REVOCATION OF TAX EXEMPTION—HARVARD UNIVERSITY'S CONSTITUTIONAL RIGHT TO DUE PROCESS

RANDLE B. POLLARD*

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* Randle B. Pollard is an Assistant Professor of Law at Albany Law School. The author thanks the participants of the 2025 Annual John Mercer Langston Writing Workshop at the University of Washington School of Law for their comments during his work-in-progress presentation and the comments of Raymond H. Brescia, Associate Dean for Research and Intellectual Life; Hon. Harold R. Tyler Chair in Law and Technology, Albany Law School.

INTRODUCTION

On April 15, 2025, President Donald Trump announced on his Truth Social account that his Administration was considering revoking the tax-exempt status of educational institutions, specifically Harvard University.[1] The Trump Administration's allegation is that nonprofits such as Harvard no longer qualify for tax-exempt status under § 501(c)(3) of the Internal Revenue Code ("Code") and relevant case law because their methods of accomplishing charitable purposes are illegal or contrary to fundamental public policy.[2] In any future revocation, the Trump Administration will likely rely on an executive order issued on March 7, 2025, which provided guidance on the nonprofit organizations that may not qualify for tax-exempt status.[3] Beyond this potential attack on Harvard's tax-exempt status, the Trump Administration has also attempted to cancel or freeze billions in federal research grants to Harvard and block its admission of foreign students, claiming the university has refused demands to change policies on free speech, diversity programs, and combating antisemitism.[4] The American Association of University Professors and Harvard successfully challenged the Trump Administration's threat to cancel billions in federal funding to Harvard in *American Association of University Professors-Harvard Faculty Chapter v. Department of Justice*.[5]

This Essay explains why the Trump Administration's use of an executive order cannot lawfully revoke Harvard's federal tax exemption. It also identifies the specific statutory provisions that govern such revocations.

The roadmap for this Essay is as follows. Part I provides background on federal tax exemption. Part II then describes the revocation of Harvard's tax exemption by executive order. Next, Part III identifies the process of and applicable law governing tax-exempt status. Last, Part IV describes the substantive issues regarding revocation of tax-exempt status.

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1 *See* Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 15, 2025, at 10:09 ET), https://truthsocial.com/ @realDonaldTrump/ posts/ 114342374504628520 ("Perhaps Harvard should lose its Tax Exempt Status and be Taxed as a Political Entity . . . .").

2 *See infra* Part II.

3 *See infra* Part II (providing detail on executive order and Trump Administration's potential reliance on it).

4 *See* Michael C. Bender, *All the Actions the Trump Administration Has Taken Against Harvard*, N.Y. TIMES (June 5, 2025), https://www.nytimes.com/ 2025/ 05/ 22/us/politics/harvard-university-trump.html (listing actions against Harvard including demand letter, funding cuts and freezes, investigations, and direct threats and actions from President Trump).

5 Order and Final Judgment, No. 1:25-CV-10910 (D. Mass. Oct. 20, 2025) (holding Trump Administration's actions, including freezing and canceling more than two billion dollars in research grants, violated Harvard and its faculty's First Amendment rights). On December 18, 2025, the Trump Administration notified the court that it intends to appeal the judge's ruling. *See* Alan Blinder, *Trump Administration to Appeal Harvard Funding Case*, N.Y. TIMES (Dec. 19, 2025), https://www.nytimes.com/ 2025/ 12/ 19/ us/ trump- administration-appeal-harvard-funding-case.html. First Amendment challenges involving the revocation of tax-exempt status are beyond the scope of this Essay.

