Myth v. Reality: Executive Branch Lacks Authority to Target Nonprofit Organizations

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The Trump Administration has continued its broad attack on civil society by targeting nonprofit organizations on ideological grounds. Most recently, President Trump threatened to strip Harvard University of its tax-exempt status. The Administration attempted to assign a team of Department of Government Efficiency (DOGE) staff members to the Vera Institute of Justice and directly targeted Citizens for Responsibility and Ethics in Washington (CREW), both of which are independent nonprofit organizations. Other executive actions targeting nonprofit organizations are expected to be released soon. The National Council of Nonprofits will explore

every avenue to defend and protect the nonprofit sector.

Myth: ***The executive branch can limit what types of groups are eligible to be designated as 501(c)(3) organizations.***

> **Reality: The executive branch does not have the authority to unilaterally limit what types of organizations are eligible for 501(c)(3) status.** Eligibility for charitable nonprofit status is laid out in federal law under the Internal Revenue Code section 501(c)(3). Any changes to the types of organizations that are eligible for 501(c)(3) status must be enacted by Congress. The Internal Revenue Code defines 501(c)(3) organizations as "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." The statute does not limit the types of these organizations that may be eligible.

Myth: *The President can direct the IRS to strip a specific nonprofit organization or foundation of its 501(c)(3) status.*

> **Reality**: **The President does not have the authority to direct the IRS to strip a specific nonprofit organization or foundation of its 501(c)(3) status.** Federal law under 26 U.S. Code section 7217 makes it illegal for the President, Vice President, or any employee of the executive office of the President or Vice President, to "request, directly or indirectly, any officer or employee of the Internal Revenue service" to conduct an audit or other investigation of any particular taxpayer. In fact, the statute states that any person who willfully does so shall be convicted with a fine not exceeding $5,000 or imprisonment of not more than 5 years.

Myth: *The IRS can immediately strip a specific nonprofit organization or foundation of their 501(c)(3) status.*

> **Reality: The IRS does not have the authority to strip a nonprofit organization or foundation of its 501(c)(3) status without following the**

required processes. According to IRS Publication 892, the IRS can make a determination that an organization does not meet the criteria for tax-exempt status if the organization is no longer complying with the law. The organization has a right to appeal the decision with the agency after they receive a proposed adverse determination, and then, if no agreement is reached, the organization can file an appeal with a court.

Myth: *The IRS can strip 501(c)(3) status from a nonprofit organization or foundation solely because it works to advance diversity, equity, and inclusion (DEI).*

Reality: **The IRS does not have the authority to strip a nonprofit organization or foundation of its 501(c)(3) status for engaging in lawful activities, including those that promote diversity, equity and inclusion.** A 501(c)(3) organization may not, however, engage in behavior that is illegal or violates public policy, and doing so can put their 501(c)(3) tax status at risk. (See generally, IRS Revenue Ruling 71-447 and the case law following the U.S. Supreme Court decision in *Bob Jones University v. U.S*.). *Bob Jones* has served as a basis for revocation of 501(c)(3) status when an organization violates the "fundamental public policy" against racial discrimination in education. The Administration has not yet defined what is considered to be unlawful diversity, equity, and inclusion (DEI) activities, and there are multiple lawsuits challenging the administration's declarations that DEI activities are illegal. Currently, it has not been determined what nonprofit organizations are prohibited from doing based on the Executive Orders or what is defined as unlawful that would place a nonprofit at risk for losing their 501(c)(3) status.

Myth: *The IRS can strip 501(c)(3) status from a nonprofit organization solely because it engages in nonpartisan advocacy or lobbying.*

Reality: **The IRS does not have the authority to strip a nonprofit organization of its 501(c)(3) status for engaging in nonpartisan advocacy or lobbying.** Nonprofits can and should engage in public policy advocacy related to their missions. The Internal Revenue Code, however, prohibits nonprofit organizations from directly or indirectly participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for elective public office. Equating issue advocacy with partisan

electioneering is misleading. See Protecting the Johnson Amendment and Nonprofit Nonpartisanship for more information.

Myth: *The Administration should deploy DOGE teams to nonprofit organizations that receive federal funding to "cut waste, fraud and abuse."*

> **Reality: The executive branch already has legal tools to provide oversight and ensure that nonprofit organizations receiving federal funds are held accountable.** Nonprofit organizations that receive money from the federal government and spend more than one million dollars in a fiscal year are required to have a "Single Audit" – an independent compliance audit that covers the entire organization's financial operations.