Imagine you are advising the board of a nonprofit art museum. You and the board members are working to create a strategic plan that will guide the museum into the next decade. The museum has been steadily expanding: more and more visitors attend each year, exhibitions are receiving positive media exposure, and the museum continues to add new acquisitions to its permanent collection. A cornerstone goal of the new strategic plan is to undergo a capital construction project that will renovate the museum’s existing building and add additional space.

This renovation project will need major funding to proceed. A handful of high-net-worth individuals are interested in giving significant financial gifts to the project. You see these donations as necessary for reaching the museum’s goals and are eager to accept the contributions.

However, the decision to accept the gifts is not as simple as it first appears. In the modern world of nonprofit museum governance, determining whether or not to forge philanthropic relationships with particular donors is a nuanced decision, increasingly subject to public scrutiny.

ART MUSEUM MISSIONS

Nonprofit art museums are classified under the IRS tax code designation 501(c)(3), the category used for religious, educational, and charitable organizations. Art museums use this designation because they provide education in the arts, culture, and humanities. Beyond their general educational purpose, individual museums include a specific purpose in their mission statements.

For example, the Denver Art Museum’s mission statement reads: “The primary mission of the Denver Art Museum is to enrich the lives of present and future generations through the acquisition, presentation, and preservation of works of art, supported by exemplary scholarship and public programs related both to its permanent collections and to temporary exhibitions presented by the Museum.”

Board members must make major museum decisions in accordance with their museum’s mission statement. And, they are entrusted with a fiduciary duty—an obligation to make decisions in the best interest of the museum. In meeting their fiduciary duty, board members contribute valuable experience, specialized knowledge, community connections, and an insatiable desire to contribute to the

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public good. Board members are also expected to contribute financially to their museums. Personal giving by board members signifies their commitment to the museum’s mission and bolsters the museum’s financial health. From an outsider’s perspective, financial support from the individuals most intimately involved in the museum’s management demonstrates their goodwill toward the museum.

THE BUSINESS MODEL

Unlike European museums, which were predominately founded from royal collections and supported with government financing, American nonprofit museums were commonly founded from the personal collections of wealthy financiers and industrialists (e.g., the Carnegie, Vanderbilt, Guggenheim, and Rockefeller families). American nonprofit art museums are not subsidized by the government, meaning not only are nonprofit museums reliant on commercial activity, but without the business world, nonprofit art museums could cease to exist.

Nonprofit art museums subsist on three main categories of revenue: contributions, program services, and earned income. The contribution category includes membership dues, fundraising, non-cash contributions, and grants. Across the nonprofit museum industry, contributions provide the most revenue, making up more than half of all income. The Sotheby’s Institute of Art notes:

Without margin, there is no mission. Staying profitable is the only way for a museum to keep its mission alive, given high operating costs and limited liquidity. With the 501(c)(3) tax status sheltering museums from taxable income, using their revenue in support of the museum’s mission is not only a guiding principle, but a requirement of the business model.

TOXIC PHILANTHROPY

Since nonprofit art museums rely heavily on contributions for financial stability, failure to maintain philanthropic relationships is extremely threatening to their existence. A term known as “toxic philanthropy” has recently permeated the minds

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4 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
of museum management and the media.\textsuperscript{11} Museums accept financial gifts from, name buildings after, and give board positions to wealthy donors, or otherwise influential members of the public. Toxic philanthropy refers to the reputational and financial harm experienced by museums for relationships with individuals who have controversial business, social, or political affiliations.

This summer, major museums including New York’s Solomon R. Guggenheim Museum and the Metropolitan Museum of Art publicly refused to accept any future financial gifts from the Sackler family members associated with Purdue Pharma.\textsuperscript{12} Brothers Arthur, Mortimer, and Raymond Sackler purchased Purdue Pharma in middle of the twentieth century.\textsuperscript{13} Now, Purdue Pharma is the pharmaceutical company primarily known as the producer of OxyContin, a narcotic pain medication.\textsuperscript{14} Purdue Pharma began selling OxyContin in 1996, sales of which established the company as a pharmaceutical titan.\textsuperscript{15} Major museums issued statements addressing their relationships with the Sackler family in response to thousands of recent lawsuits against Purdue Pharma for its alleged responsibility in starting the United States’ opioid-addiction crisis.\textsuperscript{16} The lawsuits claim the Sacklers used Purdue Pharma to downplay the addictive nature and overdose risk of the drug in advertising for nearly twenty years.\textsuperscript{17} The lawsuits also allege the Sacklers shielded assets from the company’s bankruptcy proceedings by funneling funds to personal accounts.\textsuperscript{18}

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\item European museums such as London’s National Portrait Gallery, Victoria & Albert Museums, and Tate Museum, and Paris’ Louvre Museum also issued similar statements. Elizabeth A. Harris, \textit{The Met Will Turn Down Sackler Money Amid Fury Over the Opioid Crisis}, \textit{THE NEW YORK TIMES} (May 15, 2019), https://www.nytimes.com/2019/05/15/arts/design/met-museum-sackler-opioids.html.
\item Harris, \textit{supra} note 12.
\item \textit{Id.}
\end{enumerate}
The Sackler family is a philanthropic powerhouse, which established relationships with museums around the world. The Metropolitan Museum of Art accepted contributions from the family for more than fifty years. Its glass-enclosed Sackler Wing opened in 1978 and famously houses the Ancient Egyptian Temple of Dendur. However, since the bankruptcy proceedings and criminal lawsuits, the Metropolitan Museum of Art has revisited their long-standing relationship. Art museums no longer want to be associated with the Sacklers.

