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Journalism as a Public Good: How the Nonprofit News Model Can Save Us from Ourselves

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JOURNALISM AS A PUBLIC GOOD: HOW THE NONPROFIT NEWS MODEL CAN SAVE US FROM OURSELVES

ROSALIE C. WESTENSKOW*
EDWARD L. CARTER†

At a time when many U.S. newspapers find themselves at the edge of a financial precipice, The Salt Lake Tribune's recent transformation into a 501(c)(3) public charity presents a potentially promising route to economic safety for other daily newspapers. Although the nonprofit, tax-exempt model has been an increasingly popular one for new media outlets, the IRS's bestowal of such status on a major daily newspaper marks an historic event — one that other newspapers, and their legal counsel, can learn from. This article outlines several issues such practitioners and owners should be aware of as they consider taking the leap to nonprofit status. The nonprofit route can have not only financial advantages for news publications, but it may also provide a better environment for cultivating the type of high-quality journalism that is essential to preserving our democracy. The legal requirements for 501(c)(3) organizations, as well as the ownership structure, have the potential to drive hard-hitting reporting on the most important issues, particularly for local publications, many of which are currently hemorrhaging such coverage. This article argues that journalism is a public good, and as such, a natural fit for the non-profit model.

On October 29, 2019, the Internal Revenue Service issued a brief letter, transforming for the first time a major U.S. metropolitan daily newspaper into a 501(c)(3) tax-exempt organization.¹ Newsrooms around the country took notice, seeing *The Salt Lake Tribune's* path as one that might save other slowly sinking news enterprises and

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¹*Have Questions About The Tribune's Transition to a Nonprofit? Here are Some Answers*, SALT LAKE TRIBUNE, Nov. 4, 2019, available at <https://www.sltrib.com/news/2019/11/04/have-questions-about/>.

perhaps provide a breath of fresh capital to elevate their finances.² Using the nonprofit model to fund news is not a new idea, particularly to subsidize specific philanthropic projects or as the entity type of new media organizations. However, until now it has been uncertain whether the IRS would allow such a complete, legal rebirth into a 501(c)(3) public charity — perhaps the most quintessential of all tax-exempt statuses — for an existing, major news publication.³ The IRS’s bestowal of such status on *The Salt Lake Tribune* sent a clear message (and provided a playbook) to other newspapers who have been searching for a way forward in the currently difficult climate for producing profitable journalism.

With the way clearly marked by *The Salt Lake Tribune*, such a model will no doubt attract others to follow. The for-profit model appears less and less attractive (or even possible) for most newspapers as profits plummet. The plight of print journalism has been well documented: In just the last fifteen years, the number of journalists working for newspapers has been sliced in half as more than one in five U.S. newspapers has turned off the printing presses forever.⁴ Total U.S. industry advertising revenue fell 62% over the last decade, from \$37.8 billion in 2008 to \$14.3 billion in 2018, according to the Pew Research Center.⁵ Newspaper publishers’ total revenue has also steadily declined in recent years, falling from \$33.36 billion in 2010 to \$21.45 billion in 2018.⁶ In 2020, 50% of U.S. counties (1,528) had only one newspaper, and 225 counties had no paper at all.⁷

²See, e.g., Christine Schmidt, *Wondering How The Salt Lake Tribune Got 501(c)(3) Status? Here’s Their Entire Application to the IRS — and the IRS’s Response*, NIEMAN LAB, Nov. 14, 2019, <https://www.niemanlab.org/2019/11/wondering-how-the-salt-lake-tribune-got-501c3-status-heres-their-entire-application-to-the-irs-and-the-irss-response/>.

³See, e.g., Rick Edmonds, *At The Salt Lake Tribune, an Editor Resigns, and Huntsman Family Ownership Faces Fresh Challenges*, Poynter, Sept. 9, 2020, <https://www.poynter.org/locally/2020/at-the-salt-lake-tribune-an-editor-resigns-and-huntsman-family-ownership-faces-fresh-challenges/> (paraphrasing Meghan Biss, one of the drafting attorneys for *The Salt Lake Tribune’s* 1023 Application and a former IRS exempt organization’s attorney, stating that for years “the IRS typically handled requests by news organizations for certification as nonprofit by doing nothing — neither approving nor denying”).

⁴Lara Takenaga, *More than 1 in 5 U.S. Papers has Closed. This is the Result*, N.Y. TIMES, Dec. 21, 2019, available at <https://www.nytimes.com/2019/12/21/reader-center/local-news-deserts.html>.

⁵*Newspapers Fact Sheet*, PEW RESEARCH CENTER, <https://www.journalism.org/fact-sheet/newspapers/> (last visited Mar. 9, 2021).

⁶*Estimated Revenue of Newspaper Publishers in the United States from 2010 to 2019*, by Source, STATISTA, <https://www.statista.com/statistics/184880/revenue-sources-of-us-newspaper-publishers-since-2005/> (last visited Mar. 9, 2021).

⁷*Id.* at 11; *Newspapers by County: United States*, HUSSMAN SCH. OF JOURNALISM AND MEDIA, UNIV. OF N.C. AT CHAPEL HILL (June 10, 2020), <https://public.tableau.com/profile/uncclism1164#!/vizhome/NewspapersByCountyUnitedStates/DesertandOne>.

89 Newspapers played a vital role historically in building trust in our
90 democratic system and fostering feelings of community,⁸ as well as serv-
91 ing as a check on the powerful. Eliminating such a vital public service
92 has serious consequences and wide-ranging ripple effects. “The crisis is
93 real,” media scholar Robert McChesney and journalist John Nichols
94 warned a decade ago, stating that “much of governmental activity is
95 conducted in the dark,” and hard-hitting, investigative reporting is “on
96 the endangered species list.”⁹ The coronavirus pandemic of 2020 has
97 exacerbated an already dire situation, making it “a watershed year”;¹⁰
98 media scholar Penelope Muse Abernathy argues that “the choices we
99 make in 2020 — as citizens, policymakers and industry leaders — will
100 determine the future of the local news landscape.”¹¹

101 The “news deserts”¹² left by shuttered papers allow for the cancer-
102 ous spread, unmitigated by journalistic scrutiny, of “news” that is
103 “largely spin and self-interested propaganda,” an environment that
104 “spawns cynicism, ignorance, demoralization, and apathy.”¹³ If this is
105

106
107 ⁸See PENELOPE MUSE ABERNATHY, NEWS DESERTS AND GHOST NEWSPAPERS: WILL
108 LOCAL NEWS SURVIVE? 11 (2020), Center for Innovation and Sustainability in Local
109 Media, Hussman Sch. of Journalism and Media, Univ. of N.C. at Chapel Hill, [https://
110 www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_
111 Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf) (stating that “[r]esearchers in disciplines such as political science, soci-
112 ology and economics have identified three ways strong local newspapers historically built
113 a sense of community and trust in our democracy. Through their journalism, they set the
114 agenda for debate of important public policy issues, and, as a result, influenced the
115 course of history with the stories they published and their editorials that recommended
116 specific actions. Their advertising encouraged regional economic growth and development
117 by helping local businesses connect with local consumers. Newspapers also nurtured
118 social cohesion and political participation by putting into local context issues that may
119 have seemed to be national ones, such as health care or gun control.”).

120 ⁹ROBERT W. MCCHESENEY & JOHN NICHOLS, THE DEATH AND LIFE OF AMERICAN
121 JOURNALISM: THE MEDIA REVOLUTION THAT WILL BEGIN THE WORLD AGAIN x (2010).

122 ¹⁰Thirty newspapers have closed or merged since the coronavirus pandemic hit the
123 United States in the Spring of 2020, others are now providing only online content, and
124 thousands of journalists have been furloughed or laid off. See Kristen Hare, *The
125 Coronavirus has Closed More than 25 Local Newsrooms*, POYNTER INSTITUTE, Aug. 12,
126 2020, [https://www.poynter.org/locally/2020/the-coronavirus-has-closed-more-than-25-
127 local-newsrooms-across-america-and-counting/](https://www.poynter.org/locally/2020/the-coronavirus-has-closed-more-than-25-local-newsrooms-across-america-and-counting/).

128 ¹¹ABERNATHY, *supra* note 8, at 5 (“Will our actions – or inactions – lead to an
129 “extinction-level event” of local newspapers and other struggling news outlets, as pre-
130 dicted by some in the profession? Or will they lead to a reset: an acknowledgment of
131 what is at stake if we lose local news, as well as a recommitment to the civic mission
132 of journalism and a determination to support its renewal?”).

133 ¹²One definition of “news desert” is “a community, either rural or urban, where res-
134 idents have very limited access to the sort of credible and comprehensive news and
135 information that feed democracy at the grassroots level.” ABERNATHY, *supra* note 8,
136 at 18.

137 ¹³MCCHESENEY & NICHOLS, *supra* note 9, at x (arguing that in this environment,
138 “[T]he only ‘winners’ are those that benefit from a quiescent and malleable people who
139 will ‘be governed,’ rather than govern themselves”).

133 the current state of the American press, then according to Thomas
134 Paine’s analysis, we are in trouble: “[T]he manners of a nation,” he
135 penned in 1806, “can be better ascertained from the character of its
136 press than from any other public circumstance.”¹⁴

137 A passive approach to saving and revitalizing American newspapers
138 will undoubtedly continue this downward spiral. As First Amendment
139 scholars RonNell Andersen Jones and Sonja R. West argue, “[T]he kind
140 of press we value and need in the United States — one that is free, inde-
141 pendent, and democracy-enhancing — does not just occur naturally.”¹⁵
142 Jones and West paint a picture of the media sitting atop a crumbling edi-
143 fice, supported by “legal and nonlegal pillars,” including public goodwill,
144 mutually dependent relationships with government officials, judicial sup-
145 port, a political tradition of respecting the press,¹⁶ and financial health.¹⁷
146 As with any complex and multi-faceted problem facing our vast and var-
147 ied country, the answer is unlikely to come tidily packaged in a one-size-
148 fits-all solution. Rather, each of these pillars needs to be addressed and
149 may require different approaches in different communities.

150 Tax-exempt status presents one possible avenue to strengthen finan-
151 cial health and community goodwill, providing a new hope for American
152 journalism and a possibility to produce robust reporting even without a
153 market shift. This article focuses specifically on 501(c)(3) tax-exempt
154 status, and uses the term “nonprofit” or “tax-exempt” generally to
155 encompass such entities. Although tax-exempt status is unlikely to solve
156 all of journalism’s current woes, to the extent it can save this essential
157 social service — and thus, our democracy — the nonprofit model ought
158 to be explored and utilized.¹⁸ Public charities can attract grants from
159
160

161
162 ¹⁴Thomas Paine, *Of the Term “Liberty of the Press,”* AMERICAN CITIZEN, Oct. 20,
163 1806, reprinted in PAINE: COLLECTED WRITINGS, The Library of Am. ed. 429 (1955).

164 ¹⁵RonNell Andersen Jones & Sonja R. West, *The Fragility of the Free American*
165 *Press*, 112 N.W. U. L. REV. 47, 47 (2017).

166 ¹⁶This pillar was heavily under attack by the Trump administration, as well docu-
167 mented by many media scholars and the press. See, e.g., *id.*

168 ¹⁷*Id.*

169 ¹⁸This article does not argue that the nonprofit model is the only, or even necessar-
170 ily the best, model to revive or reimagine the American press. Many others are worth
171 exploring and may present more viable models, including new social enterprise busi-
172 ness models and the possibility of public subsidies for journalism advanced by some
173 scholars and practitioners. See, e.g., MCCHESENEY & NICHOLS, *supra* note 9; Wai Wai
174 Ko Gordon Liu, *The Transformation from Traditional Nonprofit Organizations to*
175 *Social Enterprises: An Institutional Entrepreneurship Perspective*, J. BUS. ETHICS, Jan,
176 30, 2020, available at <https://doi.org/10.1007/s10551-020-04446-z>. Certainly, the non-
profit model is not the right (or even a possible) path for every news outlet. However,
it is a potentially available option for many organizations, and does not require major
changes in outside forces largely beyond the control of news outlet owners, such as pol-
icy or markets.

177 other nonprofits, lure in donors with the potential of tax-deductibility
178 for their gifts, avoid paying taxes on most income and sometimes even
179 property tax, all while continuing to charge for their services.

180 But as newspapers consider the shift from for-profit to 501(c)(3)
181 public charity, they should be aware of both the framework for, and
182 myriad of regulations governing, 501(c)(3) organizations and the
183 changes such a shift in legal status will require. This involves not only
184 considerations in the day-to-day operations of the newsroom, but a
185 restructuring of ownership and, almost certainly, a potentially great
186 financial sacrifice for those with current equity in the publication. And
187 although such a change may have financial benefits, those perks are
188 far from certain, and may have the reverse effect for some
189 publications.

190 As interest in the tax-exempt model grows, a deeper question
191 emerges: How will a large-scale shift from for-profit to nonprofit affect
192 American journalism, an already frail institution whose continued
193 existence and state of health has far-reaching implications for the rest
194 of our democracy and society? Capitalism urges the conclusion that
195 the market will drive the best product, and in a perfect world, consum-
196 ers would arguably pay more for higher quality journalism, driving
197 the type of investigatory reporting so essential for democracy and civil
198 society. In addition, taking out the consumer could lead to reporting
199 that is out of touch and tailored more toward the interest of donors or
200 the persuasions of the newsroom itself. However, with the for-profit
201 model failing for most newsrooms, the nonprofit model provides a way
202 to pay for a product that, although socially valuable, has an underval-
203 ued market monetarily. This is not a path of last resort either; the
204 nonprofit model may lend itself to encouraging and enabling higher
205 quality journalism than the current for-profit environment. This is
206 because market forces will continue to work on nonprofits in many of
207 the same beneficial ways they work on for-profits. Nonprofit newspa-
208 pers will still need to compete for subscribers to stay afloat and will
209 also have the added need to attract donors. In addition, the regulatory
210 framework for 501(c)(3) public charities also provides safeguards that
211 could arguably lead to more transparency and require a broad base of
212 donor support (as opposed to a few wealthy givers).¹⁹ The continued
213 need to listen and respond to readers and the application of strict
214 regulatory requirements, combined with new funding options, argu-
215 ably produces a model that will increase journalistic excellence.

