

DARK ORGS

*Brian L. Frye**

TABLE OF CONTENTS

I. Introduction	115
II. A Brief History of Nonprofit Organizations	118
III. The Law of Nonprofit Organizations	120
IV. Unincorporated Nonprofit Associations	122
V. The Uniform Unincorporated Nonprofit Association Acts of 1996 and 2008	123
VI. Dark Organizations	126
VII. FASORP's Lawsuit Against Northwestern University	126
<i>A. FASORP's Lack of Standing</i>	127
<i>B. FASORP's Complaint Fails to State a Claim</i>	129
<i>C. FASORP's Other Frivolous Complaints</i>	130
VIII. Reforming the Law of Unincorporated Nonprofit Associations.....	133
<i>A. The Formation of Unincorporated Nonprofit Associations</i>	134
<i>B. Unincorporated Nonprofit Associations as Litigants</i>	135
IX. Conclusion	137
Appendix.....	138

I. INTRODUCTION

*If the broad light of day could be let in upon men's actions, it
would purify them as the sun disinfects.¹*

For better or worse, the law of nonprofit organizations is largely agnostic about their purpose. Almost any noncriminal purpose other than generating profits can be a nonprofit purpose.² In fact, the law

* Spears-Gilbert Professor of Law, University of Kentucky J. David Rosenberg College of Law. Thanks to Maybell Romero, Jessica Pishko, Sean Marotta, and Jerry Edwards for helpful comments.

¹ ALPHEUS THOMAS MASON, *BRANDEIS: A FREE MAN'S LIFE* 94–95 (1946) (quoting a letter from future U.S. Supreme Court Justice Louis Brandeis to Alice Goldmark).

² See, e.g., *What is a "Nonprofit"?*, NAT'L COUNCIL OF NONPROFITS, <https://www.councilofnonprofits.org/what-nonprofit> [<https://perma.cc/QG6J-8F9Q>].

doesn't really care what a nonprofit does, so long as it's legal and the organization isn't just a business. Or rather, a nonprofit is just an organization motivated by ideology, rather than profit.

In theory, nonprofits are supposed to increase public welfare by helping people solve market failures and government failures.³ In practice, it's hard to say whether and when nonprofits actually increase public welfare, but at least they help people try to increase public welfare, which may also be valuable. After all, innovation is the engine of progress, and nonprofits are a social technology that promotes innovation.⁴ Successful nonprofits increase social welfare, and unsuccessful nonprofits show us what doesn't work. Let a thousand nonprofits bloom and see which ones thrive.

But nonprofits can be abused. It's no secret that some people use nonprofits to hide tax evasion, fraud, bribes, and other illicit activities.⁵ While abusing a nonprofit is illegal and often criminal, it's also far more common than many people in the nonprofit sector care to admit.⁶ Many abusers are caught, but many more get away with it.⁷

This Article focuses on the abuse of unincorporated nonprofit associations to form *dark organizations* and file anonymous lawsuits. Unincorporated nonprofit associations are a lesser-known form of nonprofit organization, typically used by grassroots charities and community organizations.⁸ But some people are misusing a peculiar feature of the law of unincorporated nonprofit associations to sue on behalf of a sham organization while concealing their own identity.⁹

For example, on July 2, 2024, a Texas unincorporated nonprofit association named Faculty, Alumni, and Students Opposed to Racial Preferences, or FASORP, sued Northwestern University for

³ See JOHN D. COLOMBO & MARK A. HALL, THE CHARITABLE TAX EXEMPTION 109–13 (1995) (describing the economic subsidy theory of the law of nonprofit and charitable organizations); see also Brian L. Frye, *Solving Charity Failures*, 93 OR. L. REV. 155, 162 (2014).

⁴ See, e.g., Brian L. Frye, *Social Technology & the Origins of Popular Philanthropy*, 32 GA. STATE U. L. REV. 413, 414 (2016).

⁵ See, e.g., Cassandra M. Chapman, Matthew J. Hornsey, Nicole Gillespie & Steve Lockey, *Nonprofit Scandals: A Systematic Review and Conceptual Framework*, 52 NONPROFIT & VOLUNTARY SECTOR Q. 278, 278–79, 282 (2023).

⁶ See *id.*

⁷ See *id.*

⁸ See, e.g., FRANCES LEOS MARTINEZ, WORKING WITH GRASSROOTS GROUPS: LEGAL GUIDE TO FORMING A NONPROFIT ASSOCIATION IN TEXAS 2 (2018), <https://law.utexas.edu/wp-content/uploads/sites/11/2019/09/2019-ECDC-Working-with-Grassroots-Groups.pdf> [<https://perma.cc/MAW7-4EKA>]; see also discussion *infra* Part IV.

⁹ See discussion *infra* Part VI.

discriminating against white men.¹⁰ FASORP sued on behalf of three anonymous members, claiming that they were harmed by Northwestern Pritzker School of Law’s supposed policy of discriminating against white men in faculty hiring.¹¹ But the real purpose of FASORP’s complaint was to disparage several of Northwestern Law’s Black faculty members.¹²

Of course, the First Amendment provides that FASORP and its members have a right to their opinions and a right to express them, no matter how petty and hateful. If they want to be racists, it’s their prerogative. After all, as white men who are “neither homosexual nor transgender,” they can generally do what they want to do and say what they want to say.¹³ But one thing they shouldn’t be allowed to do is file anonymous complaints.

Unfortunately, Texas law at least appears to allow unincorporated nonprofit associations to bring constitutional claims on behalf of their anonymous members.¹⁴ Under Texas law, an unincorporated nonprofit organization is a “legal entity” for at least some purposes, and has standing to sue on behalf of its members.¹⁵ In other words, it looks like Texas law allows a group of people to create an independent legal entity by simply forming a private agreement to pursue a nonprofit purpose, and then use that entity to file anonymous lawsuits.¹⁶ Which is exactly what FASORP did.¹⁷

There’s nothing inherently wrong with unincorporated nonprofit associations. In fact, they’re an important part of nonprofit law, providing a default business form when nonprofit organizations don’t incorporate.¹⁸ But FASORP’s frivolous lawsuit illuminates two

¹⁰ Complaint ¶ 3, Fac., Alumni & Students Opposed to Racial Preferences v. Northwestern Univ., No. 24-cv-05558 (N.D. Ill. July 2, 2024), ECF No. 1 [hereinafter Complaint, *Northwestern Univ.*]. While FASORP’s complaint in this action doesn’t actually identify its state of organization, FASORP has filed other lawsuits in which it identified itself as a Texas unincorporated nonprofit association. *E.g.*, Complaint ¶ 3, Fac., Alumni & Students Opposed to Racial Preferences v. Harvard L. Rev. Ass’n, No. 18-12105, 2019 WL 3754023 (D. Mass. Aug. 8, 2019), 2018 WL 5148474 [hereinafter Complaint, *Harvard L. Rev.*]; Complaint ¶ 3, Fac., Alumni & Students Opposed to Racial Preferences v. N.Y. Univ. L. Rev., No. 18 Civ. 9184, 2020 WL 1529311 (S.D.N.Y. Mar. 31, 2020), 2018 WL 4899065 [hereinafter Complaint, *N.Y. Univ. L. Rev.*].

¹¹ Complaint, *Northwestern Univ.*, *supra* note 10, ¶¶ 60–65.

¹² *See id.* ¶¶ 23–24, 26–30, 34–36, 40–42.

¹³ *See id.* ¶¶ 15, 60, 62, 64.

