

Sent via email to [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov).

December 12, 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: Oversight Subcommittee Hearing on Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape**, scheduled for December 13, 2023

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

In advance of the Oversight Subcommittee hearing on the Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape, I share for the hearing record the [responses of the National Council of Nonprofits \(NCN\)](#) to the August 14, 2023 [Request for Information](#) 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 charitable 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 pioneered, effective trainings and materials on nonpartisan engagement in communities to promote civic engagement.

As we did in the linked response, 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 requesting information from the public. 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 participate in partisan politics; 501(c)(3) (charitable, religious, and philanthropic organizations) may not.

In this statement for the hearing record, we do not repeat the responses to issues and allegations raised in the August RFI. Rather, here we lay out four overarching principles that guide the approach and thinking of frontline charitable nonprofits. We hope Members of the Subcommittee will keep the principles in mind as you consider testimony presented at and after the December 13, 2023 Subcommittee hearing.

## **Overarching Principles**

### **Overarching Principle #1: Nonpartisan, Now and Forever.**

Much of the Chairs’ letter of August 14, 2023, raised questions about the politicization of the charitable nonprofit sector, whether through 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, reserving 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).

It is considered a fundamental principle throughout the 501(c)(3) community that the longstanding Johnson Amendment must be protected.<sup>1</sup> 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 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.<sup>2</sup> 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.<sup>3</sup> 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 their 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’ August 14 letter, other engagement by and with Congress,<sup>4</sup> federal

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<sup>1</sup> 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.”

<sup>2</sup> 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](#).

<sup>3</sup> When reporters get too loose with the word “nonprofit” in their stories about 501(c)(4) and 501(c)(6) (chambers of commerce) making partisan campaign expenditures (as non-charitable nonprofits are allowed to do), invariably people 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.

<sup>4</sup> 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](#).

and state law enforcement officials,<sup>5</sup> the news media,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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 – from the left and 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

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<sup>5</sup> 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.

<sup>6</sup> 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.”

<sup>7</sup> [How Charities Secretly Help Win Elections](#), Parker Thayer, Capitol Research Center, Aug. 15, 2023.

<sup>8</sup> One such compelling media article is one 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.” Importantly, many of the “politically active nonprofit organizations” were 501(c)(4) organizations, not 501(c)(3) charitable nonprofits, according to their latest Form 990 filings available through GuideStar.

devote special attention to complying with all laws and behaving appropriately.<sup>9</sup> And that’s why it is grievously offensive when partisans try to take, and risk destroying, charitable nonprofits’ well-earned trust.<sup>10</sup>

### **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.<sup>11</sup>

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

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<sup>9</sup> 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 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”).

<sup>10</sup> 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.)

<sup>11</sup> For example, the [campaign by the Catholic Church](#) of Ohio to oppose an abortion-rights amendment to the Ohio constitution last fall was 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.

charitable nonprofits can, do, and should advance their missions through advocacy, charitable nonprofits must remain entirely nonpartisan.

**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. Every single day. Their particular 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.<sup>12</sup>

As Alexis de Tocqueville observed in 1840, the American spirit is manifested in “associations,” his term for what today are known as charities.<sup>13</sup> 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 for all that every person eligible to vote in our democracy should be

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<sup>12</sup> 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 consistently 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.”

<sup>13</sup> *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.”

registered and encouraged to get to the polls.<sup>14</sup> 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 nonprofit in the U.S. requires all beneficiaries of its services to register and vote when they become eligible. This is based on the organization's mission of helping to bring disadvantaged persons into the 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.

## Conclusion

Based on NCN's 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 Subcommittee 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. As the hearing record develops, we will submit additional information as relevant and helpful to the Subcommittee's review of the facts and law.

Respectfully submitted,

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<sup>14</sup> 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).