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Nonprofits and Civic Engagement

There are approximately 800,000 501(c)(3) nonprofits large enough to register with the federal government. Add churches, foundations, and nonprofits too small to register, and the number is far higher than that. The potential for nonprofits to engage their clients and members in community affairs and public policy making is, in theory, enormous. Yet, perversely, nonprofits are regulated by the federal government in such a way that discourages the involvement of their followers in the public policymaking process. This is a problem, not simply because we social scientists believe civic engagement is a good thing, but because these regulatory standards sharply skew public participation. Although middle- and upper-class individuals have many organizations that engage and mobilize them, nonprofits usually are the only organizations that work on behalf of the poor, those without health insurance, immigrants, the disabled, and most other marginalized constituencies. Put bluntly, federal law works against the participation of the most disadvantaged in society.

By many accounts, the very foundation of American democracy is eroding. A recently released study of civic engagement commissioned by the American Political Science Association concluded that “[c]itizens participate in public affairs less frequently, with less knowledge and enthusiasm, in fewer venues, and less equally than is healthy for a vibrant democratic polity” (Macedo et al. 2005, 1). Whether by measures of social interaction (Putnam 2000), direct participation in civic organizations (Skocpol 2003), or rates of voting (Patterson 2002; Wattenberg 2002), American democracy appears to be headed in a downward spiral.

The ominous trends are all the more discouraging because there is every reason to believe that participation should be increasing. In a modern, affluent society with an increasingly educated citizenry, one might expect that Americans would want to take advantage of the many opportunities to become involved in their communities. Theories of postmaterialism suggest that in a country such as ours, people search for meaning in their lives and try to contribute to the greater good through community and charitable activity. The enemy seems to be us. Generally speaking, government policies have not made participation more restrictive. The rate of voting, though up in 2004, has declined since the 1950s even as it became easier to register and cast a ballot.

At least in one area, however, government policy is responsible for strongly discouraging civic engagement. Through its law on charities, the federal government restrains participation in the policy-making process by nonprofit organizations, their boards, their members, and their clients. This is no small matter, as nonprofits are the organizations that must mobilize and represent the poor and disadvantaged in society if they are to have a voice in the political system. The sections that follow will explore in detail how the government inhibits civic engagement through nonprofits. First, the law on charities will be outlined and some of the theoretical issues relating to the involvement of nonprofits in politics will be explored. Second, to support the argument here, survey data from a national sample of nonprofits will be analyzed. These data demonstrate the chilling effect of government regulation on civic engagement. The third and final section will consider the implications of our findings and offer some recommendations to enhance the role of nonprofits in facilitating civic engagement in America.

The Growth Sector

We live in an age of nonprofits. The nonprofit sector encompasses an enormous range of organizations, includ-
ing associations involved in the arts, health care, human services, education, environment, social justice, religion, and philanthropy. The term is so all-encompassing that it covers virtually all organizations that are neither businesses nor units of government. At best, “nonprofit” is an imprecise term. Even the simple notion that they are organizations that eschew profits is misleading. It is perfectly legal for a nonprofit to make a profit; it is impermissible to distribute any profits to shareholders, but making a profit is just fine.

More confusing is that there are actually 27 types of nonprofits defined in the Internal Revenue Service (IRS) code (Salamon 1999, 8). These include labor unions (501[c][5]), business trade associations (501[c][6]), cemetery associations (501[c][13]), and veterans organizations (501[c][19]). What these disparate types of organizations have in common is that they are tax exempt. That is, should they make a profit, they do not have to pay income taxes on it. Only one type of nonprofit, public charities, or 501(c)(3)s, is also tax deductible. Those who donate to a 501(c)(3) can claim a deduction from their federal income taxes. It is tax deductibility, not tax exemption, that is the crown jewel because tax deductibility is a significant incentive to donors, and many institutions will only donate to a 501(c)(3). When we speak of nonprofits, we usually have in mind 501(c)(3)s and, unless otherwise indicated, the discussion here is restricted to these organizations and the term “nonprofit” refers only to them.

**Administering the Welfare State**

Although by law, 501(c)(3) nonprofits are considered to be charities, this, too, is a misnomer. In the colloquial sense of the term, only a small percentage of these organizations are what we think of as charities. Of those nonprofits large enough to file a tax return, fully half are in the fields of human services and health care. Today, nonprofits are nothing less than the administrative arm of the welfare state. With the implementation of new federal funding for social services in 1962, the federal government began moving in earnest toward reliance on services and away from income maintenance. This transformation culminated in 1996 with the passage of a welfare reform plan that promised to “end welfare as we know it.” Income maintenance—giving individuals cash and cash equivalents—can be done relatively efficiently, whereas social services are labor intensive. With the push to keep government ostensibly lean and mean, social services have been subcontracted to nonprofits so that new government employees do not have to be hired (Light 1999). Hiring nonprofit employees to implement a program rather than hiring more government workers to implement that same program is, of course, largely a shell game. The government still has to pay for the cost of its programs. Yet the headcount of government employees has become a key measure of presidential success in keeping government small, and this political imperative accelerated the move toward nonprofit service delivery.