¹⁴ *See* TEX. BUS. ORGS CODE ANN. § 252.006–.007 (West 2025).

¹⁵ *Id.*

¹⁶ *See id.* §§ 252.001, .007.

¹⁷ *See* complaints cited *supra* note 10.

¹⁸ *See* Elizabeth S. Miller, *Doctoring the Law of Nonprofit Associations with a Band-Aid or a Body Cast: A Look at the 1996 and 2008 Uniform Unincorporated Nonprofit Association Acts*, 38 WM. MITCHELL L. REV. 852, 855–56 (2012).

problems in the law of unincorporated nonprofit associations. First, state law shouldn't allow people to create an independent legal entity protected by limited liability without providing the state any information about the organization or even notifying the state of its existence. Second, state law shouldn't allow—or rather be wrongly interpreted to allow—unincorporated nonprofit associations to bring claims on behalf of their anonymous members. States should keep those principles in mind if and when they choose to adopt unincorporated nonprofit association statutes, and courts should keep them in mind when interpreting state unincorporated nonprofit associations law. Unincorporated nonprofit associations are properly used to help small grassroots charities and other nonprofit organizations do valuable work in their communities. States shouldn't let them be abused by ideologues to form dark organizations for the purpose of filing abusive litigation.

II. A BRIEF HISTORY OF NONPROFIT ORGANIZATIONS

Nonprofit organizations are intrinsic to American culture. They long predate the creation of the United States and have always played an important role in American society.¹⁹ As Alexis de Tocqueville famously observed in 1840, Americans were wild for organizations of all kinds, especially nonprofit organizations:

Americans of all ages, all conditions, and all dispositions, constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds,—religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; they found in this manner hospitals, prisons, and schools. If it be proposed to inculcate some truth, or to foster some feeling, by the encouragement of a great example, they form a society. Wherever, at the head of some new undertaking, you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.²⁰

¹⁹ David C. Hammack, *Private Organizations, Public Purposes: Nonprofits and Their Archives*, 76 J. AM. HIST 181, 182 (1989).

²⁰ 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 129–30 (Francis Bowen ed., Henry Reeve trans., Sever and Francis 1862) (1840).

Plus ça change. Two hundred years later, Americans continue to form innumerable voluntary associations dedicated to an incalculable variety of purposes.²¹ Of course, now we tend to call them charities and nonprofits. But the substance remains essentially the same. When the government can't or won't solve a social problem, we create charities and nonprofits in order to help.²² Sometimes they succeed and sometimes they don't. Solving social problems is hard.

What's more, people have always disagreed about how to solve social problems, what a solution would look like, and even whether a social problem exists in the first place. One person's problem is another's preference. Many charities have unpopular missions, and many nonprofits have distasteful purposes. It can't be helped; unpopular and distasteful people are also entitled to their preferences and organizations. Some people want more civil rights and others want fewer. But who you find distasteful often depends on the civil right they want to claim and why they want to assert it.

Of course, the nonprofit sector has always been controversial, because it's inherently countermajoritarian. Democratic theory holds that the government should solve social problems, because it is accountable to the public.²³ But the nonprofit sector is intended to solve social problems without being accountable to the public. What gives? Why should the nonprofit sector exist, and why should the government subsidize it? Good question. Perhaps it's enough to observe that not everyone always agrees with the government's approach to identifying and solving social problems, and the nonprofit sector enables private actors to take up the slack. What's more, charities and nonprofits are often better at identifying and solving social problems than the government, because they have both more information and different incentives.²⁴ In any case, the nonprofit sector is here to stay, like it or not.

²¹ See LEWIS FAULK, MIRAE KIM, TERESA DERRICK-MILLS, ELIZABETH BORIS, LAURA TOMASKO, NORA HAKIZIMANA, TIANYU CHEN, MINJUNG KIM & LAYLA NATH, *NONPROFIT TRENDS AND IMPACTS 2021*, at 17 (2021), https://www.urban.org/sites/default/files/publication/104889/nonprofit-trends-and-impacts-2021_2.pdf [perma.cc/K9W8-MGF4].

²² See, e.g., *Charitable Purposes*, IRS (Dec. 27, 2024), <https://www.irs.gov/charities-non-profits/charitable-purposes> [perma.cc/4QUC-96RJ].

²³ See *Democracy*, STANFORD ENCYC. PHIL. (June 18, 2024), <https://plato.stanford.edu/entries/democracy/> [perma.cc/77MU-A5HX].

²⁴ Jack Salmon & Patterson Tanner, *Growth of the Nonprofit Sector: More Charities, Better Solutions*, PHILANTHROPY ROUNDTABLE (Sept. 30, 2024), <https://www.philanthropyroundtable.org/resource/growth-of-the-nonprofit-sector-more-charities-better-solutions/> [perma.cc/G6PZ-B392].

III. THE LAW OF NONPROFIT ORGANIZATIONS

Like so many other bodies of law, the law of nonprofit organizations is a hybrid of state and federal law. State law provides for the formation and operation of most nonprofit organizations, and federal law provides for tax exemption and deduction, as well as many other regulations affecting nonprofit organizations.²⁵ Nonprofit organizations can take many different forms, depending on the jurisdiction in which they are created.²⁶ However, most states recognize at least four potential kinds of nonprofit organizations: nonprofit corporations, charitable trusts, limited liability companies (LLCs), and unincorporated nonprofit associations.²⁷ While a nonprofit organization can take any of those forms, the form it takes may affect how it is regulated.²⁸

There are many different kinds of nonprofit organizations.²⁹ However, charities are probably the most familiar kind of nonprofit. While every charity is a nonprofit, not every nonprofit is a charity.³⁰ In fact, charities are only one kind of nonprofit, and every other kind of nonprofit is noncharitable.³¹ Federal law defines a charity as a nonprofit organization that is eligible for tax exemption under section 501(c)(3) of the federal tax code.³² The other kinds of nonprofit organizations recognized under section 501(c) are noncharitable nonprofits or *mutual benefit* organizations.³³ The defining difference between charities and mutual benefit nonprofits is that mutual benefit nonprofits serve only their own members via their mission, while charities serve the public.³⁴ Furthermore, charities cannot have

²⁵ See, e.g., *Non-Profit Organizations Research Guide: Primary Law*, GEORGETOWN UNIV. L. LIBR., <https://guides.ll.georgetown.edu/nonprofits> [perma.cc/LN6Q-Y8WR].

²⁶ Cassady V. Brewer, Lisa A. Runquist & Elizabeth Carrott Minnigh, *Nonprofit LLCs*, AM. BAR ASS'N BUS. L. TODAY (Mar. 23, 2017), https://www.americanbar.org/groups/business_law/resources/business-law-today/2017-march/nonprofit-llcs/ [perma.cc/NM5E-P7R5].

²⁷ See *id.*

²⁸ See *id.*

²⁹ See 26 U.S.C. § 501(c). For example, the federal tax code recognizes at least twenty-nine different kinds of nonprofit organizations, and doesn't purport to be an exclusive list. *Id.*

³⁰ E.g., *Foundation vs. Charity vs. Nonprofit*, UNIV. SAN DIEGO: CONTINUING EDUC. CORNER, <https://pce.sandiego.edu/foundation-vs-nonprofit-vs-charity/> [perma.cc/MS23-PJ7B].

³¹ See *Exempt Organizations*, IRS, <https://www.irs.gov/charities-non-profits/exempt-organization-types> [perma.cc/2XFC-AWDS].

