

RESEARCH NOTE

The regulatory breadth index: A new tool for the measurement and comparison of state-level charity regulation in the United States

Cindy M. Lott¹ | Mary L. Shelly² | Nathan Dietz³ | George E. Mitchell⁴

¹Lilly Family School of Philanthropy, Indiana University, Indianapolis, Indiana, USA

²Biddle Law Library, University of Pennsylvania Carey Law School, Philadelphia, Pennsylvania, USA

³Do Good Institute, School of Public Policy, University of Maryland, College Park, Maryland, USA

⁴Austin W. Marxe School of Public and International Affairs, Baruch College, City University of New York, New York City, New York, USA

Correspondence

Cindy M. Lott, Lilly Family School of Philanthropy, Indiana University, Indianapolis, IN, USA.
Email: cmlott@iu.edu

Abstract

The bulk of charity regulation in the United States occurs at the state level, yet state-level charity regulation remains relatively under-researched within non-profit scholarship, particularly from a comparative perspective. The complexity and variation in statutory regulation, coupled with the large volume of legal research required to study state-level charity regulation systematically, has impeded scholarly progress toward a better understanding of the US charitable sector. We address this problem by deriving a state-level charity regulatory breadth index (RBI) that will enable non-profit researchers to contextualize state-level charity research within a broader framework and to incorporate state-level regulation into analyses across states. Policymakers can also benefit from the ability to benchmark their regulatory regimes against their peers.

KEYWORDS

charity regulation, nonprofit law, regulatory data, state policy, state regulation

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The bulk of charity regulation and oversight in the United States occurs at the state level, yet state-level charity regulation and enforcement remains relatively under researched within nonprofit scholarship, particularly from a comparative perspective.¹ Among many charity researchers and policymakers, state-level oversight of charities is often viewed as a patchwork of varied and oftentimes inconsistent regulation. The complexity and variation in statutory regulation, coupled with the large volume of legal research required to study state-level charity regulation systematically, has impeded scholarly progress toward a better understanding of the US charitable sector. As a result, nonprofit researchers may fail to fully appreciate the nature and significance of state-level charity regulation and the extent to which state-level charity regulation influences organizational and sectoral outcomes and mediates important empirical relationships. Nonprofit research frequently emphasizes federal-level charity regulation as described in section 501(c)(3) of the US Internal Revenue Code, examining issues such as resources, staffing, tools, and enforcement initiatives (e.g., Amarante, 2019; Carman, 2021; Colinvau, 2011). By contrast, state-level charity regulation is rarely examined, despite accounting for a significant share of overall regulatory activities. To move the field of nonprofit studies forward toward a more comprehensive understanding of the regulatory environment in which charities operate, this research note introduces a new measure of state-level charity regulation, the regulatory breadth index (RBI).

The RBI provides baseline data that scholars can use to study any number of issues that may depend upon or be influenced by state-level regulation (e.g., Bushouse et al., 2021; Pettijohn & Boris, 2018). The RBI thus opens up new opportunities for scholars to incorporate state-level charity regulation data into their research and to promote a better appreciation and understanding of state-level charity regulation generally.

The following section provides a brief review of the relevant literature regarding charity regulation in the United States, and the section after that describes the creation of the RBI. This is followed by a brief discussion. Finally, the conclusion offers suggestions for future nonprofit scholarship.

1 | LITERATURE REVIEW

In the field of nonprofit studies, the major themes across studies of charity regulation include studies of the regulatory and enforcement structures in individual states (Carman, 2021; Coble, 1999) or countries (Burger, 2012; Cordery, 2013; McDonnell & Rutherford, 2018; Phillips, 2012; Plowden, 2003), as well as normative discussions about how oversight procedures could be designed to encourage accountability (Chisolm, 1995; Lee, 2004). Only a few empirical cross-national studies have been truly comparative, notably Breen et al. (2019) and Bloodgood et al. (2014), the latter of which develops an index that characterizes NGO regulations in OECD countries. Many studies of state-level charity regulation in the US have been historical, but most have important limitations, and none are capable of measuring regulatory breadth. Some recent scholarship on US charity regulation has focused on a general overview of state and federal regulation, the division of regulatory authority between state and federal regulators, or the shift from federal to state-level oversight of charities (e.g., Lott & Fremont-Smith, 2017; Mayer, 2016; Mayer, 2019; Mead, 2019). Other scholarship has discussed to what extent the government or other quasi-governmental entities should regulate charities (Galle, 2018; Irvin, 2005; Keating & Frumkin, 2003; Mayer & Wilson, 2010; Young et al., 1996); charity self-regulation (Bies, 2010;

