

## Written Testimony

### To House Ways and Means

### Subcommittee on Oversight

**Rep. David Schweikert, chairman**

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Chairman Schweikert, Ranking Member Pascrell, distinguished members of the Subcommittee, thank you for the honor of testifying. I'm president of the Capital Research Center, and for decades we've studied the nonprofit world and its connections to politics.

I applaud the full Ways and Means Committee and this subcommittee for your attention to political abuses in the nonprofit sector, which do not receive nearly as much attention as they deserve from Congress and the media. Worse, the media typically spend much more time investigating the rightward end of the political spectrum, with long stories on donors like Charles Koch, and much less time investigating the leftward side, even though left-wing nonprofits enjoy far more money.<sup>1</sup>

Perhaps the Left's growing dominance in riches explains why, in the last couple of years, the so-called mainstream media have finally been examining the left side of the nonprofit world in more detail and with a more critical eye, as my testimony will demonstrate. No longer do left-leaning philanthropies and charities always receive the benefit of the doubt that their every dollar spent, and their every effort undertaken, are beneficent, law-abiding, and aimed at healing the country's wounds.

I've been asked to focus especially on foreign money in nonprofits, which is eminently reasonable. Our country is increasingly polarized in many ways, but we possess near-universal agreement that foreigners and foreign money should *not* meddle in our politics. The overwhelming consensus in this area should make improvements possible.

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<sup>1</sup> See for example, Shane Devine and Michael Watson, "Political and Policy-Oriented Giving After Citizens United: An Update to CRC's 2017 Analysis," Capital Research Center, December 17, 2020, <https://capitalresearch.org/article/political-and-policy-oriented-giving-after-citizens-united-an-update-to-crcs-2017-analysis>.

While both political parties have experienced abuses in the Super PAC arena over the years,<sup>2</sup> and those abuses have received attention from the Federal Election Commission (FEC) and the public, problems in 501(c)(3) and (c)(4) groups have been much less examined. By far the largest example of apparent abuses I'm aware of involves the nonprofits controlled by Swiss billionaire Hansjörg Wyss. Mr. Wyss has the Wyss Foundation, a (c)(3) private foundation, and the Berger Action Fund, a (c)(4) social welfare group.

Let us please have no claims that criticism of these two nonprofits arises from feverish right-wing conspiracy theories. Using only reports from non-conservative media sources we can see serious problems with these nonprofits. Permit me to quote some of the media reports at length.

In a *Politico* article last year, the headline and subtitle declared, "Liberal billionaire's nonprofit splashed \$56M in 2020: Berger Action Fund, founded by the Swiss-born billionaire Hansjörg Wyss, sent \$31 million of that money to Sixteen Thirty Fund, the left's leading 'dark-money' hub." *Politico* added:

Sixteen Thirty Fund spent widely on a range of liberal causes, from swing-state TV ads and left-leaning ballot measures, to campaigns opposing Trump's judicial picks and his health care and tax policies. It played a major role in the 2018 midterms as well, when Democrats flipped control of the House of Representatives.

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Other major outlays by Berger Action Fund in the 2020 fiscal year included \$10.5 million to the Fund for a Better Future ... [which] distributed tens of millions of dollars to several nonprofits associated with Democratic super PACs in 2020....

Berger Action Fund also gave \$4.5 million to League of Conservation Voters ... \$2 million to Color of Change Education Fund, a racial justice group; and \$1.75 million to Center for American Progress Action Fund, the advocacy arm of the liberal think tank where Wyss sits on the board of directors.

Another four groups got \$1 million apiece, including National Redistricting Action Fund, a sister group of Democrats' national redistricting hub, which has funded lawsuits against GOP-drawn state political maps.<sup>3</sup>

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<sup>2</sup> Axios reports, "Last year the Federal Election Commission fined Barry Zekelman, a Canadian billionaire, \$975,000 for steering some \$1.75 million to a pro-Trump super PAC in 2018. In 2019, the FEC issued \$940,000 in fines to the super PAC supporting former Florida Gov. Jeb Bush's 2016 presidential bid and a Chinese-owned corporation that made illegal donations to it. In 2002, the FEC imposed \$719,000 in fines in response to a 1996 Democratic Party fundraising scandal involving donations from China, Korea and other foreign sources." Hans Nichols and Stef W. Kight, "GOP plan targets foreign dark money for 2024," Axios, July 10, 2023, <https://www.axios.com/2023/07/10/gop-targets-foreign-dark-money-2024-election>.

