

Testimony of

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Committee on Ways and Means**

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“Tax Reform and Charitable Contributions”

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Chairman Camp, Ranking Member Levin, and members of the Ways and Means Committee, thank you for this opportunity to present testimony in support of maintaining current law regarding the deductibility of charitable contributions.

My name is Vikki Spruill, and I am the president and chief executive officer of the Council of Foundations. The Council on Foundations (“Council”) represents over 1,700 grantmaking foundations and corporations which collectively donate billions each year to help meet the many needs of the communities they serve. The mission of the Council is to provide the opportunity, leadership, and tools needed by philanthropic organizations to expand, enhance, and sustain their ability to advance the common good. As a voice of philanthropy nationally, the Council works to create an environment in which the movement can grow and thrive, and to promote policies that enable the philanthropic sector to work most effectively.

The Council on Foundations is currently undergoing a strategic transformation in order to better serve our members and the philanthropic community at large. Within this redesign the Council will be placing an increased focus on public policy, and will work to be an active voice in policy discussions surrounding issues that concern the sector. As the committee considers comprehensive tax reform, the Council hopes to engage in a meaningful role by informing your discussion and being a part of the conversation around the charitable sector.

I affirm the strong commitment of the Council and the philanthropic community to do our part to help address the grave fiscal challenges confronting our nation. In particular, the Council recognizes that in an era of fiscal austerity, the philanthropic sector will be called upon to help meet the needs of some of our most vulnerable communities and neighbors that otherwise would have to bear the brunt of painful cuts in government programs. In addition to our organizational efforts related to these current pressing issues, the Council is a leading member of the Charitable Giving Coalition. The coalition, with over 60 members, represents a

broad cross-section of nonprofit organizations, including private, community, and corporate foundations; their grantees; and independent charities. We are encouraged that so many members of the coalition were able to share their expert and unique voices at this important hearing.

While the Council understands the fiscal austerity decisions facing the government, a cap on the charitable deduction is not the solution. Some may think that the charitable deduction benefits only the wealthy, when in reality the opposite is true. The people who are the beneficiaries of the charitable deduction are those who receive the services that philanthropy funds. They will be most impacted by a cap on the charitable deduction because they will no longer be able to receive the essential human services funded through private dollars.

From 2005 through 2011, charitable contributions from individual donors actually declined—understandably so in view of the great economic hardship many Americans faced and an accompanying decline in median household incomes. Yet, over that same period, giving from foundations increased a remarkable 28.6 percent. In fact, foundation giving during that period totaled \$273.24 billion, a huge commitment which made a positive difference in virtually every community in our nation. Because of the increased giving from foundations, total charitable giving over that period, which included the worst recession since the 1930s, increased. If foundations had not increased giving dramatically, let alone given a constant or even reduced amount, total charitable giving would have declined at a time when resources were most needed. While foundations were put in this situation during unexpected economic hardship, capping or limiting the charitable deduction in any way would knowingly put them in this difficult position.

Our members are committed to help mitigate the impact of federal spending reductions not only by committing their own resources, but by identifying ways in which to do more with less. Philanthropy has a proven record of applying resources in highly innovative ways to achieve creative solutions to intractable problems, and

the Council's members have realized disproportionate results by leveraging their own resources to implement those innovations on a large scale. Philanthropy's independence and ability to use private funds for the public good makes it truly unique and able to take risks, achieve extraordinary results, and affect change. We pledge to continue doing so in the coming era of fiscal austerity and budgetary challenge.

The Council on Foundations asks that this committee and Congress seek to ensure that any policy changes, particularly those relating to the charitable deduction, not impede the ability of the philanthropic sector to continue serving our communities meeting the needs of our struggling neighbors. Any change in current law relating to the subject of this hearing, the charitable deduction provided by Internal Revenue Code section 170, would compromise philanthropy's capacity to serve and diminish its great impact on society. As a result, the communities and individuals who rely upon philanthropy to help meet their needs and realize their aspirations would be denied crucial help at a time when they have few other places to turn.

For that reason, the Council on Foundations is very concerned about proposals to impede charitable giving by further limiting the charitable deduction beyond the recent reinstatement of the "Pease" itemized deduction phase-out for upper income taxpayers, whether by denying donors the full value of their charitable contribution tax deduction, or by imposing a dollar cap on the amounts which may be deducted.

