



A PODCAST WITH RUSTY STAHL | S7 EP23

Nonprofits, the U.S. Constitution & the ACLU

Defend Nonprofits! Defend Democracy! Series

WITH

Mike Zamore
ACLU



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RUSTY (NOTE)

Hey, everybody. It's Rusty. Thanks for listening to the show. A quick note before we really get started here. Today, the day of publication of this episode is Wednesday, May 14th, 2025. But we recorded it on Friday, May 9th, 2025 and when we recorded this last Friday, there were things we didn't know that you know now and I know now.

So we didn't know that the House Ways and Means Committee was going to unveil a little bit of their bill on Friday evening, the part that was just renewing the tax cuts from 2017. And we didn't know that on Monday they would unveil the portion of the bill that is really controversial and provocative and harmful, beyond the tax cuts being harmful.

We didn't know that this bill was going to include a tax hike on charities. We didn't know this bill was going to include a tax hike on philanthropy and private foundations. We didn't know that the bill would include a way to punish nonprofits and working class Americans for health care through sort of mangling of Medicaid.

We didn't know on the plus side that the language in the bill would reinstate a universal charitable deduction for non itemizers. So that's a good thing, very happy about that.

Back to the negative side of the ledger, we didn't know that the bill would include an effort to further terrorize nonprofits by enabling the Treasury Secretary to accuse us of supporting terrorism whenever they like without offering evidence. So we didn't know that they were going to dig up from the grave the zombie H.R. 9495 bill and put it into their tax bill, their big, bloated tax hike of a bill.

So that stuff is not in this episode, but this episode is highly valuable, nevertheless. And Mike Zamore, our guest from the ACLU, talks about fighting H.R. 9495 last year in the fall. And so it's actually super relevant in that sense. And the call to action for red state nonprofits and all nonprofits is more relevant than ever this week, more relevant than when we recorded. And the message, our message about solidarity among us in nonprofits and philanthropy, in the social sector and civil society, and all of our infrastructure groups, that is more relevant than ever this week. So enjoy the episode and make sure you subscribe, make sure you follow us on LinkedIn, where we're posting updates and reposting updates from others.

Also tomorrow on Thursday, May 15th at 11 a.m., we're going to have a discussion with at least one speaker from the ACLU, not Mike, but someone else who's been working on this bill and hopefully some other speakers. So hopefully by the time you're listening to this, there'll be more information about that. But I wanted to make sure you hold that time on your calendars. So Thursday, May 15th, 11 a.m. Eastern time. Okay. Thanks so much. Talk to you soon.

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RUSTY (INTRO)

Greetings, everybody. Welcome to the Fund The People podcast and another installment of our series: Defend Nonprofits Defend Democracy.

My message for you today is: solidarity. We have to stand together in order to stand up for our sector and for our communities and for our rights and for our country. So the message of today's episode is all about solidarity. By standing together, we can individually and collectively have more courage and a more effective voice. Pushing back on the attacks on philanthropy and nonprofits and advancing our field in a way that we want to see it go forward with safety and with the ability to serve our communities and advance our missions. So solidarity is essential.

My call to action for you today echoes the one I had two weeks ago on our last Defend Nonprofits Defend Democracy episode. So it's an urgent call to action for red state nonprofits and red Congressional district nonprofits to speak out: call, write, get meetings with, email your elected officials or staff, have your board members and donors and executive directors reach out and let your elected representatives in Washington know that this tax bill should not and cannot include a tax on the nonprofit sector, and that trying to strip away the tax exemption of whole categories of nonprofits is a very dangerous, slippery slope that will really damage, not only nonprofit organizations, but also the people who we serve, who are the same people that the elected officials must serve, their voters, in fact.

So you can check out on our website. We have that call to action up on our blog, and it'll be in the show notes as well for this episode. Make sure you're on our mailing list and follow us on LinkedIn to get our calls to action and to get resources and support to take that action.

Now, in terms of headlines for this episode, there's a lot going on and we've got a whole listing of headlines and links to articles about that Call to Action for Red State Nonprofits, about maintaining our civic life, about AmeriCorps and the impact that the destruction of AmeriCorps is having on nonprofits and communities and services for people all across the country. There's a lot of local coverage of how the cuts to AmeriCorps are hurting not only the AmeriCorps members, but the people who they serve.

And we also have some important articles and headlines about how the attacks on equity and inclusion by the administration are hurting nonprofits and likely to hurt students in our schools and other places. So, be sure to check out the show notes for this episode and our blog to find all of the headlines and articles, the news you need to know about what's happening in and to the nonprofit sector this week.

