



# What Your Nonprofit Needs to Know About Online Fundraising in 2024

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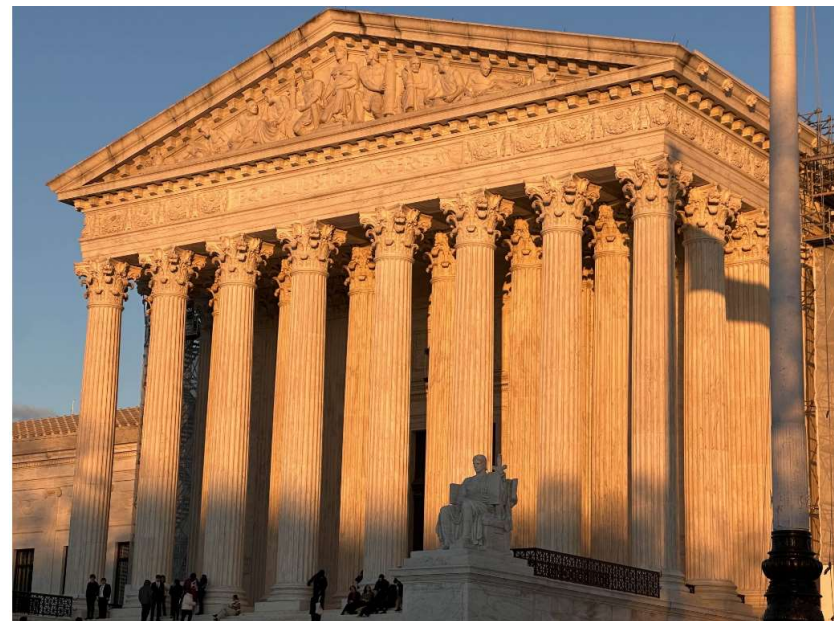
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## *Americans for Prosperity Found. v. Bonta*, 594 U.S. \_\_\_\_ (2021)

- The U.S. Supreme Court invalidated a California requirement that charities file an unredacted copy of IRS Form 990 Schedule B, which discloses the names and addresses of donors who contributed \$5,000 or more a year, as part of the charity's annual registration with the state Attorney General's office.
- The Court found that California's regulation was unconstitutional because it burdens donors' First Amendment rights and was not narrowly tailored to an important government interest.
- Form 990 Schedule B is **no longer required** to be filed with state charity renewals in California.
- New York and New Jersey have followed suit.
- What's Next?



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## Online Solicitation

- Does your nonprofit need to register to solicit online?
- Charleston Principles: Non-binding guidelines to help nonprofits and state regulators determine when registration required
- A few states have incorporated the Principles into law (CO, MS, TN).
- Many states have not adopted the Principles.
- Passive v. Active Solicitation (website v. email campaign)

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# Charleston Principles: Registration Requirements Applicable to Internet Solicitations

## A. Entities That Are Domiciled Within the State

1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
2. An entity is domiciled within a particular state if its principal place of business is in that state.

## B. Entities That Are Domiciled Outside the State

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
  - a. Its non-Internet activities alone would be sufficient to require registration;
  - b. (1) The entity solicits contributions through an interactive website; and  
(2) Either the entity:
    - i. Specifically targets persons physically located in the state for solicitation, or
    - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its website; or
  - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the website; and  
(2) The entity satisfies Principle III(B)(1)(b)(2).

## What Is Repeated and Ongoing or Substantial Basis?

State	Repeated and Ongoing	Substantial
Colorado	50+ donations	The lesser of \$25,000 or 1% of the organization's total contributions in online contributions from Colorado
Mississippi	25+ donations	\$25,000
Tennessee	100+ donations	\$25,000



# How are you fundraising?

*Social Media, Website, Emails?*

**Stand Up To Cancer**  
September 5 at 9:00 AM · 🌐

In a world where every patient becomes a long-term survivor, the possibilities are endless. ❤️ In honor of International Charity Day, donate to help create a world with more long-term survivors at <https://bit.ly/312kuQH>.

**DONATIONS HELP MAKE**

- ...more memories with loved ones
- ...more graduations
- ...more weddings
- ...more birthdays
- ...more time

**DONATE NOW**

**S12C**

112 42 Comments 20 Shares



## DONATE TO THE ACLU

The ACLU is challenging a growing wave of attacks on people's rights and freedoms. Our lawyers, advocates, and organizers need your help.

**Donate now to support voting rights, LGBTQ equality, reproductive freedom, free speech and more in every state.**

Contributions to the American Civil Liberties Union are not tax deductible.

