



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

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

**Response to “Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code”**

Dear Chairman Smith and Chairman Schweikert:

On behalf of the Council on Foundations (“Council”), Independent Sector, and United Philanthropy Forum (“Forum”), we thank you for this invitation to submit comments. We collectively represent foundations, other philanthropic organizations, and nonprofit organizations throughout the country, and we work to support our members in meeting the challenges of today into the future.

A robust charitable sector, composed of both foundations and their nonprofit partners, is a core component of American society. Overall charitable giving passed \$499 billion in 2022 according to [GivingUSA](#), with foundation giving reaching \$105 billion, and in 2019, the U.S. was named the most charitable country in the world by the [World Giving Index](#). Nonprofit organizations, including foundations, make up a vibrant sector that is core to American culture and has resulted in vital investments that fuel innovation, fund critical research and projects, and supply needed resources when disasters strike.

Our organizations strongly support the Johnson Amendment, which prohibits section 501(c)(3) organizations from engaging in political campaign activity, including endorsing specific candidates or political parties. It is inappropriate—and illegal—for section 501(c)(3) organizations to engage in electioneering or support candidates in political campaigns.

The Johnson Amendment protects section 501(c)(3) nonprofit organizations that are appropriately engaging in and advocating for public policy that advances the greater good. Nonprofits can and should inform policies aligned with their missions, as they have developed deep expertise, often through decades of on-the-ground experience in the communities they serve in the U.S. and around the world. We continue to support the ability of nonprofits to engage with policymakers on issues impacting them and their communities.

In addition, our members have long supported nonpartisan efforts to expand civic engagement. This commitment to our democracy ensures nonprofits have the resources they need to improve voter education, promote voter engagement, and increase voter participation in all communities, including underserved ones. Far from being a political activity, this work strengthens our democracy, ensuring all Americans—regardless of their political affiliation—have the knowledge and resources they need to exercise their right to vote.

Clarifications and updates to existing regulations around the issues of political activity could be helpful, particularly as channels of communication and political influence continue to evolve. Our organizations are committed to working with the Committee, the Department of the Treasury, and the Internal Revenue Service (IRS) to help create a policy environment in which philanthropy and nonprofit organizations can thrive. We encourage continued dialogue between the Committee and nonprofit organizations, and we welcome all opportunities to work with the Committee to ensure changes to existing guidelines are informed by the nonprofit organizations we represent.

### **Issues for Comment**

**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?**

We support the continued enforcement of the Johnson Amendment, which prohibits section 501(c)(3) organizations from engaging in political campaign intervention. This protection ensures these organizations do not feel pressure from any party—donor or otherwise—to support a political candidate or otherwise attempt to influence a political campaign.

Currently, section 501(c)(3) nonprofit organizations can legally make grants to section 501(c)(4) organizations so long as the section 501(c)(4) organizations do not use those funds for activities that the section 501(c)(3) organizations are prohibited from engaging in. Prohibited activities include engaging in political campaigns on behalf of or in opposition to any political candidate. To our knowledge, section 501(c)(3) organizations are acting in good faith when making grants to section 501(c)(4)s, and we support their continued ability to make these grants. We also support the appropriate enforcement in the case of any illegal or unethical activities from these organizations.

We understand the Committee’s interest in clarifying how 501(c)(3) and 501(c)(4) organizations should interpret the prohibition and limitation—respectively—on “political campaign intervention.” If accomplished through close consultation with a broad spectrum of charitable organizations, this clarification could alleviate the confusion that continues to prevent some organizations from taking part in any public policy work. However, to be clear: advocacy, public policy, and nonpartisan civic engagement are entirely legitimate activities and distinct from “political campaign intervention.” The lack of clarity in the latter could have a broader chilling effect on nonprofit voice. This question is particularly timely: [research recently released by Independent Sector](#) shows that nonprofit organizations are significantly less likely to engage on public policy matters or understand the rules of engagement than they were 20 years ago. Regardless of whether they engaged or not, organizations self-reported that “tax laws or IRS rules” were the most discouraging factor influencing their decision about whether to engage with public policy.

