October 29, 2026

Office of Associate Chief Counsel
Internal Revenue Service
Department of the Treasury

Re: Proposed Rule on Racial Nondiscrimination in Private Schools, IRS and REG-119986-25

To Whom It May Concern:

Throughout our nation's history, American higher education has served as an engine of national progress and prosperity. The work at colleges and universities, including within their medical schools and research laboratories, has combated illness and disease to improve public and global health, seeded the technologies that underpin our national and global economy, and deepened our understanding of how humans and societies learn, grow, and flourish. Programs at our institutions have dramatically increased the number of students earning a postsecondary education and thereby boosted their socioeconomic status, grown partnerships with communities, and driven economic growth for our regions and the nation.

Recognizing these vital public benefits, Congress has long exempted nonprofit educational institutions from federal income taxes under section 501(c)(3) of the Internal Revenue Code. Yet the Internal Revenue Service (IRS) now proposes to vest itself with extraordinary authority to withdraw these benefits on the basis of a discretionary and vaguely defined IRS conclusion that an institution engages in "discrimination."[1]

The American Council on Education (ACE) and the undersigned higher education associations represent our nation's colleges and universities, which deliver sundry benefits to the communities they serve. Our members are committed to eliminating all forms of unlawful discrimination. They are committed, as well, to preserving both the vibrancy and academic autonomy of our institutions of higher learning and the enormous benefits that American higher education provides to our nation. Because the IRS's proposed rule threatens these fundamental interests, we strongly object to the proposed rule, which exceeds the IRS's authority and is otherwise unlawful.

I. The Proposed Rule Exceeds the IRS's Authority.

Section 501(c)(3) provides that "[c]orporations . . . organized and operated exclusively for religious, charitable . . . or educational purposes" "shall be exempt from taxation."[2] On its face, this statutory language does not grant the IRS authority to revoke tax-exempt status

[1] 91 Fed. Reg. 56,811.
[2] 26 U.S.C. § 501 (a), (c).

based on "public policy."[3] Rather, the genesis of that authority derives from judicial precedent which clearly establishes that the IRS may revoke tax-exempt status only in specific, limited circumstances. The IRS's proposed rule ventures far beyond those limits.

A. The IRS's Authority to Revoke 501(c)(3) Status Based on "Public Policy" Is Narrow.

The case that defined the "public policy" exception, *Bob Jones Univ. v. United States*,[4] establishes a high bar for 501(c)(3) revocation. Such revocation is permitted "only where there can be *no doubt* that the activity involved is contrary to a fundamental public policy," taints the very "purpose" of the institution, and sets the institution "so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred" by the institution.[5]

That standard is plainly met where institutions have intentional policies of unlawful and invidious race-based discrimination in admissions. That was true regarding the two institutions that were the subject of the Supreme Court's *Bob Jones* decision: one accepted only white students and the other refused admission to applicants in interracial relationships.[6] It was also true in the earlier cases identified in the IRS's notice of proposed rulemaking, which *Bob Jones* cited with approval.[7] As the Court explained, this type of invidious discrimination "violate[d] a most fundamental" principle: "[o]ver the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education."[8] By setting their mission and practices against such "deeply and widely accepted views of elementary justice," the schools could no longer "be viewed as conferring a public benefit."[9]

The high bar established by these precedents is consistent with the IRS's broader positions on 501(c)(3) eligibility. For instance, the IRS regulations have long required 501(c)(3) organizations to "engage primarily in activities which accomplish one or more . . . exempt purposes"—and have provided that organizations lose that status "if more than an *insubstantial* part of its activities is not in furtherance of an exempt purpose."[10] Applying these standards, "courts recognize that a non-exempt purpose, even 'somewhat beyond a de minimis level,' may be permitted without loss of exception."[11] As courts have emphasized, this approach ensures that activities that are inadvertent or "merely

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[3] 91 Fed. Reg. at 56,811.
[4] 461 U.S. 574 (1983).
[5] *Id.* at 592 (emphasis added).
[6] *Id.* at 582-583.
[7] *See Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971), *aff'd sub nom.*, *Coit v. Green*, 404 U.S. 997 (1971).
[8] *Bob Jones*, 461 U.S. at 593.
[9] *Id.* at 592, 595.
[10] 26 C.F.R. § 1.501(c)(3)-1(c)(1) (emphasis added)
[11] *Living Faith, Inc. v. Comm'r*, 950 F.2d 365, 370 (7th Cir. 1991); *see generally Better Bus. Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, 283 (1945) ("[P]resence of a single [non-exempt] purpose, if *substantial* in nature, will destroy the exemption") (emphasis added).

incidental" to an organization's "primary purpose" do not trigger a loss of tax-exempt status.[12]

Notably, every case discussed in the IRS's proposed rulemaking—even those not analyzing 501(c)(3) status—dealt with admissions policies.[13] That includes the Supreme Court's most recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,[14] as well as its predecessors like *Grutter*, *Gratz*, and *Fisher*.[15] These cases do not support revoking 501(c)(3) status where an identified instance of discrimination is unclear, episodic, not a product of policy—or otherwise not so significant that it detracts from the organization's overall ability to "be in harmony with the public interest."[16] Rather, they reinforce that "public policy" concerns are implicated only "where there is no doubt" that the underlying policy or practice is intentional and substantial.[17]

B. The IRS Does Not Have Unfettered Discretion to Determine and Act Upon Antidiscrimination Public Policy Divorced from the Confines of Applicable Law.