³² See *Exemption Requirements – 501(c)(3) Organizations*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations> [https://perma.cc/LG5B-CMBN]; 26 U.S.C. § 501(c)(3).

³³ See, e.g., *How Mutual Benefit Corporations Differ from Other Nonprofits*, CHURCH L. CTR. (June 29, 2021), <https://www.churchlawcenter.com/nonprofit/how-mutual-benefit-corporations-differ-from-other-nonprofits/> [https://perma.cc/7LNA-EDLM]; 26 U.S.C. § 501(c).

³⁴ See *How Mutual Benefit Corporations Differ from Other Nonprofits*, *supra* note 33.

owners and cannot distribute their assets to a private party.³⁵ Accordingly, when a charity is dissolved, its assets must pass to another charity, its state of incorporation, or the federal government.³⁶ By contrast, mutual benefit nonprofits are generally owned by their members and can distribute their assets to private parties, with the consent of their members.³⁷

Many nonprofits are nonprofit corporations formed under state law. Every state has adopted a nonprofit corporations law, typically allowing any three individuals to form a nonprofit corporation by filing articles of incorporation with the state's Secretary of State.³⁸ In general, state nonprofit corporations laws are quite similar from state to state, although there can be considerable variation from state to state.³⁹ While many nonprofits are incorporated under Delaware law, it is much less common for nonprofits to be incorporated under Delaware law than for-profit businesses, and nonprofits often incorporate in the state of their primary place of business.⁴⁰

Some charities are formed as charitable trusts, although it is less common than it was in the past. Historically, the primary advantage of charitable trusts was that they didn't require incorporation, which was considerably more costly and burdensome than it is today. In addition, the trustees of a charitable trust are at least arguably bound by a stronger fiduciary duty of obedience to the charitable purposes of the trust than the fiduciary duty of obedience that binds the directors of a charitable corporation to its charitable purposes.⁴¹ Specifically, while the directors of a charitable corporation can generally amend its charitable purpose by majority vote, with the consent of the state attorney general, the trustees of a charitable trust must rely on the equitable doctrines of deviation and *cy pres* in order to modify or amend its charitable purpose.⁴²

³⁵ 26 U.S.C. § 501(c)(3) (providing that a charity is an organization “no part of the net earnings of which inures to the benefit of any private shareholder or individual”).

³⁶ *Charity – Required Provisions for Organizing Documents*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/charity-required-provisions-for-organizing-documents> [<https://perma.cc/5H2F-F5R5>].

³⁷ *See How Mutual Benefit Corporations Differ from Other Nonprofits*, *supra* note 33.

³⁸ *See Nonprofit Governance by State*, HARBOR COMPLIANCE, <https://www.harborcompliance.com/nonprofit-governance-by-state> [<https://perma.cc/RVM7-HX4J>].

³⁹ *See id.*

⁴⁰ *See* Peter Molk, *Where Nonprofits Incorporate and Why It Matters*, 108 IOWA L. REV. 1781, 1787 (2023).

⁴¹ *See, e.g.,* A.C.G., *The Fiduciary Duties of Loyalty and Care Associated with the Directors and Trustees of Charitable Organizations*, 64 VA. L. REV. 449, 450–54 (1976).

⁴² *See, e.g.,* David Kamer, *Evolve or Dissolve—How Charitable Organizations Address Change*, 42 NAEPC J. EST. & TAX PLAN., July 2023, <https://www.naepcjournal.org/issue/42/how-charitable-organizations-address-change/> [<https://perma.cc/35US-EWDB>].

In recent years, some nonprofits have formed as limited liability companies, although it is still relatively uncommon.⁴³ Charities generally cannot form as LLCs, because state laws allow single-member LLCs and allow LLCs to distribute their assets.⁴⁴ But in theory, a state could adopt a nonprofit LLC law incorporating the nondistribution constraint and the other requirements for charitable status under section 501(c)(3). In fact, nonprofit LLC laws compatible with section 501(c)(3) are probably inevitable, and the real surprise is only that no state has yet adopted one.

IV. UNINCORPORATED NONPROFIT ASSOCIATIONS

But there is a fourth organizational form used by both charities and other kinds of nonprofits that is often overlooked: the unincorporated nonprofit association. Essentially, an unincorporated nonprofit association is the nonprofit equivalent of a business partnership.⁴⁵ Unincorporated nonprofit associations have existed since time immemorial. In fact, they are the original form of nonprofit organization, and are usually so anodyne that even their own members often don't realize they exist.⁴⁶ Almost all of the associations described by de Tocqueville were effectively unincorporated nonprofit associations, because they were groups of individuals pursuing a nonprofit purpose, and incorporation was rare and largely unavailable to civic organizations in the nineteenth century.⁴⁷ Forming an unincorporated nonprofit association is easy. If a group of people agree to collectively pursue a nonprofit purpose, they have formed an unincorporated nonprofit association, whether they realize it or not.⁴⁸

Historically, unincorporated nonprofit associations were simply treated as partnerships with a nonprofit or charitable purpose.⁴⁹ And that is still true in the majority of states.⁵⁰ However, some states have adopted unincorporated nonprofit association statutes that enable people to form a legal entity with limited liability that can sue on behalf of its members without filing anything or disclosing any information about the organization to the state.⁵¹ In other words, you

⁴³ See Brewer et al., *supra* note 26.

⁴⁴ See UNIF. LTD. LIAB. CO. ACT §§ 201, 404 (UNIF. L. COMM'N 2013).

⁴⁵ Brewer et al., *supra* note 26.

⁴⁶ See *id.*

⁴⁷ See DE TOCQUEVILLE, *supra* note 20, at 129–30.

⁴⁸ See Brewer et al., *supra* note 26.

⁴⁹ See Miller, *supra* note 18, at 856.

⁵⁰ See *infra* app.

⁵¹ See *id.*; UNIF. UNINCORPORATED NONPROFIT ASS'N ACT § 8 (UNIF. L. COMM'N 2011).

can form what amounts to a secret corporation simply by forming an oral agreement with a group of people. Then your organization can sue people on behalf of its members, without disclosing any information about itself or its allegedly injured members.

That’s a hell of a trick. Thankfully, it’s usually a dud, because courts tend to deny standing, unless the organization sufficiently identifies the injured members it’s representing.⁵² But there’s no guarantee that courts will continue to deny standing, and some may find standing exists if the organization provides sufficient information to substantiate the alleged injury, without actually identifying the injured member.

It’s a problem. At the very least, forming an unincorporated nonprofit association that is an independent legal entity under state law should require disclosing basic information to the state: the address of the organization, the identities of its forming members or officers, and the identity of its agent for service of process. And if an unincorporated nonprofit association wants to sue on behalf of its members, it should be required to identify the members it is representing, or at least a representative named plaintiff. Nonprofit law shouldn’t enable people to file anonymous lawsuits, especially because they can use that power to harass and defame.

V. THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACTS OF 1996 AND 2008

The Uniform Law Commission (ULC) has played a central role in the gradual formalization of state unincorporated nonprofit associations law by promulgating the Uniform Unincorporated Nonprofit Association Acts of 1996 and 2008.⁵³ Until quite recently, unincorporated nonprofit associations were governed almost entirely by state common law.⁵⁴ Few states had adopted statutes governing unincorporated nonprofit associations, and those few statutes that existed were fragmentary and underdeveloped.⁵⁵

⁵² See, e.g., *Warth v. Seldin*, 422 U.S. 490, 515–16 (1975); *El Paso Parents v. El Paso Ind. Sch. Dist.*, No. 21-CV-298, 2022 WL 22871675, at *3 (W.D. Tex. June 3, 2022).