One article I want to lift up, among those, it's an article in the Chronicle of Philanthropy called Meet the Man Who Wants to Tax Most of the nonprofit world. And it was published on May 8th and it is a profile of someone who I had never heard of, someone named Scott Hodge, who has been pushing for \$40 billion in new taxes on nonprofits. He argues that there are too many nonprofits that are business-like, that are credit unions or hospitals that he says are not charitable enough and ought to not be nonprofits. Ought to be stripped of their legal category, legal existence or turned into for profit businesses.

So it's an article you want to read to know about one of the people who's behind some of the potential changes, potential attacks on our sector that may end up in this tax bill, this reconciliation bill, which will be really the only bill passed probably in the first two years of the Trump administration and just as the tax bill was the only real bill passed in the first Trump administration. And it will have very, very significant impacts on our sector and our society. So that is our lead headline for today.

Now, we've got an incredible guest today, the political director of the national ACLU, and we're really excited to have this conversation for you. And we talk about that tax bill and what nonprofits can do, how we can use solidarity with one another to stand up to bullies, and also how we can use our voices and the legitimacy of what we do for our communities to help inform and influence elected officials in Washington in terms of how they then shape this tax bill. So Mike Zamore is our guest and I want you to take a listen, enjoy my conversation with him. It's inspiring and action filled and very important information. Enjoy.

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RUSTY (INTERVIEW)

Okay, everybody, I'm pleased today to welcome to the show Mike Zamore. He is the national director of policy and government affairs at the ACLU, where he leads efforts to harness the organization's vast expertise. 4 million members and supporters, paid staff in every State of the Union and electoral work to shape federal, state and local policy.

Mike is a 22 year veteran of Capitol Hill and spent over 14 years as the chief of staff to Senator Jeff Merkley, an Oregon Democrat first elected in 2008. As Merkley's top aide, Mike counseled the senator on legislative and political strategy developing groundbreaking legislation in climate policy, electoral integrity and campaign finance reform, LGBTQ, equality, Wall Street accountability and more.

Prior to joining Senator Merkley, Mike was the policy director at the Democratic Senatorial Campaign Committee. He earlier served as policy advisor to Representative Patrick Kennedy. And Mike is the coauthor of a book called Filibustered!: How to Fix the Broken Senate and Save America. And he's also an adjunct faculty member at American University's Washington College of Law.

Mike, I'm thrilled to welcome you to the Fund The People podcast, thanks for being here.

MIKE

Rusty, thanks so much for having me. It's great to be with you.

RUSTY

It's awesome to have your perspective and vantage point, both your experience on Capitol Hill as well as at the ACLU. I was looking around on the ACLU website and saw that, or at least my translation of the mission as it was up there is to realize the promise of the United States Constitution for all and expand the reach of its guarantees. So I was curious, like, so the ACLU is there to advance the promise of the Constitution, so why does the ACLU work to protect nonprofit organizations and civil society? What's the connection between our Constitution and our nonprofit sector?

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MIKE

Sure. Thanks for the question, thanks for having me, thanks for the work you do.

Nonprofits are so central to our society, in part because they deliver food assistance and health care and housing, and they help people find jobs and they protect civil rights. But they're also vital as a part of an entire ecosystem that is designed to ensure that our sovereignty as people, that our ability to shape the government and to shape our own lives is in our own hands. So we're in this complicated, you know, somehow still sort of jerry rigged system that, you know, Madison and his friends concocted back over 200 years ago, that's designed to keep the federal government in check. They want to make sure that the government is not in a position to impose upon us the people its will. It's got to be the other way around.

And similarly those checks and balances are really baked into other governmental institutional players, like the courts or like Congress. But a part of that is also the press, it's civil society, it's people acting to organize themselves and counterbalance the government and push back on the government when that is appropriate.

And so what we've seen around the world is that when democracies start backsliding, when the rights and freedoms that people had previously enjoyed start getting infringed upon. One of the first places that governments go to impose that agenda is by attacking the nonprofit sector, the civil society more broadly, and to try to reduce that check on governmental power. So if you really can't have a system, a country, the society where individual rights and freedoms are protected. If the government is not held to the laws and the Constitution and you're able to bring political power to bear against the government. And so that's really how it all ties together.

RUSTY

Yeah, I mean, we've been calling these series we're doing every other week Defend Nonprofits Defend Democracy, and trying to make that kind of connection explicit, that it's not enough to just defend one organization and its budget. But we have to defend the whole platform on which all of our organizations sit, which, you know, is enshrined in the Constitution, I think. Like the freedom of assembly, freedom of speech gets a lot of, a lot of attention. But I feel like freedom of assembly is so important as well, and that freedom to petition the government. We think of speech as kind of individual speech, you know, individual's rights. But the freedom of assembly is the ability to get together with other folks, whether that's on a small scale or a massive scale.

