



September 7, 2023

The Honorable Jason Smith  
Chair  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable David Schweikert  
Chair  
Subcommittee on Oversight  
U.S. House of Representatives  
Washington, DC 20515

Re: Request for Information: Understanding and Examining the Political Activities of  
Tax-Exempt Organizations under Section 501 of the Internal Revenue Code

Dear Chairs Smith and Schweikert:

On behalf of the North Carolina Center for Nonprofits (the Center), I write in response to the Request for Information regarding activities of tax-exempt organizations. The Center is a 501(c)(3) nonprofit that connects, educates, and advocates for charitable nonprofits throughout North Carolina. The Center welcomes this opportunity to clarify apparent misperceptions about the priorities and missions of charitable organizations and to set the record straight about the importance of nonpartisan, election-related activities.

For the sake of brevity, the Center incorporates here the response of the National Council of Nonprofits, submitted to the Committee on September 5, and we will reference that response in our comments. Notably, the Center wishes to reiterate that we wholeheartedly agree with the four overarching principles articulated in the National Council of Nonprofits' response, and we include a brief explanation about why each of these principles is important to charitable nonprofits in North Carolina.

### **Overarching Principles Noted by the National Council of Nonprofits**

*Overarching Principle #1: Nonpartisan, now and forever.*

The Center consistently hears from North Carolina nonprofits that preserving the provision in Section 501(c)(3) prohibiting charitable organizations from engaging in partisan election-related intervention is critical to the public's trust in charitable nonprofits. Consequently, preserving nonprofit nonpartisanship is an important public policy priority for the Center.

*Overarching Principle #2: All honest efforts to protect the sector from encroaching partisanship are welcome.*

As the National Council of Nonprofits explained its response, charitable nonprofits rely on public trust, which is a reason that the Center emphasizes the importance of 501(c)(3) nonprofits complying with

laws and behaving ethically and appropriately. Consequently, the Center embraces any genuine efforts to enforce the nonpartisanship provision in Section 501(c)(3) of the Internal Revenue Code, whether this enforcement comes from Congress, the IRS, state nonprofit regulators, or other sources.

*Overarching Principle #3: Conflation breeds confusion.*

Most members of the public are not tax lawyers, and they do not fully understand the distinction between 501(c)(3) public charities and 501(c)(4) social welfare organizations. The vast majority of tax-exempt nonprofits are 501(c)(3) public charities (e.g., according to December 2021 IRS data, North Carolina had 41,683 organizations that were Section 501(c)(3) public charities and 2,160 social welfare organizations exemption under Section 501(c)(4)). This means that the vast majority of tax-exempt nonprofits are prohibited from engaging in *partisan campaign intervention*, but are allowed to engage in *issue advocacy*. The Center strongly agrees with the National Council of Nonprofits' observation that the use of terms like "political advocacy" and "political nonprofits" to describe activities of charitable nonprofits justifiably confuses the public and contributes to the broad misunderstanding of the distinction between permissible issue advocacy and impermissible partisan campaign intervention for charitable nonprofits.

*Overarching Principle #4: Charitable nonprofits and civic engagement are synonymous.*

While charitable nonprofits operate for a wide variety of missions, they all exist primarily for the public benefit rather than to advance the interests of private individuals or businesses. Charitable nonprofits serve the public through their work helping individuals and communities. Nonprofits' commitment to improving the lives of the people and communities they serve goes beyond the core programs and services they offer – like child care, job training, food assistance, health care, faith development, and senior care. Rather, charitable nonprofits provide more holistic support for the people they serve, including strengthening their engagement with their communities and civic structures. Consequently, the Center actively encourages charitable nonprofits to embrace nonpartisan civic engagement as complementary and essential to their organizations' missions, programs, and services.

### Responses to Questions Presented

The Center concurs with the responses that the National Council of Nonprofits provided to the 10 questions presented by the Chairs. The following are some additional observations on these questions based on our experience working with charitable nonprofits in North Carolina. Because the Center's mission is to serve *charitable* nonprofits operating in North Carolina, we have limited our comments to the portions of questions that are relevant to 501(c)(3) nonprofits.

**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?**

For 501(c)(3) nonprofits, the meaning of "political campaign intervention" is quite clear, and there is no need for updated guidance from the IRS. As part of the Center's work, we provide training and technical assistance to nonprofits on a variety of legal compliance topics, including permissible election-related activities for 501(c)(3) organizations and their staff and volunteers. In my 16 years with the Center, I have personally spoken with hundreds of nonprofit leaders on questions they have about nonpartisan

election-related activities. In the vast majority of these cases, the Center was able to provide clear answers to nonprofits' questions by pointing nonprofits either to formal guidance from the IRS – most notably [IRS Revenue Ruling 2007-41](#) – or by directing them to written materials from the Center or [Nonprofit VOTE](#), which restate federal tax law principles in ways that are clear for nonprofit audiences. In my experience, the very few questions that 501(c)(3) nonprofits have about the permissibility of election-related activities that are not answered clearly by existing IRS guidance and/or by resources from the Center or other nonprofits are fact-specific scenarios that are not broadly applicable and therefore would not lend themselves well to legislation by Congress or formal guidance from the IRS.

