

The Honorable Jason Smith  
House of Representatives  
1011 Longworth House Office Building  
Washington, DC 20515

The Honorable Richard Neal  
House of Representatives  
372 Cannon House Office Building  
Washington, DC 20515

The Honorable David Schweikert  
House of Representatives  
460 Cannon House Office Building  
Washington, DC 20515

The Honorable Bill Pascrell  
House of Representatives  
2409 Rayburn House Office Building  
Washington, DC 20515

**Testimony for the record on behalf of the Council on Foundations submitted to the U.S. House Ways and Means Subcommittee on Oversight on “Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape”**

**December 19, 2023**

Dear Chairman Smith, Chairman Schweikert, Ranking Member Neal, Ranking Member Pascrell, and members of the Subcommittee:

Thank you for this opportunity to provide written testimony for the record on the subject of “Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape.”

The Council on Foundations is a nonprofit membership association that serves as a guide for philanthropies as they advance the greater good. Building on our almost 75-year history, the Council supports over 850 member organizations in the United States and around the world to build trust in philanthropy, expand pathways to giving, engage broader perspectives, and co-create solutions that will lead to a better future for all.

The United States is the most charitable country in the world: [in 2022 alone](#), total giving surpassed \$499 billion, with foundation giving making up over 20% of overall giving at \$102 billion. This culture of philanthropy has resulted in vital investments that support organizations across the country and around the world. These investments fuel innovation, respond to disasters natural and manmade, provide vital services to vulnerable communities, and contribute to workforce and economic development.

The Council echoes Professor Phil Hackney's statement at the December 13 Subcommittee hearing: a "diverse nonprofit sector that fosters civic participation and engagement is a gem of the United States." Our sector champions a diversity of funding priorities, from rural workforce development to providing humanitarian aid abroad to ensuring religious organizations have the means to support their communities, among many others. This pluralistic approach to charitable giving has allowed the U.S. to maintain a vibrant civil society.

Our members and the philanthropic sector more broadly play a key role in supporting civic engagement and bolstering our democracy. And safeguards such as the Johnson Amendment already exist to protect charitable nonprofits from being pressured to participate in the electoral process and partisan political campaigns. While we will not fully restate the [comments we submitted](#) in response to Chairman Smith and Chairman Schweikert's Request for Information in August, we would like to reiterate the following points and supplement them with additional information:

- Nonprofit civic engagement is part of a healthy civil society.
- A healthy regulatory environment is important for nonprofit integrity.
- Section 501(c)(3) organizations are already prohibited from engaging in partisan political activity and electioneering.
- Disclosure of donor information to the Internal Revenue Service (IRS) is critical to maintaining public trust in the sector.
- Congress should prioritize passage of the Charitable Act ([H.R.3435](#)).

**Nonprofit civic engagement is part of a healthy civil society.**

Fear and confusion within the charitable sector have caused many section 501(c)(3) organizations to decrease their civic engagement and public policy work. In fact, [recent research from Independent Sector](#) shows that nonprofit organizations are significantly less likely to engage in public policy work now than they were 20 years ago, citing concerns around tax laws and IRS rules. These concerns have stunted entirely legitimate nonprofit engagement with policy and advocacy. This is unfortunate particularly because voter participation and civic engagement are core to a healthy and thriving democracy.

While they are rightly prohibited from electioneering and political campaign activity, section 501(c)(3) organizations—including many of our members—have long supported nonpartisan efforts to expand civic engagement. This commitment to our democracy ensures nonprofits have the resources they

need to support communities; promote voter education; and, at a time when voter participation is lower in the U.S. than in other democracies, encourage a broader swath of Americans to vote. Far from being partisan political activity, this work reinforces the U.S. as a beacon for democracy around the world.

Nonprofits play an essential role in elevating important issues for public discourse, creating a more informed citizenry, and energizing voters to participate in the democratic process. Congress must honor this role and consult with nonprofits when developing new policies that impact our work.

**A healthy regulatory environment is important for nonprofit integrity.**

We support a healthy regulatory environment for the nonprofit sector, including laws currently in place, and when appropriate, regulatory action subject to public comments and consultation with the sector. However, such an environment requires first enforcing existing law. As Professor Hackney detailed in his testimony, the laws prohibiting bad behavior already exist; the IRS has inadequate resources to enforce them. We urge Congress to fully fund the IRS to ensure that it is better equipped to review nonprofit applications and investigate nonprofits suspected of acting inappropriately or illegally.