And I'm glad you bring up the wider civil society outside of nonprofits, specifically. Because nonprofits are sort of, you know, governmental recognized institutions, but their social movements often spark up outside of institutions or in conjunction with institutions. But institutions like nonprofits can't create and plan movements on their own. It happens among organizations and among people who are not part of formal organizations. So I think the wider civil society is so important to talk about as well.

MIKE

Yeah, absolutely.

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RUSTY

So I was curious if you could give listeners a few examples of the fights that the ACLU has been engaged with either in the last five months or before that in Congress and in the courts, because that's something I've been learning about the ACLU, is that you are engaged both in advocacy and lobbying on Capitol Hill, as well as in litigation in the court system. So it's amazing to have the ACLU and it is such an important institution in our society and almost transcends, in some ways, the idea of the actual institution itself as an organization. It's such an ongoing institution, what 100 years old or over 100 years old now?

MIKE

Over 100 years old.

RUSTY

Yeah. So, curious to hear as we've experienced these attacks on the nonprofits sector and civil society and the Constitution from the Trump administration. What are some of the fights that the ACLU has been in as it relates to nonprofits?

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MIKE

Sure. Well, it actually predates the second Trump administration because there have been efforts to muzzle nonprofits and intimidate the nonprofit sector that have been going on for a while now.

So, last year there was legislation passed through the Republican controlled House of Representatives but had vast, broad bipartisan support. And it was basically a bill that would give the Treasury Secretary additional authorities, beyond those they already have, to target organizations that are accused of providing what's called material support for terrorist organizations. So that could be things like raising money for them or providing them services or that kind of thing. It's a pretty nebulous term with lots of litigation that ACLU has been involved in on material support, things going way back to 911. But basically allowed the Treasury Secretary to say if your organization allegedly provides material support to terrorists, then we can strip your nonprofit status immediately, and you can go try to prove that you're not actually doing that or that it was a false accusation. But, after they've already stripped your nonprofit status.

Now, why is this so problematic? Well, for one thing, due process has stood on its head. The whole idea that the government, if they're going to hurt you, they're going to lock you up or take things away from you or take your life, they need to prove their case, right. They can't do it on the basis of accusations, they have to do it on the basis of evidence. And, this system that the bill would have created, would have allowed the Treasury Secretary to make the accusation first and then put the burden on organizations to disprove the accusation, which especially if you don't know the evidence that they're relying on, is hard. But also just the whole notion of innocent until proven guilty and that you should be able to continue doing your work as a nonprofit organization without all the burdens of those accusations gets turned around.

So that bill passed with bipartisan support early last year, and Biden was still president, and the Trump election was still a long way off. And I think it was in large part because people saw it as like they don't want to be on the wrong side of fighting terrorism. It seems sort of innocuous. You know, in fact, the government already has authority to strip organizations of their nonprofit status if they are violating the law, such as supporting terrorism. So, it didn't feel like a big deal.

And once we sort of discovered that this thing was in motion and coming back in the fall, we tried to start changing the narrative here and help people understand that what you're actually doing is talking about a massive weapon to chill speech, right. And that the whole goal of what we've seen of the Trump administration so far, what we see in lots of other places is they want people to obey in advance, right? They want people to not engage in activities that the

administration doesn't support or believe in. They don't want them to be critical or do political or politically, you know, kind of contradictory things to their agenda.

And so the threat of dropping this hammer on an organization, where suddenly you can't raise tax deductible donations anymore, you're tied up with potential legal litigation and legal fees and all these things, whether or not you eventually exonerate yourself as an organization, fighting that off is going to be massively consuming and potentially existential. So, organizations don't want to be under that threat. And so the idea of handing the ability to the administration to just drop the accusation with no proof or evidence and then force nonprofits to do all of that legwork to disprove it, is a massive tool in this toolkit of silencing opposition and forcing organizations to bow to the vision and priorities of the administration.

So the bill came back for a vote in November and it passed with 11 no votes the first time around. The second time around, there were only 52 Democrats who voted yes, after an extensive lobbying campaign. And then the next week it was voted on again because of a procedural hiccup, and we knocked the 52 yes votes down to 15 Democratic yes votes in a span of one week, which is really something I've never seen happen before. But it was because the nonprofit universe organized, I know you were a part of this. But like, the breadth of the response was really striking. And I think that solidarity and unity and the power of that message really turned the heads of legislators and got enough of them to say something to the effect of, I've heard from constituents back home and I have a better understanding now of what the implications of this bill are and so I'm changing my vote. Which is, again, not something you hear out of Congress all that often.