The virtues of nonprofits extend far beyond this convenience for presidents. Their role in service delivery is prized because nonprofits finance, on average, a larger share of the cost of those services through their own private fundraising from individuals, corporations, and foundations. Nonprofits are also viewed as highly efficient, low-cost organizations staffed by professionals and volunteers who are passionately committed to their missions. Nonprofits are valued because they are seen as imaginative, flexible organizations that can tailor national or state programs to fit particular local circumstances and needs (Salamon 1995; Smith and Lipsky 1993). In short, at the heart of the modern welfare state are nonprofits such as JARC, a Detroit-based agency that offers residential care and services to those with developmental disabilities; the Transitional Work Corporation in Philadelphia, which gives the hard-core unemployed job training and a part-time job; and La Clínica del Pueblo, a Washington, DC, community health clinic whose Spanish-speaking staff treats the neighborhood’s low-income Hispanic population regardless of their ability to pay. In every community in the country, there is a dense network of nonprofits that not only provide essential services to residents but also link neighborhoods to city hall.

Although government funding is one of the reasons nonprofits have expanded, private philanthropy and volunteerism are critical, too. Americans’ devotion to nonprofits is reflected in their generosity. Giving from all sources in 2002 totaled $240 billion. Approximately 75 percent of the donated money came from individuals (Strom 2002, 2003.) It is not only money that is donated to nonprofits but time as well. In 1998, 109 million Americans volunteered with nonprofits, approximately 56 percent of the adult population. On average, they volunteered 3.5 hours per week, representing an annual aggregate of $226 billion in donated time (Weitzman et al. 2002, 69).

The number of nonprofits has grown at an explosive rate. In the last 25 years, the overall total of 501(c)(3)s registered with the IRS has more than doubled from just under 300,000 to around 800,000 (Gose 2005; Weitzman et al. 2002, 4–5). As figure 1 illustrates, 501(c)(3) nonprofits are growing at a rate more than twice that of businesses. All other types of organizations are growing at only a modest rate. By way of comparison, the other 26 types of nonprofits together encompass a little over a half million organizations, just two-thirds the number of 501(c)(3)s alone. It should also be noted that the number of 501(c)(3)s registered with the government seriously underestimates the population. Many small, neighborhood-based nonprofits do not bother to register because they fall be-
low the threshold of $5,000 in annual income. Although the vast majority of all nonprofits are small to modest in size, cumulatively, 501(c)(3)s are an important part of the American economy. Nonprofits are responsible for fully 6 percent of gross domestic product and 12.5 million Americans work for nonprofits (Moore 2004).

Underlying the growth and popularity of 501(c)(3) nonprofits is, of course, their tax-deductible status. Nonprofits that wish to come under the provisions of IRS section 501(c)(3) must be “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.” This rather broad definition is responsible for the enormous diversity of organizations that now qualify for tax deductibility. But with tax deductibility comes the not-so-hidden hand of government. The rationale for the regulation of nonprofits is relatively straightforward: Legally, they are charities. Tax deductibility is a powerful incentive for potential donors to contribute. For example, for those with a marginal income tax rate of 35 percent on their federal returns, a $1,000 contribution to a 501(c)(3) effectively costs them just $650.

Tax deductibility under section 501(c)(3) constitutes a tax expenditure. This, in turn, results in a subsidy to nonprofits from those who don’t contribute: If government chooses to spend money through a tax expenditure for nonprofits, it must draw more revenues from other sources. If there were no subsidy for donations to nonprofits, our marginal tax rate could be a bit lower. Alternatively, if there were no subsidy for nonprofits, government could spend more on programs or create other subsidies (Brody 1999; Hansmann 1987).

Ambiguous Law

There is general agreement with the principle that the subsidy funded by the tax deduction gives government the right to set rules on how that money can be spent by nonprofits. For example, we would not want these taxpayer subsidies to be converted into campaign donations. Not surprisingly, section 501(c)(3) of the tax code forbids nonprofits that qualify under its provisions from engaging in any kind of partisan activity. Recent revelations of excessive compensation, sweetheart deals with companies affiliated with board members, and the crediting of excessive value to in-kind gifts have led to serious calls by legislators to increase the regulation of nonprofits (Crenshaw 2004). Although the number of nonprofits engaging in corrupt practices appears to be small, the controversy is a painful reminder of the government’s expectation that nonprofit expenditures and activities reflect appropriate uses of subsidized taxpayer dollars.