I. History and Purpose of Tax Exemption

A. *History*

With the enactment of the first income tax system in the United States under the Revenue Act of 1913, Congress excluded certain organizations from taxation for activities related to social welfare, charitable contributions, and religious education.[6] The Internal Revenue Code of 1954, which established the modern tax code, created a tax exemption for qualifying organizations under Code § 501(c).[7] This Act also created Code § 170, which allows individual taxpayers to deduct charitable contributions.[8] The purpose of Code § 501(c) was to subsidize organizations that served public purposes.[9] The most prevalent 501(c) organization is a 501(c)(3) organization.[10] The Internal Revenue Service ("IRS") Data Book, an annual publication, tracks the number of organizations recognized as tax-exempt.[11] For fiscal year 2024, the IRS recognized over two million tax-exempt organizations, and of that number, over 92% (1,873,538) were 501(c)(3) organizations.[12]

B. *501(c)(3) Organizations*

Section 501(c)(3) of the Code provides that an organization "organized and operated" exclusively for an exempt purpose as set forth therein is exempt from federal income taxation.[13] There are two primary categories of 501(c)(3)

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[6] *See* Revenue Act of 1913, ch. 16, § II(G), 38 Stat. 114, 172 (establishing exception for organizations operating exclusively for "religious, charitable, scientific, or educational purposes").

[7] Internal Revenue Code of 1954, ch. 736, § 501(c), 68A Stat. 3, 163 (codified as amended at I.R.C. § 501(c)). *See generally* INTERNAL REVENUE SERV., TAX-EXEMPT STATUS FOR YOUR ORGANIZATION (2025), https://www.irs.gov/ pub/ irs-pdf/ p557.pdf [https:// perma.cc/ 4PME-GV5A] (listing twenty-nine types of 501(c) organizations, including private colleges and universities).

[8] I.R.C. § 170(b)(1)(A) (permitting taxpayers who itemize deductions to deduct charitable contributions of up to 20% or 30% of their adjusted gross income depending on type of 501(c) organization).

[9] *See, e.g.*, Nina J. Crimm, *An Explanation of the Federal Income Tax Exemption for Charitable Organizations: A Theory of Risk Compensation*, 50 FLA. L. REV. 419, 430-39 (1998) (discussing several theories, including public benefit theory, relieving burdens of government theory, subsidy theory, and donative theory).

[10] *See* SHANE T. HAMILTON & BRUCE R. HOPKINS, THE LAW OF TAX-EXEMPT ORGANIZATIONS 36 (13th ed. 2025) (outlining process for recognition as public charity).

[11] *See* MICHAEL FAULKENDER, REZA RASHIDI & MARK XU, INTERNAL REVENUE SERVICE DATA BOOK: OCTOBER 1, 2023 TO SEPTEMBER 30, 2024, at 30 (2024).

[12] *Id.* at 30 n.2 (clarifying number of 501(c)(3) organizations does not include churches, associations of churches, or other organizations not required to apply for tax-exempt status).

[13] *See* I.R.C. § 501(c)(3) (defining exempt organizations as "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition").

organizations: public charities and private foundations.[14] This Essay focuses on public charities. The phrase "organized and operated" provides two tests: the organizational test (the organization is organized exclusively for one or more exempt purposes) and the operational test (the organization is operated exclusively for one or more exempt purposes).[15] Relatedly, an organization that operates through a substantial illegal purpose, or that acts contrary to fundamental public policy, may therefore fail to qualify for tax-exempt status.[16] In addition to exemption from federal income taxation, contributions to 501(c)(3) organizations may be tax deductible.[17] Most public and private universities and colleges claim tax-exempt status on the basis of their educational purposes.[18]

The IRS grants tax exemptions through an application process.[19] In fiscal year 2024, the IRS reviewed approximately 136,000 exemption applications; 87.5% were approved, and 13.2% were withdrawn or left undecided due to incompleteness.[20] The IRS denied tax-exempt status to fewer than 1% of applications.[21]

II. REVOCATION OF TAX EXEMPTION BY EXECUTIVE ORDER

On March 7, 2025, the Trump Administration issued an executive order on public service loan forgiveness called "Restoring Public Service Loan Forgiveness" ("EO RPSLF"). EO RPSLF requires the Secretary of Education to propose regulations that exclude individuals eligible for loan forgiveness if they are employed by nonprofit organizations that do not qualify for tax-exempt status due to having a substantial illegal purpose or conducting substantially

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[14] *See* HAMILTON & HOPKINS, *supra* note 10, at 36.

[15] Treas. Reg. § 1.501(c)(3)-1(b) to -(c) (as amended in 2017) (providing standards for organizational and operational tests).