26 DAYS LEFT

**Lunar New Year Wishes: Hope and Good Fortune**

stjude

\$165.81 raised of \$1,500

9 donations

**Donate**

[Share](#)

We've been fortunate to provide care for kids across the globe because of our generous supporters. Celebrate the Year of the Dragon and the diversity of our patients and staff from all over the world with a donation to St. Jude. A gift today can help our patients and families tomorrow.

**Stories about this fundraiser**

[▶ Watch all](#)

Join your community in supporting this fundraiser in stories.

**1 Amount**

Select donation type

One-time

Monthly  
A monthly gift helps us respond to urgent threats and plan ahead.

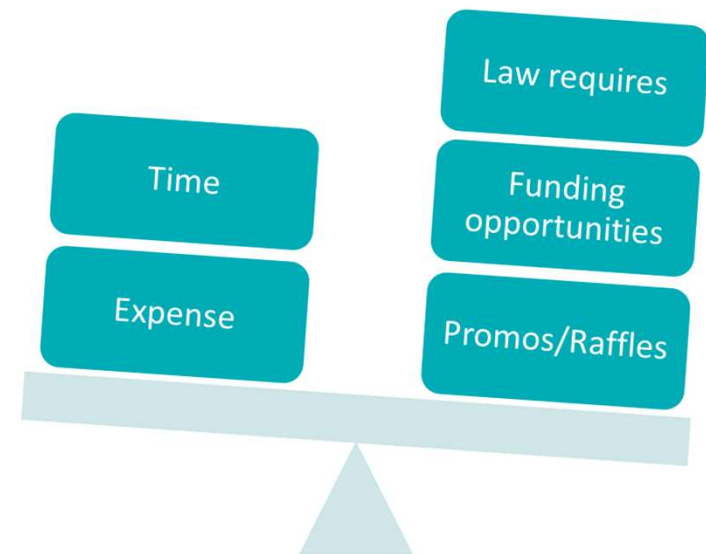
Select or enter an amount to give

**\$10** **\$25** \$50 Other

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## Considerations

- How does the organization plan to solicit (online, members only, mailers)?
- Where do your major donors reside? If they are companies, where are they located?
- Are you receiving regular donations from residents in a particular state?
- Scope and nature of planned activities (paid fundraisers, CCVs, etc.)?
- Size and reputation of the organization
- Cost/benefit analysis of compliance obligations incurred on annual basis
- Can you affirm that you do not need to be registered in the state?



# Charitable Solicitation Registration Issues

- Wet signatures, notarization, hard copy requirements
- Forms vary by state, are detailed and small errors can have broader impact on business
- Lengthy back and forth with regulators
- Processing delays impact fundraising efforts (telemarketing, direct mail, paid solicitors, CCVs, etc.) & may result in lost corporate partnership opportunities
- New agency names, addresses, and forms
- How to manage issues on a nationwide scale?

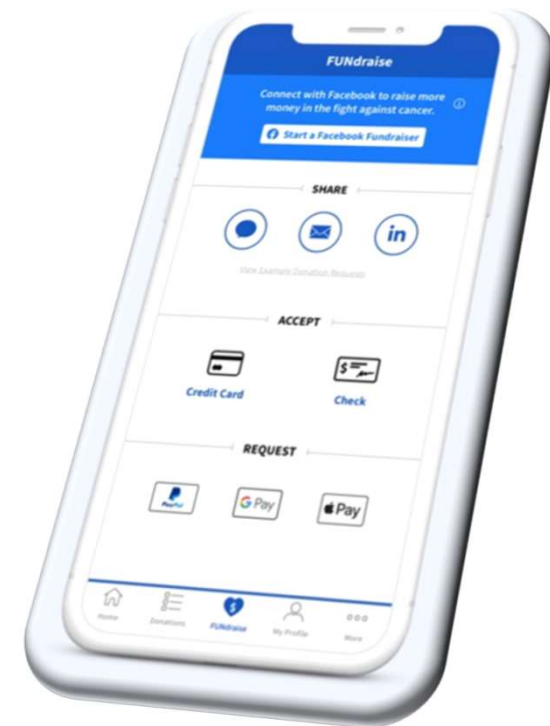


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## California AB 488 – Regulating Charitable Fundraising Platforms

