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# Nonprofit Champion | October 30, 2023

**Publisher's Note:** This edition of Nonprofit Champion presents nonprofit advocates **four opportunities to advance their missions through public comments and sign-on letters**. Feel free to jump ahead to learn how to make a difference on the [Overtime Proposed Rule](#) and [OMB Grants Reform regulations](#), plus show your organization's support for legislation to [promote charitable giving](#) and [overhaul federal grants procedures](#).

## Federal

### New Speaker Confronts Old and Growing Challenges

The House can finally get back to legislating after struggling for three weeks to select a replacement Speaker. Representative Mike Johnson (R-LA) steps into the role with an immediate and lengthy to-do list: keeping the federal government open – the current stopgap funding measure expires in 18 days; passing supplemental spending bills to provide support for Israel and Ukraine and humanitarian relief for

Palestinians; and a separate supplemental measure to provide domestic assistance for natural disasters, child care, and border security. Those hot topics are on top of the regular business of passing all 12 appropriations bills and negotiating with Democrats on final passage. Speaker Johnson has indicated that he favors an extension of the temporary “continuing resolution” to keep the federal government open until January or April. He will soon have to resolve where he stands on the issues that undermined the tenure of former Speaker McCarthy – whether to insist on including severe spending cuts and numerous poison-pill social issues attached to House appropriations measures as a price for cutting deals with Senate Democrats and the President.

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### ***Worth Quoting***

- “To pass anything, you have to get Democratic votes. You don’t have to be Einstein’s cousin to figure that one out. I just don’t know how he’s going to handle it. [Nov.] 17 is coming, the world’s on fire, the border’s open and inflation continues to gut the American people like a fish... All this has to be addressed.”

— Senator John Kennedy (R-LA), quoted in [How Speaker Johnson will get squeezed](#), *Punchbowl News*, Oct. 26, 2023.

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### ***Worth Reading***

- [U.S. Congressman Mike Johnson Official Biography](#), Mike Johnson website.
  - [55 Things You Need to Know About Mike Johnson](#), Anna Canizales and Mike Kruse, *Politico*, Oct. 26, 2023.
  - [House Elects Mike Johnson as Speaker, Embracing a Hard-Right Conservative](#), Catie Edmondson, *New York Times*, Oct. 25, 2023.
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## **Time for Action on the DOL Overtime Proposed Rule**

In eight days (**November 7**), the window closes on the opportunity for nonprofits and others to submit public comments on the Labor Department's [Overtime Proposed Rule](#) that would increase the salary level tests for determining which employees are exempt from time-and-a-half overtime under the Fair Labor Standards Act. The Department is proposing to increase the minimum salary level that executive, administrative, and professional employees must be paid (from \$35,568/year to \$55,068/year or higher) to be exempt from overtime pay. Workers in those jobs would still have to perform the duties attributed to those classifications. The Labor Department is also proposing to raise the minimum salary level for "highly compensated employees" from \$107,432/year to nearly \$144,000/year and establishing a mechanism for automatically raising these salary levels in the future.

Without a robust nonprofit response, the Overtime Final Rule, expected in April 2024, will be shaped by input from for-profit employers and unions, special interest groups, and other activists who may or may not recognize the impact of changing federal workforce standards on the work and impact of charitable organizations. Learn more about [evaluating the Labor Department's Overtime Proposed Rule](#) and [see the Comments submitted](#) by the National Council of Nonprofits for ideas on what issues are most important to your organization. You are invited to [submit public comments](#) by the **November 7** deadline.

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## ***Worth Quoting***

- "Overtime regulations have far-reaching implications for both employers and employees. Any effort resulting in increased compliance costs and confusion will need to be considered along with labor market trends, current economic conditions, and other burdens that already negatively affect nonprofits, institutions of higher education, private sector businesses, and other employers."

— Representative Virginia Foxx (R-NC), Chair of the House Education and the Workforce Committee, in a [letter to Acting Secretary Su on Overtime Rule](#), Oct. 20, 2023, calling for an extension of time for employer and employees to submit public comments on the Overtime Propose Rule.