⁵³ Miller, *supra* note 18, at 853–55 (2012). The Uniform Law Commission (ULC), or National Conference of Commissioners on Uniform State Laws, was formed in 1892. See *About Us*, UNIF. L. COMM’N, <https://www.uniformlaws.org/aboutulc/overview> [<https://perma.cc/C3DS-7FBT>]. Coincidentally, the Uniform Law Commission is itself organized as an unincorporated nonprofit association. Miller, *supra* note 18, at 855 n.16.

⁵⁴ See Miller, *supra* note 18, at 853.

⁵⁵ See *id.* at 853–54.

In 1952, the American Bar Association promulgated an influential Model Nonprofit Corporations Act.⁵⁶ The ABA Model Act was eventually adopted in whole or in substantial part by most states and facilitated the growth of the nonprofit sector.⁵⁷ But the ABA did not address unincorporated nonprofit associations, which were gradually marginalized by the new nonprofit corporation form. By the late 20th century, almost all national charities and nonprofits were organized as nonprofit corporations, and the unincorporated nonprofit association form was used almost exclusively by small local grassroots organizations.⁵⁸

As the law of nonprofit corporations flourished, the law of unincorporated nonprofit associations stagnated.⁵⁹ It was a big problem for grassroots charities and nonprofits, because they needed the legal rights available to nonprofit corporations, but did not have the resources to incorporate. So, in 1996, the ULC promulgated a Uniform Unincorporated Nonprofit Association Act intended to address some of those needs.⁶⁰ The 1996 Uniform Act gave unincorporated nonprofit associations some limited liability protection, the ability to own property, and the ability to litigate, but it didn't make them independent legal entities in all respects.⁶¹

Specifically, section 6 of the 1996 Uniform Act provides that unincorporated nonprofit associations are independent legal entities protected by limited liability for the purpose of contract and tort claims.⁶² And section 7 provides that unincorporated nonprofit associations can assert certain claims on behalf of their members:

A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit

⁵⁶ MODEL NONPROFIT CORP. ACT (AM. BAR ASS'N NONPROFIT ORG. COMM. 1952). In 2016, the ABA adopted the fourth edition of its model nonprofit corporation act. *See* MODEL NONPROFIT CORP. ACT, foreword to the fourth ed. (AM. BAR ASS'N NONPROFIT ORG. COMM. 2022).

⁵⁷ *See* Willard L. Boyd III, *The New Model Nonprofit Corporation Act*, BUS. L. TODAY (Oct. 16, 2023), <https://businesslawtoday.org/2023/10/the-new-model-nonprofit-corporation-act/> [<https://perma.cc/L8QV-WD2H>].

⁵⁸ *See* Miller, *supra* note 18, at 855–56.

⁵⁹ *See id.* at 856–57.

⁶⁰ *See* UNIF. UNINCORPORATED NONPROFIT ASS'N ACT, prefatory note (UNIF. L. COMM'N 1996) (“The Uniform Unincorporated Nonprofit Association Act (UUNAA) reforms the common law in three basic and important areas. It was drafted with the small informal associations in mind. These informal organizations are likely to have no legal advice and so fail to consider legal and organization questions, including whether to incorporate. The Act provides better answers than the common law for a limited number of legal problems. Its answers are more in accord with the expectations of those participating in the work of the unincorporated nonprofit association than the common law.”).

⁶¹ *See id.*

⁶² *Id.* § 6(a) (“A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.”).

association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.⁶³

The drafters explained that this subsection was intended to give an unincorporated nonprofit association “standing to represent the interests of its members” in a judicial proceeding under the federal standing rule.⁶⁴

The 1996 Uniform Act was a qualified success—eventually adopted by twelve states—so in 2005, the ULC decided to revise and expand it to give unincorporated nonprofit associations more and broader rights.⁶⁵ The result was the Uniform Unincorporated Nonprofit Association Act of 2008, which made unincorporated nonprofit associations independent legal entities fully protected by limited liability, and gave them all of the legal rights associated with independent legal entities.⁶⁶ In other words, under the 2008 Uniform Act, unincorporated nonprofit organizations are essentially identical to nonprofit corporations, except they don’t have to file a certificate of incorporation. In fact, they don’t have to file anything at all.⁶⁷ Furthermore, rather than referencing the federal standing rule, the 2008 Uniform Act instead provides that an association “may sue or be sued in its own name.”⁶⁸

The 2008 Uniform Act was moderately well-received and has been adopted in whole or in substantial part by seven states and the District of Columbia.⁶⁹ So, as it stands, seventeen states and the

⁶³ *Id.* § 7(b).

⁶⁴ *Id.* § 7 cmt. 3 (citing *Hunt v. Wa. Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

⁶⁵ See UNINCORPORATED NONPROFIT ASS’N ACT, prefatory note (UNIF. L. COMM’N 2011). The twelve states that adopted the 1996 Uniform Act in whole or in substantial part are: Alabama, Arkansas, Colorado, Delaware, Hawaii, Idaho, Louisiana, North Carolina, Texas, West Virginia, Wisconsin, and Wyoming. The District of Columbia also adopted the 1996 Uniform Act. See *infra* app.

⁶⁶ See UNINCORPORATED NONPROFIT ASS’N ACT, prefatory note (UNIF. L. COMM’N 2011). The 2008 Uniform Act also included an assortment of provisions addressing the governance of unincorporated nonprofit organizations. See *id.* §§ 15–31.

⁶⁷ The 2008 Uniform Act defines an “unincorporated nonprofit association” as “an unincorporated organization consisting of [two] or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes.” See *id.* § 2(11). In other words, the agreement forms the organization. Under the 2008 Uniform Act, unincorporated nonprofit associations may file a statement of authority as to real property and designate an agent for service of process, among other things, but aren’t required to do so. See *id.* §§ 7(b), 11.

⁶⁸ *Id.* § 9.

⁶⁹ The seven states that have adopted the 2008 Uniform Act in whole or substantial part are: Arkansas, Idaho, Iowa, Kentucky, Nevada, Ohio, and Pennsylvania. The District of Columbia adopted the 2008 Uniform Act after repealing the 1996 Uniform Act. See *infra* app.

District of Columbia have adopted in substantial part either the 1996 Uniform Act or the 2008 Uniform Act, and a few states retain their own *sui generis* unincorporated nonprofit association statutes or common law of unincorporated nonprofit associations.⁷⁰ In other words, a minority of states formally recognize domestic unincorporated nonprofit organizations as independent legal entities, but a majority of states do not.⁷¹

VI. DARK ORGANIZATIONS

Obviously, there is nothing intrinsically wrong with unincorporated nonprofit associations. The overwhelming majority of those associations are perfectly legitimate charities or nonprofits doing good and important work to benefit their communities. Indeed, unincorporated nonprofit associations are essential, because people who do nonprofit work often decline to create a formal legal entity, or more likely don't even realize it's an option. Accordingly, the law simply recognizes a default nonprofit business form that automatically springs into existence whenever people agree to collectively pursue a nonprofit purpose.

