May 4, 2022

Via Electronic Mail

Senate Committee on Finance
Subcommittee on Taxation and IRS Oversight
219 Dirksen Senate Office Building
Washington, D.C. 20510
Statementsfortherecord@finance.senate.gov

RE: Hearing on Laws and Enforcement Governing the Political Activities of Tax-Exempt Entities

Dear Chair Whitehouse, Ranking Member Thune, and Members of the Subcommittee:

On behalf of National Taxpayers Union Foundation ("NTUF"), I submit these written comments to the Subcommittee on Taxation and IRS Oversight for your hearing titled "Laws and Enforcement Governing the Political Activities of Tax-Exempt Entities."[1] As a nonprofit organization that regularly works with, studies, and litigates in matters involving tax agencies, we can offer a perspective focused both on tax and First Amendment law for the Subcommittee's consideration. As you may know, NTUF has historically maintained an abiding interest not only in tax policy, but also tax administration—the mechanics of how the tax law and the agency charged with its implementation can function most efficiently and effectively for the taxpayers it serves. We have published issue briefs, policy papers, and friend of the court briefs on a variety of matters in this realm, ranging from telephone customer service challenges at the IRS to the practical considerations surrounding the recent introduction of the Form 1099-K.[2]

[1] Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts—upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce. NTUF staff have testified and written extensively on the issues of this hearing before the Subcommittee.

[2] *See, e.g.*, Andrew Wilford and Andrew Moylan, *Congress Needs to Act to Provide Relief to Taxpayers (and the IRS) From Burdensome 1099-K Requirement* National Taxpayers Union Foundation (Mar. 8, 2022) *available at*: https://www.ntu.org/library/doclib/2022/03/Congress-Needs-to-Act-to-Provide-Relief-to-Taxpayers-and-the-IRS-From-Burdensome-1099-K-Requirement-1-.pdf; Demian Brady, *Increasing Complexity Brings Back Bigger Compliance Burdens*, National Taxpayers Union Foundation (Apr. 18, 2022) *available at*: https://www.ntu.org/library/doclib/2022/04/2022-tax-complexity.pdf; Andrew Wilford, "Taxpayers Expecting a Big Refund Could Be In For a Nasty Surprise," Real Clear Markets (Jan. 10, 2022) *available at*: https://www.realclearmarkets.com/articles/2022/01/10/taxpayers_expecting_a_big_refund_could_be_in_for_a_nasty_surprise_811087.html; Brief of *Amici Curiae* National Taxpayers Union Foundation and National Federation of Independent Business Small Business Legal Center in Support of Petitioner, *Boechler, P.C. v. Comm'r of Internal*

The problem before the Subcommittee in today's hearing combines several of our concerns over tax administration. Chief among them is a combination of workload and expertise: the Internal Revenue Service ("IRS" or "Service") finds itself overburdened in trying to police political activity. One standout solution is for the IRS to look to another expert agency, the Federal Election Commission ("FEC"), for guidance, since the FEC has the lived experience of litigating questions of regulation of speech and politics for decades. This recommendation notwithstanding, any modification of the laws must recognize the First Amendment's robust protections for privacy of association.

I. The Problem: Complex IRS Definitions of "Political Activity" Lead to Arbitrary and Subjective Enforcement

For tax-exempt organizations, what constitutes "political activity" is vitally important. But the Internal Revenue Code ("IRC") does not define the term. Worse, the Treasury Regulations employ an *eleven-factor* test to try to figure out what is and is not "political activity." This complex test chills core First Amendment activity by exempt organizations *and* is unworkable for the IRS to apply in practice.

How to define "political activity" for nonprofit organizations is essential to applying the tax code but troublesome to do in the real world. The scope of a nonprofit's permissible ventures turns on the extent to which the IRS will consider them "political activity." Section 501(c)(3) groups cannot support or oppose a candidate.[3] By contrast, § 501(c)(4) organizations are "operated exclusively for the promotion of social welfare,"[4] which the IRS has defined as being "primarily engaged in promoting in some way the common good and general welfare of the people of the community."[5] Activity in support of or opposition to a candidate is not "promotion of social welfare," but is permissible so long as it does not become the organization's primary purpose.[6] Just as with § 501(c)(4) status, the question of § 527 status is one of primary activity.[7] That is, a § 527 organization need not engage solely in "political activity," and may undertake other projects such as educational workshops or social activities,[8] but its main function must be political advocacy if it is to maintain its tax status.

