

**DESCRIPTION OF H.R. 8291, THE
“END ZUCKERBUCKS ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on May 15, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
A. 501(c)(3) Organizations Prohibited from Providing Direct or Indirect Funding for Election Administration	2
B. Estimated Revenue Effects of the Proposal.....	6

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for May 15, 2024, of H.R. 8291, the “End Zuckerbucks Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 8291, the “End Zuckerbucks Act”* (JCX-16-24), May 13, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. 501(c)(3) Organizations Prohibited from Providing Direct or Indirect Funding for Election Administration

Present Law

Section 501(c)(3) organizations, in general

Section 501(c)(3) provides tax-exempt status to certain nonprofit entities organized and operated exclusively for charitable, religious, educational, or certain other purposes, provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual. Organizations described in section 501(c)(3), which generally are referred to as “charities,” are classified as either public charities or private foundations.² In addition to the tax-exempt status conferred on organizations described in section 501(c)(3), charitable contributions to such organizations are tax-deductible to the donor for Federal income, estate, and gift tax purposes.³ In addition, section 501(c)(3) organizations are eligible for certain tax-exempt financing benefits.⁴

Political campaign activities of section 501(c)(3) organizations

Section 501(c)(3) expressly provides that tax-exempt organizations described in that section may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.⁵ Treasury regulations provide that prohibited political campaign activity includes, but is not limited to, the making of oral statements on behalf

² Sec. 509(a). Private foundations are defined under section 509(a) as all organizations described in section 501(c)(3) other than the organizations granted public charity status by reason of: (1) being a specific type of organization (*i.e.*, churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; (3) providing support to another section 501(c)(3) entity that is not a private foundation (*i.e.*, being a “supporting organization”); or (4) being organized and operated exclusively for testing for public safety. In contrast to public charities, private foundations generally are funded from one or a limited number of sources (an individual, family, or corporation) and are subject to restrictions not applicable to public charities. In general, more generous charitable contribution deduction rules apply to gifts to public charities.

³ See secs. 170, 642(c), 2055(a)(2), 2106(a)(2)(A)(ii), and 2522(a)(2). Organizations described in section 501(c)(3) generally are eligible for reduced postal rates and, depending on the applicable State and local laws, may also be eligible for State and local income, property, and sales tax benefits.

⁴ See sec. 145.

⁵ Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(iii) defines an organization that intervenes in any political campaign for or against a candidate for public office as an “action organization” not entitled to section 501(c)(3) status. Treasury regulations use the term “action organization” to describe organizations that intervene in political campaigns *and* organizations that engage in substantial lobbying activities.

of or in opposition to a candidate.⁶ Organizations described in section 501(c)(3) are prohibited from “directly or indirectly” participating in political campaigns.⁷

This statutory prohibition is absolute and applies to both types of section 501(c)(3) organizations -- that is, public charities and private foundations. In theory, no amount of political campaign activity is consistent with an organization retaining tax-exempt status under section 501(c)(3).⁸

Clear examples of prohibited political campaign intervention include making or soliciting campaign contributions, providing publicity or volunteer assistance, and paying expenses of a political campaign.⁹ In situations where there is no explicit endorsement of, or direct provision of financial or other support to, a candidate for elective public office, prohibited political campaign intervention may be implicit, as determined by a consideration of all relevant facts and circumstances.¹⁰

Not all election-related activities are prohibited activities for organizations described in section 501(c)(3), however. For instance, voter education activities generally do not constitute “participation or intervention” in a political campaign on behalf of or in opposition to a candidate

⁶ Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(iii).

⁷ *Ibid.* See *Branch Ministries, Inc. v. Rossotti*, 40 F.Supp.2d 15 (D.D.C. 1999) (holding that an organization engaged in prohibited political campaign intervention when it placed a newspaper advertisement that was critical of the moral character of a candidate four days before an election, and the advertisement indicated that it was sponsored by the organization and solicited contributions); Tech. Adv. Mem. 199907021, May 20, 1998 (concluding that particular communications that were critical of Congress but did not refer to specific candidates by name were not prohibited political campaign activities, while broadcasts that identified a person as a candidate and criticized that candidate by name within months of a primary election constituted improper political campaign intervention, despite educational content).

⁸ See *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876, 881 (2d Cir. 1988). In practice, however, the IRS may exercise its discretion by not seeking revocation of the organization’s tax-exempt status in cases in which the violation was unintentional, involved only a small amount, and the organization subsequently corrected the violation and adopted procedures to prevent future improper political campaign activities. See, e.g., Priv. Ltr. Rul. 9609007, December 6, 1995 (imposing the section 4955 penalty for improper political campaign intervention but not revoking the organization’s tax-exempt status).

