1. Charity Is Civil Society
Every Charity Begins with a Gift

Through Gifts We Create, Fund, and Operate the Organizations of American Civil Society
Civil Society Is One of the Foundations of American Civilization
It Is About Self Reliance
It Is About Variety
We all benefit from civil society.

- Educational organizations provide businesses with an educated work force and democracy with an educated electorate.
- Religious, ethnic, and cultural organizations knit together communities with a common identity.
- Charitable organizations help all of us when disaster strikes.
- Volunteer organizations give us a sense of purpose.
It Is About Democracy

Civil Society Does Not Require Sovereign Permission
A Delicate Balance

Civic Engagement

Democracy

Government

Civil Society

Subsidy or Neutrality?
2. The State and Civil Society
The Charitable Deduction Removes Charitable Gifts from the Tax Base

The Charitable Tax Exemption Removes Income Related to Charitable Purposes From the Tax Base
The Tax Law Forms a **Boundary** Between the State and Civil Society
Which Allows the Government to Tax...

Historic US Income Tax Rates

- WWI: 77.00%
- New deal: 63.00%
- WWII: 94.00%
- Great Depression: 24.00%
- Tax Reform: 28.00%
- 2013: 39.60%
...Without Consuming Civil Society
It Enables Civil Society to Fund Itself, Which Prevents Government Control
It Restricts the Fiscal Relationship Between Church and State
3. Why Our Discourse About the Charitable Deduction Needs a Paradigm Shift
As Specialists We Think About the Charitable Deduction Too Narrowly
The Tax Lawyer

It lowers the after-tax cost of giving!
It creates an incentive to give!
It Is Time For a New Paradigm: **Neutrality**

“Incentive” and “Subsidy” Are Inadequate to the Task
(1) Government may restrict how government funds are used

+  

(2) The recipient of a subsidy uses government funds

+  

(3) If the charitable deduction is a subsidy of civil society...

= Then the government may restrict the activities of civil society
Just as a gift to charity is not a gift to the government that it may control

*Dartmouth College v. Woodward*, 17 U.S. 519 (1819)
...a gift to charity is not a gift from the government that it may control

The Subsidy Paradigm Makes Charitable Gifts a Trojan Horse
The Government Is Under No Obligation to Continue a Subsidy
4. Who Defines Charity?
Civil Society Is Self-Defining

Americans Are Free to Identify and Pursue New Public Benefit Activities

- Addressing new social problems like the digital divide
- Combating new diseases like HIV or autism
- Practicing new religions like Christian Science or Jehovah's Witnesses

Or Cease Activities That Are Obsolete, Unhelpful or Unfashionable

- Sanitoriums for tuberculosis patients no longer needed
- Hook worm has been eradicated
- Phrenology and social Darwinism are debunked
Economics Defines Public Benefit, Not Government

\[ I = C + \Delta NW \]

Economic Income \hspace{1cm} Consumption \hspace{1cm} Change in Net Worth

Payments for Public Benefit Are Not Income
Consumption Is a Measure of Private Benefit
Tax Law Requires Public Benefit and Screens Out Private Benefit

To qualify, a 501(c)(3)...

1. Is organized and operated for a public benefit
2. Serves a broad and indeterminate class of beneficiaries
3. Does not distribute profits
4. Does not engage in excessive lobbying or political campaign intervention
5. Does not violate public policy

...and it must avoid self-dealing or excess benefit transactions
To qualify, under 170 a contribution must be...

(1) Received by a domestic charitable organization

(2) Used for a public benefit purpose

(3) Reduced by the value of any goods or services the donor receives in exchange

(4) Properly substantiated
A Self-Defining Civil Society Does Not Harm the Fisc

Therefore, the Government Should Remain Neutral Toward Civil Society
Summary

• Charity Is Civil Society
• Civil Society Is Fundamental to American Civilization
• Civil Society Creates Public Benefits
• Civil Society Does Not Harm the Fisc
• Civil Society Is Self-Defining and the Government Should Remain Neutral Toward It.