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Part 1

END ZUCKERBUCKS ACT OF 2024

MAY 14, 2024.—Ordered to be printed

Mr. STEIL, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7319]

The Committee on House Administration, to whom was referred the bill (H.R. 7319) to amend the Internal Revenue Code of 1986 to prohibit 501(c)(3) organizations from providing direct funding to official election organizations and to amend the Help America Vote Act of 2002 to prohibit the District of Columbia from receiving or using funds or certain donations from private entities for the administration of a District of Columbia election, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "End Zuckerbucks Act of 2024".

SEC. 2. 501(c)(3) ORGANIZATIONS PROHIBITED FROM PROVIDING DIRECT FUNDING TO ELECTION ORGANIZATIONS.

(a) IN GENERAL.—Section 501(c)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking "and which does not participate" and inserting "which does not participate", and

(2) by striking the period at the end and inserting ", and which does not provide below-cost services, scholarships, subsidies, or direct, in-kind, or indirect funding to official election organizations, including any State or local government entity or any government election organization.".

(b) RULE OF CONSTRUCTION.—Nothing in the amendments made by subsection (a) shall be construed to prevent a house of worship, community center, or similar private or public facility from serving as a polling place in an election for public office.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to funding provided in taxable years beginning after December 31, 2025.

SEC. 3. PROHIBITION AGAINST THE RECEIPT OR USE OF FUNDS OR CERTAIN DONATIONS FROM PRIVATE ENTITIES WITH RESPECT TO DISTRICT OF COLUMBIA ELECTIONS.

(a) SHORT TITLE.—This section may be cited as the "American Confidence in Elections: Protect District of Columbia Election Administration Act".

(b) REQUIREMENTS.—Title III of the Help America Vote Act of 2002 (52 U.S.C. 21081 et seq.) is amended—

(1) by redesignating sections 304 and 305 as sections 305 and 306, respectively; and

(2) by inserting after section 303 the following new section:

"SEC. 304. PROHIBITION AGAINST THE RECEIPT OR USE OF FUNDS OR CERTAIN DONATIONS FROM PRIVATE ENTITIES FOR THE ADMINISTRATION OF A DISTRICT OF COLUMBIA ELECTION.

"(a) IN GENERAL.—The District of Columbia may not solicit, receive, or expend any payment or donation of funds, property, or personal services from a private entity for the purpose of the administration of a District of Columbia election, including any programs with respect to voter education, voter outreach, and voter registration.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a house of worship, community center, or similar private or public facility from serving as a polling place in a District of Columbia election.

"(c) DISTRICT OF COLUMBIA ELECTION DEFINED.—In this section, the term 'District of Columbia election' means any election for public office in the District of Columbia, including an election for Federal office, and any ballot initiative or referendum.".

(c) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 401 of the Help America Vote Act of 2002 (52 U.S.C. 21111) is amended by striking "and 303" and inserting "303, and 304".

(d) CLERICAL AMENDMENT.—The table of contents of such Act is amended—

(1) by redesignating the items relating to sections 304 and 305 as relating to sections 305 and 306, respectively; and

(2) by inserting after the item relating to section 303 the following new item:

"Sec. 304. Prohibition against the receipt or use of funds or certain donations from private entities for the administration of a District of Columbia election.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to District of Columbia elections held on or after the date of the enactment of this Act. For purposes of this section, the term "District of Columbia election" has the meaning given such term in section 304 of the Help America Vote Act of 2002, as added by this section.

PURPOSE AND SUMMARY

H.R. 7319, the End Zuckerbucks Act of 2024, introduced by Representative Claudia Tenney (NY–24) and co-sponsored by Representative Tom Cole (OK–04), prohibits 501(c)(3) tax-exempt organizations from providing below cost services, scholarships, subsidies, or direct, in-kind, or in- direct funding to official election or-

ganizations, and prohibits the District of Columbia from receiving or using funds or certain donations from private entities for the administration of any election in the District of Columbia. In the run-up to the 2020 presidential election, Mark Zuckerberg and his wife Priscilla Chan donated $350 million to the 501(c)(3) organization, the Center for Tech and Civic Life ("CTCL") which distributed those funds to 2,500 election departments across 49 States. The grants were sold as assisting State and local election offices administer an election during the COVID–19 Pandemic but were actually used to fund voter registration drives and get-out-the-vote efforts to help Joe Biden win the presidency. Twenty-eight States have recognized that "Zuckerbucks", shorthand for the private funding of election administration, does *not* inspire confidence in our elections and have prohibited election offices from accepting private funds. As Zuckerbucks are still lawful in 22 States and CTCL is attempting to skirt around State Zuckerbucks bans, the End Zuckerbucks Act of 2024 would remove the tax-exempt status for 501(c)(3) organizations that provide Zuckerbucks. The Constitution gives Congress complete control over and responsibility for the District of Columbia, this legislation also prohibits any election office in the District from accepting Zuckerbucks.

BACKGROUND AND NEED FOR LEGISLATION

BACKGROUND

Article I, Section 4 of the United States Constitution[1] ("the Elections Clause") explains that the States have the primary authority to set election law and to administer elections, particularly the "times, places, and manner of holding elections[.]" Conversely, the Constitution grants the Congress a purely secondary role to alter or create election laws only in the extreme cases of invasion, legislative neglect, or obstinate refusal to pass election laws.[2] As do other aspects of our federal system, this division of sovereignty continues to serve to protect one of American citizens most precious freedoms, the right to vote.[3]

All elections in the United States are administered at the State and local level. There is no federal agency tasked with overseeing how well or poorly elections are run, and there are very few federal statutes that command States and localities how they should run their elections. One result of this is that States and localities are the actors that provide the primary sources of funding to administer their elections. Congress also provides federal funds, including those described below.

Following the 2000 presidential election, Congress enacted the Help America Vote Act of 2002 ("HAVA") that provides funding to

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[1] U.S. Const. art. I, §4, cl. 1 ("[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .").

[2] Although the text of the Elections Clause, read literally and without the benefit of context, might suggest Congress has unlimited authority in this space, an examination of an examination of history, precedent, the Framers' words, debates concerning ratification, the Supreme Court, and the Constitution itself provide that this is not the case. *See* Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), https://republicanscha. house.gov/sites/ republicans.cha. house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

[3] *Id.*

help States meet new minimum election administration standards, replace punch card and lever-based voting systems, and improve the administration of elections for federal office.[4] While HAVA authorized several different funding programs, the general improvements grants program has been appropriated for almost every year since fiscal year 2018.[5] Under this program, States are given federal funds to improve the administration of elections for federal office, educate voters, and train election officials, poll workers, and election volunteers, among other things.[6] Importantly, States are not allowed to use HAVA funds on voter registration drives or get-out-the-vote efforts.[7]

In response to the COVID–19 pandemic, Congress appropriated $400 million in new HAVA funds through the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") that assisted States to prevent, prepare for, and respond to COVID in the 2020 federal election cycle.[8] But some State election offices determined that State and local funds along with CARES Act funds were not enough and an additional source of funds was needed.

In 2015, Tiana Epps-Johnson, Whitney May, and Donny Bridges founded the Center for Tech and Civic Life ("CTCL").[9] Epps-Johnson is a former Obama Foundation Fellow who previously worked on the Voting Rights Project for the Lawyers' Committee for Civil Rights, and was the election administration director for the New Organizing Institute ("NOI").[10] Similarly, May and Bridges also both came from NOI, an organization the Washington Post once described as "the Democratic Party's Hogwarts for digital wizardry."[11] Today, Epps-Johnson serves as CTCL's Executive Director, and May serves as its Director of Government Services.[12]

CTCL describes its mission in three parts. First, CTCL "connect[s] Americans with the information they need to become and remain civically engaged, and ensure that our elections are more professional, inclusive, and secure."[13] CTCL consists of "a team of civic technologists, trainers, researchers, and, election administration and data experts working to foster a more informed and engaged democracy and helping to modernize U.S. elections."[14] Finally, CTCL "connect[s] election officials with tools and trainings so they can best serve their communities. We provide information the public needs to develop lifelong civic habits."[15]

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[4] Pub. L. 107–252, 116 Stat. 1666, *codified at* U.S.C. §§20901–21145.

[5] See Karen Shanton, Election Administration: Federal Grant Funding for States and Localities, Congressional Research Service (May 8, 2023) ("Congress appropriated a total of more than $1.3 billion under HAVA's general improvements grant program for FY2018, FY2020, FY2022, and FY2023[.]").

[6] 52 U.S.C. §20901.

[7] *See* U.S. Election Assistance Commission Funding Advisory Opinion FAO–08–005, Election Assistance Commission, available at https://www.eac.gov/sites/default/files/document_library/files/FAO-08-005_EAC_1.pdf.

[8] 2020 CARES Act Grants, Election Assistance Commission (Aug. 7, 2023), https://www.eac.gov/grants/CARES.

[9] Center for Tech and Civic Life's (CTCL) grants to election agencies, 2020, Ballotpedia, https://ballotpedia.org/Center_for_Tech_and_Civic_Life%27s_(CTCL)_grants_to_election_agencies,_2020.

[10] Mollie Hemingway, Rigged: How the Media, Big Tech and the Democrats Seized Our Elections (2021).

[11] Brian Fung, *Inside the Democratic party's Hogwarts for digital wizardry,* Washington Post (July 8, 2014), https://www.washingtonpost.com/news/the-switch/wp/2014/07/08/inside-the-democratic-partys-hogwarts-for-digital-wizardry/.

[12] Our Team, Center for Tech and Civic Life, https://www.techandciviclife.org/our-team/.

[13] Our Story, Center for Tech and Civic Life, https://www.techandciviclife.org/our-story/.