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220 ¹⁹See *infra* text accompanying notes 183–89 and 197–209.

221 This article first addresses potential First Amendment concerns
222 that could arise from this news model and then discusses the history
223 of the nonprofit journalism model and provides a basic overview of
224 tax-exempt status. It then argues that newspapers produce a public
225 good that aligns with the goals of tax-exempt status; addresses the
226 potential benefits to obtaining 501(c)(3) tax-exempt status as a print
227 newspaper; and examines a number of issues practitioners should be
228 aware of when applying for tax-exempt status on behalf of their news-
229 paper clients, including the operational and other changes the IRS
230 will require before granting that status. It concludes by arguing that
231 501(c)(3) public charity status has the potential to produce excellent
232 journalism and even result in a higher quality product than that
233 driven solely by market forces in today's climate.
234

236 FIRST AMENDMENT CONCERNS 237

238 Despite any potential benefits that may arise from the nonprofit
239 news model, the fact such status cannot be attained without govern-
240 ment approval,²⁰ and cannot be maintained without continual govern-
241 ment review,²¹ raises some legitimate First Amendment concerns. In
242 particular, a few issues are especially relevant to applying for and
243 maintaining tax-exempt status as a news organization. For example,
244 the so-called “Methodology Test,” which will apply to many if not all
245 news organizations that apply for 501(c)(3) status, has been chal-
246 lenged for unconstitutional vagueness and has been the subject of crit-
247 ics who argue that it could be used to abridge the free-speech rights of
248 nonprofit organizations.²²
249

251 ²⁰Although there are some exceptions (including churches), organizations generally
252 cannot receive 501(c)(3) tax-exempt status without submitting an application for
253 exemption, called Form 1023: Application for Recognition of Exemption Under Section
254 501(c)(3) of the Internal Revenue Code. See INTERNAL REVENUE SERV., PUBLICATION
255 557: TAX-EXEMPT STATUS FOR YOUR ORGANIZATION 11 (2020) [hereinafter
256 PUBLICATION 557].

257 ²¹Organizations (with a few exceptions that are not likely to apply to news organi-
258 zations) are required to file Form 990 each year, and their activities and practices are
subject to review by the IRS to ensure compliance. *Id.* at 11.

259 ²²See *National Alliance v. United States*, 710 F.2d 868 (D.C. Cir. 1983); *Big Mama*
260 *Rag, Inc. v. United States*, 631 F.2d 1030 (D.C. Cir. 1980); Lynn Lu, *Flunking the*
261 *Methodology Test: A Flawed Tax-Exemption Standard for Educational Organizations*
262 *that “Advocate[] a Particular Position or Viewpoint,”* N.Y.U. REV. L. & SOC. CHANGE
263 377, 382 (2004-05) (arguing that the Methodology Test is “hopelessly unclear, if not
264 unconstitutionally vague”); Alex Reed, *Playing Devil’s Advocate: The Constitutional*
Implications of Requiring Advocacy Organizations to Present Opposing Viewpoints, 37
N.Y.U. REV. L. & SOC. CHANGE 591, 591 (2013).

The Methodology Test requires that in order to qualify for 501(c)(3) status, certain types of entities²³ demonstrate that the *content* of their publication meets certain standards.²⁴ Specifically, the content must be educational and the methods of preparing the material must be “generally accepted as ‘educational’ in character.”²⁵ This is potentially deeply troubling, as it requires the IRS to analyze the content of a publication in order to decide whether or not it qualifies to receive all the government-provided benefits of 501(c)(3) status. This test has been challenged as unconstitutionally vague.²⁶ Professor Alex Reed argues that this is particularly so because, as applied, the IRS requires another, undisclosed factor: that organizations include opposing viewpoints in order for their material to qualify as “educational.” Although doing so is a hallmark of quality journalism, the advisability of placing such discretion in the hands of the government to decide whether material meets these standards is frightening. Reed goes so far as to argue that it conditions certain²⁷ “organizations’ eligibility to receive tax-deductible contributions on the absolute forfeiture of their First Amendment rights.”²⁸

The Service has attempted to ease concerns over application of the test by stating that it focuses not on content or belief, rendering “no judgment as to the viewpoint or position of the organization,” but solely on the methods used by the organization to “develop and present its views.”²⁹ The IRS has asserted that it is “the Service’s policy to maintain a position of disinterested neutrality with respect to the

²³See Rev. Rul. 67-4, 1967-1 C.B. 121 (explaining that this test applies to educational organizations whose primary purpose is the publication and distribution of information).

²⁴*Id.*

²⁵*Id.* There are other requirements of this test, not specifically related to content, which are addressed in more detail below, including an explanation of how the IRS evaluates the content and methods of preparing material an organization uses to determine whether they meet an “educational” standard. See discussion accompanying *infra* notes 155–57.

²⁶See *National Alliance v. United States*, 710 F.2d 868 (D.C. Cir. 1983); *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030 (D.C. Cir. 1980); Lu, *supra* note 22, at 382; Reed, *supra* note 22, at 591.

²⁷It is important to note that the concerns raised by Reed and Lu, for example, are primarily aimed at the potential for the IRS to disqualify advocacy organizations, and not news providers. Lu, *supra* note 22, at 381; Reed, *supra* note 22, at 592–93. However, these same standards will almost certainly apply to news organizations that publish editorials. See discussion *infra* text accompanying notes 154–58.

²⁸Reed, *supra* note 22, at 591.

²⁹Rev. Proc. 86-43, 1986-2 C.B. 729.; see also WARD L. THOMAS & ROBERT FONTENROSE, INTERNAL REVENUE SERV., EDUCATION, PROPAGANDA, AND THE METHODOLOGY TEST 91 (2020), available at <https://www.irs.gov/pub/irs-tege/eotopich97.pdf>.

beliefs advocated by an organization, and that it is the method used by the organization in advocating its position, rather than the position itself, which determines whether the organization has educational purposes.”³⁰

Despite these reassurances and current policy, the potential for tax-exempt status to cause First Amendment problems — including the IRS’s potential ability to interpret and apply its own guidance in a more restrictive manner in the future, or for elected officials to influence such an interpretation and application for their own gain — should be carefully scrutinized and considered as a backdrop for the analysis that follows. The authors recommend further research and study of these matters.

HISTORY AND A BASIC OVERVIEW OF TAX-EXEMPT STATUS AND TYPES

The nonprofit model is not a new phenomenon in the world of news reporting. In fact, one of the world’s oldest and largest news organizations,³¹ the Associated Press formed in 1846, is a nonprofit organization.³² More recently, in 1977, the Center for Investigative Reporting, now the nation’s oldest nonprofit investigative news organization, opened its doors³³ and publishes its work on its Web site, as well as through its public radio program, podcast and social media platform.³⁴ Then in 1989, Charles Lewis founded the Center for Public Integrity in Washington, D.C., to “conduct major, thorough, responsible, journalistic investigations about apparent abuses of power and the public trust.”³⁵ CPI produces stories daily, gearing them to be picked up by other news organizations and publishing them on its own Web site, in newsletters and in books.³⁶

³⁰*Id.*

³¹*Documents Shed New Light on Birth of AP; Wire Older than Originally Thought*, EDITOR & PUBLISHER, Jan. 31, 2006, available at <https://web.archive.org/web/20180728032840/http://www.editorandpublisher.com/news/documents-shed-new-light-on-birth-of-ap-wire-older-than-originally-thought/>.

³²See Charles Lewis, *The Nonprofit Road: It’s Not Paved with Gold but Good Journalism*, COL. J. REV., Sept./Oct. 2007, available at https://archives.cjr.org/feature/the_nonprofit_road.php.

³³*See id.*

³⁴The Center for Investigative Reporting, *About Us*, REVEAL <https://revealnews.org/about-us/>.

³⁵CHARLES LEWIS, *THE GROWING IMPORTANCE OF NONPROFIT JOURNALISM* 8–9 (2007).

³⁶See MAGDA KONIECZNA, *JOURNALISM WITHOUT PROFIT: MAKING NEWS WHEN THE MARKET FAILS*, 16–17; *About Us*, CENTER. FOR PUBLIC INTEGRITY, <https://publicintegrity.org/inside-publici/aboutus/>.

Other notable nonprofit news sources include ProPublica (an investigative journalism public charity³⁷ founded in 2007, which publishes articles and reports online as well as partners with local newspapers to support local journalism³⁸), Fair Observer (a 501(c)(3) public charity³⁹ focusing on civic journalism and civic education with an online-only platform⁴⁰), *The Texas Tribune* (a digital-first media organization launched in 2009⁴¹ with 501(c)(3) public charity status⁴²), *MinnPost* (an online publication with 501(c)(3) public charity status⁴³ whose mission is to “provide high-quality journalism for people who care about Minnesota”⁴⁴), *Voice of San Diego* (another 501(c)(3) public charity⁴⁵ distributing news through its Web site and podcast⁴⁶), The Wisconsin Center for Investigative Journalism (a 501(c)(3) public charity⁴⁷ founded in 2009 which, among other educational activities, produces investigative pieces, published on its website, WisconsinWatch.org, and distributed via wire service⁴⁸), and The Center Square (a Chicago-based news organization with a “taxpayer sensibility” in its focus on “state- and local-level government and economic reporting,”⁴⁹ formed in 2019 as a

³⁷ProPublica, *Form 990: Return of Organization Exempt from Income Tax*, 2018 https://apps.irs.gov/pub/epostcard/cor/142007220_201812_990_2019100316714491.pdf.

³⁸*About Us*, PROPUBLICA, <https://www.propublica.org/about/> (last visited Sept. 26, 2020); *About the Local Reporting Network*, PROPUBLICA, <https://www.propublica.org/about/local-reporting-network> (last visited Sept. 26, 2020);

³⁹*Fair Observer Tax Exempt Organization Search*, INTERNAL REVENUE SERV., <https://apps.irs.gov/app/eos/displayAll.do?dispatchMethod=displayAllInfo&Id=4877596&ein=464070943&country=US&deductibility=all&dispatchMethod=searchAll&isDescending=false&city=&ein1=46-4070943&postDateFrom=&exemptTypeCode=al&submitName=Search&sortColumn=orgName&totalResults=1&names=&resultsPerPage=25&indexOfFirstRow=0&postDateTo=&state=All+States> (last visited Sept. 26, 2020).

⁴⁰*About*, FAIR OBSERVER, <https://www.fairobserver.com/about/> (last visited Sept. 26, 2020).

⁴¹*About*, TEXAS TRIBUNE, texastribune.org/about/ (last visited Sept. 26, 2020).

⁴²Texas Tribune, Inc., *Form 990: Return of Organization Exempt from Income Tax*, 2018 https://apps.irs.gov/pub/epostcard/cor/264527097_201812_990_2020013117096179.pdf.

⁴³MinnPost, *Form 990: Return of Organization Exempt from Income Tax*, 2018 https://apps.irs.gov/pub/epostcard/cor/260573427_201812_990_2020012817078301.pdf.

⁴⁴*About*, MINNPOST, <https://www.minnpost.com/about/> (last visited Sept. 26, 2020).

⁴⁵Voice of San Diego, *Form 990: Return of Organization Exempt from Income Tax*, 2018, https://apps.irs.gov/pub/epostcard/cor/201585919_201812_990_2019080216540726.pdf.

⁴⁶*About Us*, VOICE OF SAN DIEGO, <https://www.voiceofsandiego.org/about-us/> (last visited Sept. 26, 2020).

⁴⁷Wisconsin Watch, *Form 990: Return of Organization Exempt from Income Tax*, 2018 <https://www.wisconsinwatch.org/wp-content/uploads/2019/12/2018-Public-Disclosure-Copy.pdf>.

⁴⁸*What We Do*, WISCONSIN WATCH, https://www.wisconsinwatch.org/about/what-we-do/?gclid=CjwKCAjwsan5BRAOEiwALzomX3VosGmIu49IIkgcO1ox-tzS22ZhrqPUZg4OCeInuX25EMuytAszxoCYKUQAvD_BwE (last visited Sept. 26, 2020).

⁴⁹*About*, THE CENTER SQUARE, <https://www.thecentersquare.com/site/about/about.html> (last visited Sept. 26, 2020).

project of the Franklin News Foundation,⁵⁰ a 501(c)(3) public charity, and distributing its reporting through a newswire service, its website, and social media⁵¹).

The nonprofit news sector grew at a rate of a dozen or more outlets a year from 2008 to 2018, with at least thirty-one new outlets launching in 2018 and 2019.⁵² A 2016 study that attempted to identify, contact and survey every nonprofit media outlet in the United States, provides a useful biographical snapshot of America’s nonprofit news landscape.⁵³ These groups range widely, of course, in size, location, medium and content, but a few characteristics stand out. Most are fairly new (close to three-quarters surveyed were fewer than ten years old, with 35% fewer than five years from inception).⁵⁴ Nonprofit news outlets appear to heavily favor electronic publication, with 40% identifying as digital only⁵⁵ and another 45% being some combination of digital-only or multiplatform⁵⁶ (often Web sites partnering with radio or print publications⁵⁷). Strikingly, only a few of the ninety-four organizations that responded were newspapers, radio stations, magazines or documentary makers.⁵⁸ Respondents were scattered across the country and most provided local coverage, with 40% labeling their organization as local or metropolitan.⁵⁹ Another 30% covered state or regional news.⁶⁰ Most were small: Almost 60% had staffs of fewer than five people.⁶¹

Before delving further, a brief explanation of terminology is necessary. Although this article uses the term “nonprofit” liberally, a

⁵⁰Franklin News Foundation, *Form 990: Return of Organization Exempt from Income Tax*, 2018 https://apps.irs.gov/pub/epostcard/cor/264066298_201812_990_2019110116808377.pdf.

