



State Regulation of the Charitable Sector

Enforcement, Outreach, Structure, and Staffing

Shirley Adelstein and Elizabeth T. Boris

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State charity offices play an important role in regulating the nonprofit sector, working both independently and with state and federal law enforcement agencies. As the primary regulatory and enforcement entities for charitable organizations, these offices protect charitable assets, propose or review state legislation affecting charities, and educate the charitable sector on permissible and prohibited activities. The Urban Institute-Columbia University Survey of State Charities Regulators (Lott et al. 2016) focused at the office level and showed that state charity offices vary in structure and authority and in tools they use to facilitate and enforce regulatory compliance. In this brief, we further analyze those data to compare the relationship between state-level enforcement activities, outreach activities, bifurcation of authority, and staff resources available to state charity offices. We find that staffing levels are related to the scope of outreach and enforcement activities, as well as to bifurcation of authority, which provides a promising avenue for future research.

Despite the important functions of state charity offices, there is little research that has systematically examined their oversight activities and programs. Such information is not only necessary to provide transparency but also to promote productive relationships across sectors, thereby enhancing accountability and improving state regulation of charitable organizations. Groundbreaking research first reported in Lott and colleagues (2016) documented the diversity of state charity offices. Through a combination of surveys, personal interviews, and the creation of a legal compendium, we now have baseline information on many aspects of state charity offices.

Although comprehensive enforcement and outreach data are still lacking, we do have information that allows us to begin probing how states vary in their enforcement and outreach activities and the factors associated with those differences. Because some states have bifurcated oversight structures, in which more than one office has regulatory and enforcement jurisdiction over charities, understanding state-level differences requires analysis of the resources and activities across offices in such states.¹

For this report, we combined survey responses from state charity offices to analyze state-level differences in enforcement activities, outreach activities, bifurcation of authority, and charity office staffing. We then examined the relationships among them. We must use caution when interpreting these results because the numbers are small. Although our data did not permit us to analyze variation in amounts or depth of state enforcement, our results provide preliminary indications of state enforcement and outreach capacity that can inform future research. We consider three questions:

1. How do states vary in enforcement and outreach activities?
2. How do enforcement and outreach activities differ in bifurcated versus unitary states?
3. How are charity office staff resources related to state enforcement and outreach activities?

We first review differences in enforcement and outreach activities at the state level, then examine differences between bifurcated and unitary states, and finally we compare the relationships between staff resources and enforcement and outreach activities among the states.

BOX 1

Survey of State Charities Regulators

The Urban Institute-Columbia University Survey of State Charities Regulators was administered to state regulatory and enforcement agencies in 2013–14. The survey was administered to attorneys general, secretaries of state, and other offices that oversee or regulate charities in the 50 states, the District of Columbia, and five US territories. A total of 54 respondents from 47 jurisdictions completed the survey, which captured information on office structure and staffing, outreach and transparency, funding, data and tracking practices, and enforcement strategies. It did not capture amounts or rates of enforcement but provides several measures of enforcement activities.

For this analysis, we combined survey responses to create a single, state-level value in cases of bifurcated authority (more than one state charity office with regulatory and enforcement jurisdiction). Bifurcated states were included only when both state offices responded to the survey. A total of 34 states and 2 territories are represented in this analysis (9 bifurcated and 27 unitary), a subset of the 47 jurisdictions responding to the survey and covered in our office-level report (Lott et al. 2016). The number of respondents varied somewhat by survey item.

Note: A copy of the survey can be found in appendix C of Lott and colleagues (2016).

State Variation in Enforcement and Outreach Strategies

Both enforcement and outreach are important aspects of charity offices' work. Whereas public education and outreach can serve a preventative function to increase compliance with legal and regulatory requirements, enforcement activities are critical to identify and sanction noncompliance. To assess state variation in outreach and enforcement activities, we combined survey responses where there were two offices for a single state (bifurcated authority) and examined the following:

- **Enforcement activities:** types of entities and activities regulated, whether and how states enforce registration requirements, and whether states cooperate with other government offices on enforcement actions.
- **Outreach activities:** types of outreach activities related to charities regulation/enforcement and interaction with other entities for outreach purposes (e.g., educational programs, encouraging compliance, assisting in office outreach, etc.).

As shown below, for each survey item, we examined the overall pattern of responses at the state level as well as differences between bifurcated and unitary states.