The IRS's proposed rule runs roughshod over these strict limits. The IRS asserts the authority to penalize institutions on the basis of *any* supposedly discriminatory "policy or practice" in any "school-administered or school-supported program."[18] It also claims the authority to penalize schools "regardless of the *intent* behind or the *legality* of such discrimination."[19] Each of these elements exceeds the recognized scope of the IRS's authority in crucial respects.

First, even unlawful discrimination cannot be said to pervade an institution's "purpose"—as admissions policies do and as *Bob Jones* requires—where it is isolated, episodic, unintentional, or otherwise not a formal policy or practice of the institution as a whole.

Universities host dozens of departments, thousands of classes, and innumerable official and unofficial student groups. Despite their best efforts to formulate generally applicable policy and ensure a healthy environment for all members of the community, the multifarious life of a diverse institution necessarily resists monolithic conformity. That is

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[12] *Mayo Clinic v. United States*, 145 F.4th 877, 886 (8th Cir. 2025) (quotes and citations omitted); *see also Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 407 (D.C. Cir. 2024) (organization whose "purpose and mission revolve primarily around the consumption of" illegal drug not entitled to tax-exempt status); *Asmark Inst., Inc. v. Comm'r*, 486 F. App'x 566, 569 (6th Cir. 2012) (IRS regulation "does not require the entity to operate solely for tax-exempt purposes").

[13] *See generally* 91 Fed. Reg. at 56,814.

[14] 438 U.S. 265 (1978).

[15] *Grutter v. Bollinger*, 539 U.S. 306 (2003), *Gratz v. Bollinger*, 539 U.S. 244 (2003), *Fisher v. University of Texas*, 579 U.S. 365 (2016), and *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

[16] *Bob Jones*, 461 U.S. at 591.

[17] *Id.*

[18] 91 Fed. Reg. at 56,815 (emphasis added).

[19] *Id.* (emphasis added).

why, when it comes to civil rights statutes such as Title VI, liability "requires that an appropriate person . . . with authority to take corrective action . . . have actual knowledge of the" "specific, identified incidents of" offending conduct.[20] The IRS's rule, by contrast, would seemingly allow the agency to penalize institutions for minor, episodic, or non-representative occurrences so long as it determined that they had some tenuous connection to the institution. Likewise, the rule would allow the agency to penalize institutions for discrimination that is not the result of an intentional decision—and, indeed, to punish institutions "regardless of the[ir] intent."[21] Nothing in *Bob Jones* or any other precedent the IRS cites permits the government to do so. To the contrary, as detailed above, that precedent requires the unlawful or impermissible policy be *substantial* and not incidental to the organization's purpose or function.

Second, an institution's policies, practices, or actions also definitionally cannot be contrary to "public policy" where they are legal under existing statutes or the Constitution.

For example, the First Amendment protects the rights of faculty and students to protest or to take unpopular positions in and outside the classroom—even on racially sensitive or charged topics. As the Supreme Court has emphasized, it is "a bedrock First Amendment principle" that "speech may not be banned on the ground that it expresses ideas that offend."[22] "[I]n public debate . . . citizens must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment."[23] And the government cannot skirt these First Amendment concerns by requiring the universities to punish protected speech. Because "viewpoint discrimination is uniquely harmful to a free and democratic society," a "government official cannot coerce a private party to punish or suppress disfavored speech on her behalf."[24] Requiring schools "to restrict students' expression merely" to "compel adherence to a preferred political viewpoint would" be a blatant violation of the First Amendment.[25] As the Supreme Court has observed, "[f]or [a] University . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." [26]

For this reason, courts "do not construe" federal antidiscrimination law "as requiring a university to quash protected speech."[27] The same is true for financial benefits: the

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[20] *Stand With US Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 21 (1st Cir. 2025).
[21] 91 Fed. Reg. at 56,815.
[22] *See, e.g.*, *Matal v. Tam*, 582 U.S. 218, 223 (2017); *see also Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 791 (2011) ("[N]ew categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated.").
[23] *Boos v. Barry*, 485 U.S. 312, 322 (1988) (quotes and citations omitted).
[24] *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 187, 190 (2024).
[25] *Stand With US Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 13 (1st Cir. 2025).
[26] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 836 (1995).
[27] *Stand With US*, 158 F.4th at 12; *see also Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 706–708 (9th Cir. 2010) (finding a community college was not required to restrict a professor's emails related to immigration, race, and the "preservation of [a] White majority" because "[t]he Constitution embraces . . . a heated exchange of views, even (perhaps especially) when they concern sensitive topics like race")

government may not "discriminate invidiously in its subsidies in such a way as to " 'aim[ ] at the suppression of dangerous ideas' " or suppress First Amendment freedoms.[28]

