

# AT THE GOVERNOR’S TABLE: THE CASE FOR THE NONPROFIT CABINET MEMBER

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## I. INTRODUCTION: THE IMPACT OF THE NONPROFIT SECTOR IN AMERICA

What makes America great? Chief among the many reasons is its nonprofit sector. Philanthropic organizations in America, including 501(c)(3)-public charities, educate millions of students every year, help advance important scientific research, address the health care needs of millions of patients, and help America’s communities become vibrant social centers through the promotion of arts and culture.<sup>1</sup> Without the nonprofit sector, many of the museums, universities, hospitals, and countless other institutions that Americans revere and rely upon would not exist.

America has a long history with nonprofit associations. In 1835, French political scientist and diplomat Alexis de Tocqueville in his book, *Democracy in America*, commented on the origins of the nonprofit sector in America:

Americans of all ages, all conditions, and all minds are constantly joining together in groups. In addition to commercial and industrial associations in which everyone takes part, there are associations of a thousand other kinds: some religious, some moral, some grave, some trivial, some quite general and others quite particular, some huge and others tiny. Americans associate to give fetes, to found seminaries, to build inns, to erect churches, to distribute books, and to send missionaries to the antipodes. This is how they create hospitals . . . and schools. If, finally, they wish to publicize a truth or foster a sentiment with the help of a great example, they associate. Wherever there is a new undertaking, at the head of which you would expect to see in France the government and in England some great lord, in the United States you are sure to find an association. In America I came across types of associations which I confess I had no idea existed, and I frequently admired the boundless skill of Americans in setting large

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1. 26 U.S.C. § 501(c)(3) (2015).

numbers of people a common goal and inducing them to strive toward that goal voluntarily.<sup>2</sup>

These associations continue to impact Americans on a daily basis. In fact, Americans gave more than \$373 billion to nonprofit organizations in 2015, which represents a 4.1% increase over prior year giving.<sup>3</sup> Despite the fact that the nonprofit sector (1) contributes between 5% to 8% of America's gross domestic product each year; (2) employs approximately 8% of America's civilian employees; (3) has approximately \$2.26 trillion in revenues and \$2.10 trillion in expenses; and (4) has approximately \$5 trillion in total assets, there is only one state government—the State of Connecticut—that has a cabinet-level position devoted entirely to the vibrancy of that state's nonprofit sector.<sup>4</sup> Therefore, the purpose of this article is to urge every sitting governor to follow Governor Dan Malloy's lead by creating a new cabinet-level position devoted to ensuring the vitality of the nonprofit sector in that governor's state.<sup>5</sup> Like Governor Malloy, all governors should want a direct relationship with the nonprofit sector, which not only serves as a safety net for the government, but also creates pluralistic communities.<sup>6</sup>

## II. PRINCIPAL-AGENT FRAMEWORK

If governors have existing cabinet-level members devoted to economic development, information technology, and transportation, to name a few, then there is no question that there should be a cabinet-level member devoted entirely to the nonprofit sector as well. In American society, there are three sectors: the private (for-profit), government, and nonprofit sectors. Remarkably, the nonprofit sector employs more people than the following industries: "agriculture, mining, construction, transportation, communications, finance, insurance, and real estate."<sup>7</sup> The nonprofit

2. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 595 (2004) (1st ed. 1835).

3. GIVING USA 2016 INFOGRAPHIC, <https://givingusa.org/see-the-numbers-giving-usa-2016-infographic/> (last visited January 22, 2017); see also BRUCE HOPKINS, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* 23 (11th ed. 2016) ("Charitable giving in the United States in the year the first edition of this book was published – 1975 – was \$28.56 billion, whereas for 2014 the amount of charitable giving was an estimated \$358.38 billion.").

4. THE NONPROFIT SECTOR IN BRIEF 2015, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000497-The-Nonprofit-Sector-in-Brief-2015-Public-Charities-Giving-and-Volunteering.pdf> (last visited January 22, 2017) ("revenues grew 3.0 percent from \$2.19 trillion in 2012 to \$2.26 trillion in 2013; assets increased 5.2 percent from \$4.91 trillion to \$5.17 trillion. Expenses also grew from \$2.06 trillion in 2012 to \$2.10 trillion in 2013, an increase of 1.7 percent . . ."); see also HOPKINS, *supra* note 3, at 25. A few states, including Indiana and New Hampshire, have offices devoted to volunteerism; however, based upon a review of each state government's website, only Connecticut has a cabinet-level position devoted entirely to the nonprofit sector as a collective whole.