One of the principal means of regulating nonprofits is through the lobbying provision of section 501(c)(3), which bluntly, if ambiguously, sets a limit on the amount of allowable legislative advocacy by these organizations. The history of the lobbying restriction on nonprofits is unclear (Kindell and Reilly, n.d.). The 1917 tax legislation establishing the deduction for charitable donations included no lobbying restrictions. In 1919, the Treasury Department issued regulations that said that organizations “formed to disseminate controversial or partisan propaganda” are not educational and thus are not eligible for tax deductibility (Gallagher 1998, 1). Periodically the Treasury Department rejects an application for 501(c)(3) status or revokes a nonprofit’s tax deductibility on the grounds that the organization’s principal purpose is to lobby or that its lobbying is excessive and has crossed an unacceptable threshold. One of the first organizations the IRS went after was the American Birth Control League, which was organized to help married women prevent “uncontrolled procreation.” The group went to court after its tax-deductible status was revoked by the IRS. A federal appeals court affirmed the IRS decision because the American Birth Control League’s charter explicitly called for trying to persuade legislators to change laws on birth control. This landmark decision, Slee v. Commissioner (42 F.2d 184 [2d Cir. 1930]), said simply that “agitating for the repeal of laws” could not be supported by taxpayer funds.

A few years later, in 1934, Congress took action to strengthen the intent of the Treasury Department regulations, incorporating a section on the political activity of nonprofits into the relevant statute (Revenue Act of 1934, sec. 517, 48 Stat. 760; Kindell and Reilly, 264–67). Tax deductibility was to be withheld from organizations for which “substantial part of the activities ... is carrying on propaganda, or otherwise attempting, to influence legislation.” This language is still the policy of the IRS, and nonprofits remain in the dark as to how much lobbying they can do. Although many nonprofits have asked the IRS to explicitly define its standard, the agency steadfastly re-

![Figure 1 Growth of 501(c)(3) Nonprofits](image-url)
For scholars, lobbying is viewed as representation—the way political scientists view interest group behavior. What is striking about the development of the 501(c)(3) is the definition of lobbying as a form of “propaganda,” a rather inflammatory word that suggests manipulative and dishonest communication.

As it stands, section 501(c)(3) is designed to protect citizens from having their tax money used to subsidize lobbying. The taxpayer subsidy is thus intended for charitable purposes, and lobbying of legislatures is not a charitable purpose. Rather, the official policy of the IRS is that legislative lobbying is similar to the distribution of propaganda.

**Civic Engagement**

The IRS’s equation of lobbying with unsavory activity may fit with popular attitudes, but it is surely at odds with the way political scientists view interest group behavior. For scholars, lobbying is viewed as representation—a means by which organizations voice the concerns of their constituents to policy makers. But we recognize the dangers as well. Thus, from Madison on, political scientists have regarded interest group advocacy as a paradox: It is both an instrument of democracy and a threat to democracy. Because it is concerned with the use of taxpayer dollars, the law on nonprofits appears to consider only the dangers of lobbying and none of its virtues.

The literature on civic engagement appears to be indifferent toward the role of interest groups in representing constituents because its core concern is the behavior of individuals. From this perspective, what lobbying organizations do on behalf of individuals is far less relevant than what those individuals do themselves in terms of participation in civic and political arenas. But this is shortsighted. Individual-level behavior is often closely tied to organizational efforts. Organizations engaged in advocacy know they will be far more effective if they are able to mobilize their constituents and do not have to rely solely on their lobbyists (Goldstein 1999; Kollman 1998). Organizations educate and mobilize followers who otherwise would remain uninformed and passive.

For 501(c)(3)s, there is a range of advocacy-related tactics that involve constituents or board members and fall under the prohibitions and limits of nonprofit law. As noted earlier, partisan electoral activity such as making campaign contributions or endorsements is strictly forbidden. Nonprofits are allowed to hold forums, sponsor debates, invite candidates to come to their offices, register voters, publish analyses of election issues, and engage in other nonpartisan endeavors. Yet nonprofits find this part of section 501(c)(3) confusing and generally avoid these activities because they believe they may run into trouble with the IRS if they are active in the electoral arena (Berry 2004).

The restrictions against lobbying have aroused far more criticism and controversy than prohibitions against electoral activity. These rules also are more consequential because far more nonprofits are interested in participating in policy making than in elections. The limitations on legislative advocacy apply both to the direct lobbying of members of legislatures and their staffs by organizational officials and to the grassroots mobilization of boards, clients, and constituents. Grassroots lobbying includes efforts to catalyze letter writing, phone calls, e-mails, and so on to encourage legislators to support or oppose some specific legislation (Smucker 1999). Neither direct nor grassroots lobbying may cross the substantial boundary. Because that boundary is not defined, nonprofits must police themselves so as not to breach it. The ultimate penalty for violating the substantial rule is loss of tax-deductible status. This is roughly equivalent to the death penalty in criminal law, as almost all nonprofits would regard the loss of 501(c)(3) status as catastrophic. Although rarely applied, just the knowledge that the IRS has the power to revoke their favorable tax status becomes a powerful element in the way nonprofits conceive of their role in public affairs.