Yet the IRS's proposed rule announces no such limitation—to the contrary, it appears to take the position that its unbridled executive branch assessment of an institution's policy or practice is sufficient to strip away tax-exempt status, and that the legality of the underlying conduct is *irrelevant* for purposes of its analysis. This too renders the rule unlawful. It is well established "that 'the government may not deny a benefit to a person because he exercises a constitutional right.'"[29] In "administering the tax code, the IRS may not" run roughshod over these principles.[30]

Third, precisely because the IRS purports not to be bound by *the legality* of the underlying conduct, the IRS's rule amounts to a vast assertion of authority to determine what constitutes impermissible discrimination contrary to "public policy."[31] But *Bob Jones* makes clear that the executive branch has no free-standing power to do so.

The "firm national policy" the Supreme Court identified in *Bob Jones* derived from "an unbroken line of cases" over the course of a quarter century as well as "myriad Acts of Congress," including "Titles IV and VI of the Civil Rights Act of 1964," other "sections of that Act, and numerous [other] enactments" that—taken together—proscribed the kind of "racial segregation" and anti-miscegenation policy that Bob Jones adopted "violate[d] deeply and widely accepted views of elementary justice."[32] In this way, the Supreme Court made clear that the IRS's determinations of "public policy" must follow the lead of Congress and the courts. The executive branch cannot define what constitutes discrimination contrary to "public policy" separate and apart from the legislative and judicial branches—or adopt new constructions of "public policy" on a whim.

II. The IRS's Proposed Rule Is Impermissibly Vague.

In addition to exceeding the agency's authority, the IRS's proposed rule also violates the Due Process Clause of the Fifth Amendment because it is impermissibly vague. As the Supreme Court has emphasized, the "requirement of clarity in regulation is essential to the protections provided by the" Fifth Amendment.[33] This requirement for "precision and guidance" serves "two connected but discrete" purposes: first, it ensures "that regulated parties [] know what is required of them so they may act accordingly," and second it protects against "those enforcing the law . . . act[ing] in an arbitrary or discriminatory way."[34] The IRS's proposed rule tramples over both principles.

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[28] *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 548 (1983) (citations omitted).
[29] *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (citations omitted).
[30] *Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015).
[31] 91 Fed. Reg. at 56,815.
[32] *Bob Jones*, 461 U.S. at 592-594.
[33] *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).
[34] *Id.*

A. The Proposed Rule Does Not Provide Notice of What Is Prohibited.

Statutes or regulations fail to give "fair notice of conduct that is forbidden or required" when it is "unclear as to what fact must be proved,"[35] or when they call on the executive to make "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings[.]"[36] Agency regulations or guidelines also run afoul of this requirement when they give no notice of an "abrupt" regulatory change that alters an established enforcement regime and renders new forms of activities actionable.[37] That describes the IRS proposed rule to a tee.[38]

Because the proposed rule is not based on explicit statutory text and reaches far beyond established precedent, it does not set a meaningful outer bound on what activities the IRS will deem discriminatory. It is unclear, for example, whether contentious or even offensive classroom instructions on race or history topics could fall into the IRS's broad definition of "discrimination." Nor is it clear what types of campus or student activities could be deemed "school-administered or school-supported."[39] The proposed rule seemingly leaves it entirely to the IRS's discretion to decide what conduct is sanctionable under the rule's provisions.

This lack of clarity would be constitutionally problematic under any scenario, because "due process requires that 'explicit and meaningful standard[s]' 'be[ ] formally articulated or published.'"[40] But it is especially concerning given the Administration's statements and overall course of conduct over the past 21 months.

As courts have repeatedly found, "the Administration and its executive agencies are engaged in a concerted campaign to purge 'woke,' 'left,' and 'socialist' viewpoints from the country's leading universities" using a "playbook of initiating civil rights investigations . . . to justify cutting off federal funding, with the goal of bringing universities to their knees."[41] As part of this playbook, the Administration has been summarily "cutting off funds for alleged discrimination" as a cudgel to compel universities to "change what they teach, restrict student . . . protests, and endorse the Administration's view[s]" on controversial topics.[42]

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[35] *Id.*

[36] *United States v. Williams*, 553 U.S. 285, 306 (2008).

[37] *Fox*, 567 U.S. at 254.

[38] *See id.* (administrative "findings of wrongdoing" that "could have an adverse impact on [a regulated entity's] reputation" count as "sanctions" that trigger the "essential . . . protection[ ]" of "fair notice").

[39] 91 Fed. Reg. at 56,815.

[40] *Karem v. Trump*, 960 F.3d 656, 666 (D.C. Cir. 2020) (citation omitted).

[41] *Am. Ass'n of Univ. Professors v. Trump*, 815 F. Supp. 3d 907, 930 (N.D. Cal. 2025), *appeal dismissed*, No. 26-263, 2026 WL 1049175 (9th Cir. Feb. 11, 2026); *see also United States v. President and Fellows of Harvard College*, Case No. 26-11352, ECF No 65 (D. Mass., Aug. 13, 2026) (dismissing government's suit under Title VI for failure to state a claim).