5. See GOVERNOR'S NONPROFIT LIAISON POSITION, [http://www.ct.gov/opm/lib/opm/secretary/nonprofitliaison/11-2-12\\_nonprofit\\_liaison\\_information\\_&\\_update.pdf](http://www.ct.gov/opm/lib/opm/secretary/nonprofitliaison/11-2-12_nonprofit_liaison_information_&_update.pdf) (last visited January 22, 2017).

6. Lester M. Salamon, *Of Market Failure, Voluntary Failure, and Third-Party Government: Toward a Theory of Government-Nonprofit Relations in the Modern Welfare State*, *NONPROFIT AND VOLUNTARY SECTOR QUARTERLY* 29, 37 (1987).

7. HOPKINS, *supra* note 3, at 27.

sector also has “more civilian employees than the federal government and the 50 state governments combined.”<sup>8</sup> Despite these facts, two of the sectors—the private and government sectors—generally get all of the attention. These two sectors dominate the news cycle and are typically top-of-mind for most Americans. Notwithstanding the fact that the nonprofit sector, which is sometimes even referred to as the “third sector,” plays a huge role in America’s economy, it is often overlooked. Nevertheless, the nonprofit sector frequently implements key initiatives from both the private and government sectors. In this regard, nonprofit organizations are agents of social change within the principal-agent paradigm as described by Herrington Bryce in his book, *Players in the Public Policy Process: Nonprofits as Social Capital and Agents*.<sup>9</sup>

Both the private and government sectors utilize nonprofit organizations as agents of social change.<sup>10</sup> With respect to the private sector, many corporations—including Wells Fargo, GE, and Coca-Cola—and business leaders—including Bill and Melinda Gates, Warren Buffet, and Mark Zuckerberg and Priscilla Chan—establish philanthropic initiatives to help advance certain charitable causes.<sup>11</sup> Thus, the nonprofit sector helps these corporations and business leaders make a difference. With respect to the government sector, Herrington Bryce notes that nonprofit organizations are often “agents” of the government sector too.<sup>12</sup> That is, nonprofit organizations implement key programs and initiatives that would otherwise be implemented by the government sector. In fact, one of the key reasons for both the deductibility benefit of Section 501(c)(3) organizations and the tax-exempt nature of Section 501(c) organizations in general, is that such organizations fulfill a community need that would otherwise likely be fulfilled by the government.<sup>13</sup>

Without nonprofit organizations, the government would have to do more. Consequently, the federal government foregoes taxable income to incentivize both individuals and nonprofit organizations to pursue chari-

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8. HOPKINS, *supra* note 3, at 27 (emphasis added).

9. BRYCE, HERRINGTON J., *PLAYERS IN THE PUBLIC POLICY PROCESS: NONPROFITS AS SOCIAL CAPITAL AND AGENTS* xvii (2005) (“Hence, the foundation of the principal-agent approach in this book is that the nonprofit is an agent of its public who are the principals in the same way that governments supposedly represent the people who are the ultimate sovereign and the firm represents its stockholders who are the owners.”); *see also* HOPKINS, *supra* note 3

10. *Id.*

11. 50 LARGEST CORPORATE FOUNDATIONS BY TOTAL GIVING, <http://www.fcpubhub.net/findfunders/topfunders/top50giving.html> (last visited January 22, 2017); BILL AND MELINDA GATES FOUNDATION, <http://www.gatesfoundation.org/> (last visited January 22, 2017); WARREN BUFFET: TRUSTEE PROFILE, <http://www.gatesfoundation.org/Who-We-Are/General-Information/Leadership/Executive-Leadership-Team/Warren-Buffett> (last visited January 22, 2017); INSIDE PHILANTHROPY: MARK ZUCKERBERG, <http://www.insidephilanthropy.com/guide-to-individual-donors/mark-zuckerberg.html> (last visited January 22, 2017).