But while these statutory distinctions pose few implications for federal revenue, they turn on nonobvious terms like "political activity" and "primary" purposes, and these terms must be interpreted by the IRS. The Service has responded with a complex, *eleven-factor* approach known

Rev., U.S. No. 20-1472 (Nov. 22, 2021) *available at*: http://www.supremecourt.gov/DocketPDF/20/20-1472/200934/20211122144529316_20-1472%20National%20Taxpayers%20Union%20Foundation.pdf.

[3] 26 U.S.C. § 501(c)(3) (banning "participat[ion] in, or interven[tion] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

[4] 26 U.S.C. § 501(c)(4)(A).

[5] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i).

[6] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

[7] 26 U.S.C. § 527(e)(1); 26 C.F.R. § 1.527-2(a)(1) (both defining a political organization as one "organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures" for political activity).

[8] 26 C.F.R. § 1.527-2(a)(3).

as the "facts and circumstances" test.[9] The complexity of this test has a palpable impact on exempt organizations, particularly in light of the penalties assessed for violating the tax laws.

As just one example, if a group wants to host a public forum with several candidates for the same office without violating its tax status, the Service's 2007 facts and circumstances guidance provides five factors that must be taken into consideration. But the IRS declines to be bound by those five factors, and explicitly states that there may be more.[10] Any potential sixth, seventh, or eighth factors or circumstances, however, are not made public.

The Service's test is complex, and its uncertainties will inevitably leave speakers wondering if their words will be interpreted by the IRS as "political activity." Consequently, groups are likely "to steer far wide[] of the unlawful zone."[11] As the Supreme Court observed in *Buckley v. Valeo,* laws regulating speech must be drafted with precision, otherwise they force speakers to "hedge and trim" their preferred message.[12] Additionally, "[p]rolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at the law's meaning and differ as to its application."[13]

The Supreme Court recognized the independent First Amendment harm imposed whenever a federal agency "create[s] a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests."[14] The Service's eleven-factor "facts and circumstances" test, which embraces rather than "eschew[s] 'the open-ended rough-and-tumble of factors,'" is just such a regime.[15] Indeed, twelve years ago the Supreme Court held that the FEC's similar eleven-factor test failed First Amendment review.[16] And the anticipated chill is all the more likely given the severe tax penalties imposed for guessing wrong on whether the activity is permissible.[17]

And the IRS staff itself cannot even apply the regulations correctly or consistently, instead defaulting to key word searches and other problematic short cuts. A National Taxpayer Advocate's Special Report confirmed that there are enormous problems with the current facts and circumstances test, stating that "[t]here is very little guidance to help the IRS determine whether

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[9] IRS Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 330 (Jan. 26, 2004); *cf.* IRS Rev. Rul. 2007-41, 2007-25 I.R.B. 1421 (June 18, 2007) (applying the "facts and circumstances" test to twenty-one situations).

[10] IRS Rev. Rul. 2007-41, 2007-25 I.R.B. at 1423 ("[F]actors in determining whether the forum results in political campaign intervention *include* the following…") (emphasis added).

[11] *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal citations omitted).

[12] 424 U.S. 1, 43 (1976) (per curiam) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)); *see also Reno v. Am. Civil Liberties U.*, 521 U.S. 844, 871-72 (1997) (noting that "[t]he vagueness of . . . a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech."); *cf. Fed. Commc'ns Comm'n v. Fox TV Stations, Inc.*, 567 U.S. 239, 254-55 (2012) (quoting *Reno*).

[13] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 324 (2010) (quotation marks and citation omitted).

[14] *Id*. at 336.

[15] *Id*. (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (Roberts, C.J., controlling op.).

[16] *Id*. (noting that Federal Election Commission's "11-factor test" to determine whether a nonprofit corporation could engage in political speech failed "First Amendment standards").

