

Nonprofiteers

*How to lobby like a corporation
and pay taxes like a charity*

by David Shenk

A brief role-play exercise: Let's say you can't stand Jesse Jackson. You've seen the man on TV, rabble-rousing in verse, and you wish you could take him on, just tell him to shut up. But you're a working stiff of modest means. What could you possibly do that would have any effect?

One day a letter drops through your mail slot. An "alert" message on the envelope catches your eye. "Jesse Jackson wants you to pay his salary and \$3.5 million in benefits." Inside, a letter from the American Conservative Union (ACU) reads, "Jesse Jackson has never been elected to any legitimate office. And outside of Washington, he probably never could be. So he and his liberal friends have launched a campaign to make crime-ridden and corrupt Washington the 51st state. . . . Jesse wants power. . . . And Jesse often gets what Jesse wants."

Your blood stirs. You always knew that guy was up to no good. Whatever they want you to sign, you'll sign. Maybe even throw in a cash contribution, *if* you can write it off.

But then you see the fine print—"Contributions are not tax deductible." Jeez—don't they have tax deductions for pornographic art and other filth? Why not for this?

Just in case, you phone the ACU:

"Hi, are donations to the ACU tax deductible?"

"To the ACU Foundation, they are."

"Well, um, I just got a mailing concerning Jesse Jackson and statehood. . . . I noticed it says that donations to that project are not tax deductible. But is there any way I could give money to it so that it *would* be tax deductible?"

"Well, you could give to the ACU Foundation, which provides most of the research for that project, finding out quotes and stuff like that."

David Shenk is a Washington writer. Research assistance was provided by Jennifer Bradley, Eric Konigsberg, and Dan Rocconi.

Hot damn—now your \$100 donation is going to cost you only about \$75! U.S. taxpayers, by means of the federal government, will pick up the rest of the tab for denigrating Jesse.

I made the call myself this summer, and had I been of a pro-ACU mind, I could have sent a check and taken that deduction. Why could the ACU say donations were not deductible, then turn around and tell me I could write mine off? Because, like many other nonprofit groups, it's two legally separate organizations rolled into one. The first is for government-subsidized lobbying and demagoguery; the second for even more subsidized "research" in service to the main. Smell fishy? Welcome to the murky sea of nonprofits.

That America's 500,000 nonprofits are exempt from income tax (and in some states, sales tax) while they gross more than \$700 billion a year is not inherently a bad thing. Indeed, the philosophical rationale for this exemption is both practical and humane. Because government alone clearly can't feed all the poor and train all the unemployed and so on, it makes sense for government to help nurture those organizations willing to serve the public interest on their own. Trouble is, as we subsidize their postage stamps and their lobbying and their "educational" conferences at Vail, only a fraction of those half-million nonprofits perform what most of us would consider public interest functions—the great rationale for tax exemption. That's bad enough. But more disturbing is how nonprofit political lobbies like the ACU, already having it so good, have manipulated a tax-law loophole to have it even better—at taxpayer expense.

Those 501 blues

Political lobbies and do-good groups like The United Way have traditionally operated under two completely distinct tax codes, each of which has one big pro and one big con. The "charitables"—nonlobbying groups like the Urban League and Brookings Institution—have long been able to attract individual donors more easily because donations are tax deductible. Meanwhile, "noncharitables" such as the Tobacco Institute, the National Rifle Association (NRA), and the National Abortion Rights Action League (NARAL) can't offer the tax deduction, but they *can* lobby like there's no tomorrow. Unfortunately for taxpayers, though, nobody knows how to work the system like the nonprofits' policy wonks. It was only a matter of time before the noncharitable lobbies figured out that, thanks to the see-no-evil IRS, they could con the government into subsidizing their supporters' donations.

The two breeds of nonprofit are commonly identified by their treatment under section 501(c) of the IRS code. Noncharitables—advocacy groups and lobbies—are untaxed, but their donors cannot take a deduction under 501(c)4, at least not in theory. (Though not tax deductible as "charity," donations to industry lobbies are often written off as "business expenses.") 501(c)3s, also untaxed, are supposed to be a higher and purer form of life, conducting research, educating the public, checking into the powerful institutions of government and industry, but not soiling their hands with lobbying or advocacy—hence the deduction. The word "institute" or "foundation" in its name usually identifies a c3.

A lot of nonprofit money is no doubt spent wisely and honestly. Unfortunately, however, some "charitables" manage to carry on in a rather corporate manner. "When I first went to work for a nonprofit," says Leslie Lenkowsky, the former president of the Institute for Educational Affairs and now president of the Hudson Institute, "someone informed me that there were three things that I would never have to worry about again. One is I would never have to eat in anything less than a first-class restaurant. Secondly, I would never have to stay in anything but a first-class hotel. And lastly, I would never have to deal with anyone telling me to my face what they actually think of me."

Is Lenkowsky too cynical? Follow me, if you will, to the dining room of the American Enterprise Institute (AEI), another c3, where the fine silver is complemented by china place settings with the AEI logo. Or go uptown to the NRA, where the direct mail writer, Brad O'Leary, gets hundreds of thousands of dollars a year to compose press releases touting such worthy events as a Celebrity Shoot in Los Angeles featuring appearances by Charlton Heston and Chuck Norris. Or visit the chandeliered University Club of Washington to hear Robert Novak or William Bennett lecture college kids, thanks to the largess of the conservative Madison Center for Educational Affairs. "There wasn't a domestic beer in the place," recalls one attendee approvingly. "It was all Moosehead and Heineken, and great food."

