

Confusion Over Charity Lobbying

The Chronicle of Philanthropy

LETTERS TO THE EDITOR

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To the Editor:

Leslie Lenkowsky's opinion article about nonprofit advocacy (["How to Protect the Rights of Charities to Speak Out,"](#) December 8) is just plain wrong.

His many errors of fact and law demonstrate the need for greater clarity on the differences between prohibited partisan electoral activity and other forms of policy engagement by

charitable organizations.

Most important, Mr. Lenkowsky erroneously lumps partisan election events, lobbying, nonpartisan voter engagement, and other types of advocacy activities into one analytical category — ignoring that different laws and regulations govern each type of activity.

His commentary conflates those distinctions and likely confuses readers. For example, he notes that it is "hard to reconcile" the opposition of OMB Watch and other organizations to legislation that would allow churches to endorse candidates with our support for the right of churches to speak out on broad policy matters.

In doing so, Mr. Lenkowsky confuses partisan electoral activities with legitimate issue advocacy.

Mr. Lenkowsky's commentary appears to be spurred by selective facts, partial information, and misrepresentations of third-party positions.

For example, he states that "champions of nonprofit advocacy" — a title proudly held by the authors of this letter — feel the government is "selectively" enforcing the law to advance "its own political views."

To the contrary, we champions of nonprofit advocacy have never suggested political motivations by the Internal Revenue Service and have not found any evidence to suggest that recent IRS investigations are based on a partisan or ideological enforcement of the law.

Had Mr. Lenkowsky bothered to ask, he would have learned our actual concern is that the IRS appears to have changed its interpretation and application of current law.

For example, in several current cases, it seems the IRS may now consider criticism of public officials and issue advocacy during an election season — commonly understood to be permissible activities by 501(c)(3) organizations — to be prohibited political intervention. We firmly believe that all charities should openly discuss the issues of the day as well as encourage voter participation, regardless of an election calendar, and we believe current law supports these activities.

Mr. Lenkowsky also inaccurately describes the facts surrounding a nonprofit "gag" provision in H.R. 1461, the Federal Housing Finance Reform Act.

He states the gag was "in response to allegations that Fannie Mae and other government-sponsored mortgage lenders were mobilizing nonprofit groups to lobby on their behalf."

In fact, the provision has nothing to do with lobbying on behalf of Fannie Mae, but rather with restrictions on the use of the private funds of low-income home-building nonprofit groups.

The legislation, as approved by the House, says any nonprofit applying for a grant under the newly created affordable-housing fund cannot use even its private funds to register people to vote or engage in other nonpartisan voter-engagement activities, activities that are legal and permissible under federal tax law.

The bill also prohibits participating nonprofits from associating with other people, companies, grantors, and nonprofits that engage in nonpartisan voter activities, electioneering, or lobbying.

This combination of prohibitions strikes at the core rights and functions of nonprofits — and that is where our concern is grounded. Mr. Lenkowsky also failed to note that the provision in the bill exempts for-profit users of the housing fund from similar advocacy and "guilt by association" prohibitions. ...

Mr. Lenkowsky's notion that recent government actions should be interpreted by nonprofit groups as an impetus for the sector's "self-regulation" of speech is nonsensical. Instead of self-imposed gagging, nonprofit organizations should use their constitutional rights of public-policy advocacy to stop extremist legislators and their punitive actions against nonpartisan voter registration and public-policy engagement.

As Mr. Lenkowsky's misrepresentations demonstrate, there still is confusion within the sector between impermissible partisan election intervention and legitimate issue advocacy and criticism of sitting government officials.

This confusion does not require additional regulations, but rather can be easily remedied with better education about and clarification of current law.

Attempts by the like of Mr. Lenkowsky to incorrectly, and perhaps intentionally, conflate separate areas of law — such as electoral activities and issues advocacy — will only deter nonprofit groups from carrying on legally permissible public-policy engagement and voter registration.

Another odd twist in Mr. Lenkowsky's analytical misadventure is his attempt to draw a connection between nonprofit speech issues and other philanthropic issues, such as "overcompensating executives and making large payments to fund-raising companies."

Those broader governance issues derive from inappropriate, if not illegal, behavior, and the Senate Finance Committee's hearings over the past two years have spotlighted these problems.

But despite the committee's comprehensive list of issues requiring new federal legislation and oversight, the committee has not raised one scintilla of evidence that charities are misusing federal funds for lobbying or election-related activities, nor has the committee implied the need for additional restrictions on nonpartisan voter-registration activities.

Let's face what's really motivating these recent attacks on nonprofit free speech, advocacy, and voter-registration rights: legislators who wish to silence nonprofit voices.

Take the unfortunately characteristic and vitriolic statement of Rep. Tom Feeney, Republican of Florida, about the affordable-housing fund. Mr. Feeney said, "I'd rather burn the money than give it to an advocacy group."

No one should mistake the intention of Mr. Feeney or his allies in Congress; they want to stifle the advocacy voice of the nonprofit sector along with the related — and completely legal — function of nonpartisan voter-registration and get-out-the-vote activities.

Nonprofit advocacy is a key element of our nation's civic life. A vibrant democracy demands an active — and outspoken — nonprofit sector.

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Mr. Lenkowsky responds:

Rather than respond point by point to the letter writers' efforts to deny the basis of my column, it's worth noting that these self-acknowledged "champions of nonprofit advocacy" nowhere admit the possibility that the political activities of nonprofit organizations may have gone too far in any respect. Yet, as I wrote, when all three branches of the federal government are looking closely at curtailing aspects of these activities, some self-examination — and where justified, self-control — might well benefit those who support robust advocacy, as it seems to have done for the groups concerned about the financial scandals uncovered by the Senate Finance Committee. However it would appear that the letter writers would prefer a fight to a solution.

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