<sup>3</sup> Scott Bland, "Liberal billionaire's nonprofit splashed \$56M in 2020," *Politico*, March 18, 2022, <https://www.politico.com/news/2022/03/18/liberal-billionaire-nonprofit-dark-money-00018513>.

The *New York Times* has also reported on Wyss's political activities. In a 2021 article, a *Times* reporter not only described Wyss's powerful influence on our politics but also pushed back on his claims not to be influencing American politics and elections:

Newly obtained tax filings show that [the Wyss Foundation and Berger Action Fund] donated \$208 million from 2016 through early last year to three other nonprofit funds that doled out money to a wide array of groups that backed progressive causes and helped Democrats in their efforts to win the White House and control of Congress last year.

Mr. Wyss's representatives say his organizations' money is not being spent on political campaigning. But documents and interviews show that the entities have come to play a prominent role in financing the political infrastructure that supports Democrats and their issues.

Beneficiaries of his organizations' direct giving included ... organizations that ran voter registration and mobilization campaigns to increase Democratic turnout, built media outlets accused of slanting the news to favor Democrats and sought to block Mr. Trump's nominees, prove he colluded with Russia and push for his impeachment.

Several officials from organizations started by Mr. Wyss and his team worked on the Biden transition or joined the administration, and on environmental policy in particular Mr. Wyss's agenda appears to align with President Biden's.

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...tax filings submitted by the Sacramento-based Fund for a Better Future, which passes money from donors to groups that push to shape the political process in a way that helps Democrats ... has received the majority of its funding — nearly \$45.2 million between the spring of 2016 and the spring of 2020 — from the Berger Action Fund....

...Among the groups under the umbrella of [Arabella Advisors'] Sixteen Thirty and New Venture is the Hub Project, which was started by Mr. Wyss's philanthropic network in 2015 as a sort of incubator for groups backing Democrats and their causes, as first reported by The Times. It created more than a dozen groups with anodyne-sounding names that planned to spend \$30 million attacking Republican congressional candidates before the 2018 election.<sup>4</sup>

One more non-conservative outlet, the Associated Press, this year published a similar article highlighting the highly political uses to which Wyss's nonprofit funds are put:

The Berger Action Fund is a nondescript name for a group with a rather specific purpose: steering the wealth of Hansjörg Wyss, a Swiss billionaire, into the world of American politics and policy.

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<sup>4</sup> Ken Vogel, "Swiss Billionaire Quietly Becomes Influential Force Among Democrats," *New York Times*, May 3, 2021, <https://www.nytimes.com/2021/05/03/us/politics/hansjorg-wyss-money-democrats.html>.

As a foreign national, Wyss is prohibited from donating to candidates or political committees. But his influence is still broadly felt through millions of dollars routed through a network of nonprofit groups that invest heavily in the Democratic ecosystem.

Newly available tax documents show that his giving through the [501(c)(4)] Berger Action Fund ... swelled in 2021 to \$72 million, cementing Wyss' status as a Democratic-aligned megadonor.

Representatives for Wyss insist they comply with laws governing the giving of foreign nationals and have put in place strict policies limiting the use of donations to "issue advocacy"—not partisan electoral activities. But the fact that the money cannot be publicly traced highlights the difficulty of putting such assertions to the test.

Those same groups have helped to bankroll efforts to lift President Joe Biden's agenda and paid for TV ads promoting Democratic congressional candidates ahead of last year's midterm elections.<sup>5</sup>

I apologize for quoting at such length, but the cumulative weight of these mainstream news reports proves just how extensive are the political entanglements that connect Mr. Wyss, his (c)(3) foundation, and his (c)(4) action fund, on the one hand, and, on the other hand, the network of nonprofits managed by Arabella Advisors, which runs "the left's leading 'dark-money' hub," as *Politico* puts it. Arabella's nonprofit empire involves, as the *New York Times* describes it, "an opaque network managed by a Washington consulting firm" that has "funneled hundreds of millions of dollars through a daisy chain of groups supporting Democrats and progressive causes. The system of political financing, which often obscures the identities of donors, is known as dark money, and Arabella's network is a leading vehicle for it on the left."<sup>6</sup>

