

May 18, 2022

The Honorable Nancy Pelosi
Speaker
House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Congressional Leaders,

We write to express our grave concerns about S.1981/H.R.6595, the Accelerating Charitable Efforts (ACE) Act. Although the legislation's goal of supporting charities and ensuring that they receive funding is laudable, the restrictions the ACE Act would place on donor-advised funds (DAFs) and private foundations would likely have the opposite effect and discourage charitable giving.

DAFs allow donors to make a charitable contribution, receive an immediate tax deduction, and then recommend grants from the fund over time. Because disbursements to charities are deferred, the money contributed to the fund may be invested, allowing tax-free growth that will ultimately benefit a charity when it is later disbursed. DAFs thus provide donors with an attractive option to maximize their charitable giving. And many charities rely on DAF contributions. Many public charities use anonymous DAF contributions to satisfy the IRS's requirement that they demonstrate broad support from the public. Private foundations also benefit from DAFs. Under current law, their contributions to DAFs count towards a required 5% annual distribution. DAFs enable these foundations to also protect donor information. And DAFs also allow donors to pool resources with other givers without burdening a receiving charity with extra administrative work.

The restrictions the ACE Act would impose, however, will chill donations and frustrate the ability of charities to receive funding. Most importantly, the Act would prohibit public charities from using anonymous DAF donations to satisfy the IRS's public-support test. It would treat all individual DAF contributions from a sponsoring organization to a charity as if they came from one single person. Only where the DAF's sponsoring organization identifies individual donors by name (or specifies that no individual had advisory privileges over a contribution) could charities continue to use DAF contributions to satisfy the public-support test. Of course, there are many sound reasons why donors may wish to remain anonymous—including religious reasons, reasons of modesty, or because the charity they are sponsoring is considered controversial by some. The Act's disclosure requirements would cause donors who might otherwise anonymously contribute to a preferred charity through a DAF to not donate at all. This harms not just the donor but the charity itself.

The Act would also harm private foundations by prohibiting them from counting DAF contributions towards their annual 5% distribution requirement. This prohibition would make it harder for those foundations to further their charitable missions. Worse, the Act imposes reporting requirements on private foundations who contribute to a DAF. The Act requires reporting the amount of contributions from the foundation to a DAF in a given year, the name of the DAF sponsoring organization, and any donation advice given by the foundation to the DAF sponsoring organization. The likely result of these disclosures is, again, to chill charitable giving.

While these proposed changes are likely to chill charitable giving, there is no indication that they further any public good or prevent abuse. Ostensibly, these donor reporting requirements are intended to prevent donors from using their money to influence public policy without attaching their name to it. But DAF gifts can only be directed to 501(c)(3) organizations, which are prohibited by law from conducting significant political activities. And DAFs make anonymous giving possible for all persons, whatever their political views or ideologies might be.

As Attorneys General, we take seriously our duty to protect the privacy of our citizens and their right to give to charitable causes anonymously. We oppose the ACE Act because it would help neither charities nor donors—indeed, it would harm both. At the same time, we welcome the opportunity to work with your offices to find alternative ways to improve charitable giving while protecting donors.

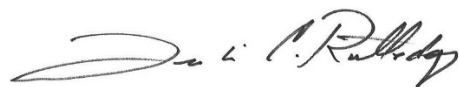
Respectfully,



Lynn Fitch
Attorney General of Mississippi



Mark Brnovich
Attorney General of Arizona



Leslie Rutledge
Attorney General of Arkansas



Christopher M. Carr
Attorney General of Georgia



Todd Rokita
Attorney General of Indiana



Daniel Cameron
Attorney General of Kentucky



Eric Schmitt
Attorney General of Missouri



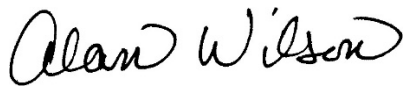
Douglas J. Peterson
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