Enforcement Activities

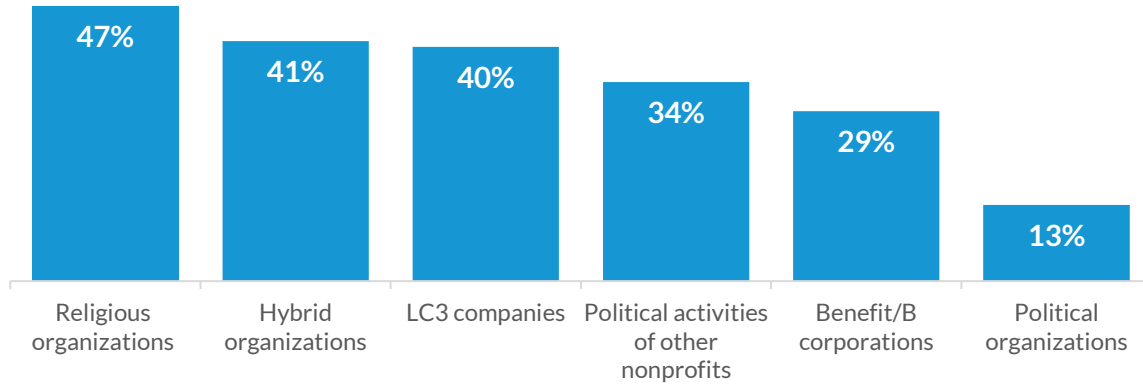
Enforcement authority varies from state to state, and specific types of organizations, activities, or fundraising methods may be exempt from regulation or from certain requirements (e.g. registration). Most states regulate traditional charities—those educational, relief of poverty, health, arts, and community service entities, among others, that have IRS 501(c)(3) tax exempt status and allow donors to make tax deductible contributions.

Fewer than half the states reported regulating religious and political organizations, those conducting political activities, and hybrid or for-benefit organizations (figure 1). States were more likely to report regulating religious organizations (47 percent of states), hybrid organizations (41 percent), and low-profit limited liability (LC3) companies (40 percent) than regulating political activities of other nonprofits (34 percent), Benefit and B corporations (29 percent), and political organizations (13 percent).

FIGURE 1

Regulation of Specific Types of Entities (In Addition to 501(c)(3) Charities)

Share of states (n=32)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.

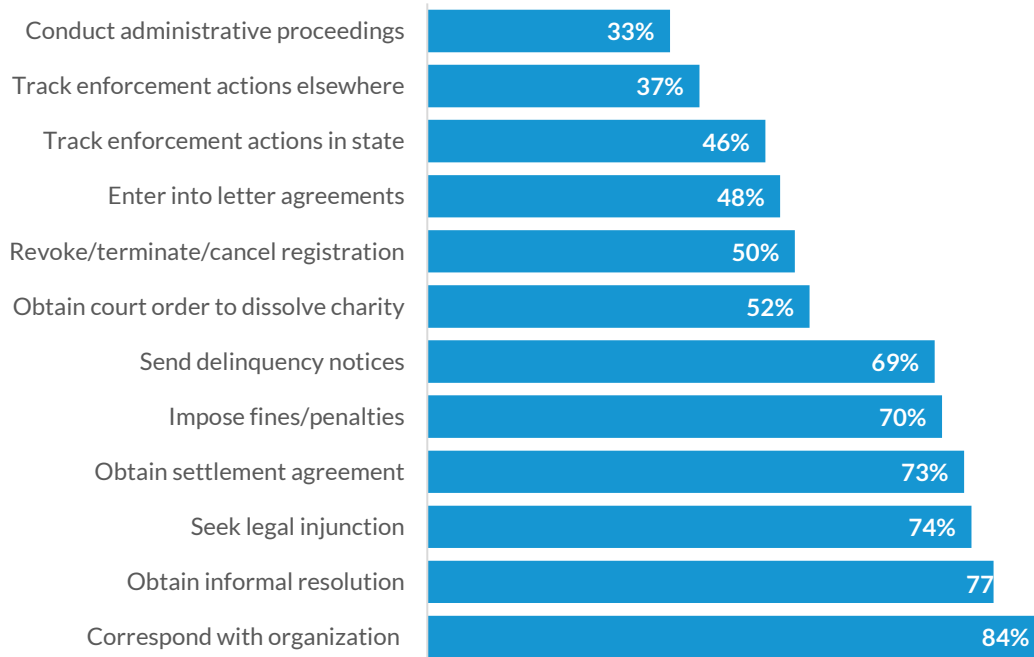
Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

Registration is one of the most common ways state charity offices oversee charities and their fundraisers. The large majority of states (85 percent) reported enforcing violations of registration requirements. But states differed in the type of actions taken to enforce registration requirements (figure 2). The most common actions reported (by over 60 percent of states) were corresponding with the organization (84 percent), obtaining informal resolution (77 percent), seeking legal injunction (74 percent), obtaining a settlement agreement (73 percent), imposing fines or penalties (70 percent), and sending delinquency notices (69 percent).

FIGURE 2

Actions to Enforce Registration Requirements

Share of states (n=32)