My colleagues at the Capital Research have totaled the revenues taken in just on the nonprofit side of the Arabella empire, which comprises six (c)(3) and (c)(4) groups that in turn fiscally sponsor over 500 "projects" for Mr. Wyss and other billionaires. In the two years of the 2018 election cycle, Arabella's nonprofits' combined revenues were \$1.2 billion; for the 2020 cycle, \$2.6 billion; for the 2022 cycle, \$3 billion.<sup>7</sup>

Mr. Wyss's entanglement with Arabella goes back decades, almost to the empire's beginning. The Wyss Foundation began making six-figure annual grants to Arabella's New Venture Fund (then the "Arabella Legacy Fund") in 2007, just one year after the fund's creation. His foundation's 2007 grant accounted for 55 percent of New Venture Fund's revenues for that year. At least one Wyss Foundation staffer, Kyle Herrig, jumped ship to Arabella. Herrig, a

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<sup>5</sup> Brian Slodysko, "Group steers Swiss billionaire's money to liberal causes," Associated Press, April 4, 2023, <https://apnews.com/article/dark-money-democrats-wyss-politics-elections-601d40cd01569190559d545418afe396>.

<sup>6</sup> Ken Vogel, "Top Bidder for Tribune Newspapers Is an Influential Liberal Donor," *New York Times*, April 17, 2021, <https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-buyer.html>.

<sup>7</sup> See "Arabella Advisors," InfluenceWatch, <https://www.influencewatch.org/for-profit/arabella-advisors/#network-financial-overview>.

Wyss Foundation staffer from 2012 to 2013, has served on the advisory boards of at least five New Venture Fund projects.<sup>8</sup> He now runs the left-of-center activist group Accountable.US.<sup>9</sup>

Both the Wyss-run nonprofits and the Arabella-run nonprofits like to claim they're mild-mannered, compassionate, and vaguely charitable operations just trying to make the world a better place, but one data point alone makes laughable these claims to be apolitical: Both the Wyss Foundation and Arabella nonprofits use the Elias Law Group, run by Marc Elias, the so-called Democratic super-lawyer known for his bare-knuckles partisanship. In 2022, the Wyss Foundation's IRS Form 990 reports \$61,251 in compensation to Elias's firm.<sup>10</sup> The same form reports the foundation made \$346,905 in payments to Global Strategy Group, a public relations firm which brags that its pollsters helped win Democratic majorities in the House and Senate.<sup>11</sup>

The strongest evidence that improper foreign intervention in American elections has resulted from Mr. Wyss's mixing foreign funds with American nonprofits comes from the Federal Election Commission. In May 2021, the right-leaning Americans for Public Trust filed a complaint with the Federal Election Commission, arguing the evidence already available indicates "Mr. Wyss indirectly funded federal electoral advocacy through his nonprofit organizations, the Wyss Foundation and the Berger Action Fund. The intended recipient of these funds was ultimately a variety of organizations whose primary purpose is to engage in electoral advocacy."<sup>12</sup>

The complaint observed that "the law prohibits foreign nationals from making contributions to political committees whether directly or indirectly." Unfortunately, the Federal Elections Commission (FEC) did not promptly act on this complaint, so after waiting a year, Americans for Public Trust filed a lawsuit<sup>13</sup> in April 2022, aiming to prod the Commission to investigate Wyss's alleged illegal donations to left-wing groups and various Democratic politicians. The plaintiff observed that FEC records already showed illegal *direct* donations to politicians, including Sen. Dick Durbin (D-IL) and former Rep. Jay Inslee (D-WA)—now governor of Washington State—and former Rep. Mark Udall (D-CO), who was later elected to the Senate.<sup>14</sup> (The statute of limitations on those illegal donations has expired.) The plaintiff also noted that Wyss has claimed to support senators for election.<sup>15</sup>

<sup>8</sup> Hayden Ludwig, "Arabella's Long War," Capital Research Center, November 12, 2021, <https://capitalresearch.org/article/arabellas-long-war-part-2/>.