[16] *See* Bob Jones Univ. v. United States, 461 U.S. 574, 591 (1983); *see also infra* Part IV.

[17] *See* I.R.C. § 170(a).

[18] *See Tax-Exempt Status of Universities and Colleges*, ASS'N AM. UNIVS. (Oct. 2, 2022), https://www.aau.edu/key-issues/tax-exempt-status-universities-and-colleges [https://perma.cc/6MXY-STKK] ("The vast majority of public and private universities and colleges are tax-exempt entities as defined by IRC Section 501(c)(3) because of their educational purposes—purposes that the federal government has long recognized as fundamental to fostering the productive and civic capacity of its citizens . . . .").

[19] For guidance on how exemption applications are processed, see *IRS Processing of Exemption Applications*, IRS (Oct. 2, 2025), https://www.irs.gov/charities-non-profits/other-non-profits/irs-processing-of-exemption-applications [https://perma.cc/Z8DQ-Q3VB].

[20] Tim Shaw, *Inside Tax-Exempt Status Audits, Revocation Challenges*, THOMSON REUTERS (Oct. 31, 2025), https://tax.thomsonreuters.com/ news/ inside- tax- exempt- status-audits-revocation-challenges [https://perma.cc/KU6W-6D4Z].

[21] *See id.*

illegal activities.[22] Notably, EO RPSLF suggests that nonprofits, like Harvard, may not qualify for tax exemption if they operate for illegal purposes.[23]

Of all of the executive orders issued to date, the Trump Administration would likely rely on EO RPSLF as authority for revoking Harvard's tax-exempt status.[24] EO RPSLF states the Public Service Loan Forgiveness Program "has misdirected tax dollars into activist organizations that not only fail to serve the public interest, but actually harm our national security and American values, sometimes through criminal means."[25] The Administration claims that the university is acting with a substantial illegal purpose by: (1) admitting students in violation of federal immigration law; (2) failing to actively halt anti-Israel protests by its students; and (3) engaging in unlawful discrimination by encouraging diversity, equity, and inclusion ("DEI") in its hiring, admissions, and academic curriculum.[26] EO RPSLF defines substantial illegal purposes as:

> (a) aiding or abetting violations of 8 U.S.C. 1325 or other Federal immigration laws;
>
> (b) supporting terrorism, including by facilitating funding to, or the operations of, cartels designated as Foreign Terrorist Organizations consistent with 8 U.S.C. 1189, or by engaging in violence for the purpose of obstructing or influencing Federal Government policy;
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> (c) child abuse, including the chemical and surgical castration or mutilation of children or the trafficking of children to so-called transgender sanctuary States for purposes of emancipation from their lawful parents, in violation of applicable law;

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22 Exec. Order No. 14235, 90 Fed. Reg. 11885 (Mar. 7, 2025). A final rule implementing EO RPSLF was later published by the Department of Education. *See generally* William D. Ford Federal Direct Loan (Direct Loan) Program, 90 Fed. Reg. 48966 (Oct. 31, 2025) (to be codified at 34 C.F.R. pt. 685). The regulations provide clarity for the implementation of EO RPSLF, which directed the Department of Education to revise the Public Service Loan Forgiveness eligibility criteria to prevent federal funds from subsidizing activities that undermine national security and American values. *See id.* at 48966. The regulations are effective July 1, 2026. *See id.*

23 *See* Exec. Order No. 14235, 90 Fed. Reg. 11885.

24 The regulations revise the definition of a qualifying employer to exclude organizations whose activities constitute substantial illegal purpose. *See id.* Because the regulations rely on the IRS's interpretation of substantial illegal purpose, known as the illegality doctrine, EO RPSLF is the most applicable executive order to date to provide a roadmap on revoking tax-exempt status. *See* Jeffrey Scott Tenenbaum, *How the IRS Can—and Cannot—Revoke Federal Tax-Exempt Status*, A.B.A. (May 6, 2025), https://www.americanbar.org/groups/business_law/resources/business-law-today/2025-may/how-irs-revoke-federal-tax-exempt-status (discussing use of EO RPSLF to support revocation of tax-exempt status of organizations); MILAN N. BALL, CONG. RSCH. SERV., IF12739, THE ILLEGALITY DOCTRINE AND 501(C)(3) ORGANIZATIONS 1 (2024) (explaining illegality doctrine and exploring how courts and IRS have used doctrine to deny 501(c)(3) status to organizations).

