

Tax Changes May Result in Shift to 501(c)(4)s

Historically, nonprofit organizations interested in entering the political arena had to balance their desire to directly engage in politics with the need to attract large donors who preferred for their donations to be tax-deductible. Two changes in the tax rules have resulted in greater use of mutual benefit structures by organizations that want to engage in modern politics. A change in the standard deduction resulted in dramatically fewer Americans using the standard deduction and therefore having less incentive to make charitable gifts. A second change allows mutual benefit organizations to publicly associate with Political Action Committees (PACs). With these two changes, nonprofits have been trending away from public charities and towards status as mutual benefit organizations to increase liberal activism.

Liberal organizations throughout the 20th century typically followed the desires of their donors and obtained tax status as 501(c)(3) charities. Many major organizations have grown out of 501(c)3 public charities to become nationally recognized organizations, focusing on litigation through public interest lawsuits and on civil education and voter outreach activities. The National Association for the Advancement of Colored People (NAACP), the Southern Poverty Law Center, and the American Civil Liberties Union (ACLU) Foundation are some of the many organizations known for liberal activism through status as public charities. The tax code benefited large donors and “the 501(c)(3) form fit snugly into the postwar theory of legal liberalism, in which the federal courts were seen as the key agents of social reform and professionally managed nonprofits as their partners in that effort.”

Conservative groups have been partnering with PACs such as Americans for Prosperity and Crossroads for many election cycles now, hiding massive donations called dark money.

While liberals initially opposed it as “politicizing” 501(c)4s, the 2016 election drove liberals to jump on board, and changes in the tax code have helped encourage the shift to 501(c)(4)s.

“This seemingly dry legal development could turn out to be one of the movement’s most significant legacies, as it presages a new model of liberal activism for the age of Trump and beyond.” *Id.*

The number of Americans who will benefit from itemizing their taxes (in part by donating to public charities) has fallen to around 10%, and many Americans now prefer to give to organizations who are willing to get dirty in partisan fights over organizations focusing on litigation and education. The Atlantic article cites huge increases in donations to mutual benefit organizations compared to public charities as a driving force behind the move to mutual benefit organizations. The NAACP has completely rebranded as a 501(c)(4), the Southern Poverty Law Center has created the SPLC in Action, and the ACLU’s mutual benefit organization has brought in over four times the amount of funding as its public charity sister organization.

While the move to allow 501(c)(4)s to associate with PACs was initially embraced by the right, modern political events, changes in the tax code, and donors’ desire for more partisan fights are driving a new wave of politically engaged organizations on the left.

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<https://www.theatlantic.com/ideas/archive/2018/11/501c3-501c4-activists-and-tax-code/576364/>