[14] *Id.*

[15] *Id.*

CTCL is organized under the federal tax code as a 501(c)(3) organization.[16] This designation comes with several important legal consequences. First, 501(c)(3) organizations are tax-exempt, which means they does not pay federal income taxes on their revenue.[17] Moreover, individuals that donate to 501(c)(3) organizations can write off their donation on their federal tax return.[18] Finally, 501(c)(3) organizations "may not attempt to influence legislation as a substantial part of its activities . . . [or] participate in any campaign activity for or against political candidates."[19] They are also heavily restricted in how much political and legislative lobbying they can conduct.[20]

In its early years of operation from 2015 through 2019, CTCL averaged roughly $1.5 million in revenue[21] and roughly $970,000 in expenses.[22] But that all changed in 2020. On March 13, 2020, President Donald Trump proclaimed that the COVID–19 outbreak ("COVID pandemic") in the United States was a national emergency.[23] In March of 2020, it was unknown how long the COVID pandemic would last and how State governments would respond. Moreover, a number of primary elections still needed to take place before the presidential election in November of 2020, and it was unclear whether States would modify their election laws in response to the COVID pandemic.[24]

Mark Zuckerberg currently serves as Chief Executive Officer of Meta, a company that includes Facebook and Instagram.[25] Following the 2016 election, Zuckerberg received a large share of the blame for helping elect Donald Trump because the Trump campaign successfully utilized advertisements on Facebook.[26] In January of 2017, Zuckerberg and his wife, Priscilla Chan, announced that David Plouffe, who is best known for helping Barack Obama win the 2008 presidential election, would join the Chan Zuckerberg initiative to lead its policy and advocacy work.[27] While Mark Zuckerberg might not have been seen as a partisan political actor before 2016, the hiring of one of President Obama's former senior advisors at his personal foundation revealed a partisan political perspective following the election of Donald Trump.

On September 1, 2020, Mark Zuckerberg and his wife Priscilla Chan announced that they would donate $250 million to CTCL and donate $50 million to a similar 501(c)(3) organization, the Center

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[16] Donate, Center for Tech and Civic Life, https://www.techandciviclife.org/donate/.

[17] Exemption Requirements—501(c)(3) Organizations, Internal Revenue Service (Jan. 29, 2024), https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] In 2019, CTCL had roughly $3.5 million in revenue, but between 2015–2018, CTCL never received more than roughly $1.4 million in revenue.

[22] *Supra* note 9.

[23] Proclamation No. 9994, 85 F.R. 53 (March 18, 2020).

[24] *See* Republican National Committee v. Democratic National Committee, 589 U.S. 423 (2020) (staying a Federal District Court order that unilaterally ordered absentee ballots mailed and postmarked after election day on April 7, 2020, to be counted so long as they are received by April 13, 2020, in Wisconsin's primary election).

[25] Mark Zuckerberg, Founder, Chairman and Chief Executive Officer, Meta, https://investor.fb.com/leadership-and-governance/person-details/default.aspx.

[26] Philip Bump, *All the ways Trump's campaign was aided by Facebook, ranked by importance,* Washington Post (March 22, 2018), https://www.washingtonpost.com/news/politics/wp/2018/03/22/all-the-ways-trumps-campaign-was-aided-by-facebook-ranked-by-importance/.

[27] Press Release, Chan Zuckerberg Initiative, *CZI Announces David Plouffe to Lead Policy and Advocacy Work* (Jan. 1, 2017), https://chanzuckerberg.com/newsroom/czi-announces-david-plouffe-to-lead-policy-and-advocacy-work/.

for Election Innovation & Research ("CEIR").[28] The announcement explained that CTCL was a nonpartisan organization that would distribute these funds to local election jurisdictions across the county to help ensure they "have the staffing, training, and equipment necessary so that this November every eligible voter can participate in a safe and timely way and that their vote is counted."[29] Similarly, the announcement explained that CEIR was a "nonpartisan organization whose mission is to assist state and local election officials to ensure elections are secure, voters have confidence in election outcomes, and democracy thrives as civic engagement grows."[30]

Most importantly, the announcement explained that CTCL's $250 million was going to a variety of local jurisdictions to expand voter access for the following purposes: poll worker recruitment, hazard pay, and training, polling place rental, temporary staffing support, drive-through voting, equipment to process ballots and applications, personal protective equipment ("PPE") for poll workers, and nonpartisan voter education provided by cities and counties.[31] To ensure that grantees complied with these guidelines, CTCL required them to submit a grant report explaining how the funds were used by January 31, 2021, three months after the election.[32]

On October 13, 2020, Mark Zuckerberg and his wife Priscilla Chan announced they would donate an additional $100 million to CTCL to fulfill the same purposes as the first donation.[33] The announcement came with the same grant guidelines as the previous one but gave additional reasons for why new funds were needed.[34] First, over 2,100 local election jurisdictions had applied for a grant suggesting the original funds were not enough.[35] Second, the announcement explained new funds were needed to "ensure that election administrators are fully funded despite a number of legal challenges that have been filed to try to undermine their efforts."[36] This reason is particularly striking because the legal challenges the announcement references were largely filed by Democrats seeking to have courts create new election laws because of the COVID Pandemic while Republicans argued that election laws on the books should be enforced.[37] Zuckerberg and Chan also explained they

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[28] Press Release, Center for Tech and Civic Life, Priscilla Chan and Mark Zuckerberg Commit $300 Million Donation to Promote Safe and Reliable Voting During COVID–19 Pandemic (Sept. 1, 2020), https://s3.documentcloud.org/documents/7070695/CTCL-CEIR-Press-Release-9-1-20-FINAL.pdf.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] COVID–19 Response Grants, Center for Tech and Civic Life, https://www.techandciviclife.org/our-work/election-officials/grants/.

[33] Press Release, Center for Tech and Civic Life, Priscilla Chan and Mark Zuckerberg Commit Additional $100 Million for Safe and Reliable Voting to Meet Overwhelming Demand (Oct. 13, 2020), https://www.techandciviclife.org/100m/.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Republican Party of Pennsylvania v. Degraffenreid, 141 S.Ct. 732 (2021) (Republican Party of Pennsylvania involved in litigation to enforce Pennsylvania law that ballots must be received by 8 p.m. on election night if they are to be counted following the Pennsylvania Supreme Court extending the deadline by three days); Democratic National Committee v. Wisconsin State Legislature, 141 S.Ct. 28 (2020) (Democratic National Party sued attempting to overturn Wisconsin law that absentee ballots must be received by election day); Moore v. Circosta, 141 S.Ct. 46 (2020) (North Carolina Republicans sued to enforce North Carolina election statutes requiring absentee ballots to be postmarked on or before election day, and received no later than three days following the election following the North Carolina Board of Elections decision to extend it to six days.)

wanted these funds to "serve all sorts of communities throughout the country—urban, rural, and suburban . . ."[38] By the end of 2020, CTCL provided election grants to nearly 2,500 election departments across 49 States and distributed approximately $350 million in grant funds.[39]

While CTCL was heralded as a nonpartisan institution and its grants were allegedly for nonpartisan purposes to expand voter access through a variety of ways, the real effect of the grants increased voter turnout in Democrat areas to help Joe Biden win the presidency. First, CTCL gave large grants to States that flipped from Trump in 2016 to Biden in 2020. According to the Capital Research Center, voter turnout for Biden increased 35 percent in counties that received CTCL grants when compared to the voter turnout for Hillary Clinton in 2016.[40] But voter turnout for Trump only increased by 18 percent in counties that received CTCL grants compared to his performance in 2016.[41] CTCL model is revealed by the record of its larger grants and more money *per capita* to counties that voted for Biden; it awarded an average of $1.10 *per capita* to States won by Biden in 2020 and an average of $0.72 *per capita* to States won by Trump.[42] Finally, of the 26 grants CTCL provided to cities and counties in Arizona, Georgia, Michigan, North Carolina, Pennsylvania, Texas, and Virginia that were $1 million or larger, 25 went to areas Biden won in 2020. The only county on this list won by Trump (Brown County, Wisconsin) received about $1.1 million—less than a little more than one percent of the $85.5 million that CTCL provided to these top-26 recipients.[43]

A State-by-State analysis of how CTCL granted their funds in a number of swing States and the results of the 2020 presidential election reveals the impact of those fund grants. While the list below only describes the effects of CTCL's grants in nine States, CTCL also granted California roughly $22 million and New York roughly $26 million.[44] While some point to those grants as evidence that CTCL operated in a nonpartisan basis, the swing State of Georgia received $45 million, and the swing State of Pennsylvania received $25 million. As the populations of California and New York dwarf Georgia and Pennsylvania, the very large grants to several swing States becomes highly questionable. The term "Zuckerbucks" below refers generally to the private funding of election administration.

ARIZONA

Donald Trump won Arizona in the 2016 presidential election by just over 91,000 votes or roughly three and a half percent.[45] Joe Biden won Arizona in the 2020 presidential election by just over

[38] *Supra* note 33.
[39] *Supra* note 32.
[40] Parker Thayer, Hayden Ludwig, *Updated: Shining a Light on Zuck Bucks in the 2020 Battleground States,* Capital Research Center (Jan. 18, 2022), https://capitalresearch.org/article/shining-a-light-on-zuck-bucks-in-key-states/.
[41] *Id.*
[42] *Supra* note 9.
[43] William Doyle, *The 2020 Election Wasn't Stolen, It Was Bought by Mark Zuckerberg,* the Federalist (Oct. 12, 2021), https://thefederalist.com/2021/10/12/the-2020-election-wasnt-stolen-it-was-bought-by-mark-zuckerberg/.
[44] *Supra* note 9.
[45] 2016 Arizona Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/arizona.

10,000 votes or roughly three-tenths of a precent.[46] CTCL granted Arizona counties $5.1 million, but $3.9 million or 75.5 percent of all CTCL funds in Arizona, went to four of the five counties won by Biden.[47] Among them, Maricopa County, the only county that flipped from Trump to Biden, received $1.84 million.[48] While the four counties Trump won in 2020 all received CTCL grants, combined, they received only $671,000 or only 13 percent of all grants statewide.[49]

Biden grew his turnout by nearly 694,000 votes in CTCL-funded counties over Hillary Clinton's 2016 turnout, an average increase of 81 percent. However, Trump only grew his turnout by 563,000 voters in CTCL-funded counties, an average increase of 66 percent from his 2016 turnout.[50] Moreover, CTCL-funded counties gave Biden roughly 1.55 million votes in 2020 whereas CTCL-funded counties only gave Trump roughly 1.42 million votes.[51]

Following the 2020 presidential election, Arizona prohibited the use of Zuckerbucks in 2021.[52]

FLORIDA

Donald Trump won Florida in the 2016 presidential election by just over 112,000 votes or a little over one percent.[53] Donald Trump won Florida in the 2020 presidential election by just over 371,000 votes or a little over three percent.[54] CTCL granted Florida counties more than $7 million, with 78 percent of counties Hillary Clinton won in 2016, receiving CTCL funds as opposed to only seven percent of counties won by Trump.[55] CTCL's three largest grants went to the Democratic strongholds of Miami-Dade County ($2,482,440), Leon County ($1,437,486), and Broward County ($1,424,971).[56] Grants to these three Democratic strongholds made up more than 75 percent of CTCL's grants in Florida.