Unfortunately, some people are abusing state unincorporated nonprofit associations law to form *dark organizations*: anonymous, invisible, and unregulated *nonprofit* organizations used only to file ideologically motivated lawsuits.⁷² This is possible because some states have adopted unincorporated nonprofit association statutes that automatically recognize unincorporated nonprofit associations as legal entities protected by limited liability and able to sue on behalf of their members, without requiring them to disclose any information or file anything at all.⁷³

VII. FASORP'S LAWSUIT AGAINST NORTHWESTERN UNIVERSITY

As previously mentioned, a Texas unincorporated nonprofit association named FASORP recently sued Northwestern University and an assortment of individuals in the United States District Court for the Northern District of Illinois, claiming that Northwestern Pritzker School of Law discriminates against white men.⁷⁴ Essentially, FASORP alleged that Northwestern declined to hire

⁷⁰ See *infra* app.

⁷¹ See *infra* app.

⁷² See, e.g., discussion *infra* Part VII.

⁷³ See discussion *supra* Part V.

⁷⁴ See Complaint, *Northwestern Univ.*, *supra* note 10, ¶ 96.

three faculty candidates because they were white men, but hired several Black faculty members with credentials that FASORP considers less impressive.⁷⁵

FASORP is a dark organization, because it is an absolute black box. It provides no meaningful information about itself, its officers, or its members.⁷⁶ FASORP's website consists of a single page that consists of nothing more than a brief description of its mission, a link to its complaint against Northwestern, and a membership form that encourages potential members to submit evidence of racial or sexual discrimination by universities.⁷⁷ It doesn't provide an address or phone number, and doesn't identify any of FASORP's founders or officers.⁷⁸

The less time spent on the substance of FASORP's complaint, the better. After all, there is little substance to discuss. The complaint barely even tries to allege a plausible case of racial discrimination. After all, as FASORP itself grudgingly admitted, Northwestern Law did hire white men as faculty members during the relevant time period, it just didn't hire the particular white men identified by FASORP.⁷⁹ In truth, the complaint reads as little more than a transparent excuse to disparage the credentials and contributions of Northwestern Law's Black legal scholars. Whoever made the allegations in the complaint should be ashamed of themselves, as should the lawyers who drafted and filed it.

A. FASORP's Lack of Standing

In any case, FASORP's complaint risked dismissal in short order for lack of standing, and probably for failure to state a claim as well. The defendants filed a motion to dismiss on October 28, 2024, which FASORP opposed on December 23, 2024, but before the court could rule on the motion, FASORP voluntarily discontinued its action.⁸⁰

⁷⁵ *Id.* ¶¶ 15–21.

⁷⁶ *See id.* ¶ 3.

⁷⁷ FASORP, <https://fasorp.org/> [<https://perma.cc/LN5T-PNMP>].

⁷⁸ *See id.* Presumably, it might be possible to learn more detailed information about FASORP by becoming a member, but I refuse to do so, even for research purposes.

⁷⁹ Complaint, *Northwestern Univ.*, *supra* note 10, ¶¶ 45, 47–49.

⁸⁰ *See* Defendants' Memorandum in Support of Motion to Dismiss, Fac., Alumni & Students Opposed to Racial Preferences v. Northwestern Univ., No. 1:24-cv-05558 (N.D. Ill. Oct. 28, 2024); Plaintiff's Response to the Defendants' Motion to Dismiss the First Amended Complaint, Fac., Alumni & Students Opposed to Racial Preferences v. Northwestern Univ., No. 1:24-cv-05558 (N.D. Ill. Dec. 23, 2024); Notification of Docket Entry, Fac., Alumni & Students Opposed to Racial Preferences v. Northwestern Univ., No. 1:24-cv-05558 (N.D. Ill. Feb. 5, 2025) (indicating FASORP's voluntary discontinuance under Rule 41(a)(1)(A)(i) on January 31, 2025, which the court acknowledged on February 5, 2025). In addition, Professors Myriam Gilles and

Despite the discontinuance, FASORP's lawsuit is a revealing example of how dark organizations can be misused.

While FASORP's complaint states that three of its members are white male law professors who are "able and ready to apply for a faculty appointment at Northwestern University's law school," it doesn't identify those members by name or provide any information to substantiate their qualifications for such a faculty position.⁸¹ That isn't even close to enough for standing, even if FASORP could somehow state a viable claim.

In order to establish constitutional standing, the plaintiff in a federal action must clearly allege facts demonstrating "a personal stake in the outcome of the controversy."⁸² An organization can have associational standing to represent the interests of its members if: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."⁸³ Accordingly, in order to plead associational standing, an organization must first show that its members have standing, by showing: (1) that one or more of its members has "suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not conjectural or hypothetical'"; (2) that there is "a causal connection between the injury and the conduct complained of"; and (3) that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"⁸⁴

Among other things, the Supreme Court "has required plaintiffs claiming an organizational standing to identify members who have

Paul Gowder, who were named in FASORP's complaint, filed an amicus brief urging the court to sanction FASORP under Rule 11(c)(3) for filing a complaint with an improper purpose. See Brief of Amici Curiae Professors Myriam Gilles and Paul Gowder in Support of Defendants at 4, *Fac., Alumni & Students Opposed to Racial Preferences v. Northwestern Univ.*, No. 1:24-cv-5558 (N.D. Ill. Nov. 26, 2024).

⁸¹ See Complaint, *Northwestern Univ.*, *supra* note 10, ¶¶ 60–65. The complaint states only that Individual A is a tenure-track law professor with a Ph.D. in political science, that Individuals B and C are tenured law professors, and that all three are "neither homosexual nor transgender." *Id.* ¶¶ 60, 62, 64. With some sleuthing, it would probably be possible to identify Individual A based on his Ph.D. and pre-tenure status, and maybe even guess the identities of Individuals B and C, but I decline to investigate or speculate any further.

⁸² *Sierra Club v. Morton*, 405 U.S. 727, 732 (1972) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)); see also *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

⁸³ *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

⁸⁴ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (first citing *Allen v. Wright*, 468 U.S. 737, 756 (1984); *Warth v. Seldin*, 422 U.S. 490, 508 (1975); *Sierra Club*, 405 U.S. at 740; then quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990); and then quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38, 41–43 (1976)).

suffered the requisite harm.”⁸⁵ Accordingly, FASORP would have failed to establish associational standing, because it did not identify its allegedly injured members, or even provide enough factual information about their putative injuries to meaningfully assess the plausibility of their claim to be injured.⁸⁶ FASORP’s three plaintiffs could be almost anyone, and anonymous plaintiffs who could be anyone might as well be no one. FASORP only stated that its three plaintiffs have unsuccessfully submitted articles to the *Northwestern Law Review* and would apply for faculty positions at Northwestern Law if they thought they could be hired.⁸⁷ I could say the same, as could most American legal scholars.

FASORP utterly failed to plead that its three plaintiffs suffered an injury-in-fact, because it alleged nothing more than a “highly attenuated chain of possibilities,” rather than an actual harm.⁸⁸ According to FASORP, its three plaintiffs would apply for faculty positions at Northwestern Law if they thought they would be hired and would submit articles to the *Northwestern Law Review* if they thought they would be published.⁸⁹ But inchoate intentions can’t give rise to a concrete injury. Without a “description of concrete plans” to apply for a faculty position or submit an article for publication, their allegations are just “some day intentions” that can’t show an injury-in-fact.⁹⁰

B. FASORP’s Complaint Fails to State a Claim

But that’s not all. Even if the court somehow found that FASORP had statutory and associational standing to sue Northwestern on behalf of its members, it would still have had to dismiss FASORP’s complaint for failure to state a claim. Recall, the essence of FASORP’s complaint was that Northwestern Law discriminates against white men.⁹¹ But the facts alleged in FASORP’s complaint do not and cannot substantiate its claim. FASORP alleged that Northwestern Law didn’t hire three particular white men, but did hire several Black scholars during the same time period.⁹² However, FASORP admitted, as it must, that Northwestern Law also hired several white men

⁸⁵ *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009).