⁹ The IRS takes the position that prohibited political campaign intervention may, depending on the facts and circumstances, arise when an organization engages in a business transaction with a candidate, such as the rental of mailing lists or the acceptance of paid political advertising. In such cases, not only must the fee charged for the good or service provided by the charity be set at a fair market rate, but the IRS will consider whether the charity has a track record of making available the same goods or services on the same terms to other candidates and noncandidates. See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1425 (Situations 17 and 18).

¹⁰ Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1421. Attempts to influence the outcome of voting by the public on referendums, initiatives, or constitutional amendments are not prohibited political campaign activities for public charities, but are considered “lobbying” activities and, thus, are subject to the limitation that such activities may not be “substantial.” Treas. Reg. sec. 1.501(c)(3)-1(c)(3). Similarly, efforts to influence the issues addressed in the platform of a political party generally are not viewed as prohibited political campaign intervention. However, such expenditures made by private foundations to influence referendums or party platforms (even if not substantial) potentially may be subject to penalty excise taxes under section 4945.

and are, therefore, permissible activities under section 501(c)(3), provided that the activities are carried out in a nonpartisan manner.¹¹ Publishing a compilation of voting records or responses to candidate questionnaires generally does not constitute prohibited political campaign activity when a wide range of issues is addressed and the published results do not suggest a bias for or against any candidate.¹² However, an alleged neutral effort to educate voters may evidence a bias and, thus, constitute prohibited political campaign intervention. Under some circumstances, dissemination of otherwise educational materials may be viewed as improper political campaign intervention, such as when an organization widely distributes (during an election campaign) a compilation of voting records of candidates only on a narrow range of issues.¹³ Under other circumstances, a charity may (consistent with section 501(c)(3) status) publish a newsletter containing voting records of incumbents on selected issues of interest to the organization, provided that the newsletter is distributed to the organization's normal readership (rather than being distributed to the general public or to any particular congressional district), is not timed to coincide with any particular election, and no comment is made on an individual's qualifications for public office.¹⁴

If a charity endorses, rates, or evaluates the qualifications of candidates for elective public office, then the political campaign intervention rule of section 501(c)(3) has been violated, even if the endorsements or ratings are allegedly based on neutral assessments of the candidates' professional, intellectual, or ethical qualifications, rather than partisan grounds.¹⁵ Moreover, the Internal Revenue Service (the "IRS") has concluded that, even if a charity itself and its employees do not formally endorse any candidate, prohibited political campaign activity may occur if the charity provides a platform for others to endorse candidates.¹⁶

Voter registration and get-out-the-vote drives are permissible activities for public charities, provided that the activities are nonpartisan and not specifically identified by the

¹¹ See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1422.

¹² See Rev. Rul. 78-248, 1978-1 C.B. 154 (charity may disseminate voting records or candidate questionnaires under certain fact patterns); Rev. Rul. 80-282, 1980-2 C.B. 178 (amplifying Rev. Rul. 78-248 regarding the timing and distribution of voter education materials).

¹³ See Rev. Rul. 78-248, 1978-1 C.B. 154; Rev. Rul. 76-456, 1976-2 C.B. 151 (organization that asked candidates to sign a code of fair campaign practices and released names of candidates who signed or refused to sign, was intervening in political campaigns).

¹⁴ See Rev. Rul. 80-282, 1980-2 C.B. 178.

¹⁵ See *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988) (rating of judicial candidates against general standards of competence was prohibited activity); Rev. Rul. 67-71, 1967-1 C.B. 125 (rating of school board candidates was prohibited activity, even if process was objective and intended to inform public about candidates).

¹⁶ See Tech. Adv. Mem. 9635003, April 19, 1996 (ruling that forums were composed of participants selected through a scientific method to reflect the democratic characteristics of a community, but publication of the participants' ratings of the candidates was improper political campaign intervention).

organization with any candidate or political party.¹⁷ However, voter registration drives conducted by private foundations may be subject to penalty excise taxes unless specific statutory criteria are satisfied.

Description of Proposal

Under the proposal, an organization is not described in section 501(c)(3) if it provides to any State or unit of a local government (1) direct funding for the purpose of the administration of elections for public office, or (2) any funding in a case in which it is reasonable to expect such funding will be used for the purpose of the administration of elections for public office, except that the proposal does not apply to the donation of space to be used as a polling place in an election for public office.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2024.

¹⁷ See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1422 (Situations 1 and 2 and accompanying text).

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts:

Fiscal Years												
[Millions of Dollars]												
<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2024-29</u>	<u>2024-34</u>
--	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]

[1] Gain of less than \$500,000.