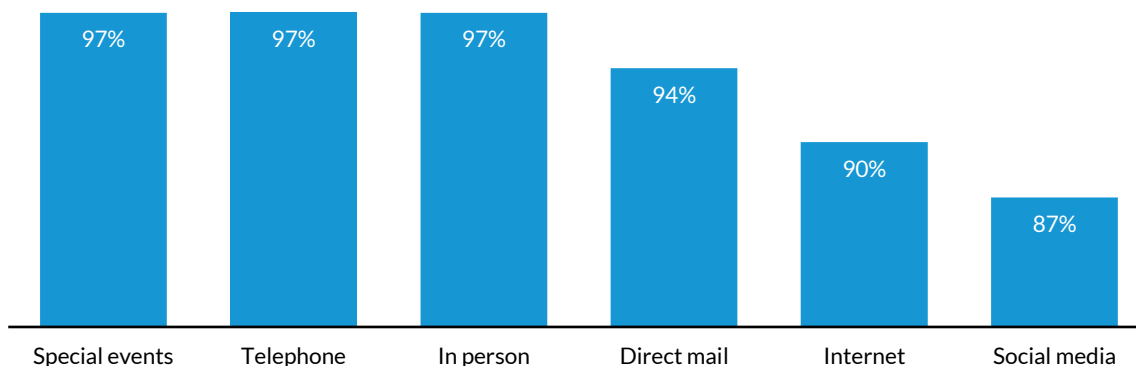


Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

Fundraising is a traditional focus of state charity regulation. The survey results showed that most states regulate well-established fundraising methods (figure 3). Over 90 percent of states reported regulating special events, telephone, in-person, and direct-mail fundraising. Smaller shares, though still high, reported regulating newer fundraising methods via the internet (90 percent of states) and social media (87 percent).

FIGURE 3
Regulation of Fundraising Methods
 Share of states (n=32)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.
Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

To enforce state law, charity offices may work with other government agencies as part of joint investigations or court actions or in referrals. As shown in figure 4, the majority of states reported that charity offices collaborate with other entities on enforcement actions against both charities and fundraisers. This includes collaborative investigations (76 percent of states for charities and 72 percent for fundraisers) as well as joint actions (65 percent for charities and 61 percent for fundraisers). In addition, we found that states in which offices reported collaborating on actions against charities typically also reported collaborating on actions against fundraisers.

FIGURE 4
Interoffice Cooperation among State Charity Offices
 Share of states in which charity offices collaborate with other government offices (n=33)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.
Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

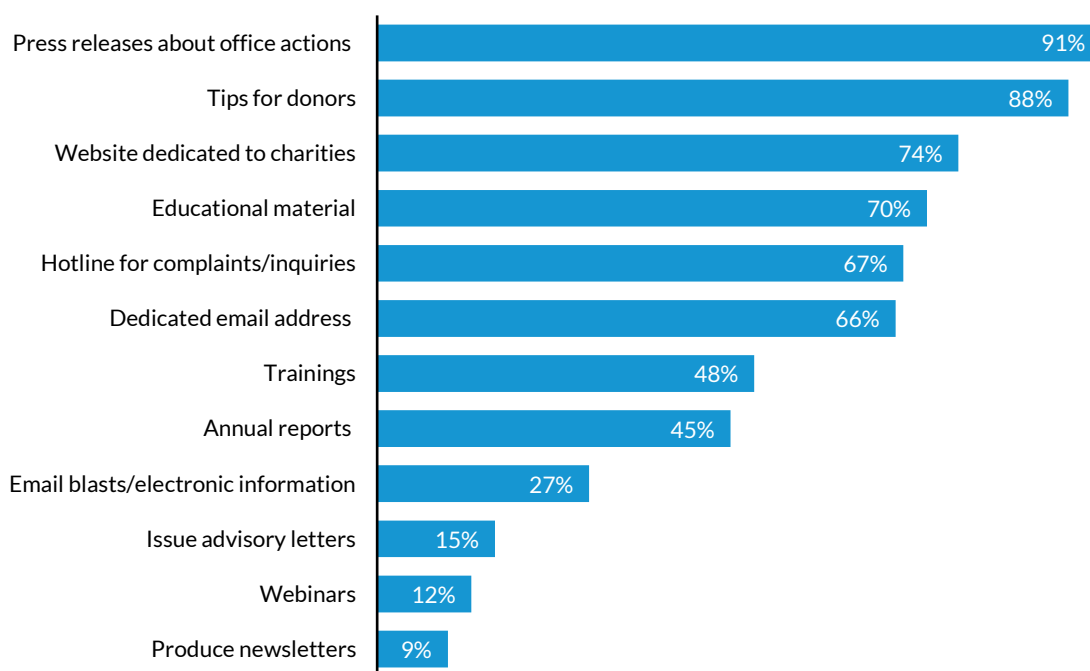
Outreach Strategies

Educating the public and nonprofit professionals about laws and regulations governing charitable organizations is one important role played by state charity offices, but states vary in the type of outreach they conduct. Figure 5 shows that states were most likely to report outreach activities such as press releases about office or division actions related to charities (91 percent of states) and least likely to use methods such as webinars (12 percent) or newsletters (9 percent).

FIGURE 5

Public Education and Outreach Activities of State Charity Offices

Share of states (n=34)