⁵¹*About*, THE CENTER SQUARE, <https://www.thecentersquare.com/site/about/about.html> (last visited Sept. 26, 2020).

⁵²INST. FOR NONPROFIT NEWS, *THE STATE OF NONPROFIT NEWS 5* (2002), available at https://119nh32zekco14afdq2plfsw-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/INN.2020.FINA_06.15.20.pdf [hereinafter *THE STATE OF NONPROFIT NEWS*].

⁵³Although the survey collectors assuredly did not reach every nonprofit outlet in the country, the authors derived their list from compiling information from funders, researchers, and nonprofit media groups themselves, succeeding in surveying ninety-four outlets. TOM ROSENSTIEL, WILLIAM VUZENBERG, MARJORIE CONNELLY & KEVIN LOKER, AMERICAN PRESS INSTITUTE., *CHARTING NEW GROUND: THE ETHICAL TERRAIN OF NONPROFIT JOURNALISM* 45 (2016).

⁵⁴*Id.*

⁵⁵*Id.* at 46.

⁵⁶*Id.*

⁵⁷*Id.* at 45.

⁵⁸*Id.* at 46.

⁵⁹*Id.* at 47.

⁶⁰*Id.*

⁶¹*Id.*

441 nonprofit organization is not necessarily a tax-exempt organization.
442 There is a two-step process. First, an entity must incorporate on the
443 state level (or internationally) as a nonprofit corporation under that
444 jurisdiction's laws.⁶² An organization that wishes to be tax-exempt
445 (meaning exempt from paying most types of income tax) can apply for
446 that status under Internal Revenue Code Section 501(c), which pro-
447 vides twenty-five different categories for tax-exempt status. The most
448 well-known of these categories are charitable organizations, granted
449 tax-exempt status under Section 501(c)(3). Within Section 501(c)(3),
450 an organization can gain tax-exempt status as either a private founda-
451 tion, a private operating foundation, or a public charity. Private found-
452 dations are the default, and usually have one major funding source.
453 This structure essentially allows a wealthy family, entity or individual
454 to create a tax-exempt entity through which they can fund charitable
455 activities by making grants to other 501(c)(3) organizations. Public
456 charities, on the other hand, usually directly operate programs that
457 qualify for one of the allowable purposes listed in Section 501(c)(3).⁶³

458 Public charities are further subdivided into three categories: (1) spe-
459 cific types of institutions (including churches, schools, and hospitals);
460 (2) "publicly supported organizations," which meet one of two mathem-
461 atical tests regarding income;⁶⁴ and (3) "supporting organizations,"
462 which are limited in their activities to supporting other public char-
463 ities (or a group of identified public charities). Private foundations are
464 more heavily regulated than public charities,⁶⁵ so public charity status
465 is usually preferable. In order to qualify as a public charity, an organ-
466 ization must prove that it falls into one of the three public charity
467 categories listed above. *The Salt Lake Tribune* attained its 501(c)(3)
468 tax-exempt status as a publicly supported public charity,⁶⁶ and this
469 particular subset of 501(c)(3) status is the focus of this Article.

470 *The Salt Lake Tribune's* approach is notable because, up until now,
471 most nonprofit news outlets were formed as nonprofits from inception,
472 as opposed to transferring from an historically for-profit operation. In
473 addition, *The Salt Lake Tribune's* choice to transform its entire
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477 ⁶²Note that it is possible to apply for tax-exempt status as an unincorporated asso-
478 ciation, but most organizations choose to first incorporate.

479 ⁶³See discussion accompanying *infra* notes 70–107.

480 ⁶⁴See discussion accompanying *infra* notes 183–89.

481 ⁶⁵These include limitations on self-dealing transactions, requirements for annual
482 distributions, a complete prohibition on lobbying, and other restrictions on operations,
483 in addition to a lower cap on the amount of donations a donor can deduct each year on
484 his or her taxes. See PUBLICATION 557, *supra* note 20, at 30, 46, 65.

⁶⁶Letter from Internal Revenue Serv. to The Salt Lake Tribune, Inc. (Oct. 29,
2019), https://local.sltrib.com/nonprofit/IRS_Ruling_Letter.pdf.

enterprise into a public charity, as opposed to forming or working with a separate foundation to fund specific projects, is also a fairly unique decision. Many of the nonprofit news organizations mentioned above are also public charities; however, they are primarily online publications, often with a specific niche focus, as opposed to providing daily news coverage of a specific locality. Established print newspapers that have looked to the nonprofit model in the past have usually taken a more hybrid approach. For example, the *Tampa Bay Times* and *The Philadelphia Inquirer* are both for-profit publications owned by tax-exempt entities.⁶⁷ However, *The Tribune* is not the only newspaper to consider the shift to public charity status. This model may be a doable one for smaller, local papers as well: Just a few days before the IRS granted *The Salt Lake Tribune* its tax-exempt status, it sent a similar letter⁶⁸ to the Montclair Local Nonprofit News Inc., publisher of *Montclair Local*, a print newspaper covering solely events in the boundaries of Montclair, New Jersey.⁶⁹

NEWS AS A PUBLIC GOOD: WHY NEWSPAPERS SHOULD QUALIFY FOR 501(C)(3) STATUS

The nonprofit model, created to fund important social services that lack a profitable market, presents a fitting and promising vehicle for newspapers in today's political, social and economic climate. Organizations seeking tax-exemption under Section 501(c)(3) must operate primarily for one or more of the following tax-exempt purposes: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports com-

⁶⁷*The Tampa Bay Times* is owned by the Tampa Bay Times Fund, a 501(c)(3) private foundation. *About the Times Fund*, TIMES PUBLISHING CO., <http://company.tampabay.com:2052/times-fund> (last visited Sept. 26, 2020); *The Philadelphia Inquirer* is owned by a 501(c)(3) public charity. Christine Schmidt, *Three Years into Nonprofit Ownership the Philadelphia Inquirer is Still Trying to Chart its Future*, NIEMAN LAB, Aug. 22, 2019, <https://www.niemanlab.org/2019/08/three-years-into-nonprofit-ownership-the-philadelphia-inquirer-is-still-trying-to-chart-its-future/>.

⁶⁸*Montclair Local Nonprofit News Inc.*, INTERNAL REVENUE SERVICE, <https://apps.irs.gov/app/eos/displayAll.do?dispatchMethod=displayAllInfo&Id=13283729&ein=833801012&country=US&deductibility=all&dispatchMethod=searchAll&isDescending=false&city=&ein1=&postDateFrom=&exemptTypeCode=al&submitName=Search&sortColumn=orgName&totalResults=1&names=Montclair+Local&resultsPerPage=25&indexOfFirstRow=0&postDateTo=&state=All+States>.

⁶⁹*Our Mission*, MONTCLAIR LOCAL, <https://montclairlocal.org/our-mission> (last visited Sept. 26, 2020).

petition, and the prevention of cruelty to children or animals.⁷⁰ *The Salt Lake Tribune* highlighted its educational work in its Application for Tax-Exempt Status,⁷¹ and this generally seems to be the route many nonprofit news organizations have taken.⁷² Although the IRS has sometimes responded uncertainly to news entities seeking tax-exempt status in the past,⁷³ there appears to be a growing consensus among scholars, the IRS, and journalists that producing high-quality reporting can be exactly the type of activity that 501(c)(3) status was created to advance.

The nonprofit model works well when high demand exists for a service or good, or when that service or good is essential to the health of communities and society, but the market to support that service or good is not robust enough on its own to finance its creation or distribution. In the United States' current condition — with freefalling profits for news organizations and a greater need than ever for local and

⁷⁰“The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.” 26 U.S.C. § 501(c)(3) (2018).

⁷¹See *The Salt Lake Tribune, Form 1023: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Attachment A, 7–8 (2019), available at <https://www.niemanlab.org/2019/11/wondering-how-the-salt-lake-tribune-got-501c3-status-heres-their-entire-application-to-the-irs-and-the-irss-response/> [hereinafter *Salt Lake Tribune 1023 Application*].

⁷²See REPORTER'S COMMITTEE, NONPROFIT NEWS GUIDE, available at <https://www.rcfp.org/resources/introduction/> (stating that “[t]hose seeking to form a nonprofit to pursue journalistic endeavors usually attempt to incorporate for ‘educational’ purposes”).

⁷³There has been confusion over whether media groups will qualify and even some rejections: “The experts concurred that there have been some worrisome actions by the IRS, which flow from the agency’s application of an antiquated analytic approach to a very dynamic sector. For example, one provision in the IRS framework requires that ‘the manner in which the distribution (of nonprofit media) is accomplished must be distinguishable from ordinary commercial publishing practices.’ This requirement is inappropriate for the Internet age, in which the distribution methods for all forms of media, whether for-profit or nonprofit — newspapers, magazines, television, radio, charitable, and private — have converged and may be identical. The application of an outdated regulatory framework and other IRS actions have created delays and uncertainty among nonprofit media organizations seeking tax-exempt status in order to facilitate the dissemination of important news. Though they receive less national attention than the mainstream outlets, these nonprofit organizations are improving news and information dissemination in communities across the nation and have often plugged specific, serious gaps in news coverage.” NIEMAN LAB, *THE IRS AND NONPROFIT MEDIA: TOWARD CREATING A MORE INFORMED PUBLIC* (2013), available at <https://www.niemanlab.org/pdfs/IRSandNonprofitMedia-CouncilofFoundations.pdf> [hereinafter *THE IRS AND NONPROFIT MEDIA*].

high-quality journalism — the situation is ripe for a non-profit solution.

Not all journalism, of course, is equal, and this article does not contend that all types of “news” are worthy of 501(c)(3) status. “Journalism” as used herein refers to “a good-faith effort to discover and disseminate truth, especially about matters of public interest such as elections, politics and the performance of public officials.”⁷⁴ John Thornton, founder of the nonprofit news outlet *The Texas Tribune*, calls this “capital J Journalism — journalism that takes on serious, complex issues and puts them in context of how citizens interact with their government,”⁷⁵ while others use the term “public journalism.”⁷⁶ It requires thorough fact-checking, it places stories in context, and it focuses on matters of serious social and political concern. It is not simply opinion nor is it distortion of fact. It is written and disseminated primarily with the goal of revealing truth, fostering dialogue, and providing factual information, and not primarily for political or personal gain. This type of journalism relies on “*bona fide* structures for gathering and disseminating news and analysis”⁷⁷ and provides the information not only “sufficient ... to make our constitutional system work”⁷⁸ but that which “dramatically enhances the constitutional system and representative democracy.”⁷⁹

High-quality journalism plays an undeniably important role in civil society. Although not as tangible as bread for the hungry, it is arguably just as essential for the health of our society as it is “the lifeblood of American democracy” and “the counterbalance to corporate and political power.”⁸⁰ It advances the realization of human rights;⁸¹ has an “informative quality” that “enhances people’s understanding of the world on issues likely to empower them as citizens in a democracy”;⁸² places a check on the wealthiest and most powerful, including its all-important function as government watchdog; sets the agenda for important public policy debate;⁸³ and “nurtures social cohesion and

⁷⁴Edward L. Carter & Rosalie Westenskow, *Freedom of Journalism in International Human Rights Law*, 25 COMM. L. & POL’Y 113, 133 (2020).

⁷⁵John Thornton, *What If: The Non-Profit Media Model*, THE HUFFINGTON POST, Aug. 30, 2009, https://www.huffpost.com/entry/what-if-the-non-profit-me_b_248284.

⁷⁶See KONIECZNA, *supra* note 36, at 6.

⁷⁷McCLESNEY & NICHOLS, *supra* note 9, at xi.

⁷⁸*Id.* at xii.

⁷⁹*Id.* at 5.

⁸⁰*Id.* at title page.

⁸¹Carter & Westenskow, *supra* note 73, at 129–30 (citing UN Human Rights Committee, General Comment 34 at ¶ 13).

⁸²STEPHEN CUSHION, THE DEMOCRATIC VALUE OF NEWS: WHY PUBLIC SERVICE MEDIA MATTER 43–44 (2012) (*cited in* KONIECZNA, *supra* note 36, at 8) (emphasis omitted).

⁸³ABERNATHY, *supra* note 8, at 11.

political participation by putting into local context issues that may have seemed to be national ones.”⁸⁴ Journalism plays such an essential role in society, that international law has recognized journalism as a specific category of freedom of expression because it “enables a broad range of opinion and expression rights; constitutes a cornerstone of democracy; and ensures that governments do not infringe (or allow others to infringe) on other fundamental human rights.”⁸⁵

All of these benefits are not just rhetorical aims, either; journalism’s positive effect on democracy has been objectively verified as well. One study conducted in Los Angeles suburbs found those living in communities with daily newspapers are more likely to vote than those living in communities without newspapers.⁸⁶ Another, examining political participation over a thirty-five-year period ending in 2004, concluded that voter turnout is higher if a community has a newspaper. Researchers have determined that if an electorate is well-informed, its politicians are less corrupt (both in the United States and abroad).⁸⁷ Yet another study, examining the impact of *The Cincinnati Post’s* closure, found that, in its absence, voter turnout decreased, fewer people ran for office, and incumbents won more often.⁸⁸ History bears out such a conclusion far beyond Cincinnati or the Twenty-First Century: A study⁸⁹ of newspaper closures and openings from 1869 to 2004 concluded that “newspapers have a robust positive effect on political participation.”⁹⁰ In fact, between 1869 to 1928, just one additional newspaper increased average presidential voting turnout by 0.3 percentage points, with a similar effect on

⁸⁴*Id.*

⁸⁵Carter & Westenskow, *supra* note 74, at 129–30.

