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# COMMENTS

## IT'S (NOT) ALL PAR FOR THE COURSE: AN IN-DEPTH ANALYSIS OF THE PGA'S CONTROVERSIAL NONPROFIT STATUS

LAUREL C. MONTAG\*

### INTRODUCTION

“[T]he millionaire will be but a trustee for the poor.”<sup>1</sup> Andrew Carnegie made this declaration in his 1887 essay entitled “Wealth,” outlining the societal duties of the wealthy to care for the poor.<sup>2</sup> As society progressed technologically, economically, and socially since 1887, new kinds of millionaires emerged on the scene: sports leagues, teams, and associations.

Sports provide a unique opportunity to promote a wide array of values. One of the most prevalent and admirable of those values is charitable giving. Particularly due to higher amounts of media attention and notoriety, professional sports teams, leagues, and associations have the power to further their charitable purposes on a larger scale. One such association, the Professional Golfers’ Association (PGA) Tour is characterized as a §501(c)(6) tax-exempt charitable organization which entitles it to certain benefits that for-

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1. Andrew Carnegie, *Wealth*, 148 NORTH AM. REV. 653, 664 (1889).

2. *Id.*

profit corporations do not enjoy.<sup>3</sup> Recently, the PGA has been under the scrutinous eye of nonprofit watchdogs who criticize its tax-exempt status.<sup>4</sup> Skeptics of the PGA's true intentions criticize the amount of taxes the organization has "evaded" compared to the dollar amount that each tournament brings in and the portion of that amount that is allocated for charitable giving.<sup>5</sup> What the nay-sayers neglect to take into account, however, is the gargantuan dollar amount that the PGA has designated exclusively for charitable purposes (over \$3 billion as of 2020), and the ramifications of revoking its tax-exempt status.<sup>6</sup>

This Comment argues that criticism of the PGA's charitable nonprofit status, although not unwarranted, is not sufficient cause to revoke its tax-exempt status. In Part I, the comment will offer a brief history of the PGA and a general outline of the charitable activity it has engaged in. In Part II, the comment will describe the intricacies and requirements under the relevant provisions in Internal Revenue Code §501. In Part III, the analysis will delve into how the PGA has chosen to structure their nonprofit organization, through their choices of formation and governance. Then, this comment will analyze the PGA's financial activities through its tax filings and will provide a brief evaluation of the organization's lobbying efforts. This section will also offer an explanation of the criticism that the PGA faces. In Part IV and V, the comment will discuss best practices for a nonprofit organization and propose possible changes that the PGA can institute to better its status as a §501(c)(6) and in the public eye.

Although the PGA has been criticized for the large tax exemption it incurs as a nonprofit organization, the organization's activities are within the legal bounds of the obligations and limitations prescribed under Internal Revenue Code §501 and should not have its tax-exempt status revoked. However, although the PGA is in compliance with the requisite requirements, it would benefit from altering its activities to better conform with best practices for a nonprofit organization.

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3. INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 990, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2018), [https://pdf.guidestar.org/PDF\\_Images/2018/520/999/2018-520999206-17102785-90.pdf?\\_ga=2.29767487.1878695335.1602615334-596959623.1600120129](https://pdf.guidestar.org/PDF_Images/2018/520/999/2018-520999206-17102785-90.pdf?_ga=2.29767487.1878695335.1602615334-596959623.1600120129).

4. Rex Hoggard, *Report: Tax-Exempt Status of Tournaments Under Scrutiny*, GOLF CHANNEL (Dec. 13, 2013, 8:36 PM), <https://www.golfchannel.com/article/golftalkcentral/report-tax-exempt-status-tournaments-under-scrutiny>.

5. Tom Ley, *The PGA Tour's Non-Profit Status is a Big Joke*, DEADSPIN (Dec. 13, 2013, 2:22 PM), <https://deadspin.com/the-pga-tours-non-profit-status-is-a-big-joke-1482806719>.

6. *PGA Tour, Its Tournaments Surpass \$3 Billion In All-Time Charitable Giving*, TOUR CHAMPIONSHIP (Jan. 28, 2020), <https://www.pgatour.com/impact/2020/01/28/pga-tour-tournaments-surpass-3-billion-dollars-all-time-charitable-giving.html>.