25 Exec. Order No. 14235, 90 Fed. Reg. 11885.

26 *See* Bender, *supra* note 4.

(d) engaging in a pattern of aiding and abetting illegal discrimination; or

(e) engaging in a pattern of violating State tort laws, including laws against trespassing, disorderly conduct, public nuisance, vandalism, and obstruction of highways.[27]

The Trump Administration may also claim that EO RPSLF authorizes revoking Harvard's tax-exempt status for endorsing discriminatory practices in student admissions and faculty hiring that are purportedly contrary to fundamental public policy.[28] EO RPSLF does not provide an evidentiary analysis to support the claim that Harvard is engaged in activities with an illegal purpose or that its activities are contrary to fundamental public policy. The executive order only provides that the President may determine that an organization has engaged in activities that warrant revocation of its tax exemption.

III. Revocation of Tax Exemption

A. *IRS Revocation*

In addition to granting tax exemption, the IRS is responsible for initiating procedures to revoke an organization's tax-exempt status. Revocation can be an automatic process or based on a substantive review of the organization's operations through an audit.[29] For either the automatic and audit revocation processes, an organization can appeal the revocation to obtain a "no-change letter," which allows the organization's tax-exempt status to remain or be reinstated.[30] If the IRS makes a final determination to revoke tax-exempt status, the organization is subject to federal income tax liability on its earnings, and donors may no longer deduct contributions to the organization.[31] However, final revocation of tax-exempt status is rare compared to the granting of tax exemption.[32]

1. Automatic Revocation—Procedural

The IRS requires an exempt organization to file an information return on Forms 990, 990-EZ, 990-PF, or 990-N.[33] If an organization fails to file its annual

[27] Exec. Order No. 14235, 90 Fed. Reg. 11885.

[28] *See* Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 31, 2025) (directing agencies to combat illegal discrimination and preferences, including DEI, in private sector and federally funded institutions).

[29] *See* Shaw, *supra* note 20.

[30] *See* Tenenbaum, *supra* note 24 (enumerating possible outcomes of IRS examinations of exempt organizations, including no-change letters).

[31] *See* Shaw, *supra* note 20.

[32] *See id.* ("[F]or 2024, only three declaratory judgment cases were filed [in Tax Court], and just one involved a revocation out of more than 20,000 total cases.").

[33] *See* Automatic Revocation and Other Special Determination Issues, IRM 7.20.4 (Dec. 5, 2024).

information return for three consecutive years, the IRS automatically revokes the organization's tax-exempt status.[34] The IRS publishes a list of organizations that have had their exempt status automatically revoked.[35] There are four administrative procedures that allow an organization to retroactively reinstate its tax-exempt status.[36]

2. Revocation by Audit—Substantive Review

An organization's tax-exempt status may also be revoked for noncompliance with policies involving private inurement or impermissible private benefit to an individual, political campaign activity, excessive lobbying, substantial unrelated business income, or failure to operate in accordance with its stated exempt purposes.[37] The IRS Tax Exempt and Government Entities Division ("TE/GE") is responsible for monitoring and reviewing compliance of tax laws by exempt organizations.[38] If the TE/GE suspects noncompliance, it may initiate an audit of the organization to determine if its tax exemption should be revoked.[39] Noncompliance is subject to a substantive review.[40] During the audit, the TE/GE will request information from the organization and conclude the audit by issuing a no-change letter, negotiating a closing agreement, or proposing to revoke tax-exempt status.[41] Upon the proposed revocation, the organization receives a "30-day letter" granting thirty days to appeal the proposal.[42] The appeal is reviewed by the Exempt Organizations Office ("EO").[43] If the EO agrees with the audit findings, the organization may file an appeal with the IRS Independent Office of Appeals.[44] If the Office of Appeals issues a final adverse determination letter revoking the organization's tax-exempt status, the organization has ninety days to appeal to the United States Tax Court, the United States Court of Federal

[34] *See* I.R.C. § 6033(j)(1)(B).