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RUSTY

Yeah, that was quite a message as their first fight of what they wanted to do to change the country according to their agenda. So I think that that idea that they can do these things without even offering a shred of evidence, that's what the bill was. You know, it was like we don't have to even pretend to have any evidence, we can just say this. It's like you're smearing the organization's reputation, let alone taking away its legal status.

And actually, as you were talking, I was thinking people think this is a small deal of, well, they can't accept tax deductible donations anymore, but big whoop, it's just a tax status. No, no, that's not true. If you strip a nonprofit's tax exempt status, what is it legally, then? As far as I can tell that's a vague thing, right? What happens to the assets that are legally tax or tax deductible donations and contributions and grants that went into that organization that are sitting there? You know, did they have to give those up? Do they have to spin those off? That's what's happened with the hospitals that have become for profits transitioned from nonprofit to for profit. They've had to spin off their charitable assets into a health conversion foundation, right? They've created foundations with the same mission as the hospital.

And so what would happen? What would happen if Harvard had to get rid of its tax status? What happens to all that money and other assets, the land, the buildings that have been built with

charitable dollars? So I think it's a really complex issue. It's not just, oh, they'll become a for profit or something. We don't know if the government will try to seize those assets and then distribute them to their friends. Will we have Trump Harvard University then, you know, or Vance, The Vance hospitals. What would that look like? And that's a whole other complexity that the field hasn't even really talked about or the government hasn't even talked about.

MIKE

Yeah. That's a really interesting point. And I think the other point to make here is that if there were a profitable model for delivering food aid to people who are hungry, you know, we probably would have seen it by now. A lot of the services that nonprofits deliver are charitable. It's like by definition, the kind of things that are happening because the market doesn't deliver on those needs. So turning an organization, converting to a for profit to be doing like, you know, Meals on Wheels or something just feels like a long shot, let's say.

RUSTY

Right. And so what have been some of the other engagements that the ACLU has been involved with in terms of lawsuits or legislative things in these recent days?

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MIKE

So there's been a lot of adjacent work, I would say, because, you know, what we were talking about at the top, there's a concerted effort by this administration to tamp down on the rights of free speech and assembly and organizing and bringing collective action. And so I think one of the core messages I would have for folks who are invested in the nonprofit sector is like, you can't only be focused on your little box. Like, this is a collective challenge that everybody across society who believes in rights and freedom and rule of law need to be paying attention to.

So, for example. We've got a number of lawsuits now on behalf of students who were here either as legal permanent residents or on visas and are being targeted for detention and deportation because of the things they have said or the protests they've been involved in. So these are core First Amendment protected rights that go to the heart of are we a free country, are we not a free country?

And so, for example, Rümeyza Öztürk from Tufts University wrote an op ed, co authored an op ed a year ago in the student newspaper, and on the sole basis of that op ed was whisked off the streets by on uniformed masked officers into an unmarked car. I mean, basically kidnaped for all intents and purposes, it is her experience of it. And she's been in detention now for several months as punishment for writing her opinions in a newspaper, right?

So we are fighting in court on her behalf and on behalf of other students in similar positions, because her ability to say her piece and speak her mind is indistinguishable from a nonprofit organization's ability to publish its own views, to do investigative reports, to deliver diversity, equity, inclusion, to fight racial injustice. All these things that the Trump administration may not

like. And if the administration is unbound by the Constitution or the laws, then the entire nonprofit sector and indeed all of us are going to be in peril. So we've got cases on First Amendment

Similarly, we've got cases about due process because, you know, we're talking about the dangers of the administration just taking actions against organizations without any proof, without having to prove their case. That's exactly what they've done in the case of these Venezuelans, who they say are dangerous gang members and therefore belong in a gulag in El Salvador. But even if you conceded -which we absolutely do not- that there is some authority to use this 1700s wartime statute to declare an invasion and deport people, even if you thought that were true, how do we know that the people that they picked up and sent to CECOT, the prison in El Salvador, are who the administration says they are, right? You need to be able to prove your case.

And so we've been litigating in probably a dozen different courts at this point to prevent this administration from sending people to El Salvador without process, under this bogus authority. And again, it's not nonprofits who are at the center of that case right now, but the idea that each of us should have the right to defend ourselves, to know the charges against us as an organization or as an individual, and to be able to fight in court and make the government show the evidence and prove their case is fundamental to the ability of nonprofits to survive in this administration. So the cases that have reached the courts so far, in our docket at least, have not been nonprofit cases, but they are incredibly closely connected to all of the issues that we're talking about.

