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The Gift That Keeps on Taking: How the TCJA Undermines Societal Health

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INTRODUCTION

Since the passage of the Affordable Care Act (ACA) in 2010, the state of healthcare has become an increasingly contentious topic in U.S. politics. Political divisions are exacerbated when considering how to distribute the costs and benefits among taxpayers, and the recently enacted Tax Cuts and Jobs Act of 2017 (TCJA), which the Republican Party pushed through Congress, has only made matters worse. The *New York Times* recently noted two emerging trends in 2018: first, pretax poverty rates fell to "11.8[%], the lowest level since 2001"; second, uninsured rates rose for the first time since the ACA's passage in 2010, increasing by 0.6% to a total of 27.5 million people lacking health insurance.[1] The article later observes, however, that although measures of poverty show a pretax decrease, the TCJA has resulted in better tax outcomes for wealthier taxpayers.[2] In other words, while the TCJA might have lifted a modest number of individuals out of poverty, the gap between the wealthy and the poor continues to grow. Further, recent research confirms that the TCJA has produced a negligible change in poverty rates, resulting in a reduction from 12.5% to 12.3%.[3] The current administration's constant insistence that America is becoming "great" again is, therefore, relatively unconvincing.

In fact, a recent presidential proclamation suggests that the U.S. tax system can hardly provide for its own citizens, let alone legal immigrants. Acknowledging the burden that uninsured individuals place upon the U.S. healthcare system, President Trump stated that "[i]mmigrants who enter this country should not further saddle our healthcare system, and subsequently American taxpayers, with higher

1 Ben Casselman et al., *Share of Americans with Health Insurance Declined in 2018*, N.Y. TIMES (Sept. 10, 2019), https://www.nytimes.com/2019/09/10/business/economy/health-insurance-poverty-rate-census.html [https://perma.cc/6DLB-P9XM].

2 *Id.*

3 MARGOT L. CRANDALL-HOLLICK ET AL., CONG. RESEARCH SERV., R45971, THE IMPACT OF THE FEDERAL INCOME TAX ON POVERTY: BEFORE AND AFTER THE 2017 TAX REVISION ("TCJA"; P.L. 115-97) 13 (2019).

costs."[4] In its proclamation, the White House suggests that unreimbursed medical services are causing unmerited emergency room visits and longer wait times, driving hospitals toward insolvency, and depleting state and federal budgets, thereby forcing taxpayers to shoulder these burdens to keep the healthcare system functioning.[5] The proclamation effectively bars visa-seeking immigrants from entering the United States unless they can show proof of adequate insurance coverage or sufficient funds to pay for any "reasonably foreseeable medical costs."[6]

A former member of the Obama administration predicted that visas would be denied to "parents of U.S. citizens based on a snap judgment about [the parents'] apparent health" and that "U.S. citizens will be separated from their husbands and wives abroad based on a failure to demonstrate health insurance coverage or a subjective level of wealth."[7] The irony is that if not for the current administration's efforts to undermine the ACA, there would not be so many uninsured U.S. citizens—yet the administration now bemoans the burden imposed on taxpayers by people of low socioeconomic status who lack health insurance. Viewed alongside the TCJA's tendency to increase wealth inequality, it should come as no surprise that despite spending the most on healthcare out of any nation in the Organisation for Economic Co-operation and Development (OECD), the United States continues to score significantly lower than other member nations on life expectancy. Moreover, U.S. citizens with the highest income are about 20% more likely to report being in good health than those with the lowest income—a gap that also dwarfs many other nations in the OECD.[8]

While this example highlights the complex interplay of immigration, healthcare, taxation, and economic inequality, the focus of this Comment is much narrower. This Comment will focus on how recent changes to the standard deduction under the TCJA have altered the charitable behaviors of U.S. citizens. Further, it argues these changes will likely cause greater income inequality and worse health outcomes for some of the most vulnerable portions of the U.S. population. The

4 Richard Gonzales, *Trump Bars Immigrants Who Cannot Pay for Healthcare*, N.P.R. (Oct. 4, 2019, 11:09 PM), https://www.npr.org/2019/10/04/767453276/trump-bars-immigrants-who-cannot-pay-for-health-care [https://perma.cc/8V46-PBTK].

5 Proclamation No. 9945, 84 Fed. Reg. 53,991 (Oct. 9, 2019).

6 *Id.*

7 Gonzales, *supra* note 4.

8 OECD, SOCIETY AT A GLANCE 2016: OECD SOCIAL INDICATORS 114–17 (2016); OECD, SOCIETY AT A GLANCE 2019: OECD SOCIAL INDICATORS 110–11 (2019).

first section of this Comment will summarize the goals and metrics of tax policy. The second section will look at changes in charitable giving before and after the TCJA. The third section will explore the havoc these changes are wreaking upon the nonprofit sector and their impacts upon income inequality and healthcare outcomes. Finally, before concluding, this Comment will turn to potential solutions to address the issues raised.

I
THE GOALS AND METRICS OF TAX POLICY

There are established criteria for evaluating tax policy. These criteria represent the competing demands of fairness, efficiency, and administrability.[9] Various metrics may be employed to measure each criterion, and some are more reliable than others. Before delving too deeply into the TCJA's effect on charitable contributions, it is first necessary to explain each criterion and lay out the metrics relied upon in this Comment.

A. Fairness

The first major concern of tax policy is fairness. Two overarching principles dictate measures of fairness in the tax realm. The first is the *benefit principle*, which suggests that those who reap the benefits of the government service provided should be the same individuals who pay the tax.[10] This system therefore opposes any redistribution of wealth. The second is the *ability to pay principle*, which suggests that taxes should be distributed according to each filer's ability to pay and is reflected in the graduated income tax rates in the U.S.[11] Under the ability to pay principle, those who earn the most should shoulder the largest tax obligation. Research by the Joint Committee on Taxation and several other groups suggests that the TCJA achieves the opposite result; instead of assessing taxes on an individual's ability to pay, the TCJA will likely reallocate a larger portion of the tax burden to lower-

9 *See generally* JOINT COMMITTEE ON TAXATION, OVERVIEW OF THE FEDERAL TAX SYSTEM AND POLICY CONSIDERATIONS RELATED TO TAX REFORM (JCX-36-17) (July 18, 2017) [hereinafter OVERVIEW OF THE FEDERAL TAX SYSTEM].

10 *Id.* at 38.

11 *Id.*

income households by the year 2027.[12] This raises the question of how a taxpayer's ability to pay ought to be assessed.

When determining ability to pay, options include looking at annual income, lifetime income, or consumption. Experts generally agree that annual income is the most common measure of an individual's ability to pay taxes,[13] and so it is the metric used in this Comment. Further, this Comment will show that changes to the charitable contribution deduction decrease fairness under both the benefit and ability to pay principles, by denying tax savings to those most likely to be in need and by granting the largest tax savings to those who would donate anyway and need to rely on charity the least. This introductory glimpse at the concept of fairness will, however, resurface later when considering potential solutions—namely in increasing audits of the wealthy.

