

HR 2058 – Charity “Transparency” Act is McCarthy Style Guilt by Association

Bill Summary: Introduced by Rep. Ted Poe (R-TX) on April 6, 2017 [HR 2058](#), the "Charity Transparency Act," would require U.S. charities and foundations to disclose to the Internal Revenue Service whether any leadership and highly compensated employees have at any time been “implicated in terror finance”, broadly defined as past employment or membership in a group found to be a supporter of terrorism or being named as an unindicted co-conspirator in a “terrorist financing scheme.” It would apply to applications for tax exemption and annual Form 990 returns, both of which are available to the public. In a [statement](#) about a similar bill proposed last year, Poe said the purpose is to inform donors.

Problems with HR 2058

- Effectively blacklisting people never charged with a crime or put on Treasury’s terrorist list

By requiring public listing of innocent former employees and members of organizations put on Treasury list of Designated Charities and Potential Fundraising Front Organizations for FTOs in IRS filings, the bill implicitly sends a message that these people are suspect and any charity that employs them or has them in a leadership position is also suspect.

- Contrary to the presumption of innocence

If the U.S. had evidence of wrongdoing by individual employees or board members of a charity it puts on the terrorist list it would have (and in many instances has) charged them with a crime or sought civil sanctions.

- Unfairly singles out charities and excludes businesses

Under the logic used to justify this bill (transparency to inform donors), the same requirement should be applied to for-profit entities put on the terrorist list so that consumers and investors could factor the information into decisions about doing business with such entities.

- Using unindicted co-conspirator lists is both impractical and unconstitutional

The Department of Justice policy is that unindicted co-conspirator lists should be sealed, and as a result no charity would be able to certify whether or not any of its employees or directors were on such a list. Furthermore, in 2010 the [Fifth Circuit Court of Appeals held](#) that public release of such lists violate the Fifth Amendment’s guarantee of due process in a challenge to release of an unindicted co-conspirator list as part of prosecution of the Holy Land Foundation. (This list was created to invoke an exception to the hearsay rule during the Holy Land trial. Details [here.](#))

- There are serious due process problems with Treasury’s list of Designated Charities and Potential Fundraising Front Organizations for FTOs

In the two most recent cases of U.S charities challenging their designation as supporters of terrorism, the courts have ruled that Treasury’s process does not give them a meaningful opportunity to challenge the listing as required by the Fifth Amendment and that freezing their funds without a warrant violates the Fourth Amendment.