I. A BRIEF HISTORY OF GOLF IN THE UNITED STATES AND THE FORMULATION OF THE PGA

A. *Intrenchment of golf as a wealthy pastime*

Historically, golf was a game that signified heightened status and wealth. Roots of the game of golf can be traced back to 15<sup>th</sup> century Scotland, where it was played mainly by nobility and members of the royal family.<sup>7</sup> As golf gained popularity in Scotland among commoners over the next few centuries, word of the sport began to spread overseas.<sup>8</sup> Eventually, golf made its way to America, where the first organized game was played in South Carolina in 1786, after a local merchant received a shipment of 432 golf balls and 96 golf clubs from Scotland.<sup>9</sup> The gradual foundation of the first American golf clubs in the late 1800s catapulted the sport into the attention of wealthy groups.<sup>10</sup> Once golf earned its spot in the social scene of the wealthy, the sport expanded incredibly fast.<sup>11</sup> Wealthy groups welcomed the sport as a means to show “the vast amounts of capital they had accumulated, not only in terms of economic capital reflected by lavish facilities and expensive equipment, but also in the form of social capital represented by the exclusive admission procedures and socially delimited communities.”<sup>12</sup> Efforts to preserve the game as exclusive to the affluent members of society were apparent as a member of the U.S. Golf Association stated in 1901, “we shall admit there is one thing clear, that is that this game is played by gentlemen only,” insinuating that poorer groups, such as caddies and professional players were deemed unworthy of membership.<sup>13</sup>

Today in the United States, golf is still synonymous with elevated status and refinement; however, efforts have been made to improve the game’s approachability.<sup>14</sup> The social structure surrounding the game has solidified its place as a largely exclusive pastime, attractive to the elite of society and

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7. ROBERT BROWNING, *Why Golf is Royal and Ancient*, in A HISTORY OF GOLF: THE ROYAL AND ANCIENT GAME (Paramount Press 1955).

8. *Id.*

9. *First Golf Played U.S.A. 1788*, PRES. SOC’Y CHARLESTON, <http://www.halseymap.com/flash/window.asp?HMID=13#:~:text=First%20Golf%20Played%20U.S.A.%201788,-Preservation%20Society%20of&text=It%20is%20thought%20that%20the,ninety%2Dsix%20clubs%20from%20Scotland> (last visited Apr. 1, 2022).

10. Hugo Ceron-Anaya, *An Approach to the History of Golf: Business, Symbolic Capital, and Technologies of the Self*, 34 J. SPORT & SOC. ISSUES 339, 349 (2010).

11. *Id.* (“Between 1888 and 1900, nearly 1,000 clubs were founded.”).

12. *Id.* at 350.

13. *Id.* Necessarily, women were also excluded from membership. *Id.*

14. BROWNING, *supra* note 7.

business tycoons.<sup>15</sup> Because many wealthy working professionals regularly play golf, golf tournaments have become a conduit for annual corporate fundraisers benefitting charity.<sup>16</sup>

*B. The foundation of the PGA and charitable giving*

With the notion of golf being a “high brow” sport came the creation of various membership organizations.<sup>17</sup> The PGA was formed in the United States in 1916 by wealthy Philadelphia businessman, Rodman Wanamaker.<sup>18</sup> The stated purposes of the PGA were to promote “interest in professional golf, elevat[e] the standards of the game, and advanc[e] the welfare of its members.”<sup>19</sup> It is devoted to the promotion of these purposes through “education and training programs, spectator events, and philanthropy.”<sup>20</sup> Today, the PGA has a membership of over 25,000 members, comprised of playing and teaching professionals.<sup>21</sup> The PGA Championship is one of the world’s four major golf tournaments, where top golfers compete for the Wanamaker Trophy.<sup>22</sup> It is essential to keep in mind, however, that the PGA of America and the PGA Tour are two separate branches of a larger entity.<sup>23</sup> For the purposes of this comment, the “PGA” and the “PGA Tour” will be used interchangeably in some areas. As explained below, the structure of a nonprofit such as the PGA Tour largely determines how the tax code will apply, and how/whether the organization will be tax-exempt.

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15. Ceron-Anaya, *supra* note 10 at 351.

16. *Id.*

17. See GEORGE B. KIRSCH, *GOLF IN AMERICA* 25 (Univ. of Ill. Press 2009).

18. *Professional Golfers’ Ass’n of Am.*, BRITANNICA, <https://www.britannica.com/topic/Professional-Golfers-Association-of-America> (last visited Apr. 1, 2022).

19. *Id.*

20. Mary Elizabeth, *A Short History of the PGA*, ACTIVE, <https://www.active.com/golf/articles/a-short-history-of-the-pga> (last visited Apr. 1, 2022).