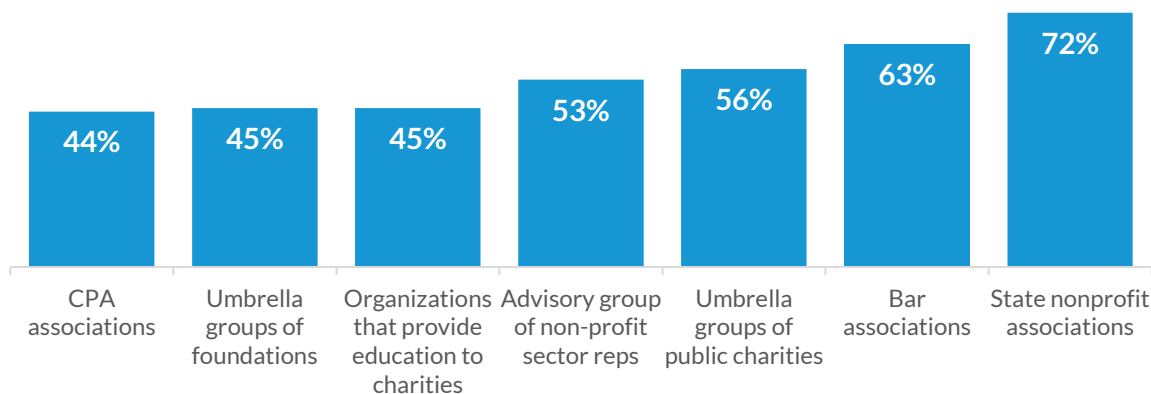


Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

State charity offices also engage a variety of partner organizations to conduct outreach activities (figure 6). The most common partners are state nonprofit associations (72 percent of states) and bar associations (63 percent), and the least common are CPA associations (44 percent), foundation umbrella groups (44 percent), and organizations or schools that provide educational programming to charities (44 percent).

FIGURE 6
Outreach Interactions
 Share of states (n=33)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.
Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

Enforcement, Outreach, and Bifurcation of Authority

In many states, overseeing charitable organizations that solicit donations is the exclusive responsibility of the state attorney general. However, in 24 jurisdictions, this authority is shared with another office, most commonly the secretary of state. A total of 9 bifurcated jurisdictions provided survey responses from both offices and were included in our analysis.

Little research has been done on whether and how a bifurcated regulatory structure impacts charities regulation. For example, states with more than one regulatory office may have access to more resources to facilitate enforcement or may be more likely to pursue actions such as registration that tend to be housed in non-attorneys general offices. Given the limited existing research in this area, there is no consensus on the impact of having two regulatory offices. Some have argued that bifurcation may improve regulation, though others have argued that lack of coordination among offices creates inefficiencies (Lott et al. forthcoming).

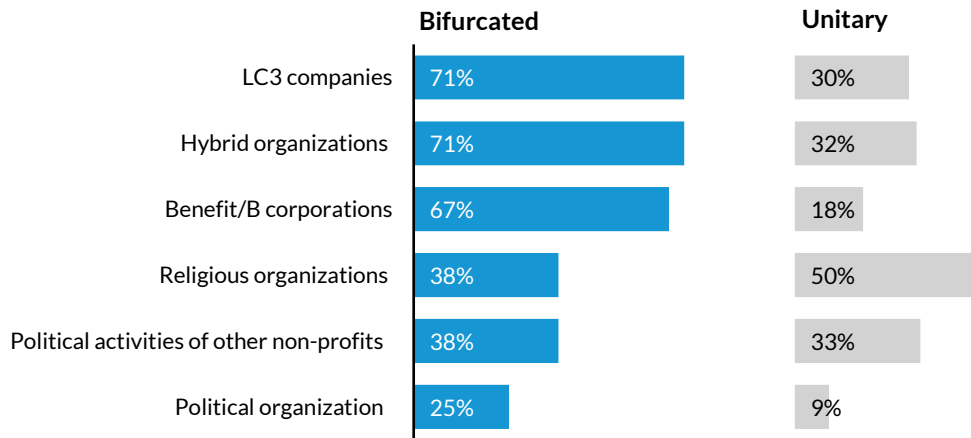
For each of the enforcement and outreach strategies reviewed above, we compared responses for bifurcated and unitary (attorney general-only) jurisdictions. Bifurcated states were more likely than unitary states to report regulating organizations other than traditional charities (figure 7). We cannot tell whether this is attributable to resources, capacity, or other considerations.

A similar pattern emerged for actions taken to enforce registration requirements (figure 8). Bifurcated jurisdictions were more likely to report taking each type of action. The largest differences were for sending delinquency notices, entering into letter agreements, seeking legal injunctions, and obtaining court orders to dissolve charities. This may reflect the fact that registration is often the purview of non-attorney general offices. It could also be driven by other factors, such as resources.

FIGURE 7

Regulation of Specific Types of Entities (In Addition to 501(c)(3) Charities) and Bifurcation of Authority

Share of states (n=8 for bifurcated states, n=24 for unitary states)



