

Nonprofit Law Prof Blog

By The Nonprofit Blogger Named Below : 5-6 minutes

A forthcoming article makes what sounds like an new and important point about the political activity restrictions in tax exemption jurisprudence. The authors, two young scholars, argue that the political activity restrictions in 501(c)(3), like a lot of things in the tax code, favor wealthy nonprofits funded by donors [who can afford to jump through the hoops that ultimately permit what seems like unlimited political activity](#). To a large extent, those restrictions only limit the nonprofits that work to better the lives of poor and disenfranchised people. Here is the abstract from [Kirsten Widner](#) and [Heather M. Kolinsky](#):

Abstract

Charitable contributions, particularly from private foundations, are an essential source of support for many nonprofit charitable organizations. However, the ability to accept these contributions comes with significant restrictions on lobbying and advocacy. Using vulnerability theory and an original survey of nonprofit advocacy organizations, we show that current restrictions on 501(c)(3) organizations disproportionately limit advocacy on behalf of the most politically disadvantaged groups—those without the right to vote. This, in turn, reinforces existing inequalities in whose voices are heard and whose interests are considered by policymakers. This Article argues that reforming the laws that structure what organizations can take tax-deductible charitable contributions and the purposes for which those contributions can be used is essential to building a more responsive state and improving resilience among the unenfranchised.

I was interested enough to read through the article briefly. The abstract doesn't capture all that this article offers. So here is some of the article's [Introduction](#):

Charitable contributions, particularly those from private charitable foundations, are an essential source of support for many charitable nonprofit organizations. One way that charitable nonprofits can incentivize contributions is to incorporate under Internal Revenue Code ("IRC") section 501(c)(3), which allows organizations to accept tax deductible contributions. However, Congress imposes restrictions on the use of tax-deductible donations given to nonprofit organizations incorporated under IRC § 501(c)(3) ("501(c)(3)s"). One of the most important limits is on the use of those donations for legislative advocacy, lobbying, and political activities.

However, Congress has created an alternative incorporation status under IRC § 501(c)(4) which allows some nonprofit organizations to engage in unlimited lobbying and some political advocacy on behalf of candidates-with a catch: donations to 501(c)(4)s are generally not tax-deductible. This means that in order to incorporate as a 501(c)(4), charitable nonprofits need donors who do not rely on tax deductions. Private foundations are often 501(c)(3) organizations themselves, and are prohibited from lobbying. Thus, a charitable 501(c)(3) nonprofit may need to forgo certain funding from private foundations in order to increase lobbying efforts, unless it has an alternative revenue stream such as membership dues. Unfortunately, this has an outsized, disparate impact on 501(c)(3) organizations that serve politically disadvantaged groups.

This Article focuses on some of the most politically disadvantaged groups-those groups that lack the right to vote. These groups, which include children, noncitizens, and people disenfranchised due to felony convictions or mental incapacity ("the unenfranchised"), already have a limited voice in policymaking arenas. Without the financial and administrative support to either maintain a 501(c)(4) or easily navigate the lobbying limitations on 501(c)(3)s, most charitable nonprofits serving these constituencies are unable, and often unwilling, to conduct meaningful legislative advocacy.

At the same time, the limitations placed on 501(c)(3)s have done little to curb lobbying and advocacy by more powerful, well-funded interests who work around the system, funnel their advocacy through companion 501(c)(4)s, or are already subject to different standards based on their organizational forms under IRC § 501(c). Thus,

the sometimes amorphous goals of limiting "selfish" lobbying by bad actors or limiting lobbying with government "subsidies" touted by members of Congress are not really met. Instead, the limitations prevent 501(c)(3)s that rely on donations from private foundations, rather than their own constituencies, from having an equal opportunity to lobby for legislation that benefits their constituencies, and this further diminishes the power and voice of those constituencies.

This should be a good read.

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<https://lawprofessors.typepad.com/nonprofit/2024/08/structural-impediments-to-nonprofit-advocacy-on-behalf-of-the-unenfranchised.html>