B. Efficiency

The second major concern of tax policy is efficiency. At a basic level, a tax is deemed efficient if it does not change taxpayer behavior; if behavior does change, the resulting change is deemed an efficiency loss.[14] The most efficient tax would thus be a "head tax," one that charges, for example, $100 per person annually with no regard to income or ability to pay.[15] This is because, in theory, it would produce no change in taxpayers' economic behaviors, such as labor or investment decisions. In contrast, research has suggested that for each percentage point increase in a taxpayer's marginal tax rate there is a corresponding increase in efficiency loss.[16] For example, one would expect that if earning more income leads to being charged a higher tax rate, individuals might change their economic behaviors to earn less so as to pay fewer taxes.

One interesting distinction the Joint Committee on Taxation identifies when looking at efficiency is the difference between

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12 WILLIAM R. CLINE, PETERSON INST. FOR INT'L ECON., THE NEW TAX LAW'S IMPACT ON INEQUALITY: MINOR BUT WORSE IF ACCOMPANIED BY REGRESSIVE SPENDING CUTS 2–3 (2018).

13 OVERVIEW OF THE FEDERAL TAX SYSTEM, *supra* note 9, at 38–39.

14 *Id.* at 27–28.

15 *Id.* at 27 n.58 (citing Alan J. Auerbach & James R. Hines, *Taxation and Economic Efficiency*, *in* HANDBOOK OF PUBLIC ECONOMICS, 1347, 1347–1421 (A.J. Auerbach & M. Feldstein eds., 2002)).

16 JOINT COMMITTEE ON TAXATION, METHODOLOGY AND ISSUES IN MEASURING CHANGES IN THE DISTRIBUTION OF TAX BURDENS (JCS-7-93) 20–31 (June 14, 1993).

economic incidence and statutory incidence. The Joint Committee explains as follows:

> The distribution of the economic burden of a tax is referred to as the economic incidence of the tax. It is important to distinguish economic incidence from statutory incidence. The statutory incidence is borne by the people who are legally liable for the tax (generally those who are required to write the checks to the government). However, in a market economy, these people may not be the ones who suffer a loss of economic well-being due to the tax. The economic incidence of the tax is borne by the people who experience a loss of economic well-being as a result of the tax.[17]

The concept of efficiency and the distinction between economic and statutory incidence are particularly relevant to the topic at hand. Changes in the standard deduction under the TCJA are projected to cause significant distortions in charitable behaviors amongst taxpayers; people earning a range of incomes will be less likely to make charitable contributions for a tax break due to statutory incidence, claiming the standard deduction instead. The individuals benefiting from charitable organizations, on the other hand, are the ones who bear the economic incidence of these changed behaviors. Greater attention will be given to efficiency in Parts II and III.

C. Administrability

The third major concern of tax policy is administrability. Administrability is a blanket term for the issues of simplicity, administration, and compliance.[18] These issues share a common theme of ease: the simpler the tax code and its method of administration, the fewer resources taxpayers have to devote to filing their returns, and the fewer resources the government likely has to spend on processing/auditing and engaging in compliance enforcement actions.

The tax gap is generally a reliable measure of how administrable the income tax is. The gross tax gap represents the difference between what the I.R.S. theoretically *should* have raised in revenue, and the revenue that was actually reported and paid.[19] Data from 2008 through 2010 showed that an average of 81.7% of taxes were voluntarily reported and paid on time.[20] By and far, the most significant portion of the tax gap (about 63%) is due to underreporting of income on tax returns—an

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[17] *Id.* at 20.

[18] OVERVIEW OF THE FEDERAL TAX SYSTEM, *supra* note 9, at 45–46.

[19] *Id.* at 46.

[20] *Id.*

issue that frequently arises for business owners/self-employed individuals without a third party reporting their wages.[21]

In theory, a higher standard deduction that results in fewer people itemizing their deductions seems as though it would aid administrability. Any potential simplification, however, is easily offset by the continued handicapping of the I.R.S. due to increasingly common government shutdowns and a former hiring freeze.[22] Further, while the TCJA may have alleviated some complexity on the side of filing income tax returns, changes to other parts of the Internal Revenue Code (I.R.C.) will likely cancel this out. For example, charitable organizations are not only likely to see fewer donations coming in under the TCJA, but, due to changes in the tax code regarding certain fringe benefits, many nonprofits also had to file Form 990 for the first time if, for example, they provided parking passes to employees.[23] While Congress appears to be correcting this issue,[24] it highlights some of the administrability problems posed by the TCJA and how sloppily the legislation was drafted. Because the TCJA is so recent, hard data on figures such as the tax gap, administrative efficiency, and so forth are difficult to obtain. Administrability is a complex concern—more individuals claiming the standard deduction should not in and of itself be viewed as a more administrable tax system.

II
NONPROFIT CHALLENGES AFTER THE TCJA

The TCJA has heavily affected the nonprofit sector. This section begins by examining the significant role nonprofits play in the U.S. economy. Next, it focuses on how changes to the standard deduction have made taxpayers less likely to claim the charitable contribution deduction and consequently less likely to engage in charitable behaviors. Finally, it closes with a look at other changes to the I.R.C. under the TCJA that presented additional challenges for nonprofits.

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21 *Id.* at 47.

22 *See* Paul Kiel & Jesse Eisinger, *How the IRS Was Gutted*, PROPUBLICA (Dec. 11, 2018, 5:00 AM), https://www.propublica.org/article/how-the-irs-was-gutted [https://perma.cc/6X4T-DJ98].

23 JANE G. GRAVELLE ET AL., CONG. RSCH. SERV., R45922, TAX ISSUES RELATING TO CHARITABLE CONTRIBUTIONS AND ORGANIZATIONS 4 (2019).

24 Jim Tankersley & Emily Cochrane, *Congressional Negotiators Agree to Extend Some Tax Credits and Add to Debt*, N.Y. TIMES (Dec. 17, 2019), https://www.nytimes.com/2019/12/17/business/congress-tax-breaks-debt.html?searchResultPosition=1 [https://perma.cc/2BRH-ZAR7].

A. Significance of the Nonprofit Sector

The nonprofit sector has a significant presence in the U.S. economy and plays an important role in providing services the government would otherwise be expected to provide. While there are a range of 501 nonprofit corporations, this Comment focuses specifically on 501(c)(3) corporations, otherwise called "public charities," and, including under its umbrella, entities "organized and operated exclusively for religious, charitable, scientific, . . . literary, or educational purposes, [etc.]."[25] Any reference to nonprofits in this Comment should be construed to mean 501(c)(3) organizations (as compared to corporations) unless expressly stated otherwise.

There are approximately 1.4 million nonprofits in the U.S.[26] Nonprofits thus play a huge role in the U.S. economy. In 2016 alone, the nonprofit sector employed 12.3 million people, paid $826 billion in wages, and accounted for $2 trillion of spending in the economy.[27] Of the 1.4 million nonprofits in the U.S, over 98,000 fall into the categories of healthcare, mental health, and hospitals, and if including nonprofits devoted to science and technology research or other public interest causes, this number would continue to rise.[28] While 98,000 is a relatively small figure when looking at 1.4 million nonprofits, these 98,000 nonprofits make up the top two spending subsectors out of all 501(c)(3) organizations.[29] Thus, one might expect that any decrease in charitable giving due to the higher standard deduction is likely to hit these health-oriented nonprofits the hardest. Further consideration of this possibility will be addressed in Part III.