RUSTY

Yeah, no, you're absolutely right. It's completely parallel in terms of due process, knowing what you're being accused of. I don't know what the legal phrase for that is, is that the disclosure in a court case, like where the prosecutors have to give the defense lawyers like, here's what we've got on your...

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MIKE

Yeah, that's definitely part of that whole principle. And you know it's been way too long since I was in law school and we would have to get real lawyers to get into the Latin terminology, but yeah, you're absolutely right. I mean, it's a core principle that you know what you're being accused of and you have a chance to see the evidence and to answer it.

You know, the other case that we are not directly involved in but have been supportive of, that is very much in this vein as well, are the executive orders targeting law firms. There have been a whole series of these orders that the administration that President Trump has signed that basically are intended to punish law firms he doesn't like because of the clients they've represented and to fundamentally undermine their ability to do their jobs, frankly, to exist as ongoing concerns. So they strip security clearances and they even go so far as to bar the firm's employees from setting foot in federal buildings, including courthouses, right?

So patently unconstitutional, as all the judges who have heard these cases so far have announced. We're not representing the firms, but we have organized with some conservative legal organizations and others what's called amicus briefs, which are basically just briefs in support of the parties in those cases. Just again, reinforcing the interest that we all have in a President who is bound by the Constitution and laws and can't use the vast powers of the presidency to target political opposition and to go after organizations or individuals because the president doesn't like them or doesn't agree with their priorities.

RUSTY

You're right. They are attacking free speech and assembly and all of that on many fronts, both for profit, nonprofit and the government itself. You know, making agencies like not release information about important health matters to the public, or things like that. So it's a many front, frontal situation.

I was curious, you spent 22 years on Capitol Hill spanning the presidencies of President Clinton, President George W Bush, President Obama, the first Trump administration, and President Biden. Have you ever seen anything like what we're experiencing right now coming out of the executive branch and also the lack of robust response from the Congress?

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MIKE

Yeah, I've never seen, I don't think any of us have seen, anything like this in the last 50 years, at least, I mean, possibly ever from the federal government. I mean, there were certainly, you know, witch hunts in the civil rights movement and McCarthyism, and going all the way back the ACLU was founded in response to an attorney general doing red scare roundups of immigrants that were accused of being communists back in 1920.

So there are certainly any number of examples of the federal government overreaching and violating the laws and violating constitutional rights. And we have been aggressive litigants in every administration of presidents of both parties, because they're always pushing lines and stretching the envelope.

What we are seeing now, though, is different in kind, not just degree. I mean, we've never seen a systematic attack by the president on every other institutional power in society, in government and in society, to try to concentrate effective political power in the president solely. And that's really where we are, and that's the effort that is underway. And there's, I think, useful examples from the past of how society and other institutional players have pushed back on the more concentrated or singular kind of overreaches by the federal government.

What's different about this is that it's on every front at the same time. We're operating in a way more polarized political world, which is part of, I think the second part of your question. We are in an environment in which faith in institutions and the fragmentation of our information ecosystems and a whole host of other factors, I think, really make the country much more

vulnerable to this sort of demagoguery and sort of authoritarian impulses than we have been, certainly in my lifetime.

On the second part of your question about Congress being sort of supine in this moment and just sitting back and letting this happen. It is dismaying and it's also not terribly surprising given the trajectory over the last couple of decades. In your intro to this question, I think, emphasized that I've been doing this for too long and it makes me sound really old, but...

RUSTY

That was not my intent.

MIKE

I'm not ascribing a motive, don't worry. But I will say that almost the entire time that I have worked in Congress and in politics we've seen a steady erosion of congressional authority and a kind of commensurate sort of vacuum filling by the executive branch. And so under both parties, we've seen presidents get increasingly more powerful and taking on more and more responsibilities that really, rightfully belong with Congress.

But Congress has become too dysfunctional and the politics have gotten too toxic in a lot of ways for Congress to exercise those powers. So it's not terribly surprising, I mean, the president is the leader of the Republican Party and Republicans in Congress see themselves as on Team Trump like first and foremost, you know, like they feel a responsibility to their constituents and to their own principles and things like that, but every day they're getting the message that they have to be on the team and support president.