[42] *AAUP*, 815 F. Supp. 3d at 930; *see also President & Fellows of Harvard Coll. v. United States Dep't of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 126 (D. Mass. 2025) (noting that it is "undisputed that Defendants did not comply with" procedural requirements of antidiscrimination statutes before cutting off Harvard's research funding).

The IRS's proposed rule seemingly forms part of the same strategy to target universities by cutting off their financial lifelines. Indeed, over the past year the President has repeatedly threatened to revoke universities' tax-exempt status to punish them for their " 'political [and] ideological' " positions.[43] And the IRS's proposal would give the agency vastly more authority and discretion to carry out those threats.

Assertion of such authority is fundamentally at odds with the Supreme Court's repeated holdings affirming "[t]he essentiality of freedom in the community of American universities," and its admonitions that "[t]o impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."[44] Indeed, a university's "[a]cademic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment."[45] For private schools in particular, there is "a zone of First Amendment protection for the educational process,"[46] that encompasses not only "the independent and uninhibited exchange of ideas among teachers and students," but also schools' "autonomous decisionmaking[.]"[47] Yet—as the courts examining the Administration's other funding actions make clear—that freedom is precisely what this Administration has sought to sanction.

The Supreme Court has made clear that Due Process vagueness concerns are heightened where, as here, regulations "touch upon 'sensitive areas of basic First Amendment freedoms.'"[48] Where penalties "threaten[ ] to inhibit the exercise of [such] constitutionally protected rights[,] . . . a more stringent vagueness [and fair-notice] test should apply."[49] These principles render the IRS's proposed rule facially unlawful.

B. The Proposed Rule Permits Discriminatory Enforcement.

Relatedly, because the IRS's proposed rule "is so standardless" and divorced from established precedent, it inherently "authorizes or encourages seriously discriminatory

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[43] *See, e.g.*, NBC News, Trump says he will revoke Harvard's tax-exempt status (May 2, 2025), available here (quoting President's Truth Social posting).

[44] *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion).

[45] *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (opinion of Powell, J.); *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 217 (2023) (recognizing a "tradition of giving a degree of deference to a university's academic decisions . . . within constitutionally prescribed limits") (quotes and citations omitted).

[46] *Asociación de Educación Privada de P.R., Inc. v. Garcia-Padilla*, 490 F.3d 1, 8 (1st Cir. 2007) (citation omitted).

[47] *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n.12 (1985); *see also Heim v. Daniel*, 81 F.4th 212, 230 (2d Cir. 2023) ("[C]ourts have consistently celebrated the need to safeguard universities' self-determination over the substance of the education they provide and the scholarship they cultivate."); *Piggee v. Carl Sandburg Coll.*, 464 F.3d 667, 671 (7th Cir. 2006) ("[A] university's ability to set a curriculum is as much an element of academic freedom as any scholar's right to express a point of view.") (internal quotation marks omitted).

[48] *Fox*, 567 U.S. at 254 (quotes and citations omitted); *see also Reno v. American Civil Liberties Union,* 521 U.S. 844, 870–871 (1997) ("The vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect").

[49] *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982).

enforcement"[50]—and leaves the government "free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case."[51]

This concern is exacerbated by the fact that the proposed rule does not articulate the criteria or procedures by which the IRS will initiate investigations or adjudicate contested factual disputes—nor provide any procedural constraints on the agency or procedural protections for institutions. In fact, unlike the framework that Congress established in civil rights statutes—such as, for example, in Titles VI and IX of the Civil Rights Act—the rule does not even provide for prior notice to institutions under investigation.[52] The IRS appears to reserve to itself vast authority to initiate investigations whenever and on whatever predicates it pleases. That "fails to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement."[53]

This lack of procedural or substantive standards once again stands in stark contrast to *Bob Jones*, where the IRS first provided notice of its intent to challenge the university's tax-exempt status, and the IRS and the university then exchanged letters and engaged in discussions over the course of a year before the IRS took action.[54] Those procedures provided the university with plenty of opportunity to understand what conduct the IRS found concerning and to correct its practices.[55] Here, on the other hand, schools can have no certainty that the IRS will not decide to impose the penalty for inadvertent and past conduct, without providing institutions any notice or an opportunity to defend or correct the supposed violation.[56]

All this unconstrained discretion throws institutions into profound uncertainty. Without any clarity in what conduct is permissible—or even if they will have any notice of or opportunity to confront or contest any evidence against them—schools can only guess what will lead them to be targeted for investigation or revocation of their tax-exempt status. That is precisely what the Due Process clause prohibits: just "as in the First Amendment context, the due process protections against vague regulations does not leave [regulated parties] . . . at the mercy of *noblesse oblige*."[57]

III. The IRS Must Clarify the Procedures It Will Use to Enforce the Rule and Afford Institutions Due Process.

Because the legality of the proposed rule is extremely suspect on its face, institutions of higher education would vigorously contest any attempt to enforce the rule against them.