<sup>9</sup> "Kyle Herrig," InfluenceWatch, <https://www.influencewatch.org/person/kyle-herrig/>.

<sup>10</sup> "Wyss Foundation," InfluenceWatch, <https://www.influencewatch.org/app/uploads/2023/12/Wyss-Foundation-Form-990-2022.pdf>.

<sup>11</sup> Ibid. And see the Global Strategy Group's "About GSG" page, <https://globalstrategygroup.com/about/>: "As top Democratic pollsters, we have worked for dozens of winning campaigns and political organizations. Our work was pivotal in helping Democrats secure today's majorities in the US House of Representatives and Senate."

<sup>12</sup> Melissa Klein, "Watchdog calls for probe into Swiss billionaire's US political spending," *New York Post*, May 15, 2021, <https://nypost.com/2021/05/15/watchdog-calls-for-probe-into-swiss-billionaires-political-spending/>.

<sup>13</sup> Americans for Public Trust, "APT Files Lawsuit Against FEC Seeking Action Regarding Alleged Illegal Foreign Contributions," April 25, 2022, <https://americansforpublictrust.org/news/apt-files-lawsuit-against-fec-seeking-action-regarding-alleged-illegal-foreign-contributions%0ef%0bf%0bc/>.

<sup>14</sup> Wyss's direct donations remain in FEC records: [https://www.fec.gov/data/receipts/individual-contributions/?contributor\\_name=Wyss%2C+Hansjoerg&contributor\\_name=Wyss%2C+Hansjorg](https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=Wyss%2C+Hansjoerg&contributor_name=Wyss%2C+Hansjorg).

<sup>15</sup> See Giorgio V. Müller, "We have found a good home for Synthes," *Neue Zürcher Zeitung*, June 11, 2011, [https://www.nzz.ch/wir\\_haben\\_ein\\_gutes\\_heim\\_fuer\\_synthes\\_gefunden-ld.589550](https://www.nzz.ch/wir_haben_ein_gutes_heim_fuer_synthes_gefunden-ld.589550). In Google's translation, Wyss

As the lawsuit pressed on the Commission, the FEC’s general counsel finally produced a document with recommendations for what the Commission should do regarding Wyss and his relations with the Arabella network. The general counsel said an investigation into Arabella’s Sixteen Thirty Fund’s relations with its largest grant recipients in the 2018 and 2020 election cycles should be conducted, to see if the group should have been registered as a PAC, rather than a 501(c)(4) nonprofit. Even on the basis of evidence already available, the general counsel found grave violations and recommended that the FEC “Find reason to believe that the Sixteen Thirty Fund and The Hub Project”—the latter launched and sustained through the Arabella network by Wyss and his nonprofits—had “violated 52 U.S.C. §§ 30102, 30103, and 30104 by not registering as a political committee and meeting the Act’s organizational, recordkeeping, and reporting requirements.”

The complaint to which the FEC general counsel responded alleges that “The Hub Project has served as a vehicle for the political spending of Mr. Wyss. This is demonstrated by the fact that Mr. Wyss has not publicly disclosed his role in founding the Hub Project. Neither his influence nor his financial support can be found anywhere on the group’s website.”<sup>16</sup>

Indeed, the *New York Times* reporter who first exposed the Hub Project only learned of Wyss’s connection to the project with the help of “interviews with five people with knowledge of The Hub Project, an internal memo from another liberal group that was obtained by The New York Times, and the appearance of The Hub Project’s business plan in a tranche of data made public by WikiLeaks.”<sup>17</sup>

The inauguration of Joseph Biden as President only led to more influence for Wyss. “Several officials from the Hub Project were hired by the Biden administration,” the *Times* reports, “including Rosemary Enobakhare, a former Environmental Protection Agency official in the Obama administration who returned to the agency under Mr. Biden; Maju Varghese as director of the White House Military Office; and Janelle Jones as chief economist for the Labor Department.” Then there’s Wyss’s top aide, Molly McUsic, president of both the Wyss Foundation and Berger Action Fund (and former Arabella Sixteen Thirty Fund board member): she “was a member of the Biden transition team that reviewed Interior Department policies and personnel.”