Fishman, 2015; Tremblay-Boire et al., 2016); and special topics, such as the regulation of charitable crowdfunding (Mayer, 2022).

Other scholarship on charity regulation has worked to define and assess state-level charity regulation, and the development of the RBI contributes to this body of work. This scholarship originated with a report sponsored by the Filer Commission that used survey data and state statutes to assess the oversight and enforcement authority state regulators had at the time (Office of the Ohio Attorney General, 1977). Later research involved using newspaper reports of civil or criminal wrongdoing of charity officials to document and measure state-level enforcement of charity regulation statutes (Fremont-Smith & Kosaras, 2003); the creation of indices using specific state-level governance, reporting requirements, and news reports of adjudicated enforcement actions to assess compliance in those states (Desai & Yetman, 2015); a survey of state regulators and analyses of state statutory codes to produce an overview of state-level charity regulation (Lott et al., 2016); and notably, the development of the Legal Compendium of state statutes related to charity regulation (Lott et al., 2019).

Similarly, in the policy literature, most state-level scholarship has generally focused on charity regulation in a single state, in a small number of individual states, or on a single issue across states. Several studies assess specific changes in legislation or specific requirements in individual states (e.g., Babenko et al., 2021; St Clair, 2016). Other recent studies involve a review of state-level charity formation requirements and promotion of compliance (Amarante, 2021); a focus on the specific issue of state-level regulation of nonprofit hospital and insurance conversions (Horwitz, 2002; Horwitz & Fremont-Smith, 2005); and the relationship between state-level fundraising disclosure requirements and donor behavior (Barber et al., 2021). In different cross-jurisdictional studies, researchers have built an index measuring the breadth of charitable solicitation regulation (Dietz et al., 2017); analyzed the issue of bifurcated state-level regulatory authority and its implications for future research (Lott et al., 2018); and compared certain state-level regulatory requirements to state-level staffing and resource issues while addressing potential enforcement implications (Adelstein & Boris, 2018; Galle, 2017). However, none of this prior research provides a means of systematically measuring the breadth of state-level charity regulation across the United States. The RBI addresses this important gap.

2 | INDEX DEVELOPMENT

The RBI is derived from data collected for the Regulation of Nonprofits and Philanthropy project (RNP) at the Urban Institute in conjunction with the Charities Regulation and Oversight Project at Columbia Law School (the latter subsumed in 2016 by the Urban Institute RNP). This multi-year research project, beginning in 2014, produced the Legal Compendium in 2016 containing information about state-level charity regulation (Lott et al., 2019). The Compendium was updated in 2019 to incorporate additional data from Dietz et al. (2017) on charitable solicitation, resulting in a dataset with 47 different regulatory variables. Developed in conjunction with experienced state charity regulators from states of varying regulatory regimes, the Legal Compendium reflects deep legal research across a broad array of statutes, encompassing data across many aspects of regulation, including legal jurisdiction, registration and reporting requirements (of charities and their fundraisers), oversight responsibilities of regulators in connection with certain transactions, obligations of charities to notify regulators of those transactions, and charitable solicitation requirements.

To help ensure that the RBI accurately and appropriately measures state-based regulatory breadth, we consulted with experienced state charity regulators, representing both larger and

smaller states, to ensure the index and its components aligned with their understandings of the most significant statutory variables that would reflect major substantive areas of state charity regulation. At each step of the research process, beginning in 2014, we had individual and group conversations with many current and former state charity regulators, each with 10 to 30 years of charity oversight experience, and solicited additional information through the official state charity regulator listserv operated by the Federal Trade Commission, which is not open to the public. In addition, for the last several years, this RBI research has been presented to the regulator-only, private meeting day at the annual National Association of State Charities Officials (NASCO) conference for feedback and consultation.

