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Charities Have, and Should Wield, Significant Power to Advocate Directly for Stronger Gun Laws and Promote Voter Engagement

As details of the horrific, deadly rampage in Uvalde, Texas continue to emerge, many of us are feeling angry, frustrated, and enormously sad, not only about the senseless deaths of so many children and their teachers, but also about the fact that we keep experiencing similar communal traumas, over and over and over. Most of the recent mass shootings (a uniquely and tragically American phrase) also reflect race-based hatred and intolerance, which compounds the trauma most acutely for those among us who identify with the targeted communities.

These moments present an opportunity to remember, or to learn, the true power of the nonprofit sector, including charities exempt under Section 501(c)(3) of the Internal Revenue Code (and the regulations, case law, and other guidance interpreting it, collectively the “Code”), to speak for the unheard, and to press for stronger, more effective policies that address their needs and protect us all. Times like this call upon nonprofits, including charities, to seek and exploit every opportunity to enter the policy arena and join together to fight the dominance of destructive voices that for too long have promoted policies that endanger our communities, our streets, and even our children’s schools.

Unfortunately, as our work with countless charities has made clear, many charity leaders believe that tax laws governing their involvement in public policy debates create a perilous web of obstacles and landmines that they must navigate.

That belief is wrong, and it keeps charities out of the arena unnecessarily, undermining their ability to accomplish their missions.

In fact, the Code provides a road map of pathways and opportunities that guides charities to more active, effective engagement, and offers a broad array of tools that, if adequately supported and properly deployed, can greatly increase charities’ influence on legislative outcomes. To take advantage of these benefits, charities and their funders must invest in learning what these tools are, and training staff and leadership how to use them to the fullest extent.

For example, rather than prohibiting lobbying, Section 501(c)(3) itself expressly authorizes charities to lobby, within limits. Specifically, it says that “no substantial part” of a charity’s “overall activities” can be lobbying. That means that the Code permits charities with unrestricted funding to devote a limited amount of time and money to writing letters to legislators supporting or opposing legislation, testifying at legislative

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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hearings, and even drafting and shopping model legislation. (Private foundations are subject to stricter rules, but even they have tools that allow them to make unrestricted grants, if they are willing to do so.)

Often, charities are justifiably inhibited by uncertainty about the meaning of “substantial,” but again, the Code comes to the rescue. Section 501(h) provides a detailed, reliable, virtually-always-beneficial tool for most charities (some can’t or shouldn’t use it) to determine exactly how much lobbying they can do in a given year (spoiler alert: it’s a lot!), exactly what counts against the limit, and how to design their activities to maximize the reach of available resources. Eligible charities have to “elect” to use Section 501(h), which is both simple to accomplish and risk-free. Electing charities report on Form 990 only their lobbying expenditures, and do not have to describe the underlying activities.

Sometimes, a barrier to effective policy is the composition of the legislature, which calls for working to change who makes decisions. Here, charities are more constrained; Section 501(c)(3) prohibits charities from “intervening” in any candidate campaign for election to public office. That means that charities can’t take sides in elections, and can’t support or oppose any specific candidate.

However, charities have lots of “nonpartisan” tools to educate candidates about issues, inform constituencies about candidate positions, and mobilize voters to participate in elections. These tools must be deployed carefully to avoid violating the prohibition on intervention, but a charity that knows the rules and how to use them can significantly affect its constituents’ impact on the outcome an election.

Charities speak for those less able to speak for themselves, and shouldn’t be constrained by misunderstandings about their capacity to enter the arena. The Code provides extensive and powerful tools for any charity willing, able, and knowledgeable enough to use them.