National Council of Nonprofits

Champions for the public good

Sent via email to waysandmeansRFI@mail.house.gov

September 5, 2023

The Honorable Jason Smith
Chair
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable David Schweikert
Chair
Subcommittee on Oversight
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard E. Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Pascrell
Ranking Member
Subcommittee on Oversight
U.S. House of Representatives
Washington, DC 20515

RE: Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code

Dear Chairs Smith and Schweikert and Ranking Members Neal and Pascrell:

The National Council of Nonprofits appreciates this opportunity to respond to the August 14, 2023, Request for Information ("Chairs' letter") regarding perceived "political" activities of tax-exempt, nonprofit organizations. As the largest network of 501(c)(3) charitable nonprofits in the United States, we embrace this chance to highlight the core beliefs and activities of nonprofit organizations and to correct common misperceptions about the "why" and "how" of charitable operations. The National Council of Nonprofits champions, connects, and informs nonprofits across the country. Our network is committed to, and indeed often pioneered, effective trainings and materials on nonpartisan engagement in communities to promote civic engagement. It is from this deep experience and engagement that we offer this response to the Request for Information.

We emphasize up front that as people deeply engaged in America's charitable nonprofits, we do not see systemic or widespread abuses suggested in the Chairs' letter. Still, we welcome the scrutiny and all efforts to root out bad actors seeking to politicize or exploit the charitable nonprofit sector.

The National Council of Nonprofits typically refers to 501(c)(3) organizations as "charitable nonprofits" to distinguish them from all other forms of 501(c) organizations (that we and others occasionally refer to as "non-charitable nonprofits"). Current law does not prohibit the more than 25 other categories of 501(c) non-charitable nonprofits from engaging in some partisan activities. For example, groups with tax-exempt status under 501(c)(4) (civic leagues and social welfare organizations), 501(c)(5)(labor unions), and 501(c)(6)(chambers of commerce and trade/professional associations) may play some in partisan politics; 501(c)(3)(charitable, religious, and philanthropic organizations) may not.

In this response, the National Council of Nonprofits will answer each question in the Chairs' letter. First, however, we lay out four overarching principles that guide the approach and thinking of frontline charitable nonprofits and, we hope, Members of the Committee will keep them in mind as you review these and other responses to the questions presented. At the end of this response, we also reiterate two specific recommendations to help reduce fraud, provide clarity, and reduce confusion.

Overarching Principles

Overarching Principle #1: Nonpartisan, Now and Forever.

Much of the Chairs' letter raises questions about the politicization of the charitable nonprofit sector, whether through people's brazen disregard for the law, surreptitious evasion, or claims of uncertainty about what the law proscribes. There must be no doubt about the position of the charitable nonprofit community. The overwhelming majority of 501(c)(3) organizations – frontline charities, churches, and foundations – are nonpartisan in law, fact, and culture, and are committed to remaining that way to ensure their integrity and impact.

Since 1954, section 501(c)(3) of the tax code has protected charitable, faith-based, and philanthropic organizations from partisan, election-related activities. That is when Congress added the third proviso, commonly known as the Johnson Amendment, which now reserves tax-exempt status and the ability to receive tax-deductible charitable donations only to organizations that do "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S. Code § 501(c)(3). The Johnson Amendment was non-controversial when originally adopted, when it was signed into law by President Eisenhower, and when it was strengthened later by President Reagan.

It is considered a fundamental principle throughout the 501(c)(3) community that the longstanding Johnson Amendment must be protected.[1] For 69 years, that law has successfully shielded charitable nonprofits, houses of worship, and foundations from the rancor of divisive partisanship and schemes by the unscrupulous to profit from tax deductions for their disguised political campaign contributions.

The 501(c)(3) nonprofit community stands strongly united in support of the federal law requiring nonpartisanship and in opposition to those attempting to politicize the charitable sector in their quest for partisan, personal, and financial gains.[2] People who donate their money to charitable, religious, and philanthropic organizations do so to support missions important to them and do not want their resources siphoned off for other purposes.[3] People who donate their time to serve on governing boards want to – and should – focus on advancing the organization's mission, not arguing with each other over which candidates for public office in local, state, and federal races up and down each ballot the organization should support (or oppose) and how much money to divert from mission to do that.

Overarching Principle #2: All honest efforts to protect the sector from encroaching partisanship are welcome.

Because nonprofit nonpartisanship is core to charitable organizations, we welcome all efforts to root out corruption, politicization, and self-serving behavior. This help is appreciated whether from the Chairs' letter, other engagement by and with Congress,[4] federal and state

[1] The Public Policy Agenda of the National Council of Nonprofits considers the law on nonpartisanship so essential that the following commitment appears in two separate places: "Supporting and preserving the longstanding federal policy limiting the ability to receive tax-deductible charitable donations only to tax-exempt organizations that refrain from participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office."

[2] Learn more about the unified position of the 501(c)(3) community – frontline charities, churches, and foundations – by reviewing the materials posted at Protecting the Johnson Amendment and Nonprofit Nonpartisanship and Additional Resources.

[3] When reporters get too loose with the word "nonprofit" in their articles about non-charitable nonprofits – 501(c)(4) and 501(c)(6) (e.g., chambers of commerce) – making partisan campaign expenditures, invariably some readers mistake the word "nonprofit" as meaning 501(c)() charitable nonprofit and post comments to those articles declaring that they'll "never give to another charity again," noting that if they'd wanted their money to go to politics, they'd have given to the candidate directly.

[4] As part of the ongoing effort to identify and root out fraud, the networks of the National Council of Nonprofits actively participated in the July 27, 2023, Oversight Subcommittee hearing, The Employee Retention Tax Credit Experience: Confusion, Delays, and Fraud. See Testimony of Linda M. Czipo of the New Jersey Center for Nonprofits, and Statement of the National Council of Nonprofits.

law enforcement officials,[5] the news media,[6] and/or the public. While the answer to any question of partisan behavior may be in the eye of the beholder (see Overarching Principle #3, below), robust scrutiny must be encouraged because the stakes are so great.