As a result of this extensive research and consultation process, the RBI contains five specific sub-indices, equally weighted, with each sub-index representing a distinct category of regulation. The range of indicators was selected because it represents the regulation of distinct junctures in the life cycle of an organization, from registration at the initial formation of an organization, to tracking various activities throughout the life of an organization (fundraising, certain other fiscal and/or corporate transactions, and revenue profiles that trigger audits), to the end-of-life stage of the organization, dissolution. These five broad categories include: (1) Registration Law and Exemptions from Registering; (2) Fundraising Regulations; (3) Requirements for Notice, Filing, or Review of Transactions (including transactions related to hospital conversions); (4) Requirements for Audits; and (5) Requirements for Notice or Action for Dissolutions. Through the consultative process, state charity regulators provide meaningful feedback and insight as to the identification and relative significance of each variable and sub-index, guiding the overall construction of the RBI.

To assign a value to each variable for each state, a small team of lawyers and legal researchers searched for a statute (or other published rule or regulation) within the published statutes for that state that addressed the regulation in question. If a requirement existed in the state, the state was coded as a “yes” for the requirement and received a value of one. If the team did not find such a requirement, the state was coded as a “no” for the requirement and received a value of zero.² This produced the Legal Compendium dataset. The next section describes the derivation of the five sub-indices of the RBI based on these underlying indicators. All five sub-indices have a logical range of zero to one, with zero indicating the minimum level of regulation and one indicating the maximum level of regulation.³

2.1 | Registration law and exemptions from registering sub-index

The registration sub-index is based on the 10 indicator variables listed in Table 1. Each state received up to 10 points for having a registration law, and then 5/9th of a point is subtracted for each subsequent exemption to that law (for a total deduction of up to five points). The resulting variable is rescaled to a range of zero to one. This scoring method ensures that a state with a registration law and no coded exemptions receives the maximum score of one; a state with a registration law and all coded exemptions receives a score of one-half; and a state with no registration law receives the minimum score of zero.

The registration sub-index reflects both (1) an affirmative registration requirement and (2) affirmative choices to exempt certain organizations from the registration requirement; thus, we employed a multi-step process for calculating the sub-index score for each state. This was done to reflect the fact that starting with a generally applicable law and then exempting most organizations from registration is similar to having no such applicable law and only requiring a few types of organizations to register.⁴

TABLE 1 Registration law and exemptions from registering

Variable	Mean
Registration law (Does the state require registration?)	0.83
Exemptions: Religious organizations	0.80
Exemptions: Small organizations	0.55
Exemptions: Educational institutions	0.65
Exemptions: Hospitals	0.31
Exemptions: Veterans organizations	0.20
Exemptions: Foundations	0.08
Exemptions: Charitable trusts	0.02
Exemptions: Non-soliciting organizations	0.71
Exemptions: Political organizations	0.43

2.2 | Fundraising regulations sub-index

The fundraising sub-index is equal to the sum of the nine indicator variables listed in Table 2, rescaled to a range of zero to one. The sub-index is based on the fundraising variables derived by Dietz et al. (2017).

2.3 | Requirements for notice, filing, or review of transactions sub-index

The transactions sub-index is equal to the sum of the eight indicator variables listed in Table 3, rescaled to a range of zero to one. The sub-index reflects the types of transactions that must be reviewed by state agencies and the number of state agencies that review each type of transaction. In states where the attorney general's office must review sales of assets, mergers, certificates of amendments, and hospital conversions, the state receives one point for each type of transaction that the office must review. Specifically for this sub-index on transactions, in consultation with state charity regulators, the sub-index awards points to each office with jurisdiction, even if there are multiple offices within the state. Thus, states may receive up to four additional points if another office within the state reviews one or more of these types of transactions.