Other recent headlines covered the ongoing demand for Warren Kanders’ resignation from his position as vice chairman of the Whitney Museum of American Art. Kanders served on the Whitney’s board for over a decade, donating more than $10 million to the museum. His wife, Allison, who was a member of the board’s painting and sculpture committee, also resigned.

Warren Kanders is the CEO of Safariland Group, a weapons manufacturing company that sells its products to law enforcement and military personnel. United States immigration officers used Safariland’s tear gas against asylum seekers at the Mexican border. Kanders partially owns another weapons company, Sierra Bullets, that was recently accused of complicity in lethal war crimes by the Israeli army against Palestinian civilians. Kanders claimed no responsibility for how the weapons were ultimately used and initially refused to accept the demand for his resignation.

His resignation followed persistent protests at the Whitney and Kanders’ family residence, as well as an open letter signed by hundreds of artists and museum staff calling for his removal. The letter to the Whitney’s board members stated:

[C]ultural institutions like the Whitney claim to be devoted to ideals of education, creativity, and dissent beyond the dictates of the market . . . [y]et, these institutions have been historically entwined with the power structures of settler colonialism, white

\[\text{\textsuperscript{19}}\text{Stapley-Brown, \textit{supra} note 13.}\]
\[\text{\textsuperscript{20}}\text{Id.}\]
\[\text{\textsuperscript{21}}\text{Id.}\]
\[\text{\textsuperscript{24}}\text{Id.}\]
\[\text{\textsuperscript{25}}\text{Id.}\]
\[\text{\textsuperscript{26}}\text{Id.}\]
\[\text{\textsuperscript{27}}\text{Id.}\]
\[\text{\textsuperscript{28}}\text{Harris, \textit{supra} note 12.}\]
\[\text{\textsuperscript{29}}\text{Id.}\]
supremacy, heteropatriarchy, and capitalism . . . [those institutions] provide cover for the likes of Kanders as they profit from war, state violence, displacement, land theft, mass incarceration, and climate disaster.30

For the time being, art museums would be wise to avoid philanthropic relationships with both pharmaceutical companies and weapons manufacturers. During discussions regarding Kanders’ resignation, board members at the Whitney expressed concern in bowing to pressure from activists.31 The open letter to the Whitney, and Kanders’ subsequent resignation, encouraged more than 200 members of the art community to publish another open letter—this time to the Museum of Modern Art (“MoMA”).32 These artists, academics, and curators denounced “MoMA’s connections to mass incarceration, global dispossession and climate catastrophe, and demand[ed] that MoMA’s [b]oard member Larry Fink, CEO of BlackRock, divest from prison companies, the war machine and the destruction of the global environment.”33 The letter was released two weeks before MoMA’s grand opening of its massively expanded and newly renovated gallery space.34

One of the 220 signatories stated, “We’re trying to ride off the tails of the Whitney action, where they successfully got Kanders off the board.”35 Around 150 supporters staged a peaceful protest at MoMA’s opening party, waving banners and chanting to encourage the “museum to speak with artists, community leaders, and immigrant rights organizations about their alleged connections to mass incarceration.”36 MoMA denied investment in for-profit private prisons but has not otherwise directly responded to the letter.37

EFFECT OF TOXIC PHILANTHROPY ON MUSEUMS

These egregious examples illustrate the glaring risk of philanthropy gone wrong. As cultural institutions, art museums give wealthy individuals an opportunity for legacy building. In exchange for a multi-million-dollar donation, a museum will

30 Weber, supra note 22.
31 Small, supra note 23.
34 Fabbro, supra note 32.
37 Id.
gladly name a stairwell, pavilion, or even an entire building after the donor.38 This exchange becomes problematic when a museum is legally obligated to keep a named building for an individual who has been publicly disgraced.39

A prior director of the Whitney commented, “Unless you are prepared to face real setbacks as an institution, it will be hard to find support derived entirely from sources beyond reproach.”40 There is tension between accountability to public stakeholders and mere survival for a museum that is utterly reliant on philanthropic contributions. Over time, public opinion shifts, and museums do not want to appear to be too partisan in making decisions on gift acceptance.41

When asked about guidelines for accepting money and accountability to the public, Max Hollein, Director at the Metropolitan Museum of Art, responded:

[Museums] should and can be a platform for debates . . . museums are very relevant institutions not only for the cultural clientele but actually for our society at large . . . we as an institution are not, per se, a political institution. We are not a partisan institution.42

The Association of Art Museum Directors, an organization that issues best practices for nonprofit museums, has not issued guidance on funding sources or gift acceptance policies.43 Museums must determine the criteria for philanthropic relationships on a case by case basis. This flexibility is essential because it allows board members to guide their museum based on its particular history, location, and constituent demographic makeup. Daniel Weiss, President of the Metropolitan Museum of Art commented:

We have not developed a list of acceptable industries or investment strategies or unacceptable ones . . . [r]ather, we take a look at individuals we’re working with in a holistic way in order to get a sense for who they are, what are their motivations for working with us, what their background is . . . [i]n the case of working with particular individuals, it’s clear there is a line . . . [a]t the same time,

39 Dafoe, supra note 16.
42 Id.
43 Stapley-Brown, supra note 40.
we are fundamentally supported by and we operate on the basis of philanthropy. That’s the American model.\textsuperscript{44}

\textbf{FUTURE CONSIDERATIONS}

The American model of the nonprofit art museum has a unique structure and a unique set of challenges. Board members play a critical role in shaping the future of museum management and governance. Board members must consider the potential risks of embarking on new philanthropic endeavors.\textsuperscript{45} Now more than ever, museums are forced to be transparent as the public demands honesty and accountability. The modern nonprofit art museum has an enormous responsibility—as well as an opportunity—to forge lasting, trustworthy relationships.

\textsuperscript{44} Id.
\textsuperscript{45} Bowley, \textit{supra} note 3.