⁸⁶ See also Defendants’ Memorandum in Support of Motion to Dismiss, *supra* note 80, at 6.

⁸⁷ See Complaint, *Northwestern Univ.*, *supra* note 10, ¶ 59.

⁸⁸ See *Clapper v. Amnesty Int’l. U.S.*, 568 U.S. 398, 410 (2013).

⁸⁹ See Complaint, *Northwestern Univ.*, *supra* note 10, ¶ 59.

⁹⁰ See *Summers*, 555 U.S. at 496 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992)).

⁹¹ See Complaint, *Northwestern Univ.*, *supra* note 10, ¶¶ 11–12.

⁹² *Id.* ¶¶ 37, 40, 42, 60–65.

during that time period.⁹³ In other words, FASORP merely alleged that Northwestern Law didn't hire certain white men, but did hire other white men.⁹⁴ That simply can't state a claim for discrimination against white men.⁹⁵

C. FASORP's Other Frivolous Complaints

Anyway, FASORP's lawsuit against Northwestern isn't its first rodeo. In 2018, it sued both the *Harvard Law Review* and the *New York University Law Review* for racial discrimination, alleging that they discriminated against white men.⁹⁶ Unsurprisingly, both lawsuits were quickly dismissed for lack of standing and failure to state a claim, prefiguring the grounds on which its lawsuit against Northwestern would struggle.⁹⁷

On October 6, 2018, FASORP sued the *Harvard Law Review* in the United States District Court for the District of Massachusetts, alleging racial and sexual discrimination against white men.⁹⁸ FASORP also sued United States Secretary of Education Elizabeth DeVos in her official capacity for providing financial assistance to Harvard and the *Harvard Law Review* via federal loans and grants.⁹⁹ FASORP claimed standing to sue the *Harvard Law Review* based on its assertion that at least one of its anonymous members had standing.¹⁰⁰ However, FASORP failed to identify any particular members with standing.¹⁰¹ It merely stated that its members included at least one Harvard Law student planning to apply for the

⁹³ *Id.* ¶ 46.

⁹⁴ *Id.* ¶ 45.

⁹⁵ See Sheldon Bernard Lyke, *Northwestern Law School Is Target of Conservative Attacks on Faculty Diversity*, CHI. SUN-TIMES (July 26, 2024, 6:30 AM), <https://chicago.suntimes.com/other-views/equality-northwestern%20university-discrimination-racism-law%20school> [<https://perma.cc/S97D-3PDS>].

⁹⁶ See Complaint, *Harvard L. Rev.*, *supra* note 10, ¶ 25; Complaint, *N.Y. Univ. L. Rev.*, *supra* note 10, ¶ 29.

⁹⁷ See *Fac., Alumni & Students Opposed to Racial Preferences v. Harvard L. Rev. Ass'n*, No. 18-12105, 2019 WL 3754023, at *10 (D. Mass. Aug. 8, 2019); *Fac., Alumni & Students Opposed to Racial Preferences v. N.Y. Univ. L. Rev.*, No. 18 Civ. 9184, 2020 WL 1529311, at *5, *7. (S.D.N.Y. Mar. 31, 2020).

⁹⁸ Complaint, *Harvard L. Rev.*, *supra* note 10, ¶¶ 6, 25. FASORP was joined by the Coalition for Meritocracy at Universities, another Texas unincorporated nonprofit association. First Amended Complaint at 1, *Harvard L. Rev.*, 2019 WL 3754023 (D. Mass. Jan. 7, 2019). FASORP was represented by Alexander K. Parachini and George W. Vien of Donnelly, Conroy & Gelhaar, LLP in Boston, Massachusetts and by Jonathan F. Mitchell of Mitchell Law PLLC in Austin, Texas, appearing *pro hac vice*. The Coalition for Meritocracy at Universities was represented only by Mitchell.

⁹⁹ See *id.*

¹⁰⁰ *Id.* ¶¶ 38–40, 42.

¹⁰¹ See *Harvard L. Rev.*, 2019 WL 3754023, at *5.

Harvard Law Review, a legal scholar planning to submit articles to the *Harvard Law Review*, and a legal scholar intending to apply for a faculty position at Harvard Law School.¹⁰²

The district court was unimpressed by FASORP's complaint, which it dismissed for both lack of standing and failure to state a claim.¹⁰³ The court held that FASORP lacked standing to sue the *Harvard Law Review* because it failed to plead facts sufficient to identify a member with standing.¹⁰⁴ It also dismissed FASORP's complaint on the merits, finding that FASORP failed to plead facts sufficient to state a claim under Federal Rule of Civil Procedure 12(b)(6).¹⁰⁵

The day after suing the *Harvard Law Review*, FASORP sued the *NYU Law Review* in the United States District Court for the Southern District of New York, making essentially identical allegations.¹⁰⁶ Unsurprisingly, the result was also the same. The district court dismissed FASORP's complaint for lack of standing and failure to state a claim.¹⁰⁷ When FASORP appealed, the Second Circuit affirmed, holding that FASORP had failed to plead standing.¹⁰⁸

In other words, FASORP's double-headed campaign against the *Harvard Law Review* and the *NYU Law Review* was a total bust on both fronts. Not only were both complaints dismissed for lack of standing, but also both district courts dismissed the complaints for failure to state a claim. It doesn't get much worse. While FASORP didn't get sanctioned by either court, it got pretty close.¹⁰⁹ And it made the very same frivolous allegations against Northwestern.¹¹⁰ Winning obviously is not the main goal for FASORP. It's not filing these complaints because it thinks it will be successful. It's filing them because they're a cheap and easy way to generate headlines by insulting Black law professors.

There's nothing meritorious or even interesting about any of FASORP's complaints. In fact, each one is less interesting than the last. The only way FASORP gets any attention is by filing frivolous

¹⁰² *Id.* at *6.

¹⁰³ *See id.* at *10.

¹⁰⁴ *See id.* at *8.

¹⁰⁵ *Id.* at *10.

¹⁰⁶ *See* Complaint, *N.Y. Univ. L. Rev.*, *supra* note 10, ¶¶ 8–25.

¹⁰⁷ *Fac., Alumni & Students Opposed to Racial Preferences v. N.Y. Univ. L. Rev.*, No. 18 Civ. 9184, 2020 WL 1529311, at *5, *7–8 (S.D.N.Y. Mar. 31, 2020).

¹⁰⁸ *Fac., Alumni & Students Opposed to Racial Preferences v. N.Y. Univ.*, 11 F.4th 68, 71 (2d Cir. 2021). The Supreme Court also denied FASORP's petition for certiorari. *Fac., Alumni & Students Opposed to Racial Preferences v. N.Y. Univ.*, 142 S. Ct. 2813, 2813 (2022).

¹⁰⁹ *See Harvard L. Rev.*, 2019 WL 3754023, at *8.

¹¹⁰ *See* Complaint, *Northwestern Univ.*, *supra* note 10, ¶¶ 11–14.

complaints that make outrageous accusations attributed to anonymous sources. Its complaint against Northwestern University is essentially identical to its complaints against the *Harvard Law Review* and the *New York University Law Review*, and would have inevitably been dismissed for the same reasons, but for a voluntary discontinuance.¹¹¹

However, FASORP is a fascinating case study in the abuse of the nonprofit form. After all, FASORP is apparently a Texas unincorporated nonprofit association even though it has never filed anything with the Texas Secretary of State or made any public disclosures of any kind.¹¹²

FASORP doesn't have any named members or officers.¹¹³ It doesn't even have a publicly disclosed agent for service of process or mailing address, other than its attorneys.¹¹⁴ Apparently, a group of two or more people in Texas (and perhaps elsewhere, who knows?) agreed to form an unincorporated nonprofit organization and name it FASORP. No one else knew anything about it until they decided to file lawsuits against the *Harvard Law Review* and the *NYU Law Review*. Five years later, even after FASORP added Northwestern to its list of legal adversaries, we still know nothing more about FASORP.