12. BRYCE, *supra* note 9, at 37.

13. HOPKINS, *supra* note 3, at 14 (“[A] subset of this political philosophical doctrine implies that tax exemption for charitable organizations derives from the concept that they perform functions that, in the absence of these organizations, government would have to perform.”).

table activities.<sup>14</sup> Similarly, many state and local governments forgo sales tax and property tax revenues to incentivize charitable activities.<sup>15</sup> Because nonprofit organizations are agents of social change of both the private and government sectors, every sitting governor, or future governors if such governor fails to act, should follow Governor Malloy's lead by creating a cabinet-level position devoted entirely to the nonprofit sector in that state.<sup>16</sup> All three sectors are needed to create not only a vibrant economy in a state, as evidenced by the impact that the nonprofit sector has on the economy, but also dynamic and lively pluralistic communities. Americans should not metaphorically "bowl alone," as described by Robert Putnam in his book, *Bowling Alone*; rather, they should strive to collectively increase their communities' social capital by investing in charitable activities.<sup>17</sup> By doing so, democracy in America will thrive.

### III. PURPOSE OF THE NONPROFIT CABINET MEMBER

Despite the importance, breadth, and scope of America's nonprofit sector, only the State of Connecticut has a cabinet-level member devoted to the vitality of the nonprofit sector in that state.<sup>18</sup> In most states, the contributions of nonprofit organizations are recognized across a diffused network of state agencies. For example, in Colorado, nonprofit colleges and universities, including the University of Denver and Colorado College, may be under the umbrella of the Department of Higher Education.<sup>19</sup> Nonprofit hospitals and healthcare clinics, including Children's Hospital – Colorado and Clinica Tepeyac, may collaborate with the Department of Public Health & Environment or the Department of Health Care Policy & Financing.<sup>20</sup> Similarly, nonprofit agencies that assist low-income individuals and families, including Urban Peak and Energy Outreach Colorado, may cooperate with or receive funding from either the Department of Labor & Employment or the Colorado Energy Office.<sup>21</sup>

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14. HOPKINS, *supra* note 3, at 14; 26 U.S.C. § 170 (2015).

15. See, e.g., COLO. REV. STAT. § 39-3-101 (2002).

16. See BRYCE, *supra* note 9, at 37.

17. PUTNAM, ROBERT, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

18. Cabinet websites

19. COLORADO DEPARTMENT OF HIGHER EDUCATION, <http://highered.colorado.gov/academics/colleges/privateaccredited.asp> (last visited January 22, 2017).

20. CHILDREN'S HOSPITAL – COLORADO, <https://www.childrenscolorado.org/your-visit/our-hospital/family-services/grievance-procedure/> (last visited January 22, 2017); CLINICA TEPEYAC, <http://clinatepeyac.org/who-we-are/annual-reports.html> (last visited January 22, 2017); see 2015 ANNUAL REPORT ("In August, Clínica Tepeyac achieved a critical benchmark when it obtained its designation as a Federally Qualified Health Center (FQHC). FQHC status is reserved for clinics that have a demonstrated track record of providing comprehensive health services to underserved communities. Moreover, FQHC designation greatly enhances Clínica Tepeyac's prospects for . . . enhanced Medicaid reimbursement . . ."); COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING, <https://www.colorado.gov/hcpf> ("We administer Health First Colorado (Colorado's Medicaid Program), Child Health Plan *Plus*, and other health care programs.").

21. COLORADO DEPARTMENT OF LABOR & EMPLOYMENT, <https://www.colorado.gov/pacific/sites/default/files/Denver%20County%20Youth%20Providers.pdf>

Through this diffused network, which is largely the existing model in each state, nonprofit organizations might receive funding by a state agency to help fulfill their missions and achieve their charitable goals. However, only the State of Connecticut has a cabinet-level position, which was established in 2011 by Governor Malloy, that is aimed at working with the nonprofit sector as a collective whole.<sup>22</sup>