[17] *See, e.g.*, 26 U.S.C. §§ 4955(a)(1) and (b)(1) (penalties for 501(c)(3)'s that engage in political activity); *id*. at (a)(2) and (b)(2) (personal liability for the managers of a nonprofit engaging in political activity).

an organization is operating" within the parameters of the Internal Revenue Code. [18] This leads to errors and scandal. The Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS targeted "Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions."[19] And it turned out the program had errors affecting organizations across the ideological spectrum.[20]

As the National Taxpayer Advocate noted: "What is clear from the TIGTA report is that IRS [Exempt Organization] staff did not believe they had sufficient criteria to make fair and consistent decisions."[21] Writing better law, though, is still difficult if not done properly. Robert Bauer, the former White House Counsel to President Obama, noted in an analysis of one proposal suggesting a new rule for the IRS to apply that "[c]omplexity means hard judgments; the judgments are about sensitive political matters; and the recent controversy demonstrates, if anything, that the IRS is at risk when making judgments of this nature."[22] Simplicity is therefore the answer.

The IRS is ill equipped to make judgment calls on what qualifies as "political activity." The existing regulatory framework—an *eleven-factor* test—is so difficult to apply that even Service employees cannot do so consistently. The Service's expertise lies in tax rates and calculation, not in campaign finance or the regulation of protected First Amendment activity. The IRS needs help, and fortunately the Congress has already directed who to call.

II. The Solution: Get Help from the Federal Election Commission

In the context of regulating politically-active organizations, Congress has provided a clear mandate that the IRS and FEC work together to harmonize their regulations of organizations discussing politics and public policy.[23] Therefore, with these guidelines in place, the role of the Service is clear: collect revenue and, where possible, streamline regulation with the FEC when dealing with political activity. Getting tangled in the administrative underbrush of independently defining and regulating "political activity" will only serve to slow and frustrate the Service's mandates.

The IRS is tasked with a difficult job: enforce the tax code and guide taxpayers into properly complying with the law.[24] This role requires a multitude of specialized personnel with distinctive training in the ever-changing tax code. Every day, the Service fields calls from the public seeking help in complying with the law and regulations. The IRS forms, schedules, handouts, and web

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[18] National Taxpayer Advocate, Special Report to Congress: Political Activity and the Rights of Applicants for Tax-Exempt Status at 14 (June 30, 2013) *available at:* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/09/Special-Report.pdf ("Special Report").

[19] Treasury Inspector General for Tax Administration, No. 2013-10-053, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, at i (May 14, 2013) *available at:*http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf; *see also id.* at 5-10 (describing the program).

[20] *See*, *e.g.*, Peter Overby, "As IRS Targeted Tea Party Groups, It Went After Progressives Too," National Public Radio (Oct. 5, 2017) *available at*: https://www.npr.org/2017/10/05/555975207/as-irs-targeted-tea-party-groups-it-went-after-progressives-too.

[21] Special Report at 14.

[22] Robert Bauer, *The IRS and "Bright Lines*," More Soft Money Hard Law Blog, May 28, 2103, http://www.moresoftmoneyhardlaw.com/ 2013/05/irs-bright-lines/.

[23] 52 U.S.C. § 30111(f); *see also* 107 Pub. L. 276 § 4; 116 Stat. 1929, 1932 (2006) (codified at 26 U.S.C. § 527 note).

[24] *See*, *e.g.*, 26 U.S.C. § 7803(a)(2).

page are all designed to guide taxpayers. The Service is the agency with expertise in all things tax, but it often asks for outside help. For example, the IRS has a special Art Advisory Panel to help the Service evaluate works of art for charitable deduction purposes—a skill set far outside most Treasury employees' normal expertise.[25]

The FEC has a clear mandate to enforce the campaign finance laws, regulate political actors, and advise participants on the applications of the complex campaign finance law.[26] The FEC has spent nearly fifty years in rulemaking, drafting advisory opinions, and litigating the constitutional contours of campaign finance law. Every day, their staff answer questions about filing disclosure reports and registering as a political committee. The FEC is the expert agency for regulating political activity.