B. The Standard Deduction

When filing taxes, taxpayers have the option to itemize their deductions or claim the standard deduction. Itemizable deductions include things such as payments for state and local taxes, mortgage interest deductions, or the charitable contribution deduction.[30] While the standard deduction gives households a flat dollar amount that can be deducted from income, households who pay large enough amounts

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25 I.R.C. § 501(c)(3).

26 NAT'L COUNCIL OF NONPROFITS, NONPROFIT IMPACT MATTERS: HOW AMERICA'S CHARITABLE NONPROFITS STRENGTHEN COMMUNITIES AND IMPROVE LIVES 7 (2019).

27 *Id.* at 12 (citing JOHN HOPKINS CTR. FOR CIVIL SOC'Y STUD., THE 2019 NONPROFIT EMPLOYMENT REPORT (2019), based on data from the U.S. Bureau of Labor Statistics).

28 *Id.* at 6.

29 *Id.* at 13.

30 *See, e.g.*, I.R.C. §§ 163(h)(3), 164(a)–(b), 170(a)–(b).

for state and local taxes, charitable contributions, or other itemizable deductions will receive a larger overall deduction if they elect to itemize. This subsection will focus on how the TCJA's changes to the standard deduction have made individuals less likely to itemize their deductions and therefore less likely to engage in behaviors that would earn them itemizable deductions.

The I.R.C. is notorious for its complexity and seemingly chaotic organization of statutory provisions.[31] Thus, not surprisingly, while this Comment revolves around charitable deductions as outlined in I.R.C. § 170, significant focus will also be given to § 63(c)(7)—the new standard deduction provision added to the Code by the TCJA. Section 63(c)(7) nearly doubled the standard deduction for filers who are single (formerly $6,500, now $12,000); married (formerly $13,000, now $24,000); and heads of household (formerly $9,550, now $18,000).[32] The natural result of this increase is that fewer filers are electing to itemize deductions, as allowed under § 63(e).[33] Without the incentive to itemize deductions, taxpayers may lose the incentive to engage in those behaviors that would earn them the itemized deductions. For example, research suggests that somewhere between 23.8 to 27.3 million tax filers will switch from itemizing deductions and claim the standard deduction instead.[34]

In his article *An Economic Analysis of the TCJA's Larger Standard Deduction*, Alan D. Viard argues that the change fails to make the tax system more administrable.[35] The standard deduction and those who claim it essentially set a floor on reported income—this floor eliminates the need for the I.R.S. to verify or track small expenditures and, in theory, should produce savings for administration and compliance purposes.[36] Yet, given the fact that itemizable deductions were created to produce societal benefits, the idea of having a floor begins to reveal its cracks. In Mr. Viard's view, the recent increase in the standard deduction may have "served as an indirect way to curtail itemized deductions that could not be curtailed directly" due to too much public

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31 *See* Shu-Yi Oei & Leigh Z. Osofsky, *Constituencies and Control in Statutory Drafting: Interviews with Government Tax Counsels*, 104 IOWA L. REV. 1291, 1293–97, 1305–07 (2019).

32 Alan D. Viard, *An Economic Analysis of the TCJA's Larger Standard Deduction*, TAX NOTES, Apr. 1, 2019, at 80.

33 *Id.* at 81.

34 *Id.*; Alex Brill & Derrick Choe, *Charitable Giving and the Tax Cuts and Jobs Act*, AM. ENTER. INST., June 2018, at 3.

35 Viard, *supra* note 32, at 84.

36 *Id.*

support for their existence.[37] In other words, Mr. Viard suggests that Congress intended to target itemized deductions like the charitable deduction. The next subsection will explore other alterations and changes to the Code that may support this argument.

C. Other Changes to the Code Affecting Giving Incentives

Some other changes to the I.R.C. under the TCJA have affected giving incentives. Marginal tax rates, otherwise known as the tax rates assigned to particular income brackets, were reduced under the TCJA, thereby reducing giving incentives. "For example, the reduction in the top bracket from 39.6% to 37% would increase the price of giving by 4% for an itemizer in that bracket (from 0.604 to 0.63)."[38] While low- to middle-income earners may elect to take the standard deduction and lose any incentive for charitable giving, even some of those individuals who continue to itemize deductions will see a smaller return on their charitable donations. This decrease thereby reduces the incentive for all but the wealthiest taxpayers.

Adjustments to the Code have drawn criticism for moving the allowable deduction out of reach for the average U.S. taxpayer and directly into the hands of the nation's wealthy. For example, another change to the Code increased allowable deductions for charitable cash contributions, stepping the deduction up from 50% to 60% of adjusted gross income.[39] Combined with the increased standard deduction and reduced marginal tax rates, this increase to charitable cash contributions seems little more than a wink and a nod to the country's wealthiest denizens. Not only are households who make significant charitable donations undeterred by the increased standard deductions because itemizing is more advantageous to them but they also can now contribute even more cash to nonprofits of their choice and are entitled to claim a larger deduction for doing so. As one study notes, fewer "than 10[%] of households—mainly those at the highest income levels" are now likely to claim the deduction.[40] This unfortunate reality has led to a great deal of criticism. As one economist observed, "A deduction that is only available to the most affluent donors cannot pass the laugh

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37 *Id.* at 88.

38 Brill & Choe, *supra* note 34, at 3.

39 I.R.C. § 170(b)(1)(G)(i).

40 JOSEPH ROSENBERG & EUGENE STEUERLE, TAX POL'Y CTR., REFORMING CHARITABLE TAX INCENTIVES: ASSESSING EVIDENCE AND POLICY OPTIONS 4 (2018).

test for political sustainability."[41] Other commentators have expressed concern with depriving other citizens of an "incentive to engage and give more to their communities."[42]

One other change in the Code worth noting is the newly imposed tax for nonprofits on employee transportation fringe benefits.[43] Section 501(b) allows that any 501(c) corporation may be subjected to a tax for unrelated business activities.[44] Nonprofits are tax exempt if they are engaging in conduct which justifies their exemption status.[45] However, after 2017,

> the TCJA disallows deductions for certain fringe benefits, including transportation-related benefits and parking benefits. Since for-profit businesses are no longer allowed to deduct these expenses as a result of other changes in the TCJA, in an effort to create parity, tax-exempt organizations are required to add the value of these fringe benefits provided to employees to their unrelated business taxable income. Increasing unrelated business taxable income by the amount of fringe benefits effectively requires tax-exempt entities to pay the corporate tax rate of 21% on the value of these benefits as provided. For some organizations that did not previously file Form 990s, particularly churches, this change could require that information returns be filed.[46]

This new policy places nonprofits in a catch-22. Either they discontinue certain fringe benefits for employees, risking employee dissatisfaction, or they must pay a tax and likely take time to learn how to file a Form 990. Both options will likely produce economic burdens upon the nonprofit and detract from focus on its actual tax-exempt purpose. Having outlined some of the key changes under the TCJA, Part III now turns to look at the corresponding effects of those changes.