21. *Professional Golfers’ Ass’n of Am.*, *supra* note 18.

22. Pdraig Harrington, *PGA Championship*, BRITANNICA, <https://www.britannica.com/sports/PGA-Championship> (last visited Apr. 1, 2022) (“along with the Masters Tournament, the U.S. Open, and the British Open”).

23. *Brief Tour History and Chronology*, PGA TOUR, <https://www.pgatour.com/media-guide/brief-tour-history.html> (last visited Apr. 1, 2022).

## II. OVERVIEW OF NONPROFIT LAW, ORGANIZATION, AND STRUCTURE

A. *Explanation of nonprofit status in §501*

Section 501 of the Internal Revenue Code governs the tax-exempt status of organizations that fall under its purview.<sup>24</sup> Section 501(c) lists the different organizations that are exempt, in some form, from paying Federal income taxes.<sup>25</sup> The most widely known and used tax-exempt status is §501(c)(3). Under §501(c)(3), “an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.”<sup>26</sup> The benefits of qualifying as a §501(c)(3) organization include exemption from Federal income tax, the ability to offer tax-deductible contributions, possible exemption from state income, sales, and employment taxes, reduced postal rates, exemption from Federal unemployment tax, and tax-exempt financing.<sup>27</sup> Because of these various assets, §501(c)(3) is often seen as the most sought-after tax-exempt status for organizations entering the nonprofit sector. There are, however, some pitfalls to receiving a §501(c)(3) status. For example, there are strict restrictions on personal inurement, lobbying, political activity, and unrelated business income (UBI).<sup>28</sup> If a §501(c)(3) organization engages in substantial lobbying or political campaign activity, it risks losing its tax-exempt status.<sup>29</sup> An organization is subject to taxes on its income from regularly carried on trade or business that is not substantially related to its exempt purpose.<sup>30</sup>

If an organization does not qualify for tax exemption under §501(c)(3), it may still gain tax-exempt status under a different section. Under §501(c)(4), for instance, the legislation allows for Federal tax exemption for “[c]ivic leagues or organizations not organized for profit but operated exclusively for the

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24. 26 U.S.C. § 501 (2022).

25. 26 U.S.C. § 501(c) (2022).

26. *Exemption Requirements - 501(c)(3) Organizations*, IRS, [irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations](https://irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations) (last visited Apr. 1, 2022) Private inurement is “generally understood as unjust enrichment from the organization’s gross or net earnings to another party.” *Id.* See also Emily Chan, *Private Benefit Rules – Part II: Private Inurement Doctrine*, NEO LAW GROUP (Oct. 16, 2012), <https://nonprofitlawblog.com/private-benefit-rules-part-ii-private-inurement-doctrine/> Some examples of private inurement violations include: compensation arrangements with insiders where there is no upper limit; use of net earnings to provide goods and services to insiders; and paying more than fair market value for goods provided by an insider. *Id.*

27. Mollie Cullinane, *Nonprofit Q&A: What are the Benefits of Having 501(c)(3) Tax-Exempt Status?*, CULLINANE L. GRP. (Apr. 30, 2013), <https://cullinanelaw.com/benefits-of-having-501c3-tax-exempt-status/>.

28. *Id.*

29. *Id.*

30. *Id.*

promotion of social welfare, or local associations of employees . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.”<sup>31</sup> Many organizations that fail to receive §501(c)(3) status are able to obtain §501(c)(4) status to receive tax exemption.<sup>32</sup>

Most importantly, for the purposes of this comment, §501(c)(6) also allows organizations to receive tax-exempt status in certain circumstances. §501(c)(6) allows for the tax exemption of “business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.”<sup>33</sup> This section also allows for more latitude in terms of how much an organization may lobby or engage in political activity.<sup>34</sup> A business league is defined as “an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.”<sup>35</sup> In order to qualify for §501(c)(6) tax exemption, the organization’s activities “must be devoted to improving business conditions of one or more lines of business as distinguished from performing particular services for individual persons.”<sup>36</sup>

### B. Choice of structure

There are various benefits associated with each type of tax-exemption status. If an organization can qualify for more than one classification, it is

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31. 26 U.S.C. § 501(c)(4) (2022); *see also Social Welfare Organizations Examples*, INTERNAL REVENUE SERV., <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations-examples> (last visited Apr. 1, 2022) (examples of nonprofit organizations that qualify as social welfare organizations include: “an organization operating an airport that serves the general public in an area with no other airport and that is on land owned by a local government, which supervises the airport’s operation; A community association that works to improve public services, housing and residential parking; A community association devoted to preserving the community’s traditions, architecture and appearance by representing it before the local legislature and administrative agencies in zoning, traffic and parking matters; An organization that tries to encourage industrial development and relieve unemployment in an area by making loans to businesses so they will relocate to the area and; An organization that holds an annual festival of regional customs and traditions.”).