And it's not just Republicans, I mean, Democrats in a lot of ways are similar when they're person is in the White House as well. And I think if you had candid conversations with Republicans right now, that were off the record, you would have lots of discomfort and feelings about the way this administration is operating. And I think if you had conversations, quiet conversations, with Democrats in early 2024, you would have a lot of people saying, I don't know about Joe Biden as being our candidate, but they weren't going out and saying in public.

The politics of our time, just make it really hard for, you know, it's not an excuse for the members, I mean, people have to make their own judgment calls about where and how they want to do those jobs. But the reality has become that it is very uncommon for Congress to exercise its institutional prerogatives and to see itself as a co-equal branch of the president when they're in the same party as the president.

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RUSTY

Well, I would just say, to me, there's not quite an equivalency of, oh, we've got a candidate who's not that exciting, versus you're going against what the nine Supreme Court justices told you explicitly to do. You'd think at a certain point there'd be a breaking point because people are patriotic or, you know...

MIKE

Yeah, the oath, you think the oath of office, the oath to the Constitution would merit some consideration at some point when the president is clearly not abiding by his.

RUSTY

Right. So, two weeks ago on this show, we issued an urgent call to action for red state nonprofits and red congressional district nonprofits encouraging them to educate Republican senators and House members about the value of the nonprofit sector, and specifically because there may be damage done to their constituents if the tax bill that's being put together includes legally codified attacks on the nonprofit sector. For example, stripping hospitals, all nonprofit hospitals of their nonprofit status, or other things that have been bandied about as potential ways to start earning tax dollars off of nonprofit organizations to pay for the tax cuts.

Our call to action was based on what we heard during Foundations on the Hill earlier this year, but also an opinion piece in the Chronicle of Philanthropy by a guy named Steve Taylor, who has been a Republican, has also been an advocate for nonprofits and he said the same thing that some folks were saying when we were on the Hill a couple months ago. And so we thought, well, it's time to start making sure folks in those red seats in congressional districts are talking to their elected officials.

So, what could you tell us about this bill that's coming potentially? We know the bill is coming. We don't quite know what's in it, I guess. How would you advise those nonprofits in red states and congressional districts to connect with their representatives and what guidance could you give them in terms of what they say and how they talk about this?

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MIKE

Yeah, it's great that you're doing that advocacy and it's really important for folks to make their voices heard with Congress. And, you know, there's a lot of cynicism about how Congress operates and it's not without reason, right. Like, the money in politics is a very significant factor. And there's a whole host of other things that are driving member decisions. But ultimately, the voices from back home, from their districts matter a lot. And they matter both in terms of volume versus how much they're hearing. And it matters in terms of who they're hearing from.

The incredible power that nonprofits have is the weight of their work, right? Is the importance of the story they can tell about the people they're helping, the mission that they're driving and giving members of Congress sort of a real world sense of the implications of different things they might be considering, how it would impact the work that these organizations are doing in these member's own districts, in their backyard, the constituents that are serving, and how many would lose services and what kind of services and what those implications would be, how many people would have to get laid off if certain things came to pass from an organization. Like all of those kinds of very tactile, real world stories, are the sorts of things that help move members and get them to notice.

I mean, you have to remember that these members of Congress are dealing with 30 different issues. They're scheduled in at best, 15 minute increments and sometimes, you know, even more fine than that. They're juggling so many different things and hearing lots and lots of people's asks all day, every day. So to cut through, we need to rely on some of those innate storytelling instincts that human beings are so drawn to and like, make it real. And the folks who are doing real things, delivering real services to real people in the hometowns of members of Congress have an ability to take this away from an abstraction and turn it into something that cuts through all the noise that's surrounding a member of Congress and their staff every day.

RUSTY

Thank you for that. And I hope people are hearing that because it's absolutely critical. And, you know, one of the people, one of the Hill staffers who I talked to, she said, you know, I love meeting with you all, because you're not for profit lobbyists who want us to help you sell avocados or something. You're actually working for the benefit of the people we're supposed to work for the benefit of. And you're here to ask for help for them, not for your own profit or your own wealth. And so I was like, Oh, good, I'm glad you actually see us not as just another lobby or another, you know, group of lobbyists. We have that distinction, we have that distinction in her mind. And I bet that that can be the case with many others on Capitol Hill.

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MIKE

Absolutely. I think that's definitely true. And, you know, there's no question that the Hill is rife with lobbyists for all sorts of for profit concerns. The good ones will do a really good job of telling the story of why the thing that happens to make their client money also is good for other interests in society and, apple pie and the American flag. But you always have to kind of wonder whether the information you're getting, how accurate it is. Whereas if you know the organization, the nonprofit and their mission, and they're telling you like this helps us with our mission, there's a lot more alignment.