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41 Viard, *supra* note 32, at 90 (citing Eugene Steuerle, *Charities Have Plenty of Opportunity to Advance Giving Despite Tax Law Losses*, CHRON. PHILANTHROPY, Feb. 8, 2018).

42 *Id.* (citing David Rogers, *GOP Tax Law a One-Two Punch to Charities – and American Giving*, POLITICO, Jan. 13, 2018).

43 *But see* Tankersley & Cochrane, *supra* note 24 (discussing the House of Representatives' recent attempt to correct for these issues).

44 I.R.C. § 501(b).

45 GRAVELLE ET AL., *supra* note 23, at 3.

46 *Id.* at 4.

III
IMPACTS UPON THE NONPROFIT SECTOR AND CORRESPONDING EFFECTS

Part III looks at several impacts these changes within the TCJA have on society. First, it explores some of the data surrounding impacts on the nonprofit sector. Second, it focuses on the connection between changes within the TCJA and their effects on income inequality. Third, it highlights how these effects are correlated to worse health outcomes for both vulnerable populations and the larger society. Finally, it concludes with a few illustrations of real-world impacts.

A. Giving Inequality and the Sectors Most Affected

Due to changes under the TCJA, overall contributions to nonprofits were expected to decrease. One study predicted a $15 billion reduction in 2018, while another estimated closer to $17.2 billion, and yet another suggested anywhere from $13 to $21 billion annually.[47] As already discussed, contributions going forward will likely be larger and concentrated in the hands of fewer donors. The effect of disincentivizing charitable contributions for all but the highest income households results in what is known as *giving inequality*, a concept that also extends to the disproportionate burden placed on small nonprofits when massive reductions in giving incentives occur.[48]

Researchers have noted that some nonprofits are likely to be hit harder than others by changes under the TCJA. Low-income donors, for example, have historically been the biggest contributors to small, local nonprofits "such as food banks, homeless shelters, and social-service [providers]."[49] However, smaller earners are not the only donors worth noting here. Of particular significance are upper-middle-class donors, who will experience the biggest shift from itemizing deductions to taking the standard deduction. This group of donors also favors organizations such as "food banks and social-services groups."[50] These smaller, locally funded nonprofits are thus the ones that will struggle the most. Meanwhile, wealthy donors favor universities and

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47 ROSENBERG & STEUERLE, *supra* note 40, at 2; Brill & Choe, *supra* note 34, at 1; NAT'L COUNCIL OF NONPROFITS, *supra* note 26, at 26.

48 NAT'L COUNCIL OF NONPROFITS, *supra* note 26, at 29.

49 *Id.*

50 Viard, *supra* note 32, at 90 (citing Richard Rubin, *Charities Brace for Tax-Driven Drop in Year-End Giving*, WALL ST. J., Nov. 27, 2018) (internal quotations omitted).

the arts, so these institutions should continue relatively unscathed.[51] It is also worth mentioning that some economists suggest wealthy donors favor hospitals and the health sector, too, yet by failing to support "religion, youth and family services, community improvement, and directly providing for basic necessities,"[52] one can easily extrapolate that giving money to hospitals does not necessarily curtail other negative socioeconomic and health outcomes. Although hospitals treat patients in need, they function more as a Band-Aid for health crises, whereas nonprofits aimed at alleviating poverty, homelessness, addiction/mental health issues, and food scarcity serve valuable interventionist purposes to prevent individuals from being hospitalized—or worse.[53]

Initial data suggest that many of these predictions are coming true. For example, individual donations in 2018 totaled $292.09 billion—an overall reduction of 3.4% when adjusted for inflation.[54] When looking at donations from all sources, charitable giving to health organizations declined by 2.3% after adjusting for inflation.[55] Other sectors in the charitable community that saw fewer donations include religion, education, foundations, and public-society benefit organizations.[56] While these percentages may seem small, their magnitude becomes clearer when considering that poverty rates experienced only a 0.2% reduction under the TCJA.

B. Effects on Income Inequality

Different stories regarding the TCJA's impact on income inequality emerge depending on which metrics are used. For example, from a purely income-based approach, the Congressional Research Service "estimates that the TCJA reduced overall poverty by 1.6% (from 12.5% in poverty under the pre-TCJA income tax to 12.3% in poverty under

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51 *Id.* For a deeper discussion of giving inequality, see Miranda Perry Fleischer, *How Is the Opera Like a Soup Kitchen?*, *in* THE PHILOSOPHICAL FOUNDATIONS OF TAX LAW 255 (Monica Bhandari ed., Oxford Univ. Press, 2017).

52 Viard, *supra* note 32, at 90; GRAVELLE ET AL., *supra* note 23, at 27–28.

53 For a discussion of the shortcomings healthcare providers face in treating hospital patients, see John T. James, *A New, Evidence-Based Estimate of Patient Harms Associated with Hospital Care*, 9 J. PATIENT SAFETY 3, 122–28 (2013).

54 GIVING USA, Giving USA 2019*: Americans Gave $427.71 Billion to Charity in 2018 Amid Complex Year for Charitable Giving* (June 18, 2019, 3:07 PM), https://givingusa.org/giving-usa-2019-americans-gave-427-71-billion-to-charity-in-2018-amid-complex-year-for-charitable-giving/ [https://perma.cc/7J6Y-5TM2].

55 *Id.*

56 *Id.*

the post-TCJA income tax)."[57] However, merely because a household has enough posttax income to lift them above the poverty threshold does not mean they are no longer struggling, nor does it mean they are able to absorb the cost of fewer social service programs available to them. Further, the households who experienced these changes in poverty rates were primarily low-income families with children and working family members.[58] Individuals who do not fit this category experienced virtually no change in their poverty rates under the TCJA.[59] Authors with the Congressional Research Service further distinguish between the poverty gap and the poverty rate, noting that the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), and housing assistance programs each had a greater effect on reducing the poverty gap than did the TCJA.[60] This distinction is noteworthy because it again highlights the important gap that nonprofits with similar purposes strive to fill.

Changes made under the TCJA risk worsening income inequality eventually, and a weakened nonprofit sector will be less capable of responding to societal needs. While the TCJA may have resulted in a slight reduction in the poverty rate, this is hardly reassuring when considering that 40% of U.S. citizens are "one missed paycheck away from poverty."[61] Further, nonprofits are already struggling to meet the needs of the public, with 57% reporting an inability to meet demand—meanwhile, that figure rises to 65% for nonprofits serving low-income populations.[62] Despite this troubling landscape, the outlook worsens when considering how Congress will afford to offset the costs of the TCJA's tax cuts.

Congress must inevitably recover the revenue lost due to recent tax cuts. As William R. Cline of the Peterson Institute notes,

> The scope for a regressive impact of the new tax law becomes much larger once one considers possible scenarios for recovering lost revenue. It is useful to consider the consequences of spending cuts distributed proportionally the same as one major social safety-net program: Medicaid. This illustration is neither extreme nor arbitrary, considering that the House Republican leadership has already

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57 CRANDALL-HOLLICK ET AL., *supra* note 3, at 13.

58 *Id.* at 13–14.

59 *Id.*

60 *Id.* at 17–18.