Each indicator variable is weighted the same based on the consensus among consulted regulators and the authors. In addition, because it is possible for a state to affirmatively require every variable in the sub-index, it is meaningful that a state adopted some requirements but did not adopt others.

2.4 | Requirements for audits sub-index

The audit sub-index is based on the single indicator variable described in Table 4. The five levels of the variable are coded such that the ordinal value labeled “Less than \$500,000” is exactly double the ordinal value labeled “Some requirement.” The label “Some requirement” applies to states in which audits are not generally required of all organizations but may be

TABLE 2 Fundraising regulations

Variable	Mean
Does the state require the fundraisers to provide notice to the regulator before any solicitation campaign (in addition to annual registration and/or filing the contract)?	0.37
Does the state require registration by commercial fundraisers?	0.84
Does the state require annual financial reporting by commercial fundraisers?	0.71
Does the state require a copy of any contract between a charitable organization and a commercial fundraiser or fundraising counsel be filed with the regulator?	0.73
Does the state oversee commercial coventuring?	0.37
Does the state require registration by fundraising counsel?	0.53
Does the state require specific disclosures to donors?	0.84
Does the state require annual financial reporting by charitable organizations in addition to filing a copy of the 990 with the regulator (if filing of the 990 is required)?	0.53
Does the state require bonding of professional fundraisers?	0.71

TABLE 3 Requirements for notice, filing, or review of transactions sub-index

Variable	Mean
Sale of Assets (to the Attorney General)	0.41
Sale of Assets (to some other regulatory office)	0.18
Mergers (to the Attorney General)	0.45
Mergers (to some other regulatory office)	0.98
Certificate of Amendments (to the Attorney General)	0.15
Certificate of Amendments (to some other regulatory office)	1.00
Hospital Conversions: Requires notice or oversight by the Attorney General	0.57
Hospital Conversions: Requires Notice or Oversight by other regulatory office	0.35

TABLE 4 Audit threshold sub-index variable

Variable value	Variable label	Freq.	Percent
0	No requirement	23	45
3	Some requirement	5	10
4	Over \$500,000	8	16
5	Equal to \$500,000	12	24
6	Less than \$500,000	3	6
	Total	51	100

required in certain circumstances or upon the request of the regulator. The resulting variable is rescaled to a range of zero to one.

States that do not require audits receive the lowest score, while states that require audits from the greatest number of charities (a threshold of less than \$500,000 in revenue) receive

TABLE 5 Requirements for notice or action for dissolutions sub-index

Variable	Mean
Voluntary Dissolutions (to the Attorney General)	0.45
Voluntary Dissolutions (to other regulatory office)	1.00
Judicial Dissolutions (to or by the Attorney General)	0.96
Judicial Dissolutions (to or by other regulatory office)	0.96
Administrative Dissolutions (to or by the Attorney General)	0.22
Administrative Dissolutions (to or by other regulatory office)	0.53

TABLE 6 Summary statistics for sub-indices and regulatory breadth index (RBI)

	Mean	SD	Median	Min	Max
Transactions	0.42	0.32	0.40	0.00	1.00
Dissolutions	0.53	0.25	0.50	0.00	1.00
Registration	0.66	0.29	0.76	0.00	1.00
Audits	0.41	0.39	0.50	0.00	1.00
Fundraising	0.63	0.30	0.67	0.00	1.00
RBI	52.86	18.89	55.29	9.00	82.78

the highest score. Table 4 displays summary statistics for the audit threshold variable. Nearly half of states had no requirement and almost a quarter of states had a threshold of exactly \$500,000.

2.5 | Requirements for notice or action for dissolutions sub-index

The dissolutions sub-index is equal to the sum of the six indicator variables listed in Table 5, rescaled to a range of zero to one. States receive up to three points if the attorney general's office must review voluntary dissolutions, judicial dissolutions, and/or administrative dissolutions. States receive up to three additional points if another state agency must review one or more of these three types of dissolutions.