The sector also has a strong commitment to self-regulation. For example, last year, the Council published a set of [ethical principles](#) that we encourage our members to adopt. In addition, over 400 community foundations are accredited under [Community Foundation National Standards](#). This accreditation represents a commitment to best practices that exceed federal and state law and prioritize accountability and integrity.

Placing philanthropic mission above personal gain is core to nonprofit and foundation ethics. Nonprofits engaging in inappropriate or illegal behavior damage the sector's integrity and destroy the public trust that we have spent decades cultivating.

**Section 501(c)(3) organizations are already prohibited from engaging in partisan political activity and electioneering.**

The Council strongly supports the Johnson Amendment, which both prohibits and protects section 501(c)(3) organizations from engaging in partisan political activity and electioneering. Nonprofits, which solicit funding from both government and private donors, should never be pressured to engage in partisan electioneering—and the Johnson Amendment ensures they cannot be. Charitable organizations that inappropriately or illegally engage in prohibited activity damage public trust in both the nonprofit sector and our political system.

Current guidance from the Department of the Treasury and the IRS on the definition of “political campaign intervention” correctly prohibits section 501(c)(3)s from electioneering or otherwise intervening in political campaigns. Further guidance should consider the perspective of nonprofits, and we urge both the Subcommittee and regulators to engage with our sector when developing or modifying policies around this issue.

Furthermore, section 501(c)(3) public charities engaging in lobbying activities must disclose this information on their Form 990 Schedule C. This includes detailing any expenditures related to both grassroots and direct lobbying. These organizations are also limited in how much they can legally spend on lobbying (including personnel costs). Section 501(c)(3) private foundations are subject to even more restrictions.

Finally, while section 501(c)(3) organizations can contribute to section 501(c)(4) organizations, funding from the 501(c)(3)s cannot be used for activities the 501(c)(3) organizations are themselves prohibited from engaging in. For example, a section 501(c)(3) community foundation’s grant to a section 501(c)(4) organization cannot then be funneled to a superPAC or be used to support a political candidate. It is essential that this prohibition is both protected and enforced.

These limitations and reporting requirements are necessary to maintaining transparency and public trust in the nonprofit sector. The IRS must enforce existing law around these limitations and requirements, and Congress should ensure it has the resources to do so.

**Disclosure of donor information to the IRS is critical to maintaining public trust in the sector.**

Currently, section 501(c)(3) organizations are required to report the names and addresses of donors who have made contributions totaling over \$5,000 to the IRS on their Form 990 Schedule B. This reporting requirement preserves public trust in the nonprofit sector and equips the federal government with a tool that helps identify bad actors. We would support a similar requirement for 501(c)(4) organizations, which would enable the federal government to better understand how donors to these organizations—foreign and otherwise—influence U.S. politics.

At the same time, we oppose requiring exempt organizations to publicly disclose donor information. Public disclosure of donor information can endanger donors supporting controversial causes and subject them to solicitations from potentially bad actors. Organizations across the ideological

spectrum, from the [Americans for Prosperity Foundation](#) to the [NAACP and American Civil Liberties Union](#), have emphasized the need for protecting donors from public disclosure.

**Congress should prioritize passage of the Charitable Act (H.R.3435).**

We would like to express our deep gratitude to Rep. Danny Davis for his leadership on the Charitable Act and for raising this important legislation at this hearing. The Charitable Act would expand the charitable deduction to nonitemizers, ensuring a greater cross-section of Americans are recognized for their charitable giving. This issue continues to be a priority for our sector. We urge Congress to prioritize passage of this bill, which could open the doors for billions of dollars to flow into the communities that need them most.

**Conclusion**

Foundations and their nonprofit partners are nimble and responsive, providing urgent support in the aftermath of disasters natural and manmade while filling in day-to-day gaps left by government. This vibrant and diverse nonprofit sector, championing a multitude of causes and working to address a multitude of issues, is not only an American tradition: it is a critical component of our democracy.

While we commend the Subcommittee's efforts to strengthen and protect the American electoral process, we urge Congress to consult with our sector when considering additional laws or guidelines that might impact our work. We welcome the opportunity to partner with Members of both the Subcommittee and the full Committee.

Thank you again for this opportunity to submit testimony for the record. We look forward to working with you to ensure the nonprofit sector can continue to meet the needs of our communities today and into the future.