



## DONOR DISCLOSURE MEANS LESS FOR CHARITIES AND THOSE THEY SERVE

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Members of Congress are increasingly concerned about foreign donations to 501(c)(3) and 501(c)(4) organizations potentially being used for US political activities. Yet, as we delve into the details and examine available data, a complex and nuanced narrative emerges. The rise in scrutiny appears to be fueled by a small number of bad actors that should be investigated and prosecuted, rather than a systemic abuse of the laws and regulations underlying the nonprofit sector—particularly tax-exempt charitable organizations.

Even within the context of IRS examinations, instances of noncompliance—particularly nonprofits inappropriately engaging in political activities—seem relatively rare. Moreover, a closer look at the political engagement of 501(c)(4) organizations reveals that the narrative is not one of widespread advocacy, but rather a more nuanced pattern of involvement.

America is more than a government and group of individuals. It is home to an intricate landscape of nonprofit organizations, created and supported by like-minded citizens who are passionate about diverse causes and communities. If lawmakers concentrate solely on the political activities of these charitable organizations, they risk distorting their broader role and contributions to the well-being and improvement of our society.

Imposing rigid regulations or sweeping donor disclosure mandates without due consideration to the constitutional right to privacy in association could inadvertently undermine the support and services these nonprofits offer Americans across the country, ranging from assisting disabled veterans and funding volunteer fire departments to providing educational resources to disadvantaged kids and fostering community service groups and neighborhood associations.

This policy brief begins to explore the complexities underlying the broader discourse on nonprofit activities, donor privacy, and the delicate balance between political transparency and American's constitutional right to private, voluntary association.

## **THE CRUCIAL ROLE OF NONPROFITS IN AMERICAN SOCIETY**

The nonprofit sector stands as a cornerstone of American society, embodying the essence of collaboration for the greater good. Through their endeavors, nonprofit organizations translate their missions and aspirations into tangible actions that have a profound impact on our nation and the lives of its citizenry. Their significance transcends mere assistance. In fact, they serve as vehicles for the manifestation of bold ideas, noble causes, life-changing innovations, and ambitious dreams.

With a staggering count of over 1.8 million nonprofit organizations in the United States, these entities form an intricate web that weaves through every corner of the nation. They operate as providers of sustenance, health care, shelter, education, and care, catering to people of all walks of life, regardless of age, gender, race, or socioeconomic status. From bustling urban centers to remote rural communities, these nonprofits diligently foster civic participation, bolster leadership, stimulate economic growth, and fortify the social tapestry of our neighborhoods.

Although not always immediately apparent, the tangible outcomes of nonprofit missions become transparent when we witness our families and neighbors directly benefiting from their efforts. These moments materialize when nonprofits supply nourishment to the hungry, administer life-saving treatments in hospitals, or provide critical aid to disaster survivors. These instances shine a spotlight on the unmistakable impact that nonprofits have in our communities.

However, the complete breadth of their influence extends far beyond the immediate and visible. The subtler, indirect benefits they bring often evade recognition. Nonprofits play a foundational role in cultivating thriving communities and nurturing the very essence of civil society. They provide platforms for civic engagement, where citizens actively participate in shaping the world around them. By doing so, they sow the seeds of active citizenship, driving change, and igniting conversations that reverberate on a grand scale.

The significance of nonprofit organizations stretches beyond social aspects, spilling over into the realm of economic growth. As they create employment opportunities, stimulate local commerce, and pioneer innovative solutions to societal challenges, nonprofits contribute significantly to the overall flourishing of our nation. Indeed, every individual in the United States reaps the benefits of nonprofit work.

## RESPECTING THE PRIVACY OF DONORS

Philanthropy Roundtable upholds anonymous giving and association as Americans' fundamental constitutional right that underpins our civil society. Within our country's extensive landscape of charitable entities and individual contributors are an array of poverty-alleviation organizations, cultural and educational establishments, faith-based communities, business, and labor groups, as well as other formal and informal entities that collectively champion a spectrum of causes significant for individuals and communities. This diverse tapestry empowers Americans to confront societal dilemmas that may lie beyond the purview, willingness, or appropriateness of governmental intervention.

Various motivations lead individual donors to value their privacy, including adherence to religious practices, personal humility, or the intention to avoid unsolicited appeals. In a society marked increasingly by division, some benefactors might also aim to shield themselves from potential risks and reprisals at home, in school, at their place of employment, online, or in their community, arising from their support for causes that either are or might evolve into subjects of contention or disfavor among those in authority.