The lobbying restriction on nonprofits has troubling implications. Although the need to regulate the use of subsidized dollars from taxpayers is clear, how to accomplish this is anything but. The class differential in political participation is well established. The poor, disabled, non-English speakers, homeless, mentally ill, unemployed, and frail elderly all participate at alarmingly low levels. Nonprofits are the organizations that work with these constituencies, providing them services of various types. These are the only organizations that have an incentive to organize, mobilize, and advocate on behalf of such constituencies. Nonprofits also provide an entry point into the political system for lower-income Americans. Although the poor participate less than others, we should not equate lower levels of participation with apathy. Participation is linked to being asked to participate (Verba, Schlozman, and Brady 1995, 133–59). If nonprofits don’t ask their clients and followers to participate because of 501(c)(3) limitations, civic engagement among these groups will remain lower than it otherwise would be.

The research for this project began with the supposition that section 501(c)(3) strongly deters nonprofit advocacy. And if nonprofits are deterred from advocacy, they will be deterred from trying to recruit lower-income Americans and other marginalized constituencies to participate in political activities. But as much as nonprofit advocates have complained about the law, the impact of section 501(c)(3) had never actually been measured. And because there are ways around the law by organizations that truly want to do advocacy, it is possible that section 501(c)(3) does not have a real, deleterious impact on the mobilization and representation of the disadvantaged and dispossessed.
Measuring the Impact

The idea of regulating interest groups stands in stark contrast to the normative theory that has long guided our thinking about the role of advocacy organizations in a democracy. In Federalist No. 10, Madison acknowledged that the new Constitution would free “factions” to lobby for their own selfish goals. Yet he warned against trying to curb the “mischiefs of faction” because it would destroy liberty. Quite bluntly, he warned that if the new nation acted to restrain factions, the “remedy [would be] worse than the disease” (Federalist Papers 1961, 78). Madison’s solution was a leap of faith: He assumed that our republican form of government, the diversity of the country, and its great size would diminish the power of any one faction.

Alexis de Tocqueville offered an even more optimistic view of group politics, linking the easy formation of associations to the American character that he admired so much. In one passage in Democracy in America, he notes that “[i]f a stoppage occurs in a thoroughfare, and the circulation of vehicles is hindered, the neighbors immediately form themselves into a deliberative body” (1956, 95). De Tocqueville’s glowing assessment of Americans’ propensity to organize has contributed to our general view that associational formation operates as a free market. Organizations succeed or fail on the basis of their business skills—their ability to attract and maintain a membership.

There is freedom of association in America, but for political organizations, it is not an unregulated freedom. A substantial array of federal regulatory standards prescribes both opportunities and restrictions for interest groups active in national politics. Additional rules have been adopted by cities and states. Some are fairly innocuous (lobbying registration), whereas others (judicial standing) determine whether an interest group can participate at all in a particular arena. Laws such as the Federal Advisory Committee Act and the Negotiated Rulemaking Act enhance the role of interest groups, drawing them formally into the policy-making process. There is certainly no government master plan that rationally sorts out all of these privileges, prohibitions, and rules of behavior. Different sectors of the interest group community play by different rules, and when all the rules and regulations are considered together, they don’t add up to a level playing field. Perversely, outside of campaign finance, business lobbies face few restrictions, whereas nonprofits are extensively regulated.

The regulatory framework is such that “Enron and the Teamsters Union have more rights in our political system than the Susan G. Komen Breast Cancer Foundation or the Children’s Defense Fund” (Berry 2003, 35).

Given that nonprofit constituencies include the most disadvantaged and dispossessed in American society, assessing the impact of regulatory standards on these organizations is critical to our understanding of civic engagement in America. Yet those who have written so eloquently about the importance of civic engagement to a healthy democracy have focused little on the legal structure of the nonprofit world. Perhaps this is understandable because much of their attention has been directed at informal associations and organizations with little, if any, direct involvement in the political process. We need not be concerned with the regulatory framework for Putnam’s iconic bowling leagues because their value to the political system is in generating social capital, which, in turn, yields the glue of “reciprocity and trustworthiness” that binds communities together (2000, 19).

When we turn from social interaction to behavior that is more directly political, the regulatory framework for nonprofits appears to be vitally significant. Anecdotal evidence gathered from meetings with directors of nonprofits and with leaders of organizations that represent nonprofits in Washington suggest that section 501(c)(3) influences the behavior of nonprofits in a number of ways. The nonprofit world is huge and hugely diverse, however, and whether the concerns we have heard are representative of the larger universe of 501(c)(3)s is still an open question.

Survey Sample

The general hypothesis that section 501(c)(3) significantly deters political participation and, as a result, diminishes the potential of nonprofits to build, nurture, and enhance civic engagement in America was tested as part of a large-scale study of nonprofits in America (Berry and Arons 2003). The Strengthening Nonprofit Advocacy Project was a collaborative effort of the Lincoln Filene Center at Tufts University and two Washington, DC–based nonprofits, Charity Lobbying in the Public Interest and OMB Watch. The data were gathered from a random-sample mail survey of nonprofits from around the country; phone interviews with the executive directors of some of the organizations that took part in the survey; focus groups with nonprofit executive directors or board members in selected locations around the country; and interviews with experts on nonprofits or nonprofit law in Washington, DC.