Why are courts allowing an essentially anonymous organization like FASORP to file lawsuits on behalf of their anonymous members? The Constitution doesn't allow anonymous plaintiffs to litigate cases, so why should an unincorporated nonprofit organization be permitted to litigate on behalf of its anonymous members? What should be done? The ULC should amend its Uniform Unincorporated Nonprofit Association Act to clearly state that associations can't sue on behalf of their anonymous members, and state legislatures should amend their unincorporated nonprofit association statutes to the same effect. Failing those changes, courts should make it clear that unincorporated nonprofit associations lack standing to sue on behalf of their individual members, whether anonymous or otherwise.

¹¹¹ See *supra* note 80 and accompanying text.

¹¹² Texas has adopted a version of the 1996 Uniform Unincorporated Nonprofit Association Act, which does not require any filings to attain legal status. See TEX. BUS. ORG. CODE ANN. § 252.001(2) (West 2025).

¹¹³ See FASORP, *supra* note 77.

¹¹⁴ See *id.*

VIII. REFORMING THE LAW OF UNINCORPORATED NONPROFIT ASSOCIATIONS

On the whole, the state of the law of unincorporated associations is fine. In fact, in most states, it barely exists, except as a relic of the common law.¹¹⁵ The overwhelming majority of unincorporated nonprofit organizations are small grassroots charities and mutual benefit nonprofit organizations that do important work in their communities.¹¹⁶ And in states that haven't adopted a formal unincorporated nonprofit associations law, there's no reason to use them for anything else. After all, from a legal perspective, they're essentially identical to a business partnership, with no additional legal protections or rights.¹¹⁷

But in states that have adopted an unincorporated nonprofit association law, they have several important and valuable rights that business partnerships don't. First, they're automatically protected by limited liability.¹¹⁸ And second, they have the right to sue, and at least the appearance of the right to sue on behalf of their members.¹¹⁹ All this without any obligations to file anything with the state or make any disclosures of any kind.¹²⁰ It's the perfect recipe for deceit. And organizations like FASORP are taking full advantage.¹²¹

What should be done? States that don't recognize unincorporated nonprofit associations as independent legal entities don't necessarily need to do anything. However, they should consider that their decisions may disadvantage some grassroots charities and nonprofits, and consider adopting one of the Uniform Acts. But states that do recognize unincorporated nonprofit associations as independent legal entities should make sure they can't be abused, by adopting reforms that will prevent abuse.

¹¹⁵ See *infra* app.

¹¹⁶ See UNIF. UNINCORPORATED NONPROFIT ASS'N ACT prefatory note (UNIF. L. COMM'N 1996).

¹¹⁷ See *id.*

¹¹⁸ *Id.* § 6 cmt. 3.

¹¹⁹ See *id.* § 7.

¹²⁰ See *id.* § 1(2).

¹²¹ Because unincorporated nonprofit associations aren't required to make any filings or disclosures, it's unclear and impossible to know how many have been formed or how they're being used. However, there are at least some organizations that seem to be using the unincorporated nonprofit association form at least in part for the purpose of avoiding disclosures. See, e.g., *About*, CONST. SHERIFFS & PEACE OFFICERS ASS'N, <https://cspoa.org/about/> [<https://perma.cc/3W9V-BFLS>]. Thanks to Jessica Pishko for making this observation.

A. The Formation of Unincorporated Nonprofit Associations

States that recognize unincorporated nonprofit associations as independent legal entities protected by limited liability should require them to publicly file basic information about the organization with the Secretary of State in order to claim that status. Currently, most states that have adopted such statutes don't require unincorporated nonprofit associations to make any public filings at all.¹²² Accordingly, they allow any group of people to create an independent legal entity merely by forming an oral agreement to pursue a nonprofit purpose, with no obligation to notify the state.

That's a problem. States can and should authorize the creation of independent legal entities. But they should also know when it happens, so they can properly regulate the legal entities created under their laws. Forming a corporation or LLC always requires a public filing that discloses the address of the corporation or LLC, the identities of the incorporators or members, and contact information for the organization's agent for service of process.¹²³

An unincorporated nonprofit association that is an independent legal entity is the functional equivalent of a corporation or LLC, so creating one should require a public filing that discloses the equivalent information. Specifically, states should recognize an unincorporated nonprofit association as an independent legal entity only if it files a certificate of association with the Secretary of State, disclosing the organization's address, the identities of its key members, and contact information for the organization's agent for service of process.

Of course, requiring unincorporated nonprofit associations to file a certificate of association in order to become independent legal entities protected by limited liability is a burden. But it's a reasonable burden. The Uniform Acts provide that unincorporated nonprofit associations are automatically independent legal entities because the ULC was concerned that many small grassroots and community organizations didn't have the resources to incorporate.¹²⁴ At one time, that was a legitimate concern. It used to be difficult and expensive to incorporate. But now it's easy and cheap. Today, anyone can quickly, easily, and cheaply create a nonprofit corporation. Simply complete

¹²² See *infra* app.

¹²³ See, e.g., N.Y. BUS. CORP. LAW § 402 (McKinney 2025).

¹²⁴ UNIF. UNINCORPORATED NONPROFIT ASS'N ACT prefatory note (UNIF. L. COMM'N 1996).

an online form providing basic information about your organization and pay a nominal fee.¹²⁵

Of course, the idea of requiring people or organizations to provide information about themselves in order to do nonprofit work is wrong. People should be able to do anything they like, so long as it's legal and not harming anyone, and shouldn't be required to justify their actions. But that doesn't require an independent legal entity or limited liability.

When the ULC promulgated the Uniform Acts, it wanted to empower unincorporated nonprofit associations to act on behalf of their members and protect the members of unincorporated nonprofit associations from liability.¹²⁶ But the solution has become a problem. If an unincorporated nonprofit association has the capacity to do anything that could possibly require independent legal entity status, it also has the capacity to incorporate, especially given how easy incorporation has become. If an unincorporated nonprofit association doesn't want to incorporate or file basic information about itself with the state, that's fine, but then it shouldn't be entitled to limited liability as an independent legal entity.

B. Unincorporated Nonprofit Associations as Litigants

States that don't recognize unincorporated nonprofit associations as independent legal entities protected by limited liability and entitled to sue have nothing to worry about. In those states, unincorporated nonprofit associations can only sue in limited circumstances, and only on behalf of named members.¹²⁷

But states that recognize unincorporated nonprofit associations as independent legal entities protected by limited liability and entitled to sue should make it clear that they can only represent the interests of their membership as a whole and must disclose the identity of any member or members who are the basis for associational standing. That's what the ULC's Uniform Acts were intended to accomplish. And it's all that's justified.

The same is true under federal law. Federal Rule of Civil Procedure 17 provides that an unincorporated nonprofit association "may sue or be sued in its common name to enforce a substantive right existing

¹²⁵ See, e.g., *Certificate of Incorporation for Domestic Not-for-Profit Corporations*, N.Y. DEPT OF STATE, <https://dos.ny.gov/certificate-incorporation-domestic-not-profit-corporations-0> [<https://perma.cc/VB5M-S3ES>].