61 Aimee Picchi, *40% of Americans Only One Missed Paycheck Away from Poverty*, C.B.S. NEWS (Jan. 29, 2019, 10:36 AM), https://www.cbsnews.com/news/40-of-americans-one-step-from-poverty-if-they-miss-a-paycheck [https://perma.cc/WQ9Y-ANC9].

62 NAT'L COUNCIL OF NONPROFITS, *supra* note 26, at 24.

> specifically mentioned healthcare and anti-poverty programs as areas of public spending that will need to be cut.[63]

Mr. Cline runs calculations using a $1 trillion spending cut to Medicaid spread across ten years.[64] The overall outcome is that the bottom 60% of taxpayers come out worse under the TCJA; the 60–80% range remains essentially unchanged, and the top 20% experience a gain.[65] While Medicaid is the example used here (and is a relatively pertinent one when considering health outcomes), this same issue arises for any social welfare program that the government may cut.

Furthermore, when the federal government makes budget cuts, the cascading effect of those budget cuts harms nonprofits. Traditionally, states receive approximately one-third of their funds from the federal government.[66] Likewise, local or municipal governments rely on state and federal funding, and nonprofits are often hired by these various levels of government "to deliver programs and services to the public."[67] Thus, not only are nonprofits, especially smaller nonprofits, likely to receive fewer charitable contributions from taxpayers, they are also heavily affected by unforeseen cuts in public spending.[68] The TCJA's increase of the standard deduction and its negligible effect on poverty rates is the equivalent of putting a Band-Aid on a gaping wound. Further, this overall negative impact on income inequality has corresponding unfavorable results when looking at health outcomes.

C. Effects on Societal Health

As has been hinted at, many changes discussed up to this point coalesce into worse health outcomes for society. Income inequality has long been linked with worse health outcomes for lower-income individuals. For example, low-income populations have significantly shorter life expectancies than their high-income counterparts and are more likely to suffer from costly health conditions such as obesity.[69] Because the TCJA will likely worsen income inequality, it is reasonable to assume that low-income communities will face worse health outcomes. It is also reasonable to conclude that when food banks

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63 CLINE, *supra* note 12, at 6.

64 *Id.*

65 *Id.* at 7.

66 NAT'L COUNCIL OF NONPROFITS, *supra* note 26, at 27.

67 *Id.*

68 *Id.*

69 Roberta F. Mann, *Controlling the Environmental Costs of Obesity*, 47 ENV'T L. 697, 703–04 (2017).

and social service programs lack funding—whether that funding is derived from direct charitable contributions or allocated through the federal budget—low-income individuals are likely to face serious hardships that will challenge their health. Whether the issue be food scarcity, housing scarcity, or even a lack of rehabilitative services like Alcoholics Anonymous meetings at the local church, community health will inevitably suffer absent such services.

The increasing marginalization of the elderly and disabled also imposes significant burdens on societal health. That the TCJA lifts some families with children and workers above the poverty threshold while leaving all others behind is particularly troubling—especially when combined with the likelihood these tax cuts will be paid for by slashing funding for benefit programs.[70] To further complicate matters, while one in five U.S. citizens are now fifty-five or older, by the year 2030 that proportion is expected to rise to one in three due to the baby boomer generation and decreasing fertility rates.[71] And, unfortunately, disparities in wealth and income have become increasingly pronounced over the past thirty years and carry over into old age.[72] Thus, while an older household in the bottom 20% had an average annual income of $9,000 in 1989 and $14,000 in 2016, older households in the top 20% averaged $242,000 in 1989 and $398,000 in 2016.[73] The top 20% experienced a 64% increase in their annual incomes, while the bottom 20% saw a 55% increase.[74] Taken with the fact that the number of uninsured individuals in the U.S. is on the rise, these figures paint a bleak picture for the health outcomes in some of the nation's most vulnerable populations.

Nor are the consequences limited to low-income populations. Recent research studying income inequality and health suggests that greater inequality also has an adverse effect on those in the highest income classes.[75] The data collected is reproduced in Figure 1.[76]

Viewing states and nations, the data finds correlations between income inequality and rates of heart failure, life expectancy, infant

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70 *See* CLINE, *supra* note 12, at 6–7.

71 U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-587, RETIREMENT SECURITY: INCOME AND WEALTH DISPARITIES CONTINUE THROUGH OLD AGE 7 (2019).

72 *Id.* at 9.

73 *Id.* at 9–10.

74 *Id.*

75 *See* INEQUALITY.ORG, FACTS: INEQUALITY AND HEALTH, https://inequality.org/facts/inequality-and-health/#us-inequality-health [https://perma.cc/D665-SYKR] (last visited Oct. 14, 2019).

76 *Id.*

mortality, and less tangible measures like stress and happiness.[77] For example, analyzing data from the *Journal of the American Medical Association* and the U.S. Census Bureau, researchers break down U.S. states by their Gini coefficient score (a measure of income inequality) and life expectancy.[78] Mississippi occupies one end of the spectrum with a high Gini coefficient of 0.4799 and low life expectancy of 74.7 years, while Hawaii occupies the other end with a low Gini coefficient of 0.4369 and high life expectancy of 81.3 years; similar trends can be observed at the international level, too.[79] As another study notes, "Income inequality harms health directly by increasing the prevalence of poverty and causing chronic stress due to social comparisons. Furthermore, it harms health indirectly by eroding societal trust and destabilizing communities."[80] This shows that while income inequality primarily leads to poor health outcomes for low-income populations, it also takes a physical and psychic toll upon the overall health of states and nations.

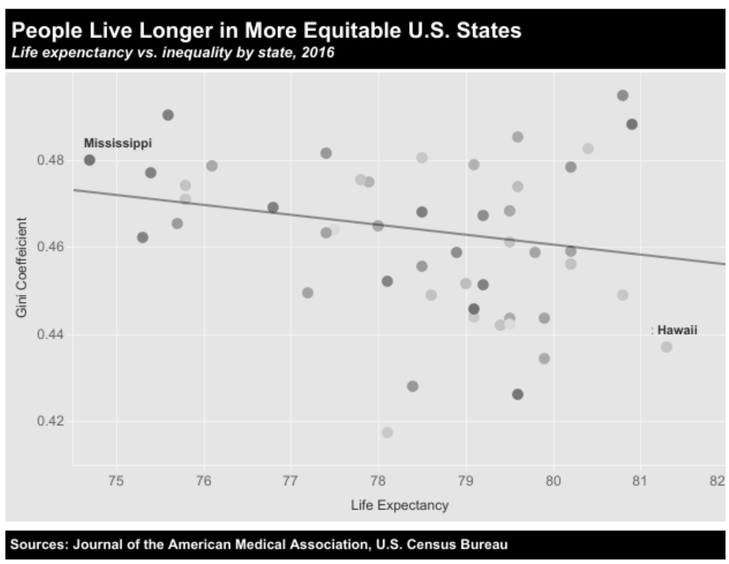

Figure 1. There is a correlation between a state's equitability and its residents' average life expectancy.