32. Jeff Krehely, *501(C)(4) Organizations: Maximizing Nonprofit Voices & Mobilizing the Public*, NAT’L COMM. RESPONSIVE PHILANTHROPY (Jan. 30, 2005), <https://www.ncrp.org/publication/501c4-organizations-maximizing-nonprofit-voices-mobilizing-public>.

33. *Business Leagues*, INTERNAL REVENUE SERV., <https://www.irs.gov/charities-non-profits/other-non-profits/business-leagues> (last visited Apr. 1, 2022).

34. *Id.* (an organization will not be disqualified just because it has engaged in some political activity, but it may need to notify members of dues used for such activities.).

35. *Id.* (trade associations and professional associations, such as the PGA, are business leagues.).

36. *Id.*

largely up to the nonprofit's leaders to determine which recognition of exemption they will apply for.<sup>37</sup> As each separate provision in §501 has its own benefits, some nonprofit organizations choose to split into multiple sub-organizations, each with their own separate tax-exempt status under a different provision in §501.<sup>38</sup> For instance, a §501(c)(3) tax-exempt organization may “affiliate itself with another organization through a parent-subsidiary relationship, common control, joint venture, shared ownership, or other affiliation.”<sup>39</sup>

### III. THE STRUCTURE, STATUS, AND CRITICISM OF THE PGA

#### A. *PGA structure and status*

The PGA offers an intriguing example of how organizations can elect to create factions that fall under multiple provisions of §501. The PGA is split into the PGA Foundation, a §501(c)(3) charitable foundation, and the PGA Tour, a §501(c)(6) organization.<sup>40</sup> The PGA Foundation, also known as “PGA REACH,” is known as the “charitable arm” of the PGA, with the mission to “positively impact the lives of youth, military veterans, and diverse populations through the creation and utilization of golf programming that supports education, health and wellness, and youth development.”<sup>41</sup> The PGA Tour, on the other hand, falls under the business league classification, as their mission is: “[b]y showcasing golf’s greatest players, we engage, inspire and positively impact our fans, partners and communities worldwide.”<sup>42</sup> Through these two arms, the PGA is able to enjoy the benefits of a §501(c)(3) charitable foundation, and contemporaneously enjoy the latitudes afforded to a §501(c)(6)

37. See INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, PUB. NO. 557, TAX-EXEMPT STATUS FOR YOUR ORGANIZATION (2022), <https://www.irs.gov/publications/p557>.

38. See Fraser Sherman, *Can a Nonprofit Corporation Be an Umbrella for Another Nonprofit?*, CHRON. (Aug. 21, 2020), <https://smallbusiness.chron.com/can-nonprofit-corporation-umbrella-another-nonprofit-64139.html>.

39. CAROLYNE R. DILGARD ET AL., SECTION 501(C)(3) TAX-EXEMPT ENTITIES FORMING AFFILIATIONS WITH OTHER ENTITIES: BENEFITS, RISKS, AND STRUCTURAL CONSIDERATIONS 1 (2011), <https://www.probonopartner.org/wp-content/uploads/2016/05/Affiliation-Primer-Unabridged.pdf> (Benefits of forming such affiliation include: “(1) preserving the tax-exempt organization’s tax-exempt status while potentially allowing more operational freedom through the affiliate; (2) management of unrelated business income tax (“UBIT”) exposure; (3) insulating the tax-exempt organization from liability and regulation; and (4) satisfying regulatory requirements.”).

40. See I.R.C. § 501(c)(6); I.R.C. § 501(c)(3).

41. *Improving Lives Through Golf*, PGA FOUND., <https://www.pgafoundation.com/> (last visited Apr. 1, 2022).

