NATIONAL TAXPAYERS UNION FOUNDATION

MEMORANDUM

TO: Members of the House Committee on Ways and Means

FROM: Tyler Martinez, Director of Litigation, National Taxpayers Union Foundation

DATE: July 22, 2026

RE: Practical and Constitutional Considerations on Pending Proposals Targeting Alleged Foreign Election Interference

I. Introduction

National Taxpayers Union Foundation ("NTUF"),[1] submits these comments regarding legislation schedule for markup by the House Committee on Ways and Means on July 22, 2026: the "Foreign Funding Transparency Act" (H.R. 9772) and "Stopping Foreign Influence in Elections Act of 2026" (H.R. 9771).

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 Committee's consideration. As you know, NTUF has 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.

II. The First Amendment Protects the Freedom of Private Association.

NTUF tracks the important need for donor privacy,[2] applying decades of Supreme Court protections for nonprofit groups. Under *Americans for Prosperity Foundation v. Bonta*, ("*AFPF*")[3] and other landmark Supreme Court cases dating back to the Civil Rights era,[4] *any* government demand for membership or donor lists must survive the First Amendment's exacting scrutiny. The exacting scrutiny "requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest" and that "the disclosure requirement be

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[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 Request for Information.

[2] *See*, *e.g.*, Tyler Martinez, *In Defense of Private Foundations, Donor Advised Funds, and Private Giving*, NTUF (July 26, 2022) https://www.ntu.org/foundation/detail/in-defense-of-private-foundations-donor-advised-funds-and-private-giving.

[3] 594 U.S. 595, 607 (2021).

[4] *See*, *e.g.*, *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).

narrowly tailored to the interest it promotes."[5] The First Amendment protects the right of private association. Protecting donor lists helps protect civil society, especially for those whose views are against the mainstream norm or are subject to ideological attack.

Nor can the IRS keep any of this in formation secure. On September 26, 2025, the Government Accountability Office ("GAO") faulted the IRS for failing to fully comply with the government's own recommendations to better secure taxpayer data.[6] The government's own watchdog has flagged for years that the IRS still cannot keep taxpayer data secure.[7] Most infamously, from 2017 to 2019, Charles Littlejohn, an IRS contractor, accessed and stole tax returns and return information of President of the United States and information from conservative entities and individuals.[8] This has lead NTUF's Taxpayer Defense Center to file a lawsuit over the information the IRS *already* collects on Form 990. The case, *Young America's Foundation v. IRS*, was filed just this month.[9]

The lack of data security at the IRS is all the more reason why the government should be collecting *less* information, not more, about citizens and their ideological and charitable causes. The next Littlejohn cannot leak what the IRS never possesses.

III. The IRS Is the Wrong Agency to Handle New Investigative Powers

The Committee is working to solve a problem of concerns over foreign influence in our civil society. It has long been the law "that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government."[10] But the IRS is not the proper arbiter of discovering foreign influence in elections. That role belongs to the national security apparatus. For example, the Foreign Agents Registration Act ("FARA") requires *foreign principals and their American agents* to comply with ongoing registration and reporting requirements.[11] The Attorney General is tasked with making the resulting files open for public inspection.[12] Keep the IRS out of the business of national security.

The IRS staff itself cannot even apply the current 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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[5] *Id*. at 611 (citations omitted).

[6] GAO, "Priority Open Recommendations: Internal Revenue Service," GAO-25-108066 at 2 (Sept. 26, 2025) https://www.gao.gov/products/gao-25-108066.

[7] *See*, *e.g.*, Government Accountability Office, "Information Technology, IRS Needs to Address Operational Challenges and Opportunities to Improve Management," GAO-21-178T at 6-7 (Oct. 7, 2020) https://www.gao.gov/assets/gao-21-178t.pdf.

[8] Ali Sullivan, "IRS Worker Gets 5 Years For Airing Tax Info On Trump, Others" LAW360 Tax Authority (Jan. 29, 2024) https://www.cnn.com/2015/05/27/politics/irs-cyber-breach-russia/index.html.

[9] The complaint in the case was filed on July 13, 2026 in the United States District Court for the District of Columbia, 1:26-cv-02449. For more information, see our website: NTUF, *Protecting Donor Privacy*, https://www.ntu.org/foundation/case/young-americas-foundation-v-internal-revenue-service.

[10] *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge court) *summ. aff'd* 565 U.S. 1104 (2012).

[11] 22 U.S.C. § 614(a) and (d).

[12] 22 U.S.C. §§ 614(c), 616(a).

an organization is operating" within the parameters of the Internal Revenue Code. [13] 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."[14] And it turned out the program had errors affecting organizations across the ideological spectrum, though many conservative groups were hit hardest.[15]

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."[16] 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."[17] Simplicity is therefore the answer.

