



The Honorable Jason Smith
1011 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable David Schweikert
460 Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

September 1, 2023

Response to August 14, 2023 Request for Information: Nonprofit Organizations and “Political Campaign Intervention”

Dear Chairman Smith and Chairman Schweikert,

Please accept these comments in response to your August 14 Request for Information (RFI), from Independent Sector – a national membership organization made up of nonprofits, foundations, and corporate giving programs nationwide. Working together, our member organizations and their networks reach every state and district and touch the life of every American in one or many ways. They range from some of the largest charities in the world to all-volunteer organizations, and from major philanthropic institutions to small foundations, academic centers, community-based organizations, and more. Independent Sector’s core aim is to support these organizations and all civil society, working toward a healthy and equitable nonprofit sector to ensure all people living in the United States thrive.

We are proud to stand with the Council on Foundations and United Philanthropy Forum on joint responses to your full request, submitted separately. In addition, we particularly welcome your interest in the definition of “political campaign intervention” and are pleased to share some additional information that is relevant to **Question 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?

As indicated in our joint responses, the Johnson Amendment’s absolute prohibition on “political campaign intervention” is a critical firewall between 501(c)(3) charities and partisan politics. It is essential that it be preserved.

Chair
Fred Blackwell
The San Francisco Foundation

Vice Chair
Sarah Kastelic
National Indian Child Welfare Association

Secretary
Michael McAfee
PolicyLink

Treasurer
Jen Ford Reedy
Bush Foundation

Nicole Anderson
AT&T Foundation

Phoebe Boyer
Children’s Aid

Dr. John Brothers
T. Rowe Price Foundation

Sonya Campion
Campion Advocacy Fund

Ann Mei Chang
Candid

Janine Lee
Philanthropy Southeast

Suzanne McCormick
YMCA

Dr. Manuel Pastor
Equity Research Institute, University of Southern California

Stacey Stewart
Mothers Against Drunk Driving (MADD)

Rev. Adam Russell Taylor
Sojourners

Dr. Akilah Watkins
Independent Sector

David Williams
Deloitte LLP

The Honorable
John W. Gardner (1912-2002)
Founding Chair

Brian O’Connell (1930-2011)
Founding President and President Emeritus

It is equally important that nonprofit organizations be engaged in the public policy process through advocacy, lobbying, and nonpartisan civic engagement. When nonprofit organizations are left out, they suffer individually as does the health of the entire charitable sector. Public policies designed without the input of nonprofits and the people they serve are less effective, and our democracy is less representative when nonprofits’ nonpartisan civic engagement is curtailed. Recently released research speaks to these opportunities directly.

Landmark Research on Nonprofit Public Policy Engagement

On July 18, Independent Sector released the results of a nationally representative survey of nonprofit institutions.¹ While there is a strong research community focused on nonprofit organizations and their work, this report fills an over 20-year gap in national data on their participation in public policy. Conducted by researchers at American University, George Mason University, and University of Massachusetts-Boston, the report is based on analysis of 2,282 completed surveys, weighted to be nationally representative of organization size, subsector, and location. In addition to providing valuable insights about the present state of nonprofit public policy engagement, the study was designed to serve as a baseline for future research.

Declines in Nonprofit Advocacy and Understanding of Permissible Activities

Overall, the research shows an alarming decline in nonprofit organizations’ engagement with public policy. In 2022, only 25 percent of nonprofit organizations reported that they had ever communicated a position on legislation to policymakers, as compared to 74 percent that reported ever having done so in 2000. Rates of public policy engagement are lowest in smaller organizations, organizations working at the local level or international level, and organizations located in suburban areas.

Additionally, the researchers found that nonprofit organizations located in political battleground states – as determined by the 2020 Cook Political Report – were less likely to engage with public policy than those located in states with a clear partisan lean. This points to a key consideration when assessing the value of additional clarity in the rules: nonprofit organizations are clearly cautious about getting caught up in partisan politics.

Beyond declines in nonprofit advocacy, the report also shows that nonprofit organizations are now less aware of what public policy engagement they are allowed to do compared to 2000. For example, fewer than one-third of nonprofit organizations currently believe that they are allowed to endorse legislation or host a candidate forum for elected office. While IRS regulations and guidance on those questions are already clear, we believe this widespread lack of knowledge indicates even broader uncertainty about other areas of the rules as well.

IRS Rules Discourage Public Policy Engagement

Organizations in the survey were also asked to assess whether 8 factors encouraged or discouraged public policy engagement. Regardless of whether they engaged with public policy or not, organizations self-reported that “tax laws or IRS rules” were the single most discouraging factor influencing their decision about *whether*

¹ Faulk, L. Kim, M., and MacIndoe, H. (2023). The Retreat of Influence: Exploring the Decline of Nonprofit Advocacy and Public Engagement. Independent Sector. <https://independentsector.org/policy/advocacy-research/>

to engage. In fact, it is the most discouraging factor for nonprofit organizations of every size and nearly every subsector.

These findings are borne out by the experiences of Independent Sector and its members. Amidst crises and uncertainty before the most recent presidential election, we heard from very large nonprofits with highly professional policy teams that were not speaking up about certain policy proposals impacting their operations. Despite the importance of these issues to their mission, they did not want to enter a legal gray area. For smaller organizations without dedicated policy staff, these challenges can be even more difficult to overcome, silencing frontline experts often in charge of implementing critical services on behalf of government.

The Government Accountability Office report cited by the RFI addresses this, noting that even IRS officials expressed concern that they had released numerous revenue rulings on the topic, but:

However, some IRS officials told us that existing guidance is not sufficiently clear about what constitutes political campaign intervention (e.g., examining a 501(c)(3) organization engaging in issue advocacy near the time of an election may be particularly challenging, as that advocacy can be very close to advocating for a specific candidate)²

GAO continues, citing IRS officials lamenting that there will always be challenges applying the law “in the absence of “bright line” rules regarding what constitutes political campaign intervention³”.

A Possible Solution

We find this phrasing by IRS officials to be noteworthy. Since 2008, the Bright Lines Project – a nonpartisan initiative undertaken by a drafting committee of technical and legal experts – has worked to develop and evolve a framework of definitions, exceptions, and clear analytical steps that could be used by the IRS and nonprofit organizations alike for recognizing “political campaign intervention.” While the Bright Lines Project is just one potential framework, it is a body of work that the Committee should closely consider if it moves forward in any way to further define “political campaign intervention.”

Thank you for the opportunity to share these comments. While the findings in this recent research are deeply concerning, we believe that they provide significant opportunities for nonprofit organizations and policymakers alike. We look forward to discussing them with you further.

Sincerely,



Dr. Akilah Watkins
President and CEO
Independent Sector

² GAO, Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives, p. 42-43, [GAO-20-66R](#), February, 2020.

³ GAO, p.43.