[35] *See Revoked? Reinstated? Learn More*, IRS (Dec. 28, 2025), https://www.irs.gov/charities-non-profits/automatic-revocation-of-exemption [https://perma.cc/W3YS-JC48].

[36] *See* Rev. Proc. 2014-11, 2014-3 I.R.B. 411, 411 (enumerating four options for reinstatement of tax-exempt status, including: (1) Streamlined Retroactive Reinstatement, (2) Retroactive Reinstatement (Within 15 Months of Revocation), (3) Retroactive Reinstatement, and (4) Post-Mark Date Reinstatement).

[37] *See* I.R.C. § 501(c)(3).

[38] *See Tax-Exempt & Government Entities Division at a Glance*, IRS (Nov. 20, 2025), https://www.irs.gov/ about-irs/ tax-exempt-government-entities-division-at-a-glance [https://perma.cc/DG47-SMF3] (explaining TE/GE's mission includes helping exempt organizations understand and comply with tax laws).

[39] *See* Shaw, *supra* note 20 ("[TE/GE's] examination process begins with case selection . . . . us[ing] compliance strategies, data analytics, and referrals . . . to identify organizations for audit.").

[40] *See id.* ("Once selected, the IRS initiates the audit with an opening conference and issues 'a flurry of' information document requests . . . for a wide range of records.").

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

Claims, or the United States District Court for the District of Columbia.[45] The time period from the initial audit to the issuance of the final adverse determination letter varies from case to case depending on the complexity of the alleged noncompliance, and may range from several months to over one year.[46]

B. *Federal Restrictions on Substantive Revocation*

As previously mentioned, the IRS can revoke an organization's tax-exempt status if it fails to file three consecutive years of information returns or does not comply with the restrictions placed on tax-exempt organizations under Code § 501(c)(3).[47] The IRS's administrative adjudication of automatic revocation is subject to the Administrative Procedure Act ("APA") and must not be arbitrary and capricious, and the organization may seek review of the revocation.[48]

Organizations that receive a proposed revocation as a result of an audit are afforded due process protections and may seek a declaratory judgment from the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia pursuant to the Code.[49] Both automatic revocation and revocation through audit processes allow the organization to appeal and defend its tax-exempt status.[50] The Fifth Amendment prohibits the federal government from depriving persons of property without due process of law, which includes the right to notice and an opportunity to be heard.[51] The Supreme Court has long held that the procedures of the Code satisfy taxpayers' due process rights.[52] When revoking tax-exempt status, the IRS must thus follow specific administrative procedures that ensure organizations receive

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45 *See* INTERNAL REVENUE SERV., HOW TO APPEAL AN IRS DETERMINATION ON TAX-EXEMPT STATUS 3 (2017), https://www.irs.gov/pub/irs-pdf/p892.pdf [https://perma.cc/435P-ZVMJ] ("The court cannot issue you a declaratory judgment unless you file an appropriate petition or complaint with the court within 90 days of the date of our final determination letter.").

46 *See* Matthew T. Journy, George E. Constantine & Jeffrey S. Tenenbaum, *The IRS Tax-Exempt Examination Process*, TAX'N EXEMPTS, May/June 2010, at 34, 41 (explaining process from starting audit to final determination could take anywhere from "a few months to five or more years").

47 *See* I.R.C. § 6033(j)(1)(B).

48 *See* Administrative Procedure Act § 10(e), 5 U.S.C. § 706(2)(a) (providing for judicial review of agency adjudications and authorizing courts to set aside agency action that is arbitrary, capricious, or otherwise contrary to law); Steve R. Johnson, *Reasoned Explanation and IRS Adjudication*, 63 DUKE L.J. 1771, 1773 (2014) (explaining APA applies to Treasury Department and IRS decision-making).

49 *See* I.R.C. § 7428(a)(2).

50 For details, see *supra* Section III.A.

51 *See* U.S. CONST. amend. V.

