

September 20, 2024

The Honorable Mike Johnson
Speaker, U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Hakeem Jeffries
Democratic Leader, U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Speaker Johnson and Leader Jeffries:

We write to express our deep concerns with H.R. 9495, the Stop Terror-Financing and Tax Penalties on American Hostages Act. Specifically, this bill includes the text of H.R. 6408, legislation we strongly oppose as it raises significant constitutional concerns. Because H.R. 6408 vests vast unilateral discretion in the Secretary of Treasury, it creates a high risk of politicized and discriminatory enforcement. The executive branch already has extensive authority to prohibit transactions with individuals and entities it deems connected to terrorism and nonprofit organizations are already prohibited from providing material support to terrorist organizations. In fact, it would be a federal crime for them to do so.¹

Moreover, we do not oppose the provisions in H.R. 9495 that relate to preventing the IRS from imposing fines and penalties on hostages while they are held abroad. Indeed, these provisions have already passed the Senate on their own, and if the House of Representatives were to pass a version of this bill that did not include the text of H.R. 6408, it could be sent immediately to the President for his signature.

Without any evidence as to the need for this legislation², H.R. 6408 authorizes broad and easily abused new powers for the executive branch. It grants the Secretary of the Treasury virtually unfettered discretion to designate a U.S. nonprofit as a “terrorist supporting organization” and to strip it of its tax-exempt status if the Secretary finds that the nonprofit has provided material support to a terrorist group, even if the “support” is not intentional or connected to actual violence.

¹ 18 U.S.C. § 2339A, <https://www.law.cornell.edu/uscode/text/18/2339A>

² Several members of Congress have repeatedly, without evidence, conflated students involved in the protests regarding the conflict in Gaza with Hamas and other foreign terrorist organizations. The Supreme Court made clear in *Holder v. Humanitarian Law Project* that the federal statute prohibiting material support to terrorist groups does not criminalize independent advocacy unless it is performed in coordination with or at the direction of a foreign terrorist organization. We are aware of no such evidence having been provided within the House record regarding this legislation.

While the sponsors of this legislation have stated that it is needed to avoid what they refer to as “time-consuming bureaucratic process”³ under current law, what the bill sponsors are actually seeking to avoid is fundamental due process. If this bill were to become law, the Secretary of Treasury could strip a US nonprofit of its tax-exempt status without providing the nonprofit a meaningful opportunity to defend itself before a neutral decisionmaker.⁴ The legislation further does not require disclosure of all the reasons for such a decision or the evidence relied upon to support it.⁵ Nor would the government be required to provide any evidence in its possession that might undermine its decision, leaving an accused nonprofit entirely in the dark about what conduct the government believes qualifies as material support.

The potential for abuse under H.R. 6408 is immense as the executive branch would be handed a tool it could use to curb free speech, censor nonprofit media outlets, target political opponents, and punish disfavored groups across the political spectrum. Moreover, the addition of this authority to the tax code would allow the IRS to explicitly target and harass domestic nonprofits using its investigative authority. It is also not hard to imagine a future administration using this power in far broader circumstances that have nothing to do with the hostilities in Gaza.⁶ And as more recent congressional oversight efforts make clear, these efforts are part of concerted attack on civil society that is targeted at more than just groups involved in the campus protests regarding Gaza.⁷

The executive branch could use this authority to target its political opponents and use the fear of crippling legal fees, the stigma of the designation, and donors fleeing controversy to stifle dissent and chill speech and advocacy. And while the broadest applications of this authority may not ultimately hold up in court, the potential reputational and financial cost of fending off an investigation and litigating a wrongful designation could functionally mean the end of a targeted nonprofit before it ever has its day in court.

The lack of guardrails creates the potential for future administrations to weaponize these powers against groups on both ends of the ideological spectrum. Even if they may never be designated as “terrorist-supporting,” let alone charged with a crime, nonprofits will curtail their activities as a precaution in order to avoid stigmatizing and financially devastating punishments. That is why we strongly urge you to oppose the inclusion of H.R. 6408 in H.R. 9495.

³ Ron Kampeas, *Is a bill targeting support for terrorism a necessary tool after Oct. 7, or authoritarian overreach?*, Jewish Telegraphic Agency, (May 23, 2024), <https://www.jta.org/2024/05/23/politics/is-a-bill-targeting-support-for-terrorism-a-necessary-tool-after-oct-7-or-authoritarian-overreach>.

⁴ The bill’s creation of an after-the-fact administrative or judicial appeals process not only comes too late, but it is also unlikely to remedy these fundamental deficiencies. Instead, it functionally shifts the burden of proof about whether a nonprofit provides material support from the government to the nonprofit.