77 *Id.*

78 *Id.*

79 *Id.*

80 AM. PUB. HEALTH ASS'N, REDUCING INCOME INEQUALITY TO ADVANCE HEALTH (2017), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/reducing-income-inequality-to-advance-health [https://perma.cc/5RQ5-J2Z5].

It is hardly a secret that financial insecurity and instability lead to worse health outcomes. By exacerbating wealth inequalities and weakening support systems for the most vulnerable populations, the TCJA threatens the health of our society. Further, it does so at a time when the number of uninsured individuals is on the rise. Even if diminished societal trust and community stability are not in and of themselves unduly harmful, there remains the problem of worsening health outcomes for low-income and marginalized communities, who are likely the same individuals losing insurance coverage, and then offsetting those costs to taxpayers. If the current administration is as concerned as it claims to be with the burden that uninsured individuals have on the healthcare system and taxpayers' pocketbooks, then it should correct for flaws in its tax policies that exacerbate these problems. The following subsection examines how these problems are affecting real nonprofits.

D. Case Studies

Several real-world impacts are identifiable in the news and media. As individuals' charitable habits evolve and organizations struggle to keep pace with the demands of the current administration, numerous nonprofits are closing. For example, the Los Angeles–based Youth Policy Institute recently announced its closure in October 2019, leading to a layoff of roughly 1,000 employees.[81] During its operation, the organization had "secured tens of millions of dollars for after-school programs, job training, tax preparation and other services targeting low-income families."[82] While the organization likely saw a reduction in charitable giving from individuals, the real death blow came from the Department of Education withholding $6 million in funding.[83] This illustration confirms Mr. Cline's fear that the federal government would target programs aimed at alleviating poverty to help finance the TCJA.

A second example further illustrates the trickle-down effect of reduced funding making its way to nonprofits. In 2017, the year the TCJA was passed, Montana saw $18 million in Medicaid cuts and a total reduction of $95 million in funding for its Department of Public

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81 David Zahniser & Howard Blume, *This Group Was Supposed to Help L.A. Tackle Poverty Head-On. Instead, It's Shutting Down*, L.A. TIMES (Oct. 25, 2019, 6:59 PM), https://www.latimes.com/california/story/2019-10-25/youth-policy-institute-shut-down-financial-garcetti.

82 *Id.*

83 *Id.*

Health and Human Services.[84] These budget cuts crippled the mental health and addiction services within the state, resulting in numerous closures, especially in more rural areas.[85] The effect was that providers and case workers suffered job losses and their patients either went without treatment or, if they were homeless, were displaced to more urban parts of the state.[86] This resulted in greater demands on both healthcare and affordable housing providers, while also introducing greater risk of crime and alcohol and drug abuse in those communities.[87] One can see that nonprofits need every dollar they can get these days. Further, the TCJA has caused significant harm by reducing the charitable giving incentive while simultaneously slashing social welfare programs to finance tax cuts for the rich.

Finally, even urban areas cannot maintain the skyrocketing demands placed on nonprofits. Peace for the Streets by Kids from the Streets (PSKS) is a homeless shelter for youth in Seattle, founded by Zackary Tutwiler—a former homeless youth himself.[88] It is facing closure because of insufficient funds, both from individual donors and the state.[89] In a community with 1,089 homeless youth, losing twenty-five beds during winter months is significant.[90] Neither rural nor urban areas can keep up with the demand, and in the face of these closures, the individuals displaced face increased risks of hospitalization, institutionalization, or incarceration—each of which places significant costs on the community and individuals affected.

IV
POTENTIAL SOLUTIONS

A variety of potential fixes have been proposed for the problems raised; Part IV takes each in turn. First, it discusses a nonrefundable tax credit for charitable contributions. Second, it explores the feasibility of an above-the-line deduction for charitable contributions. Third, it looks at the Economic Mobility Act of 2019 as a potential solution to the

84 Kianna Gardner, *Mental-Health in Montana's Frontier: Budget Cuts in 2017 Significantly Impacted Hyper-Rural Areas*, DAILY INTER LAKE, Oct. 26, 2019.

85 *Id.*

86 *Id.*

87 *Id.*

88 Ashley Archibald, *Closing Nonprofit Takes Away 25 Beds and a Voice for Youth*, REAL CHANGE (Oct. 2, 2019), https://www.realchangenews.org/2019/10/02/closing-nonprofit-takes-away-25-beds-and-voice-youth [https://perma.cc/W6MN-5CNB].

89 *Id.*

90 *Id.*

problem nonprofits now face regarding employee fringe benefits. Finally, it concludes by suggesting the I.R.S. increase its audits of wealthy taxpayers to finance the charitable contribution deduction.

A. Credits

One alternative to removing the itemizable deduction for charitable contributions is to implement a tax credit as a substitute. Substituting a tax credit for the deduction may help spread the giving incentive across all income levels without losing revenue.[91] Two economists, working with a flat-rate 25% nonrefundable tax credit that the Congressional Budget Office previously analyzed, concluded that it could significantly incentivize giving for individuals "in the lower 90 percent of the income distribution."[92] Unfortunately, this same tax credit, without a floor (i.e., a minimum contribution amount below which the credit could not be claimed), would also be one of the costliest options to implement. The floorless, nonrefundable tax credit would cost an estimated $31.1 billion in revenue and produce an estimated increase of $23.3 billion in charitable giving.[93] With a floor of $500 for single filers and $1,000 for married filing jointly, the figures change to a $15.4 billion revenue expense and $20 billion increase in charitable giving.[94] Even if the government allocated revenue from somewhere else to finance this tax credit, it contains a more significant flaw.

Using a 25% tax credit, while encouraging lower-income contributions, would disincentivize high-income donors from giving. Anyone with a marginal tax rate above 25% would now have "a higher price of giving."[95] Because high-income donors make significant charitable contributions, any disincentive to give could have large ramifications and should be avoided. In addition, by incentivizing the lowest 90% of households to claim the credit, it would reduce the administrability of the policy by "increas[ing] complexity in compliance and tax administration."[96] In light of these shortcomings, other policy alternatives are worth exploring.

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91 GRAVELLE ET AL., *supra* note 23, at 34.

92 Brill & Choe, *supra* note 34, at 7.

93 *Id.*

94 *Id.*

95 *Id.*

96 GRAVELLE ET AL., *supra* note 23, at 34.

B. Above-the-Line Deductions

From a fiscal standpoint, an above-the-line deduction for charitable contributions may be the most pragmatic option when considering its effects. "A credit directly reduces tax liability, while a deduction . . . reduces tax liability only indirectly—by reducing taxable income."[97] Compared to a nonrefundable tax credit, for example, the estimated cost of an above-the-line deduction with a $500 floor for single filers and $1,000 floor for married filing jointly is only $14.6 billion (approximately half the cost of the floorless, nonrefundable tax credit).[98] This would produce an estimated increase of $19.1 billion in charitable giving.[99] These numbers, however, are not so different from the projections for the nonrefundable tax credit provision with the same $500/$1,000 floors. Thus, consider how a credit and an above-the-line deduction differ in terms of which donors they are incentivizing. Whereas the tax credit effectively incentivizes contributions from people with a marginal tax rate of 25% or less and disincentivizes contributions for those over that threshold, "[u]nder an above-the-line deduction, the marginal rate of the charitable incentive would still be based on the taxpayer's bracket . . . . Moreover, there would still be no giving incentive for households too poor to owe individual income tax."[100] In effect, this means that high-income donors would keep their increased incentive to give, while lower-income donors might not be as incentivized, thus failing to completely resolve concerns over giving inequality.