- California AB 488 went into effect January 1, 2023, and it regulates **charitable fundraising platforms, platform charities, and beneficiary charitable organizations**
- **Charitable Fundraising Platform:** Generally, any entity that uses the internet to provide a website, service, or other platform to persons in this state, and performs, permits, or otherwise enables acts of solicitation to occur.
  - Does **NOT** include charitable organization’s own platform that solicits donations only for itself.
- **Platform Charity:** Generally, a trustee or charitable corporation (as defined under CA law) that facilitates acts of solicitation on a charitable fundraising platform, which includes either of the following and any similar activity:
  - (A) Solicits donations through a charitable fundraising platform for itself from donors who use the charitable fundraising platform with the implied or express representation that the platform charity may grant donations to recipient charitable organizations.
  - (B) Grants funds to recipient charitable organizations based on purchases made or other activity performed by persons who use a charitable fundraising platform.
- **Recipient Charitable Organization:** A trustee or a charitable corporation (as defined under CA law) that is listed or referenced by name on a charitable fundraising platform or by a platform charity for solicitation purposes.



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# Overlapping Definitions

- **Charitable Fundraising Platform and Commercial Fundraiser for Charitable Purposes**
  - A person or entity that meets the definition of both will be only a commercial fundraiser when the person or entity for compensation performs any of the following acts of solicitation:
    - Direct mail solicitation, excluding electronic mail or messages.
    - Estate gift or estate planning solicitation.
    - In-person solicitation through a fundraising event, door-to-door or other public spaces, or a vending machine or similar equipment that does not use a person to perform the solicitation.
    - Noncash solicitation.
    - Nonincidental acts of solicitation that are not internet based, including solicitation through print, radio, or television.
    - Solicitation involving receiving something of value, or a chance to win something of value, in connection with a donation.
    - Telephone solicitation.
- **Charitable Fundraising Platform and Commercial Coventurer**
  - A person or entity that meets the definition of both will be only a commercial coventurer when the acts of solicitation through an internet website, service, or other platform to persons in California **are for six or fewer recipient charitable organizations per calendar year**, and the commercial coventurer complies with the statutory requirements for commercial coventurers under California law.

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# Pending Regulations

- Multiple rounds of proposed regulations – most recent issued in Nov. 2023 with comments due in Jan. 2024
- Regulations assign “Solicitation types” A, B, C, D, and E to the types of platform solicitation:
  - **Type A:** Soliciting donations or recommended donations, such as micro donations, round up donations, or donating any amount, from donors who are platform users by listing or referencing by name one or more recipient charities to be sent donated funds.
  - **Type B:** Permitting or enabling crowdfunding campaigns created by platform users engaging in peer-to-peer charitable fundraising, or otherwise permitting or enabling platform users to solicit donations or recommended donations made by other platform users to one or more recipient charities.
  - **Type C:** Performing solicitations through charitable sales promotions, coventuring or cause marketing campaigns, or free action programs. *In these solicitations, platform users have the option to select* one or more charities to be sent donated funds. The platform or a third party would make the donations based on the purchases or other activity performed by platform users.
  - **Type D:** Performing solicitations through charitable sales promotions, coventuring or cause marketing campaigns, or free action programs. *In these solicitations, the charitable fundraising platform selects* one or more charities to be sent donated funds and makes the donations or recommended donations based on purchases made or other activity performed by platform users.
  - **Type E:** Providing a charitable fundraising platform to charitable organizations that can be private-labeled or otherwise customized, that is subject to software as a service license agreement between the charitable fundraising platform and charitable organizations, and allows charitable organizations to solicit donations made to them from donors. (The customizable platform provided by the charitable fundraising platform does not include the charitable organization’s own platform, but may integrate with the charitable organization’s platform.)

## Pending Regulations

- Annual registration and reporting obligations
  - Draft forms, deadlines, etc.
- Required disclosures
- Format and content of required consent from recipient charitable organizations
- Timing for tax donation receipts to donors
- Timing for sending donations by platform or platform charities to recipient charitable organization
- Information for donors regarding donations sent by platform or platform charities (ex: whether the donations were sent to the charity or an alternate charity)
- And more . . .