Leon County, which received over $1.4 million in CTCL funds, and Gadsden County, which received no CTCL funds each saw voter turnout increase by similar amounts.[57] But Leon County's Democrat voter turnout more than offset its increase in Republican turnout while the exact opposite happened in Gadsden County.[58] Leon County saw an increase of more than 12 percent in Democrat-presidential voters while the number of Republican presidential voters only increased almost seven percent over the same period.[59] Finally, while CTCL's grants were ostensibly meant to go to PPE

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[46] Arizona Election Results, New York Times (Nov. 30, 2023), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-arizona.html.
[47] Thayer, Hayden, *supra* note 40.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] Sarah Lee, Jon Rodeback, Hayden Ludwig, *States Banning or Restricting "Zuck Bucks"*, Capital Research Center (April 10, 2024), https://capitalresearch.org/article/states-banning-zuck-bucks/.
[53] 2016 Florida Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/florida.
[54] Florida Election Results, New York Times (Jan. 26, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-florida.html.
[55] Hayden Dublois, Nic Horton, How *"Zuckerbucks" Infiltrated & Influenced the 2020 Florida Election*, Foundation for Government Accountability (Feb. 25, 2021), https://thefga.org/wp-content/uploads/2021/02/Florida-Zuckerbucks_2020_election.pdf.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*

equipment, the Alachua County Supervisor of Elections Office confirmed that zero percent of the $707,606 received by Alachua County went to PPE.[60]

Following the 2020 presidential election, Florida prohibited the use of Zuckerbucks in 2021.[61]

GEORGIA

Donald Trump won Georgia in the 2016 presidential election by just over 210,000 votes or just over five percent.[62] Joe Biden won Georgia in the 2020 presidential election by just over 11,000 votes or two-tenths of a percent.[63] CTCL granted Georgia counties $45 million with $42.4 million, or over 94 percent of all CTCL funds going to 17 counties won by Biden.[64] In contrast, the remaining $2.6 million, or less than 6 percent of CTCL funds, were received by 26 counties won by Trump.[65]

In CTCL-funded counties, Biden received 1.96 million votes, a little over 73 percent of all votes he received statewide. Meanwhile, Trump only received 1.35 million votes in CTCL-funded counties, just over 55 percent of his statewide total.[66] Moreover, in CTCL-funded counties, Biden's voter turnout surged roughly 35 percent compared to Hillary Clinton's 2016 turnout, netting him an additional 510,000 votes whereas Trump's voter turnout only increased by 18 percent, netting him an additional 203,000 votes—less than half of Biden.[67] To underscore the effect of CTCL grants even further, the 43 counties that received funds swung, on average, two-point three percentage points towards Biden but the 116 counties that did not receive funds saw no change.[68]

Some of Georgia's largest counties also chose not to spend CTCL funds on PPE expenses as terms of the CTCL grant instructed. In the counties of Fulton, Cobb, and De Kalb, PPE expenses made up only roughly one percent of CTCL funds.[69] In fact, nearly ten times as much was spent on mail-in voting as was spent on PPE.[70] These counties also spent CTCL funds on items such as salaries, laptops, vehicle rentals, and even attorneys' fees for public records requests.[71]

Following the 2020 presidential election, CTCL gave roughly $14.5 million (included in the figure above) to help counties administer the 2021 Senate runoff elections.[72] Of those funds, more than 60 percent were allocated to the Democrat strongholds of Fulton

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[60] *Id.*
[61] Lee, Rodeback, Ludwig, *supra* note 52.
[62] 2016 Georgia Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/georgia.
[63] Georgia Election Results, New York Times (Mar. 6, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-georgia.html.
[64] Thayer, Hayden, supra note 40.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] Hayden Dublois, Tyler Lamensky, *Zuckerberg Went Down to Georgia: How Zuckerbucks Influenced the Georgia Elections*, Foundation for Government Accountability (May 24, 2021), https://thefga.org/wp-content/uploads/2021/05/How-Zuckerbucks-Influenced-the-Georgia-Elections.pdf.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*

and De Kalb counties alone.[73] Yet again, Democrat districts were targeted, and Democrat votes were boosted.

Following the 2020 presidential election, Georgia prohibited the use of Zuckerbucks in 2021.[74]

MICHIGAN

Donald Trump won Michigan in the 2016 presidential election by almost 11,000 votes or three-tenths of a percent.[75] Joe Biden won Michigan in the 2020 presidential election by almost 155,000 votes or almost three percent.[76] CTCL granted Michigan $16.8 million, most of which went to townships and cities rather than counties.[77] CTCL distributed 135 grants above $5,000; of those, Trump won only 45 of recipient localities whereas Biden won 90.[78] And those 90 localities won by Biden received $14.6 million or 86 percent of all CTCL funds in Michigan.[79]

CTCL's 39 largest per capita grants all went to cities won by Biden. The top ten were: Benton Harbor ($13.27) which voted 94 percent for Biden, Detroit ($11.64) which favored Biden won 94 percent to Trump's five percent, Muskegon ($11.32), Saginaw ($9.11), Pontiac ($6.58), Southfield ($5.82), Ypsilanti ($4.86), Lansing ($4.34), East Lansing ($4.19), and Flint ($3.84).[80] In these 39 cities, Biden received roughly 1 million votes, a little under one-third of all votes he received in Michigan.[81] Meanwhile, CTCL's largest per capita grant to a Trump municipality went to Macomb Township ($0.86) where Trump won 62 percent of the vote.

Zuckerbucks are still lawful in Michigan following Democratic Governor Gretchen Whitmer's veto of a Zuckerbucks ban in July 2022.[82]

NEVADA

Hillary Clinton won Nevada in the 2016 presidential election by a little over 27,000 votes or almost two and a half percent.[83] Joe Biden won Nevada in the 2020 presidential election by a little over 33,000 votes or almost two and a half percent.[84] Nevada received $2.7 million through two CTCL grants distributed to the reliably Democratic counties of Washoe and Clark.[85] These two counties contain Nevada's eight largest cities, including Las Vegas. CTCL provided no grants to counties won by Trump.[86]

Zuckerbucks are still lawful in Nevada.

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[73] *Id.*
[74] Lee, Rodeback, Ludwig, *supra* note 52.
[75] 2016 Michigan Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/michigan.
[76] Michigan Election Results, New York Times (Mar. 6, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-michigan.html.
[77] Thayer, Hayden, *supra* note 40.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] Lee, Rodeback, Ludwig, *supra* note 52.
[83] 2016 Nevada Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/nevada.
[84] Nevada Election Results, New York Times (Mar. 6, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-nevada.html.
[85] Thayer, Hayden, *supra* note 40.
[86] *Id.*

NORTH CAROLINA

Donald Trump won North Carolina in the 2016 presidential election by a little over 173,000 votes or a little over three and a half percent.[87] Donald Trump won North Carolina in the 2020 presidential election by almost 75,000 votes or a little over one percent.[88] North Carolina counties received $2.9 million in CTCL grants of which 64 percent went to six of the 26 counties won by Biden.[89] Of the 74 counties Trump won in North Carolina, 21 of them received CTCL grants but they only accounted for 36 percent of all CTCL funds in the State.[90]

In CTCL-funded counties, Biden received over 691,000 votes; an increase of nearly 139,000 votes compared to Hillary Clinton's 2016 performance.[91] In contrast, CTCL-funded counties gave Trump 782,000 votes, an increase of 125,000 votes when compared to his 2016 performance.[92]

In October of 2023, the North Carolina legislature overrode the veto of Democratic Governor Roy Cooper to prohibit the use of Zuckerbucks in North Carolina.[93] As a result, Zuckerbucks are now prohibited in North Carolina.

PENNSYLVANIA

Donald Trump won Pennsylvania in the 2016 presidential election by almost 45,000 votes or seven-tenths of a percent.[94] Joe Biden won Pennsylvania in the 2020 presidential election by almost 81,000 votes or a little over one percent.[95] Pennsylvania counties received $25 million in CTCL grants of which 10 of the 13 counties won by Biden received almost $21 million or over 80 percent of all CTCL grants in Pennsylvania.[96] In stark contrast, only $1.73 million, or seven percent of all CTCL grants in Pennsylvania were received in 12 of the 54 counties won by Trump.[97] The remaining funds of roughly $2.45 million were received by the Pennsylvania Department of State and it remains unclear how those funds were spent.[98]

In CTCL-funded counties, Biden received 2.5 million votes, or 73 percent of his statewide total, while these same counties only provided Trump with 1.8 million votes, or 53 percent of his statewide total.[99] Moreover, in CTCL-funded counties, Biden turnout surged by an additional 20 percent over Hillary Clinton's 2016 turnout

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[87] 2016 North Carolina Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/north-carolina.

[88] North Carolina Election Results, New York Times (Mar. 6, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-north-carolina.html.

[89] Thayer, Hayden, *supra* note 40. CTCL also disclosed a $4.3 million grant to the North Carolina secretary of state. Precisely how that money was spent is still unclear, but it's possible that the funds were redistributed by the secretary of state to county elections offices.

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] Lee, Rodeback, Ludwig, *supra* note 52.

[94] 2016 Pennsylvania Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/pennsylvania.

[95] Pennsylvania Election Results, New York Times (Nov. 30, 2023), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-pennsylvania.html.

[96] Thayer, Hayden, *supra* note 40.