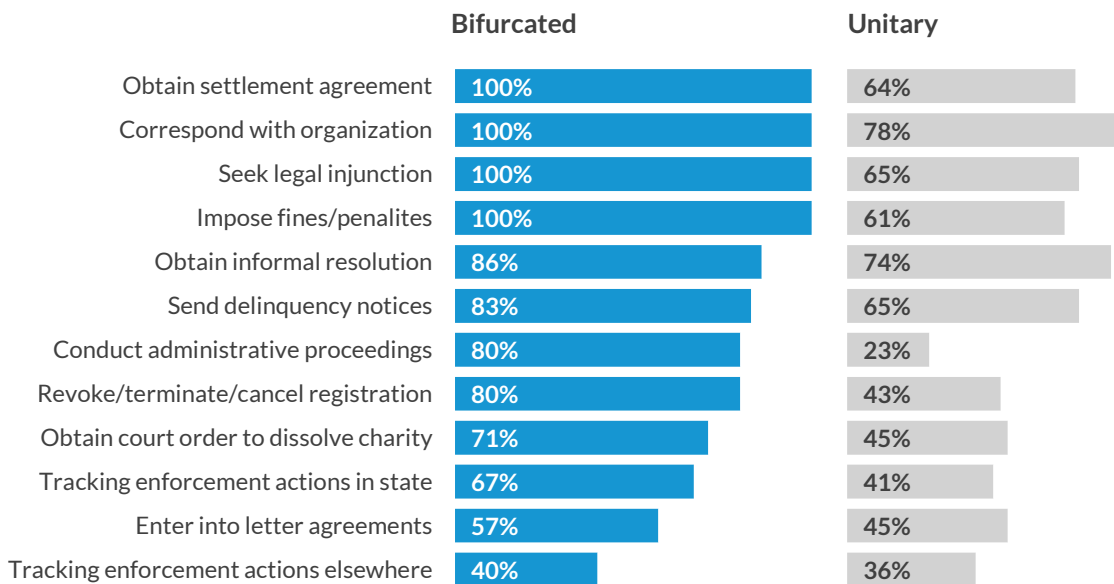
Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

FIGURE 8

Actions to Enforce Registration Requirements and Bifurcation of Authority

Share of states (n=9 for bifurcated states, n=23 for unitary states)

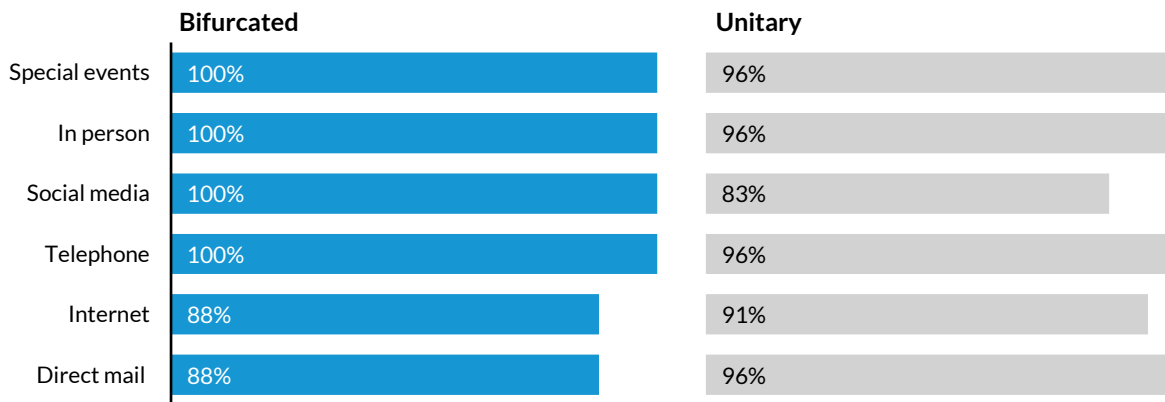


Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

A different pattern emerged for regulating fundraising methods (figure 9). Almost all of both bifurcated and unitary states reported regulating each fundraising method, perhaps because regulation of fundraising is the bedrock, traditional activity for entities overseeing charities. The only notable difference was that all bifurcated jurisdictions reported that they regulate social media fundraising, compared with 83 percent of unitary jurisdictions.

FIGURE 9
Regulation of Fundraising Methods and Bifurcation of Authority
Share of states (n=8 for bifurcated states, n=24 for unitary states)



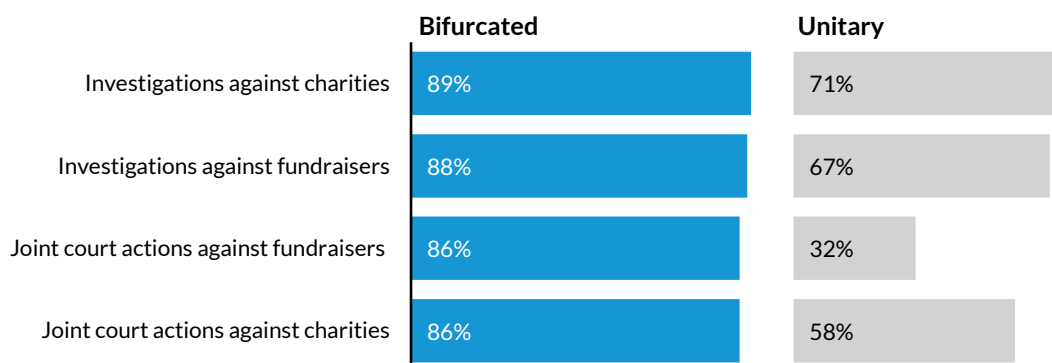
Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013-14.
Notes: Sample size varies slightly by item. Excludes bifurcated states in which only one office responded.

In contrast, there is a striking difference between bifurcated states and unitary states in the number that pursue interoffice cooperation. Bifurcated states were much more likely to report taking part in joint investigations and actions against charities and fundraisers (figure 10).

