

Ultra Vires

Why the IRS Lacks the Jurisdiction and Authority to Regulate Nonprofit Governance

Bruce R. Hopkins

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Without warning, the IRS began, in 2007, to regulate in the realm of nonprofit governance. *Ultra Vires* offers an explanation as to why, as a matter of law, the IRS does not have the jurisdiction or the authority to regulate the governance affairs of the nation's public charities and other categories of tax-exempt organizations.

Ultra Vires reviews the federal law concerning government agencies' jurisdiction and authority. The book evaluates IRS policymaking and demonstrates that the IRS's policies are arbitrary and capricious. *Ultra Vires* concludes that the IRS lacks both the jurisdiction and authority in connection with nonprofit governance.

Ultra Vires provides a solid legal underpinning for those who are concerned about the IRS's expansion of its authority into the realm of nonprofit governance, particularly when the IRS has a lengthy record of getting the underlying law wrong and imposing detrimental policies and practices on these organizations. It will be a necessary read for nonprofit directors, trustees, officers and senior executive staff and their lawyers.

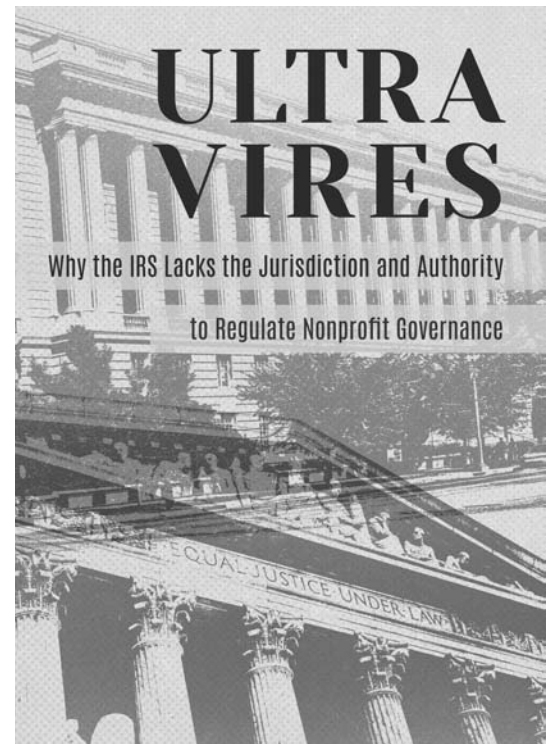


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BRUCE R. HOPKINS concentrates on the representation of tax-exempt organizations, practicing with the Bruce R. Hopkins Law Firm, LLC, Kansas City, Missouri. He is the Professor from Practice at the University of Kansas School of Law. He writes a monthly newsletter, the *Bruce R. Hopkins' Nonprofit Counsel*, now in its 34th year. Hopkins is the author of over 30 books in the field of nonprofit tax law.

ADVANCE PRAISE

Bruce Hopkins is a remarkable lawyer and one of this country's leading experts on nonprofit entities. The book you hold is the fruit of his decision to take an SJD at the University of Kansas School of Law. In this book is the product of decades of practice and several years of intense writing and thinking and is a "must read" for anybody interested in nonprofit governance.

Michael H. Hoeflich

John H. & John M. Kane Professor of Law, University of Kansas School of Law

The IRS, in a move that shocked the nonprofit sector, decided it should oversee not only the compliance by nonprofit organizations with the tax laws, but how and by whom the organizations should be governed. In *Ultra Vires*, Bruce Hopkins more than makes the case for the IRS overstepping its boundaries with nonprofit governance and in creating law where there is none to be found. This book is a fascinating study in government non-restraint and will be enjoyed by all who care about charities and other exempt organizations.

Virginia C. Gross, tax-exempt organizations lawyer and partner, Polsinelli PC

Bruce Hopkins sheds light on the IRS's regulation of nonprofit governance using his usual well-honed tools: perspective, insight, legal acuity, and dry wit. He offers the benefit of nearly 50 years of experience as a nonprofit lawyer and academician in asserting the proper role of government in overseeing the core fiduciary duty of every nonprofit: effective governance. As Hopkins lays out in a compelling legal analysis, the IRS has regulated in this area without jurisdiction or authority or the catalyst of scandal or legislative demand. He skillfully encourages the IRS to stick to the knitting.

Thomas K. Hyatt, Partner, Dentons US LLP

Ultra Vires presents a compelling case why the IRS's recent foray into the regulation of nonprofit governance is beyond the scope of the IRS's jurisdiction and authority. One can only hope that the IRS will accept Mr. Hopkins' well-reasoned invitation to desist from its exorbitant, and often misguided, regulatory experiments in this area, thereby freeing up scarce resources for other matters within its jurisdiction that desperately need guidance from the IRS. Additionally, for its useful discussions of the law regarding the deference owed to IRS regulations and other guidance, and governance "best practices" promulgated by organizations other than the IRS, space must be made for *Ultra Vires* on the shelves of any tax-exempt practitioner's library.

Shane Hamilton, Special Counsel, Miller & Chevalier Chartered

In *Ultra Vires*, Bruce Hopkins explains that one of the most important developments in the evolution of the law of nonprofit organizations is the IRS's entry into the realm of nonprofit governance in 2007. Hopkins argues in great detail that the exempt organizations (EO) function of the IRS should not persist in a regulatory effort – its nonprofit governance initiative – that is beyond the scope of its jurisdiction and authority, and he faults the IRS for relying on a doctrine – private benefit – that is not applicable. Instead, the IRS should be doing what the law and good policy in the EO area demands. Its attempted regulation of nonprofit governance, including the composition and functioning of governing boards and related managerial concerns, is an example of extreme agency overreach that detracts from its mission and adversely impacts nonprofit organizations. Hopkins maintains that nonprofit governance concerns are the province of state regulators and hence the IRS should not be playing a role.

Paul Streckfus, Editor, EO Tax Journal

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