The data discussed here were taken primarily from the mail survey of nonprofits. Available space allows for only a brief outline of the sampling frame and other methodological issues. The universe of nonprofits from which the sample was drawn comprised approximately 220,000 501(c)(3)s large enough to file a tax return in 1998. The tax-filing threshold is a gross annual income of at least $25,000. The far greater number of nonprofits, both registered and unregistered with the IRS, fall below the tax-filing threshold. Because the focus here is explicit political activity, restricting the examination to tax filers is an acceptable strategy because the modest amount of lobbying done by smaller organizations is much less likely to be
influenced by the IRS’s regulatory framework. Moreover, there is no public listing of nonfilers, and, as a result, there is no practical means of sampling from the universe of all existing nonprofits.

Unlike our personal 1040 tax returns, which are private, a nonprofit’s 990 tax return is public information. The IRS makes the 990s available to the National Center for Charitable Statistics at the Urban Institute, a Washington, DC– based think tank. In turn, the Urban Institute provided us with the dataset of all 990s from 1998 in machine-readable form. A random sample of nonprofits was sent a mail questionnaire, and, after three waves of soliciting responses, we ended up with a completion rate of 64 percent. This is an exceptionally high return rate for a survey of nonprofit organizations. In most cases, the questionnaire was filled out by the executive director of the nonprofit.5

Constructing a questionnaire that accurately measured the levels of various forms of advocacy by nonprofits was no small challenge. Embedded in the identity of being a nonprofit is that the organization is part of the third sector, performing a useful societal function outside the spheres of business or government. For nonprofit leaders, it is all too easy to believe that contacts with government have little to do with politics or even public policy making. Because of the ambiguous boundary dividing substantial from insubstantial lobbying and the fear of the IRS, many nonprofit leaders insist that they don’t “lobby.” If the questionnaire appeared at an initial scan to be about lobbying, too many nonprofit executive directors would toss it in the wastebasket, believing their organization was inappropriate for the study. On the other hand, to properly assess the issues being investigated, the questionnaire did have to elicit valid responses to questions asking about advocacy.

The approach taken was to ask about a variety of activities and to overlap questions so that we tested for particular forms of political behavior in different ways. The three items that used the term “lobbying” were part of lists of a variety of different statements, so there was no reason for respondents to believe we expected all nonprofits to engage in this activity. Because political scientists define lobbying so liberally, regarding it as just about any activity by an organization taken with an eye toward eventually influencing policy makers, there was no need to rely only on the few questions that used this sensitive word. Because multiple questions were used to measure different forms of interaction with government, the chances that the statistical results are artifacts of question wording are significantly reduced.

The H Election

Before proceeding to an analysis of the survey results, one more element of the research design requires introduction. After years of criticism aimed at the IRS because of the vagueness of the substantial standard, Congress acted in 1976 to create an alternative lobbying provision for nonprofits. When the IRS revoked the Sierra Club’s tax-deductible status in 1966 because of its conspicuous lobbying against a proposal in Congress to build two dams on the Colorado River, the agency came under fire for its lack of specificity in its lobbying standard for 501(c)(3)s. As part of an omnibus tax bill, supporters of a more liberal regulatory provision succeeded in placing the so-called H election into the legislation. In contrast to the ambiguity of the substantial criterion, the 501(c)(3) H provision is an expenditure test that is highly specific as to the quantity of lobbying that is permissible. It delineates two sliding-scale formulas, one for the direct lobbying of legislators and one for grassroots lobbying. At the low end, nonprofits with budgets of up to $500,000 can spend as much as 20 percent of their total expenditures on direct lobbying. An organization with a budget of $1.5 million to $17 million can spend $225,000 plus 5 percent of the budget over $1.5 million. The formula for grassroots lobbying allows for an additional one-quarter of spending on direct lobbying (Smucker 1999, 55).

After the law’s enactment, the IRS took 14 years to write the regulations to implement the H election. Its lassitude in producing the H regulations was followed by a failure to publicize the new option. Nor has it made any effort since the adoption of the regulations to make nonprofits aware of this option. Not surprisingly, only about 2.5 percent of all 501(c)(3) s take the H election, even though there is absolutely no drawback to choosing this option. All that is required to become an H elector is the completion of a short form, less than half a page in length, which takes about 60 seconds to fill out. The upside is that the H election regulations spell out what constitutes lobbying, and these rules define a surprising array of endeavors as falling outside the definitions of either direct or grassroots lobbying. These definitions apply only to H electors and not to conventional nonprofits.