FIGURE 10

Interoffice Cooperation and Bifurcation of Authority

Share of states (n=9 for bifurcated states, n=24 for unitary states)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013-14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

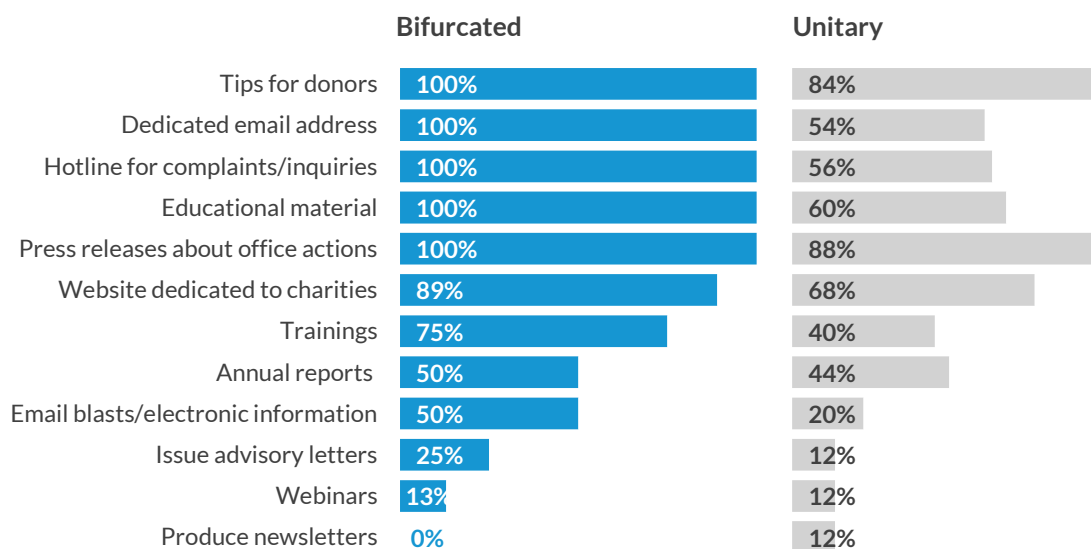
As noted above, although the numbers are small, these results suggest that bifurcation of charity offices may be associated with different, possibly higher levels of enforcement activities. Although our data do not allow us to assess variation in strength of enforcement, our findings provide some preliminary evidence on the relationship between bifurcation of authority and enforcement capacity.

Similarly, our results show that bifurcated states tend to engage in more outreach activities (figure 11) and are generally more likely to partner with other entities to conduct public education and outreach (figure 12). One possible explanation is that attorneys general offices may view outreach activities as outside the purview of an office that launches enforcement actions (Lott et al. 2016). Forthcoming research by Lott and colleagues finds that non-attorney general offices are generally more likely to be involved in preventative measures such as audits or bonding of and submitting contracts for professional fundraisers. It is also possible that bifurcated states have more resources, such as staff, available to conduct such outreach functions. In the next section, we examine how staffing levels are associated with enforcement and outreach.

FIGURE 11

Outreach Activities and Bifurcation of Authority

Share of states (n=9 for bifurcated states, n=25 for unitary states)



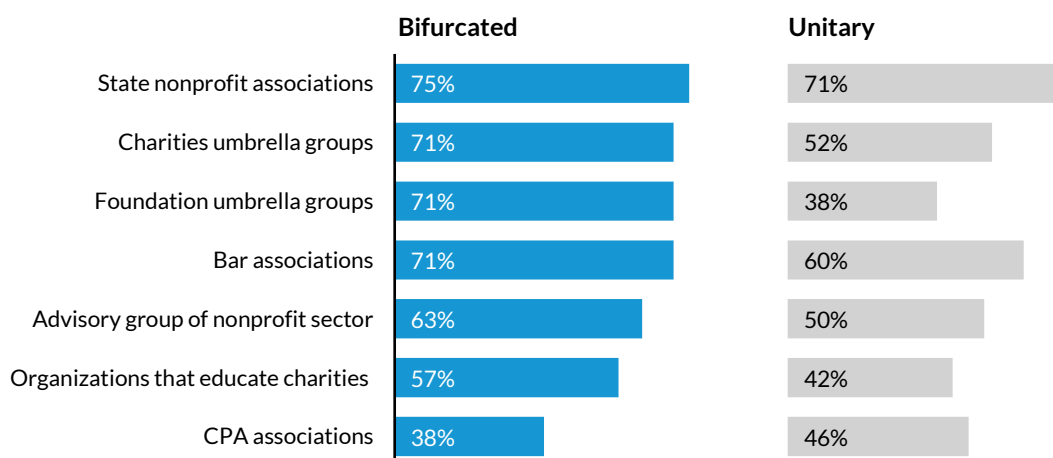
Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013-14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

FIGURE 12

Outreach Interactions and Bifurcation of Authority

Share of states (n=8 for bifurcated states, n=25 for unitary states)



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013-14.

Notes: Number of respondents varies slightly by item. Excludes bifurcated states in which only one office responded.

Enforcement, Outreach, and Staffing

As shown above, bifurcation is a structural factor that is associated with variation in state enforcement and outreach activities. One reason for the relatively higher use of various strategies among bifurcated states may be access to resources. For example, perhaps bifurcated offices have more personnel or other means at their disposal for oversight purposes. In this section, we examine whether access to staff resources may facilitate enforcement and outreach, and we consider whether this association helps explain the results we observed for bifurcation of authority. Although we do not have a comprehensive measure of resources available from our survey data, the relative number of staff dedicated to charities oversight is one indicator that is useful for examining patterns associated with office resources.