Worse, when the IRS erroneously went after conservative groups, getting into Federal court is nearly impossible thanks to jurisdictional bars like the Anti Injunction Act. *Freedom Path, Inc. v. Internal Revenue Service*,[18] is illustrative. After the district court stripped away other bases for jurisdiction,[19] the challengers were left with facial claims against Revenue Ruling 2004-6, which uses the above-mentioned eleven-factor "facts and circumstances" test to define "political activity" for which a § 501(c)(4) organization will be taxed.[20] Ultimately, the Fifth Circuit held that a facial claim could only be applied to the text of Revenue Ruling 2004-6, not how the IRS might apply that text to particular activity, and instructed that the case be dismissed.[21]

IV. "Foreign Funding Transparency Act" (H.R. 9772)

This bill will expand the power of the IRS to collect information concerning nonprofit donors. While not aimed at Americans, the only practicable way for enforcement of this new collection of

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[13] 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").

[14] 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*: https://www.oversight.gov/sites/default/files/oig-reports/TIGTA/201310053fr_0.pdf; *see also id.* at 5-10 (describing the program).

[15] *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; *cf.* Kelly Phillips Erb, *IRS Targeting Scandal:* Citizens United*, Lois Lerner And the $20M Tax Saga That Won't Go Away*, Forbs (Jun. 24, 2016) https://www.forbes.com/sites/kellyphillipserb/2016/06/24/irs-targeting-scandal-citizens-united-lois-lerner-and-the-20m-tax-saga-that-wont-go-away/?sh=1fb3fb59bcd1.

[16] Special Report at 14.

[17] 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/.

[18] 913 F.3d 503 (5th Cir. 2019).

[19] *Freedom Path, Inc. v. Lerner*, No. 3:14-CV-1537-D, 2015 WL 770254 (N.D. Tx. Feb. 24, 2015) (unpublished) ("*Freedom Path I*") (dismissing claims against then-Exempt Organizations Director for lack of personal jurisdiction); 2016 WL 3015392 (N.D. Tex. May 25, 2016) (unpublished) ("*Freedom Path II*") (dismissing remaining *Bivens*, First Amendment, Fifth Amendment, and APA claims); *sub. nom. Freedom Path, Inc. v. Int. Rev. Serv.*, 2017 WL 2902626 (N.D. Tx. July 7, 2017) (unpublished) ("*Freedom Path III*") (rejecting vagueness challenge to Rev. Rul. 2004-6).

[20] *Freedom Path*, 913 F.3d at 506.

[21] *Id*. at 508.

data to operate is for nonprofits collect information on *all* their donors. As of now, there is no limiting rubric that would not capture Americans in the data dragnet.

The bill allows nonprofits to rely on donors' representations regarding their nationality unless the organization "knows or should have known" such representations are false. While well-intentioned, any reporting requirements must account for the practical limitations nonprofits face in collecting donor information and avoid unnecessarily chilling lawful or anonymous giving.

How would a nonprofit really comply with this law? For example, mere location of a donor cannot be enough: after all, Americans live all around the world fulfilling jobs in the United States interests. Oil workers, teachers, businesses people, guides, and others all help project American soft power and bring allies closer to us by actively participating in the worldwide economy. Many too are the spouses and relatives of those sent by the government in service of country: for example, Americans living abroad when a spouse is stationed in Germany on military assignment or foreign service officers.

The only way, then is to collect data from all donors—from *Americans and foreigners alike*—and then intensely investigate the source of the income. Aside from the impracticability of such a mandate from the government, this option completely eliminates the ability for a nonprofit to accept an anonymous donation. Such anonymous giving—in the words of the Bible, "do not let your left hand know what your right hand is doing" is a long-honored tradition in American charitable giving.[22]

V. "Stopping Foreign Influence in Elections Act of 2026" (H.R. 9771)

This bill will prohibit and penalize what are currently legal contributions.

Nonprofits that do not accept tax-deductible donations may engage in limited political activity, so long as that is not their primary purpose. The "Stopping Foreign Influence in Elections Act of 2026" penalizes certain American nonprofits for giving to "political entities," defined to include political committees and 501(c)(4) organizations, simply because an organization received a single donation *in any amount* from a foreign national in the past two years.

The bill dangerously and unnecessarily expands IRS power to enforce financial restrictions on nonprofit activity. Political committees are governed by the Federal Election Campaign Act (FECA) and overseen by strict Federal Election Commission (FEC) rules and regulations. FECA already prohibits foreign nationals from making contributions and expenditures in connection with U.S. elections and further prohibits contributions from being made in the name of another person. This measure is duplicative at best and actively harmful at worst.

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.[23] 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

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[22] Matt. 6:3 (NASB).
[23] 52 U.S.C. § 30106.

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."[24] 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.

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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,

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[24] Special Report at 16.