52 *See* Phillips v. Comm'r, 283 U.S. 589, 595-99 (1931) (explaining due process requirements satisfied through administrative proceedings conducted to collect internal revenue).

proper notice, a reasonable opportunity to be heard, and the chance to appeal the decision.[53]

Notwithstanding the due process protections provided to tax-exempt organizations through the APA, Code § 7428, and the Fifth Amendment, there are additional restrictions on the ability of the IRS to revoke tax-exempt status. Code § 7217 prohibits executive branch officials, including the President, from directly or indirectly requesting or influencing an IRS audit or investigation of any particular taxpayer.[54] This law was enacted as part of the IRS Restructuring and Reform Act of 1998 to protect the IRS from political interference and to ensure fair, non-political tax administration.[55]

IV. STANDARDS TO REVOKE TAX EXEMPTION

With regard to Harvard, the Trump Administration claims it is acting with a substantial illegal purpose and contrary to public policy by purportedly admitting students in violation of federal immigration laws, not actively halting anti-Israel protests by its students, and engaging in unlawful discrimination that is against fundamental public policy by encouraging DEI in its hiring, admissions, and academic curriculum.[56] Harvard is only one of many nonprofits that allegedly has engaged in or has failed to prevent such conduct in recent years.[57]

A. *EO RPSLF's Illegal Purpose Argument*

One of the Trump Administration's allegations against Harvard involves its admission of students in violation of federal immigration law. This allegation relies on illegal purpose as defined in EO RPSLF. That definition includes, inter alia, aiding or abetting violations of 8 U.S.C. § 1325 or other federal immigration laws. A fundamental legal principle applicable to 501(c)(3)

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[53] *See* Shaw, *supra* note 20 (describing IRS audit and revocation procedures, including issuance of thirty-day letter and availability of review by Independent Office of Appeals).

[54] I.R.C. § 7217(a) ("It shall be unlawful for [the President, Vice President, and any employee of the executive office of the President] to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer . . . .").

[55] *See* Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 26 I.R.C.).

[56] *See* Exec. Order No. 14235, 90 Fed. Reg. 11885 (Mar. 7, 2025) (proposing regulations seeking to exclude entities acting with substantial illegal purpose from categorization as public service organizations).

[57] *See* Tenenbaum, *supra* note 30 (chronicling tax-exemption challenges to Gates Foundation due to race-restricted scholarship programs); *Evolving Threats to the Tax-Exempt Status of 501(c)(3) Nonprofits*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Apr. 2025) [hereinafter *Evolving Threats*], https://www.icnl.org/post/news/evolving-threats-to-the-tax-exempt-status-of-501c3-nonprofits (explaining further calls to investigate tax-exempt status of nonprofit organizations involved in pro-Palestine protests and similar actions against CUNY School of Law).

organizations is that the organization must not engage in illegal activity.[58] The origins of this "illegality doctrine" lie in the law of charitable trusts.[59] The operational test of Code § 501(c)(3) requires the organization to operate exclusively for one or more exempt purposes; an illegal purpose would disqualify the organization's tax-exempt status.[60] In *Better Business Bureau of Washington, D.C., Inc. v. United States*,[61] the Supreme Court interpreted the predecessor statute to Code § 501(c)(3) and held that the presence of a substantial nonexempt purpose destroys the tax exemption of the organization.[62] Regardless of whether the substantial purpose is illegal, if it does not further the organization's exempt purpose, it is inconsistent with the organization's exempt status.[63] The IRS has provided guidance into the activities it considers illegal and grounds for revoking tax-exempt status. The IRS considers both quantitative (substantial activity) and qualitative (the gravity of the illegal act) factors.[64]

The United States Tax Court defined the phrase "substantial illegal purpose" in *Church of Scientology of California v. Commissioner*.[65] That 1984 ruling held that the church's activities of concealing income through false tax returns and records constituted a conspiracy to defraud the United States, and demonstrated that the church had a "substantial illegal purpose."[66] The church was found to have violated 18 U.S.C. § 371, the criminal statute on conspiracy to defraud the

[58] *See* Treas. Reg. § 1.501(c)(3)-1(d)(2) (as amended in 2017) (defining "charitable" with reference only to lawful purposes); Rev. Rul. 67-325, 1967-2 C.B. 113, 114-17 (distinguishing meaning of "charitable" for 501(c)(3) organizations from broader definition of charity developed by judicial decisions); *see also* Rev. Rul. 71-447, 1971-2 C.B. 230, 230 ("All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy."); Rev. Rul. 75-231, 1975-1 C.B. 158, 158-59 (offering guidance on hypothetical situations in which charitable organizations with discriminatory policies may not be recognized as tax-exempt charities).

