

Using the Law to Protect Nonprofits' Missions and Finances: An Empowered Approach

May 29, 2025

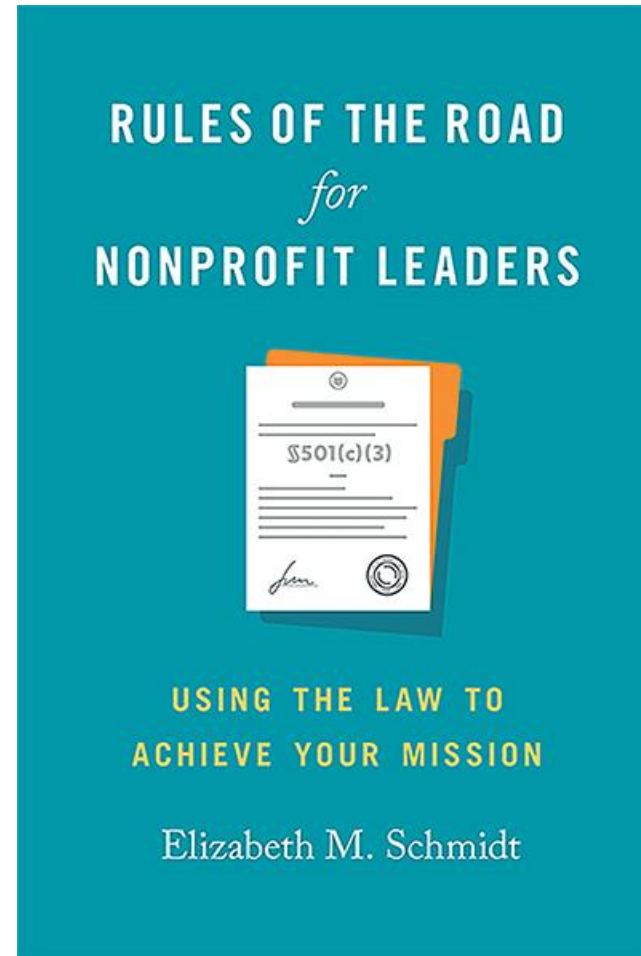
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Today's Presenter



Elizabeth (Betsy) Schmidt
Professor of Practice of Public Policy,
UMass



NFC Moderators



Wade Rogers, CPA

NFC Moderator

Financial Consulting and Training for Nonprofits



Mark Hager

NFC Moderator

Emeritus Professor Arizona State University

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Poll Questions

Do you worry that the current political environment may lead to legal issues for the nonprofit you work with, and if so, what specific legal concerns do you most anticipate or fear?

1. New laws that outlaw or criminalize our work at federal level
2. New laws that outlaw or criminalize our work at state level
3. New requirements for contracting with which we are unwilling to comply
4. Challenges to our tax exemption
5. Challenges based on a lack of compliance with existing regulations or governance requirements

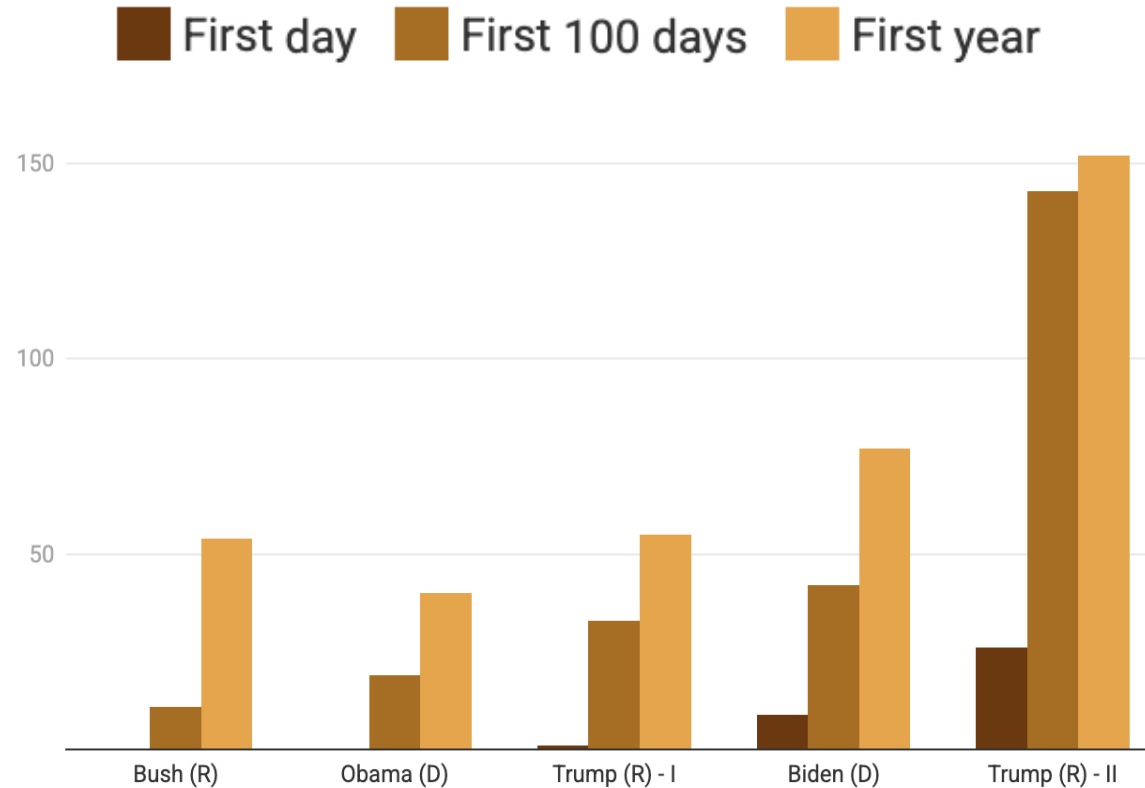
Turbulent Times!