The Center helps North Carolina nonprofits understand what types of election-related activities are permissible and impermissible for 501(c)(3) nonprofits in several ways:

1. Offering webinars and in-person trainings on nonpartisan election-related activities and incorporating this information into other advocacy workshops that the Center offers.
2. Publishing answers to common nonprofit questions about nonpartisan election-related activities and North Carolina-specific voter education information (e.g., how nonprofits' clients can find their polling places, sample ballots, voter registration information, and Early Voting sites and hours). For example, last year the Center published [Answers to Common Questions About Nonprofits and the 2022 Election](#).
3. Sharing resources from Nonprofit VOTE and other trusted nonprofit partners about nonpartisan voter registration and voter education activities for nonprofits.

To ensure that this information is broadly available to all 501(c)(3) nonprofits in North Carolina, the Center offers these resources for free to any charitable organization, not just to our dues-paying members. We provide these resources to *any* nonprofit free of charge because we believe it is critical that every 501(c)(3) nonprofit in the state: (a) operates in a nonpartisan manner; (b) understands the types of nonpartisan election-related activities that are permissible; and (c) appreciates that nonpartisan voter registration and voter education activities may be complementary to their organization's mission, programs, and services.

The Center does not work directly with 501(c)(4) organizations, but we agree with the analysis of in the National Council of Nonprofits about the potential value of renewed IRS rulemaking on “political campaign intervention” by 501(c)(4) social welfare organizations.

**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?**

Because 501(c)(3) nonprofits are prohibited from engaging in “political campaign intervention” and “political advocacy,” this question is not relevant for charitable nonprofits.

**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?**

As noted above, in my 16 years working for the Center, I have talked with hundreds of charitable nonprofits about their voter education and voter registration activities. In those interactions, I have

never encountered a 501(c)(3) that stated or implied that it undertook these activities with the intent of favoring or opposing a candidate or a particular political party.

Further, my observation has been that the effect of charitable nonprofits' voter education and voter registration activities rarely, if ever, unilaterally favors or opposes one particular candidate or political party. Nonprofits typically provide voter education and voter registration for the people and communities they serve. It is true that many nonprofits serve populations with a greater propensity to vote for one candidate or political party in a particular election year. For example, nonprofits in rural communities and those serving seniors are more likely to provide services to Republicans than to Democrats, and nonprofits serving college students and those in urban areas like Raleigh and Charlotte are more likely to provide services to Democrats than to Republicans. However, the reality is that:

1. People served by nonprofits do not vote as a single bloc, regardless of their political affiliation;
2. In North Carolina, more voters – including people served by nonprofits – are registered as unaffiliated than as Democrats or Republicans, so it is nearly impossible for nonprofits to know how the plurality of the people they serve are likely to vote in any particular election;
3. Voting trends change over time, so a nonprofit that may register or provide voter education to more Republicans in one election may also register or provide voter education to more Democrats in the next election, and vice versa; and
4. Most importantly, nonprofits are committed to ensuring that the people they serve vote in elections, regardless of which candidates they might select on their ballots.

**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?**

The National Council of Nonprofits' response provides an excellent analysis of much of the programmatic information that 501(c)(3) nonprofits already must disclose on their Forms 990. As that response notes, it is appropriate for many charitable nonprofits to report their nonpartisan voter education and voter registration activities on their Statement of Program Service Accomplishments on Part III of Form 990.

The Center would not recommend adding further disclosure requirements on nonpartisan voter registration or voter education activities of 501(c)(3) nonprofits to Form 990 – particularly if charitable nonprofits were required to identify which contributions were used to fund these activities – for three reasons:

1. This additional reporting requirement would increase paperwork for charitable nonprofits without providing any meaningful transparency for donors or the general public;
2. Because some charitable nonprofits use general operating support, including program service revenue, to fund their nonpartisan voter education work, it may be difficult for these organizations to identify specific contributions that were used to pay for these activities; and
3. By singling out nonpartisan voter registration and voter education, this type of reporting could wrongly suggest to the public that these activities are inappropriate for charitable nonprofits and/or are of less value to nonprofit's constituents and communities than other types of programs and services.

The question about reporting of political activities on Form 990 is not relevant for 501(c)(3) nonprofits, since charitable organizations cannot engage in partisan campaign activities.

**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?**

Because contributions to 501(c)(3) nonprofits cannot be used to influence U.S. elections, this question is not relevant for charitable nonprofits.

**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)?**

Because 501(c)(3) nonprofits generally do not engage in activities regulated by the FEC, this question does not appear to be relevant for charitable nonprofits.