We have no knowledge about whether the allegations in a recent report from the Capital Research Center are true or not.[7] But we do know from media accounts and visible policy actions that the allegation in the CRC report that "there is no conservative equivalent" must be subjected to scrutiny.[8] The gutting of the IRS budget over the past decade, plus the 2019 termination of required donor disclosures to the IRS for some non-charitable nonprofits, and a Supreme Court decision and recent state laws blocking reasonable access to evidence of fraud have significantly hindered the ability of federal and state law enforcement to detect and stop bad actors seeking to funnel hidden "dark money" to influence partisan elections. Charitable nonprofits are deeply disturbed by efforts – whether from the left or the right – to misuse them to abuse public trust, violate the law, and stain the goodwill of charitable organizations for partisan purposes.

It cannot be stated enough that charitable nonprofits rely on public trust. Earning and retaining the public's trust requires constant ethical leadership, consistently responsible practices, and ongoing training and reinforcement. That is why charitable organizations devote special attention to complying with all laws and behaving appropriately.[9] And that's

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[5] See, e.g., National Association of State Charity Officials letter to Congressional leaders "express[ing] deep concern about efforts to repeal or weaken a long-standing provision in federal law – the so-called 'Johnson Amendment'" – because, among other reasons cited in the letter, doing so "would adversely impact [the states' law enforcement] abilities to protect the integrity of charitable assets and charitable solicitations." Aug. 23, 2017.

[6] In 2019, the *News Tribune* in Missouri's capital of Jefferson City received from the Missouri Press Foundation an "honorable mention for an editorial supporting the Johnson Amendment, a federal tax code ban on religious and other nonprofit organizations endorsing/opposing political candidates." The newspaper's editorial expressed its view: "Repeal of the Johnson Amendment would allow political organizations/donors to use churches as dark-money pipelines, because they, as 501(c)(3) organizations, don't have to disclose their donors." The editorial concluded, "Repealing the Johnson Amendment would be bad for politics, bad for churches and bad for America."

[7] How Charities Secretly Help Win Elections, Parker Thayer, Capitol Research Center, Aug. 15, 2023.

[8] One media article showing otherwise was written by a reporter cited with favor in the Request for information: Democrats Decried Dark Money in Politics, but Used It to Defeat Trump, Kenneth P. Vogel and Shane Goldmacher, *The New York Times*, Jan. 29, 2022, updated Aug. 21, 2022 , which reported abuses by both political parties, finding that "15 of the most politically active nonprofit organizations that generally align with the Democratic Party spent more than $1.5 billion in 2020 — compared to roughly $900 million spent by a comparable sample of 15 of the most politically active groups aligned with the G.O.P."

[9] See generally, Ethical Leadership for Nonprofits, National Council of Nonprofits, and Ethics and Accountability for Nonprofits, National Council of Nonprofits. Many of our member state associations of nonprofits provide

why it is grievously offensive when partisans try to take and play off of, and risk destroying, charitable nonprofits' well-earned public trust.[10]

Overarching Principle #3: Conflation Breeds Confusion.

In the field of nonprofit law, words matter. By that we mean that when vague, undefined terms are bandied about, like "political advocacy" and "political nonprofits," the public is justifiably confused. It compounds the confusion when the news media, politicians, and activists mislabel organizations using terms that suggest violations of the law that, if labeled more correctly, would lead to accuracy and understanding. Some people may see issues like abortion, immigration, and climate change as "political," but at their core these are *public policy* issues that may or may not happen to align with specific political parties at any given time.[11]

The distinction between the types of nonprofits also matters. Federal law has long recognized the fundamental distinction for charitable nonprofits between partisan political electioneering (which is expressly forbidden) and permissible nonprofit advocacy, which comes in many forms, including lobbying, engaging in ballot measures (such as initiatives, referenda, and public bonding issues, which the law technically treats as lobbying), and promoting public engagement through nonpartisan election-related activities. While charitable nonprofits can, do, and should advance their missions through advocacy, charitable nonprofits must remain entirely nonpartisan.

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guidance on state-specific legal requirements and promote "best practices" to raise awareness about how ethical, accountable, and transparent practices – including remaining nonpartisan – make nonprofits more effective and trustworthy. See, e.g., Maryland's Standards for Excellence®: An Ethics and Accountability Code for the Nonprofit Sector ("In promoting public participation in community affairs, charitable nonprofits must be diligent in assuring they do not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office"), and Minnesota's Principles and Practices for Nonprofit Excellence ("501(c)(3) organizations must not take positions or spend funds to support or oppose a candidate for political office or coordinate their activities with a candidate, political party, or other organization supporting or opposing political candidates").

[10] See Nonprofit Impact Matters, National Council of Nonprofits, Fall 2019, at 11: "Nonprofits can promote civic engagement such as voting, but they must always avoid endorsing or opposing any candidates for public office or using charitable assets for partisan campaign activity. Remaining nonpartisan is both the law and common sense. *People trust nonprofits as problem-solvers because they know nonprofits are working for the common good rather than a political party*." (Emphasis added.)

[11] For example, the recently announced campaign by the Catholic Church of Ohio to oppose an abortion-rights amendment to the Ohio constitution is within its advocacy rights, as clearly articulated by the IRS, to raise and spend money on the ballot measure because that is considered lobbying on a public policy issue rather than engaging in partisan, election-related activities.

Overarching Principle #4: Charitable nonprofits and civic engagement are synonymous.

Charitable nonprofits operate in local communities across America. They feed, heal, shelter, educate, inspire, enlighten, and nurture people of every age, gender, race, and socioeconomic status, and they foster civic engagement and leadership development, drive economic growth, and strengthen the fabric of our communities. Their specific missions may appear divergent when looking at the individual subsectors, such as the arts and culture, education, environment and animals, faith-based, health care, human services, philanthropy, and so much more, but collectively they share common broader missions of improving lives, strengthening communities, and often advancing cherished American values of individual freedoms of expression and beliefs.[12]

As Alexis de Tocqueville observed in 1840, the American spirit is manifested in "associations," his term for what today are known as charities.[13] As with their work on the census, social services, and community healing, charitable nonprofits have the closest connection to the people in communities, serving as trusted partners. When there is a deficit in democracy, as in large populations of eligible voters remaining unregistered and disengaged, it is logical for the groups in their communities to connect and engage.