Our organizations are proud to support the Nonprofit Stakeholders Engaging and Advancing Together (Nonprofit SEAT) Act ([H.R. 3245](#)), introduced by Rep. Nancy Mace (R-SC) and Rep. Betty McCollum (D-MN) earlier this year. Section 10 of this bipartisan legislation directs the Government Accountability Office to issue a report to Congress on opportunities to clarify the difference between prohibited political campaign intervention and nonpartisan civic engagement for 501(c)(3) organizations. We welcome any opportunity to work with the Committee and relevant regulators on this issue.

**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?**

Current guidance on this definition correctly prohibits section 501(c)(3) nonprofit organizations from electioneering or otherwise intervening in political campaigns. Changes to the definition of political campaign intervention and subsequent modifications to the related rules and regulations will likely not only impact section 501(c)(4)s, but also 501(c)(3)s. Therefore, we urge Treasury and the IRS to ensure any further guidance considers the perspectives of section 501(c)(3) nonprofit organizations, which are permitted to engage in public policy advocacy and education as they align with their missions. 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. It is vital that this role be honored by any further guidance from the IRS.

**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?**

We are not aware of organizations within our membership engaging in this behavior.

**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?**

Currently, section 501(c) organizations engaging in any political campaign or lobbying activities must disclose this information on their Form 990 Schedule C. This includes detailing any expenditures related to both grassroots and direct lobbying. Section 501(c)(3) organizations are specifically limited in how much they can legally spend on lobbying (including personnel costs), and private foundations are even more limited. Section 501(c)(3) organizations may also choose to make an election under section 501(h) by filing Form 5768, which allows for more precision in determining a nonprofit's permissible lobbying. We strongly encourage the continued collection of this information, which helps maintain integrity and public trust in nonprofit organizations.

Nonprofits can and do engage in civic engagement aimed at increasing voter participation and providing voter education. This is an essential activity for many organizations at a time when voter turnout in the U.S. is relatively low compared to other developed countries. Our organizations work to educate our members and the broader nonprofit sector regarding the activities nonprofits can legally support and the differences between political campaign activity and civic engagement. Any potential changes made to reporting requirements should also recognize the clear difference in these types of activities. We welcome the opportunity to collaborate with the Committee to provide additional clarity on this critical topic.

**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?**

Congress and the federal government must preserve the integrity of the American electoral process. The Johnson Amendment and similar laws protect section 501(c)(3) nonprofit organizations from being influenced, including by their donors, to support political candidates or campaigns. The law is clear: no section 501(c)(3) organization should be seeking to influence partisan political campaigns, regardless of whether it has received donations from foreign nationals.

We also welcome this opportunity to share with the Committee the importance of cross-border philanthropic flows. As the world becomes increasingly connected, grantmakers seek to serve a broader community through their giving. We are aware that some nonprofits do accept donations from foreign nationals—many of whom live, work, and pay taxes in the U.S. If Congress considers modifications to rules for foreign contributions to American nonprofits, our organizations strongly urge you to prioritize legislation that ensures these rules are targeted toward those acting on behalf of a foreign government or political party. We are specifically concerned about rules that would harm philanthropic activity or create unnecessary barriers to cross-border philanthropy.

In addition, governments across the world look to U.S. laws as models for their own. Any changes to the law that make it harder for nonprofits to receive donations from foreign nationals risk copycat laws abroad. This has already been the case with the Foreign Agents Registration Act: [imitations](#) in countries such as Nicaragua have made it more difficult for American donors to support nonprofit organizations serving critical needs abroad. The U.S. has long stood as a beacon of democracy around the world, and we must continue to be a model of these ideals.

#### **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)?**

The IRS collects information from section 501(c)(3) and section 501(c)(4) organizations about their political and lobbying activities. Section 501(c)(3) organizations engaged in any lobbying activities must submit a Schedule C as part of their Form 990, and they can elect to submit a Form 5768 to further elucidate their lobbying expenditures. Section 501(c)(3) organizations are prohibited from engaging in the activities described in the foreign national prohibition under FECA, and we support this continued prohibition.

In addition, section 501(c)(3) organizations are required to report donors who have made contributions totaling over \$5,000 to the IRS on their Form 990s, meaning the federal government already has

information enabling it to investigate suspected illegal activity. This reporting requirement preserves public trust in the nonprofit sector: it equips the federal government with a tool that helps identify bad actors and helps ensure the sector is acting with integrity. Section 501(c)(4) organizations are not required to report this information.