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[50] *Fox*, 567 U.S. at 253.
[51] *Beckles v. United States*, 580 U.S. 256, 266 (2017) (quotes and citations omitted).
[52] *See, e.g.*, 42 U.S.C. § 2000d-1 (requiring notice and "opportunity for hearing").
[53] *Act Now to Stop War & End Racism Coal. & Muslim Am. Soc'y Freedom Found. v. District of Columbia*, 846 F.3d 391, 410 (D.C. Cir. 2017) (quotes and citations omitted).
[54] *See Bob Jones*, 461 U.S. at 581-582 (detailing the process by which the IRS investigated and revoked the university's tax-exempt status).
[55] *See id.*
[56] *See, e.g.*, *AAUP*, 815 F. Supp. 3d at 930 (noting that has agencies have been forgoing "required notice and hearing processes" under civil rights laws to cut off funding).
[57] *Fox*, 567 U.S. at 255 (quotes and citations omitted).

Given the profound interests the proposed rule imperils, it is vital that the IRS create clear substantive and procedural standards if it elects to enact it as a final rule. Although such modifications would not cure all the legal defects in the rule, they would at least ameliorate some of the rule's most immediate harmful effects.[58]

A. Necessary Internal IRS Policy, Processes, and Standards.

First, the IRS must bring the rule in line with *Bob Jones* and existing civil rights statutes by making clear that the agency will only penalize institutions that intentionally maintain policies that embrace *intentional* and *unlawful* discrimination. As explained above, only that type of discrimination can trigger the IRS's narrow authority to revoke an entity's tax-exempt status on the basis of the institution's activities being contrary to clear and established "public policy."

Second, the IRS must detail the process and standards by which it will investigate potential violations of the rule. This process should likewise mirror the framework that Congress has created in civil rights statutes like Title VI and Title IX by, among other things, affording schools adequate notice of any investigation against them.[59] Indeed, those bare minimum procedures are required by the Due Process clause.[60] They are also essential to ensure that the rule is not liable to discriminatory enforcement.

Third, the IRS must provide a mechanism by which institutions that are subject to investigation are afforded an adequate opportunity to confront and rebut the evidence the agency has gathered against them. These protections are likewise required by the Due Process clause and are crucial in any context.[61] They are especially vital here, because taxpayers are typically required to await the revocation of their 501(c)(3) status before seeking judicial relief.[62]

Fourth, the IRS must provide transparency on how and why it initiates any proceedings to examine or revoke 501(c)(3) status. Such transparency will be key to ensuring that the IRS is not abusing its discretion or enforcing the rule arbitrarily in response to improper political pressure.

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[58] When new requirements for hospitals to maintain 501(c)(3) status were codified in Section 501(r) by the Affordable Care Act, IRS issued regulations providing that hospital's status would not be affected by minor omissions and errors that are either inadvertent or due to reasonable cause. *See* 26 C.F.R. § 1.501(r)-2(b)(1); *see generally* Consequence of non-compliance with Section 501(r) | Internal Revenue Service. Likewise, recognizing that revocation of 501(c)(3) status was a draconian penalty, Congress created "intermediate sanctions" in Section 4958 of the Internal Revenue Code related to "excess benefit transactions." *See* Intermediate sanctions | Internal Revenue Service

[59] *See, e.g.*, 42 U.S.C. § 2000d-1 (requiring notice and "opportunity for hearing").

[60] *See, e.g.*, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'").

[61] *See, e.g.*, *Hesai Tech. Co., Ltd v. United States Dep't of Def.*, 186 F.4th 873, 880 (D.C. Cir. 2026) (entity was deprived of due process when it "was 'notified of the Secretary's decision and permitted access to the . . . record only *after* the [] decision was final.'") (citations omitted); *Esparraguera v. Dep't of the Army*, 101 F.4th 28, 40 (D.C. Cir. 2024) ("Absent exigent circumstances," process must be provided "before final deprivation") (quotes and citations omitted).

[62] *See infra* Section III.B.

B. Procedures Necessary to Facilitate Expeditious and Effective Judicial Review.

Given the importance of 501(c)(3) status to private schools' operations, the IRS must also take steps to facilitate expeditious and effective judicial review. Doing so is necessary to ensure that institutions have an adequate means to contest any application of the rule to them.

As a general matter, the Anti-Injunction Act and the tax exemption to the Declaratory Judgment Act do not allow a court to enter injunctive relief against the collection of a tax.[63] To obtain judicial review, an institution must first lose its tax-exempt status, then either (i) pay a tax and sue for a refund or (ii) bring a declaratory action pursuant to Section 7428 of the IRS.[64] That is an incredibly high bar for higher education institutions facing potentially unlawful agency action, and all but extinguishes meaningful opportunity to contest the IRS's actions.