⁸⁶Jackie Filla & Martin Johnson, *Local News Outlets and Political Participation*, 45 URBAN AFF. REV. 679, 686 (2010).

⁸⁷Alicia Adserà, Carles Boix & Mark Payne, *Are You Being Served? Political Accountability and Quality of Government*, 19 J.L. ECON. & ORG. 445, 445 (2003).

⁸⁸Sam Schulhofer-Wohl & Miguel Garrido, *Do Newspapers Matter? Short-Run and Long-Run Evidence from the Closure of “The Cincinnati Post.”* 26 J. MEDIA ECON. 60, 60 (2013).

⁸⁹Matthew Gentzkow, Jesse M. Shapiro & Michael Sinkinson, *The Effect of Newspaper Entry and Exit on Electoral Politics*, 101 AM. ECON. REV. 2980, 2981 (2011) (“Our basic strategy is to look at changes in political outcomes in counties that experience an entry or exit relative to other counties in the same state and year that do not. To address the possibility of a spurious relationship, we first discuss theory and evidence on the determinants of newspaper profits and the extent to which they could be correlated with the political outcomes of interest. We then plot changes in the outcomes in years before or after entry and exit events to confirm that the effects we find are driven by sharp ‘on impact’ changes, that any associated trends match the predictions of theory, and that the pattern of leads and lags is inconsistent with unobserved shocks to economic or political variables driving our key findings.”).

⁹⁰*Id.* at 2981.

661 congressional elections.⁹¹ The study estimates that, in recent years,
662 introducing a newspaper in a county without one raises voter turnout
663 among that county's eligible voters by one percentage point for presi-
664 dential elections.⁹² Clearly, journalism is a public good.⁹³

665 The IRS's decision to grant *The Salt Lake Tribune* tax-exempt sta-
666 tus strongly suggests the Service's agreement that traditional, daily,
667 local newspapers and the journalism they provide fall squarely into
668 the category of public goods. *The Tribune* relied heavily on this argu-
669 ment in its application for tax-exempt status, explaining its role as
670 "Utah's independent voice for news and information" and arguing that
671 bestowal of tax-exempt status would allow it to "ensure the sustain-
672 ability of this vital public resource and provide important educational
673 information to the citizens of Utah."⁹⁴

674 Despite its importance to society, financial support for this essential
675 good is lacking,⁹⁵ and this arguably cannot be fixed by market forces.
676 Media scholar Robert W. McChesney and journalist John Nichols
677 argue that the current collapse in media funding has been coming for
678 some time and has "roots in a deep-seated and longstanding tension
679 between commercialism and ... journalism."⁹⁶ This tension has
680 exploded in the last decade, such that "the circumstances that made
681 possible the production [of journalism] no longer exist and the market
682 is ceasing to nurture or sustain substantial journalism, or even signifi-
683 cant amounts of commercial journalism."⁹⁷ John Thornton argues that
684 this is typical of public goods, such as "clean air and national defense,"
685 and that these goods "will not be produced in sufficient supply exclu-
686 sively by market forces."⁹⁸

687 The problem with relying on market forces to fund journalism lies
688 in positive externalities—social benefits that neither the producer nor
689 consumer pays for.⁹⁹ The positive effects of high-quality journalism
690 (such as reducing political corruption) are enjoyed by both those who
691 paid for the news *and* those who did not, meaning that the news
692
693

694 ⁹¹*Id.*

695 ⁹²*Id.* at 3003.

696 ⁹³*See, e.g.,* MCCHESENEY & NICHOLS, *supra* note 9, at xii (stating "[j]ournalism must
697 be understood as a public good"). (*See also* THE IRS AND NONPROFIT MEDIA, *supra* note
698 73, at 10 (arguing that "[l]ocal accountability journalism is of great civic importance
699 and value, but does not generate significant consumer demand to fuel healthy media
700 business models").

701 ⁹⁴*Salt Lake Tribune 1023 Application, supra* note 71, at Attachment A, 2.

702 ⁹⁵*See supra* text accompanying notes 5–6.

703 ⁹⁶MCCHESENEY & NICHOLS, *supra* note 9, at xi.

704 ⁹⁷*Id.* at xii.

⁹⁸Thornton, *supra* note 75.

⁹⁹*See* KONIECZNA, *supra* note 36, at 34.

705 producer is not adequately compensated.¹⁰⁰ Those who do not pay for
706 news but who benefit from its production are called free-riders, and
707 this problem is magnified by the characteristics of public goods.¹⁰¹
708 Public goods have two prominent features: They are “non-rival,” which
709 means production of the good by one person does not inhibit produc-
710 tion by another, and they are “non-excludable,” meaning a producer
711 cannot prevent a consumer from using them without paying for
712 them.¹⁰² Due to the Internet, “journalism is more of a public good than
713 ever before,” because now the information it provides can often be
714 accessed and shared for free with huge groups of acquaintances, col-
715 leagues, or friends on a social media platform in ways that a simple
716 paper clipping never could have been disseminated.¹⁰³ This vastly
717 magnifies the already inherent free-rider problem that journalism has
718 always faced.¹⁰⁴

719 The problem of positive externalities affects different types of news
720 differently, dealing the heaviest blow to the most essential types of
721 coverage. A 2013 report by the Nonprofit Media Working Group found
722 that the most expensive topics to cover, even when of high societal
723 value, are also the most likely to get dropped, including most promin-
724 ently, education, local government accountability, health, and the
725 environment.¹⁰⁵ When the market produces a good at less than its
726 optimal rate, this is called “market failure.”¹⁰⁶

727 As such, a new, non-market approach to funding this essential ser-
728 vice must be found. In the words of journalism scholar Philip Meyer,
729 “The only way to save journalism is to develop a new model that finds
730 profit in truth, vigilance, and social responsibility.”¹⁰⁷ The nonprofit
731 model provides one possible road toward monetizing such positive
732 externalities.

736
737 ¹⁰⁰*Id.* at 34–35.

738 ¹⁰¹*Id.* at 35.

739 ¹⁰²*Id.*

740 ¹⁰³*Id.*

741 ¹⁰⁴*Id.*

742 ¹⁰⁵THE IRS AND NONPROFIT MEDIA, *supra* note 73, at 10. Noting: “Public affairs
743 coverage is especially challenged. The types of stories that involve high costs include:
744 Investigative pieces that require lengthy documents and records searches. Stories
745 where government officials actively resist the disclosure of records and information.
746 Stories that involve knowledge best gained through beat reporting, since understand-
747 ing some policy areas involves spending time observing a set of institutions and issues.
748 [And] The creation of new software applications that make government data more
749 accessible to the public.” *Id.* at 5.

749 ¹⁰⁶See KONIECZNA, *supra* note 36, at 35.

749 ¹⁰⁷Lewis, *supra* note 32 (citing PHILIP MEYER, THE VANISHING NEWSPAPER (2004)).

FINANCIAL BENEFITS OF THE PUBLIC CHARITY MODEL

In addition to the obvious benefit of being exempt from most income tax, one of the most alluring aspects of tax-exempt status for news organizations is the potential to tap into the massive nonprofit sector of the United States. Access to such a funding source, especially when added on top of traditional revenue sources from advertisements and subscription fees, could make it possible for already established print newspapers to stay afloat and even thrive.

The United States nonprofit sector claims a hefty 5.6% of the country's gross domestic product, contributing an estimated \$1.047.2 trillion in 2016 to the country's economy.¹⁰⁸ Private giving from individuals, foundations and businesses amassed \$427.71 billion in funds for nonprofits in 2018.¹⁰⁹ For perspective, the entire U.S. news industry generated just \$21 billion in revenue in 2018.¹¹⁰ Americans are generous with their time as well, with an estimated 25% of U.S. adults volunteering in 2017 for a total of 8.8 billion hours (a labor force that employment laws bar for-profits from tapping into).¹¹¹

Organizations that qualify for tax-exempt status can step into this world of funding in a way that for-profits and taxable nonprofits can only dream about due to both formal legal barriers and informal, but no less real, barriers of public perception. From the legal perspective, IRS rules make it easier to attract donations from individuals and other 501(c)(3) organizations if an entity has 501(c)(3) status. Although donations from such sources are not the main source of nonprofit income, they still represent significant dollars. One study found that U.S. public charities, as a whole, earn 49% of their income from private fees for services, 31.8% from government grants and contracts, 8.7% from donations from private individuals, 2.9% percent from foundation donations, 1.5% from bequests, 0.9% from corporate donations, and 5.2% from other sources.¹¹² That means 14% of public charities' revenue comes solely as donations. Individuals can give funds to non-501(c)(3) organizations, but the potential to deduct that donation on

¹⁰⁸See NATIONAL CENTER FOR CHARITABLE STATISTICS, THE NONPROFIT SECTOR IN BRIEF (2020) available at <https://nccs.urban.org/project/nonprofit-sector-brief>.

¹⁰⁹See *id.*

¹¹⁰*Newspaper Publishing Revenue in the United States from 2010 to 2018*, by Media Type, STATISTA, <https://www.statista.com/statistics/184887/us-newspaper-publishing-revenue-by-media-type-since-2005/> (last visited Sept. 26, 2020).

¹¹¹NATIONAL CENTER FOR CHARITABLE STATISTICS, *supra* note 108.

¹¹²NATIONAL COUNCIL OF NONPROFITS, NONPROFIT IMPACT MATTERS, 19 (2020), available at <https://www.nonprofitimpactmatters.org/site/assets/files/1/nonprofit-impact-matters-sept-2019-1.pdf>.

793 their taxes only exists if the recipient is a 501(c)(3). Similarly, private
 794 foundations (which often exist solely to fund the work of like-minded
 795 public charities) and other public charities can much more easily
 796 donate to another 501(c)(3); donations to an entity without tax-exempt
 797 status are largely barred under IRS rules unless the giving organiza-
 798 tion closely tracks how the money is spent and ensures it is only used
 799 for tax-exempt purposes — a significant time investment with a poten-
 800 tial for legal liability most 501(c)(3) organizations are not willing to
 801 take on.

802 Public perception also aids nonprofits in attracting donors. In addi-
 803 tion to the potential for tax deductibility, individuals and corporations
 804 are more likely to give to 501(c)(3) organizations because they are
 805 likely to perceive the mission of such organizations as more worthy of
 806 donations, and the IRS oversight gives some confidence that donations
 807 will be used to advance that mission, as opposed to just lining the
 808 pockets of insiders. In terms of news organizations, tax-exempt status
 809 sends a powerful signal to potential “donors that the reporters are
 810 more interested in providing essential civic information than generat-
 811 ing an audience or income.”¹¹³

812 This funding potential is important for a nonprofit news organiza-
 813 tion because, in order to qualify for 501(c)(3) status, it must show that
 814 it produces high-quality journalism of an educational value, as
 815 explained above. This type of reporting tends to be more expensive to
 816 produce than lighter and fluffier stories.¹¹⁴ In addition, if revenue
 817 exceeds costs, the excess can be funneled back into generating content,
 818 instead of being distributed to shareholders, allowing for greater
 819 investment in the production of news.¹¹⁵

820 News organizations have been tapping into non-commercial, public
 821 funding in the United States since as early as 1731,¹¹⁶ however, the
 822 first major nonprofit funding for news began in the 1930s.¹¹⁷ One
 823 2011 study estimated that foundations had invested more than a bil-
 824 lion dollars in the U.S. nonprofit news sector since 2000.¹¹⁸ This repre-
 825 sents just a small fraction of total foundation disbursements during
 826

827
 828 ¹¹³THE IRS AND NONPROFIT MEDIA, *supra* note 73, at 5.

829 ¹¹⁴*Id.* (stating, “The topics covered by the tax-exempt media are often costly to
 830 investigate and report, important to democracy, but unprofitable.”).

831 ¹¹⁵*Id.*

832 ¹¹⁶This was the year Benjamin Franklin formed an association in Philadelphia, cre-
 833 ating the Library Company. See LEWIS A. FRIEDLAND & MAGDA KONIECZNA, TECHNICAL
 834 UNIVERSITY OF DORTMUND, THE FIELD OF NONPROFIT FUNDING OF JOURNALISM IN THE
 835 UNITED STATES 9 (2011), available at [https://www.journalismfund.eu/sites/default/files/
 836 The%20Field%20of%20Nonprofit%20Funding.pdf](https://www.journalismfund.eu/sites/default/files/The%20Field%20of%20Nonprofit%20Funding.pdf).

¹¹⁷*See id.*

¹¹⁸*See id.* at 10.

that time,¹¹⁹ but with more than 86,000 foundations in the United States in 2015,¹²⁰ not to mention corporate donors and grantmaking public charities, the potential is an enticing pull toward obtaining 501(c)(3) status.

This, along with the goal of retaining local ownership, appears to have been a motivating factor for *The Salt Lake Tribune* in shifting to a nonprofit model. Founded in 1870, *The Tribune* was owned by Utah-based businesses or families for much of its history,¹²¹ but in 1997 was sold to Telecommunications Inc., beginning a string of non-local owners, including New York City hedge fund Alden Global Capital.¹²² However, in 2016, the Huntsmans, a prominent Utah family, purchased the paper,¹²³ with the self-stated goal of returning the newspaper to local ownership.¹²⁴ Paul Huntsman, owner when the paper applied for tax-exempt status, described searching for an option that would enable that local control to continue as “revenue loss and migration away from print media” challenged *The Tribune*, like other newspapers, to survive.¹²⁵ According to Huntsman, in 2018, he and now former Editor Jennifer Napier-Pearce searched “for a new path toward sustainability.”¹²⁶ After visiting a number of nonprofit news organizations and foundations across the United States, they discovered that “no one had reorganized a for-profit legacy newspaper into a 501(c)(3) public nonprofit.”¹²⁷ Enticed by the potential benefits available to nonprofits, and the ability to retain local control, Huntsman and his team decided to be the first.¹²⁸

Of course, the nonprofit model alone is unlikely to salvage a flailing organization or open the floodgates of funding. Nonprofit news

¹¹⁹For example, in just 2007, foundations gave a total of \$44 billion. *Id.* at 10.