This idea of IRS deference to the FEC has the approval of the former National Taxpayer Advocate. Almost nine years ago Nina Olson, when she was still in office as Taxpayer Advocate, suggested Congress instruct the IRS to defer to the FEC on these matters: "Specifically, the FEC would have to determine that proposed activity would not or does not constitute excessive political campaign activity."[27] Therefore, in crafting any regulation of political entities, the IRS should defer to the expertise of the FEC on matters of substantive regulation of political activity and disclosure.

The IRS just endured one of its toughest filing seasons yet.[28] The Service has more than enough work to do in many specialized areas of law, ranging from 199A implementation from the Coronavirus Aid, Relief, and Economic Security Act to the Enhanced Child Tax Credit.[29] And the IRS has proposed an ambitious plan for restructuring under the Taxpayer First Act.[30] Plus the Service is woefully behind in processing returns during the pandemic.[31] The IRS has enough on its plate applying the tax laws.

The core roles of the Service remain as they always were: to collect revenue and serve taxpayers. The IRS should not add to itself an attempt at wading into the prolix campaign finance laws. Thus, the Service's rules on exempt organizations' political activity should be aimed at steering clear of substantive regulation of the content of the speech.

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[25] IRS, "Art Appraisal Services" *available at*: https://www.irs.gov/appeals/art-appraisal-services.
[26] 52 U.S.C. § 30106.
[27] Special Report at 16.
[28] *See, e.g.*, Andrew Wilford, Pete Sepp, and Joe Bishop-Henchman, *Taxpayers Desperately Need Help with Disastrous Filing Season*, National Taxpayers Union Foundation (Feb. 17, 2022) *available at*: https://www.ntu.org/library/doclib/2022/02/Taxpayers-Desperately-Need-Help-with-Disastrous-Filing-Season-2-.pdf .
[29] Lynn Mucenski Keck, "Pass-Through Entities Claiming The Employee Retention Credit May Have A Limited 199A Deduction," Forbes (Mar 14, 2022) *available at*: https://www.forbes.com/sites/lynnmucenskikeck/2022/03/14/pass-through-entities-claiming-the-employee-retention-credit-may-have-a-limited-199a-deduction/?sh=197ca98f7983; Wilford, "Taxpayers Expecting a Big Refund Could Be In For a Nasty Surprise," *supra* note 2.
[30] IRS, Taxpayer First Act Report to Congress (Jan. 2021) *available at*: https://www.irs.gov/pub/irs-pdf/p5426.pdf.
[31] *See, e.g.*, National Taxpayer Advocate, "IRS Delays in Processing Amended Tax Returns Are Impacting TAS's Ability to Assist Taxpayers" NTA Blog (Nov. 10, 2021) *available at*: https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-delays-in-processing-amended-tax-returns-are-impacting-tass-ability-to-assist-taxpayers/.

III. Any New Statute or Treasury Regulation Must Protect Donor Privacy

The Supreme Court ardently protects our First Amendment rights, especially in public policy discussion. In *Buckley*, the Court noted that "'a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates.'"[32] The Supreme Court has also recognized the need to protect the freedom of association from undue disclosure to the government.[33] For decades, the Supreme Court has consistently shielded organizational donors and supporters from the generalized donor disclosure found in campaign finance law.

The Supreme Court's tailoring analysis in *Buckley* was straightforward: organizations with the "major purpose" of supporting or opposing candidates are also subject to campaign finance disclosure at the FEC.[34] Thus candidate committees, political committees, and issue committees are all focused on engaging in electoral politics. Generalized donor disclosure makes sense in the context of such organizations with "the major purpose" of politics because donors *intend* their funds to be used for political purposes. The IRS would put such organizations in the § 527 category.