We reject the premise that an organization must be biased and/or partisan for focusing on registering low-income people or other demographic groups. Quite the contrary, it should be a bedrock principle of civic engagement for all that every person eligible to vote in our democracy should be registered and encouraged to get to the polls.[14] It's a basic civic virtue that's been espoused by chambers of commerce, faith-based groups, community leaders, and charitable nonprofits that traces back to the Athenian Oath. A major charitable organization in the U.S. requires all beneficiaries of its services to register and vote when they become eligible. This is based on their mission of helping to bring disadvantaged persons into the

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[12] Part IV of the National Council of Nonprofits' 2023 Public Policy Agenda fully endorses civic engagement as a core focus of the operations of charitable nonprofits: "nonprofits share the responsibility to promote greater engagement of the citizenry, civic dialogue, open elections, and open government." It is the stated commitment and priority of NCN to be "[s]upporting and preserving the longstanding federal policy allowing 501(c)(3) nonprofits to engage in nonpartisan voter registration, voter education, and get-out-the-vote activities so long as organizations are not coordinating their activities with political campaigns, political parties, or political action committees."

[13] *Democracy in America*, Alexis de Tocqueville, 1840. It is noteworthy that De Tocqueville also appears to have been an ardent supporter of nonpartisanship: "I have a passionate love for liberty, law, and respect for rights." he wrote. "I am neither of the revolutionary party nor of the conservative. [...] Liberty is my foremost passion."

[14] See Keeping Our Republic: The Roles of Charitable Nonprofits, *Nonprofit Champion*, July 24, 2022. See also, IRS Exempt Organization CPE texts for "Election Year Issues" (1993-N, 91 pages) and "Political Campaign Prohibition" (1996-O, 18 pages).

mainstream of American life, and like paying taxes, voting is about as mainstream as a person can get. Some people need more help than others. Helping people is what charitable nonprofits do.

While we recognize that the rough and tumble of partisan politics may cause some to discourage voting by perceived opponents, we in the charitable nonprofit world continue to hold true to the long-respected virtue of full voter participation.

Responses to Questions Presented

In turning to the 10 questions, we thank the Chairs for raising these issues. We anticipate, and indeed, hope, that our responses and those from others will cause unscrupulous partisan operatives, regardless of their party affiliations, to squirm uncomfortably knowing the contempt and condemnation people have for them when they try to abuse and misuse charitable nonprofits. Not everything can be or should be reduced to partisan politics. Increasing numbers of Americans view the polarizing nature of politics today as being too toxic. Charitable nonprofits work hard to earn and retain the public's trust to advance their mission every day. To have partisan political operatives leach off that goodwill ultimately undermines the trust earned by charitable nonprofits and thus hurts the public in local communities throughout the county as nonprofits lose donations, lose volunteers, and can no longer meet the public's needs.

1. Would it be helpful to 501(c)(3) and 501(c)(4) organizations for the Internal Revenue Service (IRS) to issue updated guidance on how to define "political campaign intervention" and the extent to which 501(c)(4) organizations can engage in "political campaign intervention" be helpful to 501(c)(3) and 501(c)(4) organizations? If yes, why?

No, as to 501(c)(3) organizations, but yes as to 501(c)(4) organizations, for reasons explained below.

A. There Is Not a Problem for 501(c)(3) Organizations, Because the Rules For Nonpartisan, Election-Related Activities Are Clear to the Reasonable Person.

Charitable Nonprofits: It would be extremely *unhelpful* to 501(c)(3) charitable nonprofits for the IRS to engage in rulemaking on how to define "political campaign intervention." The rules on what is and is not partisan, election-related activities are quite clear to frontline 501(c)(3) organizations and the ordinary reasonable person. No additional rulemaking by the IRS or legislation by Congress is needed to provide clarity to aid charitable organizations as they effectively engage in their communities. Charitable nonprofits already have ready access to

information and assistance for remaining nonpartisan as they engage in election-related activities.

This clarity is provided in the form of the definition of "political campaign activity" on the Form 990.[15] Also, the IRS already provides clear formal guidance,[16] including drawing distinctions between appropriate "issue advocacy" vs. banned "political campaign intervention."[17] Further, the networks of the National Council of Nonprofits, and in particular our member state associations of nonprofits, have developed, often in conjunction with Nonprofit VOTE, extensive educational materials, checklists, and how-to guides, and regularly provide trainings for charitable organizations and professionals.[18] Here is a *brief* sampling to show that the election-related activities of charitable nonprofits are nonpartisan, purposeful, and focused on uplifting communities:

- Staying Nonpartisan: Permissible Election Activities Checklist, Nonprofit VOTE.
- Election Checklist for 501(c)(3) Public Charities: Ensuring Election Year Advocacy Efforts Remain Nonpartisan, Bolder Advocacy.
- Working with Candidates on a nonpartisan basis, Nonprofit VOTE.
- Hosting Candidates at Charitable Events: Ensuring Candidate Appearances Remain Nonpartisan, Bolder Advocacy, Nonprofit VOTE.
- **Arizona**: Voter Registration, AZ Impact for Good.
- **Massachusetts**: Supporting Caring Communities – Register to Vote!, Caroline O'Neill, Providers' Council, Aug. 2, 2023.
- **Pennsylvania**: In Support of Democracy: What Nonprofits Can Do, Pennsylvania Association of Nonprofit Organizations, July 8, 2022.

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[15] The Glossary in the instructions to the Form 990 completed annually by 501(c) organizations defines "political campaign activities" in a way that, we believe, clearly delineates what charitable nonprofits can and cannot do. It warns against "All activities that support or oppose candidates for elective federal, state, or local public office. It doesn't matter whether the candidate is elected. A candidate is one who offers himself or herself or is proposed by others for public office. Political campaign activity doesn't include any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn't directly or indirectly support or oppose any candidate."

[16] See, e.g., IRS Fact Sheet FS-2006-17 (February 2006); IRS Revenue Ruling 2007-41 (June 2007); and generally, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Internal Revenue Service, last updated on June 9, 2023.

[17] IRS Revenue Ruling 2007-41; 501(c)(3) Tax Guide for Churches and Religious Organizations, Internal Revenue Service, Publication 1828 (Rev. 8-2015), pp. 8-9.

[18] See generally, In Praise of Nonpartisan Electioneering, *Nonprofit Champion*, May 2, 2022, highlighting nonpartisan activities in Arizona, Connecticut, Kentucky, and Minnesota; Nonprofits Promoting Democracy and Nonpartisan Engagement, *Nonprofit Champion*, Sept. 5, 2022, highlighting similar nonpartisan activities in Maine, Massachusetts, New York, and North Carolina.