[97] *Id.*

[98] *Id.*

[99] *Id.*

while Trump's turnout surged by only 15 percent in these same counties compared to his 2016 results.[100]

The 5 biggest grants per capita in CTCL-funded counties all went to counties which Biden won: Philadelphia: $6.56, Centre: $5.46, Chester: $4.79, Delaware: $3.77, Lehigh: $2.04.[101] In contrast, the largest per capita grant to a Trump won county went to Berks County at $1.10.[102]

In July of 2022, Democratic Governor Tom Wolf signed a bill prohibiting the use of Zuckerbucks in Pennsylvania.[103]

VIRGINIA

Hillary Clinton won Virginia in the 2016 presidential election by a little over 212,000 votes or almost five and half percent.[104] Joe Biden won Virginia in the 2020 presidential election by a little over 450,000 votes or a little over 10 percent.[105] Virginia counties received $3.7 million in CTCL funds that were given across 36 of Virginia's 133 counties.[106] However, $3.4 million was given to 14 of the 46 counties won by Biden whereas only $358,910 was given to 22 of the 87 counties won by Trump.[107] James City County and Lynchburg County, which were won by Trump in 2016, received CTCL funds and flipped to Biden in 2020.[108] And Fairfax County, the most populous county in Virginia, received nearly three and a half times ($1.24 million) as much from CTCL as every Trump-county *combined*.[109]

In April of 2022, Governor Glenn Youngkin signed legislation prohibiting the use of Zuckerbucks in Virginia.[110]

WISCONSIN

Donald Trump won Wisconsin in the 2016 presidential election by almost 23,000 votes or roughly seven-tenths of a percent.[111] Joe Biden won Wisconsin in the 2020 presidential election by almost 21,000 votes or roughly six-tenths of a percent.[112] Wisconsin received $10.1 million in CTCL grants, most of which went to townships and cities rather than counties.[113]

CTCL distributed 31 grants of $5,000 or more of which three went to counties while the other 28 went to cities.[114] Of those 28 cities, Biden won 20 of them while Trump only won eight.[115] The 20 cities won by Biden received $9 million or 90 percent of all

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[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] Lee, Rodeback, Ludwig, *supra* note 52.
[104] 2016 Virginia Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/virginia.
[105] Virginia Election Results, New York Times (Mar. 6, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-virginia.html.
[106] Thayer, Hayden, *supra* note 40.
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] Lee, Rodeback, Ludwig, *supra* note 52.
[111] 2016 Wisconsin Results, New York Times (Aug. 1, 2017), https://www.nytimes.com/elections/2016/results/wisconsin.
[112] Wisconsin Election Results, New York Times (Mar. 8, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-wisconsin.html.
[113] Thayer, Hayden, *supra* note 40.
[114] *Id.*
[115] *Id.*

CTCL funds distributed in Wisconsin while the cities that voted for Trump generally received the minimum grant of $5,000.[116]

Moreover, for grants of over $5,000, 9 of CTCL's 10 largest per capita grants went to cities which Biden won.[117] The top ten cities were: Racine: $21.83, Green Bay: $11.60, Kenosha: $8.63, Milwaukee: $5.91, Madison: $4.71, Janesville: $2.79, Cottage Grove: $1.37, Wausau: $1.25, Rice Lake $1.11, and West Allis: $1.03.[118] Of these ten, Trump only won Rice Lake.

In CTCL-funded cities that received $5,000 or more, Biden received over 608,000 votes while Trump received just over 286,000.[119] And while Biden's margin of victory in the State was almost seven-tenths of a percent, his margin of victory in CTCL funded counties was 36 percent.[120]

As Mollie Hemmingway documented in her book *Rigged*, the five Wisconsin cities of Racine, Green Bay, Madison, Milwaukee, and Kenosha outsourced much of their election operations to private liberal groups.[121] Under the terms of CTCL's grant, jurisdictions could not use CTCL funds to outsource election operations unless CTCL approved the plan in writing.[122] In these cities, CTCL did just that and provided a network of current and former election administrators to help cities scale up their vote by mail process and ensure forms and other materials were completed correctly by voters.[123] CTCL's network included Power the Polls, a liberal group recruiting poll workers and also promised to help with ballot curing.[124]

CTCL sent experienced election staffers to the office of the Milwaukee Election Commissioner, one of which ultimately took over Green Bay's election planning from the official charged with running the election.[125] That staffer was provided a daily update on the number of absentee ballots returned and still outstanding, and he also asked for direct access to the Milwaukee Election Commission's voter database.[126] As CTCL recommended staffers came into election offices, they pushed out career officials who were not confrontable with providing private actors sensitive election information. In fact, some CTCL recommended staffers access voting machines before election night and were seen touching ballots and giving orders to poll workers without authority to do so.[127] When claims of impropriety were filed with the Wisconsin Election Commission, the Commission dismissed them arguing it did not have statutory authority over private grant funding.[128]

Some cities, like Racine, had unspent CTCL funds from the 2020 election and chose to spend them in the 2022 midterm election. The Racine City Clerk chose to use remaining CTCL funds on a mobile

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[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] Hemingway, *supra* note 10.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*

voting unit (i.e. an election van) for the August 2022 primary.[129] The van stopped at nearly two dozen sites for several hours of in-person absentee voting before moving to other sites over the course of two weeks prior to election day.[130] The Racine County Circuit Court later found that the mobile voting van violated Wisconsin law because it was deployed almost entirely in areas that provided a partisan advantage to Democratic voters, and because the use of a mobile voting vehicle lacked statutory authority.[131]

In April of 2024, Wisconsin voters approved a statewide referendum to amend the Wisconsin constitution to prohibit Zuckerbucks with 54 percent of voters supporting the amendment.[132] The constitutional amendment was required because Democratic Governor Tony Evers vetoed two different legislative proposals to prohibit the use of Zuckerbucks.[133]

CTCL'S NEW VENTURE: THE U.S. ALLIANCE FOR ELECTION EXCELLENCE

As described above, following the unprecedented influence that private money played in the 2020 presidential election, 28 States have now banned Zuckerbucks.[134] While most States have done this through the traditional legislative process, others, like Wisconsin, did it through a ballot initiative. Most importantly, these bans have come on a bipartisan basis. For example, when Pennsylvania banned Zuckerbucks in 2022, the then-Democratic governor Tom Wolf signed the ban into law.[135] Similarly, Mark Zuckerberg has publicly stated that he would provide no more election grants to CTCL and has not done so since 2020.[136]

The 28 States that have banned Zuckerbucks are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.[137]

However, even without Zuckerberg's funds, CTCL is still trying to influence U.S. elections. CTCL is currently in the midst of a five-year, $80 million program called the U.S. Alliance for Election Excellence ("the Alliance").[138] The Alliance is the reinvention of CTCL's scheme to use private funding to strongarm election policy nationwide. It has committed to distributing $80 million to 10

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[129] Lucas Vebber, *Judge Strikes Down Racine's Use of Absentee Voting Sites Which Conferred Partisan Advantages to One Party and Use of Election Van for In-Person Absentee Voting*, Wisconsin Institute for Law and Liberty (Jan. 2024), https://will-law.org/will-wins-election-integrity-lawsuit/.

[130] *Id.*

[131] Brown v. Wisconsin Election Commission, 2022CV001324, 2024 Wisc. Cir.

[132] Wisconsin Question 1, Ban on Private and Non-Governmental Funding of Election Administration Amendment, Ballotpedia (April 2024), https://ballotpedia.org/Wisconsin_Question_1,_Ban_on_Private_and_Non-Governmental_Funding_of_Election_Administration_Amendment_(April_2024).

[133] Lee, Rodeback, Ludwig, *supra* note 52.

[134] Thayer, Hayden, *supra* note 37.

[135] Peter Hall, *What legislation did Gov. Tom Wolf approve or veto during budget season*?, Pennsylvania Capital-Star (July 13, 2022), https://penncapital-star.com/campaigns-elections/what-legislation-did-wolf-veto/.

[136] Neil Vigdor, *Mark Zuckerberg Ends Election Grants*, New York Times (April 12, 2022), https://www.nytimes.com/2022/04/12/us/politics/mark-zuckerberg-midterms-elections-grant.html.

[137] Lee, Rodeback, Ludwig, *supra* note 48.

[138] Victoria Marshall, *CTCL Kicks Off 2024 Election Cycle with A New $80 Million 'Zuckbucks' Pledge*, the Federalist (Dec. 13, 2022), https://thefederalist.com/2022/12/13/ctcl-kicks-off-2024-election-cycle-with-a-new-80-million-zuckbucks-pledge/.

counties over the next five years in states such as Nevada, Wisconsin, and Michigan, among others.[139]

The Alliance has attempted to skate through States with Zuckerbucks bans like Georgia, Arizona, and North Carolina. In Georgia, DeKalb County accepted $2 million from the Alliance in 2023 for use in the 2024 elections.[140] This happened because Georgia law allowed private funds to go to a county's treasury to be appropriated for use by an election office, effectively making the Zuckerbucks ban difficult to enforce. In Arizona, Coconino County entered into a membership agreement with the Alliance and provided it with sensitive election information and its election practices.[141] And in North Carolina, both Forsyth and Brunswick County were targeted by the Alliance to become member organizations like Coconino County in Arizona.[142]

In election offices that choose to join the program, the Alliance operates Centers for Election Excellence.[143] At these centers, election offices are expected to provide substantial in-kind contributions to the Alliance, at taxpayer expense, that include helping the Alliance develop its programming.[144] In conjunction, the Alliance offers services that touch every aspect of election administration, ranging from "legal" and "political" consultation, to public relations, guidance, and assistance with recruitment and training.[145] The Alliance's goal is to gather detailed information on the inner workings of participating election offices and develop "improvement plans" to reshape the way they operate.[146]

The Alliance offers election offices several different types of membership agreements ranging from basic to premium. Member election offices agree to pay dues ranging from $1,600 to $4,800 a year, though the membership agreement automatically enrolls applicants into a scholarship program (if allowed by law) that may cover those costs.[147] The basic membership includes access to election administration resources, trainings, coaching, and consulting. It also comes with curated access to a selection of off-the-shelf, publicly-accessible election administration resources, document templates, and training materials, center-specific coaching and consulting, and invitations to numerous live and recorded trainings hosted by select Alliance partners, as well as facilitated discussions among centers concerning topics related to best practices in election administration.[148] A premium membership comes with all the benefits of a

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[139] *Id.*

[140] Fred Lucas, *How 1 Georgia County Skirted 'Zuckerbucks' Ban to Bank $2 Million Election Grant*, Daily Signal (Feb. 3, 2023), https://www.dailysignal.com/2023/02/03/how-1-georgia-county-skirted-zuckerbucks-ban-to-bank-2-million-election-grant/.