¹²⁰*Number of Foundations in the United States from 1990 to 2015*, STATISTA, <https://www.statista.com/statistics/250878/number-of-foundations-in-the-united-states/#:~:text=This%20statistic%20shows%20the%20number,registered%20in%20the%20United%20States>. (last visited Sept. 26, 2020).

¹²¹Note, however, that three Kansas businessmen purchased *The Tribune* in 1873 and retained ownership until 1901. See Mike Gorrell, *A Brief History of Salt Lake Tribune Owners Since its Birth – With Photos of the Paper Through the Years*, SALT LAKE TRIBUNE, Apr. 22, 2016, available at <https://www.sltrib.com/news/2016/04/22-a-brief-history-of-salt-lake-tribune-owners-since-its-birth-with-photos-of-the-paper-through-the-years/>.

¹²²*Id.*

¹²³*Id.*

¹²⁴Paul Huntsman, *Paul Huntsman: Join Me in Supporting the New Nonprofit Salt Lake Tribune*, SALT LAKE TRIBUNE, Nov. 4 2019, available at <https://www.sltrib.com/news/2019/11/04/paul-huntsman-join-me/>.

¹²⁵*Id.*

¹²⁶*Id.*

¹²⁷*Id.*

¹²⁸*Id.*

881 organizations are not, on the whole, wealthy entities. A 2016 study
882 found 70% of the nonprofit news organizations surveyed had budgets
883 under \$1 million, with 40% of that group operating on less than
884 \$250,000.¹²⁹ However, particularly for already established news
885 organizations that have the name recognition and historical clout to
886 attract donors, as well as the staff and wherewithal to effectively mar-
887 ket their services and mission, tax-exempt status could be one piece in
888 the puzzle of survival.

891 **CONSIDERING THE LEAP TO NONPROFIT? WHAT NEWSPAPERS** 892 **AND THEIR LEGAL COUNSEL NEED TO KNOW** 893

894 The nonprofit model presents an attractive route for many faltering
895 newspapers, one that feels more possible after seeing it successfully
896 executed by *The Salt Lake Tribune*. As newspapers and their legal
897 counsel consider whether such a shift is right for their individual publi-
898 cations, however, there are a number of issues to consider, which alone
899 or in combination may present a change so significant that some news-
900 papers may not be willing to undergo the transformation. These include
901 changes in ownership and a loss of equity, board governance models,
902 ensuring an educational purpose and compliance with the Methodology
903 Test, Unrelated Business Income Tax issues, electioneering prohibitions,
904 the public support calculation, and public disclosure requirements.

905 This article does not address all of the intricacies of tax-exempt sta-
906 tus, nor does it cover the step-by-step process for application.
907 However, there are excellent sources available for practitioners on
908 these subjects, starting with those provided by the IRS itself.
909 Practitioners considering applying for tax-exempt status on behalf of
910 newspaper clients will likely already be familiar with most of these,
911 but the resources and publications on the IRS Exempt Organizations
912 Web site are an excellent place to start, particularly *Publication 557:*
913 *Tax-Exempt Status for Your Organization*, for answers to specific
914 questions.¹³⁰ Perhaps the most valuable tool will be *The Salt Lake*
915 *Tribune's* Form 1023: Application for Recognition of Exemption Under
916 Section 501(c)(3) of the Internal Revenue Code.¹³¹ This is the form
917
918

919
920 ¹²⁹ROSENSTIEL ET AL., *supra* note 53, at 47.

921 ¹³⁰There are a number of other resources available, including a Nonprofit News
922 Startup Guide provided by the Institute for Nonprofit News. See *Starting a Nonprofit*
923 *News Organization*, INSTITUTE FOR NONPROFIT NEWS, <https://learn.inn.org/startup-introduction/> (last visited Sept. 26, 2020).

924 ¹³¹*Salt Lake Tribune 1023 Application*, *supra* note 71.

925 entities must use to apply for tax-exempt status with the IRS. Luckily
926 for practitioners, it is also a public record, and copies can be requested
927 from the IRS or *The Salt Lake Tribune* itself; in this case, that step
928 has already been done, as interested parties who requested it posted it
929 online, making it easily accessible for the curious practitioner in
930 search of a helpful roadmap.

932 ***Ownership and Loss of Equity***

933 One of the first hurdles confronting any for-profit newspaper consid-
934 ering the switch to nonprofit is ownership. Tax-exempt 501(c)(3) non-
935 profits do not have “owners” in the sense that no one can build equity
936 in the organization or be paid dividends from profits. The only way to
937 benefit financially from a 501(c)(3) organization is to be paid fair mar-
938 ket value (or less) in exchange for services or products provided to the
939 organization. In addition, in order to qualify for 501(c)(3) tax-exempt
940 status, the IRS requires that upon dissolution, the assets of an organ-
941 ization must go to another 501(c)(3) organization or government entity
942 for a public purpose.¹³² Although this is not usually a significant issue
943 for organizations that are created as nonprofits, for a major metro
944 newspaper, converting to a 501(c)(3) organization will likely require a
945 philanthropic act by the current owner or owners. Somehow the assets
946 of the newspaper — including intellectual property, such as the mast-
947 head, Web site content, articles, illustrations, trademarks, photo-
948 graphs and other content produced by the newspaper in the past —
949 must be placed in or otherwise made available to the nonprofit.

950 The easiest route from the perspective of the new organization is for
951 the owner to donate the assets to the organization.¹³³ Owners that are
952 individuals can then deduct the value of the gift from their taxes, as
953 they would with any other gift to a 501(c)(3), assuming they meet the
954 requirements on their own individual returns to do so. Owners that
955 are for-profit entities also have the potential to deduct the donation as
956 a business expense on their annual tax return. For most major metro-
957 politan newspapers, however, this would be a significant philanthropic
958
959

960
961
962 ¹³²This must be contained in the articles of incorporation. See INTERNAL REVENUE
963 SERVICE, INSTRUCTIONS FOR FORM 1023: APPLICATION FOR RECOGNITION OF EXEMPTION
964 UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE 8 (2002), available at [https://
www.irs.gov/pub/irs-pdf/i1023.pdf](https://www.irs.gov/pub/irs-pdf/i1023.pdf).

965 ¹³³This might also need to include the owner retaining any liabilities of the organ-
966 ization, as opposed to transferring those to the new nonprofit. *The Salt Lake Tribune*
967 chose to go the donation route, with the previous owner, PCH Tribune LLC, transfer-
968 ring the masthead and journalistic operations of the paper to the new charity. See
Salt Lake Tribune 1023 Application, *supra* note 71, at Attachment A, 2.

act, and the owner may be either unable or unwilling to lose their investment and equity. For newspapers in smaller communities, especially those who face shuttering permanently if some change is not made, however, this may be a feasible, and even attractive option, for the owner. This is the route *The Salt Lake Tribune* took, relying on the charitable donation of the masthead and journalistic operations of its previous owner, Paul Huntsman (via his business entity, PCH Tribune, LLC).¹³⁴ In *The Tribune's* case, the application for tax-exempt status explained that Huntsman's grant of these assets would occur after tax-exempt status was approved.¹³⁵

When deciding whether to donate assets to the new organization, owners should realize that once an asset enters the coffers of a 501(c)(3) organization, the giver cannot get it back unless he or she pays full market value for the item. This is because IRS rules prohibit any of a 501(c)(3) organization's income or assets from inuring to an individual, particularly an insider, without a fair exchange of value; in addition, 501(c)(3) organizations cannot provide a "private benefit," only a public benefit.

Note that even if the owner gifts the masthead and journalistic operations to the new nonprofit, the owner could still hold on to certain property and then lease it to the new organization. This might be particularly appropriate, for instance, with the building that houses the newspaper, assuming the same individual or entity owns both. This would allow the owner to retain a valuable asset, but provide options for leasing the space to the newspaper at a reduced rate, which might be especially important during its first years as a nonprofit while it attempts to create a strong funding base.

It is possible that the new nonprofit organization could instead purchase the publication from its current owners, likely taking out a loan to do so. This may or may not be feasible financially for the new organization, and in order to ensure the continued viability of the publication, the owner may need to sell the assets to the organization at a reduced price. The owner would then still have the ability to deduct the value of the assets that exceeded the purchase price received from the organization.

In any scenario, without a willing and philanthropically minded owner, this transformation is obviously unlikely to occur, and this may be the biggest barrier to many newspapers acquiring tax-exempt status. This is likely to be especially true for the myriad of newspapers

¹³⁴*Id.* at Attachment A, 3.

¹³⁵*Id.*

1013 that have been bought up by investment entities, which are arguably
1014 far more focused on the bottom line than in giving up equity for the
1015 better good and the pursuit of excellent journalism.¹³⁶ However, for
1016 newspapers still owned by individuals or family-owned companies,
1017 particularly those with a vested interest in the community, this may
1018 present an attractive and viable path toward sustainability while pro-
1019 viding a tax deduction.

1020 ***Board Governance***

1021 Another major change solicited by the shift to a nonprofit model is
1022 converting to a system of board governance and control. Board govern-
1023 ance is largely controlled by the laws of the state in which the new
1024 nonprofit incorporates.¹³⁷ However, no matter what the intricacies
1025 are, it generally means that the founder has no guarantee of staying
1026 on the board or retaining some sort of leadership role. Boards are often
1027 self-electing, and thus a majority of board members could remove the
1028 founder or founders at some point down the road and take control of
1029 the organization. Practitioners should consult the laws of their state
1030 regarding options for appointing and/or electing Board members and
1031 ensure they choose a model that best protects the interests of the
1032 organization.

1033 ***Ensuring an Educational Mission and Compliance with the 1034 Methodology Test***

1035 The narrative attached to *The Salt Lake Tribune's* Application for
1036 Tax-Exempt Status spends significant energy proving its educational
1037 purpose as well as compliance with requirements for educational
1038 organizations and the Methodology Test mentioned above, which
1039 applies to advocacy organizations. *The Tribune's* description, as well
1040 as understanding the legal framework prompting it, can help guide
1041 other practitioners in successfully persuading the IRS that their pur-
1042 pose also qualifies as educational and complies with the same require-
1043 ments governing *The Tribune*.

1044 In order to qualify as a 501(c)(3) organization, a newspaper must
1045 first convince the IRS that it functions for one or more of the following
1046

1051 ¹³⁶See PENELOPE MUSE ABERNATHY, CENTER FOR INNOVATION & SUSTAINABILITY IN
1052 LOCAL MEDIA, THE RISE OF A NEW MEDIA BARON AND THE EMERGING THREAT OF NEWS
1053 DESERTS 8 (2016), available at <http://newspaperownership.com/new-media-barons>.

1054 ¹³⁷This does not necessarily have to be in the state where the newspaper is located.
1055 Note, for example, that *The Salt Lake Tribune* chose to incorporate as a nonprofit
1056 entity in Delaware. See *Salt Lake Tribune 1023 Application*, *supra* note 71, at 37–43.

1057 specific exempt purposes: charitable, religious, educational, scientific,
1058 literary, testing for public safety, fostering national or international
1059 amateur sports competition, and the prevention of cruelty to children or
1060 animals.¹³⁸ The logical option for a news organization is to apply as an
1061 educational, and perhaps charitable, organization.¹³⁹ “Educational” is
1062 defined in Treasury Regulations as including the “instruction of the pub-
1063 lic on subjects useful to the individual and beneficial to the
1064 community.”¹⁴⁰ The term “charitable” includes advancing education,
1065 promoting social welfare, lessening neighborhood tensions, eliminating
1066 prejudice and discrimination, and defending human and civil rights.¹⁴¹

1067 Educational organizations whose primary purpose is the publication
1068 and dissemination of information, such as newspapers, must also meet
1069 the Methodology Test by demonstrating that the publication meets the
1070 requirements listed in Revenue Ruling 67-4, namely the following:
1071

1072 (1) the content of the publication is educational, (2) the preparation of
1073 material follows methods generally accepted as “educational” in
1074 character, (3) the distribution of materials is necessary or valuable in
1075 achieving the organization’s educational ... purposes, and (4) the
1076 manner in which the distribution is accomplished is distinguishable
1077 from ordinary commercial publishing practices.¹⁴²
1078

1079 *The Salt Lake Tribune* argues in its application that it meets
1080 requirements one and two of this test by describing the educational
1081 content and method of preparing its articles. In particular, it lists the
1082 investigative “reports, articles, and editorial content” produced by the
1083 newspaper, including coverage of “state and local government, public
1084 corruption, crime, faith, the environment, education and culture, and
1085 other local issues.”¹⁴³ It reference its reporting on specific issues,
1086 including racism in Utah high school sports, overcrowding at Utah
1087 national parks, and corruption by officials in local governing bodies.¹⁴⁴
1088 The methods used are educational, it argues, as *Tribune* staff “possess
1089 unique training, knowledge, and skills,” and in conducting their
1090 reporting, they do thorough investigations and provide factual infor-
1091 mation to “aid readers in the learning process.”¹⁴⁵
1092

1094 ¹³⁸26 U.S.C. § 501(c)(3) (2021).

1095 ¹³⁹See REPORTER’S COMMITTEE, *supra* note 72.

1096 ¹⁴⁰26 C.F.R. § 1.501(c)(3)-1(d)(3)(i) (2021).

1097 ¹⁴¹*Id.* at § 1.501(c)(3)-1(d)(2).

1098 ¹⁴²Rev. Rul. 67-4, 1967-1 C.B. 121.

1099 ¹⁴³*Salt Lake Tribune 1023 Application*, *supra* note 71, at Attachment A, 1.

1100 ¹⁴⁴*Id.* at Attachment A, 5–6.

¹⁴⁵*Id.* at Attachment A, 5.