## Key Provisions in Effect

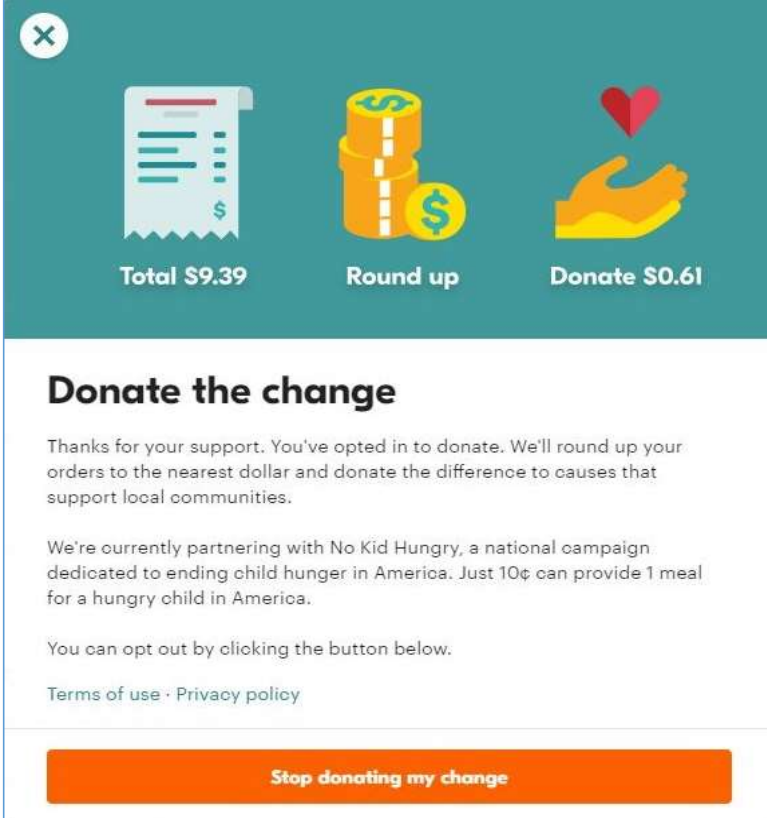
As of January 1, 2023:

- Charitable fundraising platforms and platform charities should **ensure compliance with the law's good standing requirements** for charities
- **Donations must be maintained in an account separate** from other funds belonging to a charitable fundraising platform or platform charity
- Charitable fundraising platforms and platform charities are **required to make disclosures** that prevent the likelihood of donor deception or confusion, when applicable
- Comply with the requirements for when you **solicit for “non-consenting” charities**

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## Some New Considerations for Nonprofits

- Online round ups and free action campaigns
- “Good standing” requirement
- Tax donation receipt requirements
- Format of consent for charitable fundraising platforms and platform charities



The screenshot shows a notification with a teal header and a white body. The header contains three icons: a receipt labeled 'Total \$9.39', a stack of coins labeled 'Round up', and hands holding a heart labeled 'Donate \$0.61'. The body text explains the round-up process and mentions a partnership with 'No Kid Hungry'. At the bottom, there is an orange button labeled 'Stop donating my change'.

**Donate the change**

Thanks for your support. You've opted in to donate. We'll round up your orders to the nearest dollar and donate the difference to causes that support local communities.

We're currently partnering with No Kid Hungry, a national campaign dedicated to ending child hunger in America. Just 10¢ can provide 1 meal for a hungry child in America.

You can opt out by clicking the button below.

[Terms of use](#) · [Privacy policy](#)

**Stop donating my change**

# California's New "Good Standing" Requirement

- Under AB 488, a charitable fundraising platform or platform charity may only “solicit, permit, or otherwise enable solicitations, or receive, control, or distribute funds from donations for recipient charitable organizations or other charitable organizations in good standing.”
- To comply with California’s “good standing” requirement, fundraising platforms and platform charities receiving funds through the platform must ensure that, with respect to each recipient organization:
  - 1. The organization’s federal tax-exempt status has not been revoked by the IRS**
    - IRS Tax-Exempt Organization Search Tool:  
<https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>
  - 2. The organization’s tax-exempt status in California has not been revoked by the California Franchise Tax Board (FTB);**
    - California FRB Revoked Organizations List:  
<https://www.ftb.ca.gov/file/business/types/charities-nonprofits/revoked-entity-list.html>
  - 3. The organization is not prohibited from soliciting or operating in the State by the California Attorney General.**
    - CA AG List of Charities that May Not Operate or Solicit in the State:  
<https://oag.ca.gov/charities/reports> (Downloadable List – provides list of delinquent, delinquent – late fees, suspended, subject to cease & desist, revoked organizations) (updated once a month)



## Issues?

- Uncertainty surrounding implementation
- Changes to online fundraising strategy
- Some organizations have been blocked from receiving donations through various online fundraising platforms
- Roll out of new platform terms
- Training to identify and address compliance risks
- Lack of compliance/awareness of the law by corporate partners

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## Questions?

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