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# Federal *FastView*

- **Withdrawing ERTC Claims:** In response to the prevalence of Employee Retention Tax Credit (ERTC) scam artists enticing employers to submit ineligible claims, the Internal Revenue Service has created a process that enables nonprofits and businesses that have filed for the refundable payroll tax credit to [withdraw their claims without being subject to penalties](#) or interest payments. Organizations that have applied for the ERTC, have not yet received payment, and now realize that they are not eligible for the credit have the opportunity to withdraw their claim and avoid liability. Earlier, the IRS announced a [moratorium on processing new ERTC applications](#) until at least 2024. This means that nonprofits that were eligible for the ERTC for 2020 or 2021 and have not yet filed for the tax credit will need to wait until at least early 2024 for the IRS to process their applications. Nonprofits that have pending ERTC applications should expect delays during the moratorium period because the IRS is processing existing claims at a much slower pace than usual.
- **Questioning Free Speech on Campuses:** The top tax writer in the House made news this month by appearing to threaten the tax-exempt status of colleges and universities that fail to police or condemn statements of support for the terrorist group Hamas. In a [strongly worded statement](#), House Ways and Means Committee Chair Jason Smith (R-MO), wrote “Some organizations that have celebrated the unspeakable acts of terror that claimed the lives of 30 Americans and hundreds of Israeli men, women, and children currently enjoy tax-exempt status in the United States, and their statements call into question the academic or charitable missions they claim to pursue.” He continued, “University administrators, for example, have weaponized their institutions to attack speech and free inquiry as ‘violence,’ yet fail to condemn actual violence that threatens our way of life all while their institutions enjoy lucrative federal tax-exempt status.”
- **Reforming Federal Grants Regulations:** The Office of Management and Budget is proposing significant [changes to the rules governing federal grantmaking](#) that would correct longstanding challenges that have limited nonprofit effectiveness, discouraged qualified organizations from seeking federally funded grants, and wasted billions of dollars and countless hours in jumping through needlessly complex reporting requirements. The proposed changes include numerous nonprofit-friendly reforms including raising the *de*

*minimis* indirect cost rate from 10% to 15%, prohibiting federal agencies from pressuring organizations to accept lower reimbursements for indirect costs, and creating what amounts to an appeals process when federal agencies fail to follow OMB guidance. Learn more about the impact of the proposed regulations on charitable nonprofits. All nonprofits with government grants and/or that have been shut out of funding opportunities due to complex federal rules should take advantage of this opportunity to submit [public comments on Federal Grants Reforms](#) by **December 4**.

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### ***Worth Studying***

- [Pending federal grants reforms could make life easier for nonprofits](#), *Nonprofit Essentials*, Oct. 11, 2023.
  - [Taking the Mystery Out of Filing Comments on Proposed Rules](#), National Council of Nonprofits.
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## **Legislative Sign-On Opportunities**

### **Federal Grants Reform Legislation**

The ***Streamlining Federal Grants Act*** ([S. 2286/H.R. 5934](#)), a bipartisan bill in the Senate and House, would help address many of the challenges that nonprofits experience with federal grants. Among other things, the bill would establish a Grants Council that would provide guidance to federal agencies on streamlining and simplifying grant applications and reporting requirements; improve nonprofits' user experiences with federal grants; and mandate that government agencies solicit input from nonprofits and other partners on ways to improve the delivery of services to communities through federal grants. Learn more about [how the legislation would positively affect charitable organizations](#). To encourage Congress to pass the ***Streamlining Federal Grants Act***, a broad coalition of nonprofits is sending a [letter to leaders in Congress](#) asking them to take action on it. The deadline to [sign on to the letter](#) is **November 11**.

### **Charitable Giving Legislation**

The annual [Giving USA report](#) found that individual giving declined by 13.4% last year and [responses to the workforce shortage survey](#) show nonprofits anticipate that 2023 will be as bad or worse. The **Charitable Act** ([S. 566/H.R. 3435](#)) would create a [universal charitable deduction](#) or above-the-line tax deduction (*i.e.*, a tax deduction that taxpayers can claim on their Forms 1040 regardless of whether they use the standard deduction or itemized deductions) for non-itemizers who make charitable contributions. The deduction would be capped at one-third of the standard deduction (about \$4,600 for individuals and \$9,200 for couples). The Charitable Giving Coalition has prepared a [letter to leaders in Congress](#) urging passage of the **Charitable Act**. Nonprofits are invited to [add your organization's name to the letter](#). The deadline to sign on to this letter is **November 17**.