2.6 | Regulatory breadth index

The RBI is equal to the average of the five sub-indices, multiplied by 100 for convenience of display. Table 6 provides summary statistics for the RBI and the five sub-indices. Table 7 ranks all 50 states and the District of Columbia according to the RBI and displays the index and sub-index values for each state. Figure 1 displays the results in a map, with darker shading indicating higher values of the RBI.

TABLE 7 Regulatory breadth index

Rank	State	RBI	Audits	Registration	Transactions	Dissolutions	Fundraising
1	Tennessee	82.78	0.83	0.71	0.60	1.00	1.00
2	Oregon	82.60	0.50	0.94	0.80	1.00	0.89
3	New Jersey	80.25	1.00	0.82	0.80	0.50	0.89
4	Hawaii	77.34	0.83	0.71	0.80	0.75	0.78
5	California	76.98	0.67	0.88	0.80	0.50	1.00
6	Pennsylvania	76.85	1.00	0.76	0.80	0.50	0.78
7	New Hampshire	75.33	0.67	1.00	0.60	0.50	1.00
8	New York	75.05	0.67	0.65	0.80	0.75	0.89
9	Georgia	74.96	0.67	0.76	0.90	0.75	0.67
10	Massachusetts	73.09	0.83	0.88	0.80	0.25	0.89
11	Illinois	67.67	1.00	0.71	0.40	0.50	0.78
12	Washington	66.31	0.67	0.88	0.60	0.50	0.67
13	Maryland	65.58	0.67	0.82	0.40	0.50	0.89
14	Connecticut	65.52	0.83	0.76	0.40	0.50	0.78
15	South Carolina	63.90	0.00	0.71	0.60	1.00	0.89
16	Rhode Island	63.72	0.83	0.65	0.40	0.75	0.56
17	Florida	63.61	0.83	0.65	0.20	0.50	1.00
18	Maine	63.41	0.50	0.76	0.60	0.75	0.56
19	Minnesota	63.23	0.67	0.71	0.40	0.50	0.89
20	Mississippi	63.14	0.83	0.82	0.00	0.50	1.00
21	Wisconsin	62.56	0.83	0.71	0.20	0.50	0.89
22	Ohio	60.25	0.00	0.82	0.80	0.50	0.89
23	Virginia	59.72	0.50	0.65	0.20	0.75	0.89
24	Michigan	59.39	0.67	0.65	0.60	0.50	0.56
25	Arkansas	58.56	0.83	0.71	0.00	0.50	0.89
26	West Virginia	55.29	0.83	0.76	0.00	0.50	0.67
27	North Dakota	54.58	0.00	0.82	0.60	0.75	0.56
28	North Carolina	54.04	0.00	0.74	0.80	0.50	0.67
29	Missouri	52.18	0.00	0.76	0.40	1.00	0.44
30	Washington, D.C.	47.93	0.00	0.94	0.40	0.50	0.56
31	Kansas	47.91	0.83	0.62	0.00	0.50	0.44
32	Louisiana	46.58	0.50	0.82	0.20	0.25	0.56
33	Kentucky	45.98	0.50	0.88	0.00	0.25	0.67
34	New Mexico	44.38	0.83	0.94	0.00	0.00	0.44
35	Vermont	44.33	0.00	0.00	0.80	0.75	0.67
36	South Dakota	41.11	0.00	0.00	1.00	0.50	0.56
37	Utah	39.80	0.00	0.82	0.00	0.50	0.67

TABLE 7 (Continued)

Rank	State	RBI	Audits	Registration	Transactions	Dissolutions	Fundraising
38	Colorado	38.80	0.00	0.82	0.20	0.25	0.67
39	Iowa	37.14	0.00	0.82	0.20	0.50	0.33
40	Nebraska	36.00	0.00	0.00	0.80	1.00	0.00
41	Alaska	34.80	0.00	0.82	0.00	0.25	0.67
42	Alabama	34.67	0.00	0.71	0.00	0.25	0.78
43	Indiana	32.92	0.00	0.53	0.20	0.25	0.67
44	Wyoming	32.00	0.00	0.00	0.60	1.00	0.00
45	Texas	31.70	0.00	0.53	0.00	0.50	0.56
46	Arizona	28.59	0.00	0.53	0.40	0.50	0.00
47	Oklahoma	27.09	0.00	0.88	0.00	0.25	0.22
48	Montana	26.00	0.00	0.00	0.80	0.50	0.00
49	Nevada	19.87	0.00	0.88	0.00	0.00	0.11
50	Delaware	11.22	0.00	0.00	0.20	0.25	0.11
51	Idaho	9.00	0.00	0.00	0.20	0.25	0.00

