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OF THE
UNITED STATES OF AMERICA

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The Honorable Peter J. Roskam
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Roskam:

The U.S. Chamber of Commerce strongly supports H.R. 4916, the “Preventing IRS Abuse and Protecting Free Speech Act,” which prohibits the Internal Revenue Service (IRS) from collecting the identity of donors who contribute to tax-exempt organizations, eliminating an unnecessarily burdensome and invasive reporting requirement for non-profit organizations.

On July 17, 2018, the IRS issued Rev. Proc. 2018-38, providing that organizations exempt from tax under §501(a),¹ other than those described in §501(c)(3), are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. The Chamber applauds this guidance and strongly supports the codification of that guidance and the broader approach taken in H.R. 4916, which eliminates these superfluous and onerous reporting requirement for all §501(c) organizations.

The Chamber has long been a vigorous defender of free speech and robust debate for all individuals and organizations in our society. We are increasingly concerned about Schedule B’s ramifications on the vital rights of tax-exempt organizations.

The Constitution clearly establishes the right of individuals to associate with organizations for the “advancement of beliefs and ideas,” and this right is fundamental to our system of government.² Unfortunately, special interests increasingly attempt to silence opposing opinions rather than allow them to compete in the marketplace of ideas. Identifying, harassing, and intimidating the organization’s supporters is a chief means of silencing that organization’s speech. Congress correctly took important steps to protect sensitive donor information from public disclosure. For example, it imposed severe felony penalties, including loss of employment and up to five years imprisonment, for IRS and government employees who

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

² *NAACP v. Patterson*, 357 U.S. 449, 460 (1958).

disclose such information to an unauthorized party. However, Congress did not anticipate an increasing threat to the speech rights of tax-exempt organizations – the inappropriate handling of taxpayer information by state government officials.

Under the guise of charitable statutes, some state officials have begun to require that tax-exempt organizations submit an unredacted copy of Schedule B in order to receive or maintain their state registrations. Although these officials purport that they will only use the information for internal purposes and will not publicly disclose it, experience has shown that Schedule B information provided to the states is not secure.

For example, recent litigation revealed that one state inadvertently published more than 1,700 confidential Schedule Bs on its website.³ As the judge in the case correctly noted, “Once a confidential Schedule B has been publically disseminated via the internet, there is no way to meaningfully restore confidentiality.” The judge also found that the organizations in that case “have demonstrated that the Schedule B disclosure requirement places donors in fear of exercising their First Amendment right.”

It is now abundantly clear that an organization’s list of donors has the potential to be misused and to chill protected First Amendment activity. Prohibiting the IRS from collecting such information would significantly reduce this risk, and, according to former IRS officials, it would do so without compromising the IRS’s ability to enforce the federal tax laws.⁴ The recent Treasury and IRS guidance to eliminate the requirement for some tax-exempt organizations is further evidence that the agencies themselves view Schedule B as unnecessary. Accordingly, the Chamber strongly supports H.R. 4916, which would codify the guidance and extend the same protections to all organizations exempt from tax under §501(a). We look forward to working with you to advance this vital legislation.

Sincerely,



Caroline L. Harris



Ryan P. Meyers

Cc: Orrin Hatch, Chairman, Committee on Finance, United States Senate

Kevin Brady, Chairman, Committee on Ways and Means, U.S. House of Representatives

³ *Americans for Prosperity v. Harris*, No. CV 14-9448-R (C.D. Cal. filed April 21, 2016).

⁴ See, e.g., “The IRS’s Donor Lists,” *Wall Street Journal* (May 15, 2016), available at <https://www.wsj.com/articles/the-irss-donor-lists-1463346736>.