Note these materials are prepared by charitable nonprofits for charitable organizations, which illustrates that these organizations take compliance with the law's nonpartisanship directive seriously. This is true not only for their own organizations, but also for the broader charitable community, thus providing another example of nonprofits constantly working to protect the public's trust in all charitable organizations. In our extensive experience, 501(c)(3) nonprofits that engage in election-related activities do so in a nonpartisan way with intent to maximize voter participation in their communities and civic participation among all the people they serve – regardless of their political affiliation – and without expectation that their activities will benefit particular candidates or political parties.

Social Welfare Organizations: It would, however, be extremely *helpful* for the IRS to renew rulemaking on how to define "political campaign intervention" as that term relates to 501(c)(4) social welfare organizations. Recent events, beginning with the Supreme Court's decision in *Citizens United v. FEC*, have motivated partisan interests to use 501(c)(4) social welfare organizations to finance their partisan campaign agendas. The result has been scandal, confusion, and diminished public respect for the work of all nonprofits, thereby inflicting unnecessary and collateral damage to the work of 501(c)(3) charitable nonprofits.

B. Past IRS Rulemaking to Define "Political Campaign Intervention" and Congressional Actions Make the Prospect of Devising Truly Objective Standards on Nonpartisanship Without Creating More Problems Extremely Unlikely.

The IRS has tried, yet failed, to clarify the term "political campaign intervention" – partly through bad drafting of proposed regulations and partly because of congressional opposition. The IRS issued *Proposed Guidance for Tax-Exempt 501(c)(4) Social Welfare Organizations on Candidate-Related Political Activities*[19] in late 2013 and withdrew the proposal in 2014 after receiving nearly 150,000 public comments, most of which expressed strong opposition. Most of the opposition pushed back against perceived partisan bias by the IRS. The National Council of Nonprofits' comments, also in opposition, challenged the proposal's improper attempt to extend the term "political campaign intervention" to charitable organizations that are absolutely barred from "political" activities as that term is commonly understood.[20] NCN made the case that "the proposed regulations would negatively affect the ability of 501(c)(3) charitable nonprofits to advance their individual missions and their collective role in ensuring

[19] REG-134417-13.

[20] Comments of the National Council of Nonprofits to IRS Rulemaking, Notice of Proposed Guidance for Tax-Exempt 501(c)(4) Social Welfare Organizations on Candidate-Related Political Activities ((REG-134417-13), submitted on Feb. 25, 2014.

a strong democracy." It is from this experience that we oppose the suggestion that the IRS once again seek to clarify for *charitable* nonprofits a term that does not and should not apply to them. It would only create confusion where there is none now for 501(c)(3) organizations.

The comments that NCN filed in 2014 expressed a view that echoes the Chairs' request for information: then, as now, NCN is concerned about "the serious need for corrective action to stop the use of 501(c)(4) social welfare organizations for partisan political purposes that is, among other things, causing confusion with and harming the work of 501(c)(3) charitable nonprofits." The Treasury Department and IRS withdrew the proposed regulations but have not been able to even try to improve guidance because Congress has expressly blocked further rulemaking on this topic. Since the initial rulemaking, Congress has included a rider in every appropriations bill for the Treasury Department prohibiting any regulatory action, revenue rulings, or other guidance that might clarify which actions of social welfare organizations are and are not considered legal and appropriate.[21]

So, while clarity is needed to help identify the limits of partisan behavior by 501(c)(4) social welfare organizations, Congress will first need to step aside to allow rulemaking to proceed.

2. Does the IRS's current guidance on the definition of "political campaign intervention" properly account for new forms of political advocacy? If not, what should be included in updated guidance from the IRS to account for forms of political advocacy that are currently not covered?

We do not believe this question applies to charitable nonprofits. The overarching principles presented earlier explain why the term "political campaign intervention" does not relate to charitable nonprofits, which must remain nonpartisan in all of their activities. Further, as we stated in response to the first question, the existing rules are clear and appropriate in defining what charitable nonprofits can and cannot do when it comes to nonpartisan, election-related activities. Finally, the undefined term "political advocacy" is a foreign concept to 501(c)(3) organizations. Charitable organizations are permitted to engage in "issue advocacy" as that

[21] Legislation currently pending in the House, H.R. 4664 (118th Congress), making appropriations for financial services and general government for fiscal year 2024, would continue the ban preventing such regulatory action at Section 123: "(1) none of the funds made available in this or any other Act may be used by the Department of the Treasury, including the Internal Revenue Service, to issue, revise, or finalize any regulation, revenue ruling, or other guidance not limited to a particular taxpayer relating to the standard which is used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4) of the Internal Revenue Code of 1986 (including the proposed regulations published at 78 Fed. Reg. 71535 (November 29, 2013))."

term is contemplated in the second proviso of Section 501(c)(3) of the Internal Revenue Code. But the next proviso in the subsection, expressing the absolute bar to partisan activities, makes clear that partisan activities – the most typical usage of the word "political" – are not permissible.

New forms of advocacy are always evolving, of course. In 2007, the IRS sought to clarify when the inclusion of a link to a truly partisan webpage would render an otherwise nonpartisan communication to be improper.[22] Social media postings from individuals that are not initially attributable to a charitable nonprofit can seem to be so connected when others draw connections. The IRS's usual "facts and circumstances test" is not perfect, but it remains a viable tool for discerning the intent and impact of communications. Absent clear conduct or an obvious trend, we call on Congress to refrain from seeking clarity for hypotheticals or when certainty is already the rule that frontline charitable nonprofits recognize.

3. Are there any tax-exempt organizations whose voter education or registration activities you suspect might have had the effect of favoring a candidate or group of candidates which would constitute prohibited participation or intervention? If yes, please describe those activities?

As stated previously, the networks of the National Council of Nonprofits have extensive experience in promoting nonpartisan, election-related activities through educational materials, how-to guides, checklists, trainings, and more. This focus, particularly from the network of state associations of nonprofits, merges the overarching principles of nonpartisanship and civic engagement. It is natural, authorized by law, and indeed expressly recognized by the IRS, for charitable nonprofits to promote outreach in under-represented communities.[23] Therefore, we reject any partisan perspective that working in specific communities and/or with various demographic groups, like seniors, should be considered biased.