If, as the president has proposed, the value of itemized deductions for taxpayers in the top bracket is limited to 28 percent, that limitation would reduce the value of charitable donations by a dramatic 29.2 percent for donors in the top tax bracket. All assessments we have seen conclude that capping the dollar amount of itemized deductions, as Governor Romney proposed during the presidential campaign, would be even worse, potentially denying any deduction at all for

charitable contributions. Under present law, once itemized deductions exceed the amount disallowed under the “Pease” limitation, there is no limit on the tax benefits of additional deductions, including charitable deductions. To the contrary, if the dollar amount of itemized deductions is capped, once that cap is exceeded—and non-discretionary deductions, most notably state and local taxes, often would exceed the threshold amounts discussed by themselves—there would be no tax benefit whatsoever for any itemized deductions. In those instances, capping deductions at a certain dollar amount would eliminate *any* tax benefits for charitable donations.

Though it is very difficult to quantify with precision just how devastating these changes to current law would be, by any reckoning lowering the value of the charitable deduction would reduce charitable contributions by many billions of dollars in the coming years. As Council Chairman Kevin Murphy, president of the Berks County (PA) Community Foundation, noted in testimony at the February 14 hearing, donors do not choose to give to charity exclusively because of the tax deduction. However, the deduction very much affects the *amount* that they give. Basic economics, not to mention simple common sense, indicates that if charitable giving is made more expensive, less charitable giving will take place. Further, by reducing the value of the tax deduction for charitable giving by such large increments—anywhere between 29.2 percent and 100 percent, that reduction in contributions would be very significant, and thus very hurtful to philanthropic giving and the people whom the philanthropic sector serves.

Simply put, the communities we serve and the individuals we help would be devastated by the decline in giving which inexorably would result from reducing the value of the charitable deduction. The many hundreds of billions of dollars which foundations have invested in their communities—funds used to provide for a wide range of community needs, ranging from homeless shelters to medical research to arts education—have been critical, not just to permit the residents of a community with the basic means to live, but also to make the community itself more alive. And,

those funds cannot be replaced from other sources if philanthropy is forced to curtail giving as a consequence of diminished resources. As noted, not only is government limited by the realities of fiscal austerity, but individual charitable giving also has been constrained by economic conditions. Philanthropy drives innovation and creates change that our government and the private sector cannot. Not only does philanthropy provide for its communities, it also has a tremendous economic impact on the communities it serves.

During the hearing Congressman Richard Neal raised a critically important point when he reflected on the dynamic charitable environment in Massachusetts—the sector provides tremendous economic benefits there. While it's easy to understand the intrinsic value of clothing the homeless and providing basic human services, there is a less-understood economic impact from philanthropy and grantmaking that extends throughout society. I would like to bring the work of The Philanthropic Collaborative (TPC), which has looked at the economic impact in a number of reports, to your attention.

TPC, a non-partisan research and educational organization, is uncovering the dollars-and-cents data behind grantmaking's substantial and widespread economic benefits. In its December 2012 report, TPC released a first of its kind study using IMPLAN input/output modeling to measure two types of economic contributions from grantmaking: the immediately tangible returns from direct spending, and the longer-term, more substantial returns on investment occurring over a generation. The value of this report is its illustration of the long-term benefits of charitable intervention; for example, reduced costs of juvenile crime and social services resulting from a preschool education, increased lifetime incomes from workforce training and job placement for the disabled and homeless, the increased tax revenue from revitalized urban areas, and higher standards and quality of life from medical research and treatments.

As many tax policy experts from both sides of the aisle have observed, the charitable deduction is unique among tax deductions in that it encourages behavior that is both discretionary and solely for the benefit of others. Unlike, for example, state and local taxes, charitable contributions need not be made even in the absence of a tax deduction. Unlike mortgage interest, which results from a contractual obligation, charitable contributions do not relate to an expenditure which benefits the person claiming the deduction. Every other deduction either mitigates the cost of an expenditure that must be made in any event, or subsidizes the cost of an expenditure relating to the consumption or investment of the taxpayer. Conversely, a charitable donor never benefits financially from making a contribution—the donor is always less well-off financially after making a donation, regardless of the tax consequences of the donor’s generosity.

