

U.S. Charities Get Political in Cuba

Tax Analysts looks at an apparent disconnect in the law that allows U.S.-based tax-exempt organizations to engage in political activities in foreign countries but not at home.

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Churches, charities, and other tax-exempt organizations are prohibited from participating in domestic political activities, but those same groups can receive permission from the Treasury Department to advance regime change in other countries, such as Cuba. The apparent disconnect worries critics, who view the promotion of political interference overseas not only as bad tax policy but also as a process that makes charitable groups appear to be tools of the U.S. government and its foreign policy agenda.

At a recent legal forum sponsored by the American Law Institute- American Bar Association, Clara David, a senior official with Treasury's Office of Foreign Assets Control (OFAC), explained how nongovernmental organizations can receive one- to two-year licenses to promote Cuba's transition to democracy and other "civil society" goals. David directed interested parties to OFAC's published guidelines for the licensing and registration of NGOs that seek to operate in Cuba and other countries subject to U.S. sanctions, including Burma, Iran, and Sudan. (The guidelines are available at <http://www.treas.gov/offices/enforcement/ofac/regulations/ngo.txt>.) OFAC is in charge of administering and enforcing U.S. sanctions rules.

According to Treasury's "Guidelines for the Licensing for the Support of the Cuban People," political activities for which a license may be granted include:

activities of recognized human rights organizations; activities of independent organizations designed to promote a rapid and peaceful transition to democracy; and activities of individuals and nongovernmental organizations that promote independent activity intended to strengthen the civil society of Cuba.

The IRS has launched several investigations of high-profile charities accused of engaging in

inappropriate political activities, including an inquiry into allegations that the NAACP violated rules against campaign intervention. (For prior coverage, see Tax Notes, Mar. 28, 2005, p. 1503, Doc 2005-5826 [PDF], or 2005 TNT 54-3 .) In light of that history, Treasury's practice of licensing charities to carry out electoral and political change in other countries "appears to be a contradiction of the structures under which they operate under in this country," according to Rick Cohen, executive director of the National Committee for Responsive Philanthropy.

In an interview with Tax Analysts, former IRS Commissioner Sheldon Cohen said OFAC's restrictive guidelines on the activities charities can engage in to receive a license amounts to "muzzled speech." Cohen, now with Farr, Miller & Washington, said the government is trying to say that a charity can go to Cuba, but only if the charity says and does what the government wants it to. "They're trying to facilitate economic change in Cuba and use charities to that end," he said.

Political restrictions on tax-exempt organizations date back to 1954, when then-Sen. Lyndon B. Johnson introduced legislation to prevent groups organized under section 501(c)(3) from opposing political candidates. Sheldon Cohen served as Johnson's personal counsel from 1957 to 1963.

Rick Cohen warned that a policy allowing charities to enter a sanctioned country if they work to further U.S. government policy objectives could put at risk those organizations that conduct international aid and relief work in volatile countries.

"Charities often have to present themselves as independent entities, devoid of governmental attachments, to gain support in foreign countries," he said.

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