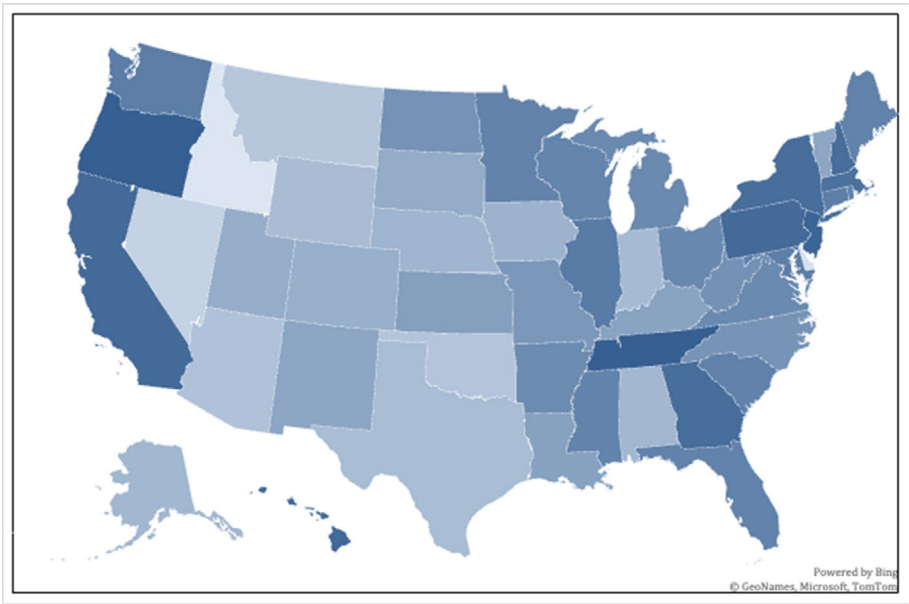


FIGURE 1 Regulatory breadth index map. Darker shading indicates higher RBI values (greater regulatory breadth)

3 | DISCUSSION

Even a cursory review of the RBI findings may be surprising, as the ranking indicates some interesting regulatory “bedfellows” in the form of adjacent or nearly adjacent states.

The ranking provides fodder for many queries as to why certain states are located where they are in relation to other states, suggesting possible historical, geographic, and political explanations. We encourage researchers to explore the RBI both within and across states, including how regulatory breadth correlates with other policy, political, demographic, and economic attributes of states and regions.⁵ We also encourage researchers to experiment with additional and alternative measures using our replication files.

To assess the validity of the RBI, we hypothesized a number of other variables with which a valid RBI should be positively correlated. We expected that a valid measure of state-level charity regulation breadth should be positively correlated with (1) the size of a state's nonprofit sector, (2) the overall size of a state by population and GDP, and (3) the overall levels of regulation and taxation in a state generally. A larger nonprofit sector, state population, and state economy should present more opportunities and permutations for charitable activities that may give rise to additional charity regulations. In addition, states predisposed to higher levels of overall regulation should be expected to also exhibit higher levels of charity regulation. Finally, higher-tax states should have more government resources available to support regulation, including charity regulation. Indeed, the RBI is positively correlated with, correspondingly: (1) the number of nonprofits ($\rho = 0.36$), the log of nonprofit total assets ($\rho = 0.55$), and the log of nonprofit gross receipts ($\rho = 0.56$); (2) the log of GDP ($\rho = 0.42$) and total population ($\rho = 0.30$); and (3) the total number of restrictions ($\rho = 0.46$) and taxes paid to the state per capita ($\rho = 0.48$).⁶ These correlations suggest that the RBI is a valid measure of the breadth of state-level charity regulation.