[59] *See* JEAN WRIGHT & JAY. H. ROTZ, INTERNAL REVENUE SERV., ILLEGALITY AND PUBLIC POLICY CONSIDERATIONS 2 (1994), https:// www.irs.gov/ pub/ irs-tege/ eotopicl94.pdf [https:// perma.cc/T6DK-MTBS] (discussing origins of illegality doctrine, including interpretation, application, and importance of underlying public policy).

[60] Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) (enumerating exempt purposes as religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals).

[61] 326 U.S. 279 (1945).

[62] *See id.* at 283 ("[T]he presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.").

[63] *See id.* at 283-84 (explaining unethical business practices and fraudulent merchandising schemes serve ends other than education, thereby destroying claims of exempt educational purpose).

[64] *See* EXEMPT ORGS. OFF., INTERNAL REVENUE SERV., ACTIVITIES THAT ARE ILLEGAL OR CONTRARY TO PUBLIC POLICY 2 (1985), https:// www.irs.gov/ pub/ irs-tege/ eotopicj85.pdf [https://perma.cc/8368-H5PT] ("The nature of [disqualifying activities] is as important as their quantity.").

[65] 83 T.C. 381 (1984).

[66] *See id.* at 506.

United States, and the illegal activity was substantial enough to justify revoking the church's tax-exempt status.[67]

In reviewing the quality of an illegal activity, the IRS examines the seriousness of the illegal activity and the involvement of the organization's officers and directors in the activity. The IRS stated that an organization engaged in organized crime committed a sufficiently serious and blatant disqualifying activity, and that organized crime alone was enough for revocation of tax-exempt status.[68]

Relying on EO RPSLF, the Trump Administration may claim that Harvard has violated 8 U.S.C. § 1325 or other federal immigration laws. However, unlike in *Church of Scientology*, a court has not held that Harvard, as a tax-exempt organization, has acted to further a substantial illegal purpose. Absent such a finding, allegations of illegal purpose cannot be used to substantiate the revocation of Harvard's tax-exempt status without due process.

B. *Trump Administration's Contrary to Public Policy Argument*

In addition to the substantial illegal purpose argument, the Trump Administration may claim that Harvard's support of DEI in its admission of students and hiring of faculty does not serve a charitable purpose and is contrary to fundamental public policy.[69]

The question of whether the federal government can revoke an organization's tax-exempt status because its purpose is contrary to public policy was addressed in *Bob Jones University v. United States*.[70] In *Bob Jones*, the IRS revoked the tax-exempt status of the university for its discriminatory policy of prohibiting

[67] *See id.* at 504-09 (deciding conspiratorial acts were clear violations of criminal statute and revocation was appropriate remedy in light of circumstances and precedent).

[68] I.R.S. Gen. Couns. Mem. 34,631 (Oct. 4, 1971); *see* EXEMPT ORGS. OFF., *supra* note 64 (offering guidance on determining substantiality of disqualifying activities on basis of General Counsel Memo 34631 "significant extent" analysis).

[69] *See supra* note 56 and accompanying text (describing Trump Administration's purported reasons for attacking Harvard's tax-exempt status); *Evolving Threats*, *supra* note 57 (implying DEI trainings might be accused of aiding and abetting illegal discrimination); *see also* Letter from Edward Blum, President, Am. All. for Equal Rts., to Robert Malone, Dir., Exempt Orgs. & Gov't Entities, Internal Revenue Serv. 1 (Apr. 1, 2025), https://americanallianceforequalrights.org/wp-content/uploads/American_Alliance_for_Equal_Rights_Files_Request_to_IRS.pdf [https://perma.cc/JS93-JTX8] (claiming Gates Foundation scholarship programs excluded white applicants and engaged in racial discrimination, violating fundamental public policy and is ineligible to retain its tax-exempt status); James Taranto, *From Bob Jones to Columbia University and DEI*, WALL ST. J. (Mar. 24, 2025, at 16:06 ET), https://www.wsj.com/opinion/ from-bob-jones-to-columbia-university-trump-can-use-irs-to-solidify-his-civil-rights-record-eccdd0d8 (stating President Trump should direct IRS to include DEI measures employed by education institutions as against public policy for purposes of tax exemption).