So what's the big deal? you ask. *I'm not giving money to them. They can buy whatever beer they like.* That's the argument the libertarian Cato Institute implicitly invokes in one of its pamphlets: "In order to maintain an independent posture, the Cato Institute accepts no government funding." Of course, that rugged independence doesn't keep Cato from batten- ing on federal tax exemptions in any number of ways. A pamphlet from the institute, which touts itself as a government waste watchdog, mentions a re-

cent “Benefactor Summit” on St. Thomas—tax-exempt, naturally. And yes, your contributions to the Cato Institute are tax deductible—which means the federal government is quietly chipping in plenty. Say I’m in the 28 percent tax bracket. My net cost for a \$100 donation to Cato is \$72. The rest of America pays \$28 to cover my write-off. Call it libertarian license.

Split identity

Of course, all 235 million of us can split that \$28 pretty easily. But these things have a way of adding up. Total deductions for charitable contributions taken by individual taxpayers added up to nearly \$51 billion in 1988. That subsidy was so enormous that the lobbying nonprofits had to notice. And they had to have a piece of the action—hence the birth of the c3/c4 split.

In the early seventies, as various public and private political institutions emerged from the turmoil of the preceding decade, archconservative Richard Viguerie was tinkering with databases and envelopes. Direct mail fundraising, he reckoned, would be an essential part of Washington’s future. He was right. Special interest money poured in, establishing enormous PACs and other advocacy groups. But contributions still weren’t tax-exempt until Jesse Helms came along.

When the North Carolina senator wanted to raise some money, he hired Viguerie, and in so doing became the first to mate the noncharitable studhorse with the charitable mare and breed the hybrid worth billions in government subsidies. Attempting to establish a power base, Helms and his associates started by getting Viguerie to help them set up a series of fundraising and lobbying groups. The first of these were noncharitable c4s: the Congressional Club, Conservative Caucus, Committee for the Survival of a Free Congress, and a PAC—the National Conservative Political Action Committee.

The next step was for James Lucier and Joseph Carbaugh, Helms aides who had engineered the first batch of groups, to test the charitable waters with a parallel set of c3s: Coalition for Freedom, Institute of American Relations, Institute on Money and Inflation, and American Family Institute, all run by the same people for the same ends. Helms himself openly admitted to the charade of the Coalition for Freedom to *The New Yorker* in 1981: “I think [Carbaugh, Lucier, et al.] figured they could be more effective raising money if [citizens targeted by direct mail] didn’t have a letter every week from the Congressional Club.” Besides which, the Coalition donations would be tax deductible.

Over the next few years, Helms raised tens of millions of dollars and generated reams of “educational” printed material designed to bring colleagues around to his way of seeing things. Tax-deductible money was also used to cover salaries and fund airplane tickets and lavish lunches. (This is the same frugal Jesse Helms, you might recall, who raised a national furor over a few thousand dollars in art subsidies.) Before long, Helms’s two-pronged nonprofit attack had earned him a reputation as one of the loudest and most influential senators. But even more important, the “c3/c4 split” begat more splits, as noncharitable advocacy groups began erecting “educational” foundations to perform research and other less overtly partisan functions.

The second great galvanizer was a 1983 Supreme Court case, *Taxation With Representation of Washington v. Donald Regan*. The c4 nonprofit, which advocated statehood, was trying to become a c3. The group lost the case, but in the opinion, Justice William Rehnquist pointed out plainly that a c4 had an alternative: It could set up a complementary c3. “What that case did was give people more confidence that it was legal,” says Mike Trister, a tax lawyer who has represented dozens of nonprofits for Lichtman, Trister, Singer, and Ross. “[It] loosened up the IRS’s attitude about it and encouraged us on the outside.”

Thus, today, split groups abound on both right and left, including NARAL, Fund for a Feminist Majority, American Security Council, Friends of the Earth, Gun Owners of America, SANE/Freeze, the ACLU, and hundreds more. In fact, these days, even the teeny National Community Education Association of Alexandria, Virginia, has a “National Community Education Foundation” to take tax-deductible contributions. The c3/c4s share offices, staff, directors, equipment, donors, and of course, political views. Not surprisingly, in offices where split groups have virtually the same names and resources, both the finances and the politics often become hopelessly entangled.

Helms’s Conservative Caucus’s c3/c4 set-up includes such a vague arrangement of shared equipment and employees. Although 1989 tax returns show that the c3 Conservative Caucus Research Analysis & Education Foundation earned roughly 17 percent of the income of the c4 Conservative Caucus, Inc., the foundation paid nearly 30 percent of the total wages. The Caucus returns also show a \$78,000 “consulting fee” to a separate Howard Phillips Corporation—Phillips is listed as “full-time” chairman of the Caucus—on top of Phillips’s regular \$134,000 salary. Though one fundraising event grossed \$1,133,072, the expense charge came to \$927,421,