But if an organization is *neither* controlled by a candidate *nor* has as its "major purpose" speech targeting electoral outcomes, then disclosure is appropriate only for activity that is "unambiguously campaign related."[35] That is, when (1) the organization makes "contributions earmarked for political purposes . . . and (2) when [an organization] make[s] expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate."[36] Such limited disclosure is appropriate because it involves "spending that is unambiguously related" to electoral outcomes.[37] Thus, *Buckley* held that comprehensive disclosure can be required of groups only insofar as those groups exist to engage in unambiguously campaign related speech.[38]

While the Supreme Court upheld certain disclosure outside the major purpose framework in *Citizens United*, it addressed only a narrow form of disclosure. The Court merely upheld the disclosure of a federal electioneering communication report, which disclosed the *entity making the expenditure* and the purpose of the expenditure.[39] Such a report only disclosed contributors giving over $1,000 *for the purpose of furthering* the electioneering communication.[40] The *Citizens United* Court specifically held that the limited disclosure of an electioneering communications report is a "less restrictive alternative to more comprehensive regulations of speech," such as the regular

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[32] *Buckley*, 424 U.S. at 14 (1976) (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).
[33] *See, e.g.*, *Americans for Prosperity Found. v. Bonta*, 594 U.S. ___, 141 S.Ct. 2373 (2021) ("*AFPF*"); *Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *Talley v. California*, 362 U.S. 60, 65 (1960); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958).
[34] *Buckley*, 424 U.S. at 79.
[35] *Id*. at 81.
[36] *Id*. at 80 (emphasis added). Of course, the *Buckley* Court narrowly defined "expressly advocate" to encompass only "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [and] 'reject.'" *Id*. at 80 n.108 (incorporating by reference *id*. at 44 n.52).
[37] *Id*. at 80.
[38] *Id*. at 81.
[39] 52 U.S.C. §§ 30104(f)(2)(A) through (D).
[40] 52 U.S.C. §§ 30104(f)(2)(E) and (F); *Citizens United*, 558 U.S. at 366.

reporting and generalized donor disclosure required of political committees.[41] What is "less restrictive" in *Citizens United* is that the disclosure was focused on the entity making the message and the donors who gave for that specific activity, not the organization's general donor list.

Just last year the Supreme Court in a 6-3 decision continued to protect nonprofits from generalized donor disclosure to government officials. The Court recognized the long line of precedent that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."[42] That is because "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," and there is a "vital relationship between freedom to associate and privacy in one's associations."[43] Therefore generalized donor disclosure will fail unless the government can prove it survives "exacting scrutiny," which "requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest" and "the disclosure requirement be narrowly tailored to the interest it promotes."[44] Any expansion of the existing disclosure framework would need to meet this high standard of judicial scrutiny. This will be even more strenuous for any proposal for public disclosure of nonprofit supporters.

Indeed, as we detailed to the Supreme Court last year, Form 990's Schedule B was never intended to uncover wrongdoing and its collection of donor data is ripe for abuse.[45] Instead, Congress added the list of major contributors as a method of protecting donor information against IRS disclosure under other statutes, especially the Freedom of Information Act.[46] Unfortunately, Schedule B became a treasure trove for opposition researchers if and when it does get leaked. Warehousing the information is risky, and for little benefit. As it stands, the IRS itself found that Schedule B's general questions were useless compared to the detailed information contained in other areas of Form 990.[47] And the IRS has for decades exercised discretion to relieve a broad swath of organizations from the donor disclosure of Schedule B.[48] As a result, the IRS no longer uses Schedule B for most exempt organizations, and *forty-seven* states do not require the information either.[49]