Given the significant growth of the nonprofit sector in America over the past forty years, which now includes more than 2 million registered charitable organizations, this diffused network model should be augmented by a cabinet-level position devoted entirely to the health of the nonprofit sector in that state.<sup>23</sup> Along with having numerous “go-to” agencies as described above, nonprofit organizations should be able to communicate with one state leader, appointed by the governor, who will focus on their collective needs and goals. By creating this position, a governor would be publicly recognizing, on a sustained basis, the important contributions that these nonprofit organizations make by giving the nonprofit sector a direct line of communication to such governor and a seat at the governor’s table. There are common issues that affect all nonprofit organizations, such as (1) charitable giving by individuals, foundations, and corporations, (2) state funding, (3) volunteering, (4) public-private partnerships, and (5) awareness of the work conducted by the nonprofit sector in general. A cabinet-level member focusing on the nonprofit sector would work daily on these issues and related issues affecting all nonprofit agencies.

For example, in Colorado there is an issue with charitable giving by households, and a cabinet-level member focusing on the nonprofit sector could help address this issue. Colorado ranked 30th out of 50 states in charitable giving by households.<sup>24</sup> If Colorado households increased charitable giving from 4.2% of discretionary income to 10.6% of such income, like households in neighboring Utah, then nonprofit agencies would have additional resources to accomplish their charitable goals.<sup>25</sup> In the nonprofit sector, “money equals mission.”<sup>26</sup> Furthermore, according to a report conducted by the Colorado Nonprofit Association, “Colora-

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(last visited January 22, 2017); ENERGY OUTREACH COLORADO, <http://www.energyoutreach.org/about/community-partners> (last visited January 22, 2017).

22. THE CHRONICLE ON PHILANTHROPY: CONNECTICUT NONPROFIT LIAISON MAKES ‘SIGNIFICANT IMPACT’: <https://www.philanthropy.com/article/Connecticut-Nonprofit-Liaison/227281> (last visited January 22, 2017).

23. HOPKINS, *supra* note 3, at 25 (“[T]he number of exempt organizations known to and interacting with the IRS is over 2 million.”); *see also id.* at 23 (“Charitable giving in the United States in the year the first edition of this book was published—1975—was \$28.56 billion, whereas for 2014 the amount of charitable giving was an estimated \$358.38 billion.”).

24. CHRONICLE OF PHILANTHROPY: HOW STATES STACK UP IN GENEROSITY, <https://www.philanthropy.com/article/Sharing-the-Wealth-How-the/156245> (“A typical Colorado household gave 4.2 percent of its discretionary income to charity.”) (last visited January 22, 2017).

25. *Id.*

26. STRATEGIES FOR SUCCESS: SMART FUNDRAISING, [http://www.hartsookcompanies.com/strategies/pdf/16\\_0120.pdf](http://www.hartsookcompanies.com/strategies/pdf/16_0120.pdf) (last visited January 22, 2017).

doans believe that ‘as state government budgets shrink, charities are needed to provide more services.’”<sup>27</sup> Just as the Department of Transportation focuses on roads, highways, and bridges in Colorado to create the infrastructure that is necessary for this state and its economy to thrive, the new “Department of Nonprofits” would focus on charitable giving, volunteering, and policy initiatives that help Colorado, its economy, and its population to thrive. Nonprofit leaders are on the front lines of some of America’s most pressing issues; thus, they also deserve a seat at the governor’s table.<sup>28</sup>

#### IV. CONNECTICUT CASE STUDY

State governments should do more to connect with the nonprofit organizations that impact their communities and, in certain instances, help change the lives of the people they serve. In each state, a nonprofit organization is generally required to register with that state if it conducts business or raises funds in that state.<sup>29</sup> In Colorado, for example, nonprofit corporations are legal entities derived from state law.<sup>30</sup> Even if a nonprofit organization is not incorporated in Colorado under the Colorado Revised Nonprofit Corporation Act, it is generally required to register with the Colorado Secretary of State by filing a “Statement of Foreign Entity Authority” if it conducts business in Colorado.<sup>31</sup> Additionally, if the leaders of a nonprofit organization believe that it will raise more than a certain amount of funds from the general public, \$25,000 for example, then such nonprofit organization is also generally required to register with that state under the applicable charitable solicitations law.<sup>32</sup> However, beyond registration and maintenance of that registration, there is little ongoing, meaningful contact between most state governments and their nonprofit organizations unless a state agency provides funding to a certain nonprofit organization.