42. *About Us*, PGA TOUR, <https://www.pgatour.com/company/aboutus.html> (last visited Apr. 1, 2022).



business league. The PGA Tour runs each tournament as a charity (which became the policy of the organization in 1979).<sup>43</sup> PGA spokesman Ty Votaw said that running the tournaments this way is “a means to an end, and the end is to benefit any number of charities that, in turn, help countless lives.”<sup>44</sup>

In examining the form 990s for the PGA Foundation and the PGA Tour, there are some stark differences between the two. Dissecting the 990s of both organizations will help to determine (1) where the money is coming from, (2) whether excess spending is occurring, (3) where charitable grants are being directed and in what amounts, and (4) the possible existence of personal inurement in the case of the §501(c)(3). The revenue section of the PGA Foundation’s 990 shows that the majority of revenue comes from program service revenue and contributions and grants.<sup>45</sup> There seems to be a disconnect, however, on the expenses side, as only \$522,988 was given in grants by the foundation, but more than \$7.2 million comprised “other expenses” in 2017, the largest portion of which was made up of management and office expenses.<sup>46</sup> The PGA Foundation’s highest-paid employee for 2017 received just over \$2 million in compensation.<sup>47</sup> As for the PGA Tour’s 990, the large majority of its revenue comes from program service revenue, coming in at over \$1 billion for 2018.<sup>48</sup> That same year, the PGA Tour spent over \$42 million in grants.<sup>49</sup> It is also notable that the Commissioner of the PGA Tour, Joseph Monahan, was reported to have received more than \$7 million in compensation in 2018.<sup>50</sup> As of 2020, the PGA had donated over \$3 billion to charity over the course of its existence.<sup>51</sup> The decision to structure the PGA’s arms like this was a strategic play to effectively and legally reap the benefits of tax-exempt status on both fronts.

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43. Paula Lavigne, *Tax Breaks Power PGA Tour Giving*, ESPN (Dec. 6, 2013), [https://www.espn.com/espn/otl/story/\\_/id/10089803/pgs-tour-tax-breaks-help-fuel-giving-which-falls-industry-standards](https://www.espn.com/espn/otl/story/_/id/10089803/pgs-tour-tax-breaks-help-fuel-giving-which-falls-industry-standards).

44. *Id.*

45. *See* I.R.C. § 501(c)(3).

46. *Id.*

47. *Id.*

48. I.R.C. § 501(c)(6).

49. *Id.*

50. *Id.*

51. *PGA Tour, Its Tournaments Surpass \$3 Billion In All-Time Charitable Giving*, *supra* note 6.

*B. Criticism of the PGA's nonprofit status*

The PGA has come under fire recently from nonprofit watchdogs who believe that the organization's spending efforts compared to their charitable actions do not justify its tax-exempt status. Nonprofits, in general, have been under attack recently because "[m]any observers believe that, despite the good work of nonprofits, they benefit unfairly from an incongruity in the system used to identify eligibility for tax exemptions."<sup>52</sup> Generally, members of the public do not have standing to challenge a nonprofit organization's federal tax-exempt status.<sup>53</sup> Consequently, the IRS is the proper enforcement mechanism to challenge a nonprofit's tax-exempt status.<sup>54</sup> However, the public can and is encouraged to alert the IRS of perceived violations.<sup>55</sup> There are some exceptions where third parties may have standing to challenge organizations' tax-exempt status. For instance, taxpayers may have standing "to challenge Establishment Clause violations when the allegedly unconstitutional action was authorized by Congress under the taxing and spending clause of Art. I, § 8."<sup>56</sup> This exception, however, is very narrow.<sup>57</sup>

An investigation of the PGA Tour's charitable practices in 2013 revealed that the organization had been exempt from paying up to \$200 million in federal taxes over the previous twenty years.<sup>58</sup> The investigation further found that the PGA Tour spends, on average, 16% on "actual charity" per year, which is "far below the minimum 65 percent that charity watchdog groups say makes for a responsible charity."<sup>59</sup> The majority of the Tour's money, Charity Navigator

52. James R. Hines Jr. et al., *The Attack on Nonprofit Status: A Charitable Assessment*, 108 MICH. L. REV. 1179, 1180 (2010).

53. JAMES J. FISHMAN ET AL., NONPROFIT ORGANIZATIONS: CASES AND MATERIALS (Robert C. Clark et al. eds., 5th ed. 2015); *Common Cause Challenges American Legislative Exchange Council's Tax-Exempt Status Using Whistleblower Provisions*, MCGUIREWOODS (May 4, 2012), <https://www.mcguirewoods.com/client-resources/Alerts/2012/5/commoncausechallengesamericanlegislativeexchangeCouncilstaxexemptstatususingwhistleblowerprovisions#:~:text=Courts%20generally%20have%20held%20that,organization's%20federal%20tax%2Dexempt%20status>.