The federal and state governments have often sought to curtail this right when faced with the power of Americans joining for a common cause. For example, President Andrew Jackson attempted to compel postmasters to divulge the identities of individuals supporting the abolitionist movement, aiming to subject them to public mockery, coercion, and intimidation. In a similar vein, in the 1950s, several southern states demanded that the NAACP disclose the names of its members and contributors. As a result, NAACP membership in southern states declined by 38 percent between 1955 and 1957 with approximately 246 branches closing in the region.<sup>1</sup>

The Supreme Court has responded forcefully to these unconstitutional disclosure mandates. In 1958, the Court delivered a unanimous ruling, saying Alabama (or any state) could not coerce the NAACP into revealing their donor information. The Court said such an action would violate fundamental First Amendment rights by exposing members and donors to "financial retaliation, employment loss, threats of physical force, and other forms of public hostility." With American society characterized by significant polarization and division today, safeguarding donor privacy continues to be an indispensable facet of philanthropic liberty.

Furthermore, the significance of donor confidentiality transcends political affiliations. A striking example is evident in the case of donors to the right-leaning Americans for Prosperity Foundation (AFPF), who encountered threats to their lives after California's insistence on disclosing donor details. When the organization challenged a state policy mandating the forced disclosure of nonprofit donor names to state officials, and as the case reached the US Supreme Court, a noteworthy occurrence emerged: left-leaning groups, such as the American Civil Liberties Union, the NAACP, and the

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<sup>1</sup> Morris, Aldon D. *The Origins of the Civil Rights Movement*. New York: Simon & Schuster, 1986. pp 33-34.

Human Rights Campaign rallied with their ideological opponents in support of AFPF by submitting amicus briefs.<sup>2</sup>

Recognizing the value of philanthropy for a thriving civil society starts with respecting the freedom of speech, freedom of association, and the rights of donors to give freely and privately.

## THE IRS ALREADY PLACES STRICT RULES ON POLITICAL ACTIVITY

The IRS plays a role in upholding the integrity of nonprofit organizations, particularly those classified under sections 501(c)(3) and 501(c)(4) of the tax code. These designations come with specific benefits and responsibilities, one of the most crucial being restrictions or limits on engaging in political activity. The IRS's imposition of strict rules around how these organizations participate in political activity is a necessary safeguard that preserves their charitable and social welfare purposes while preventing undue influence on the democratic process.

Under the Internal Revenue Code, 501(c)(3) organizations are prohibited from engaging, either directly or indirectly, in any form of participation or intervention in a political campaign for or against any candidate seeking elective public office.<sup>3</sup> Any contributions to political campaign funds or public expressions of support or opposition (whether spoken or written) made by the organization that align with or oppose a specific candidate for public office explicitly contravene the prohibition on political campaign activity.

Breaching this prohibition could lead to the denial or withdrawal of tax-exempt status and the imposition of specific excise taxes. Certain limited activities, such as presenting public forums or publishing voter education guides (conducted in a non-partisan manner) do not constitute prohibited political campaign activity.

To qualify as a social welfare organization under IRC Section 501(c)(4), an organization must be operated exclusively for the promotion of social welfare and must not be organized for profit.<sup>4</sup> This standard is met if the organization is primarily engaged in activities that in some way promote the common good and general welfare of the community.

A 501(c)(4) organization's attempts to influence legislation are considered activities that further Internal Revenue Code Section 501(c)(4) social welfare purposes if that legislation is germane to accomplishing its mission. A 501(c)(4) organization may engage in political campaigns, provided such activities are not the organization's primary activity. In contrast, an organization whose primary activity is lobbying to advance the financial interests of its members, as opposed to promoting the social welfare of the community, doesn't qualify for IRC Section 501(c)(4) status.

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2 "First Amendment Rights Belong to Everyone." Americans for Prosperity. Last modified June 14, 2021. <https://americansforprosperity.org/afpf-v-bonta-highlights/>.

3 "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations." Internal Revenue Service. <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

4 Audit Technique Guide – IRC Section 501(c)(4), Civic Leagues, Social Welfare Organizations, and Local Associations of Employees. Internal Revenue Service, 2017.

## THE IRS HAS A HISTORY OF MISMANAGING PRIVATE INFORMATION

While the IRS already places strict rules on the activities of nonprofit organizations, proposals for increased regulations should, rightfully, be met with serious criticism. There may very well be gaps in enforcement, which should be addressed. However, the answer cannot be to give the agency more donor information to mismanage. After all, the IRS has a poor track record in safeguarding donor privacy. The repeated instances of leaked private donor information and potential political manipulation within the agency underscore the need for skepticism when considering proposals to empower the IRS further in its oversight of nonprofit activities.