¹²⁶ See UNIF. UNINCORPORATED NONPROFIT ASS'N ACT prefatory note (UNIF. L. COMM'N 1996).

¹²⁷ See Brewer et al., *supra* note 26.

under the United States Constitution or laws,” in order to enable labor unions and other unincorporated nonprofit associations to sue and be sued as independent legal entities, rather than as a partnership.¹²⁸ And Federal Rule of Civil Procedure 23.2 provides that the members of an unincorporated association may bring an action as a class represented by named members, but only if those members will adequately represent the interests of the association and its members as a whole.¹²⁹ The Federal Rules of Civil Procedure do not and should not allow unincorporated nonprofit associations to assert claims on behalf of particular, anonymous members.

It’s fine and good for nonprofit organizations—including unincorporated nonprofit associations—to be able to sue on behalf of their membership and in furtherance of their nonprofit purpose. Even if many or most people find the nonprofit purpose repugnant and the lawsuits distasteful. Perhaps especially then, because people ought to be able to advance even causes that majorities find repugnant.

But it isn’t fine or good for nonprofit organizations to be able to sue anonymously or to act as proxies for their anonymous members. If you want to sue someone, you ought to be required to identify yourself, in order to prove your right to sue and ensure the legitimacy of your claim. Unincorporated nonprofit associations were never intended to enable dark organizations to bring lawsuits on behalf of their supposed anonymous members, and states ought to make it transparently clear they can’t be used in that way.

States that allow unincorporated nonprofit associations to sue on behalf of their members should require them to identify the members they are representing. Several states allow unincorporated nonprofit associations to sue on behalf of their members, but none of them

¹²⁸ See FED. R. CIV. P. 17(b)(3)(A); see also FED. R. CIV. P. 17 advisory committee’s note on rules—1937 (observing that subdivision (b) relies on, *inter alia*, *Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933) and *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922)).

¹²⁹ FED. R. CIV. P. 23.2 (“This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).”). This rule was intended to enable unincorporated associations that are not legal entities to sue and be sued as if they are effectively entities. See Fed. R. Civ. P. 23.2 advisory committee’s notes on rules—1966 (“Although an action by or against representatives of the membership of an unincorporated association has often been viewed as a class action, the real or main purpose of this characterization has been to give ‘entity treatment’ to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17(b).”).

explicitly require the organization to identify the particular member or members whose interests it is representing.¹³⁰ That’s a problem, because it’s inconsistent with standing doctrine, which requires organizations claiming associational standing to identify the members they are representing.¹³¹

Ideally, states should require unincorporated nonprofit associations suing on behalf of their members to identify the members they are representing by name. Plaintiffs can’t sue anonymously; they have to identify themselves.¹³² Allowing unincorporated nonprofit associations to sue on behalf of their members without naming those members effectively enables those members to sue anonymously.

IX. CONCLUSION

Unincorporated nonprofit associations are an important organizational form. However, some people are abusing the unincorporated nonprofit association laws of some states in order to file anonymous lawsuits on behalf of their anonymous members. What they’re doing isn’t actually permitted by the law. Their lawsuits should be dismissed for lack of standing. And states should make it clear that unincorporated nonprofit associations can’t be used in this way.

¹³⁰ See discussion *supra* Part V; Brewer et al., *supra* note 26.

¹³¹ Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009).

¹³² See *id.*

APPENDIX

*Survey of State Unincorporated Nonprofit Association Laws*¹³³

Jurisdiction	Statute	Legal Entity	Limited Liability	Public Filings	1996 Act	2008 Act
Alabama	ALA. CODE § 10A-17-1.01	Y	Y	N	Y	
Alaska	None					
Arizona	None					
Arkansas	ARK. CODE § 4-28-601	Y	Y	N	Y	Y
California	CA. CORP. CODE § 18000	Y	Y	N		
Colorado	COLO. CODE § 7-30-101	Y	Y	N	Y	
Connecticut	None					
Delaware	DEL. CODE TIT. 6, § 1901	Y	Y	N	Y	
Florida	None					
Georgia	None					
Hawaii	HAW. REV. STAT. § 429-1	Y	Y	N	Y	

¹³³ A statute is included for the purposes of this table only if it addresses the domestic formation of an entity that it describes as an “unincorporated nonprofit association.” States where no statute is indicated may nevertheless recognize the existence of entities or relationships that function as unincorporated nonprofit associations, whether formed pursuant to caselaw, *see, e.g.*, *Perkaus v. Chi. Cath. High Sch. Athletic League*, 488 N.E.2d 623 (Ill. 1986), under a statute authorizing the creation of certain types of fraternal organizations, *see, e.g.*, N.H. REV. STAT. § 292:12, or otherwise. The “Legal Entity” column is marked “Y” if the statute recognizes unincorporated nonprofit associations as a legal entity separate from their members for any purpose. The “Limited Liability” column is marked “Y” if the statute provides the entity with any form of limited liability. The “Public Filings” column is marked “Y” if a public filing is required to form the entity.

2024-2025

Dark Orgs

139

Idaho	IDAHO CODE § 30-27-101	Y	Y	N	Y	Y
Illinois	None					
Indiana	None					
Iowa	IOWA CODE § 501B.1	Y	Y	N		Y
Kansas	None					
Kentucky	KY. REV. STAT. § 273A.005	Y	Y	N		Y
Louisiana	LA. STAT. § 12:501	Y	Y	N	Y	
Maine	None					
Maryland	None					
Massachusetts	None					
Michigan	None					
Minnesota	None					
Mississippi	None					
Missouri	None					
Montana	None					
Nebraska	None					
Nevada	NEV. STAT. § 81.700	Y	Y	N		Y
New Hampshire	None					
New Jersey	None					
New Mexico	None					

New York	None					
North Carolina	N.C. GEN. STAT. § 59B-1	Y	Y	N	Y	
North Dakota	None					
Ohio	OHIO REV. CODE § 1745.05	Y	Y	N		Y
Oklahoma	None					
Oregon	None					
Pennsylvania	15 PA. CONS. STAT. § 9111	Y	Y	N		Y
Rhode Island	None					
South Carolina	None					
South Dakota	None					
Tennessee	None					
Texas	TEX. BUS. ORGS. CODE § 252.001	Y	Y	N	Y	
Utah	None					
Vermont	None					
Virginia	None					
Washington	None					
West Virginia	W. VA. CODE § 36-11-1	Y	Y	N	Y	
Wisconsin	WIS. STAT. § 184.01	Y	Y	N	Y	

2024–2025

Dark Orgs

141

Wyoming	WYO. STAT. § 17-22-101 ¹³⁴	Y	Y	N	Y	
Washington, D.C.	D.C. CODE § 29-1101	Y	Y	N	Y	Y

¹³⁴ Wyoming has also adopted the first state law recognizing decentralized autonomous organizations, or DAOs, as a form of unincorporated nonprofit organization. See WYO. STAT. ANN. § 17-32-101 (2025); Practical Law Finance, *Wyoming Grants Legal Status to DAOs with DUNA Law*, THOMAS REUTERS (Apr. 2, 2024), [https://uk.practicallaw.thomsonreuters.com/w-042-8374?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&ppcid=8b2ccba321e748008219fa83871f9d2c&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-042-8374?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&ppcid=8b2ccba321e748008219fa83871f9d2c&firstPage=true) [https://perma.cc/ZX36-L9VE].