[141] Shawn Fleetwood, *Exclusive: How A Left-Wing 'Alliance' Skirted Arizona's 'Zuckbucks' Ban to Meddle In Key County's Elections*, the Federalist (Jan. 8, 2024), https://thefederalist.com/2024/01/08/exclusive-how-a-left-wing-alliance-skirted-arizonas-zuckbucks-ban-to-meddle-in-key-countys-elections/.

[142] Jason Snead, Dr. Andy Jackson, *The U.S. Alliance for Election Excellence*, Honest Elections Project, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf.

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

basic membership plus additional Center-specific coaching and consulting services.[149]

THE DISTRICT OF COLUMBIA

Under the Constitution, the District of Columbia ("DC") is not a sovereign State; rather, it serves as the federal capital district entirely under congressional control.[150] And unlike the primacy that States enjoy under the Elections Clause, the Constitution is clear that Congress can "exercise exclusive legislation *in all cases whatsoever*, over such District . . . "[151] The Supreme Court has interpreted this language broadly. Under it, Congressional ". . . power is plenary. Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes", legislating in the first instance for D.C.[152] While under the delegation of authority given to its city government by Congress, D.C. can pass election laws in the first instance, *everything* it does is subject to being overridden by Congress. This understanding is buttressed by the language in the Twenty-Third Amendment, providing D.C. the ability to appoint presidential electors, but ". . . in such manner that *Congress* may direct."[153]

CTCL granted D.C. over $600,000 in private funds to help it administer the 2020 election.[154] Even with this grant, D.C. still administered the 2020 election in an incredibly poor manner. During the 2020 Federal and local D.C. elections, D.C. chose to mail every registered voter a ballot. In the 2020 general election, the Board of Elections ("the Board") mailed 421,791 ballots, and 48,018 of them were undeliverable—more than 11 percent.[155] This rate was more than eight times the national average.[156] Unlike the 28 States that have prohibited Zuckerbucks since the 2020 presidential election, D.C. still allows election offices, including the D.C. Board of Elections, to accept private funds.[157]

In the 117th Congress, former Ranking Member on the Committee on House Administration, Representative Rodney Davis (IL–13), introduced H.R. 8528, the American Confidence in Elections Act.[158] That legislation included a similar version of Representative Tenney's H.R. 7319, the End Zuckerbucks Act of 2024.

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[149] *Id.*

[150] U.S. Const. art. I, § 8, cl. 17 "The Congress shall have Power . . . [t]o exercise exclusive Legislation in all Cases whatsoever, over such *District* (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States . . ."; *See also* U.S. Const. amend. XXIII (this amendment was adopted to give the District of Columbia representation in the Electoral College because it is not a State under the Electors Clause of Article II, § 1, cl. 2); *See also* Bolling v. Sharpe, 347 U.S. 497, 498 99 (1954) (holding that the Fourteenth Amendment's Equal Protection Clause did not apply to the District of Columbia because it is not a State.)

[151] U.S. Const. art. I, § 8, cl. 17.

[152] Palmore v. United States, 411 U.S. 389, 397–98 (1973).

[153] U.S. Const. amend. XXIII.

[154] *Supra* note 9.

[155] Martin Austermuhle, *Audit finds high number of D.C. mail ballots returned as 'undeliverable' in 2020,* NPR (Nov. 17, 2021), https://www.npr.org/local/305/2021/11/17/1056487637/audit-finds-high-number-of-d-c-mail-ballots-returned-as-undeliverable-in-2020.

[156] *Id.*

[157] Bans on Private Funding of Election Offices, Movement Advancement Project (April 2, 2024), https://www.lgbtmap.org/img/maps/citations-private-funding-bans.pdf.

[158] American Confidence in Elections Act, H.R. 8528, 117th Cong. § 2 (2022).

In the 118th Congress, Representative Bryan Steil (WI–01), introduced H.R. 4563, an updated version of the American Confidence in Elections Act.[159] ("ACE Act"), which includes a similar version of Representative Tenney's H.R. 7319, the End Zuckerbucks Act of 2024.

NEED FOR LEGISLATION

Representative Tenney's End Zuckerbucks Act of 2024 prohibits 501(c)(3) tax-exempt organizations from providing below cost services, scholarships, subsidies, or direct, in-kind, or indirect funding to official election organizations, and prohibits the District of Columbia from receiving or using funds or certain donations from private entities for the administration of any election in the District of Columbia.

As described above, the $350 million donated to CTCL by Mark Zuckerberg and his wife Priscilla Chan were meant to help election offices administer the 2020 presidential election during the COVID pandemic. The press releases describing the donations explained they would be used by CTCL to help election offices expand voter access for several purposes, none of which included voter registration drives of get-out-the-vote efforts. However, as the State data above shows, in almost every swing State that received Zuckerbucks, Democratic jurisdictions received more than Republican jurisdictions and Democrat turnout increased significantly from Hillary Clinton's 2016 totals. While these results in one or two States might be understandable, the fact it happened in every swing States above was not an accident. If Zuckerbucks were solely used for the purposes CTCL claimed they would be used for, the results above would look far differently.

The federal tax code should not permit 501(c)(3) groups like CTCL to provide private funding to election offices. As evidenced by the 2020 election, there is a serious risk that election offices become beholden and develop relationships with these organizations and take actions of questionable legality to ensure they continue receiving funds. CTCL is still developing these relationships through its new project, the U.S. Alliance for Election Excellence. In short, election offices receiving private funds do not give voters confidence that their elections are being administered in a proper way.

Twenty-eight States have recognized the massive problems associated with Zuckerbucks and have prohibited their election offices from accepting private funds. However, Zuckerbucks are still lawful in 22 States and CTCL's new venture, the U.S. Alliance for Election Excellence, is working to skirt around State Zuckerbucks bans. As a result, CTCL and other 501(c)(3) organizations are attempting to influence the 2024 presidential election in the same way they did in the 2020 presidential election. However, CTCL and other groups are likely to abandon their efforts if they lose their 501(c)(3) tax-exempt status.

Congress has a responsibility to exercise its constitutional authority over D.C. to enact common-sense election reforms that give voters confidence in the capital city's elections. The nation's seat of government should administer the best elections in the country,

[159] American Confidence in Elections Act, H.R. 4562, 118th Cong. § 1 (2023).

serving as an example of seamless democracy. As such, the legislation prohibits election offices in D.C. from accepting Zuckerbucks. This will give D.C. voters confidence that their election offices are not being influenced by private actors and will give the nation an example for legislation that the remaining 22 States that have not banned Zuckerbucks can look toward as model legislation.

Under the federal tax code, houses of worship and community centers are often organized as 501(c)(3) tax-exempt organizations. As such, the legislation has a rule of construction to ensure these facilities, and similar private or public facilities do not lose their 501(c)(3) tax-exempt status if they serve as a polling place for a primary or general election. Similarly, in D.C., these facilities can serve as polling places under the legislation's D.C. Zuckerbucks prohibition.

In their dissenting views, Committee Democrats first bemoan "the funding crisis for elections administrators" as the fiscal year 2023 omnibus provided $75 million in Election Security Grants and the fiscal year 2022 omnibus contained the same amount.[160] This attack is wildly misplaced. The fiscal year 2022 omnibus was drafted and passed when Democrats controlled the House, Senate, and presidency. The fiscal year 2023 omnibus was drafted and passed with a small Republican majority in the House, and Democrat control of the Senate and presidency. If Democrats are concerned about existing federal election funds, they have themselves to blame. Committee Democrats also point out at the February 14th markup of H.R. 7319 that they provided an amendment to fund election administrators.[161] While the Committee voted the amendment down, many members recognized that the Committee on House Administration does *not* have jurisdiction over appropriations.[162]

At the heart of their dissenting views, Committee Democrats argue that Republicans are opposed to Zuckerbucks because they believe the funds helped Joe Biden get elected president, which Democrats view as a conspiracy theory. Ironically, Committee Democrats cannot disagree with any of the facts provided above nor do they try. While Zuckerbucks might not have won Joe Biden the presidency, there is no doubt they helped him significantly. The main problem for Committee Democrats lies in the fact that CTCL is a left-wing organization. Its founders and those in key leadership positions are all life-long Democrats. If CTCL was run by Republicans and distributing funds from Ken Griffin or Charles Koch, Committee Democrats would enthusiastically support H.R. 7319.

Finally, Committee Democrats again argue that H.R. 7319 "violates the principles of Home Rule for the residents of the District of Columbia . . ."[163] However, as explained above, the Constitution gives States the primary authority over election administration while also granting Congress complete control over DC Therefore, it is appropriate for Congress to treat the District of Columbia differently than the sovereign States.

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[160] Dissenting Views at 2.
[161] Dissenting Views at 5.
[162] Rules of the United States House of Representatives, Rule X(b)(1), https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf.
[163] Dissenting Views at 5.

COMMITTEE ACTION

INTRODUCTION AND REFERRAL

On February 13, 2024, Representative Claudia Tenney (NY–24), joined by Representative Tom Cole (OK–04), introduced H.R. 7319, End Zuckerbucks Act of 2024. The bill was referred to the U.S. House of Representatives Committee Ways and Means and the Committee on House Administration.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee held four full committee hearings and one subcommittee hearing to develop H.R. 7319.