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## **Worth Quoting**

### *On federal grants and contracts*

- “Overall, it’s an overly complicated and antiquated process that does not align with nonprofits. It places unnecessary burdens on us to create systems that are more relevant to large institutions and government agencies.”

— Olga Gonzalez, Executive Director at Cultivando, quoted in [A Colorado nonprofit turned down \\$500,000 from EPA to monitor air pollution. Here’s why](#), Noelle Phillips, *The Denver Post*, Oct. 23, 2023, explaining why the **Colorado** nonprofit decided not to accept an air monitoring grant from the Environmental Protection Agency.

### *On AmeriCorps*

- “As a vehicle to address community-level challenges, AmeriCorps's decisions and budget are principally managed by governors and its services are delivered by community, nonprofit, and faith-based organizations. When you find AmeriCorps members in national and state parks, in the aftermath of storms and fires, and at the whiteboards in our schools, it's because states and communities wanted them there.”

— Rye Barcott and Annmaura Connolly, writing in [On AmeriCorps’ Thirtieth Anniversary, Congress Considers Gutting National Service](#), *Time*, Oct. 26, 2023.

They warn, “Congress is considering halving the program, eliminating tens of thousands of national service member opportunities.”

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## **Worth Reading**

- [The Student-Loan Forgiveness Program That More Nonprofit Workers Should Know About](#) (paywall), Sarah Herschander, *Chronicle of Philanthropy*, Oct. 30, 2023.

## **State and Local**

### **Ballot Measures in the General Election**

[Thirty-six statewide ballot measures will be considered](#) by voters in six states ( **Colorado, Louisiana, Maine, New York, Ohio**, and **Texas**) this fall. Issues [range from abortion and marijuana](#) in Ohio to water and conservation in Texas. These hot topic issues are expected to drive voter turnout in the states. Several of the issues on the ballots can affect charitable nonprofits and their communities.

- **Child Care:** Voters in **Texas** will consider [Proposition Number 2](#) (one of 14 on the November 7 ballot) that would empower counties and cities to exempt operators of child-care facilities from paying 50% to 100% of property taxes. The measure would permit localities to impose additional eligibility requirements for the exemption. During the summer, the St. Paul, **Minnesota**, City Council approved for the 2024 elections a ballot proposal allowing voters to decide on property tax increases to [fund child care](#) for children up to five years old.
- **Campaign Contributions:** Maine [Question 2](#) asks voters, “Do you want to ban foreign governments and entities that they own, control, or influence from making campaign contributions or financing communications for or against candidates or ballot questions?” If approved, the citizen’s initiative would authorize significant [changes to the state election code](#).

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## **Worth Remembering**

- “The political campaign intervention prohibition [for 501(c)(3) organizations] is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organizations.”

— [Revenue Rule 2007-41](#), Internal Revenue Service, June 18, 2007.

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## ***Worth Heeding***

- [Public Charities are Restricted from Participation in Political Campaigns. How About Their Staff?](#), Amy Y. Lin, Perlman + Perlman, Oct. 13, 2023, providing clear explanations of permissible voter registration and civic engagement and impermissible partisan political activities by nonpartisan charitable nonprofits and their staff for the upcoming election season.
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## **State Law Roundup**

New laws and rules going into effect directly affect the work of charitable organizations.

- **State Taxation of Federal Charitable Deductions:** A **Colorado** statute passed last year limits the amounts that taxpayers earning \$300,000 per year may claim for charitable deductions to \$12,000 for individuals and \$16,000 for couples. [Newly proposed rules by the state Department of Revenue](#) would require Colorado taxpayers who meet the \$300,000 income threshold for deduction caps to pay state income tax on the difference between the cap and the federal standardized deduction.
- **Unemployment Insurance Mandated:** All nonprofits in **Vermont**, regardless of size, will be required to [participate in the state unemployment system](#) under a new law ([H.217](#)) that goes into effect July 1, 2024. Previously, nonprofits with fewer than four employees were exempt from having to provide coverage. Nonprofits have two choices to comply as [contributory employers or reimbursable \(or “self-insured”\) employers](#). The Vermont Department of Labor

has been working with **Common Good Vermont**, the state association of nonprofits, to present an [informational session on November 8](#) for nonprofits affected by the change. [Learn more](#).

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## States Revising Nonprofit Regulations

Several new state laws have a range of impacts on charitable nonprofits.