For example, the IRS has encountered significant challenges in securing donor information, as evidenced by multiple instances of data breaches. In 2013, the IRS admitted to a breach of donor privacy when the personal information of a nonprofit organization's donors was leaked.<sup>5</sup> This incident highlighted vulnerabilities in the agency's systems and raised concerns about its potential misuse of sensitive data. Even more alarming was the breach in 2021 that exposed confidential tax returns of numerous Americans to the public.<sup>6</sup>

Recent incidents, such as the inadvertent release of private information of approximately 120,000 taxpayers, further highlight the IRS's struggles in managing sensitive data.<sup>7</sup> This data remained accessible on the IRS website for a year before being identified and removed. Such breaches not only erode public trust but also compromise the right to privacy of individuals who have made donations in good faith.

Another crucial concern is the potential weaponization of the IRS against nonprofits to advance political agendas. Granting the IRS additional powers could create opportunities for political manipulation, where the agency might be used to target organizations that hold opposing views. The poor track record of the IRS in safeguarding donor information, coupled with the risks of political weaponization and inadvertent releases, warrants caution in considering any proposals to empower the agency with further oversight powers.

### WHAT THE DATA REVEAL ABOUT 501(C)(3) AND 501(C)(4) POLITICAL ACTIVITY

Despite the inherent value of donor privacy in philanthropic freedom, we are seeing burgeoning attempts by policymakers to question the First Amendment right to donor privacy, expose donors to unpopular causes to harassment, and disincentivize

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5 The Washington Times. "Marriage Group to Sue IRS over Donor Leak, Says List Went to Political Enemies." The Washington Times. Last modified October 3, 2013.  
<https://www.washingtontimes.com/news/2013/oct/3/marriage-group-to-sue-irs-over-donor-leak/>.

6 Tuccille, J.D. "One Year Later, No One Has Been Punished for the IRS Leak of Billionaires' Tax Data." Reason.com. Last modified June 2, 2022.  
<https://reason.com/2022/06/03/irs-leak-of-billionaires-tax-data/>.

7 Kim, Juliana. "The IRS Says It Mistakenly Made Public Data for About 120,000 Taxpayers." NPR. Last modified September 4, 2022.  
<https://www.npr.org/2022/09/04/1121061081/irs-data-mistake-public-congress>.

charitable giving.<sup>8</sup> At the same time, we are witnessing growing calls by policymakers to investigate 501(c)(3) and 501(c)(4) organizations over concerns around donations to nonprofit organizations being funneled into potential US political activity.<sup>9</sup>

While there may be bad actors who should be prosecuted, there is no significant evidence of systemic abuse of the nonprofit system by nefarious foreign actors. The House Ways and Means Committee's recent request for information on foreign sources of funding and the rules governing nonprofit engagement in political activities, for example, cites one case of a foreign donor giving \$208 million to three separate nonprofit organizations over a five-year period in its letter appendices. Surely, if there are isolated instances of potential bad actors, those claims are best addressed through investigation and enforcement of existing laws, rather than through sweeping disclosure mandates that will capture and jeopardize the rights of private American citizens.

Reviewing the closed IRS examinations of nonprofit compliance provides insight into how many organizations are not operating in accordance with their exempt purpose. If the IRS determines noncompliance, it will revoke an organization's tax-exempt status or apply excise taxes for certain types of violations. In more serious cases, the IRS can also request that the Department of Justice bring action.<sup>10</sup>

These instances offer some idea of the frequency at which nonprofit organizations may be failing to operate in accordance with their exempt status (such as engaging in political activities). A Government Accountability Office (GAO) report covering fiscal years 2010 to 2017 found that the IRS, through its data-driven analytics efforts, conducted and closed 226 examinations of nonprofit organizations in a eight-year period.

Among those examinations, 90 percent were conducted and closed with no changes to the tax-exempt status of organizations, while just twenty-two organizations (10 percent) faced further action from the IRS.<sup>11</sup> As of the latest available data, there are almost 1.6 million 501(c)(3) and 501(c)(4) organizations registered in the United States, so twenty-two instances of noncompliance over the course of eight years does not appear to warrant a systematic donor disclosure regime.