Individuals with credible evidence of violations of tax-exempt laws should submit a "**Tax-Exempt Organization Complaint**" (Form 13909) with the IRS. The form expressly lists as a potential violation "Organization is involved in a political campaign" and "Income/Assets are being used to support illegal or terrorist activities." The IRS instructions provide that Form 13909, and any supporting documentation, can be submitted in a variety of ways: Mail to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce St., Dallas, TX 75242-1198; Fax to 214-

[22] IRS Revenue Ruling 2007-41.

[23] IRS Fact Sheet FS-2006-17.

413-5415; or Email to eoclass@irs.gov. In addition, credible evidence of violations can be reported to state attorneys general or other state charity regulators, who typically regulate misuse of donor funds and other abuses by nonprofits within their jurisdictions. See the National Association of State Charity Officials' listing of the appropriate place to contact in each state.

4. Are there changes to Form 990 – which is used by tax-exempt organizations to file their tax returns – that would help clarify how contributions are being used by 501(c) organizations? Especially regarding contributions that are used to fund political activities by 501(c)(4) organizations or nonpartisan voter education activities that 501(c)(3) organizations are allowed to engage in such as voter registration activities, public forums, and publishing voter education guides?

The answers to these questions are different depending on the type of nonprofit. For 501(c)(3) charitable nonprofits, there is no need to alter the Form 990 to clarify how contributions of this nature are being used. For social welfare organizations organized under Section 501(c)(4), however, the IRS should restore the procedures for confidential donor disclosure to law enforcement that existed prior to 2019.

Disclosure to governments of the names and amounts of contributions is one of the hottest and most controversial issues in this area of the law. The National Council of Nonprofits wholeheartedly agrees that the names of donors to charitable organizations *should not be disclosed to the public* under compulsion of law. Forced *public* disclosure of the identities of donors to charitable nonprofits is anathema to donor protection, donor interests, and sound fundraising principles. However, reasonable and confidential disclosure to law enforcement officials of some donor information is essential to protect the public, charitable organizations, and respect for the law.

On many occasions, NCN has expressed the strongly held view that, to ensure faith in a system, the public must believe that participants are playing by the rules. That requires law enforcement. If the public believes that there is inadequate oversight allowing some to "game the system," then people will lose faith in that system. When that happens with respect to charitable giving, then people withhold their support of financial contributions and volunteering time, which damages the ability of charitable nonprofits to deliver on their

missions for the millions of people who depend on them. That is why deterrence of bad actors and fraud is so important.[24]

The Form 990 and 501(c)(3) Charitable Nonprofits

The existing Form 990, pursuant to statute, requires charitable nonprofits to submit Schedule B – Schedule of Contributions, which reports on a *confidential, non-public* basis the names and amounts given by the charitable nonprofit's "substantial contributors" – those donating the greater of either $5,000 or more than two percent of the group's revenue. This disclosure enables the IRS to compare the tax returns of individuals and charitable organizations to ensure consistency and compliance with the law. One example is how the IRS can cross-reference to ensure that a taxpayer does not claim a deduction for a charitable donation of $100,000, when the nonprofit reports a donation of $2,000. Also, having access to that data allows law enforcement to monitor against self-dealing. These examples also illustrate the deterrent effect: if someone knows they might get caught, they tend to not do the bad act.

In addition, the current Form 990, which is signed under penalty of perjury, already contains sufficient disclosure requirements which prompt a detailed schedule response for any 501(c)(3) organization that might engage in improper, partisan activities. As can be seen, the current disclosure requirements are robust:

a) In making their **Statement of Program Service Accomplishments** (Part III), organizations already must describe the three largest program services, as measured by expenses. The form expressly states: "Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported." Assuming proper disclosure, as required by law, the larger program activities involving "political activities by 501(c)(4) organizations or nonpartisan voter education activities that 501(c)(3) organizations" should be reported and made publicly available.

b) The **Checklist of Required Schedules** (Part IV) expressly asks, "Did the organization engage in direct or indirect political campaign activities[25] on behalf of or in opposition to candidates for public office?" If so, the filing organization must fill out and submit both:

[24] See *Amicus Curia* brief of the National Council of Nonprofits, *Americans for Prosperity v. Bonta*, U.S. Supreme Court, No. 19-251, submitted Mar. 31, 2021; *Why We Filed an Amicus Brief in the U.S. Supreme Court to Protect Charitable Nonprofits*, National Council of Nonprofits blog, Apr. 5, 2021.

[25] As shown in footnote 15, the Glossary in the Form 990 instructions provides a clear definition for what constitutes "Political campaign activities."

i. Schedule C, Political Campaign and Lobbying Activities For Organizations Exempt From Income Tax Under section 501(c) and section 527, which requires the charitable nonprofit to "Provide a description of the organization's direct and indirect political campaign activities "and report the amount of money and volunteer time spent on any political campaign activities; and

ii. Schedule I, Grants and Other Assistance to Organizations, Governments, and Individuals in the United States, which requires Section 501(c)(3) organizations to report grants to other organizations, including Section 501(c)(4) organizations, in excess of $5,000. If properly filled out, both the Statement of Program Service Accomplishments and the Schedule I disclosure are sufficient to provide the IRS with information to track permissible grants (those for general operations) from Section 501(c)(3) organizations to Section 501(c)(4) organizations.

c) Also on the **Checklist of Required Schedules** (Part IV) is a question designed to identify fund transfers to related organizations. Question 36 for Section 501(c)(3) organizations asks, "Did the organization make any transfers to an exempt non-charitable related organization?" Charitable nonprofits answering "Yes" must complete Schedule R, which deals with Related Organizations and Unrelated Partnerships and requires organizations to disclose the name of the related organization, type of transaction (from a list of 19 options), the amount involved if $50,000 or more, and how that amount was determined.

The Form 990 and 501(c)(4) Social Welfare Organizations

While there is not a need for additional reporting by 501(c)(3) nonprofits on their election-related activities, it is unfortunate and troubling that the disclosure requirements for non-charitable 501(c) organizations were recently changed to provide less transparency, making it even harder for the IRS to police illegal activities. Prior to 2020, all 501(c) organizations were required to submit a Form 990 Schedule B that tells the government – on a confidential, non-public basis – the names and addresses of substantial contributors and amounts donated. In 2019-2020, the Treasury Department and IRS engaged in rulemaking that resulted in the elimination of this disclosure requirement for all tax-exempt organizations with the notable exception of charitable nonprofits.[26]

[26] Final Regulation: Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 1545-BN28, Effective May 28, 2020.

