



## **Non-Profit Organizations Under Attack: Senate Bill 4136 Creates Loophole for Abuse**

**To:** United States Senator

**From:** Justice For All, Non-Profit Human Rights Advocacy Organization

**Date:** April 28, 2024

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### **Executive Summary**

As student movements for Free Palestine gain unprecedented ground, students exercising their freedom of speech are met with repressive action including suspensions, evictions, job revocations, disbanding of student organizations, and arrests. Similarly in Congress, legislation has been introduced to threaten the movement in a manner reminiscent of McCarthyism. Senate Bill 4136 is one such concerning legislation that targets non-profit organizations.

Bill S.4136 proposes to authorize the Secretary of Treasury to unilaterally classify any charity as a terrorist-supporting organization and remove its non-profit status within 90 days. Since federal law already criminalizes material support for terrorism, this legislation is unnecessary at best. The bill goes further, however, by creating a new term – “terrorist-supporting” – to shut down charities without the due process required for an official designation as a terrorist organization. This follows a historical pattern by which the definition of antiterrorism is broadened in order to obstruct the efforts of non-profit organizations advocating for certain causes, such as free Palestine. Such designations, even if later proved false, damage the work of the non-profit organization and deplete its resources in legal defense work. Ultimately, the ones who suffer the most as a result are innocent civilians whom these non-profit organizations are set up to serve. It is all too easy under the proposed bill for a non-profit organization to be designated as “terrorist-supporting” simply because they operate in a conflict zone where designated terrorists also operate, despite all of the mechanisms in place to mitigate any risk of funding terrorism.

The Senate should reject Bill 4136 as redundant legislation that creates a loophole for political actors to exploit and target certain non-profit organizations, thereby undermining both due process and First Amendment freedom of speech.

## Background: Legislative History of H.R.6408 and Companion Bill S.4136

On November 14, 2023, Congressman David Kustoff (R-TN) and Congressman Brad Schneider (D-IL) introduced bipartisan legislation H.R. 6408<sup>1</sup> to allow the Secretary of Treasury to designate any organization as a “terrorist-supporting” group and revoke their tax-exempt status within 90 days, without an official designation of the charity as a terrorist organization.<sup>2</sup> The impetus for introducing this bill was made clear from the presenters’ own words; Congressman Schneider cited an alleged “increase in incidents of hateful speech, threats of violence and, shockingly, support for the Hamas terrorists” and stated that “American taxpayer funds should never be used to support terrorist groups like Hamas, Hezbollah or ISIS.”<sup>3</sup> Congressman Kustoff referenced the “global fight against terrorism” and urged swift passage of the bill to “diminish the ability of Hamas and other terrorist groups to finance their operations”.<sup>4</sup> Clearly, the motivation was suppression of speech and advocacy in support of a liberated Palestine.

The bill would amend Section 501(p)<sup>5</sup> of the Internal Revenue Code of 1986 to give the Secretary of Treasury unilateral authority to designate any charity as a “terrorist supporting organization” and suspend its tax-exempt status, without it needing an official designation as a terrorist organization.<sup>6</sup> The bill defines *terrorist supporting organization* as any organization designated as having provided (during the three-year period prior to its designation) material support or resources to a terrorist organization in excess of a *de minimis* amount.<sup>7</sup> The

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<sup>1</sup>H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16).

<https://www.congress.gov/bill/118th-congress/house-bill/6408>

<sup>2</sup> David Kustoff Press Release, November 14, 2023,

<https://kustoff.house.gov/media/press-releases/kustoff-schneider-introduce-legislation-revoke-tax-exempt-status-non-profits>

<sup>3</sup> David Kustoff Press Release, November 14, 2023,

<https://kustoff.house.gov/media/press-releases/kustoff-schneider-introduce-legislation-revoke-tax-exempt-status-non-profits>

<sup>4</sup> David Kustoff Press Release, November 14, 2023,

<https://kustoff.house.gov/media/press-releases/kustoff-schneider-introduce-legislation-revoke-tax-exempt-status-non-profits>

<sup>5</sup> Suspensions pursuant to Code Section 501(p), IRS,

<https://www.irs.gov/charities-non-profits/charitable-organizations/suspensions-pursuant-to-code-section-501p>

<sup>6</sup> H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16).

<https://www.congress.gov/bill/118th-congress/house-bill/6408>; Matthew Petti, “This Bill Would Give the Treasury Nearly Unlimited Power to Destroy Nonprofits”, Reason, April 24, 2024,

<https://reason.com/2024/04/24/this-bill-would-give-the-treasury-nearly-unlimited-power-to-destroy-nonprofits/>.

<sup>7</sup> H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16).