1101 In response to requirement three, *The Tribune's* application states
1102 that distribution and publication is necessary to achieve its educa-
1103 tional purpose because it provides the members of the public with the
1104 information needed to “fulfill their duties as citizens and to function in
1105 the modern world.”¹⁴⁶ Given the current decline in high-quality, local
1106 journalism, publication helps to fill a void in essential information.¹⁴⁷
1107 Print¹⁴⁸ publication is necessary because “not all households” in Utah
1108 have Internet connections; dual publication, therefore, will “increase
1109 opportunities to educate the public on these vital issues.”¹⁴⁹ Further,
1110 under the fourth requirement, *The Tribune* argues that the manner of
1111 distribution is distinguishable from ordinary commercial publishing
1112 practices. Like the publication in Revenue Ruling 67-4, whose charges
1113 for the publication only partially recovered the costs, *The Tribune*
1114 stated in its application that it intends to distribute *The Tribune*
1115 “without regard to the realization of a net profit.”¹⁵⁰ At the time of the
1116 application, *The Tribune* was operating at a loss.¹⁵¹ In addition, upon
1117 receiving tax-exempt status, the newspaper intended to provide sub-
1118 scriptions free-of-charge to Utah libraries as well as lower subscription
1119 rates for students and active military members.¹⁵² “Further,” the
1120 application states, “the economic reality of journalism in Utah means
1121 that [*The Tribune*] will have to rely upon donated public support from
1122 a variety of sources ... [W]ithout this support the paper is not finan-
1123 cially viable.”¹⁵³

1124 Tax-exempt seeking newspapers that plan to publish editorials
1125 should also preemptively address the Methodology Test,¹⁵⁴ which is
1126 applied by the IRS to advocacy organizations in an attempt to weed
1127 out those publishing non-educational propaganda from those publish-
1128 ing educational information. The Methodology Test permits exemption
1129 for an educational organization even if it advocates a particular pos-
1130 ition or viewpoint, but will not do so if the method used by the organ-
1131 ization to present a viewpoint “fails to provide a factual foundation for
1132

1133
1134
1135 ¹⁴⁶*Id.* at Attachment A, 6.

¹⁴⁷*Id.*

1136 ¹⁴⁸In hindsight, this appears to have been more aspirational than practical, as just
1137 over one year after gaining tax-exempt status, *The Tribune* announced that it would
1138 cut its daily print edition and provide just one, weekend print edition, with online edi-
1139 tions available six days a week. See discussion accompanying *infra* note 232.

¹⁴⁹*Id.*

¹⁵⁰*Id.*

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³*Id.*

1143 ¹⁵⁴See text accompanying *supra* notes 22–30, regarding a discussion on the consti-
1144 tutionality of this test.

1145 the viewpoint or position being advocated, or if it fails to provide a
1146 development from the relevant facts that would materially aid a lis-
1147 tener or reader in a learning process.”¹⁵⁵ In determining whether the
1148 organization’s method qualifies as educational, the IRS considers the
1149 following factors, the presence of which may jeopardize the organiza-
1150 tion’s tax-exempt status:

- 1151
- 1152 (1) The presentation of viewpoints or positions unsupported by facts is
 - 1153 a significant portion of the organization’s communications. (2) The
 - 1154 facts that purport to support the viewpoints or positions are distorted.
 - 1155 (3) The organization’s presentations make substantial use of
 - 1156 inflammatory and disparaging terms and express conclusions more on
 - 1157 the basis of strong emotional feelings than of objective evaluations. (4)
 - 1158 The approach used in the organization’s presentations is not aimed at
 - 1159 developing an understanding on the part of the intended audience or
 - 1160 readership because it does not consider their background or training
 - 1161 in the subject matter.¹⁵⁶
 - 1162

1163 The presence of any one factor is not necessarily fatal; the IRS will
1164 look at all the facts and circumstances.¹⁵⁷

1165 *The Salt Lake Tribune* addressed the Methodology Test in its
1166 Application by explaining its editorial standards (including a list of
1167 how articles are selected), with a focus on its intention to inform read-
1168 ers of “all sides of issues” and to ensure that a “sufficient factual
1169 foundation” is presented to allow readers to form an “independent
1170 opinion based on the knowledge obtained” from its publication.¹⁵⁸

1171 In order to enforce the educational and charitable character of its
1172 work, *The Tribune* highlighted other, non-reporting, work and prom-
1173 ised the IRS a series of new activities specifically geared toward
1174 enhancing its charitable mission. These include continuing to employ
1175 a handful of interns each year for “intensive training that includes
1176 exposure to every aspect of newspaper operations,”¹⁵⁹ and hosting free
1177 monthly town hall sessions, open to the public and including topic
1178 experts, to delve deeper into topics *The Tribune* is covering, such as
1179 recent legislative action.¹⁶⁰

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1181
1182
1183
1184 ¹⁵⁵Rev. Proc. 86-43, 1986-2 C.B. 729.

1185 ¹⁵⁶*Id.*

1186 ¹⁵⁷*Id.*

1187 ¹⁵⁸*Salt Lake Tribune 1023 Application, supra* note 71, at Attachment A, 5.

1188 ¹⁵⁹*Id.* at Attachment A, 7. *See also* I.R.S. Gen. Couns. Mem. 38,845 (May 4, 1982).

¹⁶⁰*Salt Lake Tribune 1023 Application, supra* note 71, at Attachment A, 7.

1189 Many of these same arguments, tailored of course to the specific
1190 situation of any given publication, could likely be used for other local
1191 newspaper seeking tax-exempt status. A more thorough analysis of
1192 the sources cited in *The Tribune's* Application for Tax-Exempt Status
1193 regarding its educational purpose and compliance with the tests
1194 explained above would be a good place for practitioners to start in
1195 crafting their own arguments as to why the newspapers they repre-
1196 sent qualify for 501(c)(3) status.

1197 ***Unrelated Business Income Tax***

1200 Tax-exempt newspapers must also be aware that not all of a
1201 501(c)(3)'s income is exempt from taxation: Profits that come as a
1202 result of "unrelated business activities," including, most notably,
1203 advertising dollars, are taxable unless exempt.¹⁶¹ The purpose of such
1204 a tax is to prevent tax-exempt organizations from conducting business
1205 activities not related to their exempt purpose and unfairly competing
1206 with taxable for-profits providing a similar service. Unrelated business
1207 income is revenue that comes from a (1) trade or business that (2) is
1208 regularly carried on and (3) is not substantially related to the charit-
1209 able, educational, or other purpose that is the basis for the organiza-
1210 tion's exemption.¹⁶² For newspapers, the most obvious activity likely
1211 to produce unrelated business income taxes is advertising, which for
1212 many, if not all, newspapers will continue to be a necessary source of
1213 funding even under the nonprofit model.

1214 A "trade or business" includes an activity carried on for produc-
1215 tion of income from the sale of goods or the performance of serv-
1216 ices.¹⁶³ This includes "soliciting, selling, and publishing commercial
1217 advertising."¹⁶⁴

1218 In determining whether business activities are "regularly carried
1219 on," the IRS looks at the "frequency and continuity."¹⁶⁵ A trade or
1220 business activity is "regularly carried on" if the organization conducts
1221 that activity in a manner similar to comparable commercial activities
1222 pursued by taxable entities.¹⁶⁶ The IRS has found advertising sales in
1223 various types of publications published and circulated by tax-exempt
1224

1225
1226 ¹⁶¹Unrelated Business Income for is subject to taxation at normal corporate rates.
1227 See INTERNAL REVENUE SERVICE, PUBLICATION 598: TAX ON UNRELATED BUSINESS
1228 INCOME OF EXEMPT ORGANIZATIONS 2-3 (2019) [hereinafter PUBLICATION 598].

1229 ¹⁶²*Id.* at 3.

1230 ¹⁶³See 26 C.F.R. § 1.513-1(b) (2021).

1231 ¹⁶⁴*Id.*

1232 ¹⁶⁵*Id.* at § 1.513-1(c)(1).

¹⁶⁶PUBLICATION 598, *supra* note 161, at 3.

1233 organizations to be “regularly carried on,”¹⁶⁷ and this would almost
 1234 certainly be the case for a newspaper, which regularly circulates its
 1235 publication and therefore is continually and frequently soliciting and
 1236 publishing advertising.¹⁶⁸

1237 Income from a regularly carried on trade or business is only taxable if
 1238 that business activity is not substantially related to the charitable, educa-
 1239 tional or other purpose that is the basis for the organization’s exemp-
 1240 tion.¹⁶⁹ Such an activity will only be substantially related if it contributes
 1241 importantly to the organization’s work, meaning the accomplishment of
 1242 its exempt purpose. The relationship between the two must be a causal
 1243 one.¹⁷⁰ In addition, the IRS considers the size and scale of the activity in
 1244 comparison to the size and scale of the exempt purpose it furthers in
 1245 making this determination.¹⁷¹ Activities of a greater scale than required
 1246 to promote the exempt activity are unlikely to be substantially related.¹⁷²
 1247 Simply using the income produced by the activity to further exempt pur-
 1248 poses is not a sufficient connection. The income generated by a nonprofit
 1249 newspaper from sales of the newspaper itself seem clearly and substan-
 1250 tially related to the newspaper’s exempt purpose — this was the very rea-
 1251 son for which the news outlet was given tax-exempt status. However,
 1252 income from advertising sales is unlikely to be substantially related. This
 1253 is because selling advertising space itself does not promote educational,
 1254 charitable or other exempt purposes. As such, the income it produces will
 1255 almost always constitute UBI.¹⁷³

1256 Although neither the “solicitation of commercial advertising” nor
 1257 the “mere presence of commercial advertising in a publication” that
 1258 otherwise qualifies as exempt will “prevent its being recognized as a
 1259 Section 501(c)(3) organization,”¹⁷⁴ newspapers should monitor the
 1260
 1261

1262 ¹⁶⁷*See, e.g., National Collegiate Athletic Ass’n v. Comr.*, 92 T.C. 456, 467–68 (1989).

1263 ¹⁶⁸PUBLICATION 598, *supra* note 161, at 3.

1264 ¹⁶⁹*Id.* at 4.

1265 ¹⁷⁰*Id.*

1266 ¹⁷¹*Id.*

1267 ¹⁷²*See* 26 C.F.R. § 1.513-1(d)(2)–(3) (2021).

1268 ¹⁷³*See* *United States v. Am. Coll. of Physicians*, 475 U.S. 834 (1986) (stating
 1269 “stringent standards” must be met for sales of advertising space in order to be exempt
 1270 from UBI tax). Noting, “We believe that the Claims Court was correct to concentrate
 1271 its scrutiny upon the conduct of the College rather than upon the educational quality
 1272 of the advertisements. For all advertisements contain some information, and if a modi-
 1273 cum of informative content were enough to supply the important contribution neces-
 1274 sary to achieve tax exemption for commercial advertising it would be the rare
 1275 advertisement indeed that would fail to meet the test. Yet the statutory and regula-
 1276 tory scheme, *even if not creating a per se rule against tax exemption, is clearly antagon-
 istic to the concept of a per se rule for exemption for advertising revenue*” (emphasis
 added). *Id.* at 848–89.

¹⁷⁴I.R.S. Gen. Couns. Mem. 38587 (Dec. 18, 1980).

amount of unrelated business income they generate, as an excessive amount of taxable income can jeopardize tax-exempt status. Recall that, in order to qualify as tax-exempt, an organization must have a charitable, scientific, educational, religious, or other specifically enumerated purpose. Too much time invested in and money generated from a non-exempt, unrelated business suggests the organization no longer meets that qualification.¹⁷⁵

The IRS provides no bright-line rule on the allowable amount of UBI.¹⁷⁶ “[T]here is no quantitative limitation on the ‘amount’ of unrelated business an organization may engage in under Section 501(c)(3),” other than that an implicit, fundamental requirement of charity law requires that charitable assets must be used for the charitable purpose to which they are dedicated.¹⁷⁷ Although nonprofit newspapers can still solicit and publish commercial advertising, they should be aware of the limitations involved, and any practitioner working with a nonprofit news organization should be familiar with the detailed information provided by the IRS on how to calculate UBI for tax purposes.¹⁷⁸

Electioneering Prohibitions

Nonprofit newspapers will also find their ability to endorse political candidates curtailed, as the regulations governing 501(c)(3) organizations are, in the unequivocal words of the IRS, “absolutely prohibited” from engaging in political campaigns, including through direct or indirect participation or intervention in any political campaign, whether in support or opposition of election, of any candidate for political office.¹⁷⁹ This includes written and verbal statements of support or opposition made by the organization on behalf of any candidate for

¹⁷⁵26 C.F.R. § 1.501(c)(3)-1(e) (2021).

¹⁷⁶See I.R.S. Gen. Couns. Mem. 34,682 (Nov. 17, 1971) (stating that “every determination of whether a given entity is organized and operated “primarily” for an exempt purpose notwithstanding its conduct of substantial business operations for profit is essentially a factual matter”).

¹⁷⁷I.R.S. Gen. Couns. Mem. 38,742 (Jun. 3, 1981); see also, I.R.S. Gen. Couns. Mem. 36,310 (Jan. 6, 1975).

¹⁷⁸26 C.F.R. § 512(a)-1(a) (2021). See also PUBLICATION 598, *supra* note 161, at 6.

¹⁷⁹*The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/charities-nonprofits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> (last visited Sept. 26, 2020) [hereinafter *Restriction of Political Campaign Intervention*].

political office.¹⁸⁰ The IRS takes this seriously and regards a violation as grounds to revoke an organization's tax-exempt status.