**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?**

This seems like a reasonable and beneficial measure for the IRS to take provided that Congress appropriates the necessary funding for this expanded IRS oversight.

**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?**

As noted in our responses to Question #2 and Question #4 above, this question is not relevant for 501(c)(3) nonprofits.

**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 appreciate this question. In its more than 30 years of service to North Carolina’s charitable nonprofit sector, the Center has worked closely with thousands of nonprofits serving all 100 counties of our state. To my knowledge, the Center has never encountered a 501(c)(3) nonprofit whose “true purpose” was influencing elections in favor of one political party. Because our mission is to serve

charitable nonprofits, we cannot speak to the purposes or operations of 501(c)(4) organizations in North Carolina.

**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 appreciate this question and the Chairs' interest in identifying instances of charitable nonprofits engaging in impermissible private inurement and/or misusing donor funds in ways that are inconsistent with clearly stated donor intent. As the National Council of Nonprofits noted in its response, if the Center were aware of any such problematic activities, it would report them to appropriate law enforcement authorities. In North Carolina, the Consumer Protection Division of the NC Department of Justice has staff dedicated to reviewing inappropriate actions by nonprofits, including misuse of donor funds and private inurement. The Center has engaged with staff at the Consumer Protection Division, and we are confident that the Division has a strong process for handling and addressing legitimate issues of misuse of donor funds and private inurement by 501(c)(3) nonprofits operating in North Carolina.

#### **Note on Potential Legislative Action**

Apart from the 10 questions, the Request for Information concludes with a paragraph on the "Potential Need for Legislative Action." The Chairs note the "Congress may need to consider closing growing loopholes that allow the use of tax-exempt status to influence American elections." The Center is generally supportive of legislation that seeks to limit the influence of non-501(c)(3) nonprofits on partisan politics, since this may help ensure that a greater percentage of increasingly limited donor funds goes to the mission-related work of charitable organizations providing essential services in the community rather than being used by non-501(c)(3) organizations to influence partisan election outcomes.

However, we must note that legitimate nonpartisan voter education activities of 501(c)(3) organizations should not be considered "loopholes that allow the use of tax-exempt status to influence American elections." Indeed, in North Carolina, we have noticed that nonprofits have found it increasingly necessary to engage in nonpartisan voter education activities for several reasons:

1. **Election laws and processes change nearly every year in our state, so the general public is often unsure of important details about the voting process.** For example, in 2023 alone, the North Carolina Supreme Court reinstated a 2018 law that established a photo ID requirement for voting, and a recently enacted state law made changes to the absentee ballot and Early Voting processes. Nonprofits can help provide clear and accurate information about current voting laws and processes to their staff, volunteers, and the people they serve, helping them know when and where to vote and what to expect on Election Day or during Early Voting or when submitting their absentee ballot.
2. **Candidates for public office often avoid talking about policy solutions that matter most to their constituents.** Nonprofits can organize nonpartisan candidate forums or publish candidates' responses to nonpartisan questionnaires to help inform voters across the political spectrum of how candidates from all parties would address a host of policy issues that do not break down along party lines. For example, last year, the Center worked with several other 501(c)(3)

nonprofits in Pitt County to host a nonpartisan candidate forum in Greenville, North Carolina. An equal number of Democratic and Republican candidates participated in a meaningful, substantive discussion about issues such as transportation priorities, food insecurity, tax policy, access to healthcare, and economic development. Attendees included nonprofit staff, volunteers, and clients, who gained information about candidates' insights on issues that directly affect their lives and that generally were not mentioned in the campaign because they were topics that were absent from the platforms of both the Democratic and Republican parties.

3. **Many people don't trust government or politicians.** People are far more likely to trust information about elections if it comes from a charitable nonprofit that they already rely on for services like child care, job training, food assistance, senior care, or healthcare.
4. **State and local governments cannot always afford to fully fund election administration.** When election boards lack the capacity to provide adequate outreach to the public with clear and accurate information about election laws and the process for voting, it is incumbent on charitable nonprofits to fill in these gaps through nonpartisan voter education work.

Charitable nonprofits engage in nonpartisan voter education not because it is profitable (it isn't) or because they want to influence partisan election outcomes (they don't), but rather because they see this type of nonpartisan civic engagement as a necessary public service to their clients and their community, and therefore something that is complementary to their charitable missions. We urge Congress to work collaboratively with charitable nonprofits to help them do this work effectively and not to consider legislation that would make it more difficult for charitable organizations to engage in important nonpartisan voter education work.

Thank you for the Chairs' interest in these important issues related to the election-related activities of 501(c)(3) and 501(c)(4) nonprofits. The Center appreciates the opportunity to share our input and perspective, and we welcome any questions that you or others on the House Ways and Means Committee may have about our responses.

Sincerely,

A handwritten signature in black ink that reads "David R. Heinen". The signature is written in a cursive, slightly slanted style.

David R. Heinen  
Vice President for Public Policy and Advocacy  
North Carolina Center for Nonprofits