The National Council of Nonprofits strongly opposed the abolition of the disclosure requirement in extensive public comments submitted during the rulemaking process. The gist of those comments is shared here:

> If adopted, the proposed regulations would result in secrecy undermining public trust in all nonprofit organizations, even charitable nonprofits to which these draft rules are not directed. Moreover, the proposed regulations threaten the integrity of federal, state, and local elections, something of concern to all individuals and organizations in our country. Finally, we urge the IRS to correct the misinformation campaign leading up to this rulemaking that, left unaddressed, will promote further distortions and outright lies. Simply put, nothing is broken, so there is no legitimate reason to remove a deterrent that has proved successful for years.[27]

The concerns we expressed at the end of 2019 are strikingly like those expressed in the Chairs' letter: public trust has been undermined, the integrity of our elections is being questioned, and misinformation – based on ignorance and the lack of law-enforcement scrutiny – abounds. We said in 2019 and stand by these words here: the elimination of the Schedule B disclosure requirement for non-charitable nonprofits was misguided because it invited "bad actors to infiltrate and exploit the nonprofit community to perpetrate excess benefit transactions, engage in unlawful partisan activities, and open the way for disguised foreign interference in American elections and public discourse." We expressly endorsed the public comments submitted by the National Association of State Charity Officials[28] in calling on the IRS to uphold responsible tax-law enforcement by withdrawing the proposed regulations.

We now urge the Committee to investigate the adverse impact of the 2019-2020 regulatory action eliminating the Schedule B disclosure requirement and to update the Internal Revenue Code to affirmatively restore this important, non-public disclosure requirement.

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[27] Public Comments on IRS REG-102508-16 – Comments on the Proposed Regulation Eliminating a Schedule B Requirement for Tax-Exempt Organizations to Submit the Names and Addresses of Substantial Contributors, National Council of Nonprofits, submitted Dec. 9, 2019.

[28] Public Comments on IRS REG-102508-16 – Comments of the National Association of State Charity Officials, Dec. 5, 2019.

5. Should Congress consider policy changes to address money from foreign nationals – who are prohibited from contributing directly to political campaigns, candidates, and super PACs – flowing through 501(c)(3) and 501(c)(4) organizations to influence U.S. elections? If so, what specific policy changes should be considered?

Although the National Council of Nonprofits does not have direct knowledge of money coming from foreign nationals or international organizations seeking to influence U.S. elections, we remain concerned for our democracy that foreign states, foreign corporations, and foreign nationals have channeled funds in an intentionally clandestine fashion through non-charitable nonprofit organizations, chiefly Section 501(c)(4) organizations, into the hands of political candidates running for office in the United States.

We take note of various news articles which raise allegations about improper activities and observe further that recent actions by the IRS that relieve Section 501(c) non-charitable organizations (other than Section 501(c)(3) organizations) from including identifying information such as names and addresses of donors when completing the Form 990.[29] The lack of Schedule B information has made it increasingly difficult (if not impossible) for the IRS to determine whether there are impermissible donations from foreign nationals utilized by Section 501(c)(4), (6), and (7) organizations for political purposes including influencing U.S. elections. See generally Revenue Procedure 2018-38, which provides this reporting exemption for Section 501(c)(4), (6), and (7) organizations.

There has been an outright prohibition on foreign contributions to U.S. political campaigns since 1976. Over the past twenty years, this prohibition has been strengthened by Congress and affirmed by the Supreme Court, which declined to extend the reasoning of the *Citizens United* decision to such foreign contributions.[30] The use of Section 501(c)(4) organizations to engage in political activity and fund political campaigns has expanded significantly over the past decade. Because non-charitable nonprofits are shielded from revealing sources of their donations, the use of dark money donations has grown substantially, widening the potential that foreign contributions could illegally fund domestic campaigns without reporting to law enforcement or public knowledge.

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[29] E.g., Trojan Horse Charities and the Foreign Agents Registration Act, Darryll K. Jones, *Nonprofit Law Prof Blog*, Aug. 21, 2023.

[30] *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011) (three-judge court) (upholding ban on contributions by foreign nationals, 52 U.S.C. § 30121(a)), *summ. aff'd*, 132 S. Ct. 1087 (2012).

The problem resulting from foreign contributions to organizations engaged in political activity arises from a confluence of income tax and campaign finance laws. As discussed in our response to question #4, we recommend that enforcement regimes of both the IRS and the Federal Election Commission work in tandem to address the issue of illegal foreign contributions. As a first step, we recommend that the IRS return to requiring non-charitable nonprofits to disclose confidentially to the IRS on Schedule B of the annual Form 990, the names and addresses of their substantial contributors.

6. Does the IRS collect information from 501(c)(3) and 501(c)(4) organizations that would aid the Federal Election Commission (FEC) in enforcing the foreign national prohibition under the Federal Election Campaign Act of 1971 (FECA)?

In responding to this question, we note that funding from foreign nationals and the law of federal elections generally fall outside our areas of expertise and regular engagement. That said, we note that both 501(c)(3) charitable nonprofits and 501(c)(4) social welfare organizations can accept foreign donations and deploy them for *nonpolitical* and *advocacy* purposes. We also observe that the Form 990 requires filers to answer questions about operations outside the United States.[31] However, as noted several times in this response, social welfare organizations are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990–EZ. In short, there are important, but incomplete disclosures available to law enforcement officials.

Schedule C, disclosed on the Form 990, with the addition of a confidentially disclosed Schedule B, could aid both the Internal Revenue Service as well as the Federal Election Commission enforce the foreign national prohibition under the Federal Election Campaign Act of 1971. We recommend that the IRS return to requiring 501(c)(4) social welfare organizations to annually disclose the names and addresses of their substantial contributors privately on the annual Form 990. If the IRS fails to act, we urge Congress to amend the tax law to require the disclosure of substantial donor information by 501(c)(4) social welfare organizations.

[31] IRS Form 990, Part IV, Question 14a: "Did the organization maintain an office, employees, or agents outside of the United States?" and Question 14b, "Did the organization have aggregate revenues or expenses of more than $10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at $100,000 or more?" If answering yes to the latter question, filers are instructed to provide greater detail on Schedule F, Parts I and IV.