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[41] *Citizens United*, 558 U.S. at 369.
[42] *AFPF*, 141 S.Ct. at 2382 (citation omitted, brackets in *AFPF*).
[43] *Id*. (citations omitted, brackets in *AFPF*).
[44] *Id*. at 2385.
[45] Brief of National Taxpayers Union Foundation and the Public Policy Legal Institute as *Amici Curiae* in Support of Petitioners, *Americans for Prosperity Found. v. Bonta*, U.S. Nos. 19-251 and 19-255 at 15 (Feb. 26, 2021) *available at*: http://www.supremecourt.gov/DocketPDF/19/19-251/170004/20210226150717748_NTUF-PPLI%20Amicus%20AFPF %20TMLC%20v%20Becerra.pdf.
[46] *See, e.g.*, *Landmark Legal Found. v. Internal Rev. Serv.*, 267 F.3d 1132, 1135 (D.C. Cir. 2001).
[47] IRS, Tax-Exempt and Government Entities Div. "Disclosure Risk on Form 990, Schedule B and Re. Proc. 2018-38" Slide 7 (Aug. 2018) *as reprinted in* Gurbir S. Grewal, Attorney General of New Jersey, *et al.*, Letter to Sec. Steven T. Mnuchin, Appendix C (Dec 9, 2019) *available at*: https://downloads.regulations.gov/IRS-2019-0039-8296/attachment_1.pdf.
[48] IRS "Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations" 85 Fed. Reg. 31959, 31960 (May 28, 2020) (collecting examples).
[49] *Id*. *See also* Brief of Arizona, *et al.*, *Americans for Prosperity Found. v. Bonta*, U.S. Nos. 19-251 and 19-255, at 4 (Mar. 1, 2021) *available at*: http://www.supremecourt.gov/DocketPDF/19/19-251/170569/20210301165759643_19-251%20-255%20tsac%20Arizona.pdf.

In reality, the rest of Form 990 is far better suited for detecting problems. For example, Part IV of Form 990 alone contains thirty-eight questions triggering a requirement to file more information, each designed to spot particular situations which the IRS has determined may pose issues. These include questions about grants of money to officers, directors, and other key employees, as well as to substantial contributors "or to a 35% controlled entity or family member of any of these persons."[50] The same information is required for loans, but details are not provided via Schedule B's general list.[51] Business relationships with substantial contributors too must be disclosed, but that information is also not on Schedule B, but on the publicly-available sections of Form 990.[52] And once a problem is detected, it becomes an enforcement matter with investigation of *one* organization, not the warehousing of thousands of organizations' thousands of donors. A general donor list is not nearly as useful as the rest of Form 990 in enforcing the tax laws.

Preventing wrongdoing by charities is an important interest, but greater generalized donor disclosure is not the answer. Already the IRS struggles to keep taxpayer information secure.[53] This is a repeated problem recognized by the Government Accountability Office.[54] And the leaks are already used to make political hay against ideological foes.[55] Multiple Senators on the Finance Committee have already called for reforms to better protect taxpayer data.[56] The government should be wary of collecting and storing more sensitive donor information than is necessary.

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Thank you for considering our comments. We look forward to answering any questions and working with you and your staff to develop the necessary reforms to assure regulation of tax-exempt organizations comports with the needs of proper IRS oversight, as well as the First Amendment.

Respectfully submitted,

Tyler Martinez
Senior Attorney

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[50] IRS, "Form 990, Return of Organization Exempt form Income Tax," Part IV, Line 27 at 4 *available at*: https://www.irs.gov/pub/irs-pdf/f990.pdf.
[51] *Id*. at Part IV, Line 26 and Schedule L, Part II.
[52] *Id*. at Part IV, Line 28 and Schedule L, Part IV.
[53] *See, e.g.*, Andrew Wilford and Andrew Moylan, "What's the Fallout From the ProPublica Leak?" National Taxpayers Union Foundation (July 27, 2021) *available at*: https://www.ntu.org/foundation/detail/whats-the-fallout-from-the-propublica-leak; *see also* Michael Tasselmyer, "IRS Security Breach Impacts 100,000 Taxpayers," National Taxpayers Union Foundation (May 28, 2015) *available at*: https://www.ntu.org/foundation/detail/irs-security-breach-impacts-100000-taxpayers-05-28-2015.
[54] *See, e.g.*, GAO, "Information Technology, IRS Needs to Address Operational Challenges and Opportunities to Improve Management," GAO-21-178T, at 6 (Oct. 7, 2020) *available at*: https://www.gao.gov/assets/gao-21-178t.pdf.
[55] *See, e.g.*, Jesse Eisinger, *et al.*, "The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax," ProPublica (June 8, 2021) *available at*: https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax.
[56] Sen. Mike Crapo, *et al.*, Letter to Commissioner Rettig (Dec. 1, 2021) *available at*: https://www.finance.senate.gov/imo/media/doc/finance_r_letter_to_rettig.pdf.