Because tax-exempt status is foundational to so many areas of institutions' operations, loss of that status would immediately expose institutions to catastrophic and irreparable harm.[65] Among other things, institutions would immediately and indefinitely lose access to critical fundraising opportunities and other funding streams, which may never be recovered. Few institutions would be willing to risk such an outcome even knowing that they have winning arguments.[66]

Recognizing that it is improper for the government to create a scheme that for all practical purposes insulates its activities from judicial review, the Supreme Court has repeatedly made clear that it is improper to "require plaintiffs to 'bet the farm . . . by taking the violative action' before" seeking judicial relief.[67] To the extent the IRS believes its proposed rule is authorized by the underlying statute, it has an obligation to respect this principle.

In particular, if the IRS chooses to finalize anything like the proposed rule, it **must include a provision suspending any revocation of 501(c)(3) status pending the final resolution of any legal challenge.**

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[63] *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 727 (1974) (explaining that "prior to the assessment and collection of any tax, a court may [not] enjoin the Service from revoking" tax-exempt status).

[64] *See id.*; 26 U.S.C. §§ 7422, 7428.

[65] *See infra* Section IV.

[66] *See, e.g.*, *Nat'l Infusion Ctr. Ass'n v. Kennedy*, No. 25-50661, 2026 WL 2517285, at *10 (5th Cir. Aug. 26, 2026) (observing that "[w]ith respect to the [Inflation Reduction Act's] excise tax, a postpayment refund suit is not an alternative remedy because no taxpayer subject to the tax could afford such a suit if the suit proceeded as the Plaintiffs contend it could").

[67] *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 490–91 (2010) (quoting *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 129 (2007)).

IV. The Tax-Exempt Status of Higher Education Institutions Is Crucial to Them, Their Communities, and the Nation.

Tax-exempt status is a foundational pillar of American higher education. It is the catalyst for the billions of dollars that annually support colleges and universities through private, charitable giving and philanthropy. For private, nonprofit colleges and universities, which generally lack state financial support, their tax-exempt status and the charitable support that flows from it is critical to advancing their missions and indeed their very survival. Our public higher education institutions are beneficiaries of substantial philanthropy as well.

In fiscal year 2025, higher education in total received an estimated $78.8 billion in charitable support, with private, nonprofit institutions receiving $49.5 billion.[68] Institutions use that charitable support for an array of purposes on campus, including student financial aid and services, academic programming and resources, faculty and their research, college sports, campus and athletic facilities, and physical and behavioral healthcare operations. This charitable giving does more than help advance initiatives and sustain institutional health. It plays a critical role in growing, diversifying, and maintaining an innovative economy nationally and in states and localities across the country.

A. Importance of Tax-Exempt Institutions to the Economy.

There are more than 1,700 private, nonprofit institutions in the United States, enrolling 5.3 million students.[69] They help to provide quality job opportunities for residents, attract educated workers from other regions, and build a sustainable tax base for local governments. Colleges and universities sustain and strengthen the workforce, drive economic growth and innovation, and provide critical services and facilities to communities across the country. In 2024, they employed approximately 2 million faculty, administrators, and staff, often at salaries above the average wage of a region. In many states and localities, private, nonprofit colleges and universities are the largest and most stable employers.

They also help sustain economic growth by consuming a large amount of goods and services, and large private, nonprofit universities engaged in research also consume specialized products and services such as the purchase and maintenance of complex machines, tools, and chemicals. Local procurement of these items helps to develop the capabilities and financial stability of specialized supply firms that are critical in the attraction of high-tech, high-wage businesses.

Moreover, the real estate investments of private, nonprofit institutions in and around their campuses, as well as their cultural, sports, and community available resources, increase the value of surrounding properties. This spurs significant private investment in adjacent areas by reducing the financial risk facing private developers. In fiscal year 2024,

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[68] Research on Voluntary Support of Private and Public Nonprofit Institutions of Higher Education – 2025 (unpublished data) (on file with the Council for Advancement and Support of Education).
[69] Nat'l Ass'n of Indep. Colls. & Univs., Key Facts 2026: Private, Nonprofit Higher Education (Feb. 2026).

these institutions generated an estimated $839 billion in economic impact, and federal, state, and local tax revenue of $122.2 billion.[70]

Policies that threaten the tax-exempt status of colleges and universities will reduce access to higher education, limit research advancements, and weaken community-enhancing resources. Any changes to their tax-exempt status could be devastating to the institutions, their students, faculty, and staff, and have profound adverse consequences which would ripple through the economy locally and across the nation.

B. Tax Exemption, Healthcare, and the Critical Role of Academic Medicine.

The threat to healthcare education is particularly acute. Medical institutions affiliated with private, nonprofit universities play a singular role in the U.S. health system, and benefit enormously from private philanthropy resulting from their tax-exempt status. In fiscal year 2025, the 61 private MD-granting medical schools reported receiving more than $2.077 billion in charitable gifts, an amount that is more than half of total tuition and fees reported in that same period.[71] Through integrated medical schools, teaching hospitals, faculty practices, and research enterprises, these institutions combine patient care, physician training, biomedical research, and public service in ways that few other organizations can replicate.