<https://www.congress.gov/bill/118th-congress/house-bill/6408>

Department of Treasury would need to provide notice of such designation and an opportunity to cure, and rescind a designation if erroneous or if the organization was not given notice.

The bill provides for a process for administrative review by the Internal Revenue Service Independent Office of Appeals only *after* a designation has already been made, rather than before.<sup>8</sup> The accusation of being a terrorist-supporting organization alone is enough to hamper the activities of the organization. This has occurred in the past, when American Muslim charities such as Global Relief Foundation had their assets frozen and activities shut down within the span of ten days in December 2001 after the Department of Treasury, without notice and through the use of secret evidence, designated them as terrorist organizations.<sup>9</sup>

On April 15, 2024, H.R.6408 passed the House.<sup>10</sup> The next day, the bill was referred to the Senate.<sup>11</sup> On April 17, 2024, Senator John Cornyn (R-TX) introduced bill **S.4136**<sup>12</sup>, a companion bill to amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. The bill was co-Sponsored by Senator Angus S. King Jr. (I-ME).

### **Senate Bill 4136 is the Latest in a Disturbing Trend of Abusing U.S. Anti-Terrorism Legislation to Oppose Palestinian Liberation**

What the senate bill is proposing is to shut down a charity even without an official terrorism designation.<sup>13</sup> The Secretary of Treasury need only designate a charity as “terrorist-supporting organization” in order to remove their tax exempt status within 90 days and only the Secretary of

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<sup>8</sup> The U.S. district courts shall have exclusive jurisdiction to review any such designation. H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16). <https://www.congress.gov/bill/118th-congress/house-bill/6408>.

<sup>9</sup> Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the ‘War on Terrorism Financing’”, American Civil Liberties Union (ACLU), June 2009, <https://www.aclu.org/wp-content/uploads/legal-documents/blockingfaith.pdf>, p. 7.

<sup>10</sup> H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16). <https://www.congress.gov/bill/118th-congress/house-bill/6408>

<sup>11</sup> Actions - H.R.6408 - 118th Congress (2023-2024): To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 16). <https://www.congress.gov/bill/118th-congress/house-bill/6408/all-actions>

<sup>12</sup> S.4136 - 118th Congress (2023-2024): A bill to amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations. (2024, April 17). <https://www.congress.gov/bill/118th-congress/senate-bill/4136>

<sup>13</sup> Matthew Petti, “This Bill Would Give the Treasury Nearly Unlimited Power to Destroy Nonprofits”, Reason, April 24, 2024, <https://reason.com/2024/04/24/this-bill-would-give-the-treasury-nearly-unlimited-power-to-destroy-nonprofits/>.

Treasury could cancel this designation.<sup>14</sup> Providing material support to a US-designated terrorist organization is already a felony under the Anti-Terrorist Act and International Emergency Economic Powers Act; nine charities have been shut down since 2001 under this law.<sup>15</sup> Terrorist organizations are banned from claiming tax-exempt status under section 501(c)(3) of the tax code. The bill is therefore redundant.

The Foundation for Middle East Peace (FMEP) warned that H.R.6408 enables “a new category of legal harassment of NGOs, focused in the first instance on those that engage with Palestinians or on Palestinian issues, but also enabling attacks on NGOs working in any sector and on any issues”.<sup>16</sup> This would not be the first time that legislation was used to attack charities without basis, as FMEP recalls the False Claims Act lawsuits in 2018 brought by the Zionist Advocacy Center (TZAC) against four non-profit organizations, alleging they provided “material support” to listed groups in Palestine that received USAID; they brought these suits alleging the non-profit organizations’ certification to USAID was false using an extremely broad definition of “material support”.<sup>17</sup> FMEP warns that “this new legislation would potentially represent a powerful weapon of NGO mass harassment, enabling politically motivated actors from across the political spectrum, and focused on any issue, to launch harassment lawsuits (aka SLAPP suits) against NGOs whose mission/work they want to undermine, discredit, or otherwise obstruct”.<sup>18</sup>

The Charity and Security Network (C&SN), a coalition of charities that operate in conflict zones, expressed strong opposition to H.R.6408 and legislation that targets charities.<sup>19</sup> Noting that charitable organizations operating in settings where designated terrorist groups operate are already subject to strict scrutiny, C&SN warned that this legislation would serve to hinder charities from helping the most vulnerable people in the world.<sup>20</sup> The legislation is at best

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<sup>14</sup> Matthew Petti, “This Bill Would Give the Treasury Nearly Unlimited Power to Destroy Nonprofits”, Reason, April 24, 2024,

<https://reason.com/2024/04/24/this-bill-would-give-the-treasury-nearly-unlimited-power-to-destroy-nonprofits/>.