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What Has Shifted?

- ▶ Rhetoric
- ▶ Policy
- ▶ Federal funding
- ▶ Executive orders
 - ▶ 152 and counting
 - ▶ Most stopped, at least temporarily, by courts
- ▶ Basic law has not changed!



BALLOTEDIA

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Tools to Help Achieve Your Mission- Especially in Turbulent Times

1. Keep the mission front and center.
2. Govern wisely.
3. Fill the coffers
4. Go into business?
5. Treat your friends and colleagues well, just not too well.
6. Advocate for your cause.
7. Complete the paperwork.
8. Know when to change course or throw in the towel.

Is DEI Still Allowed?

- ▶ Executive Orders
- ▶ Nationwide Injunction against parts of these orders
- ▶ If you don't get federal money, can still do as you choose legally
- ▶ The law has not changed, despite a few cases that trend away from DEI



When Can Grants and Contracts be Legally Terminated?

- ▶ Review your grant agreement or contract's terms
- ▶ Government has procedures to follow—understand the regulations
- ▶ Draw down funds carefully
- ▶ Closeout costs
- ▶ Administrative remedies—watch timelines
- ▶ Lawsuits—join with others
- ▶ Inform Congressional representative

Federal Grants and Contracts—Certification Requirements

- ▶ Litigation on whether this is allowed
 - ▶ Administration stopped from DEI things in schools
- ▶ This is when you hire an attorney!
- ▶ Steps to take
 - ▶ Speak to grant manager for additional info: guidance documents? Deadlines?
 - ▶ The law hasn't changed, and administration has told courts it intends to enforce existing law
 - ▶ Do a discrimination law audit
- ▶ Notes on False Claims Act
 - ▶ Anyone can bring suit and penalties are high
 - ▶ impose liability on funding recipients for materially false statements
 - ▶ Must either know statement is false or deliberately ignore or recklessly disregard evidence of the falsity of statement.



How to make the decision?



- ▶ Be guided by your mission
- ▶ Consider your stakeholders—your clients, your donors
- ▶ Balance the risks—only you know how to do that

How Serious is the Threat of Loss of Exemption?

- ▶ Rumors
- ▶ Procedures to revoke exemption are extensive
 - ▶ Administrative process
 - ▶ You have chance to appeal administratively & to sue
- ▶ Procedures to change regulations are extensive
 - ▶ Notice
 - ▶ Right to Comment
 - ▶ Courts no longer give deference to regulations
- ▶ Congress can legislate changes



Should we Prepare for Possible Loss of Exemption?

- ▶ Yes! Always. . . .
- ▶ Focus on mission and finances, govern well, and complete the paperwork.
- ▶ Remember, an IRS inquiry is not loss of exemption
- ▶ Watch for legislative and rules changes—and act.



2025 Big Beautiful Bill



It will change!

- ▶ Universal charitable deduction
- ▶ Standard deduction increased
- ▶ Taxes on endowments and foundations
- ▶ Excess compensation for executives
- ▶ Provisions that will affect nonprofits in particular areas
 - ▶ Medicaid and SNAP cuts
 - ▶ Funds for deportation
 - ▶ Leasing of federal lands
 - ▶ Check affiliate groups

General steps to take



- ▶ Advocate for your cause!
- ▶ And your beneficiaries
- ▶ And the sector

What Does it Mean to Advocate?

Nonprofits support large and small communities in unrecognized ways.

Nonprofits provide critical support government does not.

NONPROFITS ARE AMERICA'S INVISIBLE BACKBONE

providing critical support to improve communities and save lives.

Nonprofits are mostly small, very local, and well managed.

YOU CAN'T

Endorse a candidate or
Spend too much on lobbying

YOU CAN DO A LOT!