Although some nonprofits don’t need the additional protection of the expenditure test, nonprofits that are active in the policy-making process benefit from it because they do not have to be concerned about violating the law. The expenditure limits are more than generous because only an outlay of money to support legislative lobbying on a specific bill counts against them. Unless an organization only does lobbying, it would take gross incompetence on the part of an accountant to let his or her nonprofit client hit the expenditure limits. In practical terms, it is difficult for an IRS auditor to contest a nonprofit’s records of how its employees spend their time.

The H electors retain their valuable 501(c)(3) status and the right to offer tax deductibility to donors. The single difference between a conventional 501(c)(3) nonprofit and
Reducing Access

Although anecdotal evidence had led us to believe that the law on nonprofits is an obstacle to their involvement in the governmental process, other hypotheses are cogent, too. It could be that the nonprofits that are interested in being seriously involved in policy making take the H election, and those that choose to remain under the substantial standard are not particularly interested in talking with those in government or mobilizing their followers. Another possibility is that although nonprofits are aware of the limitations of the substantial provision, they understand there is very little chance the IRS would crack down on them for excessive grassroots activity or direct lobbying. A third alternative is for the tax-deductible 501(c)(3) to create an affiliated organization, typically a 501(c)(4) that lacks tax deductibility and, therefore, can lobby without restriction.

The analytical strategy for trying to disentangle these arguments was to try to determine whether H electors differ from conventional nonprofits in ways beyond the lobbying standard they fall under. One key factor in this puzzle is the need to interact with government. There was no direct measure in the survey of an absolute need to work with government, but two variables serve as relatively good proxies. First, those answering the questionnaire were asked to estimate the amount of their organization’s annual income derived from various sources. (The exact wording of this and all other survey questions used here can be found in Berry and Arons 2003.) The H electors received an average of 19.6 percent of their annual budgets from government, close to the 22.1 percent for conventional 501(c)(3) nonprofits (see table 1). An organization receiving a significant percentage of its budget from government surely has reason to be in close contact with policy makers. Indeed, it has every reason to lobby for support and for an increase in program funding. Such organizations risk their very existence by not being aggressive in their relations with government. In this respect, the two samples appear to have the same level of need.

Second, we wanted to determine the substantive mission of each organization in the two samples. Fortunately, embedded in a nonprofit’s 990 tax return is a code that reveals its primary area of interest. When the two samples were compared, it turned out that 37 percent of the conventional nonprofits were in human services and another 11 percent in health care. This is just 3 percent more than the aggregate total of the H electors that fall into these two categories. Nonprofits in these two areas receive a higher percentage of their budgets from government than do nonprofits working in other policy areas. Our interviews with the directors of the nonprofits confirmed the statistical evidence and led to the inescapable conclusion that the conventional nonprofits in human services and health care have equally critical interests before state legislatures and Congress as do H electors in these fields.

Although the H electors are not a true control group, the strong similarities between them and conventional 501(c)(3) s for the variables of government support and organizational mission allow us to make a meaningful comparison of the impact of the two regulatory standards. The results for three separate questions on advocacy, worded very differently, showed a strong and consistent pattern. One question quite deliberately used the term “lobbying,” asking respondents how often they engaged in “lobbying on behalf of or against a proposed bill or other policy pronouncement.” The difference in responses to this question is significant: 2.4 for the H electors and just 0.9 for the conventional 501(c)(3)s on a five-point scale. (A higher score indicates more public policy involvement.) In contrast, another question pointed toward the administrative side of government, inquiring how often respondents worked “in a planning or advisory group that includes government officials.” Section 501(c)(3) contains no restriction against such work; nevertheless, a significant (albeit smaller) difference emerged here, too: 2.8 versus 1.6, again on a five-point scale.

A third question used an experimental design. The words “advocate,” “lobby,” and “educate” were used alternately in an otherwise identically worded statement about how
The accepted wisdom on interest groups is that effective lobbies must be ready to lobby all institutions with whatever tactics are most appropriate. The H electors demonstrated this with an equal propensity toward legislative and administrative advocacy. On a five-point scale, the utilization rate for H electors averaged an identical 2.3 for both the legislative and administrative clusters. Conventional nonprofits revealed a different pattern, with an aggregate score of 0.9 for the legislative tactics and 1.4 for the administrative ones. Absent the legal considerations relating to 501(c)(3)s, there is no reason why conventional nonprofits would have a decided preference for administrative advocacy while H electors would rely on both approaches equally. We have already demonstrated that H electors do not appear to be distinct from conventional nonprofits outside their level of activism. The difference, of course, is that for conventional nonprofits, lobbying administrative agencies is perceived to be much safer than lobbying legislatures. And this is no small matter because the goals of legislative lobbying differ from administrative lobbying in many respects. Legislatures, not administrative agencies, set the broad priorities of government. Removing a large portion of nonprofits from the lobbying equation on budgeting tilts the playing field away from human services. Administrative lobbying is far more technical in nature and depends far less on mobilizing constituents. Thus, the lobbying focus of nonprofits pulls them away from tactics that would contribute more to enhancing civic engagement in America.