Because the charitable deduction is unique, Democrats who have introduced legislation to codify the “Buffet Rule,” including H.R. 3903 and H.R. 5333 during the 112th Congress, have taken care to differentiate charitable contributions from other tax deductions and to preserve their treatment in current law. Similarly, Martin Feldstein, a Harvard professor who served as chairman of the Council of Economic Advisers under President Ronald Reagan and as an advisor to Republican presidential nominee Mitt Romney, has recognized the uniqueness of the charitable deduction by excluding it from his proposal to limit the tax savings from all deductions and major tax exclusions to 2 percent of an individual's adjusted gross income. In a February 22, 2013, op-ed in *The Wall Street Journal* advocating his plan, Professor Feldstein wrote, “The existing charitable deduction in particular deserves to be maintained. Unlike other deductions and exclusions, it does not benefit the taxpayer but provides important private support for universities, religious and cultural institutions, and hospitals.” Though the Council on Foundations takes no position on either the Buffet Rule or Professor Feldstein’s proposal, it agrees that, whatever course this committee and Congress choose to take, current law regarding the charitable deduction should be preserved. In fact,

we encourage Congress to consider strategies that would further expand charitable giving.

In addition to the charitable deduction, we would like to comment upon three other issues raised at the hearing. The first of these was the suggestion of some committee members that certain charitable causes should receive preferential status. The Council also strongly supports maintaining current law regarding the *type* of charitable contributions which may qualify for the full deduction under section 170. The Internal Revenue Code, regulations promulgated thereunder, and voluminous case law and other guidance spell out in great detail what type of activities are properly characterized as “charitable” and, perhaps more importantly, those which are not. Collectively, those authorities affirm that a charitable deduction is permitted only when the donated funds are used for a purpose which confers no benefit on the donor, but instead helps further one of several worthy objectives relating to persons in need and the communities in which we and others live.

Current law recognizes that there is no sound policy basis for creating a hierarchy among purposes recognized as charitable by the tax code. And, does Congress want to undertake the burden of attributing a scale to value charitable causes? Differentiating between funding cancer research and funding the treatment of an impoverished cancer patient is impossible. Providing the quality education needed for a young person to find employment and providing food assistance to those who are unemployed are equally important. Choosing between eradicating disease in South Sudan and providing essential health care in South Dakota is asking to place a value on human life. In addition, discriminating among the charitable purposes already recognized by current law not only would impede critical work; it also would be administratively unworkable.

The hearing also touched on the dilemma of “bad actors.” Although the Council on Foundations opposes any change in current law relating to the

charitable deduction, it strongly supports any efforts that would make current law work better, a point brought up by Congressman Becerra at the hearing. In particular, as our chair Kevin Murphy also made clear in his testimony, the Council is, and will continue to be, committed to combating any abusive practices that permit bad actors to potentially game the system. The Community Foundations National Standards Board (CFNSB), which is a supporting organization of the Council, is a self-regulating entity that monitors the work of community foundations. This board has established 41 national standards and awards accreditation to community foundations that are found in compliance. These standards help to maintain the highest level of ethical practices by community foundations. The Council and its members stand ready to work with the committee to identify and address any concerns, and to ensure that enforcement measures effectively target abusive behavior that could both tarnish the sector and harm those whom we serve.

The third issue we would like to comment upon is the private foundation excise tax. This tax (Internal Revenue Code section 4940) was raised by Congressman Blumenauer and addressed by witness Eugene Steuerle of the Urban Institute. Mr. Steuerle stated that, in his opinion, the excise tax “is silly... and I would eliminate it.” The Council would like to echo Mr. Steuerle’s critical assessment of the current scheme. Short of that, we concur with Mr. Steuerle’s additional comments that at the very least Congress should simplify the complex two-tier structure, which can present a disincentive for increased foundation giving and create complicated administrative burdens.

In closing, the Council on Foundations respectfully urges this committee to preserve the current law regarding the charitable tax deduction. Reducing the charitable deduction—through a percentage limitation, deduction cap, or otherwise—would result in a loss of billions of dollars each year in contributions that otherwise would serve the critical needs of our communities. I urge this

committee to bear in mind that any limit on the charitable deduction would be borne not by those individuals with the most resources, but by those with the least. At the core, all of us seek to have an impact in the communities we serve, creating hope and opportunity when neither seems possible.

Thank you again for this opportunity to present testimony and for your leadership in reforming our broken tax code. The Council on Foundations strongly supports the committee's efforts, and is committed and stands ready to work with you on this crucial task in the coming months.