To close this loop, both national and local nonprofit trade associations—such as Philanthropy Roundtable, Independent Sector, Council on Foundations, and Colorado Nonprofit Association, each of which are 501(c)(3) tax-exempt organizations—work with the federal government and state governments to advance initiatives that further the interests of

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27. COLORADO NONPROFIT ASSOCIATION: UNDERSTANDING GIVING BELIEFS & BEHAVIORS OF COLORADO’S DONORS: A REPORT OF THE COLORADO GENEROSITY PROJECT 8, <https://www.coloradononprofits.org/sites/default/files/attachments/understandinggiving.pdf> (last visited January 22, 2017).

28. *See generally*, GARY BASS, ET. AL., SEEN BUT NOT HEARD: STRENGTHENING NONPROFIT ADVOCACY (2007).

29. COLORADO SECRETARY OF STATE: STATEMENT OF FOREIGN AUTHORITY, <https://www.sos.state.co.us/pubs/business/FAQs/foreign.html> (last visited January 22, 2017).

30. COLO. REV. STAT. § 7-121-101 et. seq. (1998).

31. COLO. REV. STAT. § 7-90-803 (2006); COLO. REV. STAT. 6-16-101 et. seq.

32. COLO. REV. STAT. § 6-16-104 (2014).

the nonprofit sector.<sup>33</sup> For instance, the Council on Foundations annually holds its “Foundations on the Hill” conference. The purpose of the conference is to “bring foundation leaders to [Washington] D.C. for meetings with Congress about key issues of importance to foundations and philanthropy.”<sup>34</sup> Without question, the work of these trade associations is crucial to the vitality of the nonprofit sector in America; however, governors should not only be receptive to hearing the initiatives of these organizations, they should also be proactive, like Governor Malloy, about engaging the nonprofit sector on a recurring basis. Each governor should have a bold vision for his or her state, and the nonprofit sector should be utilized as agents of social change to help such governor achieve this vision.<sup>35</sup>

Given the significant growth of the nonprofit sector in America over the past forty years, governors should follow Connecticut’s lead by electing to formalize the relationship between the government and nonprofit sectors through the creation of a cabinet-level position devoted entirely to the nonprofit sector. In fact, the state leader who is appointed to this cabinet-level position by a particular governor will not only work directly with the foregoing national and local trade associations, but also the leaders of the state’s nonprofit sector in general. If this position is implemented, a governor will likely engage more deeply with the boards and senior staff of private foundations, public charities, and other exempt organizations, such as 501(c)(4) social welfare agencies and 501(c)(6) business leagues.<sup>36</sup> In most states, the relationship between the government and nonprofit sectors has largely been informal, and now is the time, given the size and impact of the nonprofit sector, for governors to formalize this relationship. Based on recent data gathered by Indiana University, charitable giving will likely continue to increase; thus, governors should follow Governor Malloy’s lead by choosing to capitalize on this trend.<sup>37</sup>

In 2011, Governor Malloy chose to formalize the relationship between the State of Connecticut and the various nonprofit organizations located in that state. In that year, Governor Malloy launched two initiatives to achieve this goal. First, he created the “Cabinet on Nonprofit Health and Human Services” to:

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33. PHILANTHROPY ROUNDTABLE, <http://www.philanthropyroundtable.org/> (last visited January 22, 2017); COUNCIL ON FOUNDATIONS, <http://www.cof.org/> (last visited January 22, 2017); COLORADO NONPROFIT ASSOCIATION, <https://www.coloradononprofits.org/> (last visited January 22, 2017); INDEPENDENT SECTOR, <https://www.independentsector.org/> (last visited February 21, 2017).

34. FOUNDATIONS ON THE HILL, <http://www.foundationsonthehill.org/> (last visited January 22, 2017).

35. BRYCE, *supra* note 9, at 37.

36. 26 U.S.C. § 501(c)(4) (2015); 26 U.S.C. § 501(c)(6) (2015).

37. GIVING USA 2016 INFOGRAPHIC, <https://givingusa.org/see-the-numbers-giving-usa-2016-infographic/> (last visited January 22, 2017).