- **New York:** On October 25, the Governor signed a measure clarifying how non-membership nonprofits can create classes of board members for the purpose of staggering their terms of office via bylaws. **Nonprofit New York**, along with nine other nonprofits, sent a [letter to Governor Hochul](#) earlier in the month supporting the bill.
  - **Oklahoma:** A new law requires charitable organizations to [register with the Attorney General](#) 45 days or more before dissolution, termination, disposition of all or substantially all assets, removal from the state, removal of assets from the state, or amendment of the governing document that describes the charitable purpose. The law applies to nonprofits incorporated, organized, or with a principal place of business in the state, or that have assets in the state worth more than \$500,000 and solicit contributions in the state for one year.
  - **Texas:** Texas enacted a new statute requiring charitable nonprofits to keep and make available at its principal office all [documents that a nonprofit must make available](#) for public inspection for at least three years.
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## Worth Quoting

*On government grants*

- “We recognize the essential role [nonprofit] organizations play in our community’s well-being.”

— New York Assemblywoman Buttenschon, quoted in [Assemblywoman Shows Nonprofits How to Access Grant Money During Seminar](#), *WKTV Utica*, Oct. 24, 2023, covering the Assemblywoman’s forum for nonprofits on how to access grant money appropriated for her district.

## *On the state of the nonprofit sector*

- “Today’s nonprofits are struggling like never before, due in large part to increasing demand, soaring costs, and fewer resources. This, in turn, places greater demand on nonprofit leaders and greater responsibility on regulators.”

— Meghan Stoppel, writing in [NAAG and NASCO Convene to Discuss Challenges Facing Nonprofits, Benefits of Collaboration](#), *The State AG Report*, Oct. 17, 2023, summarizing a presentation from the National Council of Nonprofits’ Tim Delaney and Donna Murray Brown, “State of the Nonprofit Sector,” at the 2023 NAAG/NASCO Annual Charities Conference.

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## **Numbers in the News**

**300,000+**



The number of people who registered to vote, updated their registration, or checked their registration status on National Voter Registration Day.

**Source:** [National Voter Registration Day: 2023 Highlights](#), Nonprofit VOTE, Oct. 2023.

**47%**

The share of **Rhode Island** nonprofit survey participants reporting it taking longer than three months to fill staff vacancies; 82% reported at least some staff burnout.

**Source:** [Finding workforce is labor intensive for local nonprofits](#), Sarah Francis, *Providence (RI) Business Journal*, Oct. 28, 2023.

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## ***Schoolhouse Rock, Updated***

Remote video URL

[Well Versed](#) is an update on the classic “Schoolhouse Rock” series. The animated series explains the U.S. Constitution and Bill of Rights, government structure, and laws from a children’s perspective. [Watch the teaser](#).

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## Nonprofit Events

- Nov. 1, [Annual Conference](#), Nonprofit New York
- Nov. 2, [Nonprofit Summit of the Midlands](#), Nonprofit Association of the Midlands (Nebraska)
- Nov. 2-3, [Conference for NC’s Nonprofits](#), North Carolina Center for Nonprofits
- Nov. 7, [Transform Arizona](#), AZ Impact for Good
- Nov. 14, [SC Nonprofit Issues Forum](#), Together SC
- Nov. 15, [Annual Policy Convention](#), CalNonprofits

## Advocacy in Action

### Advocating in the Gray Areas

It’s not quite accurate to say it’s easy to advocate for a policy position when everyone in the charitable sector agrees; organizations still vary in levels of interest, priority, focus, etc. But it is certainly harder to take a position on an issue in which your voice must be heard when there is no consensus or there are profound disagreements over the “correct answer.” How is an advocate to proceed when the answer is not black or white, but gray?

A case in point is the pending [Overtime Proposed Rule](#) from the U.S. Department of Labor that would expand employee protections and, by all estimates, raise the labor costs of most charitable nonprofits, as well as for for-profit businesses and governments. Depending on who you ask, the proposed changes would improve lives of employees and the people nonprofits serve, or they can force employers to make cutbacks, cause job losses, and lead to reduced services for the people the nonprofit is dedicated to serve.

In the face of these conflicting views, the [National Council of Nonprofits has submitted public comments](#) in advance of the **November 7** filing deadline to educate the policymakers about the unique contextual challenges nonprofits face today while addressing unasked, but longstanding related questions about how the federal government generally, and the Labor Department specifically, treats charitable nonprofits.

[Read more](#)

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