Even more disturbing, given the Ways and Means Committee’s responsibility for overseeing the nonprofit sector, is the fact that Joe Biden might never have had any transition team in 2020, were it not for what Ms. McUsic, using her Wyss Foundation email account, was discussing in 2015 with John Podesta, then the presumptive head of Hillary Clinton’s 2016 presidential campaign.

As a Capital Research Center colleague has reported on at length, McUsic helped to launch a “massive [voter] registration surge” that spanned two presidential elections (and counting) and consumed over \$150 million in funds from 501(c)(3) private foundations and

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says of his time in America during the George W. Bush administration, “I already had three foundations and supported senators.”

<sup>16</sup> Americans for Public Trust v. Federal Election Commission, May 14, 2021, [https://www.fec.gov/resources/cms-content/documents/afpt\\_compl\\_for\\_declaratory\\_and\\_injunctive\\_relief\\_04-25-2022.pdf](https://www.fec.gov/resources/cms-content/documents/afpt_compl_for_declaratory_and_injunctive_relief_04-25-2022.pdf).

<sup>17</sup> Vogel, “Top Bidder for Tribune Newspapers Is an Influential Liberal Donor,” *New York Times*, April 17, 2021, <https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-buyer.html>.

public charities.<sup>18</sup> The funds were channeled through (c)(3) “charities,” which microtargeted voters in a handful of swing states in the 2016 and 2020 cycles, registering millions of persons. One of McUsic’s Wyss Foundation emails to Podesta was labeled “new c3 version,” and it had a Word file attachment from a for-profit Democratic consulting firm which had altered its partisan voter registration program in hopes of squeezing it into a campaign to which (c)(3) foundations and donor-advised funds could legally contribute, and which (c)(3) charities could carry out.<sup>19</sup> To understand the kind of fig leaves the “new c3 version” put on top of the scheme’s original partisan language, consider that a reference to changing the “outcome of an election”—something forbidden to charities and private foundations—was switched to changing the “competitiveness of an election.” Sometimes no fig leaf could be found that was large enough to camouflage the partisanship, as when three entire paragraphs in the original version had to be deleted, because they calculated how targeted voter registration could have turned three past elections won by Republicans into Democratic victories.

This Voter Registration Project effort, midwived by the Wyss Foundation, has continued to grow and aims to be central in the 2024 presidential election. Capital Research Center has just acquired the latest IRS Form 990 for the “charity” at the center of this scheme (the Voter Registration Project), which reveals that in 2022 the group’s revenues rose to \$46 million, compared to \$17 million the previous year, with the total number of employees rising to 42.<sup>20</sup> The Form 990 also indicates that the group’s second-largest independent contractor, to which it paid \$233,750 in 2022, is Catalist LLC, described by the *New York Times* as a “Democratic data firm.”<sup>21</sup>

This dubious (c)(3) voter registration nonprofit is related to a concern raised by the Ways and Means Committee in its August 14, 2023 Request For Information. The Committee cited a 2020 donor strategy memo from the Mind the Gap Super PAC launched by Sam Bankman-Fried’s mother, which declared that “the single most effective tactic for ensuring Democratic victories” was to send money to targeted (c)(3) voter registration efforts.<sup>22</sup> The two (c)(3) groups recommended to donors were the Voter Registration Project and the Voter Participation Center. I regret to inform the Committee that the same Super PAC has had its 2024 donor strategy memo leak, and once again the Super PAC declares its presidential strategy is “to massively scale high-performing voter registration and mobilization programs.” This time they recommend only one grantee, the (c)(3) Voter Registration Project charity that our report highlighted. The Super PAC adds that this charity’s voter registration work, along with voter-mobilization radio ads through

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<sup>18</sup> See Parker Thayer, “How Charities Secretly Help Win Elections,” Capital Research Center, <https://capitalresearch.org/app/uploads/CRC-Voter-Registration-Report.pdf>. Appendix 4, “Grants to the VRP Network,” identifies all known contributors (totaling \$154,853,011) and identifies whether they are 501(c)(3)s, (c)(4)s, or (c)(5)s.

<sup>19</sup> McUsic’s email is available at <https://web.archive.org/web/20220909192538/https://www.wikileaks.org/podesta-emails/emailid/8885>. The attached Word file with edits visible is available at <https://www.influencewatch.org/app/uploads/2022/07/Corridor-Partners-Plan-.pdf>.