- Lobby, if you don't spend too much (approximately 20% of budget)
- Educate legislators on issues
- Nonpartisan voter guides
- Advocate for better regulations
- Write white papers and op eds
- Engage in community organizing
- Testify if the legislature invites you
- Litigate
- Argue for fair enforcement of laws

General Steps to Take



- ▶ Try not to comply in advance
- ▶ Know your org's values and risk tolerance
- ▶ Review website and social media
- ▶ Document destruction policy—check all policies!
- ▶ Careful minutes
 - ▶ Say enough, but not too much
- ▶ Planning
 - ▶ Scenario planning
 - ▶ Crisis planning
 - ▶ Grants risk assessment
 - ▶ Radical imagination! Don't be afraid of hard decisions
- ▶ Find allies—state councils of nonprofits, affinity with your cause
- ▶ Advocate for your cause! (And for your clients and the sector).

Remember:

We are the Resilient & Innovative Sector

- ▶ “The way in which the world is imagined determines at any particular moment what [humans] will do.”

---Walter Lippman

- ▶ “It’s our privilege to be people of the moment, when things must change”

--Winona LaDuke



Resources and Wrap Up

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ELIZABETH M. SCHMIDT

SERIES: GEORGETOWN STUDIES IN PHILANTHROPY, NONPROFITS, AND NONGOVERNMENTAL ORGANIZATIONS

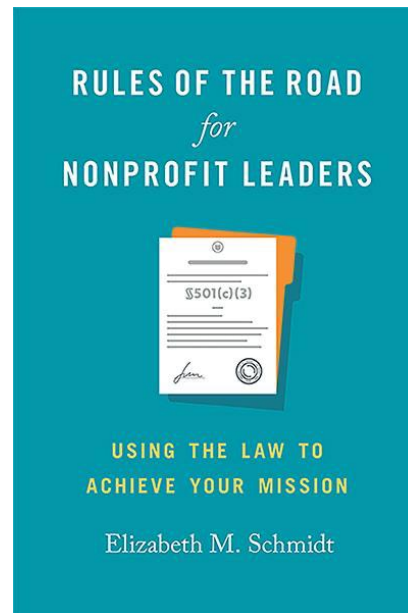
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Elizabeth M. Schmidt is a professor of practice at the School of Public Policy in the University of Massachusetts Amherst who specializes in nonprofits, social enterprises, and policy analysis. She is coauthor of *Nonprofit Law: The Life Cycle of a Charitable Organization*, 4th Edition (2025).



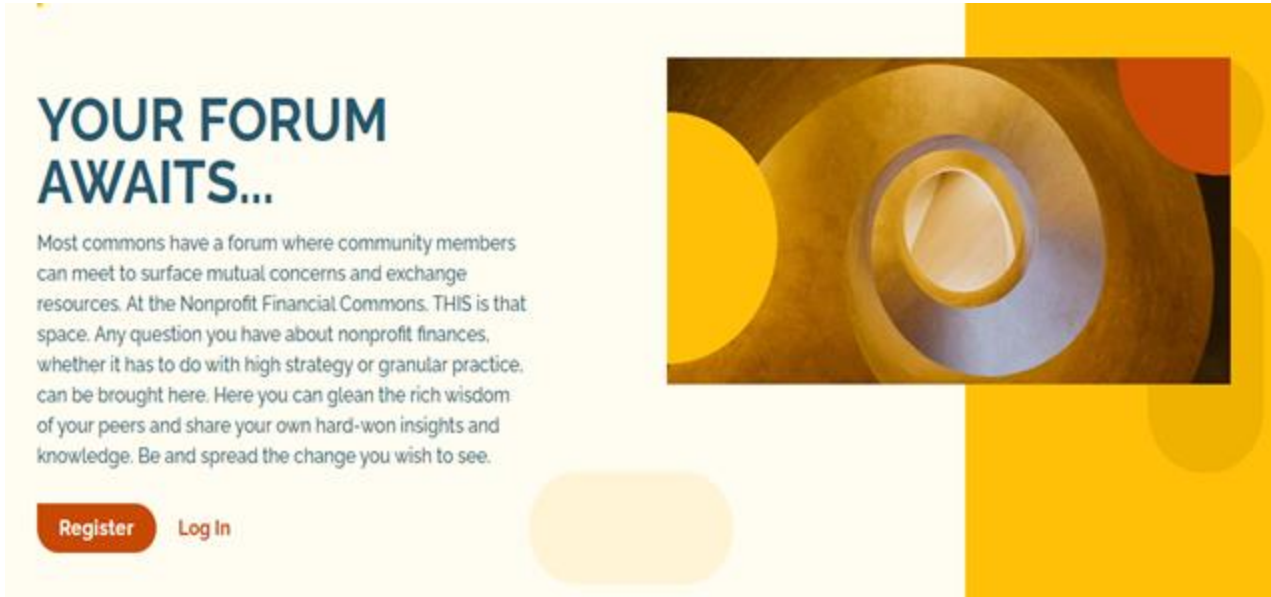
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Betsy Schmidt
Email: eschmidt@umass.edu

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