence in those border counties under the Governor's "disaster" order.

Local governments are reticent to openly counter the state or exercise their established legal authority in support of residents, out of fear of reprisal. The state has generated a host of new laws intended to bring local municipalities into cooperation with state immigration policy and they risk loss of funding for city programs as well as costly lawsuits should they take actions that would support immigrant communities in their jurisdiction or even legal actions within the boundaries of their authority. In an exercise of punitive preemption, Governor Abbott has withheld funding from municipalities for programs designed for victims of family violence, veterans, and refused grant applications unrelated to immigration for counties and cities that are not compliant with SB4.

In another state action, the Chief of Police for Bexar County, William McManus, was sued by the state of Texas in 2017 for releasing twelve suspected undocumented people found in the back of a tractor-trailer instead of turning them over to immigration authorities. Despite eventual judicial dismissal since the policing response was legally valid according to both federal and state law, the lawsuit cost the city of San Antonio over $6 million to settle (Fechter 2022). The challenge for local governments is the same as for nonprofits when the state is using the courts as a tool to shut down dissent. While there may be little legal foundation to the state action, municipalities find it easier to settle than to spend taxpayers' money. A civil rights attorney noted,

> If local government or a nonprofit is dragged into litigation with the state, it can be exorbitant and it is impossible to predict outcomes even when the state is violating basic rights because conservative courts are backing the state, even against local governments.

Judicialization of civic space conflicts has become increasingly popular, largely because it draws media attention (van der Borgh and Terwindt 2014). While the courts ostensibly provide some

recourse through appeal, this is an unlikely avenue for resolution. The state has become emboldened in its rollback of legal rights with both nonprofits and local municipalities precisely because the extreme measures it has undertaken have been supported by the appellate courts and the Fifth Circuit Court of Appeals that oversees federal litigation coming from Texas. The Fifth Circuit is "so extreme that its decisions are often reversed even by the Supreme Court's current, very conservative majority" (Millhiser, 2022)

6. Conclusion

Alexis de Tocqueville's admiration for early Americans' associational vigor is widely taught in our field, but the context in which he wrote is usually overlooked. He was, in fact, reacting as much to the authoritarianism within his own country as he was the great American experiment when he cautioned that associational freedoms were fragile and vulnerable to despotism.[5] Many of those interested in nonprofit associational rights today have also observed that "civil liberties are fragile in any society, often subject to majoritarian pressures" (Bresler et al. 2015, p. 1110).

In the U.S. context, its federalist political system allows those majoritarian pressures at the state level to restrict associational activity even under the umbrella of extensive federal constitutional protections. Judicial appeals by civil society organizations and those they serve may reclaim only some of the protected public space that states have denied. Many of these laws are being litigated (First Amendment Foundation 2023). For example, in Florida, HB 7 – known as the "Stop WOKE Act (2022)" – was struck down by a federal appeals court on March 5, 2024 as an infringement of employers' free speech rights (including nonprofit employers).[6]

But we argue that even while these laws are being litigated for being overly vague, these laws may actually have been written to be deliberately broad and ambiguous in wording. Although we did not conduct a close text analysis of these state laws, we agree with many legal observers that the real political strategy may be to confuse political adversaries, encourage self-censorship, and chill associational activity and free speech regardless of the outcome of legal challenges (ACLU of Indiana 2021; First Amendment Watch 2023; Brown and Lacy 2021).

What this trend means for nonprofit management remains an open question. We offer a few concluding questions for future researchers. First, social movement action in open democracies

[5] He viewed associationalism as a "perilous liberty" vulnerable to legislative attack (de Tocqueville and Kershner 1983)

[6] The appeal was led by the nonprofit organization Project Democracy, which describes its mission as "dedicated to defeating the authoritarian threat, building more resilient democratic institutions, and protecting our freedom and liberal democracy" (https://protectdemocracy.org/about/)

Passel, J. and J. Krogstad. Nov 13, 2023. "What we know about unauthorized immigrants living in the U.S." Pew Research Center.
https://www.pewresearch.org/short-reads/2023/11/16/what-we-know-about-unauthorized-immigrants-living-in-the-us/

(which characterizes the U.S. at least in part) is more likely to occur in the open itself (Mati et al. 2016). Given the extremely strong normative expectation of transparency in nonprofit public behavior, we wonder how associational activity under threat of state restrictions will affect meeting records and public reporting? Will nonprofits take more decision making out of public view, and how might that action impact public trust in charities?

Next, state laws of preemption that prohibit diversity, equity and inclusion principles in publicly funded health or social programs may generate the need for new, privatized services that must be offered in racialized or genderized ways to compensate for civil rights losses. Will these actions send philanthropic resources in new directions and put new demands on donors, with little assurance that the results will be equitably distributed (SoRelle and Fullerton 2023)? In the policy and law discussions on "New Preemption", a rather flippant belief sometimes surfaces that local communities could turn to private, philanthropic resources to replace publicly defunded services. But this assumption does not account for limits and variations in community philanthropic capacity. After Indiana women lost access to abortions in-state, private giving to support out-of-state abortion travel spiked temporarily but then declined, returning most of the costs of abortion access to individuals (Marchbank 2024). The nonprofit sector has seen the potential for philanthropic disruption before, such as with the Reagan Administration's defunding of welfare programs. Its impact should be measured now.

Another implication for nonprofits is the possibility that state legal challenges to their existence cause mission drift because they require nonprofits to focus on self-defense advocacy and distract from central missions of service, expressive activity, and community-building. This possibility certainly is reflected in the historical experience of the LGBTQ+ movement, Muslim service organizations, and identity organizations serving other marginalized people.

Finally, and most distressingly, is the possibility that states succeed – with or without legally defensible rationales – in chilling associational activity through legislative and executive actions, or through prosecutorial overreach, and that courts fail to support associational liberties. Punitive state actions can have a "chilling effect" on nonprofit activity far broader than the targeted organizations (Baylor 2023), and this impact on the nonprofit sector has been seen in the U.S. before, such as through the McCarthy era, the Civil Rights era, and the post-9/11 crackdown on charitable Muslim organizations (Sidel 2011). It deserves a more serious look today as well.

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