Analyze existing public-private partnerships with respect to the state's health and human delivery systems and to make recommendations to enhance the effectiveness of those systems in regard to client outcomes, cost-effectiveness, accountability, and sustainability.<sup>38</sup>

Both state agency representatives and nonprofit agency representatives serve on this cabinet. Thus, just as Connecticut is addressing its population's healthcare needs through this cabinet, states could address a myriad of other issues, such as homelessness, workforce development, or criminal justice reform, through similar cabinets. Secondly, Governor Malloy in 2011 also created the "Nonprofit Liaison" position, which is a cabinet-level position:

The partnership of state agencies and private providers has always been, and continues to be, integral for the delivery of services to many of our residents who require assistance in their lives. In recognition of this important relationship, and in support of the state's safety net, Governor Malloy established the position of Nonprofit Liaison. The Governor's Nonprofit Liaison interacts and communicates directly with the nonprofit community-based health and human services providers and advises the Governor with regard to policy reforms and other measures that will benefit this partnership. The Nonprofit Liaison coordinates efforts to implement these policy reforms.<sup>39</sup>

Similar to Connecticut's nonprofit liaison, who better to coordinate a state's public-private partnerships than such state's new nonprofit cabinet member? Like other cabinet members, this leader will constantly advise the governor on issues that are critical to the state; however, the focus of this leader will be how the three sectors can work together to address these issues. Connecticut is on the right path with the creation of the nonprofit liaison, and Governor Malloy correctly placed this position at the cabinet level. This cabinet-level designation gives the nonprofit sector the appropriate credit that it deserves for helping America's communities be the best that they can be.

## V. CONCLUSION

Alexis de Tocqueville's observations about the role of associations in America's society remain true. Whether Americans realize it or not, charitable organizations have a profound impact on their communities, on their states, and on their nation. Accordingly, every governor should follow Governor Malloy's lead by creating a cabinet-level position devoted entirely to the health and vibrancy of the nonprofit sector in his or

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38. CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, <http://www.ct.gov/opm/cwp/view.asp?Q=490946> (last visited January 22, 2017).

39. STATE OF CONNECTICUT: GOVERNOR'S NONPROFIT LIAISON, [http://portal.stag.ct.gov/Departments\\_and\\_Agencies/Office\\_of\\_the\\_Governor/Learn\\_More/Governor\\_s\\_Nonprofit\\_Liaison/](http://portal.stag.ct.gov/Departments_and_Agencies/Office_of_the_Governor/Learn_More/Governor_s_Nonprofit_Liaison/) (last visited January 22, 2017).

her state. Furthermore, since funding for new initiatives at the state level is seemingly always a challenge, governors should reach out to the 501(c)(3) tax-exempt organizations located in his or her state with the hope that these philanthropic organizations will provide some or all of the funding required to implement this position. In Rhode Island, for example, Governor Raimondo created the state's Chief Innovation Officer position based on private funding sources, including support from the Rhode Island College Foundation.<sup>40</sup>

Certainly, an easy way for any governor to test the model created by Governor Malloy is to simply ask the leaders of charitable organizations located in his or her state (1) whether a nonprofit cabinet member is a good idea and (2) whether they would be interested in funding such a position. If these inquiries yield affirmative feedback, and if this position is ultimately implemented, the governor will have a direct line of communication to the numerous nonprofit organizations that have a profound impact on his or her state, the state's population will likely benefit from policy initiatives that are enacted from the wisdom of various nonprofit leaders who are on the front lines of some of America's most pressing issues, and the nonprofit sector will earn a seat at the governor's table. Because of the significant contributions and impact of America's nonprofit sector, it deserves to be represented in a governor's cabinet.

Finally, if this position is implemented at the state level and proves to be valuable to numerous states, then the President of the United States may elect to implement a similar position at the federal level. At that point, Alexis de Tocqueville's observations of America will be further cemented—America's greatness stems, in large part, from its population's affinity for associations.

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40. Interview with the Hon. Gina Raimondo, Governor of Rhode Island, conducted by the inaugural class of the Colorado Governors Fellowship Program (October 13, 2016) (discussing Rhode Island's need for a Chief Innovation Officer) (notes on file with the author).