Despite these disparate impacts, nonrefundable tax credits and above-the-line deductions share many commonalities. For example, just as a nonrefundable tax credit would reduce administrability, adding a new above-the-line deduction that all taxpayers could claim would have the same result.[101] As already mentioned, the above-the-line deduction also creates incentive issues based on income class and would perpetuate the current "giving inequality" already in place under the TCJA. However, while the TCJA has lowered by percentage the number of poor and nonpoor households that owe taxes at the end of the year,[102] it still stands to reason that an above-the-line deduction

97 RICHARD SCHMALBECK ET AL., FEDERAL INCOME TAXATION 14 (Rachel E. Barkow et al. eds., 5th ed. 2018).

98 Brill & Choe, *supra* note 34, at 7.

99 *Id.*

100 Viard, *supra* note 32, at 91.

101 GRAVELLE ET AL., *supra* note 23, at 33.

102 CRANDALL-HOLLICK ET AL., *supra* note 3, at 12.

would incentivize giving among a broader base of lower-middle- to high-income earners. For those individuals that do have tax liabilities, an above-the-line deduction is a powerful tool to incentivize giving as it may help lower that household's overall marginal tax rate. A nonrefundable tax credit, on the other hand, might lower the household's tax liability (if one is owed) and thereby lower its average tax rate.[103] Ultimately, either solution would be an improvement over the current system and help restore the giving incentive to those who may have switched from itemizing their deductions.

C. The Nonprofit Tax Relief Act of 2019 (H.R. 3323) and the Economic Mobility Act of 2019 (H.R. 3300)

As noted earlier, one other area in which reform is needed is the TCJA's changed treatment of certain fringe benefits and unrelated business income for nonprofits. I.R.C. §§ 512(a)(6)–(7) now impose additional burdens on nonprofits, treating them instead as if they are for-profit businesses.[104] For example, under § 512(a)(6) "unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business[,]"[105] thereby disallowing any aggregation between jointly operated nonprofits. Additionally, § 512(a)(7) now requires that unrelated business taxable income be increased by the amount of certain (previously deductible) employee fringe benefits, such as transportation, parking passes, or athletic facilities.[106] Congress justified these changes by suggesting "the tax would 'make the tax system simpler and fairer for all businesses.'"[107] Because Congress made similar changes in the Code for for-profit business, it presumably considered it fair to hold nonprofits to the same standards.

Many commentators, however, have objected to this rationale. For example, Professor Roger Colinvaux writes that "'fair' or equal treatment between a nonprofit when performing its nonprofit functions and a for-profit business makes no sense. There is not meant to be a level playing field, which is why nonprofits get tax exemptions in the

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103 CTR. ON BUDGET AND POL'Y PRIORITIES, POLICY BASICS: MARGINAL AND AVERAGE TAX RATES, https://www.cbpp.org/research/policy-basics-marginal-and-average-tax-rates [https://perma.cc/3Z2N-6AKE] (last updated June 21, 2019).

104 *See* I.R.C. §§ 512(a)(6)–(7).

105 I.R.C. § 512(a)(6).

106 I.R.C. § 512(a)(7).

107 Roger Colinvaux, *Fixing Philanthropy: A Vision for Charitable Giving and Reform*, TAX NOTES 1007, 1014 (2019) (quoting H.R. Rep. No. 115-409, at 266).

first place."[108] Considering that nonprofits do not operate for profit, it seems odd to treat them as equivalent to for-profit businesses. There is also the added and unforeseen consequence mentioned earlier, wherein many nonprofits are now learning (or being told) that they must file Form 990 for the first time, which is undoubtedly undermining Congress's goal of making the tax system simpler.

To address these concerns, numerous pieces of legislation have been advanced. Two such pieces of legislation include the Nonprofit Tax Relief Act of 2019 (H.R. 3323) and the Economic Mobility Act of 2019 (H.R. 3300).[109] The Nonprofit Tax Relief Act "would eliminate the separate business calculation of the UBIT [unrelated business income tax]," while the Economic Mobility Act "would, among other things, repeal the inclusion of certain fringe benefits in UBIT."[110] In sum, these pieces of legislation would effectively return nonprofits to the tax exempt treatment they received before enactment of the TCJA. Congress should seriously consider both measures to alleviate the burdens nonprofits now face due to its enactment.

D. Increasing I.R.S. Compliance and Enforcement

To fund either a tax credit or an above-the-line deduction for charitable contributions, the I.R.S. should increase its compliance and enforcement efforts. Compliance and enforcement enable the agency to audit and collect on underreported or underpaid taxes. The rate at which millionaires are audited has dropped roughly 80% from 2011 to 2018.[111] This is in part because the agency has experienced large budget cuts of $3 billion since 2010, resulting in positions being lost through attrition and a brain drain on the agency as talented auditors retire.[112] While this solution therefore would take some time and money to implement, it is a worthwhile endeavor. The I.R.S. and its auditors serve to deter dishonest behavior and make sure that everyone is paying their fair share—breathing new life into its compliance and

108 *Id.*

109 GRAVELLE ET AL., *supra* note 23, at 39.

110 *Id.*

111 Paul Kiel, *It's Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%*, PROPUBLICA (May 30, 2019, 10:16 AM), https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent [https://perma.cc/7CXS-GMH2].

112 Jesse Eisinger & Paul Kiel, *Why the Rich Don't Get Audited*, N.Y. TIMES (May 3, 2019), https://www.nytimes.com/2019/05/03/sunday-review/tax-rich-irs.html [https://perma.cc/AUK5-UJ53]; Kiel, *supra* note 111.

enforcement department would ensure that the agency has adequate talent for generations to come.

Further, this endeavor would pay for itself *and* the costs of financing the nonrefundable tax credit or above-the-line deduction for the charitable contribution. It has been estimated that the top 0.5% "of the highest-earning Americans account for about a fifth of the income that's hidden from the I.R.S. . . . or more than $50 billion a year in today's dollars."[113] While there is no guarantee that the I.R.S. could collect this amount, this represents only a fraction of the revenues that go unreported or unpaid every year. In fact, the I.R.S. estimated this tax gap to run closer to the tune of $245 billion for income tax in 2001.[114] In support of this, the Congressional Budget Office has estimated that once new employees are hired and trained at the I.R.S., each dollar of funding devoted to the agency would yield five dollars in revenue collected, and other sources have suggested even more favorable results.[115] Thus, by prioritizing compliance and enforcement actions for the highest earners, the I.R.S. may help strengthen the fairness of the current tax system and defend against future attempts to erode it. Further, this reform would easily pay for a charitable contribution credit or above-the-line deduction.