To measure staffing resources, we created a staffing score for each state based on the ratio of reported full-time equivalent staff to number of public charities in the state. Each state received a score ranging from one to five based on how its staffing ratio compared to the percentile distribution of overall responses. For bifurcated states, we added the total full-time equivalent staff for both offices and included only those bifurcated states for which both offices responded. To illustrate our scoring, states receiving a score of 1 were in the bottom quantile of states (bottom 20 percent), and states with a score of 5 were in the top quantile (top 20 percent).

The pattern of staffing scores for bifurcated versus unified states provides some preliminary evidence that greater access to resources may help explain the relatively higher rate of affirmative responses to enforcement and outreach questions among bifurcated states. For the staffing score, bifurcated states scored 3.5 on average, compared to 2.2 on average for unitary states (not shown).

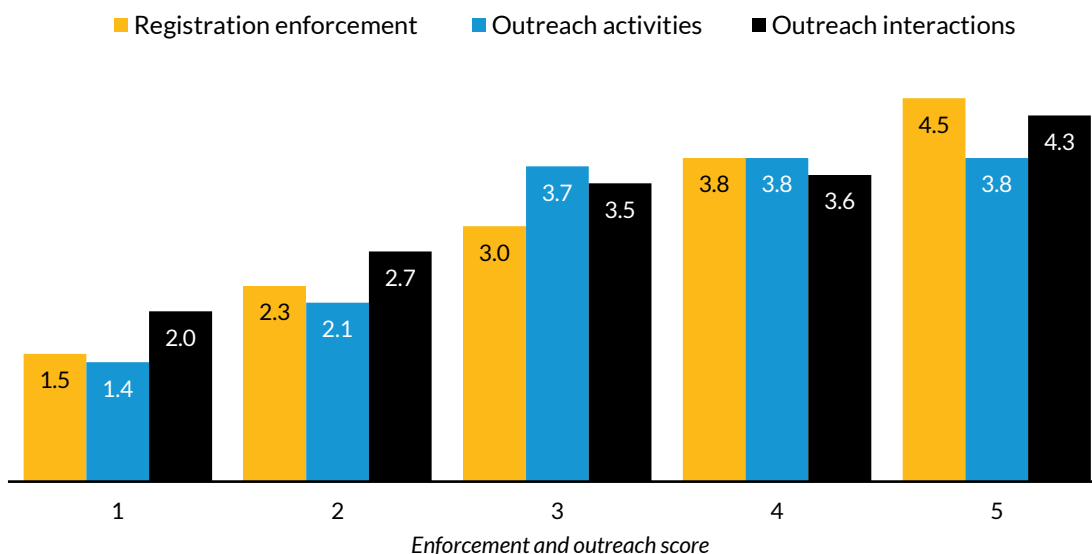
To assess the relationship between staff resources and enforcement and outreach activities, we used a similar five-point scoring method to create state scores based on responses to the number of actions taken to enforce registration requirements (*registration enforcement score*), the number of outreach activities used (*outreach activities score*), and the number of entities with which state offices interact to conduct outreach (*outreach interactions score*). As with the staffing measure, each state received a score ranging from 1 to 5, with higher values indicating that the state selected more responses relative to other states.

For enforcement, we focused on actions to enforce registration requirements as a rough proxy for enforcement capacity. It is a direct, albeit limited, measure of action. Importantly, we do not suggest that this measure captures amount or strength of enforcement, which would require more extensive data collection to capture the myriad aspects of enforcement. Rather, we use this measure for an exploratory analysis of the association between staffing and enforcement as a prelude to future research.

FIGURE 13

Staff Resources, Registration Enforcement, and Outreach Scores

Average state staffing scores by registration enforcement, outreach activities, and outreach interactions



Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14. Staffing data are also based on data on the number of state charities in 2013 published in the 2016 Urban Institute *Nonprofit Almanac* (McKeever, Dietz, and Fyffe 2016).

Note: Excludes bifurcated states in which only one office responded.

Figure 13 shows the average staffing score among states within each of the five possible scores for registration enforcement, outreach activities, and outreach interactions. For example, among states with an enforcement actions score of 1 (meaning they were in the bottom 20 percent for number of actions used), the average staffing score was 1.5. In contrast, among states with an enforcement actions score of 5 (meaning they were in the top 20 percent for number of actions used), the average staffing score was 4.5.

The results in figure 13 indicate that states with higher scores for our enforcement and outreach measures also tended to have higher average staffing scores. To further examine this association, we computed the correlation between state staffing, enforcement, and outreach scores (table 1).² The correlation results suggest that the staffing score has a strongest positive correlation (0.73) with the actions to enforce registration requirements. Both outreach measures also had positive correlations with staffing, including the outreach activities score (0.64) and the outreach interactions score (0.56).

TABLE 1

Correlations between Enforcement, Outreach, and Staffing Scores*Spearman's correlation coefficients*

	Correlation with staffing score
Registration enforcement score	0.73
Outreach methods score	0.64
Outreach interactions score	0.56

Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14. Staffing measure is also based on data on number of state charities in 2013 published in the 2016 Urban Institute *Nonprofit Almanac* (McKeever, Dietz, and Fyffe 2016).