**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 agree that ensuring election integrity is vital, and we would not oppose such a requirement as long as it did not unduly burden nonprofits and their donors. However, because section 501(c)(3) organizations are already prohibited from engaging in activities that influence political campaigns, and because section 501(c)(4) organizations are not required to disclose their donors to the IRS, this change would likely not have a significant impact on election integrity and would further stretch the IRS’s already-stretched resources.

**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?**

Section 501(c)(3) organizations are prohibited from engaging in political campaign intervention. We support the continued enforcement of the Johnson Amendment and other provisions of the tax code that prevent these organizations from engaging in electioneering. We also support the continued reporting of Section 501(c)(3) donor information to the IRS. Additional disclosures from section 501(c)(3)s would not impact this issue.

**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 are not aware of organizations engaging in this behavior within our membership.

**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.**

We support a healthy regulatory environment for the nonprofit sector. This includes current law and additional regulations when appropriate alongside the sector's commitment to self-regulation. Current laws at both the state and federal levels address actions that should be taken when nonprofit organizations misuse donor funds or otherwise act illegally and unethically. Enforcing these laws is important for maintaining public trust in the nonprofit sector. We support the allocation of adequate funding to ensure the IRS and relevant state and federal agencies have the resources they need for this enforcement.

In addition, core to nonprofit and foundation ethics is placing philanthropic mission above personal self-interest. Nonprofits and foundations that violate this ethic risk damaging not only the integrity of their organizations but also trust in the sector. To support this work, our organizations have engaged in the following initiatives (note that this is not a comprehensive list):

- The Council published a set of [ethical principles](#) in 2022 that we encourage our members and the sector to apply to their work.
- Over 400 accredited community foundations have committed to the [National Standards for Community Foundations](#), a set of principles dedicated to prioritizing community foundation integrity and grantmaking due diligence.
- Independent Sector developed the [33 Principles for Good Governance and Ethical Practice](#) at the urging of Senate Finance Committee leadership in 2004, and it updates and maintains them as sound practices that every charitable organization should consider to strengthen effectiveness and accountability.

We welcome any opportunity to share about the work our organizations and our members are engaged in to ensure the continued integrity of our sector.

### **Conclusion**

Preserving existing laws and guidelines around nonprofit civic education and engagement is essential to maintaining public trust in these organizations. We strongly support the continued enforcement of the Johnson Amendment, which protects section 501(c)(3) organizations from engaging in political

campaign activity. Yet fear and confusion around political campaign intervention [have stunted](#) entirely legitimate nonprofit engagement with policy and advocacy. Maintaining public trust in nonprofit organizations is vital to ensuring our members and the broader sector have the resources they need to continue supporting communities around the country. If the Committee is considering additional laws and guidelines, or potential clarifications to existing laws, we urge the Committee to consult the nonprofit and philanthropic sectors.

Thank you again for this opportunity to submit comments for the record. Free and fair elections are a critical component of American democracy, and we commend the Committee's efforts to maintain election integrity. We appreciate the Committee's consideration of our insights, and we look forward to working with you to ensure the charitable sector can continue to meet the needs of our communities today and into the future.

Respectfully submitted,

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## **About Our Organizations**

### **Council on Foundations**

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.



**Independent Sector**

Independent Sector is the only national membership organization made up of nonprofits, foundations, and corporate giving programs nationwide. Its core aim is to support these organizations and all civil society, working toward a healthy and equitable nonprofit sector to ensure all people living in the United States thrive.

**United Philanthropy Forum**

United Philanthropy Forum (Forum) is the largest and most diverse network in American philanthropy, holding a unique position in the social sector to help increase philanthropy's impact in communities across the country. The Forum is a membership network of nearly 100 regional and national philanthropy-serving organizations (PSOs), representing more than 7,000 funders who work to make philanthropy better.

Our public policy work helps the Forum promote a strong philanthropic sector and advocate for vibrant, healthy communities by identifying practical policy solutions that catalyze a just and equitable society where all can participate and prosper.