7. According to a U.S. Government Accountability Office (GAO) report, IRS examiners "do not review the national origin of sources of donations reported" by tax-exempt organizations on the Form 990, "and do not assess an organization's compliance with FECA provisions during audits. Given concerns over foreign influence in our elections, should IRS examiners review the national origin of sources of donations reported by a tax-exempt organization on the agency's IRS Form 990-series?

We believe the suggested scrutiny proposed in this question is reasonable. We generally would oppose adding additional burdens to the IRS that are outside the scope of the agency's governing statutes and mission. However, abuse of tax and election laws for partisan, election-related goals can and should trigger enforcement actions by both the IRS and the Federal Election Commission. Therefore, assuming Congress provides appropriate funding for expanded oversight, we agree that greater cooperation is in the public interest.

8. Are there additional disclosures by 501(c)(3) and 501(c)(4) organizations engaged in "political campaign intervention" that would help prevent illegal contributions made by foreign nationals to influence U.S. elections?

Please see our response to Question #4. We reject the premise that there are widespread efforts by 501(c)(3) organizations to engage in "political campaign intervention," however defined and regardless of whether the concern is illegal contributions from domestic or foreign sources. While we cannot speak for 501(c)(4) organizations, we are confident that the overwhelming majority of charitable nonprofits are vigilant in their commitment to nonpartisanship and the integrity of their financial, governance, and operational practices.

9. Are you aware of organizations under Section 501(c) that are tax-exempt but have the true purpose of influencing elections in favor of one political party? If so, please provide a description of how such organizations achieve that goal.

We appreciate this question for the reasons stated in our Overarching Principle #2, above. All charitable nonprofits should welcome legitimate inquiries into credible allegations of shady conduct. The IRS and state charity officials cannot root out all corruption on their own, particularly when they face budget cuts, restrictions on reasonable access to information about donations and spending, and other hindrances to their proper law enforcement activities.

The National Council of Nonprofits is not privy to partisan activities intended to favor one party. We do take notice of recent news articles that suggest that allegations of abuse are not limited to one ideology or party:

- Don't Make Me Pull This Car Over! More Dark Money Fights, Darryll K. Jones, *Nonprofit Law Prof Blog*, Aug. 18, 2023.
- US 'Dark Money' Donor Groups Accuse Each Other of Abusing System, Emily Birnbaum, *Bloomberg*, Aug. 15, 2023.
- ALEC State Lawmakers Lead Campaign to Conceal Conservative Donors, Juliana Broad, Exposed by CMD, July 13, 2023.
- For many Southern Baptists, the only campaign question is which Republican candidate to support, AP News, June 7, 2023.
- 'Dark money' groups have poured billions into federal elections since the Supreme Court's 2010 Citizens United decision, Anna Massoglia, *Open Secrets*, Jan. 24, 2023.
- 20 Examples of Johnson Amendment Violations, Experts Say, Pro Publica and *Texas Tribune*, Nov. 7, 2022.
- How Dark Money and Super PACs Are Influencing the 2022 Election, J. David Herman, *Yahoo!*, Nov. 7, 2022.
- Two "dark money" groups bankrolled a "pop-up" super PAC spending millions on GOP primaries, Taylor Giorno, *Open Secrets*, Aug. 23, 2022.
- House quietly passes tax exemption for megadonors, Kenneth P. Vogel and Hillary Flynn, *Politico*, Apr. 16, 2015.

Also, as explained previously, individuals with credible evidence of violations of tax-exempt laws should submit a "**Tax-Exempt Organization Complaint**" (Form 13909) with the IRS and/or report credible evidence to their state attorney general.

10. Are you aware of organizations under Section 501(c) that are tax-exempt but have misused donor funds for the personal benefit of organization executives or have misused donor funds outside the stated purpose of the donor? If so, please provide a description of those organizations and the relevant conduct.

Once again, we appreciate this question and reiterate our response above that charitable nonprofits should welcome all legitimate inquiries into credible allegations of shady conduct for the reasons stated above in Overarching Principle #2.

If the National Council of Nonprofits were aware of credible evidence of violations of tax-exempt laws (credible meaning known facts, more than just rumor, innuendo, or third-hand media accounts), we would report what we knew to the appropriate law enforcement authorities. That said, we happened to notice two news articles published after the Chairs posted their Request for Information that appear to involve allegations responsive to

Question 10 about alleged misuse of donor funds: Associated Press (Aug. 18) and Politico (Aug. 22).

Related Issues Needing Committee Attention

As demonstrated in our response to the Request for Information, the National Council of Nonprofits shares the Chairs' interest in preventing illegal behavior, providing clarity in the law, and protecting the integrity of the work of the charitable nonprofit sector. We offer the following two recommendations designed to reduce fraud and minimize confusion over issue advocacy limits.

I. Reduce Fraud by Significantly Revising or Abandoning Completely the Current Form 1023-EZ.

In 2014, the IRS radically changed its application and approval process for certain organizations seeking tax-exempt status. In doing so, it ignored strong warnings expressed by state charity regulators, nonprofits, accountants and attorneys specializing in nonprofit law, and thousands of others. Now we know without a doubt those warnings were accurate, because the incontrovertible data show that the IRS almost automatically grants tax-exempt status to all applicants using the Form 1023-EZ. The most unfortunate outcome has been the agency's near abdication of its duties to protect the public by screening out unqualified or unscrupulous individuals who seek charitable tax-exempt status. The abbreviated application process must be significantly revised or abandoned completely.

Prior to 2014, the IRS required all groups seeking charitable tax-exempt status to file a Form 1023. Applicants had to attach copies of their state formation documents and bylaws, thereby proving their legal existence and purpose. The process played at least two important roles to protect the general public from bad actors and protect the trust that legitimate charitable nonprofits had earned from the public. First, it included educational components to ensure applicants understood what running a nonprofit requires. Second, it served as a strong deterrent, weeding out bad actors who thought it would be a quick way to get easy money and putting all applicants on notice about accountability.[32]

[32] "The level of detail on Form 1023 is also helpful in signaling to applicants that they are entering into a complex regulatory environment with a strict set of rules. While most people who establish a new charity are good people and want to do good things, the thoroughness of Form 1023 helps underscore that tax exemption is a privilege that comes with responsibilities." Internal Revenue Service, Advisory Committee on Tax Exempt and Governmental Entities (ACT): Report of Recommendations (Rev. 06-2012) Publication 4344: Catalog Number 38578D, at 87 (June 6, 2012).