CONCLUSION

To recap, the number of uninsured individuals is on the rise while nonprofits charged with providing services to aid at-risk populations are seeing reduced charitable contributions. The TCJA and other policies of the Trump administration are largely to blame. On the surface, the TCJA may not immediately appear to worsen income inequality—but by slashing funding elsewhere, the legislation produces drastic effects, as evidenced by giving inequality and the several closures of community-based nonprofits. These closures shift tax burdens to hospitals, mental institutions, law enforcement, and

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113 Kiel, *supra* note 111 (citing Andrew Johns & Joel Slemrod, *The Distribution of Income Tax Noncompliance*, 63 NAT'L TAX J. 397, 404 (2010)).

114 Rosemary D. Marcuss, *Understanding Compliance: What's the Tax Gap Got to Do With It?*, TAX NOTES 887, 888 (2011).

115 CONG. BUDGET OFFICE, INCREASE APPROPRIATIONS FOR THE INTERNAL REVENUE SERVICE'S ENFORCEMENT INITIATIVES, https://www.cbo.gov/budget-options/2018/54826 [https://perma.cc/2W2D-FBV5] (2018); Lawrence H. Summers & Natasha Sarin, *Yes, Our Tax System Needs Reform. Let's Start with This First Step.*, WASH. POST (Nov. 17, 2019, 3:46 PM), https://www.washingtonpost.com/opinions/yes-our-tax-system-needs-reform-lets-start-with-this-first-step/2019/11/17/4d23f8d4-07dd-11ea-924a-28d87132c7ec_story.html [https://perma.cc/3HBX-XUPM].

incarceration systems. Accordingly, the TCJA has reduced the fairness, efficiency, and administrability of the tax system.

To help remedy the situation, a few steps should be taken. Congress should create either a nonrefundable tax credit or above-the-line deduction for charitable contributions to restore the charitable giving incentive. Congress should also enact H.R. 3323 and H.R. 3300 to reverse the additional administrative burdens imposed on nonprofits and the I.R.S. by the TCJA. Finally, funds should be appropriated to increase compliance and enforcement at the I.R.S.—an endeavor that, while initially costing a little money upfront, will produce significant payouts and help restore equity to the tax system in the long term.

POSTSCRIPT

In the time since this Comment was written, the COVID-19 pandemic has spread across the global community, overwhelming healthcare systems in many nations, including the United States. The crisis has further exacerbated a number of issues raised in this Comment. For example, the size of the most vulnerable populations in the U.S. is rapidly increasing, and nonprofits are struggling more than ever to meet demand. Additionally, as the economy reacts to the pandemic and layoffs soar, lower- and middle-income households, already lacking a tax incentive to make charitable contributions, now have an increased sense of self-preservation that discourages charitable giving. Further, fundraising events and galas—prime sources of donations for nonprofits—are being canceled to slow the spread of the disease.

The situation is expected to get far worse before it begins to improve, and it is already dire. Nonprofits have been negotiating with Congress for $60 billion in additional funding; they are also imploring Congress to allow every taxpayer a reduction in tax liability for each dollar contributed to a nonprofit—regardless of whether those taxpayers itemize their deductions.[116] Congress has responded by passing the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which temporarily allows "[t]axpayers who do not itemize their deductions [to] take a one-time deduction of up to $300 for gifts made to charitable organizations."[117] A modest change for an immodest problem.

116 Naomi Jagoda, *Charities Seek $60B in Stimulus Funding Due to Coronavirus*, THE HILL (Mar. 18, 2020, 11:27 AM), https://thehill.com/policy/finance/488212-charities-seek-60b-in-stimulus-funding-due-to-coronavirus [https://perma.cc/HW7M-4M6Q].

117 *The CARES Act: Charitable Giving Incentives*, AFP NEWS (Apr. 10, 2020), https://afpglobal.org/news/cares-act-charitable-giving-incentives [https://perma.cc/BY5E-H85V].

Meanwhile, those hit hardest by the virus and the economic downturn are the elderly, those with chronic health conditions, and those of low socioeconomic status.[118] For example, the homeless population is twice as likely to contract and spread the coronavirus to others.[119] While Congress is acting to pass relief packages,[120] such as providing for free testing and treatment for those afflicted with the virus, hospitals and nonprofits are inadequately equipped to meet the demand.[121] The State of Washington, faced with its inability to treat everyone, established guidelines to decide which patients should receive priority for life-saving treatment.[122] Now, more than ever, the nation is relying on its nonprofits; now, more than ever, Congress needs to create an above-the-line deduction for charitable contributions, ensuring that the wealthy and poor alike are equally incentivized to donate to nonprofits.

As the nation is gripped by food shortages, lack of sanitary supplies, and a skyrocketing need for beds to house the infected, community-based nonprofits are uniquely positioned to provide these services. Because these same nonprofits are disfavored by the wealthy, though, and because no tax incentive exists for anyone else to donate to them, they are operating at diminished efficiency during this pandemic. Meanwhile, Congress is hemorrhaging money in its relief efforts and has proposed even more corporate tax cuts as one part of the solution.[123] Now is the time, however, to make smart tax policy choices. Because nonprofits' purpose is to fill in efficiency gaps for the

118 Max Fisher & Emma Bubola, *As Coronavirus Deepens Inequality, Inequality Worsens Its Spread*, N.Y. TIMES (Mar. 15, 2020), https://www.nytimes.com/2020/03/15/world/europe/coronavirus-inequality.html [https://perma.cc/N2Z8-8J9L].

119 Andrew Selsky, *Homeless at 'Double Risk' of Getting, Spreading Coronavirus*, REG. GUARD (Mar. 10, 2020, 5:01 AM), https://www.registerguard.com/news/20200310/homeless-at-double-risk-of-getting-spreading-coronavirus [https://perma.cc/9LVV-QMZF].

120 Emily Cochrane & Jim Tankersley, *Senators Edge Closer to Bipartisan Agreement on Economic Rescue Plan*, N.Y. TIMES (Mar. 20, 2020, 1:33 PM), https://www.nytimes.com/2020/03/20/us/politics/congress-coronavirus-economic-rescue-plan.html?action=click&module=Top%20Stories&pgtype=Homepage [https://perma.cc/QZS2-9ELM].

121 Julie Bosman & Richard Fausset, *The Coronavirus Swamps Local Health Departments, Already Crippled by Cuts*, N.Y. TIMES (Mar. 14, 2020, 5:00 AM), https://www.nytimes.com/2020/03/14/us/coronavirus-health-departments.html [https://perma.cc/M3HV-DPF9].

122 Karen Weise & Mike Baker, *'Chilling' Plans: Who Gets Care as Washington State Hospitals Fill Up?*, N.Y. TIMES, https://www.nytimes.com/2020/03/20/us/coronavirus-in-seattle-washington-state.html?action=click&module=Top%20Stories&pgtype=Homepage [https://perma.cc/8JVC-CPET] (last updated Mar. 22, 2020).

123 Emily Cochrane et al., *Senate Rescue Package Includes Corporate Tax Cuts and $1,200 Checks*, N.Y. TIMES (Mar. 19, 2020), https://www.nytimes.com/2020/03/19/us/politics/1000-checks-coronavirus-stimulus.html [https://perma.cc/7H9T-X5EJ].

government, the first place to start is by correcting the charitable contribution deduction. By doing so, similar scenarios in the future may be mitigated.