Medical schools that are members of the Association of American Medical Colleges (AAMC) and their academic health systems train approximately 77,000 residents each year and are the primary producers of both primary care and specialty physicians.[72] They care for some of the nation's sickest and most complex patients, with patients at major teaching hospitals experiencing up to 20 percent higher odds of survival compared with those at non-teaching hospitals.[73] At the same time, university-affiliated teaching hospitals function as major regional employers and economic anchors. AAMC-member medical schools and teaching hospitals contributed more than $728 billion to U.S. GDP in 2019 and supported more than 7.1 million jobs.[74] This role is particularly important in smaller metropolitan and rural-serving areas that rely on these institutions for specialty referral care, workforce development pipelines, and stable high-skill employment. As a result, any federal action affecting the tax-exempt status of the many private, nonprofit universities with medical schools within this mosaic of medical training and care would have substantial cascading consequences for all biomedical research, physician training, complex patient care, regional economic stability, and rural access to specialized medical services.

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[70] *Id.*

[71] https://www.aamc.org/data-reports/data/table-8-revenues-supporting-programs-and-activities-private-us-medical-schools-millions-dollars-fy.

[72] Ass'n of Am. Med. Colls., The Impact of Federal Actions on Academic Medicine and the U.S. Health Care System (June 11, 2025).

[73] Ass'n of Am. Med. Colls., Academic Health Systems: Where Clinical Care Meets Scientific Discovery

[74] Patrick Boyle, *Medical Schools and Teaching Hospitals: Economic Engines for Their Communities and the Nation*, Ass'n of Am. Med. Colls. (Mar. 22, 2022).

C. Tax Exemption and the Philanthropy That It Helps Generate Supports Institutions of Higher Education and Their Students.

The philanthropic support that flows from tax-exempt status and the tax-free treatment of investment income is vital in helping colleges and universities achieve their teaching and research missions. As institutions work to respond to the challenge of college access and the cost of attendance, philanthropy has never been more crucial.

The trend over the last few years is that institutional financial aid, derived from institutional resources including charitable giving, now exceeds federal student loans for undergraduates. In 2024-25, undergraduate students received approximately $67.4 billion in institutional grant aid, compared with $46.3 billion in federal student loans. A decade earlier, the pattern was reversed: undergraduates received approximately $55.2 billion in institutional grants and approximately $82.7 billion in federal student loans, in 2024 dollars. Thus, over the last decade, the undergraduate aid mix shifted from roughly 60 percent federal loans and 40 percent institutional grants to roughly 59 percent institutional grants and 41 percent federal loans. At public and private nonprofit colleges and universities in 2025-26, institutional grant aid represented an extraordinary investment in undergraduate affordability. [75]

These institutional grants are generally "funded by undedicated sources of revenue, such as general funds and foregone revenue[,]" which in effect means that these institutions are devoting their core operating resources including charitable donations—the very resources that benefit from tax-exempt status—directly into student affordability.[76] Endowments are often a source of the charitable resources used to support student access. In 2025, endowment spending across higher education totaled $33.4 billion, 47.4% of which was used for student financial aid.[77] At many of the most well-resourced, private, nonprofit institutions, endowments help implement a broad array of financial aid models to expand access and affordability, particularly for low- and middle-income students.[78]

While college and university endowments vary in size, structure, and organization, they share a common, legally mandated charitable purpose: to support their institution's mission by expanding and enhancing education, research, and programs that serve the public good. They are aggregations of donor-directed gifts invested by a college or university to help sustain its mission in perpetuity, allowing institutions to make commitments for educational activities now and far into the future with a reasonable assurance that resources to meet those commitments will be available. Endowments, regardless of size, help private, nonprofit colleges and universities support student

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[75] Jennifer Ma, Matea Pender & Meghan Oster, Coll. Bd., Trends in College Pricing and Student Aid 2025 32, 36, tbl. SA-1 (2025).

[76] Nat'l Ass'n of Coll. & Univ. Bus. Officers, NACUBO Study Finds Private Colleges and Universities Are Offering Record Financial Aid to Students (June 24, 2025).

[77] Nat'l Ass'n of Coll. & Univ. Bus. Officers, 2025 NACUBO-Commonfund Study of Endowments (February 12, 2026).

[78] These models combine some or all of the following features: need-blind admissions, commitments to meet 100 percent of demonstrated financial need, loan-free or no-loan aid packages, income-based tuition or full-cost guarantees, and targeted support for first-generation and lower-income students.

financial aid, academic programs, faculty support, and campus operations. For smaller colleges and universities, even modest endowments provide essential resources for student financial aid, academic programs, faculty support, and campus operations.

Endowments provide a foundation for keeping college accessible, supporting educational activities, building research programs that drive innovation, and serving as economic anchors for communities, all of which have impacts that extend well beyond campus. At a time when institutions of all sizes face rising costs, enrollment pressures, and uncertainty in other revenue streams, endowment distributions provide an important source of recurring financial support and stability. These resources help institutions sustain critical programs, respond to emerging needs, and maintain affordability for students and families.