54. *Common Cause Challenges American Legislative Exchange Council's Tax-Exempt Status Using Whistleblower Provisions*, *supra* note 53.

55. *Id.* (The public can do this by submitting a Form 13909, which is a one-page form that allows the public to file a complaint. The public can also "apply for an award from the proceeds of amounts the IRS collects by reason of the information provided." This process is provided for by the whistleblower provisions of the Internal Revenue Code §7623.).

56. *In re U.S. Cath. Conf.*, 885 F.2d 1020, 1027 (2d Cir. 1989).

57. *Id.*

58. Lavigne, *supra* note 43.

59. *Id.*

president Ken Berger said, is going to prizes and promotion.<sup>60</sup> Berger called the PGA Tour's charitable practices "pathetic" and said that the taxpayers ultimately bear the burden of paying the taxes for the organization while it gives the bare minimum to charity.<sup>61</sup> Despite years of criticism, efforts to revoke the PGA Tour's tax-exempt status have proven fruitless.<sup>62</sup> In 2017, a section of the Senate's tax reform bill entitled "Repeal of Tax-Exempt Status for Professional Sports Leagues" was removed just before the legislation was passed.<sup>63</sup> As further explained below, these fruitless attacks have not had a significant impact on the PGA Tour's tax-exempt status and likely will not in the future.

#### IV. BEST PRACTICES FOR NONPROFIT ORGANIZATIONS

As evidenced by the structure of the PGA's multiple branches, nonprofit organizations vary in structure and purpose. Therefore, while §501 of the tax code offers general guidelines for formation and structure, nonprofits have considerable latitude to carry out their charitable purpose as they see fit.<sup>64</sup> Nonetheless, there are certain norms and tenants, separate and apart from legal constraints, that suggest the best practices for functioning nonprofits. Relatively new charity watchdogs, such as Guidestar and Charity Navigator, have made it easier for the public to scrutinize organizations' practices, with a particular focus on financial ratios.<sup>65</sup> The effectiveness of a nonprofit can be judged by factors that are not financial, however, such as reputation, outcome and impact, or multi-dimensional models.<sup>66</sup> While these more inclusive measures have started to become a significant measuring device of compliance with best practices, financial ratios remain the primary yardstick.<sup>67</sup> Regardless of the benchmark, "increased demands for transparency and accountability of

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60. *Id.*

61. *Id.*

62. John Paul Newport, *PGA Tour Officials Breathe Easier after Provision to Strip Tour's Tax-Exempt Status is Removed at Last Minute from Senate Bill*, GOLF DIG. (Dec. 3, 2017), <https://www.golfdigest.com/story/pga-tour-officials-breathe-easier-after-provision-to-strip-tours-tax-exempt-status-is-removed-at-last-minute-from-senate-bill>.

63. *Id.*

64. See Stephanie Brinegar et al., *Operations and Governance*, in *STARTING A NONPROFIT: WHAT YOU NEED TO KNOW* 72, 74-75 (Rebecca Adams et al. eds., 1st ed. 2005).

65. Kellie C. Liket & Karen Maas, *Nonprofit Organizational Effectiveness: Analysis of Best Practices*, 44 *NONPROFIT & VOLUNTARY SECTOR Q.* 268, 269 (2015) ("[F]inancial ratio" can refer to the ratio of compensation and other expenses to charitable giving).

66. *Id.*

67. *Id.* at 727 (Financial measures have various advantages due to "their scalability, collectability, level of objectivity, and comparability across organizations.").

[nonprofit organizations] make the topic a pressing concern for both nonprofit scholars and practitioners.”<sup>68</sup>

A 2015 study outlined some of the most important factors that are included in best practice expectations for nonprofits.<sup>69</sup> The most important factor is transparency.<sup>70</sup> Transparency is the first step in fostering an environment of accountability.<sup>71</sup> Other factors include: reporting, accessibility, online publication, and a mission-focused board of directors.<sup>72</sup> A well-oiled nonprofit should be cognizant of these factors, and its leadership should take affirmative steps to ensure that its practices are up to snuff.