Notes: Excludes bifurcated states in which only one office responded. Statistical significance is not presented because of small sample size.

The results provide a preliminary indication that bifurcated jurisdictions have access to more staff resources to facilitate outreach and registration enforcement, which may be associated with greater enforcement capacity. The data, however, do not permit us to make causal inferences about these relationships—they are correlations that do not control for a variety of other factors that could help account for the observed relationships. Additionally, our survey included a limited number of questions related to enforcement and outreach, and these questions do not allow us to measure the amount or depth of either. Although our analysis cannot fully address the relative efficiency or effectiveness of bifurcated and unitary structures, the evidence in this brief is suggestive and provides fodder for future research.

To better assess these relationships, future research should (1) collect the same information from the states that did not respond to the survey, (2) conduct in-depth interviews about enforcement actions beyond those in the survey and resources available to each type of office, and (3) collect more comprehensive data on direct measures of enforcement and outreach actions, including types and amount, with assistance from practitioners. These results should also be the subject of a roundtable discussion of state charity officials, who could be invited to share their reactions about the implications of the findings and suggestions for further research and analysis.

Conclusion

This analysis examined the enforcement and outreach activities reported in the Urban Institute-Columbia University Survey of State Charities Regulators (Lott et al. 2016) and related them to structural features of charity offices and staff resources reported in the survey. Results suggest that both structure and staffing are related to the nature of enforcement and outreach activities based on the available data in our survey. The fact that resources, as measured by staff, are aligned with enforcement and outreach should not be a surprise. However, the finding that bifurcation may be associated with more enforcement and outreach activities, as well as more resources, warrants further analysis to better understand the implications of different regulatory structures.

Further research should prioritize types and amounts of enforcement activities, outreach activities, and financial resources to see if the relationship holds up. As more responsibility for oversight of charities devolves to the states, the question of appropriate resources and structure to do this well becomes an important consideration for the charitable sector, for regulators, and for civil society.

Appendix

TABLE A.1

Enforcement, Outreach, and Staffing Scores

Descriptive statistics

Measure	n	Mean	SD	Min	Max
Registration enforcement	32	2.88	1.43	1	5
Outreach methods	34	2.91	1.40	1	5
Outreach interaction	33	2.64	1.50	1	5
Staffing	31	2.94	1.46	1	5

Sources: Authors' analysis and the Urban Institute and Columbia Law School Survey of State Charities Regulators 2013–14. Staffing measure is also based on data on number of state charities in 2013 published in the 2016 Urban Institute *Nonprofit Almanac* (McKeever, Dietz, and Fyffe 2016).

Note: Excludes bifurcated states in which only one office responded.

Notes

¹ Throughout this brief, we refer to “states” and “jurisdictions” alternately to refer to the combination of US states (n=34) and territories (n=2) included in the analysis.

² Correlation coefficients may range from -1 to 1, with negative values indicating that two items are negatively correlated (move in opposite directions), positive values indicating that two items are positively correlated (move in the same direction), and 0 indicating that there is no correlation. Values closer to -1 or 1 indicate stronger correlations, either positive or negative.

References

Lott, Cindy M., Elizabeth T. Boris, Karin Kunstler Goldman, Belinda J. Johns, Marcus Gaddy, and Maura Farrell. 2016. *State Regulation and Enforcement in the Charitable Sector*. Washington, DC: Urban Institute.

Lott, Cindy M., Mary L. Shelly, Nathan Dietz, and Marcus Gaddy. Forthcoming. *Bifurcation of State Regulation of Charities: Divided Regulatory Authority Over Charities and its Impact on Charitable Solicitation Laws*. Washington, DC: Urban Institute.

McKeever, Brice S., Nathan E. Dietz, and Saunji D. Fyffe. 2016. *The Nonprofit Almanac: The Essential Facts and Figures for Managers, Researchers, and Volunteers*. 9th ed. Washington, DC: Urban Institute Press.

About the Authors

Shirley Adelstein is a research associate in the Center on Labor, Human Services, and Population at the Urban Institute. She has expertise in survey design and administration and quantitative research methods. Before joining Urban, Adelstein was an analyst in the work-life policy office at the US Office of Personnel Management and a research fellow at the Center for Research on Children in the United States at Georgetown University, where she is affiliated as a nonresident senior fellow. She completed her BA at New York University and received her MPP and PhD in government from Georgetown University.

Elizabeth T. Boris is an institute fellow at the Center on Nonprofits and Philanthropy at the Urban Institute, where she conducts research on nonprofit organizations and philanthropy. From 2015 to 2017, she also held the Waldemar A. Nielsen Chair in Philanthropy and was a visiting professor of practice at the McCourt School of Public Policy at Georgetown University. Dr. Boris was the founding director of the Center on Nonprofits and Philanthropy from 1996 to 2016. The center conducts research on the role and impact of the charitable sector and the public policies that affect it. The National Center for Charitable Statistics, which builds and maintains research databases on nonprofits and compiles the *Nonprofit Almanac*, is a program of the center. Dr. Boris holds a PhD and MA in political science from Rutgers University and an AB from Douglass College.

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