In addition to restricted gifts to an institution's endowment, other charitable giving plays an enormous role supporting institutional operations, including enabling academic offerings, sustaining and expanding athletics programs and facilities, and a host of other core aspects of higher education institutions, from libraries to campus housing to student physical and behavioral health. Philanthropy is also critical to sustaining research on campus, including faculty and student exploration of new fields, developing and applying new technologies, and discovering new knowledge, particularly when the work is so innovative that funding is not readily available from other sources. The National Science Foundation found that institutions contribute about 25 percent of the total funding for research conducted on campus, much of which comes from their endowments.[79] Charitable resources also are used to support the more than 550,000 student athletes who participate in college sports across all NCAA divisions,[80] receiving more than $4 billion in athletics scholarships a year.[81]

D. Institutions and Students Also Benefit from Tax-Exempt Financing Options.

Tax-exempt institutions have long relied on tax-exempt bonds as an essential financing tool to provide affordable capital for investments that support their educational missions. The lower financing costs from tax-exempt bonds make them a common choice for capital projects to finance the construction, renovation, and modernization of classrooms, laboratories, research facilities, residence halls, utilities, and other critical campus infrastructure. These investments support teaching, research, student life, and community engagement, often benefiting generations of students.

The importance of this financing mechanism is reflected in the significant presence of private, nonprofit colleges and universities in the municipal bond market. According to 2025 municipal market data from *CreditSights* and *Bloomberg*, private higher education institutions represented approximately 40 percent of higher education municipal bond

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[79] National Center for Science and Engineering Statistics (NCSES). 2025. Higher Education Research and Development: Fiscal Year 2024. NSF 26-304. Alexandria, VA: U.S. National Science Foundation.
[80] NCAA Demographics Dashboard.
[81] NCAA – What We Do – Scholarships & Grants.

issuance, totaling more than $14 billion.[82] These figures illustrate the extent to which private institutions depend on the availability of tax-exempt financing to meet their long-term capital needs—and highlight the financial implications of putting that access at risk.

An institution that loses its federal tax-exempt status would generally no longer qualify for new financing through qualified 501(c)(3) bonds, potentially leaving taxable borrowing as its principal alternative. Because taxable debt typically carries higher interest rates, institutions could face substantially increased debt-service obligations, diverting resources from instruction, student financial aid, research, and other institutional priorities. Some colleges and universities, particularly smaller institutions and those with weaker or no credit ratings, could face significant barriers to obtaining replacement financing on reasonable terms. As a result, institutions may be compelled to postpone, scale back, or abandon needed capital improvements. The resulting financial pressures could extend throughout campus operations, limiting institutions' ability to invest in students and sustain the facilities and services essential to their missions.

CONCLUSION

For the reasons set forth above, the IRS's proposed rule exceeds the agency's authority, is impermissibly vague, imperils institutions' established interests and freedoms, and fails to offer institutions necessary substantive or procedural protections. It also would undermine the tax-exempt model of private, nonprofit institutions of higher education, which is foundational and vital to their existence, with potentially profound adverse consequences to the nation. We urge the IRS to abandon this proposal in its entirety or, at the very least, to narrow and modify the rule in the manner described above.

Sincerely,



Ted Mitchell
President

On behalf of:

AACTE: American Association of Colleges for Teacher Education
Association of American Medical Colleges
AccessLex Institute
ACPA-College Student Educators International

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[82] *CreditSights*, *Muni Primary Market Review as of Sept 2026* (Oct. 2026) (unpublished data compilation) (on file with the Nat'l Ass'n of Coll. & Univ. Bus. Officers); *see also* https://www.bloomberg.com/news/articles/2025-03-17/harvard-penn-colleges-targeted-by-trump-sell-bonds-at-record-pace; https://www.forbes.com/sites/emmawhitford/2025/06/10/colleges-big-and-small-issue-bonds-amid-political-chaos-and-trumps-higher-ed-assault/

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of University Professors
American College Health Association
American Council of Learned Societies
American Council on Education
Associated Colleges of the Midwest
Association for Institutional Research
Association for Student Conduct Administration
Association of American Law Schools
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Independent California Colleges and Universities
Association of Independent Colleges & Universities in Massachusetts
Association of Independent Colleges & Universities of Rhode Island
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Schools and Colleges of Optometry
Association of Schools and Programs of Public Health
Association of Vermont Independent Colleges
COGR
College and University Professional Association for Human Resources
Commission on Independent Colleges & Universities in New York
Complete College America
Connecticut Conference of Independent Colleges
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Independent Colleges
EDUCAUSE
Great Lakes Colleges Association
Hispanic Association of Colleges and Universities
NAGAP, The Association for Graduate Enrollment Management
NASPA-Student Affairs Administrators in Higher Education
National Association for College Admission Counseling
National Association of College and University Business Officers
National Association of Diversity Officers in Higher Education
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
Phi Beta Kappa Society
Presidents' Alliance on Higher Education and Immigration