Again, these statistical data are strongly supported by the interviews with executive directors and by the conversations that took place in our focus groups with nonprofit executive directors or board members. What surprised us most was the profound ignorance about what section 501(c)(3) actually says. A large proportion of executive directors of conventional nonprofits were badly misinformed about what they could and could not do under the law. Some even said they were flatly prohibited from engaging in lobbying. Others cited a specific percentage of their budget they could devote to lobbying, even though no expenditure test applied to them because they were not H electors. (The meaningless percentage figure they cited varied widely and did not correspond to the H elector al-

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Source: Survey from the Strengthening Nonprofit Advocacy Project (see Berry et al. 2003). The averages are the mean of the aggregate scores for each tactic, not the mean of all responses. The n for each subsample is 320 for the H electors and 583 for the conventional nonprofits. The aggregate responses to each tactic are a bit smaller.

often the nonprofits approached government. The one-third of the conventional nonprofit sample that received the “lobbying” version of the question were much less likely to say they frequently approached government than those who filled out a questionnaire with the words “advocate” or “educate.” By way of comparison, the mean for the aggregate of all three versions for H electors was 2.9, whereas the score for the conventional 501(c)(3) was 1.9. The scale for this question was just four points, so this difference is quite sizable.

To amplify and cross-check these results, a fuller comparison of advocacy tactics uses a nine-part question about various tactics of influence. Because the limitation on lobbying for conventional nonprofits applies only to legislative lobbying and not to administrative advocacy, we can test again for the impact of the law by dividing the tactics into those that are more oriented toward legislatures and those more relevant to administrative agencies. Most items refer to government or policy makers in general, but reasonable inferences can be made as to which branch of government the tactic is usually directed toward. Testifying, lobbying, and encouraging members to write are more suggestive of legislative than administrative advocacy. In table 2, these three are arranged together with “releasing research reports,” as they constitute the most aggressive advocacy tactics. (Releasing research results can be quite aggressive, as it is often aimed at embarrassing some part of government by showing how ineffective it is at dealing with a particular problem.) The second group of tactics (meeting with government officials, working in a planning group, responding to requests for information, discussing grants, and socializing) are less confrontational and involve more cooperative forms of interaction. For conventional nonprofits, it appears there is a strong tendency to rely more on administrative advocacy and the more cooperative tactics associated with that strategy.

The averages are the mean of the aggregate scores for each tactic, not the mean of all responses. The n for each subsample is 320 for the H electors and 583 for the conventional nonprofits. The aggregate responses to each tactic are a bit smaller.

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<th>Table 1 Similar Constituencies, Different Levels of Advocacy</th>
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<td>Percentage of non-profits in policy area</td>
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Source: Berry with Arons (2003, 62)

Q. 5. For some nonprofits, there is a need to educate those in government so that policy makers will have a better understanding of the problems facing the community. How often does your organization undertake an effort to educate government officials at any level? (Experimental design question: “educate,” “lobby,” and “advocate” were each used in one-third of the sample. Responses are aggregated here. Never = 1; once a month or less = 2; two, three times a month = 3; four or more times a month = 4.)

Q. 6a. Lobbying on behalf of or against a proposed bill or other policy pronouncement. Scale: 0–4
Q. 6d. Working in a planning or advisory group that includes government officials. Scale: 0–4

The differences in the mean scores are significant at the .000 level.
lowances.) Often, we heard them describe a lobbying effort but then insist it wasn’t lobbying, going through linguistic contortions to portray it as some other activity, such as “educating” legislators or simply responding to requests from legislators. In a similar vein, our survey revealed appalling ignorance about the specifics of the law. For example, 68 percent of respondents from conventional nonprofits believed, incorrectly, they cannot lobby if part of their budget comes from federal funding (Berry and Arons 2003, 59).

In our interviews and focus groups, we also heard nonprofit leaders tell us that lobbying or advocacy generally was not part of their mission. In some cases, this made sense because the organization had little reason to be involved with government. Other times, they said this even though they operate in policy areas where government decisions have a significant impact on the work they did. With recent government cutbacks, nonprofits working in human services or health care are, more than ever, overloaded with clients and find their budgets and staffs stretched thin. It is certainly understandable that their chief executive officers would tell us they just do not have the resources to be active in governmental affairs. What our research revealed, however, is that part of this reluctance is also the consequence of fear of the IRS and a basic misunderstanding of the law.

Conclusion

The available evidence indicates there is no rational sorting out of nonprofits by mission, funding, or programs into a politically active set of H electors and a residual set of conventional 501(c)(3) organizations that have little reason to be involved with government. When the two subsamples of human service providers were selected, the basic difference appears to be that the conventional 501(c)(3) s are less active in representing their clients’ interests before legislative bodies than H elector nonprofits. The conventional nonprofit human service providers do not have less reason to speak with legislators and their staffs—far from it. To the degree that conventional nonprofits do interact with government, it is clear they are less aggressive in their advocacy than they otherwise would be in the absence of 501(c)(3).