RUSTY

Well, it's good to hear from somebody who was on the receiving end of a lot of these communications from lobbyists and I'm sure nonprofits over the years.

MIKE

Yeah. Can I add one thing on this, Rusty? One other thing, just for folks to think about, is that nonprofits also have, you don't just have things to ask of members of Congress, you also have things to offer members of Congress. So, they're always looking when they're back in their district to be doing events and meeting people and associating themselves with positive services and developments and the like. There are opportunities to invite members to come and do a visit to the organization and see what their mission is, organizing a roundtable with some of the clients that are served, or to do a shift in a service providing setting and for a photo op.

And, you know, there are ways that the nonprofits can at the same time as you are helping them better understand and have a clear visibility into what the day to day of your organization looks like and how you serve the community, you can also be giving them something that's like currency to them, which is association with something that has a positive vibes, opportunity to get some press, a chance to meet some constituents and look good, you know, so there's some symbiosis there to be had, if the circumstances align right.

RUSTY

And do you think those experiences, the staff and elected officials come away from that, like actually remembering it? I mean, would they go, you know, a month later, remember when we did that, like that guy I met?

MIKE

Yeah, absolutely. I mean, they do a lot. Whether it cuts through or not sort of depends a little bit on good fortune and a little bit on structuring a good, a good visit, a good day. But the chance for them to have like a curated event where they're like meeting a handful of constituents in a setting that is like controllable or controlled and they're getting like some real, some stories that they can then use and repeat when they're doing their work is really valuable.

Seeing the how, like kind of the sausage gets made in some of the nonprofits that do some kind of work. It's like, my boss when I was working for the senator, he said let's go do Habitat for Humanity builds, because it's a chance to like go out and like actually feel like you're doing something that is helpful. It's, you know, again, like physical and real and makes for a great photo. And so, yeah, those kinds of experiences stick with you. Like it's just we all spend time sitting in conference rooms around tables and one bleeds into the next. But when you're out in the field and doing something tangible, it can last and kind of leave a memory.

00:43:08:01

RUSTY

Yeah, I would say the same thing for philanthropic funders, you know, that those kinds of experiences can leave a real impression in terms of what gets called site visits. Being in somebody's place, being in a real place with "real people" (that's what people in Washington say, real people)

MIKE

Exactly, none of us here at DC are real.

RUSTY

No, no, no... You know, you've written about the filibuster here in this book, and I haven't had a chance to read it, I just learned about it. But, any thoughts on what we can be doing as the nonprofit and philanthropic sector with this tax bill? Because it's, you know, it's reconciliation, so it's just a pure majority, is my understanding, is needed to vote in both chambers. So the filibuster doesn't apply, like what can be done, if something bad gets into this bill is there anything that can be done?

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MIKE

Yeah. So first of all, it is important to recognize that you are absolutely correct. This is a partisan exercise, right? So you can expect that every Democrat in both chambers will likely vote against whatever they end up producing. It should be said that, you know, at least as of right now, as we're recording this, they still haven't figured out how to navigate their way through the math challenges they have on the Republican side.

So the ultimate shape of the bill, how much they're going to try to cut from various programs, how much they're going to do in tax cuts and what those all look like, it's all up in the air. But what that dynamic means is that the leverage on this bill is all on the Republican side. Like to the extent that are provisions that the nonprofit community is concerned about, they need to be figuring out who among the Republicans can help get that changed.

And there are opportunities, right now while the bill is still being drafted. there's opportunities while it's in committee, to offer amendments in committee to try to get it changed. It'll be coming out of committee and then there will be like a process to sort of massage and assemble these different component pieces of it into one massive, gigantic bill. But that process is another chance to like create, to put changes in there that will happen in Speaker Johnson's office, basically. But he's got to navigate, you know, the House majority is super narrow, so it only takes a handful of Republican members of Congress to say, look, I'm not okay with that provision to sort of prompt a conversation about whether it stays in or doesn't stay in.

So my advice here, and that's just the House side and then it goes to the Senate, and then it's got to get through the Senate, and the Senate has a process that allows for as many amendments as senators want to consider for as long as it takes. It's called vote-arama and usually goes all night. It's a little bit of a procedural nightmare for the senators and their staff, but it's, you know, an opportunity to at least force votes on provisions that people are not happy about.

So there's a bunch of opportunities here to get the bill changed if folks can put appropriate pressure on Republican members to insist that it be changed. So then it comes back to what we were just talking about, which is like who has reach into the Republican offices, who's got relationships? Many nonprofit executive directors are like paragons of their communities and have lots of relationships and certainly collectively there's a lot of weight. So I think organizing and trying to bring those views to bear and potentially mobilizing the constituents and drawing some attention to these provisions is all sort of on the table. And I would not assume that there's no way to change this thing while the process is still playing out.