4 | CONCLUSION

State-level oversight of charities historically has addressed fundamental aspects of the sector and is increasingly the primary force in charity regulation (e.g., Lott & Fremont-Smith, 2017). The RBI represents a novel tool for nonprofit scholars and policymakers interested in the charitable sector's regulatory environment. For scholars, the RBI provides an in-depth foundation for studying the state-level regulatory regime for charitable oversight both within and across states. The RBI can help contextualize state-level nonprofit research by locating a state's regulatory regime with respect to close and distant peers. Scholarship adopting a national research frame can incorporate the RBI as a predictive, mediating, or control variable to account for variations in state-level charity regulation. For policymakers, the RBI offers a new opportunity for benchmarking and comparative analysis for more informed policymaking. The RBI is a powerful resource that can be used in support of a wide range of analyses to advance the field of nonprofit studies and inform future charity regulation.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are openly available in OSF at https://osf.io/dgyn9/?view_only=df51432f3592403ebc69c6e7df65ee07.

ENDNOTES

¹ Within this paper, "state" is defined as all 50 states and the District of Columbia, whereas "jurisdiction" is defined as the entire area that a state has regulatory authority, which under the law may be well beyond the state's borders. For example, a state creates regulations on fundraising, but those regulations may apply to

entities incorporated or located outside of the state's borders, if the entity is soliciting or conducting other business within the state's borders.

- ² The replication files provide a detailed record of the numerical coding, including the coding of "N/A" and "*" values.
- ³ The sub-indices are rescaled for ease of interpretation and to ensure equal weighing in the calculation of the RBI. The rescaling formula for each sub-index is: (sum of the variables – minimum of the sum) / (maximum of the sum – minimum of the sum).
- ⁴ The replication files provide a detailed record of the numerical coding, including the coding of "N/A" and "*" values.
- ⁵ The RBI has several notable limitations, all of which may be ameliorated by further in-depth research projects. First, we recognize that there may be a difference between a state affirmatively deciding not to regulate and a state simply having no statute or regulation. Distinguishing between those two circumstances would have required extensive research into the legislative histories of each state in our index, which, although valuable, is beyond the scope of our project. Second, the RBI does not attempt to measure the common law - the law created through custom or precedential judicial decisions - focusing instead on statutes and/or other types of published rules or regulations. Third, the RBI does not attempt to measure rates of enforcement of the statutes or regulations that it includes. Inconsistent, little, or no enforcement of the regulations have larger implications for the impact of regulations themselves. We look forward to future research that addresses these limitations.
- ⁶ Nonprofit data are from the August 2019 IRS non-private foundation (public charity) Business Master File. GDP data are from the Bureau of Economic Analysis for 2019. Population data are 2019 Census estimates. Total restrictions data are from QuantGov and the Mercatus Center. Taxes paid per capita data are from the Tax Foundation. All correlations are significant at $\alpha = 0.05$. The correlations are based on the entire population of US states and the District of Columbia.

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AUTHOR BIOGRAPHIES

Cindy M. Lott is Clinical Professor of Philanthropic Studies, director of the Professional Doctorate in Philanthropic Leadership (PhilD) and Stead Policy Fellow at Indiana University's Lilly Family School of Philanthropy; she is also a non-resident fellow at Urban Institute in Washington, D.C. Her academic research and professional practice address the intersection of policy, law and the charitable sector.

Mary L. Shelly is a reference librarian at the Biddle Law Library at the University of Pennsylvania Carey Law School. She has a J.D. and M.S.I. from the University of Michigan.

Nathan Dietz is Associate Research Professor and Senior Researcher with the Do Good Institute (DGI) in the School of Public Affairs at the University of Maryland, College Park. His research focuses on social capital, volunteering and giving to charity, civic engagement and social entrepreneurship.

George E. Mitchell is an associate professor at the Austin W. Marxe School of Public and International Affairs at Baruch College, City University of New York and director of the Marxe School's Center for Nonprofit Strategy and Management. His research examines topics in nonprofit and international NGO management, leadership, and strategy.

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