#### V. DESPITE MULTIPLE ATTACKS, THE PGA TOUR'S TAX-EXEMPT STATUS IS NOT IN SERIOUS DANGER

It is unlikely that the PGA Tour's tax-exempt status will ever be revoked for a multitude of reasons. First, taxpayers and members of the public do not have sufficient standing to challenge the PGA Tour's nonprofit status. As stated in *In re U.S. Catholic Conference*, although there is an exception where taxpayers may sue to challenge a nonprofit organization's tax-exempt status, that exception is exceedingly narrow.<sup>73</sup> Specifically, that exception does not apply to the PGA Tour because it does not concern unconstitutional actions “authorized by Congress under the taxing and spending clause of Art. I, § 8.”<sup>74</sup>

Although members of the general public do not have standing to challenge its nonprofit status directly, concerned taxpayers and lawmakers continue to push for the revocation of the PGA's and other sports leagues' tax-exempt status through legislative efforts, as evidenced by the latest failed attempt in 2017. The likely reason that these attempts continue to fall short is due to the PGA Tour's

68. *Id.* at 269.

69. *Id.* at 276-81.

70. *Id.* at 276 (“Transparency is often argued to be one of the most important processes by which NPOs render themselves accountable to their stakeholders.”).

71. *Id.*

72. *Id.* at 278-280 (“Reporting is a key first step for NPOs in creating openness about their past, current, and future actions . . . . For an organization to be transparent, it must report information but also must be accessible for questions and complaints . . . . Considering the contemporary importance of the Internet, practices that include the online publication of the strategic plan, annual report, and the identity of all board members are usually desirable . . . . The normative literature on boards recommends that there usually be a clear separation between the duties and responsibilities of the board and the executive body.”).

73. *In re U.S. Cath. Conf.*, 885 F.2d 1020, 1027 (2d. Cir. 1989).

74. *Id.*

lobbying efforts. In 2013, the PGA Tour spent \$40,000 on lobbying alone.<sup>75</sup> Lobbying is an essential component of keeping the PGA Tour afloat. On the political front, attacks on sports leagues' nonprofit statuses come from both sides of the aisle.<sup>76</sup> Because the PGA Tour is a §501(c)(6) organization, it is permitted to engage in unlimited lobbying.<sup>77</sup> The PGA Tour has not violated any law governing tax-exempt status by engaging in such lobbying. The purpose of §501(c)(6) is "to encourage development of business leagues to promote the public welfare by improving the business conditions of an industry."<sup>78</sup> Therefore, the PGA Tour has succeeded in helping to achieve this goal – the tournaments that the organization produce each year promote public welfare by donating millions of dollars to charity.

However, while the PGA Tour's practices are within the legal boundaries of §501(c)(6), there is merit behind the critics' arguments that the organization's practices set a precedent of inequity. As reported in the PGA Tour's 2018 form 990, the organization's commissioner received over \$7 million in compensation.<sup>79</sup> This number should raise some questions of personal inurement and excess compensation. However, because compensating employees to this degree is not violative of §501(c)(6)'s requirements, any change to the structure of the organization and its allocation of funds would have to come from within. To preserve its public image, the PGA Tour should reevaluate its allotment of funds to charitable giving vs. employee compensation, promotional materials, and tournament prizes.

Alternatively, it would likely benefit the PGA Tour to follow in the National Football League's (NFL) footsteps in voluntarily revoking its own tax-exempt

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75. PGA TOUR'S LOBBYING REPORTS, LD-2 DISCLOSURE FORM (2013), [https://www.espn.com/pdf/2013/121313/OTL\\_-\\_PGATourlobbying.pdf](https://www.espn.com/pdf/2013/121313/OTL_-_PGATourlobbying.pdf); see e.g., Act of Apr. 22, 2020, ch. 1256, 2020 Sess. (providing information regarding the Virginia lottery, powers and duties of the Board, and sports betting).

76. See Sean Gregory, *Why the NFL Suddenly Wants to Pay Taxes*, TIME MAG. (Apr. 28, 2015, 5:26 PM), <https://time.com/3839164/nfl-tax-exempt-status/> ("In 2013, Sen. Tom Coburn (R) of Oklahoma introduced legislation that would prohibit the NFL and other pro sports organizations with over \$10 million in revenue from filing as non-profits . . . Senator Cory Booker, a Democrat, proposed similar legislation – and argued that taxes on these leagues could fund domestic violence programs.").