<sup>20</sup> “Voter Registration Project,” InfluenceWatch, <https://www.influencewatch.org/non-profit/voter-registration-project/>.

<sup>21</sup> Blake Hounshell, “Five Takeaways From a Red Wave That Didn’t Reach the Shore,” *New York Times*, November 10, 2022, <https://www.nytimes.com/2022/11/09/us/politics/midterm-elections-takeaways.html>.

<sup>22</sup> The Super PAC memo is available at Theodore Schleifer, “Inside the secretive Silicon Valley group that has funneled over \$20 million to Democrats,” *Vox*, January 6, 2020, <https://www.vox.com/recode/2020/1/6/21046631/mind-the-gap-silicon-valley-democratic-donors-stanford>.

American Independent Radio, “are projected to generate more net Democratic votes dollar for dollar than virtually any other tactic this cycle.”<sup>23</sup>

With this kind of abuse that turns charitable dollars into political dollars, no wonder the nonprofit sector finds itself facing calls for radical changes. For example, the subcommittee’s Democrats have invited to this hearing as their witness professor Philip Hackney, who has written that “we ought to eliminate tax benefits for the private foundation form.”<sup>24</sup> The professor may find himself surprised to have Senator J.D. Vance (R-Ohio) as a possible ally in this fight. It brings to mind how the Ford Foundation’s grants for partisan voter registration in 1967 so outraged Congress, both of whose houses were under Democratic control, that it passed the landmark Tax Reform Act of 1969, whose restrictions still largely shape what’s legally permissible for private foundations and public charities in this area.<sup>25</sup>

### **Will Stricter IRS Enforcement or Forced Donor Disclosure Save Us?**

The changes in the nonprofit sector most likely to be called for after an examination of foreign money abuses by the likes of Hansjörg Wyss are first, stricter enforcement of rules by the IRS, and second, government-coerced disclosure of donors. But calls for harsher IRS enforcement are unlikely to bring greater fairness or banish illegal behavior. As I testified last year to the Senate Finance Subcommittee on Taxation and IRS Oversight, we must never forget “the terrible temptations the IRS places before administrations of both parties. From FDR through Nixon, the IRS repeatedly used selective enforcement as a political weapon, and entire books have been needed to chronicle this ugly abuse of governmental power.”<sup>26</sup>

IRS officials like the Obama-Biden Administration’s notorious Lois Lerner will, all too often, control IRS enforcement. In the same testimony, I noted that the subcommittee’s chairman, Senator Sheldon Whitehouse (D-R.I.), had himself held a hearing to demand enhanced IRS enforcement a decade earlier, in April 2013, only to have the Lois Lerner scandal erupt a month later. Her improper suppression of conservative-leaning nonprofits seeking recognition—which a study by academics from Harvard’s Kennedy School, Stockholm University, and AEI found likely had a powerful effect on the 2012 election<sup>27</sup>—caused even Senator Whitehouse to address

<sup>23</sup> Teddy Schleifer, “The Stratosphere,” Puck News, [https://puck.news/newsletter\\_content/sam-i-am-2/](https://puck.news/newsletter_content/sam-i-am-2/).

<sup>24</sup> Philip Hackney, “The 1969 Tax Reform Act and Charities: Fifty Years Later,” *Pittsburgh Tax Review* Volume 17 (2020): 246, <https://doi.org/10.5195/taxreview.2020.116>.

<sup>25</sup> See Michael E. Hartmann, “The Ford Foundation, the 1967 Cleveland mayoral election, and the 1969 Tax Reform Act,” *The Giving Review*, February 3, 2021, <https://www.philanthropydaily.com/the-ford-foundation-the-1967-cleveland-mayoral-election-and-the-1969-tax-reform-act/>.

<sup>26</sup> Scott Walter, “Testimony before the U.S. Senate Finance Subcommittee on Taxation and IRS Oversight Hearing on ‘Laws and Enforcement Governing the Political Activities of Tax Exempt Entities,’” May 4, 2022, <https://capitalresearch.org/article/scott-walter-testifies-to-a-senate-finance-subcommittee-on-the-political-activities-of-tax-exempt-entities/>. For a book-length treatment of IRS abuses by both parties written by a *New York Times* reporter, see David Burnham, *A Law Unto Itself: Power, Politics, and the IRS* (Oregon: Book News, Inc., 1990).