This has clear implications for newspapers, many of which carefully select and endorse candidates regularly. Even given this history, the IRS seems willing, based on its response to *The Tribune's* application, to grant tax-exempt status if the organization vows not to continue this practice in its charitable incarnation.¹⁸¹ Newspapers can still function as a facilitator of discussion among candidates in some ways, though, as the IRS allows voter education activities if conducted in a non-partisan manner, including presenting public forums, for example.¹⁸²

Public Support Calculation

Newspapers seeking to become public charities must also meet the public support calculation, which requires receiving a large percentage of its income from other public sources or a large number of private individuals and entities.¹⁸³ There are a number of ways to qualify as a 501(c)(3) public charity, either because an entity's activities fall into a specific category, including being a hospital or school, or by meeting certain requirements for the source of its income, namely those outlined in 509(a)(1) or 509(a)(2). Fee-based organizations may turn to the 509(a)(2) test, but most others attempt to qualify under the 509(a)(1) public support test, and this is the option *The Tribune* chose in its 1023 Application.¹⁸⁴

The public support test requires that, over a five-year period, at least one-third of the charity's "support," or income,¹⁸⁵ normally comes

¹⁸⁰26 U.S.C. § 501(c)(3) (2018) (listing organizations exempt from taxation under 26 U.S.C. § 501(a) as corporations, which among other things "do not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

¹⁸¹In its 1023 Application, *The Tribune* promised to "neither support nor oppose any candidate for public office." *Salt Lake Tribune 1023 Application*, *supra* note 71, at Attachment A, 8. On its Web site, *The Tribune* further clarifies that this means its editorial board will no longer endorse candidates. *Our Nonprofit Model*, SALT LAKE TRIBUNE, <https://www.sltrib.com/footer/2020/01/09/our-nonprofit-model/> (last visited Sept. 26, 2020) [hereinafter *Our Nonprofit Model*].

¹⁸²*Restriction of Political Campaign Intervention*, *supra* note 179.

¹⁸³26 U.S.C. § 509(a)(1) (2018); 26 U.S.C. 179(b)(1)(A)(vi) (2018). See PUBLICATION 557, *supra* note 20, at 32.

¹⁸⁴*Salt Lake Tribune 1023 Application*, *supra* note 71, at Part X, line 5(j).

¹⁸⁵The IRS defines "support" as including, but not limited to "[g]ifts, grants, contributions, or membership fees; [n]et income from unrelated business activities, whether or not those activities are carried on regularly as a trade or business; [g]ross investment income; [t]ax revenues levied for the benefit of an organization and either paid to or spent on behalf of the organization; and [t]he value of services or facilities furnished by a governmental unit to an organization without charge (except services or facilities generally furnished to the public without charge)." 26 U.S.C. § 509(d).

1365 from “public sources.”¹⁸⁶ “Public sources” include funds received from
1366 governmental units or from other publicly supported, 501(c)(3) public
1367 charities, as well as contributions from individuals or private entities.¹⁸⁷
1368 However, the amount of any contribution from a private individual or
1369 entity that counts toward public support is capped at two percent of the
1370 organization’s total support.¹⁸⁸ This means that the organization must
1371 either get a significant amount of income from the government or other
1372 public charities, or it must attract income from a wide funding base, and
1373 pragmatically, it must usually do both; one wealthy donor is not able to
1374 keep such an organization afloat, or it will fail to meet the public charity
1375 test and be reclassified as a private foundation.¹⁸⁹ This requirement
1376 may require significant changes to an organization’s funding plans and
1377 demands consistent effort to attract grants and donations.
1378

1379 ***Public Disclosure Requirements***

1380 The nonprofit and for-profit models also diverge when it comes to
1381 public disclosure requirements. Organizations exempt under Internal
1382 Revenue Code Section 501(c)(3)¹⁹⁰ are required to reveal a great deal
1383 of their financial information to anyone curious enough to ask for it.
1384 By law, these organizations are required each year to file an annual
1385 return with the IRS (Form 990, 990-EZ, or 990-N, depending on their
1386 income level). This annual return includes a detailed description of the
1387 organization’s finances,¹⁹¹ and organizations are further required to
1388 provide the bulk of their last three annual returns to anyone who
1389 requests a copy.¹⁹² Failure to do so can result in hefty fines (up to \$20
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1393 ¹⁸⁶PUBLICATION 557, *supra* note 20, at 32.

1394 ¹⁸⁷*Id.* at 35.

1395 ¹⁸⁸*Id.*

1396 ¹⁸⁹Note that there is also a “facts and circumstances” test that public charities can
1397 use to qualify, even if they do not meet the one-third public support test. *See*
1398 PUBLICATION 557, *supra* note 20, at 32–33. The one-third public support test has a
1399 number of complexities beyond the scope of this Article that practitioners should
1400 examine. *See id.* at 32–37 for more information and comprehensive examples.

1401 ¹⁹⁰Note that this requirement applies to other organizations as well, including all
1402 501(c) organizations and section 527 political organization. 26 C.F.R. § 6033(a)(1), (g)
1403 (2021); 26 U.S.C. § 501(a) (2018). Certain exceptions also apply. These include reli-
1404 gious 501(c)(3) organizations and 501(c)(3) organizations whose gross receipt in each
1405 tax year do not normally exceed \$5,000. 26 C.F.R. § 6033(a)(3)(C) (2021).

1406 ¹⁹¹*See* INTERNAL REVENUE SERVICE, FORM 990: RETURN OF ORGANIZATION EXEMPT
1407 FROM INCOME TAX Parts VIII–XII (2020), available at <https://www.irs.gov/pub/irs-pdf/i1023.pdf> [hereinafter FORM 990].

1408 ¹⁹²INTERNAL REVENUE SERVICE, INSTRUCTIONS FOR FORM 990 RETURN OF
ORGANIZATION EXEMPT FROM INCOME TAX, 76 (2019), available at <https://www.irs.gov/pub/irs-pdf/i990.pdf> [hereinafter FORM 990 INSTRUCTIONS]

a day and \$10,000 total per return),¹⁹³ and copies can also be requested and obtained from the IRS as public documents.¹⁹⁴ One controversial aspect of the Form 990 is Schedule B, which requires organizations to list the names and addresses of all substantial contributors;¹⁹⁵ this information must be provided to the IRS, but is not required to be disclosed to the public and may be redacted by the organization (and must be redacted by the IRS) from a Schedule B before providing it to the public.¹⁹⁶

THE NONPROFIT MODEL HAS PROMISING POTENTIAL TO PRODUCE HIGHER QUALITY JOURNALISM

The nonprofit model may not only be a more sustainable route for many news organizations, but it has the potential to foster and encourage higher quality journalism. This is not to say that all nonprofit news organizations produce excellent journalism, or that every nonprofit will produce a higher quality product than a for-profit; rather, it appears that journalists at the average news enterprise must work against market forces to research and write the kind of journalism “essential for democracy,”¹⁹⁷ while those at nonprofit organizations are generally supported in doing so.¹⁹⁸ Of course, the nonprofit model is not perfect and faces some of its own challenges in producing legitimate journalism, including concerns that large donors, particularly foundations, might influence the organization’s reporting. Despite this, the nonprofit model may be more conducive on the whole to producing high-quality journalism for a variety of reasons, including the difference in ownership, transparency requirements, and the need to attract a wide variety of public support.

Evidence suggests that nonprofit news organizations produce more investigative and analytical reporting than their for-profit counterparts.¹⁹⁹ Primary topics covered by nonprofit outlets consist of social justice, government and politics, the environment and education.²⁰⁰ At the same time that for-profits are slashing in-depth reporting budgets,

¹⁹³*Id.* at 79.

¹⁹⁴*Id.* at 76.

¹⁹⁵*See id.* at 94. *See also* INTERNAL REVENUE SERVICE, SCHEDULE B: SCHEDULE OF CONTRIBUTORS 1 (2020), available at <https://www.irs.gov/pub/irs-pdf/f990ezb.pdf>.

¹⁹⁶FORM 990 INSTRUCTIONS, *supra* note 192, at 76.

¹⁹⁷KONIECZNA, *supra* note 36, at 6.

¹⁹⁸*See* text accompanying *infra* notes 200–01.

¹⁹⁹*See* text accompanying *infra* notes 221–23.

²⁰⁰*See* THE STATE OF NONPROFIT NEWS, *supra* note 52, at 5.

1453 the Institute for Nonprofit News found three-quarters of nonprofit
1454 news organizations cite investigative or explanatory reporting as their
1455 mission.²⁰¹ What's more, the organizations' money backs that mission:
1456 Eight in ten outlets have at least one investigative reporter on staff.²⁰²
1457 There is certainly value to market forces, and such forces arguably
1458 still work on a nonprofit, just through different pathways. Although
1459 nonprofit news organizations are less reliant on subscription and
1460 advertising income, these are still important sources of income,²⁰³
1461 meaning that nonprofits must still be responsive to the interests and
1462 needs of their audiences. However, they also need to attract and
1463 appease donors, who might be a subset of that audience or from a dif-
1464 ferent population, including foundations.²⁰⁴ While the general popula-
1465 tion may only be willing to pay a certain amount for news, and may
1466 not be willing to fund the "positive spillover" of the most important
1467 types of news, wealthier donors, or those passionate about journalism,
1468 may require a higher standard in order to lure their support. They
1469 may also be more likely to specifically fund the kind of journalism that
1470 is the most important and expensive, and therefore, the most unprofit-
1471 able, in the for-profit model.²⁰⁵

1472 The ability to tap into foundations and wealthy donor funding sour-
1473 ces, however, is also a potentially concerning aspect of how nonprofit
1474 status impacts news production. Particularly concerning is the oppor-
1475 tunity for donors, especially foundations, to influence reporting. The
1476 potential for funders' interests to warp coverage has always existed,
1477 whether they be advertisers or foundations, but the new nonprofit
1478 model presents a new system of funding, which brings new worries.²⁰⁶
1479 A recent study found foundations influence the news organizations
1480 they fund, although this influence largely plays out not in the tone or
1481 topic of coverage but in the methods used.²⁰⁷ In particular, foundation
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1484 ²⁰¹*See id.*

1485 ²⁰²*See id.*

1486 ²⁰³However, with earned income at only 11%, this is not a big slice of the pie.
1487 *See id.*

1488 ²⁰⁴Forty-eight percent of revenue to the nonprofit news sector comes from founda-
1489 tions. *See id.* at 3.

1490 ²⁰⁵THE IRS AND NONPROFIT MEDIA, *supra* note 73, at 5.

1491 ²⁰⁶Patrick Ferrucci & Jacob Nelson, *The New Advertisers: How Foundation*
1492 *Funding Impacts Journalism*, 7 MEDIA AND COMM. 45, 45 (2019). ("[W]e argue that the
1493 impact of foundations on journalism parallels that of advertisers throughout the 20th
1494 century—with one important distinction: Journalism practitioners and researchers
1495 have long forbidden the influence from advertisers on editorial decisions, seeing the
1496 blurring of the two as inherently unethical. Outside funding from foundations, on the
1497 other hand, is often premised on editorial influence, complicating efforts by journalists
1498 to maintain the firewall between news revenue and production.")

1499 ²⁰⁷*See id.*

1497 funding encourages “specific, technology-driven projects; audience
1498 engagement projects; and projects intended to push journalists to
1499 expand their daily work beyond traditional routines.”²⁰⁸ Perhaps even
1500 more concerning, a 2016 study found only thirty-seven percent of non-
1501 profit news outlets had adopted written guidelines on funding.²⁰⁹

1502 There are some safeguards, both externally and internally, on this
1503 influence, however. Although still significant, foundation funding is
1504 decreasing in the nonprofit news sector, as these organizations diver-
1505 sify their revenue streams.²¹⁰ The public can also scrutinize founda-
1506 tion funding in ways it cannot for paid advertising. Foundations must
1507 disclose all the grants they gave during a tax year, the amount, pur-
1508 pose and recipient, on their annual tax return (Form 990-PF) with the
1509 IRS, and they must provide a copy of their 990-PF for the last three
1510 years to anyone who requests it.²¹¹ In addition, the nonprofit news
1511 industry, foundations, and media scholars appear to be increasingly
1512 recognizing this danger,²¹² the hope being that prompting greater
1513 awareness and proactive steps to ensure foundation funding does not
1514 distort reporting. *The Salt Lake Tribune* addresses this on its Web
1515 site, stating that it “maintains a strict firewall between governing
1516 bodies, advisers and donors and the newsroom,” which means
1517 “supporters will have no more influence on editorial decision making
1518 than any other member of the public.”²¹³ Its Gift Acceptance Policies
1519 are available for public review on the Web site, and include a number
1520 of safeguards, including publishing the names of all donors of more
1521 than \$5,000 on its website and laying out requirements for notifying
1522 readers of the relationship when its news coverage references board
1523 members or donors.²¹⁴ It also states that no donor will be able to direct
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1527 ²⁰⁸*Id.* at 50.

1528 ²⁰⁹See ROSENSTIEL ET AL., *supra* note 53, at 4.

1529 ²¹⁰See THE STATE OF NONPROFIT NEWS, *supra* note 52, at 3.

1530 ²¹¹See INTERNAL REVENUE SERVICE, FORM 990-PF: RETURN OF PRIVATE FOUNDATION
1531 Parts XV, line 3 (2020), available at <https://www.irs.gov/pub/irs-pdf/f990pf.pdf>;
1532 INTERNAL REVENUE SERV., COMPLIANCE GUIDE FOR 501(C)(3) PRIVATE FOUNDATIONS, 22,
1533 available at <https://www.irs.gov/pub/irs-pdf/p4221pf.pdf>.

1534 ²¹²See, e.g., ROSENSTIEL ET AL., *supra* note 53; Ferrucci & Nelson, *supra* note 206;
1535 MATTHEW NISBET ET AL., SHORENSTEIN CENTER ON MEDIA, POLITICS AND PUBLIC POLICY,
1536 FUNDING THE NEWS: FOUNDATIONS AND NONPROFIT MEDIA (2018), available at https://shorensteincenter.org/wp-content/uploads/2018/08/NisbetWihbeyetal2018_FundingtheNews_ShorensteinCenter_June18.pdf. See also, *Guidance on Philanthropic Funding of Media and News*, AM. PRESS INST. (Jan. 12, 2017), <https://www.americanpressinstitute.org/publications/nonprofit-funding-guidance/> (providing sample guidelines for both funders and nonprofit news rooms on how to ensure editorial independence while receiving nonprofit funding).