While 501(c)(3) organizations are subject to very strict rules regarding lobbying and political advocacy, 501(c)(4) organizations are social welfare organizations, designed purposefully to advocate for policy outcomes and free to engage occasionally in political activities in furtherance of their cause-based mission – so long as such activities are not the primary activity of the organization. This distinction often means that 501(c)(4) organizations are placed under greater scrutiny by policymakers and

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8 McGuigan, Elizabeth. "Donor Privacy: A Constitutional Right for American Givers." Philanthropy Roundtable. Last modified November 1, 2021.

9 "Ways & Means Seeks Public Input on Tax-Exempt Organizations: Potential Violations of Rules on Political Activities, Inappropriate Use of Charitable Funds, & Rise in Foreign Sources of Funding." House Committee on Ways and Means (blog). August 14, 2023.

10 "26 U.S. Code § 7409 - Action to Enjoin Flagrant Political Expenditures of Section 501(c)(3) Organizations." Legal Information Institute | Cornell Law School. Accessed August 17, 2023. <https://www.law.cornell.edu/uscode/text/26/7409>.

11 U.S. Government Accountability Office, Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives (Feb. 2020).

partisan pundits who condemn 501(c)(4) organizations that engage in limited political advocacy on issues they oppose.

However, claims that an entire category of the nonprofit sector is exceedingly engaged in political advocacy simply aren't supported by Form 990 returns or by the existing literature on the subject. Prior studies have concluded that "a large proportion of 501(c)(4) organizations are not politically or electorally active. Among those that are, the amount of money spent on influencing elections is very small."<sup>12</sup>

One analysis published by the Urban Institute in 2014 conducted a keyword search for ideologically loaded terms (i.e., grassroots, action, citizen, etc.) to determine what share of 501(c)(4) organizations were likely to be engaged in lobbying or political advocacy.<sup>13</sup> The author found 2,059 such organizations among 86,451—or 2.4 percent of the total. Another study published in 2016 used a similar screening methodology applying nine keyword search terms to all filed 990s for 501(c)(4) organizations for tax year 2014.<sup>14</sup> The results reveal that 2,168 out of 81,490 organizations were likely engaged in lobbying or political activities—or 2.7 percent of the total. The author concludes by saying "The rules governing political activity are of little to no consequence for most 501(c)(4) organizations because they are not involved in advocacy activities, let alone electoral politics."

Using the latest available IRS data on 990 filings of Section 501(c)(4) organizations, we can apply the same search term methodology to determine what share of 501(c)(4) nonprofits are likely engaged in lobbying, political, or grassroots activities. Applying the search terms for groups with names including "advocacy," "activist," "activism," "action," "voting," "voter," "citizen," or "grassroots" turns up 1,898 organizations out of a total of 74,065 501(c)(4) nonprofits.

Similar to the results of prior studies, the data demonstrates that just 2.6 percent of 501(c)(4) organizations are likely engaged in lobbying, political, or grassroots activities. In other words, roughly 97-98 percent of these social welfare organizations are likely not engaged in such activities, although they may legally take public advocacy positions.

Concentrating solely on the political engagements of 501(c)(4) organizations distorts and fails to grasp the subsector's true role and influence. Imposing uniform regulations or disclosure requirements on these entities is illogical, given that most 501(c)(4) organizations are not involved in such pursuits. Adopting such an approach without caution would inadvertently undermine the valuable contributions made by these nonprofit entities in bolstering communities nationwide. These contributions include the operations of disabled veterans' chapters, volunteer fire departments, community service clubs, health providers, as well as neighborhood and community associations.

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<sup>12</sup> Krehely, Jeff, and Kendal Gollday. "The Scope and Activities of 501(c)(4) Social Welfare Organizations: Fact Versus Fantasy." 24 (2001).

<sup>13</sup> Koulish, Jeremy. "There Are a Lot of 501(c)(4) Nonprofit Organizations. Most Are Not Political." Urban Institute (2013). <https://www.urban.org/urban-wire/there-are-lot-501c4-nonprofit-organizations-most-are-not-political>.

<sup>14</sup> Koulish, Jeremy. "From Camps to Campaign Funds: The History, Anatomy, and Activities of 501(c)(4) Organizations." Urban Institute, January 2016.