1. On April 27, 2023, the Committee held a full committee hearing titled, "American Confidence in Elections: State Tools to Promote Voter Confidence." The hearing focused on Title I of H.R. 4563, the American Confidence in Elections Act, what tools States need to boost voter integrity and strengthen voter confidence, and how the federal government can provide States with access to the information needed to accomplish these goals. Witnesses included the Honorable Ken Cuccinelli, Chairman, Election Transparency Initiative, the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, the Honorable Mac Warner, West Virginia Secretary of State, the Honorable Donald Palmer Commissioner, U.S. Election Assistance Commission, and Mr. Joseph Paul Gloria, Chief Executive Officer for Operations, Election Center.[164]

2. On May 24, 2023, the Committee on House Administration Subcommittee on Elections held a subcommittee hearing titled, "American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law." The hearing highlighted the strong election integrity reforms that have passed throughout several States and how important it is for States to learn from other States' successes in the election arena. Witnesses included: Mr. Joseph Burns, Lawyer, Law Office of Joseph T. Burns, PLLC, Ms. Lisa Dixon, Executive Director, Lawyers Democracy Fund (now the Center for Election Confidence), Mr. Thor Hearne, Founding Partner, True North Law, LLC, The Honorable Scot Turner, Executive Director, Eternal Vigilance Action Inc., and Mr. Deuel Ross, Deputy Director of Litigation, NAACP Legal Defense and Educational Fund, Inc.[165]

3. On June 7, 2023, the Committee held a joint committee hearing with the Committee on Oversight and Accountability titled, "American Confidence in Elections: The Path to Election Integrity in the District of Columbia." The hearing focused on election administration problems in the District of Columbia and the national importance of implementing necessary reforms in the nation's capital city. Witnesses included: The Hon-

[164] *American Confidence in Elections: State Tools to Promote Voter Confidence: Hearing Before the H. Comm. On Admin.,* 118th Cong. (2023).

[165] *American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law: Hearing Before the Subcomm. On Elections of the H. Comm. On Admin.,* 118th Cong. (2023).

orable Ken Cuccinelli, Chairman, Election Transparency Initiative, Mr. Charles Spies, Member, Dickinson Wright, PLLC, Ms. Monica Evans, Executive Director, D.C. Board of Elections, and Ms. Wendy R. Weiser, Vice President, Democracy, Brennan Center for Justice.[166]

4. On July 10, 2023, the Committee held a full committee field hearing titled, "American Confidence in Elections: The Path to Election Integrity Across America." The hearing outlined the newly introduced H.R. 4563, the American Confidence in Elections Act, and highlighted the successes of S.B. 202 (Georgia), 2021. Witnesses included the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, Dr. Kathleen Ruth, former Vice Chair, Fulton County, Georgia, Board of Registration and Elections, Mrs. Vernetta Keith Nuriddin, Elections Consultant, City of Milton, Georgia, and Ms. Cathy Woolard, Chair, Fulton County, Georgia, Board of Registration and Elections.[167]

5. On February 7th, 2024, the Committee held a full committee hearing titled, "American Confidence in Elections: Confronting Zuckerbucks, Private Funding of Election Administration." The hearing focused on the influence private funding has on the administration of U.S. elections and the importance of removing the tax-exempt status for private groups that provide funding to election offices. Witnesses included Dr. Will Flanders, Research Director at the Wisconsin Institute for Law & Liberty, Ms. Mollie Hemingway, a journalist and national best-selling author, Mr. Scott Walter, President of the Capital Research Center, and Dr. Zachary Mohr, an associate professor at the University of Kansas.[168]

COMMITTEE CONSIDERATION

On February 14, 2024, the U.S. House Committee on House Administration met in open session and ordered the bill, H.R. 7319, End Zuckerbucks Act of 2024 reported favorably to the House of Representatives, by a record vote of six to three, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee's consideration of H.R. 7319:

1. Vote on an amendment to H.R. 7319, offered by Mr. Morelle, failed by a record vote of 6 noes and 3 ayes. Noes: Steil, B., Loudermilk, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A. Ayes: Morelle, J., Sewell, T., Kilmer, D.

2. Vote on an amendment in the nature of a substitute to H.R. 7319 offered by Mr. Steil, adopted by voice vote.

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[166] *American Confidence in Elections: The Path to Election Integrity in the District of Columbia: Hearing Before the H. Comm. On Admin. and the H. Comm. On Oversight and Accountability,* 118th Cong. (2023).

[167] *American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. On Admin.,* 118th Cong. (2023).

[168] *American Confidence in Elections: Confronting Zuckerbucks, Private Funding of Election administration.", Hearing Before the H. Comm. On Admin.,* 118th Cong. (2024).

3. Vote to report H.R. 7319 ANS favorably to the House of Representatives, passed by a record vote of 6 ayes and 3 noes. Ayes: Steil, B., Loudermilk, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A. Noes: Morelle, J., Sewell, T., Kilmer, D.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- The Sixteenth Amendment—"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." [169]
- Article I, Section 8, Clause 17—"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States; . . ." [170]
- Article I, Section 8, Clause 18—"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [171]

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 7319, and it is likely this legislation would result in increased revenue because if CTCL and other 501(c)(3) organizations were to continue their current practices, they would lose their tax-exempt status under the legislation and be required to pay federal income tax.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of

[169] U.S. Const. Amend. XVI.
[170] U.S. Const. art. I, § 8, cl. 17. *See also* Palmore v. United States, 411 U.S. 389, 397–98 (1973).
[171] U.S. Const. Art. I, § 8, cl. 18.

the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 7319 are to prohibit 501(c)(3) tax-exempt organizations from providing below cost services, scholarships, subsidies, or direct, in-kind, or indirect funding to official election organizations, and prohibit D.C. from receiving or using funds or certain donations from private entities for the administration of any election in the District of Columbia. Following the 2020 election, 28 States have prohibited election offices from accepting Zuckerbucks. However, as Zuckerbucks are still lawful in 22 States and CTCL is attempting to skirt around State Zuckerbucks bans, this legislation removes the tax-exempt status for 501(c)(3) groups like CTCL and prohibits any election office in the D.C. from accepting Zuckerbucks.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 7319 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 7319 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

H.R. 7319 does not establish or authorize any new advisory committees.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section provides the short title of the bill, "End Zuckerbucks Act of 2024".

Section 2.

Section (a)(2) removes 501(c)(3) tax-exempt status for organizations that participate in activities including below-cost services, scholarships, subsidies, direct or in-kind, or indirect funding to official election organizations.

Section (b) clarifies that section (a)(2) should not prevent houses of worship, community centers, or similar private or public facilities from serving as polling locations for elections.

Section (c) makes section two of this legislation effective after December 31, 2025.

Section 3.

Section (a) provides the short title of this section of the bill to be the "American Confidence in Elections: Protect District of Columbia Election Administration Act".

Section (b) amends the Help America Vote Act to prohibit the District of Columbia from accepting payments or donations from private entities for the purpose of administering District of Columbia elections or election programs including voter education, voter outreach, and voter registration.

Section (b) also clarifies that the above language should not prevent houses of worship, community centers, or similar private or public facilities from serving as polling locations for elections.

Section (c) defines the District of Columbia election to mean any election for public office in the District of Columbia including elections for federal office and ballot initiatives or referendums.

Section (e) makes the Act effective for all District of Columbia elections upon enactment of the legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter F—EXEMPT ORGANIZATIONS

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PART I—GENERAL RULE

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SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), **[**and which does not participate**]** *which does not participate* in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office**[**.**]**, *and which does not provide below-cost services, scholarships, subsidies, or direct, in-kind, or indirect funding to official election organizations, including any State or local government entity or any government election organization.*

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or

local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but

only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

(iv) from any nuclear decommissioning transaction, or

(v) from any asset exchange or conversion transaction.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for

use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(E) For purposes of subparagraph (C)(ii), the term "FERC" means—

(i) the Federal Energy Regulatory Commission, or

(ii) in the case of any utility with respect to which all of the electricity generated, transmitted, or distributed by such utility is generated, transmitted, distributed, and consumed in the same State, the State agency of such State with the authority to regulate electric utilities.

(F) For purposes of subparagraph (C)(iv), the term "nuclear decommissioning transaction" means—

(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(v), the term "asset exchange or conversion transaction" means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

(i) generating, transmitting, distributing, or selling electric energy, or

(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term "load loss transaction" means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term "base year" means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(I) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2), income received or accrued in connection with an election under section 45J(e)(1) shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(J) In the case of a mutual or cooperative telephone or electric company described in this paragraph, subparagraph (A) shall be applied without taking into account any income received or accrued from—

(i) any grant, contribution, or assistance provided pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act or any similar grant, contribution, or assistance by any local, State, or regional governmental entity for the purpose of relief, recovery, or restoration from, or preparation for, a disaster or emergency, or

(ii) any grant or contribution by any governmental entity (other than a contribution in aid of construction or any other contribution as a customer or potential customer) the purpose of which is substantially related to providing, constructing, restoring, or relocating electric, communication, broadband, internet, or other utility facilities or services.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b).

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

(i)(I) the gross receipts for the taxable year do not exceed $600,000, and

(II) more than 50 percent of such gross receipts consist of premiums, or

(ii) in the case of a mutual insurance company—

(I) the gross receipts of which for the taxable year do not exceed $150,000, and

(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii),[1] except that in applying section 831(b)(2)(B)(ii) [1] for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation be-

cause it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unem-

ployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liabil-

ity of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

(i) the fair market value of the assets of the trust, over

(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term "qualified investments" means—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7)) located in the United States.

(iii) The term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term "incidental expenses" includes legal, accounting, actuarial, and trustee expenses.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(D),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable,

section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(26) Any membership organization if—

(A) such organization is established by a State exclusively to provide coverage for medical care (as defined in section 213(d)) on a not-for-profit basis to individuals described in subparagraph (B) through—

(i) insurance issued by the organization, or

(ii) a health maintenance organization under an arrangement with the organization,

(B) the only individuals receiving such coverage through the organization are individuals—

(i) who are residents of such State, and

(ii) who, by reason of the existence or history of a medical condition—

(I) are unable to acquire medical care coverage for such condition through insurance or from a health maintenance organization, or

(II) are able to acquire such coverage only at a rate which is substantially in excess of the rate for such coverage through the membership organization,

(C) the composition of the membership in such organization is specified by such State, and

(D) no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).

(27)(A) Any membership organization if—

(i) such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) such State requires that the membership of such organization consist of—

(I) all persons who issue insurance covering workmen's compensation losses in such State, and

(II) all persons and governmental entities who self-insure against such losses, and

(iii) such organization operates as a non-profit organization by—

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

(B) Any organization (including a mutual insurance company) if—

(i) such organization is created by State law and is organized and operated under State law exclusively to—

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.

