



September 7, 2023

The Honorable Jason Smith
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

The Honorable David Schweikert
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Smith and Chairman Schweikert,

Philanthropy Roundtable appreciates the opportunity to provide information in response to the August 14th Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code.

We understand the very serious concerns raised by recent media reports about the interference of foreign nationals in American politics, and we urge the Committee to exercise caution when considering policy solutions.

We write today to highlight the unintended consequences that increased donor disclosure proposals could have on U.S. donors and the nonprofit causes and communities they support.

The Charitable Sector Is a Pillar of Our Democracy

As members of the Committee are no doubt aware, our nation's vibrant landscape of nonprofit organizations includes everything from local food banks to nationwide housing charities and international disaster relief groups. This vast network has long represented a tradition of American citizens voluntarily collaborating to address concerns and uplift communities throughout our country.

Through their endeavors, nonprofit organizations translate their missions and aspirations into tangible actions that have a profound impact on our nation. 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.¹ 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, every individual in the United States reaps the benefits of nonprofit work. 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 wield.

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.

Anonymous Giving Is a Constitutional Right

These nonprofits are created by and supported by individual citizens giving in a wide variety of ways. Some of these generous Americans choose to privately support nonprofits for a range of reasons. We know donors may want to remain private in their giving for reasons like religious traditions or wanting to keep the attention on the charities doing the good work, or a desire to not be asked for money by other organizations. But it's impossible to ignore that we live in a highly divided society. The rampant cancel culture we face can destroy the lives of those who support controversial causes or unpopular approaches to our nation's problems. Generous Americans face job loss, harassment, and even violence for supporting nonprofits willing to stand up for their beliefs.

Forcing the disclosure of their names and personal information would constitute an overly broad effort to expose a handful of bad actors abusing the nonprofit ecosystem for political purposes. If there is evidence of wrongdoing – that should be investigated and prosecuted. However, the last thing Americans need is for all charitable activity to be chilled in a hunt for those doing wrong.

¹ "How many nonprofit organizations are there in the U.S.?" Candid.

<https://learning.candid.org/resources/knowledge-base/number-of-nonprofits-in-the-u-s/>.



When examining ways to identify whether foreign nationals are abusing certain nonprofits to advance political goals, we must not forget about protecting the constitutional rights of Americans to free speech and free association. As the U.S. Supreme Court again upheld in its 2021 *Americans for Prosperity Foundation v. Bonta* decision, this includes the right to give to nonprofits anonymously.²

Forced Disclosure Chills Charitable Giving

Throughout history, the federal and state governments have often sought to curtail this right when faced with the power of Americans joining together 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.³

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."⁴ 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, 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 major nonprofit donor names to state officials, and as the case reached the Supreme Court, a noteworthy occurrence emerged: left-leaning groups, such as the American Civil Liberties Union, the NAACP, and the Human Rights Campaign rallied with more conservative voices on the right in support of AFPF by submitting amicus briefs. The right to donor privacy is not a left or right issue. It is a left and right issue.

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 if they so choose.

² *Americans for Prosperity Foundation v. Bonta*, Attorney General of California. Supreme Court of the United States, 2021. https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf.

³ Morris, Aldon D. *The Origins of the Civil Rights Movement*. New York: Simon & Schuster, 1986. pp 33-34.

⁴ "NAACP V. Alabama Ex Rel. Patterson, 357 U.S. 449 (1958)." Justia Law. <https://supreme.justia.com/cases/federal/us/357/449/>.



Recent reports suggest charitable giving is down and economic indicators show families are still struggling.⁵ Nonprofits are doing the hard work in our communities to ensure America stays strong and our neighbors are able to make it through these times. Punishing all donors who wish to remain private will further chill charitable giving. As the Supreme Court said in the *Americans for Prosperity Foundation v. Bonta* decision regarding California's sweeping donor disclosure law, "Each governmental demand for disclosure brings with it an additional risk of chill."

Nonprofits Can and Should Engage in Issue Advocacy

As this important investigation progresses, we would urge the Committee to keep in mind that nonprofits, including both 501(c)(3)s and 501(c)(4)s, can and do engage in issue advocacy.⁶ In this, they serve as a key counterbalance to a large, powerful government. Whether it is a pro-life group, an education reform organization, or a fiscal responsibility watchdog, nonprofits play a crucial role in shaping U.S. policies. Those in power within our government need to hear from American citizens that care deeply about a diverse range of causes and communities.

Our nonprofit donors have weathered targeting by the state of California, discrimination against conservative groups by President Obama's IRS,⁷ and more recent government leaks,⁸ they have been attacked by those who disagree with different approaches to our nation's challenges, and they continue to voluntarily collaborate to make our communities stronger. The constitutional rights of these generous Americans must be upheld by lawmakers.

Focus Should Be on Enforcement and Prosecution of Bad Actors

The Roundtable understands the Committee is investigating whether there is evidence of systemic abuse of the nonprofit system by foreign actors. While we do not have any evidence that this is a systemic problem, we do urge the Committee to seek a narrow approach to targeting wrongdoing, that allows for the protection of Americans' right to give and associate privately.

The IRS has proven they do not prioritize the confidentiality of taxpayer information and we do not believe that providing them with more information about the charitable donations of Americans will help address the concerns of the Committee. Granting the IRS additional powers could create opportunities for political manipulation, where the agency might once again be used to target organizations that hold opposing views. The poor track record of the IRS in safeguarding confidential information, coupled with the risks of political weaponization and inadvertent releases,

⁵ Giving USA Annual Report on Philanthropy. Giving USA. June 20, 2023.

⁶ McGuigan, Elizabeth, and David Bass. "Policy Philanthropy and Its Key Role in Civil Society." Philanthropy Roundtable, November 2022. <https://www.philanthropyroundtable.org/resource/policy-philanthropy-and-its-key-role-in-civil-society/>.

⁷ Dinan, Stephen. "Marriage group to sue IRS over donor leak, says list went to political enemies." Washington Times, October 3, 2013.

⁸ Kim, Juliana. "The IRS says it mistakenly made public data for about 120,000 taxpayers." NPR, September 4, 2022.



warrants caution in considering any proposals to empower the agency with further powers.

As the Committee continues its important work, the Roundtable stands ready to provide additional information or resources. We appreciate your consideration of the right to give privately in your ongoing investigations.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth McGuigan", written in a cursive style.

Elizabeth McGuigan
Vice President of Policy and Government Affairs
Philanthropy Roundtable



Appendix 1: Additional Resources

Donor Privacy: A Constitutional Right for American Givers

<https://www.philanthropyroundtable.org/resource/donor-privacy-a-constitutional-right-for-american-givers/>

Unheralded Generosity: A 50-State Look at Anonymous Giving

<https://www.philanthropyroundtable.org/resource/unheralded-generosity-a-50-state-look-at-anonymous-giving/>

Policy Philanthropy and Its Key Role in Civil Society

<https://www.philanthropyroundtable.org/resource/policy-philanthropy-and-its-key-role-in-civil-society/>

Philanthropy Roundtable Asks Supreme Court to Uphold Donor Privacy

<https://www.philanthropyroundtable.org/philanthropy-roundtable-asks-supreme-court-to-uphold-donor-privacy/>

When Philanthropy Comes Under Attack: What the Resurgence of Populism Means for Charitable Organizations

<https://www.philanthropyroundtable.org/resource/when-philanthropy-comes-under-attack/>