<sup>27</sup> Stan Veuger, “Yes, IRS Harassment Blunted The Tea Party Ground Game,” RealClearMarkets, June 20, 2013, [https://www.realclearmarkets.com/articles/2013/06/20/yes\\_irs\\_harassment\\_blunted\\_the\\_tea\\_party\\_ground\\_game\\_100412.html](https://www.realclearmarkets.com/articles/2013/06/20/yes_irs_harassment_blunted_the_tea_party_ground_game_100412.html). “Obama’s margin of victory in some of the key swing states was fairly small: a mere 75,000 votes separated the two contenders in Florida, for example. That is less than 25% of our estimate of what the Tea Party’s impact in Florida was in 2010.”



the Senate on “the scandal that the IRS appears to have targeted organizations for inquiry based on Tea Party affiliation. Obviously, that’s wrong.”<sup>28</sup>

Similarly, having the government force disclosure of nonprofit donors is not desirable, and much of the conversation surrounding donor disclosure is disingenuous. We hear wild denunciations of “dark money” hiding in the shadows, and yet no legal definition of these monies appears, even in hearings in places like the Senate Judiciary Committee or Senate Finance’s IRS Oversight Subcommittee. Is it money in 501(c)(3) nonprofits? in (c)(4) nonprofits? (c)(6)s? in donor-advised funds? I’ve yet to learn which ones define “dark money,” even though a clear definition would be made if, in fact, those who complain about “dark money” were raising the issue in good faith, rather than invoking it as a vague insult that drives attention away from the substance of public policy debates like, say, the proper judicial philosophy for a judge.

In hearings on “dark money” where I’ve testified, I’ve heard advocates for disclosure reveal that they believe donor disclosure will harm both the donors and the grantees forced to disclose.<sup>29</sup> That raises my central criticism of forced government disclosure: *As a defender of citizens’ privacy, I do not wish to harm donors and groups I disagree with, and I respectfully urge others to end their campaign to harm donors and groups they disagree with.* Of course, that objection applies to U.S. citizens, whose rights should be protected, not to foreigners with no claim to those rights.

None of this means there is no hope for improvement. Carefully targeted legislation has the potential to substantially affect such problems as indirect foreign funding of American politics; for example, the ACE Act introduced in the House Administration Committee would ban (c)(4) nonprofits from contributing to political committees for four years if they accept donations of foreign money, and would also bar foreign nationals from giving to state ballot initiatives, which can be supported by (c)(3) charities.<sup>30</sup> State attorneys general are also becoming more engaged in overseeing nonprofits in their jurisdictions, for good or ill, which may deter some bad behavior even as it will sometimes be the attorneys general who themselves behave with improper partisanship.

There are no final solutions to these problems of our republic, and anyone who claims to have a final solution should not be trusted. I agree with my fellow witness professor Hackney, who wrote, “I believe deeply in the power of a fiercely independent and courageous civil society that empowers the voices of all in our communities.”<sup>31</sup> But that will require protecting our nonprofits, especially our charities, from the abuses of foreign money and from improper politicization.

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<sup>28</sup> Sheldon Whitehouse, “The Two Scandals at the IRS: As Prepared for Delivery on the Senate Floor,” <https://www.whitehouse.senate.gov/news/press-releases/the-two-scandals-at-the-irs>.

<sup>29</sup> See Scott Walter, “Highlights from Scott Walter’s Answers to Questions for the Record from Sen. Whitehouse,” Capital Research Center, April 15, 2021, <https://capitalresearch.org/article/highlights-from-scott-walters-answers-to-questions-for-the-record-from-sen-whitehouse/>.

<sup>30</sup> Committee on House Administration, “Chairman Steil Introduces American Confidence in Elections Act,” July 10, 2023, <https://cha.house.gov/2023/7/chairman-steil-introduces-american-confidence-elections-act>.

<sup>31</sup> Hackney, “The 1969 Tax Reform Act and Charities: Fifty Years Later,” *Pittsburgh Tax Review*, Volume 17 (2020): 245, <https://doi.org/10.5195/taxreview.2020.116>.