1538 ²¹³*Our Nonprofit Model*, *supra* note 181.

1539 ²¹⁴*Salt Lake Tribune Gift Acceptance Policies*, SALT LAKE TRIBUNE, available at
1540 https://local.sltrib.com/nonprofit/sltrib_gift_policy.pdf (last visited Sept. 26, 2020).

1541 reporting, and to ensure that, it establishes a policy of discussing with
1542 donors the organization's values and practices and communicating the
1543 editor's control over article development and news content.²¹⁵
1544 Whether this is adequate will be a test for time, but the acknowledg-
1545 ment and proactive approach toward preventing donor influence, par-
1546 ticularly from foundations, is an encouraging step.

1547 Perhaps one of the greatest benefits of the nonprofit model is that it
1548 lends itself to an "owner" whose interests are more in line with those
1549 of the average citizen. Who owns the paper matters, journalist and
1550 researcher Penelope Muse Abernathy argues, "because the decisions
1551 owners make affect the health and vitality of the community."²¹⁶ The
1552 issue of ownership is a pressing one because, in the for-profit news sec-
1553 tor, an increasing number of newspapers are being gobbled up by
1554 investment entities, which arguably have no interest in the product or
1555 services of the paper other than as a diversification of their investment
1556 portfolios.²¹⁷ As described above, the migration of readers to digital
1557 news in the early twenty-first century, followed by the Great
1558 Recession, resulted in a massive drop in print newspaper valua-
1559 tions.²¹⁸ This allowed "passive investors" (hedge funds and private
1560 equity funds) to sweep in and acquire newspapers at "bargain base-
1561 ment prices."²¹⁹ By 2014, investment entities were six of the ten larg-
1562 est newspaper owners in the U.S., in terms of the number of
1563 papers owned.²²⁰

1564 This type of owner undercuts the quality of journalism produced
1565 because the interests of the owner in profits, and profits alone, do not
1566 align with societal interests in high-quality journalism; indeed,
1567 Abernathy finds in her research that investment entities employ a
1568 strategy of "aggressive cost cutting paired with revenue increases and
1569 financial restructuring, including bankruptcy" to squeeze whatever
1570 profit they can from the paper.²²¹ Although such cost cutting may pro-
1571 long the life of some of these newspapers, instead of reinvesting the
1572 profits back into the newspaper to preserve it, investors tend to use
1573 the funds for management fees, shareholder dividends, and loan pay-
1574 ments.²²² In stark contrast with the owners of the 20th century, who
1575 held on to their newspapers as a long-term investment and would
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1578 ²¹⁵*Id.*

1579 ²¹⁶ABERNATHY, *supra* note 136, at 6.

1580 ²¹⁷*Id.*

1581 ²¹⁸*Id.* at 25.

1582 ²¹⁹*Id.*

1583 ²²⁰*Id.* at 27.

1584 ²²¹*Id.* at 8.

²²²*Id.*

1585 have felt the losses if the paper failed, investment owners have a
1586 short-term vision of their newspapers, which they acquire as a small
1587 part of a massive investment portfolio.²²³ In addition, owners of the
1588 twentieth century tended to be local, wealthy families “eager for
1589 prestige and hoping to affect the political process” and thus willing
1590 to subsidize the production of high-quality journalism “without
1591 necessarily expecting that investment to yield a return.”²²⁴ Not so
1592 with investment owners, who are beholden primarily to sharehold-
1593 ers and the bottom line. Because of this, “they do not, or need not,
1594 pay close attention to the quality of journalism produced by their
1595 newspapers.” And if one fails, the loss is insignificant in a sea of
1596 other investments. Because investment owners do not live in — and
1597 may never have even been to — the communities that many of their
1598 newspapers cover, often as the only source of news for that area, the
1599 loss of such a paper is a purely financial hit for them, and likely not
1600 a big one at that.

1601 The results of the “hyper-commercial logic”²²⁵ of many for-profit
1602 news owners, even before the takeover by investment entities, was
1603 illustrated in 1986. The day the Knight-Ridder newspaper chain won
1604 seven Pulitzer Prizes, its stock tumbled.²²⁶ As retold, Knight-Ridder
1605 executive Frank Hawkins reached out to a stock analyst for an explan-
1606 ation.²²⁷ The verdict was: “[Y]ou win too many Pulitzers.”²²⁸ Instead
1607 of spending that money on expensive projects, it should have advanced
1608 the bottom line, the stock analyst advised.²²⁹

1609 A nonprofit, on the other hand, has no owner in the sense that no
1610 individual can profit financially, other than in fair compensation as an
1611 employee. This encourages a mindset of cultivating and preserving the
1612 organization, as opposed to wringing it dry and discarding it. In addi-
1613 tion, nonprofits are ultimately led by volunteer boards of directors,
1614 who collectively make decisions for the organization and help ensure it
1615 fulfills its mission. Ideally, board members are recruited for their
1616 expertise, as well as their passion for the mission of the organization,
1617 and their commitment to and connection with the community it
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1621 ²²³*Id.*

1622 ²²⁴See KONIECZNA, *supra* note 36, at 36.

1623 ²²⁵Rodney Benson, *Are Foundations the Solution to the American Journalistic*
1624 *Crisis?*, 3 (NYU Depart. Of Media, Culture, and Communication Media Ownership
1625 Project, Working Paper No. 2016-001, March 2016).

1626 ²²⁶PHILIP MEYER, *THE VANISHING NEWSPAPER* 6 (2006).

1627 ²²⁷*Id.*

1628 ²²⁸*Id.*

1629 ²²⁹*Id.*

1629 serves. They are not compensated for their time,²³⁰ but usually have a
1630 large emotional and personal investment in the work of the organiza-
1631 tion and often function as significant benefactors of the organization.
1632 Although it may not always be the best business model to divorce the
1633 personal finances of an entity's leaders from its financial success, it
1634 arguably is an ideal solution in today's market and its current effect
1635 on journalism. This seems particularly true for small community
1636 newspapers, which are only likely to prioritize quality news over big-
1637 ger profit margins if run by those who are committed to the commu-
1638 nities they serve. This is much more likely to occur if the organization
1639 is run by a board of locally connected, civically minded individuals
1640 than by a remote investment entity.

1641 However, the Board ownership model does not necessarily equate to
1642 effective leadership nor does it prevent the rise of internal conflict. *The*
1643 *Salt Lake Tribune* has already seen turnover in its leadership due to con-
1644 flict between staff and the board. In August 2020, the paper's executive
1645 editor, Jennifer Napier-Pearce, resigned, citing "differences of opinion
1646 about newsroom coverage, management and policies" between herself
1647 and board chair Paul Huntsman.²³¹ In addition, if *The Salt Lake Tribune*
1648 is any indication, even with local board leadership, nonprofit status will
1649 not necessarily enable legacy newspapers to continue daily print editions.
1650 At the end of 2020, *The Salt Lake Tribune* announced that, starting in
1651 2021, its daily print editions would cease, and it would produce an online
1652 editions six days a week with a print weekend edition.²³² Despite this,
1653 the potential for an ownership model motivated more by public good than
1654 investment returns presents an option worth pursuing.
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1657 ²³⁰Board members can be paid for their work as Board members, but they lose sig-
1658 nificant protection from personal liability when they do so. The IRS is also wary of
1659 such situations and imposes additional scrutiny on an organization that wishes to
1660 compensate its Directors. Note that Board members can be paid for *non*-Board work,
1661 however, without losing personal liability protection if certain precautions
1662 are followed.

1663 ²³¹Tony Semerad, *Salt Lake Tribune Editor Jennifer Napier-Pearce Resigns*, SALT
1664 LAKE TRIBUNE, Aug. 5, 2020, available at <https://www.sltrib.com/news/2020/08/05/salt-lake-tribune-editor/>.

1665 ²³²*Tribune will Resume Print Publication Sunday*, SALT LAKE TRIBUNE, Dec. 31,
1666 2020, available at <https://www.sltrib.com/news/2020/12/31/tribune-will-resume-print/>.
1667 This announcement followed on the heels of a joint press release from *The Salt Lake*
1668 *Tribune* and its competitor, *Deseret News*, stating that the two newspapers would not
1669 renew their 68-year-old Joint Operating Agreement, which allowed the two entities to
1670 "collaborate on advertising and subscription pricing and to share the huge operating
1671 costs of printing and delivering their respective papers." Press Release, The Salt Lake
1672 Tribune and Deseret News, Salt Lake Tribune and Deseret News Announce End of
Joint Print and Delivery Operations (Oct. 26, 2020), <https://www.deseret.com/pr/2020/10/26/21535139/salt-lake-tribune-and-deseret-news-announce-end-of-joint-print-and-delivery-operations>.

1673 The nonprofit model also allows for and encourages investment in
1674 quality news; unlike the for-profit owner whose shareholders demand
1675 to see profits, the nonprofit can reinvest excess revenue into “content
1676 generation, rather than distribut[ion] to shareholders.”²³³ Perhaps
1677 *The Tribune* explained it best: “Who owns the paper? ... The commu-
1678 nity — all of us — now owns *The Salt Lake Tribune*.”²³⁴

1679 Another potential benefit, at least for the news consumer, of the
1680 nonprofit model is the high level of transparency required in order to
1681 comply with 501(c)(3) regulations. As explained above, nonprofits have
1682 a higher degree of transparency than for-profits because they must
1683 disclose all of their financial information on their annual tax return,
1684 Form 990, and that is available to the public.²³⁵ Although fraud can,
1685 and certainly does, occur in the nonprofit sector, if the public is inter-
1686 ested in monitoring how an organization is using or disposing of its
1687 income, a review of the 990 is a helpful tool.

1688 Finally, because public charities must raise one-third of their total
1689 income from public sources, as explained above, including from other
1690 public charities, government sources, and donations from a wide-range
1691 of individuals, this requires them to be responsive and reach out to the
1692 community. For most organizations, this means they must garner sup-
1693 port from enough private individuals, as well as other organizations
1694 that are also dependent on public support, to maintain their status.
1695 This spreads the cost of high-quality journalism and ideally creates
1696 buy-in from the community. This model is a stark contrast from pas-
1697 sive investors who see ownership only as a benefit if there is a finan-
1698 cial return, rather than a cause worth donating to and supporting
1699 because of its societal value, even at a financial loss.

1700 The nonprofit model has the potential to produce excellent journal-
1701 ism because the incentives inherent in that model arguably encourage
1702 the kind of reporting that is most essential to our democracy, while
1703 the for-profit model appears to increasingly encourage the reverse. As
1704 one group of nonprofit media leaders explained, “while for-profits *can*
1705 provide public educational benefits, a nonprofit *must* provide public
1706 educational benefits, and be solely organized for the achievement of
1707 that mission.”²³⁶ In addition, the lack of a traditional “owner” in the
1708 nonprofit model can potentially create an institution with leaders
1709 whose interests in news production are more aligned with the good of
1710 the community as a whole. The combination of these factors, in
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1713 ²³³THE IRS AND NONPROFIT MEDIA, *supra* note 73, at 5.

1714 ²³⁴*Our Nonprofit Model*, *supra* note 181.

1715 ²³⁵See discussion accompanying *supra* notes 190–96.

1716 ²³⁶THE IRS AND NONPROFIT MEDIA, *supra* note 73, at 15.

1717 addition to greater transparency requirements and the need to attract
1718 broad community support via donations, combine to create a model
1719 well-suited to producing high-quality journalism.
1720

1721 CONCLUSION

1722 Information has never been more readily available than it is today.
1723 However, this proliferation of quantity has not equated to a propor-
1724 tionate rise in quality, and the availability of local, public-interest
1725 journalism has plummeted, setting our society on a perilous course.
1726 With so many news organizations closing or floundering to stay afloat,
1727 new solutions are needed. These solutions might result in newsrooms,
1728 and the reporters that fill them, which look different from those of the
1729 twentieth century,²³⁷ and what works best in one community may be
1730 different from what works in another. Indeed, many solutions are
1731 needed, as “[n]o one experiment is going to replace what we are now
1732 losing with the demise of the news on paper, but over time the collec-
1733 tion of new experiments that do work might give us the journalism we
1734 need.”²³⁸ The nonprofit model presents one such experiment, and *The*
1735 *Salt Lake Tribune’s* recent transformation to a tax-exempt 501(c)(3)
1736 public charity provides a useful playbook for other newspapers inter-
1737 ested in making the switch. This model is valuable not just to replace
1738 what we are losing, but potentially to provide something even better.
1739 Although not a panacea by any means, the ability to nurture a product
1740 for its societal value, rather than just its monetary return, ideally sit-
1741 uates nonprofits to produce the journalism we so desperately
1742 need today.
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1752 ²³⁷With the advent of the Internet and other technology, most individuals who
1753 want to produce and share content can do so. One of the decided positive outcomes to
1754 this change is the dramatic increase in the diversity of the voices engaged in news
1755 making: “The relative homogeneity of the news space of the mid-twentieth century . . .
1756 is unlikely to return. Instead, tomorrow’s journalism will certainly include a rich mix
1757 of voices and media.” KONIECZNA, *supra* note 36, at 42. Ideally, the nonprofit news
1758 model will be used to leverage and encourage the participation of those traditionally
1759 excluded from the news making process.

1760 ²³⁸Clay Shirky, *Newspapers and Thinking the Unthinkable*, THE GUARDIAN, Apr.
13, 2009, available at <https://www.theguardian.com/commentisfree/cifamerica/2009/apr/13/internet-newspapers-clay-shirky> (cited in KONIECZNA, *supra* note 36, at 42).