[70] 461 U.S. 574 (1983).

interracial dating or marriage of its students.[71] The IRS relied on its revenue ruling that held "[a] private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption."[72] The University appealed, claiming the IRS revocation violated the Establishment Clause by preferring religions and religious beliefs that did not require racial discrimination.[73] The Supreme Court granted certiorari to the University and the petitioner in a companion case, *Goldsboro Christian Schools, Inc. v. United States*,[74] involving a nonprofit private school maintaining racially discriminatory admissions policies based on religious beliefs, to determine if the petitioners qualified as tax-exempt organizations under § 501(c)(3) of the Code.[75] The Supreme Court determined entitlement to tax exemption under § 501(c)(3) "depends on meeting certain common-law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy."[76] To determine that an organization is not charitable, and therefore not entitled to tax exemption, the Supreme Court required that "there is no doubt that the organization's activities violate fundamental public policy."[77] Here, the Court found that there was a fundamental public policy against racial discrimination in education, evidenced by twenty-five years of decisions and pronouncements from all three branches of government.[78]

The Trump Administration's attempt to determine that Harvard's DEI policies in admissions and hiring are contrary to a fundamental public policy falls short of meeting the standards created by the *Bob Jones* public policy doctrine. Unlike in *Bob Jones*, years of decisions and pronouncements by all

[71] *See id.* at 579-81 (reviewing language of university's disciplinary rule and history of IRS actions leading to revocation of tax-exempt status).

[72] Rev. Rul. 71-447, 1971-2 C.B. 230.

[73] *Bob Jones*, 461 U.S. at 602 & n.28 (reiterating university's contention that Commissioner's policy cannot constitutionally be applied to schools engaging in racial discrimination on basis of genuine religious beliefs).

[74] 436 F. Supp. 1314 (E.D.N.C. 1977).

[75] *See id.* at 1316 ("Plaintiff's exemption depends upon whether plaintiff was, during the years in question, an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954, which contains the basic definition of 'charitable' organizations which qualify for federal tax benefits.").

[76] *Bob Jones*, 461 U.S. at 586.

[77] *Id.* at 598.

[78] *See id.* at 599 (indicating Congress did not modify IRS rulings to correct misconceptions of either Executive Branch or courts). The Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), was the beginning of a series of decisions establishing that racial discrimination in education violated the nation's fundamental public policy. Acts of Congress establishing the same principle included Titles IV and VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 5 U.S.C., 28 U.S.C., and 42 U.S.C.). Many executive orders joined the rulings of the other branches, for example, Exec. Order No. 10730, 3 C.F.R. § 389 (1954-1958 comp.), which required military forces to comply with federal standards for school desegregation programs.

three branches of government do not establish a fundamental public policy against DEI efforts in admissions and hiring in education. At best, the Trump Administration has established that DEI in education does not align with its political preferences. However, the Supreme Court and Congress have not established that DEI is contrary to public policy.

CONCLUSION

The Trump Administration wrongly implies that an executive order can, on its own, revoke Harvard's validly granted federal tax exemption. Such an implication overlooks judicial precedent, established in *Church of Scientology* and *Bob Jones*, which set standards for revoking tax-exempt status for actions deemed illegal or contrary to public policy. It also overlooks the Treasury Department's procedures for revoking federal tax exemption, which require providing tax-exempt organizations with notice and affording them an opportunity to appeal through the IRS administrative appeal process or the federal judiciary. Most importantly, it circumvents the safeguards that Congress has implemented to guard against the arbitrary granting or revoking of federal tax-exempt status. The revoking of a university's tax-exempt status through an executive order without providing administrative and judicial recourse violates the Fifth Amendment's Due Process Clause.