## THE EFFICACY OF EXISTING LAWS AND REGULATIONS

There is already an extensive framework of laws and regulations in place that prevent foreign election interference. One of the oldest laws preventing foreign intervention in US politics is the Foreign Agents Registration Act (FARA), enacted in 1938. FARA mandates registration of individuals or entities acting on behalf of foreign governments, promoting transparency and safeguarding the integrity of the American political process.<sup>15</sup> The law compels disclosure of activities, finances, and relationships, acting as a deterrent against covert foreign influence. Enforced by the Department of Justice with strict civil and criminal penalties for violators, FARA carries penalties for non-compliance, ensuring adherence to transparency.

Similarly, the Federal Election Campaign Act (FECA), enacted in 1971, serves as a testament to the United States's commitment to transparent political processes. FECA prohibits foreign contributions, introduces restrictions on issue speech prior to an election, and mandates detailed reporting of campaign finances.<sup>16</sup> The Federal Election Commission (FEC) enforces civil violations of FECA while the Department of Justice enforces criminal violations of the Act. Both act as a deterrent against unlawful foreign involvement.

The Bipartisan Campaign Reform Act (BCRA) of 2002 strengthened these provisions, banning political contributions from foreign nationals.<sup>17</sup> BCRA regulated contributions to political parties, curbing foreign entities' indirect influence. Enhanced disclosure requirements for issue speech by nonprofits shed light on foreign funding sources, preventing covert foreign financing. BCRA contains a number of policies aimed at preserving democratic integrity from foreign interference.

Existing laws and regulations establish a framework against foreign intervention in US political activities. These laws promote transparency, prevent foreign political contributions, and enhance disclosure. Their comprehensive provisions render blanket disclosure requirements on specific nonprofit organizations redundant, upholding the democratic process while respecting nonprofit autonomy.

If there is evidence that hostile foreign actors are intentionally avoiding compliance with these laws, there can be little expectation that they would comply with new donor disclosure protocols as well. Instead, these administrative and regulatory burdens will fall predominantly on US-based nonprofits and their American supporters. A smarter path would be enforcement of existing rules to more effectively address the concerns of lawmakers.

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<sup>15</sup> "The Foreign Agents Registration Act (FARA): A Guide for the Perplexed." Covington & Burling LLP. <https://www.cov.com/en/news-and-insights/insights/2018/01/the-foreign-agents-registration-act-fara>.

<sup>16</sup> Legislative History of the Federal Election Campaign Act of 1971. Washington, D.C.: The Federal Election Commission, 1981.

<sup>17</sup> H.R.2356 - Bipartisan Campaign Reform Act of 2002. Congress.gov, 2002. <https://www.congress.gov/bill/107th-congress/house-bill/2356>.



## CONCLUSION

As the complex tapestry of the nonprofit sector unfurls, it becomes evident these organizations serve as a dynamic force that shapes communities, fosters civic engagement, and fortifies the very foundation of civil society. The intrinsic value of donor privacy resonates deeply with all Americans, safeguarding their philanthropic liberty and ability to support causes without fear of repercussion.

While scrutiny surrounding the political activities of 501(c)(3) and 501(c)(4) organizations persists, a nuanced examination reveals these activities are neither as prevalent nor as monolithic as portrayed. The existing framework of laws and regulations stands as a bulwark against foreign intervention in American politics, rendering sweeping disclosure requirements redundant. Where lawmakers determine there are shortfalls in the current rules, the Roundtable encourages an understanding of potential unintended consequences and a careful, narrowly tailored approach to proposed changes to existing laws.

Embracing these insights, we affirm the invaluable contributions of nonprofits to our nation's well-being, recognizing that their impact extends far beyond the immediate and visible, and their autonomy is essential to nurturing the spirit of altruism that defines our society.



## ABOUT THE AUTHOR

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Jack Salmon is the director of Policy Research at Philanthropy Roundtable. Prior to joining the Roundtable, Jack served as program manager and researcher at the Mercatus Center at George Mason University, where he oversaw policy relating to budgets, taxation, institutions and economic growth. His research and commentary have been featured in a variety of outlets, including The Hill, Business Insider, RealClearPolicy and National Review.

In Jack's current role, he supports the Policy and Government Affairs team with research, commentary and analysis on issues facing the charitable sector and philanthropic freedom. Originally from the U.K., Jack graduated from King's College London in 2015 with a Master of Arts in political economy.

## ABOUT PHILANTHROPY ROUNDTABLE

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Philanthropy Roundtable is a nonprofit organization dedicated to building and sustaining a vibrant American philanthropic movement that strengthens our free society. To achieve this vision, the Roundtable pursues a mission to foster excellence in philanthropy, protect philanthropic freedom and help donors to advance liberty, opportunity and personal responsibility.