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RUSTY

That's good to know. That's an important point, and I think we'll just keep an eye out and maybe we can turn to information coming out of the ACLU and other sources about what is in these

drafts or, you know, who is jostling for what to be included. I did hear that, you know, one committee chair, I think, saying they were not going to advance cuts to Medicaid in the bill. I think that was news a day or two ago.

But who knows? You know, we just don't know until something is in writing to be discussed. I hope we can get some of that info out to folks, and I hope people can hear that there is power in our voices and there are nonprofits in every State of the Union and every area of the country who can bring that voice to bear on these matters.

Mike, Any final thoughts on messages for philanthropic funders or for nonprofit folks who are listening?

00:47:37:09

MIKE

Yeah, you know, I think that the most important thing for all of us to remember right now is that solidarity is so, so important. The nonprofit sector, as we talked about, like the rest of civil society, is really under an enormous amount of pressure, and that's going to continue. There's an effort to bully our organizations and all of us as individuals, to toe the party line essentially of Trump and MAGA.

And we have the power together to resist that. But individually, it's really hard. So, you know, the dynamic, I think we're all familiar right at this point with the dynamic of the administration threatening big penalties on Columbia University and them sort of folding and saying, okay, we'll do what you want us to do. Or on some of the law firms that, you know, sort of bent the knee and signed agreements. And that divide and conquer strategy is the most effective tool they have to consolidate power and ultimately succeed in shutting us down, right?

They want us all to think that if we step out of line, as they see it, that there will be punishment. And, you know, there was a great op ed in The New York Times, earlier this week, from Levitsky and Ziblatt and Way, who are political scientists, and they said, like the measure of whether we are sort of in an authoritarian society or a political system or democracy is measured on the cost of opposing the government.

And they said in democracies, citizens are not punished for peacefully opposing those in power. Under authoritarianism, by contrast, opposition comes with a price. And I think right now, many of us, certainly those of us who are close to the work of fighting this administration in court or with organizing tools or others, are all feeling the pressure. And I think you see it in the business community, you see Republicans in Congress talking about it openly, like there is fear that if you disagree with the administration, with the president, you will face some sort of punishment. And so people are like checking their instincts, right?

The most important thing for nonprofits, for philanthropy, for all of us, is to stand shoulder to shoulder and be in community together, saying that an attack on one of us is an attack on all of us, we are all going to stand up for the rights and freedoms and privileges that are promised to

us by the Constitution, that are enshrined in our laws. And we're going to hold this administration to the law, because this is our right as Americans, as individuals who live in this country, as organizations that do our work in our communities in this country. And so that's my main message.

And there's been like, I think really in the last month or two, we've just seen the beginnings of this like unity forming. And you saw Harvard stand up and sue the government for the attacks on Harvard, and all of these, you know, 200 plus other university presidents immediately came out with a statement of solidarity.

Philanthropies have their own effort with a statement that has 626 signers on it. We organize with others and run a nonprofit solidarity statement in anticipation of some attacks that have not yet fully emerged but are certainly, you know, being contemplated. And lots and lots of folks are coming together on this. And I think that process is so crucial to us being able to preserve the ability of each of these nonprofit organizations to deliver our mission, which is ultimately the goal, right?

Like, the main thing here is we should be able to serve our communities and in all the myriad ways that these nonprofits do, without fear that the government's going to shut us down because they don't like what we do or what we say. And so we stand together. I think we've got the power to win that fight.

00;51;24;04

RUSTY

Love it. That's a great way to end the conversation. And thank you so much, Mike, for the work you do, both the work you've done in government, public service and now at the ACLU. Thank you for being here and sharing your perspective with our audience.

MIKE

Well, it's my pleasure. Thanks for having me and thanks for everything you do to keep the fires burning.

RUSTY

Well, I keep saying we got to use our freedoms to keep our freedoms. So it is scary, what you said about checking our instincts. It's like we got to maintain, even if it is scary, we've still got to use our speech to keep our speech and use our assembly to keep our assembly and all of those things.

MIKE:

Yeah, well said.

RUSTY

Yeah. So it's exciting to be able to talk to somebody from the ACLU, which has been using and maintaining those freedoms for so long. So thank you.

I hope you'll join us next Wednesday morning when we will be back with our regularly scheduled podcast programming, with another incredible guest from the field. Please do not miss it right here on your Fund The People podcast.