(29) CO–OP HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO–OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph,

(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or individual,

(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.—For purposes of this title, an organization shall be treated as an organiza-

tion organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 81/2 months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) COOPERATIVE SERVICE ORGANIZATIONS OF OPERATING EDUCATIONAL ORGANIZATIONS.—For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115,

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) DEFINITION OF AGRICULTURAL.—For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) EXPENDITURES BY PUBLIC CHARITIES TO INFLUENCE LEGISLATION.—

(1) GENERAL RULE.—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) DEFINITIONS.—For purposes of this subsection—

(A) LOBBYING EXPENDITURES.—The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) LOBBYING CEILING AMOUNT.—The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) GRASS ROOTS EXPENDITURES.—The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) GRASS ROOTS CEILING AMOUNT.—The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) ORGANIZATIONS TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) ORGANIZATIONS PERMITTED TO ELECT TO HAVE THIS SUBSECTION APPLY.—An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 170(b)(1)(A)(ix) (relating to agricultural research organizations),

(F) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(G) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) DISQUALIFIED ORGANIZATIONS.—For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) YEARS FOR WHICH ELECTION IS EFFECTIVE.—An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) NO EFFECT ON CERTAIN ORGANIZATIONS.—With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) AFFILIATED ORGANIZATIONS.—For rules regarding affiliated organizations, see section 4911(f).

(i) PROHIBITION OF DISCRIMINATION BY CERTAIN SOCIAL CLUBS.—Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any

person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) SPECIAL RULES FOR CERTAIN AMATEUR SPORTS ORGANIZATIONS.—

(1) IN GENERAL.—In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) QUALIFIED AMATEUR SPORTS ORGANIZATION DEFINED.—For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) TREATMENT OF CERTAIN ORGANIZATIONS PROVIDING CHILD CARE.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (C)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A [1] of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.

(m) CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE NOT EXEMPT FROM TAX.—

(1) DENIAL OF TAX EXEMPTION WHERE PROVIDING COMMERCIAL-TYPE INSURANCE IS SUBSTANTIAL PART OF ACTIVITIES.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) OTHER ORGANIZATIONS TAXED AS INSURANCE COMPANIES ON INSURANCE BUSINESS.—In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) COMMERCIAL-TYPE INSURANCE.—For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) INSURANCE INCLUDES ANNUITIES.—For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) CHARITABLE GIFT ANNUITY.—For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) CHARITABLE RISK POOLS.—

(1) IN GENERAL.—For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) QUALIFIED CHARITABLE RISK POOL.—For purposes of this subsection, the term "qualified charitable risk pool" means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which meets the organizational requirements of paragraph (3).

(3) ORGANIZATIONAL REQUIREMENTS.—An organization (hereinafter in this subsection referred to as the "risk pool") meets the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if, within a reasonable period of time after such pool is notified as required under subparagraph (E)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) OTHER DEFINITIONS.—For purposes of this subsection—

(A) STARTUP CAPITAL.—The term "startup capital" means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) NONMEMBER CHARITABLE ORGANIZATION.—The term "nonmember charitable organization" means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(o) TREATMENT OF HOSPITALS PARTICIPATING IN PROVIDER-SPONSORED ORGANIZATIONS.—An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1855(d) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.

(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) ERRONEOUS DESIGNATION.—

(A) IN GENERAL.—If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(q) SPECIAL RULES FOR CREDIT COUNSELING ORGANIZATIONS.—

(1) IN GENERAL.—An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization—

(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which—

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body—

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(E) The organization does not own more than 35 percent of—

(i) the total combined voting power of any corporation (other than a corporation which is an organization

described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

(2) ADDITIONAL REQUIREMENTS FOR ORGANIZATIONS DESCRIBED IN SUBSECTION (C)(3).—

(A) IN GENERAL.—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

(B) APPLICABLE PERCENTAGE.—

(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

(ii) TRANSITION RULE.—Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is—

(I) 80 percent for the first taxable year of such organization beginning after the date which is 1

year after the date of the enactment of this subsection, and

(II) 70 percent for the second such taxable year beginning after such date, and

(III) 60 percent for the third such taxable year beginning after such date.

(3) ADDITIONAL REQUIREMENT FOR ORGANIZATIONS DESCRIBED IN SUBSECTION (C)(4).—In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

(4) CREDIT COUNSELING SERVICES; DEBT MANAGEMENT PLAN SERVICES.—For purposes of this subsection—

(A) CREDIT COUNSELING SERVICES.—The term "credit counseling services" means—

(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

(iii) a combination of the activities described in clauses (i) and (ii).

(B) DEBT MANAGEMENT PLAN SERVICES.—The term "debt management plan services" means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

(r) ADDITIONAL REQUIREMENTS FOR CERTAIN HOSPITALS.—

(1) IN GENERAL.—A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

(A) meets the community health needs assessment requirements described in paragraph (3),

(B) meets the financial assistance policy requirements described in paragraph (4),

(C) meets the requirements on charges described in paragraph (5), and

(D) meets the billing and collection requirement described in paragraph (6).

(2) HOSPITAL ORGANIZATIONS TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to—

(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its

exemption under subsection (c)(3) (determined without regard to this subsection).

(B) ORGANIZATIONS WITH MORE THAN 1 HOSPITAL FACILITY.—If a hospital organization operates more than 1 hospital facility—

(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

(3) COMMUNITY HEALTH NEEDS ASSESSMENTS.—

(A) IN GENERAL.—An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

(B) COMMUNITY HEALTH NEEDS ASSESSMENT.—A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

(ii) is made widely available to the public.

(4) FINANCIAL ASSISTANCE POLICY.—An organization meets the requirements of this paragraph if the organization establishes the following policies:

(A) FINANCIAL ASSISTANCE POLICY.—A written financial assistance policy which includes—

(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

(ii) the basis for calculating amounts charged to patients,

(iii) the method for applying for financial assistance,

(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of nonpayment, including collections action and reporting to credit agencies, and

(v) measures to widely publicize the policy within the community to be served by the organization.

(B) POLICY RELATING TO EMERGENCY MEDICAL CARE.—A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their

eligibility under the financial assistance policy described in subparagraph (A).

(5) LIMITATION ON CHARGES.—An organization meets the requirements of this paragraph if the organization—

(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the amounts generally billed to individuals who have insurance covering such care, and

(B) prohibits the use of gross charges.

(6) BILLING AND COLLECTION REQUIREMENTS.—An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

(7) REGULATORY AUTHORITY.—The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).

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HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

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SEC. 304. PROHIBITION AGAINST THE RECEIPT OR USE OF FUNDS OR CERTAIN DONATIONS FROM PRIVATE ENTITIES FOR THE ADMINISTRATION OF A DISTRICT OF COLUMBIA ELECTION.

(a) IN GENERAL.—The District of Columbia may not solicit, receive, or expend any payment or donation of funds, property, or personal services from a private entity for the purpose of the administration of a District of Columbia election, including any programs with respect to voter education, voter outreach, and voter registration.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a house of worship, community center, or similar private or public facility from serving as a polling place in a District of Columbia election.

(c) DISTRICT OF COLUMBIA ELECTION DEFINED.—In this section, the term "District of Columbia election" means any election for public office in the District of Columbia, including an election for Federal office, and any ballot initiative or referendum.

SEC. [304.] *305.* MINIMUM REQUIREMENTS.

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

SEC. [305.] *306.* METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

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TITLE IV—ENFORCEMENT

SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-

discriminatory election technology and administration requirements under sections 301, 302, [and 303] *303, and 304*.

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MINORITY VIEWS

ELECTION ADMINISTRATION IS UNDERFUNDED IN THE UNITED STATES

Election administrators from across the United States have told the Committee, repeatedly, that they desperately need additional funding to run safe and secure elections upon which our democracy rests. According to the United States Election Assistance Commission, between 2003 and September 30, 2021, over $4 billion in federal funds were awarded across the 50 states, the District of Columbia, and the five U.S. territories.[1] In 2018 and 2020, Congress appropriated a combined $805 million to improve federal election administration, with an emphasis on security enhancements to election systems—$380 million in FY2018 (which was the first time since 2010 that Congress made resources available through the Help America Vote Act in support of federal election improvements[2]) and $425 million in FY2020—including $400 million under the CARES Act in for improvements or supplements necessary in response to the COVID–19 pandemic.[3] The funds appropriated under the CARES Act, however, required jurisdictions to match federal funding with state or municipal funds,[4] a potentially significant expenditure for many jurisdictions with financial limitations. By 2023, various states had returned over $63 million of the $400 million in CARES Act funding to the federal government.[5]

Because of the magnitude of the pandemic and the unique scale of the support needed by election administrators in 2020, even with the substantial CARES Act investment, "Congress did not fully fund local election departments during the pandemic."[6] Even before the pandemic, the quality of election administration in the United States diverged significantly from jurisdiction to jurisdiction: "An election department in an impoverished jurisdiction—funded by that impoverished jurisdiction's tax revenue—will usually have fewer voting locations, worse communication to voters, and fewer staff members."[7] With the onset of the pandemic, and the extreme costs associated with running an election during a

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[1] *2021 Grant Expenditure Report: October 1, 2020–September 30, 2021,* ELEC. ASSIST. COMM. (July 2022), at https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC_2021_Grant_Expenditure_Report_FINAL.pdf.

[2] *Id.*

[3] *Id.*

[4] *Guidance on Meeting Match in CARES Act Grants under HAVA,* ELECTION ASSISTANCE COMM'N (Mar. 31, 2023), https://www.eac.gov/grants/guidance-meeting-match-cares-act-grants-under-hava.

[5] *Quarterly Report to the Pandemic Response Accountability Committee,* ELECTION ASSISTANCE COMM'N (Jul. 10, 2023), https://www.eac.gov/sites/default/files/2023 07/15011_Quarterly_Report_on_CARES_Funding_Due_July_10_2023.pdf.

[6] *Final Report on 2020 COVID–19 Response Grant Program and CTCL 990s,* CTR. FOR TECH & CIVIC LIFE (Dec. 15, 2021), https://www.techandciviclife.org/2020covidsupport/ [hereinafter CTCL Final Report].

[7] *Id.*

once-in-a-century health crisis, many jurisdictions were unable to meet the COVID–19-related service burden.[8]

The funding crisis for elections administrators has not abated since 2020. The FY2023 Omnibus provided $75 million for Election Security Grants to help states secure election systems and improve election administration, and the FY2022 Omnibus also provided $75 million in Election Security Grant funding. But even with this money, "elections offices are left with limited options to meet urgent gaps in equipment, personnel, and facilities."[9] The President's FY2024 budget request proposed $5 billion in new elections assistance funding allocated over the next 10 years, but that has not yet been appropriated.