Section 501(c)(3) of the tax code fundamentally shapes the representation of interests in America. There is no question that the federal government needs to protect the integrity of the tax deduction for charitable giving. The government should not be subsidizing organizations whose primary purpose is strictly political or partisan. The H alternative for 501(c)(3) nonprofits demonstrates, however, that federal law can allow for appropriate levels of nonprofit participation in the governmental process without compromising support for the charitable tax deduction. Because few nonprofits take the H election, our legal system inhibits participation and even intimidates nonprofits whose leaders do not understand what the law allows. The result is that the disadvantaged and the marginalized are poorly represented in our political system. Those with AIDS, the mentally retarded, disabled immigrants and non-English speakers, the frail elderly, and other such constituencies who badly need a greater voice in our political system are artificially and unnecessarily discouraged from civic engagement by the nonprofits that serve them.

Unfortunately, there is little prospect for a legislative change that would reform 501(c)(3) in a way that would balance the need to ensure that taxpayer dollars are used appropriately with the benefit of involving low-income and disadvantaged Americans in the governmental process. The only movement on 501(c)(3) in recent years has been an effort by Republicans to make the law more restrictive in terms of legislative lobbying. Nor is the IRS likely to do anything to publicize the H election. In this beleaguered and resource-strapped agency, the regulation of nonprofits is not a high priority. The tax-exempt division of the IRS is severely understaffed, with just 800 employees to oversee the nation’s 1.6 million nonprofits of all types.

If nonprofits are to become more knowledgeable about the law on public charities, it is other nonprofits that must educate them. There is, in fact, considerable training that goes on in the nonprofit world, though most of it involves management and fund-raising issues and focuses little on advocacy. The leadership organizations that dot the nonprofit world, including trade associations and statewide nonprofit associations, can do much more to educate rank-and-file nonprofits about both the H election and what is permissible under the conventional 501(c)(3) rules. All nonprofits in this country need to know that it is perfectly legal to lobby, that they would have to do a significant amount of lobbying to cross the substantial threshold, that accepting federal funds does not prohibit them from lobbying, and, if they should feel constrained by the law, that the H election is a no-cost, no-risk alternative that broadens their right to voice the concerns of their followers and to mobilize them when appropriate.
1. The APSA committee, which included the author, reviewed the available scholarship but did not engage in original research. Although there were some modest disagreements about specific trends, there was strong support for the general conclusion that the overall pattern is one of democratic decline (Macedo et al. 2005).

2. Data on volunteering are far from the most reliable statistics because there is surely exaggeration in the self-reporting of time spent. This figure, from Independent Sector, the leading trade group in the nonprofit field, comes from a survey taken by the organization. Its numbers are at the high end of the range of reports measuring volunteerism. At the low end, the U.S. Department of Labor puts the number at 63.8 million. The differences derive in part from the way the scope of volunteering is defined (Wilhelm 2004).

3. A detailed description of the methodology can be found in Berry et al. (2003).

4. At the other end of the spectrum, all colleges, universities, and hospitals were removed from the sample. In terms of budget, these organizations are egregious statistical outliers and would have muddied any statistical analysis that included them. Moreover, these large organizations are quite sophisticated politically and are not as confounded by IRS regulations as the typical nonprofit.

5. The entire questionnaire is reprinted in Berry and Arons (2003) and Berry et al. (2003).

6. The two other samples included in our study were conventional 501(c)(3)s that list lobbying expenditures on their 990 (0.5 percent of nonprofits) and H electors that list no lobbying expenditures on their 990 (2.0 percent of nonprofits). These two samples behave largely like the sample of H electors listing lobbying expenditures and, for simplicity of presentation, they are not included in the discussion here. A line on the 990 tax form asks nonprofits to list their lobbying expenditures for the past year but, because of fear of the IRS, nonprofits typically put a zero there.

7. The sample size for electors listing lobbying expenditures was 320 and the sample size for nonelectors with no lobbying expenditures listed (those we call conventional nonprofits) was 583. The n varied slightly for specific questions and was a bit below the total for these samples.

8. After the survey was completed and responses coded into an SPSS file, we inserted the tax return of each organization into its data field. This allowed us to disaggregate the samples by the substantive area that they worked in. These codes are nested by differing levels of specificity. We used the level-three or major NTEE categories of coding. See Weitzman et al. (2002, 201–13).

9. The aggregate figures for those from conventional nonprofits who said they advocated, lobbied, or educated “two, three times a month” or “four or more times a month” were 19.5 percent, 9.8 percent, and 24.3 percent, respectively, significant at .000.

10. The survey did not allow us to rigorously test the hypothesis that conventional nonprofits with a desire to lobby make widespread use of 501(c)(4) affiliates. For a variety of reasons, we doubt that 501(c)(4) affiliates are a major explanatory factor underlying the behavior of 501(c)(3)s documented here.

References


