

Social Welfare = Political Welfare

The Questionable Legitimacy of Political §501(c)(4) Organizations

On March 2, 2012, the IRS issued a private letter ruling regarding the §501(c)(4) organization, Emerge America.¹ Emerge America was established as a §501(c)(4) exempt organization, for the express purpose of “[identifying] women interested in potential [Democratic] Party leadership roles and the development of a political leadership training program for such women in the United States.”² The IRS decided to review Emerge America’s exempt status, alleging that the organization’s activities conferred a benefit onto private parties.

The court cited *American Campaign Academy v. Commissioner*, where the tax court held that an organization established to train candidates and campaign professionals for Republican campaigns violated the private benefit restriction of §501(c)(3).³ The court there relied on the following factors in its decision: (1) the organization’s activities were exclusively funded by the National Republican Congressional Trust; (2) lessons dealt strictly with Republican issues; (3) the admission of members ensured that almost all were members of the Republican party; and (4) the organization was an outgrowth of the National Republican Congressional Committee.⁴ The court concluded that “[e]ducational activities undertaken to provide a partisan benefit are considered to serve private interests, rather than common good.”⁵ Therefore, the IRS revoked the American Campaign Academy’s exempt status.

Based on that holding, the IRS determined that Emerge America also operated to benefit a political party and its candidates.⁶ The Service cited as evidence the fact that “[Emerge America measures its] success in terms of the number of...graduates who have run for, or won, elective office representing the party.”⁷ The Private Letter Ruling concluded that, “[b]ecause your primary activity is an educational program that is limited to women who are members of the Party and that is conducted with the partisan objective of increasing the number of the Party’s elected officials, you primarily serve private interests.”⁸

With such precedent behind them, it is now time for the IRS to begin to crack down on political §501(c)(4) organizations. If you were to tell people on the street that the organization responsible for bombarding them with countless negative political ads was considered by the IRS to be a “Social Welfare Organization,” they would likely laugh in disbelief. This is not an issue of partisanship; such organizations exist on both sides of the

¹ *Priv. Ltr. Rul. 2012-21-028* (Mar. 2, 2012) Pg. 1.

² *Id.*

³ *Id.* at 4.

⁴ *Id.* at 3-4.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

aisle and operate in essentially the same manner. However, allowing these organizations to continue to spew their political propaganda under the guise of social welfare hurts the legitimacy of our government, and more specifically that of the IRS.

For example, Crossroads GPS, a Republican leaning §501(c)(4) organization founded by Karl Rove, spent over \$17 million on independent expenditures and electioneering communication during the 2010 election.⁹ While I recognize that the decision in *Citizens United* has led to an extreme influx of money in politics, even that decision highlighted the importance of donor disclosure.¹⁰ This is why Political Action Committees (§527) are required to disclose almost all donors. However, §501(c)(4) organizations are allowed to take anonymous or confidential donations, while not being substantively restricted in their campaigning abilities as compared to a §527 organization. Additionally, because §501(c)(4) organizations are allowed to donate to §527 organizations, the influx of undisclosed money in political campaigns is even greater.

Taking advantage of these loopholes has been a legitimate strategy of many political social welfare organizations. “One operative close to Karl Rove has suggested that the publicity around the large-dollar donations were meant to incentivize other, presumably more publicity-adverse individuals, to give large amounts anonymously to Crossroads GPS – a strategy that ‘worked like a charm.’”¹¹

Cracking down on these organizations will be a political nightmare for the IRS, but it is necessary to ensure the ongoing legitimacy of the Service. Furthermore, some legal scholars believe that the above-mentioned precedents have opened the door for such action. Organizations that engage in strictly partisan conduct, like Crossroads GPS will be most susceptible: “Applying a partisan screen in the conduct of an organization’s activities is likely to be viewed by the Service as prima facie evidence of...a non-incidental private benefit.”¹²

Unfortunately for these political §501(c)(4) organizations, conferring private benefit is not the only violation that they must worry about. The IRS and FEC are also investigating such organizations for violating the political campaigning restrictions on nonprofit organizations. However, based on the amount of political weight surrounding these issues, the FEC and IRS have a long battle ahead of them.

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⁹ Byrnes and Cortlin, *I Went Down to the Crossroads: Lifting the Blindfold About the Origin of 501(c)(4) Political Advertisements*, Univ. of San Francisco L. Rev. 504 (Fall 2011).

¹⁰ *Id.* at 493.

¹¹ *Id.* at 502.

¹² Murphy, Paul J., *Political Campaign Activity Under Section 501(c)(4)*, Taxation of Exempts 8 (Jan./Feb. 2012).