<sup>15</sup> “The Prohibition on Material Support and its Impacts on Non Profits”, Charity & Security Network, August 8, 2019, <https://charityandsecurity.org/issue-briefs/the-prohibition-on-material-support-and-its-impacts-on-nonprofits/>.

<sup>16</sup> Foundation for Middle East Peace, FMEP Legislative Round-Up: November 17, 2023,

<https://fmepe.org/resource/fmep-legislative-round-up-november-17-2023/>.

<sup>17</sup> Charity & Security Network, Issue Brief: False Claims Act Cases against NPOs, June 2020,

<https://charityandsecurity.org/wp-content/uploads/2018/09/Revised-2020-Updated-Fact-Sheet-FCA-Cases-April-2019-Autosaved.pdf>.

<sup>18</sup> Foundation for Middle East Peace, FMEP Legislative Round-Up: November 17, 2023,

<https://fmepe.org/resource/fmep-legislative-round-up-november-17-2023/>.

<sup>19</sup> “Charity & Security Network Opposes Legislation that Targets Charities”, Charity & Security Network, accessed April 27, 2024,

<https://charityandsecurity.org/news/charity-security-network-opposes-legislation-that-targets-charities/>.

<sup>20</sup> “Charity & Security Network Opposes Legislation that Targets Charities”, Charity & Security Network, accessed April 27, 2024,

<https://charityandsecurity.org/news/charity-security-network-opposes-legislation-that-targets-charities/>.

“redundant and unnecessary” because providing material support to a designated terrorist organization is already a federal crime, they argue, and at worst it allows for abuse by political actors seeking to target groups that work on Palestine issues.<sup>21</sup>

Furthermore, this type of legislation continues the false narrative that nonprofit organizations are used by terrorist organizations, when historically both the U.S. Department of Treasury<sup>22</sup> and Financial Action Task Force<sup>23</sup> have stated that there is little to no risk of terrorists financing abuse as there are adequate risk-mitigation mechanisms in place.<sup>24</sup> Alleging abuse without substantiating claims damages the charitable sector and undermines the due diligence of experts in the nonprofit field that work to ensure that aid goes directly to innocent civilians. The most vulnerable have the most to lose by laws like this Bill S.4136.

The implications of the proposed bill affect not only pro-Palestine non-profit organizations such as American Muslims in Palestine (AMP), but also student groups such as Students for Justice in Palestine (SJP). In November, Jonathan Schanzer, senior vice president of Foundation for Defense of Democracies, testified before the House Ways and Means Committee alleging that SJP is “unquestionably one of the most vitriolic anti-Israel voices on campus” and that students take “guidance and support” from AMP, a 501(c)(3), whose founder also founded SJP.<sup>25</sup> He alleged that SJP and AMP are pro-Hamas organizations and called for an investigation, but failed to provide support for these allegations, conceding that AMP “does not discuss Hamaz explicitly”. These allegations falsely conflate criticism of Israel with support for terrorism, and provide context to the proposed bill’s implications on non-profit and student organizations for Palestine.

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<sup>21</sup> “Charity & Security Network Opposes Legislation that Targets Charities”, CHarity & Security Network, accessed April 27, 2024,

<https://charityandsecurity.org/news/charity-security-network-opposes-legislation-that-targets-charities/>.

<sup>22</sup> The Department of the Treasury’s De-risking Strategy, April 2023,

[https://home.treasury.gov/system/files/136/Treasury\\_AMLA\\_23\\_508.pdf](https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf), p. 52 (“Importantly, the vast majority of U.S.-based tax-exempt charitable organizations face little risk of TF abuse”).

<sup>23</sup> “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations”, Financial Action Task Force, Updated November 2023,

<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/protecting-non-profits-abuse-implementation-R&R.html>

<sup>24</sup> “Consortium for Financial Access: Banking Nonprofit Organizations - The Way Forward”, Association of Certified Anti-Money Laundering Specialists (ACAMS), June 2019, <https://charityandsecurity.org/system/files/ACAMS%20Financial%20Access%20Paper%20-%20Updated.pdf> (“NPOs serve to protect the organizations, its donors, programs, partners and recipients, as well as to prevent abuse from terrorists and criminals”).

<sup>25</sup> Dr. Jonathan Schanzer, “From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing”, House Ways and Means Committee Congressional Testimony: Foundation for Defense of Democracies”, November 15, 2023,

<https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/Schanzer-Testimony.pdf>.