⁵ The legislation explicitly allows the Secretary to limit notice of the reasons and evidence by requiring such notice only “to the extent consistent with national security and law enforcement interests.”

⁶ Kate Arnoff, *This Bipartisan Bill Could Give Trump Huge Power Against His Enemies*, The New Republic, (April 30, 2024), <https://newrepublic.com/article/181087/treasury-pipelines-gaza-non-profit-terrorism>

⁷ See, Congressman Brian Mast letter to Secretary of State Anthony Blinken, May 22, 2024, <https://freebeacon.com/wp-content/uploads/2024/05/May22GroupMeetingletter.pdf>, and Chairman James Comer and Chairwoman Virginia Foxx letter to Secretary of Treasury Janet Yellen, May 14, 2024 <https://freebeacon.com/wp-content/uploads/2024/05/Letter-to-Yellen-051424.pdf>.

Sincerely,

#WelcomeWithDignity

18 Million Rising

Advocacy for Principled Action in Government

Alliance for Peacebuilding

American Atheists

American Civil Liberties Union

American Federation of Teachers

American Friends Service Committee

Amnesty International USA

Anethum Global

Arab American Institute (AAI)

Asian Americans Advancing Justice | AAJC

Asian Law Caucus

Aunties Coalition

Ayuda

Bend the Arc: Jewish Action

Borderlands Resource Initiative

Brennan Center for Justice at NYU School of Law

Center for American Progress

Center for Civilians in Conflict (CIVIC)

Center for Common Ground

Center for Constitutional Rights

Center for Democracy & Technology

Center for International Policy

Center for Media and Democracy

Center for Popular Democracy

Center for Victims of Torture

Charity and Security Network

Chinese for Affirmative Action

Citizens for Responsibility and Ethics in Washington (CREW)

Civil Liberties Defense Center

Coalition for Civil Freedoms

Coalition for Humane Immigrant Rights (CHIRLA)

COLAGE

Colorado Immigrant Rights Coalition

Color of Change

Council on American-Islamic Relations

DAWN

DC Volunteer Lawyers Project

Defending Rights & Dissent

Demand Progress

Democratic Messaging Project

EarthRights International

Earthworks

Emgage Action

Ensaaf
Equality Federation
Evangelical Lutheran Church in America
Food Shift
Free Press Action
Freedom of the Press Foundation
Friends Committee on National Legislation
Friends of Human Rights
HEART
Hindus for Human Rights
Human Rights First
Human Rights Watch
ICNA Dallas
Immigration Hub
Indivisible
International Civil Society Action Network (ICAN)
International Jewish Anti-Zionist Network
International Refugee Assistance Project (IRAP)
Islamic Association of The Colony
Islamic Center of Quad Cities
Just Foreign Policy
League of Conservation Voters
McKinney Islamic Association
Medical Center Islamic Society
Middle East Democracy Center (MEDC)
MLFA
MoveOn
MPower Change Action Fund
Multicultural Center
Muslim Advocates
Muslim Counterpublics Lab
Muslim Justice League
Muslims for Just Futures
NAACP
National Disabled Legal Professionals Association
National Education Association
National Immigration Law Center
National Iranian American Council Action
National Lawyers Guild-Mesoamérica subcommittee
National LGBTQ Task Force Action Fund
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
New Georgia Project Action Fund
New Israel Fund
North American Indian Muslim Association
NTIC

Oil Change International
Organization for Identity & Cultural Development (OICD.net)
Othman Bin Affan Mosque
Oxfam America
Palestine Legal
PASNY
Peace Action
Peace Appeal Foundation
Peace Catalyst International
Peace Direct
Planned Parenthood Federation of America
Plus
Positive Women's Network-USA
Presbyterian Church (USA), Office of Public Witness
Project On Government Oversight
Project South
Protect Democracy
Public Citizen
Refreshed Refined Reformed R3 Inc
Reproductive Freedom for All (former NARAL Pro-Choice America)
Restore the Fourth
September 11th Families for Peaceful Tomorrows
Shoulder to Shoulder Campaign
Southern Poverty Law Center
Stop AAPI Hate
The Interfaith Center of New York
The Seed Program by Kai, Inc.
The Sikh Coalition
The United Methodist Church - General Board of Church and Society
The Workers Circle
The X-Lab
Tides Center
Tides Foundation
Unitarian Universalist Service Committee (UUSC)
US Campaign for Palestinian Rights Action (USCPR Action)
Win Without War
Women for Weapons Trade Transparency
Women's March