In 2014, IRS introduced the Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code for the stated purpose of increasing efficiencies in processing to address an increasing backlog of applications. The IRS did so despite significant objections and recommendations of experts on its own IRS Advisory Committee on Tax Exempt and Government Entities, its state regulatory partners with the National Association of State Charity Officials, and practitioners in the charitable community, including the National Council of Nonprofits and various accountants and attorneys. Using the Form 1023-EZ, a person now can merely check boxes to secure tax-exempt status without having created the required underlying organizational entity or knowing the duties and obligations that status entails. This is a disservice to the donating and volunteering public, to state charities enforcement and oversight officials, and to charitable organizations.

The predicted outcome has come true: Form 1023-EZ has opened the floodgates to unqualified organizations and fraudulent individuals. Studies by the U.S. Government Accountability Office, as well as reports issued by the IRS' National Taxpayer Advocate and most recently the Treasury Inspector General for Tax Administration, have subjected the 1023-EZ Streamlined Application to significant criticism. They found that the IRS has consistently approved ineligible applicants at astonishingly high rates: 26 percent (2016), 42 percent (2017), 46 percent (2019), and 80 percent in a 2022 undercover audit.[33] This unacceptably high error rate, combined with the lack of organizational entity audit or review, as initially promised by IRS commissioners, produces "a meaningless tax-exempt application process and a toothless monitoring regime, a combination resulting in thousands of unworthy entities enjoying charitable status," according to analysis by a prominent tax law professor. He went on to predict, "If this widespread noncompliance continues unabated, it will decimate the public's confidence in the entire charitable sector."[34]

Further, a *New York Times* investigation last year identified 76 fake charities from one convicted fraudster and all using the same mailbox that secured tax-exempt status from the

[33] See, e.g., U.S. Government Accountability Office, GAO-15-164, *Tax-Exempt Organizations: Better Compliance Indicators and Data, and More Collaboration with State Regulators Would Strengthen Oversight of Charitable Organizations*, December 2014; Taxpayer Advocate Service, 2015 Annual Report to Congress, Volume One, p.36; Taxpayer Advocate Service, Fiscal Year 2020 Objectives Report to Congress, Section Four, p. 92; More Information is Needed to Make Informed Decisions on Streamlined Application for Tax Exemption, Report Number: 2023-10-001, Treasury Inspector General for Tax Administration, Oct. 3, 2022 (the Form 1023-EZ "application itself does not provide the IRS with sufficient information to appropriately approve or deny an organization's tax-exempt status. As a result, the IRS is approving organizations for tax-exempt status that may not qualify." "Moreover, through undercover testing, "TIGTA obtained I.R.C. § 501(c)(3) status for four of five nonexistent organizations."

[34] Eric Franklin Amarante, *Unregulated Charities,* 94 Wash. Law R. 1503 (2019).

IRS using the Form 1023-EZ.[35] A former IRS official summed up the problem: "Nobody's watching the store."

Recommendation: We urge Congress to insist that the IRS protect the public, donors, and the charitable community by working with the 501(c)(3) community to make significant modifications to the current Form 1023 EZ Streamlined Application or by scrapping the Form 1023-EZ entirely. Any changes should engage stakeholders to develop a replacement application.[36]

II. Uphold Advocacy Rights.

Advocacy is a core component of the mission of charitable nonprofits to address problems in their communities. As stated repeatedly in this response to the Chairs' letter, nonprofits share the responsibility to promote greater engagement of the citizenry, open elections, and open government. We remain steadfast in our support for the tax-law ban on electioneering and partisan political activities because we believe that nonpartisanship is essential to ensuring the public's trust in charitable nonprofits. A 501(c)(3) nonprofit organization does not have to wade into the partisan political morass to affect public policies.

We believe strongly that the rules for the ban on charitable nonprofits engagement in partisan, election-related activities are reasonably clear. However, a similar statement about clarity cannot be said for the second portion of 501(c)(3) concerning nonprofit advocacy and lobbying. Since 1934, a vague standard has existed that "no substantial part of the activities" of charitable organizations may be devoted to legislative lobbying. The ambiguity of this tax-law test has historically discouraged the advocacy work of many charitable nonprofits, leaving policymakers to rely on others who may be less connected to the communities and less aware of challenges and appropriate solutions.

In 1976, Congress provided some relief from the ambiguous "no substantial part of activities" limitation by offering nonprofits the option to use a bright line of financial expenditures test (in Section 501(h)) based on a sliding percentage of their expenditures. Yet Congress failed to index the expenditure test's fixed-dollar amounts, which now – 47 years later – are unreasonably low. Furthermore, charitable nonprofits using the optional expenditures test

[35] 76 Fake Charities Shared a Mailbox. The I.R.S. Approved Them All., David A. Fahrenthold, Troy Closson, and Julie Tate, *The New York Times*, July 3, 2022.

[36] Go to IRS Form 1023-EZ, National Council of Nonprofits website, for more information on the problems caused by the abbreviated application and proposed solutions.

under Section 501(h) may spend only 25% of their allowable lobbying expenses for "grassroots lobbying" to communicate with the public.

RECOMMENDATION: We urge Congress to update the financial threshold for nonprofit lobbying activities by increasing the levels at least to a rate adjusted for inflation, and then ensure that the threshold is regularly updated automatically.

Conclusion

As noted at the beginning, based on our personal and extensive, near-daily involvement with charitable nonprofits over the past few decades, we have not seen and we do not believe there is systemic or widespread abuses by 501(c)(3) nonprofit organizations engaging in prohibited activities to influence partisan elections. Nonetheless, we recognize threats abound that demand vigilance and collaboration between charitable organizations, law enforcement, and policymakers. The networks of the National Council of Nonprofits stand ready to assist the Committee and its members in identifying challenges and solutions that will help ensure the charitable sector remains a safe haven from caustic, partisan politics that Congress has intended it to be and the American people want it to be.

Sincerely,

Liz Moore
Board Chair
National Council of Nonprofits

Tim Delaney
President & CEO
National Council of Nonprofits