On October 25, the Anti-Defamation League (ADL) and Louis D. Brandeis Center for Human Rights Under Law sent a letter to nearly 200 leaders of universities and colleges urging them to investigate SJP, accusing them of violating the material support statute.<sup>26</sup> The following day, the U.S. Senate passed a resolution denouncing campus SJP chapters<sup>27</sup>, and since then members of Congress have proposed extreme legislation, such as setting up a Congressional committee to investigate allegations of anti-semitism, which has falsely and dangerously been conflated with anti-Israel.<sup>28</sup> For over a decade, groups like the ADL have used “U.S. antiterrorism laws as a weapon against the Palestinian liberation movement.”<sup>29</sup> The Center for Constitutional Rights along with Palestine Legal published an extensive report mapping how U.S. antiterrorism legislation evolved to oppose Palestinian liberation struggles.<sup>30</sup>

A recent example of how a charity can be accused of supporting terrorism without any evidence leading to devastating consequences is the withdrawal of support for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) by the United States and other major international supporters based on unsupported claims by Israel that employees of UNRWA were involved in Hamas’s October 7th attack. “Israel made public claims that a significant number of UNRWA employees are members of terrorist organisations. However, Israel has yet to provide supporting evidence of this,” according to the 54-page final report, *Independent review of mechanisms and procedures to ensure adherence by UNRWA to the humanitarian principle of neutrality*.<sup>31</sup>

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<sup>26</sup> Anti-Defamation League, ADL and Brandeis Center Letter to Presidents of Colleges and Universities, Oct. 25, 2023, <https://www.adl.org/resources/letter/adl-andbrandeis-center-letter-presidents-colleges-and-universities>.

<sup>27</sup> See Condemning Hamas and Antisemitic Student Activities on College Campuses in the United States, S. Res. 418, 118th Cong. (2023).

<sup>28</sup> See Safeguarding Americans from Extremism (SAFE) Act of 2023, H.R. 6211, 118th Cong. (2023); To Establish the Commission to Study Acts of Antisemitism in the United States, H.R. 6578, 118th Cong. (2023).

<sup>29</sup> Palestine Legal & Center for Constitutional Rights, Anti-Palestinian at the Core: The Origins and Growing Dangers of U.S. Antiterrorism Law”, February 2024,

<https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65d637d9f2843f3855780ae3/1708537837536/Anti-Palestinian+at+the+Core-.pdf> ; see also Palestine Legal & Center for Constitutional Rights, The Palestine Exception to Free Speech: A Movement Under Attack in the U.S. (2015), <https://palestinelegal.org/the-palestine-exception>.

<sup>30</sup> Palestine Legal & Center for Constitutional Rights, Anti-Palestinian at the Core: The Origins and Growing Dangers of U.S. Antiterrorism Law”, February 2024,

<https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65d637d9f2843f3855780ae3/1708537837536/Anti-Palestinian+at+the+Core-.pdf>.

<sup>31</sup> “Allegations against UNRWA Staff”, United Nations, accessed April 28, 2024, <https://www.un.org/en/situation-in-occupied-palestine-and-israel/allegations-against-unrwa-staff>; “Final Report for the United Nations Secretary-General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality”, April 20, 2024, [https://www.un.org/sites/un2.un.org/files/2024/04/unrwa\\_independent\\_review\\_on\\_neutrality.pdf](https://www.un.org/sites/un2.un.org/files/2024/04/unrwa_independent_review_on_neutrality.pdf).

UNRWA served as a lifeline for Palestinian refugees living under brutal apartheid rule, providing not just humanitarian relief, but also education, healthcare, and social services. As a supporter of UNRWA for the past six decades and the largest bilateral donor, the United States' decision to cut funding to UNRWA was devastating as Palestinians in Gaza were facing forced famine, bombing, displacement, and destruction of essential infrastructure, including hospitals, schools, and houses.<sup>32</sup> The United States must not repeat the same mistake here in relying upon allegations unsupported by evidence to cut support for charities delivering much needed humanitarian aid and support for human rights under international law.

### **Conclusion and Recommendations**

Senators should vote against Senate Bill 4136, as it is redundant, hampers freedom of speech and violates due process. The harm and abuse of legislation like Senate Bill 4136 have been well-documented over the past two decades, demonstrating a dangerous trend of using antiterrorism laws to deplatform Palestinian advocacy organizations, including student groups. As the Center for Constitutional Rights and Palestine Legal detailed in their report, decision-makers should recognize the anti-Palestinian bias built into laws expanding antiterrorism such as S.4136, and protect Palestine advocacy organizations from baseless accusations seeking to unconstitutionally surveil, harass, and defund their efforts. Such legislation only serves to harm the most vulnerable civilians, not just in Palestine, but also in other countries of conflict. The Senate should invite Palestine Legal, the Center for Constitutional Rights, and Justice for All to testify regarding this bill with further analysis.

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<sup>32</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East, "United States: A Long-Standing Partner of UNRWA", accessed March 6, 2024, <https://www.unrwa.org/united-states-long-standing-partner-unrwa>.