H.R. 7319 would tie the hands of state and local election administrators, barring them from receiving philanthropic, non-profit, non-partisan support to supplement their all-to-often meagre budgets. They are doing so because they cannot move on from their 2020 Big Lie conspiracy theorizing.

H.R. 7319 IS INSPIRED BY 2020 BIG LIE CONSPIRACY THEORIES

On September 1, 2020—in the face of the global COVID–19 pandemic—Mark Zuckerberg (Facebook co-founder) and his wife, Pricilla Chan (philanthropist and former pediatrician), donated $300 million to "to promote safe and reliable voting in states and localities."[10] Of the $300 million, Chan and Zuckerberg committed $250 million to the Center for Tech and Civic Life ("CTCL"), and $50 million to the Center for Election Innovation and Research.[11] On October 13, 2020, Chan and Zuckerberg contributed an additional $100 million to CTCL "to meet overwhelming demand."[12]

CTCL distributed the $350 million donation from Chan and Zuckerberg, in the form of grants, "to nearly 2,500 U.S. election departments spanning 47 states."[13] Republicans sometimes refer to these grants as "Zuckerbucks." Every Republican on the Committee represents at least one county or city that accepted CTCL money during the 2020 election.[14] Jurisdictions were able to apply for the grants, but no jurisdiction was required to accept grant money from CTCL.[15] There were no partisan questions on the grant application and CTCL did not make grant decisions on a partisan basis; jurisdictions spanning the political spectrum received money.[16]

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[8] *See generally* Charles Stewart III, *The Cost of Conducting Elections*, MIT ELECTION DATA + SCIENCE LAB (May 2022), https://electionlab.mit.edu/sites/default/files/2022-05/TheCostofConductingElections-2022.pdf.

[9] *League Urges Congress to Preserve funding for elections,* LEAGUE OF WOMEN VOTERS (Sept. 28, 2023), https://www.lwv.org/expanding-voter-access/league-urges-congress-preserve-funding-elections.

[10] Press Release, Ctr. for Tech & Civic Life, Priscilla Chan and Mark Zuckerberg Commit $300 Million Donation to Promote Safe and Reliable Voting During Covid–19 Pandemic (Sept. 1, 2020), https://s3.documentcloud.org/documents/7070695/CTCL-CEIR-Press-Release-9-1-20-FINAL.pdf [hereinafter CTCL September Press Release].

[11] *Id.*

[12] Press Release, CTCL Receives Additional $100M Contribution to Support Critical Work of Election Officials (Oct. 13, 2020), https://www.techandcivicife.org/100m/.

[13] *10 Facts About CTCL & the COVID–19 Response Grant Program,* CTR. FOR TECH & CIVIC LIFE (Oct. 14, 2021), https://www.techandcivicife.org/10-facts-about-ctcl-grants/.

[14] *CTCL Program Awards Over 2,500 COVID–19 Response Grants,* CTR. FOR TECH & CIVIC LIFE (Oct. 29, 2021), https://www.techandcivicife.org/grant-awards/.

[15] CTCL Final Report *supra* note 6.

[16] *Id.*

According to the CTCL press release announcing the donation from Chan and Zuckerberg, the grant money was distributed to support:

- Poll worker recruitment, hazard pay, and training.
- Polling place rental.
- Temporary staffing support.
- Drive-through voting.
- Equipment to process ballots and applications.
- Personal protective equipment ("PPE") for poll workers.
- Nonpartisan voter education.[17]

There was initially bipartisan enthusiasm for the donation from Chan and Zuckerberg. For example, in response to the donation Ben Ginsberg, the former national counsel to the 2000 and 2004 campaigns of President Bush and a longtime Republican election attorney, declared that:

> The [Chan-Zuckerberg] private money is needed. The reality is that elections are rarely a priority of the state and local jurisdictions that must pay for them . . . Congress appropriated $400 million in emergency elections funds at the beginning of the year under the CARES relief act but did not heed the requests of local and state jurisdictions for more. Both Republicans and Democrats have said it's not enough . . . Into this void have, laudably, stepped private donors.[18]

And when the funds were distributed, Ohio Secretary of State Frank LaRose, a Republican, declared that "Americans need to know now more than ever how to make their voice heard in this fall's election. That requires getting them the information they need from trusted sources, and these dollars [from Chan and Zuckerberg] are going to go a long way to making that happen."[19]

As CTCL observed,[20] the money the organization distributed was, at least in part, effective in helping election administrators run safe elections in the midst of the pandemic: The 2020 election was "the most secure in United States history,"[21] with voter turnout soaring across the United States.[22]

In the conservative ecosystem, theories related to CTCL were widespread. One majority hearing witness, for example, claimed in a discussion with conservative legal activist Cleta Mitchell that "Mark Zuckerberg [through CTCL grants] spent over $400 million

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[17] CTCL September Press Release *supra* note 10.

[18] Ben Ginsberg, *A powerful way for the GOP to show they care about voting,* CNN (Oct. 30, 2020), https://www.cnn.com/2020/10/30/opinions/election-2020-private-funds-vote-ginsberg/index.html.

[19] Maggie Miller, *Mark Zuckerberg, Priscilla Chan donate $300M to promote safe, secure elections,* THE HILL (Sept. 1, 2020), https://thehill.com/policy/cybersecurity/514593-mark-zuckerberg-priscilla-chan-donate-300-million-to-promote-safe-and/.

[20] CTCL Final Report *supra* note 6.

[21] Press Release, Cybersecurity & Infrastructure Security Agency, Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees (Nov. 12, 2020), https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election.

[22] Drew DeSilver, *Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president*, PEW RESEARCH CTR. (Jan. 28, 2021), https://www.pewresearch.org/short-reads/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/.

to turn out the Democratic vote for Biden in 2020."[23] Another majority hearing witness claimed—without evidence—that CTCL grants were both misspent and misappropriated to Democratic-leaning counties in order to spur the vote for Democrats.[24]

The conspiracy theories about the CTCL grants have been thoroughly debunked.[25] A judge in Dane County, Wisconsin noted that "[t]here is nothing . . . demonstrating that the CTCL money was used to disadvantage certain populations over others."[26] The Federal Election Commission voted unanimously—including all three Republican commissioners—to find "no reason to believe that Priscilla Chan and Mark Zuckerberg" violated federal law.[27] A joint report from AEI and the MIT Election Data + Science Lab determined that "[d]espite some concerns that these funds may have been given with partisan intent, there is no evidence that the funds were distributed on a political basis."[28] And a magistrate judge in Colorado sanctioned attorneys who brought a lawsuit on the basis of, among other things, conspiracy theories about CTCL, writing that the lawsuit was "filed in bad faith."[29] Despite the mountain of evidence, many conservatives—including a number of House Republicans—claim that the CTCL grants undermined the outcome of the 2020 election.

COMMITTEE REPUBLICANS REJECTED AN AMENDMENT TO FULLY FUND AMERICAN ELECTIONS

Having heard, time and again, from election officials, Committee Democrats recognize the significant costs of conducting the elections that define the very soul of this country. At the Committee mark-up of H.R. 7319, Committee Democrats offered an amendment to finally give election administrators the funding they need. In his FY2024 budget, President Biden called on Congress to appropriate $5 billion dollars—over the course of a decade—to support election administrators across the United States. This amendment would have authorized that vital appropriation to this bill, because if H.R. 7319 bars election administrators from receiving much-needed supplemental support from non-partisan, non-profit organizations, the least Congress can do is ensure officials have the resources they need to run safe, free, and fair elections. The amendment would also have required the Election Assistance Commission seek input from a bipartisan group of state and local elec-

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[23] Scott Walter, *Zuckerberg's $400 Million to Turn Out Votes for Biden*, CAPITAL RESEARCH CTR. (Jan. 7, 2022), https://capitalresearch.org/article/zuckerbergs-400-million-to-turn-out-votes-for-biden/.

[24] Mollie Hemingway, *Facts about Zuck Bucks: How he helped swing the electorate in 2020*, N.Y. POST (Oct. 13, 2021), https://nypost.com/2021/10/13/how-mark-zuckerberg-helped-swing-the-electorate-in-the-2020-election/.

[25] Walter Olson, *"Zuckerbucks" Didn't Throw the 2020 Election*, CATO INST. (Sept. 12, 2022), https://www.cato.org/blog/zuckerbucks-didnt-throw-2020-election.

[26] Scott Bauer, *Wisconsin judge upholds legality of private election grants*, AP (Jun. 1, 2022), https://apnews.com/article/2022-midterm-elections-covid-health-chicago-lawsuits-4f9318cf7cbc01cd117a21395b44615d.

[27] Factual and Legal Analysis at 1, MURs 7854, 7946, https://www.fec.gov/files/legal/murs/7854/7854_25.pdf.

[28] *Lessons Learned from the 2020 Election: Report to the U.S. Election Assistance Commission,* AEI & MIT ELECTION DATA + SCIENCE LAB (Sept. 2021), https://electionlab.mit.edu/sites/default/files/2021-09/Lessons-Learned-in-the-2020-Election.pdf.

[29] Order Granting Defendants' Motions for Sanctions, *O'Rourke et al. v. Dominion Voting Systems et al.* (D. Colo. 2021), https://storage.courtlistener.com/recap/gov.uscourts.cod.203235/gov.uscourts.cod.203235.136.0.pdf.

tion administrators and submit a report to the Director of the Office of Management and Budget, to ensure that the voices and views of local officials are heard in the budgeting process.

Committee Republicans unanimously rejected the common-sense amendment.

H.R. 7319 VIOLATES THE SOVEREIGNTY OF THE PEOPLE OF WASHINGTON, D.C.

Finally, H.R. 7319 would specifically prohibit Washington, D.C. from receiving supplemental election assistance from non-profit, non-partisan sources. This bill—like others considered previously by this Committee—violates the principles of Home Rule for the residents of the District of Columbia that Committee Democrats have long supported.

JOSEPH D. MORELLE,
Ranking Member.

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