77. *Lobbying by 501(C)(6) Organizations*, HURWIT & ASSOCS., <https://www.hurwitassociates.com/lobbying-advocacy/lobbying-by-501-c-6-organizations#:~:text=One%20of%20the%20advantages%20of,in%20unlimited%20amounts%20of%20lobbying.&text=Although%20these%20organizations%20are%20not,certain%20IRS%20rules%20and%20requirements> (last visited Apr. 1, 2022) ("Although these organizations are not subject to restriction on the quantity of lobbying they do, they must abide by certain IRS rules and requirements.").

78. Vicki Kelly Brittain & Rebecca W. Crotty, *Creation of Tax-Exempt Business Leagues: For the Section 501(c)(6) "First-Timer"*, 16 WASHBURN L.J. 628 (1977).

79. I.R.C. §501(c)(6).

status.<sup>80</sup> In 2015, the NFL elected to voluntarily denounce its tax-exempt status, following relentless criticism and political threats to have its status revoked by the IRS.<sup>81</sup> What critics of the NFL's tax-exempt status failed to recognize, however, is that because of the structure of the league, the member teams that comprise the NFL are taxable entities.<sup>82</sup> Therefore, while the NFL, itself, was tax-exempt, the major revenue machines (the member clubs) do not receive special tax treatment.<sup>83</sup> The main motivation for voluntarily revoking its tax-exempt status was to restore its reputation in the eyes of the public.

When a tax-exempt nonprofit organization chooses to revoke its tax-exempt status, it no longer has to publicly disclose its tax forms, which make public specific details of the organization's highest-compensated employees.<sup>84</sup> Major League Baseball (MLB) also relinquished its tax exemption in 2007.<sup>85</sup> After doing so, the MLB "no longer had to disclose the pay of commissioner Bud Selig, which had exceeded \$18 million."<sup>86</sup> If the PGA Tour chooses to follow in the footsteps of the NFL and the MLB, they would no longer be required to "file yearly tax forms that publicly disclose details like executive pay."<sup>87</sup> By voluntarily relinquishing its tax-exempt status, the PGA Tour would effectively do two things: (1) signal to the public that the organization is more concerned with its contribution to the Tour and to society than receiving a tax-cut and (2) protect itself from further scrutiny by ending its obligation to publicly disclose details such as employee compensation.

#### CONCLUSION

In the context of Carnegie's prescription for millionaires to act as trustees for the poor, the PGA Tour has met this challenge in some ways (such as giving over \$3 billion to charity). However, on a larger scale, some members of the

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80. Drew Harwell & Will Hobson, *The NFL is Dropping its Tax-Exempt Status. Why That Ends Up Helping Them Out.*, WASH. POST (Apr. 28, 2015), <https://www.washingtonpost.com/news/business/wp/2015/04/28/the-nfl-is-dropping-its-tax-exempt-status-why-that-ends-up-helping-them-out/>.

81. Gregory, *supra* note 76.

82. *Id.*

83. *Id.* (the result of this vital distinction is that the combined revenue of the member clubs (over \$11 billion) was taxed, and the income of the league office (\$9 million in 2012) was exempt).

84. Harwell & Hobson, *supra* note 80.

85. Gregory, *supra* note 76.

86. *Id.*

87. *Id.* (it would also be a better outcome as to the public's perception if the PGA Tour voluntarily revoked their tax-exempt status, rather than getting it forcibly removed by the IRS); see Naomi Hatton, *Where do Sports Leagues Stand After the NFL Revokes its Tax Exempt Status?*, AVE MARIA L. REV. (2016-2017); James J. Fishman, Stephen Schwartz, Lloyd Hitoshi Mayer, *Formation, Dissolution and Restructuring*, in NONPROFIT ORGANIZATIONS CASES AND MATERIALS (Robert C. Clark ed., 2015).

public criticize the organization for not being a trustee for the rest of society, specifically by enjoying a seemingly unnecessary tax break.

The PGA has given billions of dollars to charity over its existence, yet nonprofit watchdogs and some taxpayers are not satisfied. Although, overall, most of the PGA Tour's funds do not go directly to charity, as they are used to compensate employees, fund tournaments, and furnish prizes, its practices are still within the confines of §501(c)(6). Therefore, the organization's technically legal practices, coupled with its considerable lobbying power, solidify the reality that its tax-exempt status is likely not susceptible to revocation by the IRS. However, to preserve the PGA's image in the eyes of the public and to grow its reputation as a generous organization, it would be best served to reform its spending habits and reallocate some of its funds to focus more on its charitable mission, or voluntarily revoke its tax-exempt status altogether.